COMMON COUNCIL OF THE CITY OF HOBART, INDIANA

Ordinance Number 2015-28

An Ordinance to Establish Submission Requirements for Bidders on City Public Works Projects and Responsible Bidder Determinations

WHEREAS, the Common Council ("Council") of the City of Hobart, Indiana ("City") has noted that the City is required by law (I.C. §36-1-12-4 (b) (8)) to award certain contracts for public works projects to the "lowest responsible and responsive" bidder, and

WHEREAS, the law (I.C. §36-1-12-4 (b) (11)) further requires that the City entity awarding a public works contract where bids are required, in determining whether a bidder is a "responsible bidder," may consider the following factors: (A) The ability and capacity of the bidder to perform the work; (B) The integrity, character, and reputation of the bidder; and (C) The competence and experience of the bidder; and

WHEREAS, the Indiana General Assembly has enacted legislation (Public Law 252-2015, §9) which took effect on July 1, 2015 to, inter alia, repeal the Common Construction Wage Act (I.C. § 5-16-7-1, et seq.) and which also amended certain of Indiana's procurement laws. As a result, the Common Construction Wage Act no longer applies to public works contracts awarded after June 30, 2015 and references to the Act was deleted from twenty-nine (29) different procurement statutes. Furthermore, the repealing legislation (Public Law 252-2015, §11) enacted I.C. §5-16-7.2-5 which prohibits a public agency from establishing, mandating or otherwise requiring a wage schedule on a public works project; and

WHEREAS, the City of Hobart, based upon its experience, has determined that quality workmanship, efficient operation, safety, and timely completion of projects requires all bidders meet certain minimum requirements in order to be a "responsible bidder," and are essential to the determination of whether a bidder has the ability and capacity as well as the competence and experience to perform the work; and

WHEREAS, as noted above, applicable state law also requires that bidders meet certain minimum requirements in order to be a "responsive and responsible" bidder;

WHEREAS, the City of Hobart seeks to enhance its ability to identify "responsible and responsive" bidders on all City public works construction projects by the institution of comprehensive submission requirements which are in compliance with Indiana State law, and which are consistent with the exercise of the City's Home Rule powers pursuant to I.C. 36-1-3; and

WHEREAS, this "Responsible Bidding Practices and Submission Requirements" Ordinance will preserve administrative resources by insuring that only qualified contractors and subcontractors are awarded contracts on public works construction projects; and

WHEREAS, this "Responsible Bidding Practices and Submission Requirements" Ordinance will assure efficient use of taxpayer dollars, will promote public safety and is in the public interest; and

WHEREAS this "Responsible Bidding Practices and Submission Requirements" Ordinance will help ensure that no contractor awarded work under this Ordinance or any
subcontractor at any tier working on a project awarded pursuant to this ordinance engages in
payroll fraud, including the misclassification of employees as independent contractors to
avoid paying state, federal or local payroll taxes, workers compensation insurance,
unemployment insurance premiums and failing to pay overtime and wages as required by
law.

THEREFORE, BE IT ORDAINED by the Common Council of the City of Hobart
that:

SECTION ONE: The Municipal Code of the City of Hobart, Indiana
(“Code”) is hereby amended by adding a new sub-chapter to be entitled
“Responsible Bidding Practices and Submission Requirements”
commencing with new section 33.200 and the subsequent other sections, as
follows:

§33.200. BID SUBMISSION REQUIREMENTS.

Contractors proposing to submit bids on any City of Hobart (“City”)
project which are governed by City of Hobart bidding rules and policy,
estimated to have a total construction cost of at least one hundred fifty
thousand dollars ($150,000.00) or more must, prior to the opening of bids,
submit a statement made under penalty of perjury, on a form designated by the
City and must include:

(1) A copy of a print-out of the Indiana Secretary of State’s on-line records
for the bidder dated within sixty (60) days of the submission of said
document showing that the bidder is in existence, current with the
Indiana Secretary of State’s Business Entity Reports, and eligible for a
certificate of good standing. If the bidder is an individual, sole
proprietor or partnership, this subsection shall not apply;

(2) A list identifying all former business names.

(3) 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), or federal Davis-
Bacon and related Acts;"

(4) A statement on staffing capabilities, including labor sources;

(5) 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
certificates or standards for these training programs.

(6) A copy of a written plan for employee drug testing that: (i) covers all
employees of the bidder who will perform work on the public work
project; and (ii) meets, or exceeds, the requirements set forth I.C. § 4-13-18-5 or I.C. § 4-13-18-6;

(7) The name and description of the management experience of each of the bidder’s project managers and superintendents that bidder intends to assign to work on the project;

(8) Proof of any professional or trade license required by law for any trade or specialty area in which bidder is seeking a contract award; and, disclosure of any suspension or revocation within the previous five years of any professional or trade license held by the company, or of any director, office or manager employed by the bidder;

(9) Evidence that the contractor is utilizing a surety company which is on the United States Department of Treasury’s Listing of Approved Sureties; and

(10) A written statement of any federal, state or local tax liens or tax delinquencies owed to any federal, state or local taxing body in the last five years.

(11) A statement that individuals who will perform work on the public work project on behalf of the bidder will be properly classified as either (i) an employee or (ii) an independent contractor, under all applicable state and federal laws and local ordinances;

(12) A list of projects of similar size and scope of work that the bidder has performed in the State of Indiana within three (3) years prior to the date on which the bid is due;

(13) For the last three years, provide copies of the surety/performance bonds in which you are the named Insured and surety/performance bonds where you were covered under the name of another Insured.

The City reserves the right to require the submission of additional written supplemental information, from the bidder, including additional verification of any of the information provided by the bidder and may also conduct random inquiries on the bidder’s qualifications with the bidder’s current and prior customers.

§33.201. POST-BID SUBMISSIONS FROM SUBCONTRACTORS.

All bidders shall provide a written list that discloses the name, address, and type of work for each first-tier subcontractor from whom the bidder has accepted a bid and/or intends to hire on any part of the public work project, including individuals performing work as independent contractors, within five (5) business days after the date the bids are due.

In addition, each such first-tier subcontractor shall be required to adhere to the
requirements of §33.200 of this sub-chapter as though it were bidding directly
to the City, except that first-tier subcontractors shall submit the required
information (including the name, address, and type of work for each of their
first-tier subcontractors) to the successful bidder no later than five (5) business
days after the subcontractor’s first day of work on the public work project and
the bidder shall then forward said information to the City. Payment shall be
withheld from any first-tier subcontractor who fails to timely submit said
information until such information is submitted and approved by the City.

Upon request, the City may require any second and lower-tier subcontractors
to provide the required information (including name, address, type of work on
the project and the name of the higher-tier subcontractor). Payments shall be
withheld from any second or lower-tiered contractor who fails to timely
submit this information until this information is submitted and approved by
the City. Additionally, the City may require the successful bidder and relevant
subcontractor to remove the second or lower-tier subcontractor from the
project and replace it with a responsive and responsible subcontractor.

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. The City may also
require that successful bidder to remove the subcontractor from the project and
replace it with a responsive and responsible subcontractor.

The disclosure of a subcontractor (“Disclosed Subcontractor”) by a bidder or a
subcontractor shall not create any rights in the Disclosed Subcontractor. Thus,
a bidder and/or subcontractor may substitute another subcontractor
(“Substitute Subcontractor”) for a Disclosed Subcontractor by giving the City
written notice of the name, address, and type of work of the Substitute
Subcontractor. The Substitute Subcontractor is subject to all of the obligations
of a subcontractor under this Ordinance.

§33.202. VALIDITY OF PRE-QUALIFICATION CLASSIFICATION.

Upon designation by the City that a contractor's or subcontractor's
submission in anticipation of a bid is complete and timely, and upon any
further consideration deemed necessary by the City, the contractor or
subcontractor may be pre-qualified for future City public works projects. A
contractor's classification as "qualified" shall exempt the contractor or sub-
contractor from the comprehensive submission requirements contained herein
for the remainder of the calendar year. Thereafter, contractors or
subcontractors who are pre-qualified must submit a complete application for
continuation of "pre-qualified" standing, on a form provided by the City, (also
referred to as the "short form") by December 31st for the upcoming calendar
year. Failure by any pre-qualified contractor or subcontractor to timely submit
its complete application for continuation of "pre-qualified" standing shall
result in automatic removal of the designation, effective January 1 of the
upcoming year. However, the "removed" contractor or subcontractor shall still
be permitted to bid on City public works projects by including the required
documents with their bid.

Any material changes to the contractor's status, at any time, must be reported
in writing within ten (10) days of its occurrence to the City. The pre-
qualification designation is solely within the discretion of the City and the
City specifically reserves the right to change or revoke the designation for a
stated written reason(s).

Denial of pre-qualification shall be in writing and shall be forwarded to the
contractor within seven (7) working days of such decision. Any contractor
denied or losing pre-qualification status may request reconsideration of the
decision by submitting such request in writing to the City within five (5)
business days of receipt of notice of denial.

§33.203. INCOMPLETE SUBMISSIONS BY BIDDERS.

It is the sole responsibility of the potential bidder to comply with all
submission requirements applicable to the bidder in section I above by no later
than the public bid opening. Post-bid submissions must be submitted in
accordance with section II above. Submissions deemed inadequate,
incomplete, or untimely by the City may result in the automatic
disqualification of the bid.

§33.204. RESPONSIVE AND RESPONSIBLE BIDDER
DETERMINATION.

The City, after review of complete and timely submissions, shall, in its
sole discretion, after taking into account all information in the submission
requirements, determine whether a bidder is responsive and responsible. The
City specifically reserves the right to utilize all information provided in the
contractor or subcontractor's submission or any information obtained by the
City through its own independent verification of the information provided by
the contractor.

§33.205. CERTIFIED PAYROLL.

For projects in which the estimated cost is at least $250,000, the successful
bidder and all subcontractors working on a public work project shall submit a
certified payroll report utilizing the federal form now known as a W-347
which must be prepared on a weekly basis and submitted to the City within
ten (10) calendar days after the end of each week in which the bidder or
subcontractor performed its work on the public work project. These certified
payroll reports shall identify the job title and craft of each employee on the
project, e.g. journeyman electrician or apprentice electrician. In the event any
contractor or subcontractor uses independent contractors to perform work on
the project, such individual must be identified on the WH-347 form with the
same information as is required for employees.

The City may withhold payment due for work performed by a bidder if the
bidder fails to timely submit its certified payroll reports until such time as such
certified payroll reports are submitted. The City may also withhold payment
due for work performed by a subcontractor if the subcontractor fails to timely
submit its certified payroll reports until such time as such certified payroll
reports are submitted. The City shall not withhold payment to a bidder for
work performed by the bidder or for work performed by subcontractors who
have submitted their certified payroll reports, because one or more other
subcontractors failed to timely submit their certified payroll reports.

§33.206. PUBLIC RECORDS.

All information submitted by a bidder or a subcontractor pursuant to
this Ordinance, including certified payrolls, are public records subject to
review pursuant to the Indiana Access to Public Records IACT(IC 5-14-3-1, et
seq.).

§33.207. PENALTIES FOR FALSE, DECEPTIVE OR
FRAUDULENT STATEMENTS.

Any bidder that willfully makes, or willfully causes to be made, a
false, deceptive or fraudulent statement, or willfully submits false, deceptive
or fraudulent information in connection with any submission made to the City
shall be disqualified from bidding on all City projects for a period of three
years and shall be subject to fine in an amount not to exceed $2,500.00 for
each false, deceptive or fraudulent statement or submitted information.

SECTION TWO: This ordinance shall become effective upon its adoption in the
manner required by law, and upon publication thereof pursuant to I.C. §36- 3-4-6-14(b) in
two newspapers of general circulation published within the City pursuant to I.C. §5-3-1-4 (a).

SECTION THREE: All ordinances or portions thereof in effect prior to
the effective date and in conflict with the provisions of this ordinance are
hereby repealed.

ALL OF WHICH is PASSED and ADOPTED by the Common Council of the City of
Hobart, Indiana on this 7th day of October, 2015.

PRESIDING OFFICER

ATTEST: DEBORAH A. LONGER, Clerk-Treasurer
PRESENTED by me to the Mayor of the City of Hobart on the 7th day of October, 2015 at the hour of 7:00 p.m.

DEBORAH A. LONGER, Clerk-Treasurer

APPROVED, EXECUTED and RETURNED by me to the Common Council of the City of Hobart on this 7th day of October, 2015.

BRIAN K. SNEDECOR, Mayor

ATTEST: DEBORAH A. LONGER, Clerk-Treasurer