

1 **COMMON COUNCIL OF THE CITY OF HOBART, INDIANA**

2
3 **Ordinance Number 2015-28**

4
5 **An Ordinance to Establish Submission Requirements for Bidders on City**
6 **Public Works Projects and Responsible Bidder Determinations**

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

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

15 WHEREAS, the Indiana General Assembly has enacted legislation (Public Law 252-
16 2015, §9) which took effect on July 1, 2015 to, *inter alia*, repeal the Common Construction
17 Wage Act (I.C. § 5-16-7-1, *et seq.*) and which also amended certain of Indiana’s procurement
18 laws. As a result, the Common Construction Wage Act no longer applies to public works
19 contracts awarded after June 30, 2015 and references to the Act was deleted from twenty-nine
20 (29) different procurement statutes. Furthermore, the repealing legislation (Public Law 252-
21 2015, §11) enacted I.C. §5-16-7.2-5 which prohibits a public agency from establishing,
22 mandating or otherwise requiring a wage schedule on a public works project; and
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24 WHEREAS, the City of Hobart, based upon its experience, has determined that
25 quality workmanship, efficient operation, safety, and timely completion of projects requires
26 all bidders meet certain minimum requirements in order to be a “responsible” bidder, and are
27 essential to the determination of whether a bidder has the ability and capacity as well as the
28 competence and experience to perform the work; and
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30 WHEREAS, as noted above, applicable state law also requires that bidders meet
31 certain minimum requirements in order to be a “responsive and responsible” bidder;
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33 WHEREAS, the City of Hobart seeks to enhance its ability to identify “responsible
34 and responsive” bidders on all City public works construction projects by the institution of
35 comprehensive submission requirements which are in compliance with Indiana State law,
36 and which are consistent with the exercise of the City’s Home Rule powers pursuant to I.C.
37 36-1-3; and
38

39 WHEREAS, this “Responsible Bidding Practices and Submission Requirements”
40 Ordinance will preserve administrative resources by insuring that only qualified contractors
41 and subcontractors are awarded contracts on public works construction projects; and
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43 WHEREAS, this “Responsible Bidding Practices and Submission Requirements”
44 Ordinance will assure efficient use of taxpayer dollars, will promote public safety and is in
45 the public interest; and
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47 WHEREAS this “Responsible Bidding Practices and Submission Requirements”
48 Ordinance will help ensure that no contractor awarded work under this Ordinance or any

49 subcontractor at any tier working on a project awarded pursuant to this ordinance engages in
50 payroll fraud, including the misclassification of employees as independent contractors to
51 avoid paying state, federal or local payroll taxes, workers compensation insurance,
52 unemployment insurance premiums and failing to pay overtime and wages as required by
53 law.

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

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

63
64 **§33.200. BID SUBMISSION REQUIREMENTS.**

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66 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:

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73 (1) A copy of a print-out of the Indiana Secretary of State’s on-line records
74 for the bidder dated within sixty (60) days of the submission of said
75 document showing that the bidder is in existence, current with the
76 Indiana Secretary of State’s Business Entity Reports, and eligible for a
77 certificate of good standing. If the bidder is an individual, sole
78 proprietor or partnership, this subsection shall not apply;
- 79
80 (2) A list identifying all former business names.
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82 (3) Any determinations by a court or governmental agency for violations
83 of federal, state, or local laws including, but not limited to violations of
84 contracting or antitrust laws, tax or licensing laws, environmental laws,
85 the Occupational Safety and Health Act (OSHA), or federal Davis-
86 Bacon and related Acts;”
- 87
88 (4) A statement on staffing capabilities, including labor sources;
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90 (5) Evidence of participation in apprenticeship and training programs,
91 applicable to the work to be performed on the project, which are
92 approved by and registered with the United States Department of
93 Labor’s Office of Apprenticeship, or its successor organization. The
94 required evidence includes a copy of all applicable apprenticeship
95 certificates or standards for these training programs.
- 96
97 (6) A copy of a written plan for employee drug testing that: (i) covers all
98 employees of the bidder who will perform work on the public work

99 project; and (ii) meets, or exceeds, the requirements set forth I.C. § 4-
100 13-18-5 or I.C. § 4-13-18-6;

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

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

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

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

119
120 (11) A statement that individuals who will perform work on the public
121 work project on behalf of the bidder will be properly classified as
122 either (i) an employee or (ii) an independent contractor, under all
123 applicable state and federal laws and local ordinances;

124
125 (12) A list of projects of similar size and scope of work that the bidder has
126 performed in the State of Indiana within three (3) years prior to the
127 date on which the bid is due;

128
129 (13) For the last three years, provide copies of the surety/performance
130 bonds in which you are the named Insured and surety/performance
131 bonds where you were covered under the name of another Insured.

132
133 The City reserves the right to require the submission of additional written
134 supplemental information, from the bidder, including additional verification of
135 any of the information provided by the bidder and may also conduct random
136 inquiries on the bidder's qualifications with the bidder's current and prior
137 customers.

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140 **§33.201. POST-BID SUBMISSIONS FROM SUBCONTRACTORS.**

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

147
148 In addition, each such first-tier subcontractor shall be required to adhere to the

149 requirements of §33.200 of this sub-chapter as though it were bidding directly
150 to the City, except that first-tier subcontractors shall submit the required
151 information (including the name, address, and type of work for each of their
152 first-tier subcontractors) to the successful bidder no later than five (5) business
153 days after the subcontractor's first day of work on the public work project and
154 the bidder shall then forward said information to the City. Payment shall be
155 withheld from any first-tier subcontractor who fails to timely submit said
156 information until such information is submitted and approved by the City.
157

158 Upon request, the City may require any second and lower-tier subcontractors
159 to provide the required information (including name, address, type of work on
160 the project and the name of the higher-tier subcontractor). Payments shall be
161 withheld from any second or lower-tiered contractor who fails to timely
162 submit this information until this information is submitted and approved by
163 the City. Additionally, the City may require the successful bidder and relevant
164 subcontractor to remove the second or lower-tier subcontractor from the
165 project and replace it with a responsive and responsible subcontractor.
166

167 Failure of a subcontractor to submit the required information shall not
168 disqualify the successful bidder from performing work on the project and shall
169 not constitute a contractual default and/or breach by the successful bidder.
170 However, the City may withhold all payments otherwise due for work
171 performed by a subcontractor, until the subcontractor submits the required
172 information and the City approves such information. The City may also
173 require that successful bidder to remove the subcontractor from the project and
174 replace it with a responsive and responsible subcontractor.
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176 The disclosure of a subcontractor ("Disclosed Subcontractor") by a bidder or a
177 subcontractor shall not create any rights in the Disclosed Subcontractor. Thus,
178 a bidder and/or subcontractor may substitute another subcontractor
179 ("Substitute Subcontractor") for a Disclosed Subcontractor by giving the City
180 written notice of the name, address, and type of work of the Substitute
181 Subcontractor. The Substitute Subcontractor is subject to all of the obligations
182 of a subcontractor under this Ordinance.
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185 **§33.202. VALIDITY OF PRE-QUALIFICATION CLASSIFICA-**
186 **TION.**
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188 Upon designation by the City that a contractor's or subcontractor's
189 submission in anticipation of a bid is complete and timely, and upon any
190 further consideration deemed necessary by the City, the contractor or
191 subcontractor may be pre-qualified for future City public works projects. A
192 contractor's classification as "qualified" shall exempt the contractor or sub-
193 contractor from the comprehensive submission requirements contained herein
194 for the remainder of the calendar year. Thereafter, contractors or
195 subcontractors who are pre-qualified must submit a complete application for
196 continuation of "pre-qualified" standing, on a form provided by the City, (also
197 referred to as the "short form") by December 31st for the upcoming calendar
198 year. Failure by any pre-qualified contractor or subcontractor to timely submit

199 its complete application for continuation of "pre-qualified" standing shall
200 result in automatic removal of the designation, effective January 1 of the
201 upcoming year. However, the "removed" contractor or subcontractor shall still
202 be permitted to bid on City public works projects by including the required
203 documents with their bid.
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205 Any material changes to the contractor's status, at any time, must be reported
206 in writing within ten (10) days of its occurrence to the City. The pre-
207 qualification designation is solely within the discretion of the City and the
208 City specifically reserves the right to change or revoke the designation for a
209 stated written reason(s).
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211 Denial of pre-qualification shall be in writing and shall be forwarded to the
212 contractor within seven (7) working days of such decision. Any contractor
213 denied or losing pre-qualification status may request reconsideration of the
214 decision by submitting such request in writing to the City within five (5)
215 business days of receipt of notice of denial.
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218 **§33.203. INCOMPLETE SUBMISSIONS BY BIDDERS.**
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220 It is the sole responsibility of the potential bidder to comply with all
221 submission requirements applicable to the bidder in section I above by no later
222 than the public bid opening. Post-bid submissions must be submitted in
223 accordance with section II above. Submissions deemed inadequate,
224 incomplete, or untimely by the City may result in the automatic
225 disqualification of the bid.
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228 **§33.204. RESPONSIVE AND RESPONSIBLE BIDDER**
229 **DETERMINATION.**
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231 The City, after review of complete and timely submissions, shall, in its
232 sole discretion, after taking into account all information in the submission
233 requirements, determine whether a bidder is responsive and responsible. The
234 City specifically reserves the right to utilize all information provided in the
235 contractor or subcontractor's submission or any information obtained by the
236 City through its own independent verification of the information provided by
237 the contractor.
238

239 **§33.205. CERTIFIED PAYROLL.**
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241 For projects in which the estimated cost is at least \$250,000, the successful
242 bidder and all subcontractors working on a public work project shall submit a
243 certified payroll report utilizing the federal form now known as a WH-347
244 which must be prepared on a weekly basis and submitted to the City within
245 ten (10) calendar days after the end of each week in which the bidder or
246 subcontractor performed its work on the public work project. These certified
247 payroll reports shall identify the job title and craft of each employee on the
248 project, e.g. journeyman electrician or apprentice electrician. In the event any

249 contractor or subcontractor uses independent contractors to perform work on
250 the project, such individual must be identified on the WH-347 form with the
251 same information as is required for employees.
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253 The City may withhold payment due for work performed by a bidder if the
254 bidder fails to timely submit its certified payroll reports until such time as such
255 certified payroll reports are submitted. The City may also withhold payment
256 due for work performed by a subcontractor if the subcontractor fails to timely
257 submit its certified payroll reports until such time as such certified payroll
258 reports are submitted. The City shall not withhold payment to a bidder for
259 work performed by the bidder or for work performed by subcontractors who
260 have submitted their certified payroll reports, because one or more other
261 subcontractors failed to timely submit their certified payroll reports.
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263 **§33.206. PUBLIC RECORDS.**
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265 All information submitted by a bidder or a subcontractor pursuant to
266 this Ordinance, including certified payrolls, are public records subject to
267 review pursuant to the Indiana Access to Public Records IACT(IC 5-14-3-1, *et*
268 *seq.*).
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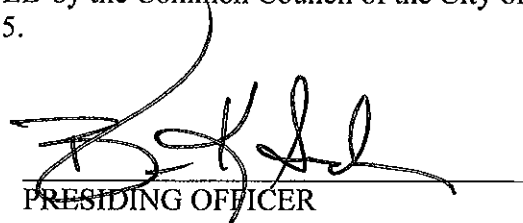
270 **§33.207. PENALTIES FOR FALSE, DECEPTIVE OR**
271 **FRAUDULENT STATEMENTS.**
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273 Any bidder that willfully makes, or willfully causes to be made, a
274 false, deceptive or fraudulent statement, or willfully submits false, deceptive
275 or fraudulent information in connection with any submission made to the City
276 shall be disqualified from bidding on all City projects for a period of three
277 years and shall be subject to fine in an amount not to exceed \$2,500.00 for
278 each false, deceptive or fraudulent statement or submitted information.
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280 *SECTION TWO:* This ordinance shall become effective upon its adoption in the
281 manner required by law, and upon publication thereof pursuant to I.C. §36- 3-4-6-14(b) in
282 two newspapers of general circulation published within the City pursuant to I.C. §5-3-1-4 (a).
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284 *SECTION THREE:* All ordinances or portions thereof in effect prior to
285 the effective date and in conflict with the provisions of this ordinance are
286 hereby repealed.
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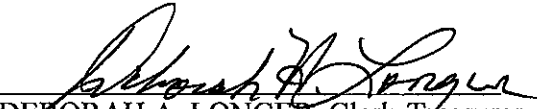
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289 ALL OF WHICH is PASSED and ADOPTED by the Common Council of the City of
290 Hobart, Indiana on this 7th day of October, 2015.
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PRESIDING OFFICER

ATTEST: 
DEBORAH A. LONGER, Clerk-Treasurer

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PRESENTED by me to the Mayor of the City of Hobart on the 7th day of October,
2015 at the hour of 7:00 pm.


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