CITY CLERK
10 APR 26 A 8:15
CINDY [illegible]

ORDINANCE NO. 2010-15

AN ORDINANCE TO AMEND TITLE 2 OF THE LAFAYETTE MUNICIPAL CODE ENTITLED "ADMINISTRATION AND PERSONNEL" TO CREATE A "CITY OF LAFAYETTE RESPONSIBLE BIDDER ORDINANCE"

WHEREAS, the City of Lafayette ("City"), pursuant to Indiana Code §36-1-12-4, is required by law to award public work contracts to the most "responsive and responsible" bidder;

WHEREAS, the City of Lafayette expends substantial funds for public works construction, a portion of that money being derived from taxes paid by residents;

WHEREAS, the City of Lafayette seeks to preserve administrative and taxpayer resources by ensuring that only qualified contractors and subcontractors are awarded City contracts;

WHEREAS, the City of Lafayette wishes to ensure that City contracts are awarded in an atmosphere that invites competition and guards against favoritism, improvidence, arbitrary conduct, extravagance, malfeasance, fraud and corruption, so as to secure the highest quality of work at the lowest cost practicable;

WHEREAS, the City of Lafayette, through exercise of its proprietary duties and responsibilities, possesses great discretion in determining the most "responsive and responsible" bidder and is entitled to specify the terms of the contract when it solicits bids and the criteria that bidders must meet in order to be considered a "responsible" bidder;

WHEREAS, the City of Lafayette finds that it is in its best interest to define the term "responsible" as contained within I.C. 36-1-12, entitled "Public Work Projects," and

WHEREAS, the "City of Lafayette Responsible Bidder Ordinance" will ensure efficient use of taxpayer dollars and promote public health, safety and welfare, NOW THEREFORE:

BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF LAFAYETTE, INDIANA as follows:

Chapter 2.17 of the Lafayette Municipal Code is hereby adopted and shall read as follows:

<u>Chapter 2.17 Responsible Bidder Ordinance</u>

2.17.010 Purpose
2.17.020 Applicability
2.17.030 Criteria

2.17.040 Certified Payroll
2.17.050 Additional Criteria
2.17.060 Lowest Bidder Not Chosen
2.17.070 Multiple Low Bids
2.17.080 Disqualification
2.17.090 Access to Public Records Act
2.17.100 Severability
2.17.110 Effective Date

Section 2.17.010 Purpose.

The Responsible Bidder Ordinance shall serve to define the term "responsible" as used in Indiana Code § 36-1-12-4, regarding competitive bidding.

Section 2.17.020 Applicability.

This Chapter of the Lafayette Municipal Code shall apply when:

A. The City is seeking a contract or service to perform public work. Public work, in this context, means the construction, reconstruction, alteration, or renovation of public building, or other structure that is paid for out of a public fund or special assessment. The term includes the construction, alteration, or repair of a highway, street, alley, bridge, sewer, drain, or other improvement that is paid for out of a public fund or special assessment. The term also includes any public work leased by the City under a lease containing an option to purchase; and

B. The cost of the contract or service shall be at least one-hundred thousand dollars ($100,000.00).

Section 2.17.030 Criteria.

A "responsible bidder" shall meet all the bid and contract specifications, and shall:

A. Affirm compliance with all applicable laws pre-requisite to doing business in Indiana;

B. Produce evidence of a federal employer taxpayer identification number or social security number (for sole proprietors);

C. Confirm compliance with Section 2000(e) of Chapter 21, Title 42 of the United States Code and Federal Executive Order No. 11375 (known as the Equal Opportunity Employer Provisions);

D. Confirm that individuals working on public works projects on behalf of contractors are

either classified as an employee or independent contractor under all applicable state and federal laws and local ordinances;

E. Provide the City with certificates of insurance indicating coverage, when such is required in the bid or contract specifications;

F. Affirm, where worker's compensation insurance is required under the bid specifications, that all employees are (1) covered under a current worker's compensation insurance policy, (2) properly classified under such policy and (3) provide to the awarding agency, upon formal request, a copy of the "declarations" page of the contractor's worker's compensation insurance policy which includes the name and addresses of the insured, as well as the class codes the compensation premium is based upon;

G. Indicate compliance with Indiana Code § 5-16-7 *et seq.*, the Indiana Common Construction Wage Act and/or federal Davis-Bacon Act, as applicable;

H. Submit proof of any professional or trade license required by law for any trade or specialty area in which a bidder is seeking a contract award; and disclose any suspension or revocation within the previous five (5) years of any professional trade license held by the company, or of any director, officer, or manager employed by bidder;

I. At the time of submitting the bid, bidder shall disclose the amount of work by self-performance and the following information regarding subcontractors:(1) the amount of each subcontractors bid (2) business name and address, (3) type of work to be performed and (4) statement of acknowledgement that subcontractor(s) shall comply with all applicable federal and state laws and local ordinances.

J. State that individuals who will perform work on the public works project on behalf of the contractor are properly classified as either (1) and employee or (2) an independent contractor under all applicable state and federal laws and local ordinances;

K. Provide information as to the substance abuse policy that pertains to all of the bidder's employees working on the project;

L. Confirm that any apprentices to be used on the project are registered with an apprenticeship and training program approved and registered with the United States Department of Labor, Bureau of Apprenticeship and Training (or any state or federal successor agency).

Section 2.17.040 Certified Payroll.

All contractors and subcontractors are required to submit to the awarding agency, and General Contractor, if applicable, an approved and detailed certified payroll on a weekly basis,

unless different payroll reporting requirements are stated under the bid specifications or contract.

Section 2.17.050 Additional Criteria.

The City may also request evidence of and/or consider the following factors when identifying responsible bidders for the purpose of awarding contractors under this Chapter.

A. The ability, capacity and skill of the bidder to perform the contract;

B. The capacity of the bidder to perform the contract promptly and efficiently, or within the time specified, without delay or interference;

C. The character, integrity, reputation and experience of the bidder;

D. The quality of the bidder's past performance, including performance of previous contracts, whether or not such performance was with the City;

E. The bidder's default under previous contracts, whether or not such contract was with the City;

F. The bidder's failure to pay or satisfactorily settle bills due on former contracts, whether or not such contracts were with the City;

G. The previous and existing compliance by the bidder with laws and ordinances relating to the contract;

H. The financial ability of the bidder to perform the contract;

I. A statement regarding and/or disclosure of:

Any determination of court or government agency for violations of federal and state laws or local ordinances including but not limited to violations of contracting or antitrust laws, tax or licensing laws, environmental laws, the Occupational Safety and Health Act (OSHA), the National Labor Relations Act (NLRA), Common Construction Wage Law, or the federal Davis-Bacon Act;

Any findings of "non-responsibility" by federal, state or local departments.

J. Any additional factors the City determines relevant for the contract.

Section 2.17.060 Lowest Bidder Not Chosen.

When a contract is awarded to a bidder other than the lowest bidder, a statement of the reasons for such award shall be prepared by the awarding agency.

Section 2.17.070 Multiple Low Bids.

When two (2) or more responsible bidders submit the same low bid, the contract shall be granted to the bidder whose headquarters are geographically closest to the City of Lafayette's corporation boundary; but if both low bidders are headquartered within the City of Lafayette's corporation boundary, then the winning bid shall be determined by drawing lots in public at a meeting of the awarding agency.

Section 2.17.080 Disqualification.

Any bidder who has defaulted under a City contract after the effective date of this Ordinance shall be disbarred from bidding for a period of two (2) years from the date of the default.

Section 2.17.090 Access to Public Records Act.

All requests for inspection or copying made by the public for submissions tendered under this Chapter shall be subject to disclosure in accordance with Indiana Code § 5-14-3-1 *et seq.*, the Indiana Access to Public Records Law

Section 2.17.100 Severability.

If any section, sentence or provision of this chapter, or the application thereof to any person or circumstances shall be declared invalid, such invalidity shall not affect any of the other sections, sentences, provisions, or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter we declare to be severable.

Section 2.17.110 Effective Date.

This Ordinance shall be in full force and effect from and after its passage by the Common Council of Lafayette, Indiana, and approval of the Mayor and publication as required by law.

ADOPTED AND PASSED BY THE COMMON COUNCIL of the City of Lafayette, Indiana, this 7 day of June, 2010.

Melissa Weast-Williamson

Melissa Weast-Williamson, President

ATTEST:

Cindy Murray

CINDY MURRAY, City Clerk

Presented by me to the Mayor of the City of Lafayette, Indiana, on this 7 day of June, 2010.

Cindy Murray

CINDY MURRAY, City Clerk

This Ordinance approved and signed by me on this 7 day of June, 2010.

Tony Roswarski

TONY ROSWARSKI, Mayor

ATTEST:

Cindy Murray

CINDY MURRAY, City Clerk

Sponsored by: Mayor Tony Roswarski