

ORDINANCE NO. 2015- 9

AN ORDINANCE TO ESTABLISH RESPONSIBLE BIDDING PRACTICES
AND SUBMISSION REQUIREMENTS FOR SUBMITTING BIDS
TO PERFORM CONSTRUCTION WORK ON PUBLIC WORKS PROJECTS

WHEREAS, the City of Portage is required by law to award capital improvement contracts to the "lowest responsive and responsible" bidder;

WHEREAS, the City, 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 "responsive and responsible" bidder;

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

WHEREAS, the City seeks to enhance its ability to identify "responsive and responsible" bidders on all City public works construction projects by institution of more comprehensive submission requirements which are in compliance with Indiana State law;

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

WHEREAS, this Ordinance will assure efficient use of taxpayer dollars, will promote public safety and is in the public interest:

NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF PORTAGE THAT:

Section 1. A new Section 18-2, entitled "Responsible Bidding Practices and Submission Requirements for Submitting Bids to Perform Construction Work on Public Works Projects," shall be added to the City of Portage Municipal Code which shall read as follows:

Sec. 18-2. Responsible Bidding Practices and Submission Requirements for Submitting Bids to Perform Construction Work on Public Works Projects.

(a) Bid Submission Requirements:

Contractors proposing to submit bids on any City project estimated to cost at least one hundred fifty thousand dollars (\$150,000.00) or more must submit with their bid a statement made under oath and subject to perjury laws, on a form designated by the City and which includes:

(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 in IC 4-13-18-5 or IC 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, officer 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.
- (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.

The City reserves the right to demand supplemental information from the bidder, additional verification of any of the information provided by the bidder, and to conduct random inquiries of the bidder's current and prior customers.

(b) 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 Section I of this Ordinance 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 the successful bidder to remove a 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.

(c) Validity of Pre-Qualification Classification:

Upon designation by the City that a contractor's or subcontractor's submission required by this Ordinance 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 a period of twelve (12) months. 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.

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.

(d) 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.

(e) 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.

(f) Certified Payroll:

For projects in which the 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 WH-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.

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.

(g) 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 law (IC 5-14-3).

(h) Penalties for False, Deceptive or Fraudulent Statements/Information:

Any bidder that makes, or causes to be made, a false, deceptive or fraudulent statement, or 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 may be fined a maximum of \$5,000.00.

Section 2. Conflicting Ordinances. Any Ordinance or provision of any Ordinance of the City of Portage or of the Municipal Code of the City of Portage in conflict with the provisions of this Ordinance is hereby repealed.


Section 3. Severability. The invalidity of any section, clause, sentence or provision of this Ordinance shall not affect the validity of any other part of this Ordinance which can be given effect without such invalid part or parts.

Section 4. Effective Date. This Ordinance shall be in full force and effect from and after its passage and approval by the Mayor of the City of Portage and publication as required by law.

PASSED AND ADOPTED by the Common Council of the City of Portage, Porter County, Indiana, on the 1st day of September, 2015.

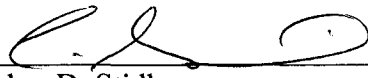

PRESIDING OFFICER

ATTEST:



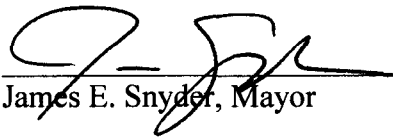
Christopher D. Stidham, Clerk-Treasurer

Presented by me to the Mayor of the City of Portage, Porter County, Indiana, this 2nd
day of September, 2015.



Christopher D. Stidham,
Clerk-Treasurer

Approved by me, the Mayor of the City of Portage, Porter County, Indiana, this 2nd
day of September, 2015.



James E. Snyder, Mayor