

ORDINANCE NO. ____

**AN ORDINANCE ESTABLISHING RESPONSIBLE BIDDER
REQUIREMENTS ON PUBLIC WORKS PROJECTS**

WHEREAS, the City of _____ (“City”) is a municipal corporation organized and operating under the laws of the State of Illinois;

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

WHEREAS, the City seeks to preserve administrative resources by ensuring that only qualified contractors and subcontractors are awarded contracts on public works construction projects;

WHEREAS, the City, based upon its experience, has determined that quality workmanship, efficient operation, safety, and timely completion of projects are not necessarily insured by awarding a construction contract solely on the basis of the low bid;

WHEREAS, the City seeks to enhance its ability to identify the lowest “responsible bidder” on all public works construction projects by instituting more comprehensive submission requirements which are in compliance with Illinois law; and

WHEREAS, “An Ordinance Establishing Responsible Bidder Requirements on Public Works Projects” will assure efficient use of taxpayer dollars, will promote public safety, and is in the public interest.

NOW, THEREFORE, BE IT ORDAINED by the City Council of _____, Illinois, that:

Section 1. Public works

For purposes of this chapter, the term “public works” shall mean the following: any constructing, altering, reconstructing, repairing, rehabilitating, refinishing, refurbishing, remodeling, remediating, renovating, custom fabricating, maintenance, landscaping, improving, moving, wrecking, painting, decorating, demolishing, and adding to or subtracting from any public building, structure, airport facility, highway, roadway, street, alley, bridge, sewer, drain, ditch, sewage disposal plant, water work, parking facility, railroad, excavation, or other project, development, real property, or improvement, or to do any part thereof, whether or not the performance of the work herein described involves the addition to, or fabrication into, any structure, project or development, real property or improvement herein described of any material or article of merchandise, which is paid for out of a public fund or out of a special assessment. The term also includes any public works leased by a political subdivision under a lease containing an option to purchase.

Section 2. Responsible Bidder

In determining whether a bidder is a “responsible bidder” for the award of a public works contract the bidder must submit the following information and supporting documentation verified under oath on a form designated by the City, in order for the bid to be accepted:

- A. Documents evidencing compliance with all applicable laws and ordinances pre-requisite to doing business in Illinois;
- B. A valid federal employer tax identification number or, if an individual, a valid social security number;
- C. Documents evidencing current registration with the Illinois Department of Revenue if bidder has employees (e.g. document with account number, Illinois Business Tax number);
- D. Documents evidencing current registration with the Illinois Department of Employment Security if bidder has employees (e.g. document with UI account number);
- E. Disclosure of any federal, state or local tax liens or tax delinquencies against the contractor or any officers of the contractor in the last five (5) years.
- F. A statement that all employees are (i) covered under a current workers’ compensation insurance policy and (ii) properly classified under such policy.

If the bidder is insured with a carrier, the evidence of workers’ compensation insurance shall be a copy of the “Information Page” of the contractor’s workers’ compensation policy and any continuation of that Information Page which include the name and address of the insured, as well as the class codes the compensation premium is based on and the total estimated remuneration per class code;

- G. A statement of compliance with all provisions of the Illinois Prevailing Wage Act (820 ILCS 130/1 et seq.) and all rules and regulations therein, for the past five (5) years.

Such statement shall also provide that the contractor has reviewed the Prevailing Wage Act (or federal Davis-Bacon and related Acts), has reviewed and agrees to pay the applicable prevailing wage rates attached to the bid specifications, and will strictly comply with the Prevailing Wage Act (or federal Davis-Bacon and related Acts) and related requirements.

A contractor who has been found by the Illinois Department of Labor to be in violation of the Prevailing Wage Act twice within a three (3) year period shall be deemed not to be a Responsible Bidder for two (2) years from the date of the latest finding;

- H. A statement of compliance with provisions of Section 2000e of Chapter 21, Title 42 of the United States Code and Federal Executive Order No. 11246 as amended by Executive Order No. 11375 (known as the Equal Opportunity Employer provisions);

- I. A copy of the written program for the prevention of substance abuse to be filed with a public body pursuant to the Substance Abuse Prevention on Public Works Projects Act (820 ILCS 265/1 et seq.);
- J. A statement that individuals who will perform work on the public works project on behalf of the contractor are properly classified as either (i) an employee or (ii) an independent contractor under all applicable state and federal laws and local ordinances;
- K. Disclosure of any federal, state or local claim for unpaid compensation (wages and/or fringe benefits) for contractor's employees filed against the bidder in the last five years, where such claim totals \$100,000 or more;
- L. Documents evidencing any professional or trade license required by law or local ordinance for any trade or specialty area in which the contractor is seeking a contract award. Additionally, the contractor must disclose any suspension or revocation of such license held by the company, or of any director, officer or manager of the company;
- M. Evidence of participation in apprenticeship and training programs applicable to the work to be performed on the project which are approved by and registered with the United States Department of Labor's Office of Apprenticeship, or its successor organization. The required evidence includes a copy of all applicable apprenticeship standards and Apprenticeship Agreement(s) for any apprentice(s) who will perform work on the public works project;
- N. Documents evidencing contractors safety and health activities and programs, including:
 - (i) a written safety policy statement signed by a company representative;
 - (ii) completed copies of OSHA Form 300A Summary of Work-Related Injuries and Illnesses for the past three (3) years (if applicable); and
 - (iii) the current year-to-date OSHA Form 300 Log of Work-Related Injuries and Illnesses (if applicable).
- O. Disclosure of the name and address of each subcontractor from whom the contractor has accepted a bid and/or intends to hire on any part of the project. Further, each such subcontractor shall be required to adhere to the requirements set forth herein as though it were bidding directly to the City. Each contractor shall submit all subcontractor information and supporting documentation to the City prior to the subcontractor commencing work on the project.

Any material changes to the contractor's status, at any time, must be reported in writing to the City within fourteen (14) days of its occurrence. Failure to comply with this requirement is grounds for the contractor to be deemed a non-responsible bidder.

Section 3. Additional Criteria Available

If all of the above criteria are otherwise satisfied and credits considered, the City may also consider the following factors, in its discretion, in awarding the project if such information is requested:

- A. Statements as to past performance, which shall give an accurate and complete record of all public works projects completed in the past three (3) years by the contractor. Such statements shall include the name of the public body and the project, original contract price, final contract price, and the names of all subcontractors used, if applicable, and a statement as to compliance with completion deadlines; and/or
- B. Any determinations by a court or governmental agency for violations of federal, state, or local laws 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), or federal Davis-Bacon and related Acts.

Section 4. Credit Toward Bid Award

The following criteria shall be used as credit toward a bid in determining the lowest responsible bidder. If the City applies any credit(s) towards a bid, the credit(s) will not reduce the amount of a contract.

EXAMPLE: \$1,000,000 bid, receives \$50,000 local bidder credit. For purposes of determining the lowest bidder, the contractor's bid is \$950,000. However, the contract price will remain \$1,000,000.

- A. The City shall apply a credit equal to 5% or \$50,000, whichever is less, based on the local bidder's bid. A local bidder is an individual or business entity that (1) establishes it has a place of business located in the county where the work is to be performed for at least 1 year prior to the deadline for submitting bids, and (2) can demonstrate for one year prior to the deadline for submitting bids that it has paid a minimum of \$5,000 of sales tax in the county where the work is to be performed.

In the event a local bidder does not bid on the project, a bidder that establishes it has a place of business located within an Illinois county contiguous to the county where the work is to be performed for at least one year prior to the deadline for submitting bids will receive a credit equal to 1% or \$10,000, whichever is less; and

- B. The City shall apply a credit equal to 2% or \$20,000, whichever is less, towards the bid of a bidder with a local workforce. "Local workforce" means at least 25% of the bidder's construction employees reside in the county where the work is to be performed or Illinois counties contiguous to the county where the work is to be performed. The bidder is not required to have a place of business in the county where the work is to be performed for this credit to apply.

The bidder is responsible for requesting credit based upon any of the above criteria.

Section 5. Incomplete Submissions by Bidders and Subcontractors

It is the sole responsibility of the contractor to comply with all submission requirements at the time it submits its bid to the City. Contractor submissions deemed inadequate or incomplete may result in a determination that the contractor is not a responsible bidder.

The submission requirements also apply to all subcontractors, except that the contractor shall submit all subcontractor submissions to the City prior to the subcontractor commencing work on the project. Failure of a subcontractor to submit the required information shall not disqualify the successful bidder from performing work on the project and shall not constitute a contractual default and/or breach by the successful bidder. However, the City may withhold all payments otherwise due for work performed by a subcontractor, until the subcontractor submits the required information and the City approves such information.

Section 6. Lowest Bidder Not Chosen

When the award is not recommended to be given to the lowest bidder, a statement of the reason for such recommendation shall be prepared by the purchasing agent.

Section 7. Multiple Low Bids

When two or more responsible bidders submit the same low bid, the contract award shall be determined by drawing lots at a public meeting of the City Council, unless one bidder is a local contractor and one is a non-local contractor, in which event the local contractor shall be awarded the contract.

Section 8. Public Records

All information submitted by a contractor or subcontractor pursuant to this Ordinance are public records subject to review pursuant to the Illinois Freedom of Information Act (5 ILCS 140/1 et seq.).

Section 9. Materiality

The requirements of this Ordinance are a material part of the bid documents and the contract and the successful bidder shall insert this Ordinance in all subcontracts.

Section 10. Severability

If any portion of this Ordinance or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other portions or applications of this Ordinance which can be given effect without the invalid portions or applications and, to this end, the portions of this Ordinance are severable.

Section 11. Other Ordinances

Any prior ordinance or portion thereof in conflict with this Ordinance is hereby revoked.

Section 12. Effective Date

This Ordinance shall take effect upon passage by the City Council of _____, Illinois.

This Ordinance was passed by the City Council of _____, Illinois on this ____ day of _____, 201__.

This Ordinance was approved by the Mayor of the City of _____, Illinois on this ____ day of _____, 201__.

Mayor

Attest:

Clerk