

**TOWN OF SCHERERVILLE, LAKE COUNTY, INDIANA**

**ORDINANCE NO.: 1900**

**AN ORDINANCE ESTABLISHING SUBMISSION REQUIREMENTS FOR BIDDERS ON TOWN OF SCHERERVILLE PUBLIC WORKS PROJECTS AS WELL AS ESTABLISHING RESPONSIBLE BIDDING PRACTICES AND DETERMINATION STANDARDS, AND ALL MATTERS RELATED THERETO.**

**WHEREAS**, the Town Council (hereinafter, the "Town Council") of the Town of Schererville, Lake County, Indiana (hereinafter, the "Town"), has been informed and advised that the Town is required by applicable law, namely, 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 Town Council has been further informed and advised that other provisions of applicable law, namely, I.C. §36-1-12-4(b) (11), further require that the Town entity awarding a public works contract where bids are required, in determining whether a bidder is a "responsible bidder", may consider the following factors, namely: (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 Town Council has been further informed and advised that legislation has been enacted by the Indiana General Assembly, taking effect July 1, 2015, to, inter alia, repeal the Common Construction Wage Act, previously set forth at I.C. §5-16-7, et seq., and which also amended certain procurement laws of the State of Indiana; as a consequence, the Common Construction Wage Act no longer applies to public works contracts awarded after June 30, 2015; references to same have been deleted from numerous procurement statutes in the Indiana Code; further, the legislation repealing the Common Construction Wage Act enacted I.C. §5-16-7.2-5, which law prohibits a public agency from establishing, mandating, or otherwise requiring a wage schedule on a public works project; and

**WHEREAS**, the Town, based upon its experience, has determined that quality workmanship, efficient operation, safety, and timely completion of projects, requires all bidders to 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 required on the public work projects; and

**WHEREAS**, the Town Council has been further informed and advised that as set forth hereinabove, applicable State law also requires bidders to meet or exceed certain minimum requirements in order to be a "responsive and responsible" bidder; and

**WHEREAS**, the Town Council seeks to enhance its ability to identify "responsible and responsive" bidders on all Town public works construction projects by the institution of comprehensive submission requirements which are in compliance with current applicable Indiana State law, and which are consistent with the exercise of the Town's Home Rule Powers pursuant to the provisions of I.C. §36-1-3, et seq.; and

**WHEREAS**, the Town Council has determined that the "Responsible Bidding Practices and Submission Requirements" enabling Ordinance, and terms and provisions herein will preserve administrative resources by ensuring that only qualified contractors and subcontractors are awarded contracts on public works construction projects in the Town; and

**WHEREAS**, the Town Council further concurs and agrees that the within “Responsible Bidding Practices and Submission Requirements” Ordinance will enhance and assure efficient use of taxpayer dollars, promote public safety, and be in the best interests of the citizens and residents of the Town; and

**WHEREAS**, the Town Council further concurs and agrees that this “Responsible Bidding Practices and Submission Requirements” Ordinance will aid to ensure that no contractor awarded work under the terms and provisions of this Ordinance, as amended from time to time, or any subcontractor at any tier working on a public works project awarded pursuant to the terms and provisions of 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, as well as failing to pay overtime and wages as required by applicable law.

**NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF SCHERERVILLE, LAKE COUNTY, INDIANA, AS FOLLOWS, NAMELY:**

**SECTION ONE: Establishment.**

The Town of Schererville hereby adopts and establishes the within Responsible Bidders Regulations Ordinance for the Town.

**SECTION TWO: Pre-Bid Submission Requirements for Contractors.**

Contractors proposing to submit bids on any Town of Schererville public works project estimated to cost at least Two Hundred Thousand Dollars (\$200,000.00), or more, must, prior to the opening of bids, submit a statement made under oath and subject to perjury laws, on a form designated by the Town and must include the following:

- A. A copy of a print-out of the Indiana Secretary of State’s on-line record 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.
- B. A list identifying all former business names;
- C. Any determinations by a Court or Government 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;
- D. A statement on staffing capabilities, including labor sources;
- E. 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;
- F. 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 works project; and (ii) meets, or exceeds, the requirements set forth in I.C.§4-13-18-5 or I.C. §4-13-18-6;

G. 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;

H. Proof of any professional or trade license required by law for any trade or specialty area in which the 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;

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

(J) 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 (5) years;

(K) A statement that individuals who will perform work on the public works 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; and

(L) 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.

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

### **SECTION THREE: Post-Bid Submission Requirements for Subcontractors.**

Upon request, the Town may require All bidders to 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 listed first-tier subcontractor shall be required to adhere to the requirements of this Ordinance as though it were bidding directly to the Town, 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 (5) business days after the subcontractor's first day of work on the public work project and the bidders shall immediately forward said information to the Town. 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 Town.

The Town 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) within ten (10) calendar days. Payments shall be withheld from any second or low-tier contractor who fails to timely submit this information until this information is submitted and approved by the Town. Additionally, the Town may require the successful bidder and relevant subcontractor to remove the second or lower-tier subcontractor from the project and replace it with the 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 Town may withhold all payments otherwise due for work performed by a subcontractor until the subcontractor submits the required information and the Town approved such information. The Town 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 Town 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, as amended from time to time.

#### **SECTION FOUR: Validity of Pre-Qualification Designation.**

Upon determination by the Town 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 Town, the contractor or subcontractor may be designated as pre-qualified for future Town public works projects. A contractor's designation as pre-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 continued or pre-qualified standing, on a form provided by the Town, (also referred to as the "short form") by December 31<sup>st</sup> for the upcoming calendar year. Failure by any pre-qualified standing shall result in automatic removal of the designation effective January 21 of the upcoming year. However, the "removed" contractor or subcontractor shall still be permitted to bid on Town public works project.

Any material changes to the contractor's status at any time must be reported in writing by the contractor within ten (10) days of its occurrence to the Town. The pre-qualification designation is solely within the discretion of the Town and the Town 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 Town within five (5) business days of receipt of notice of denial.

#### **SECTION SIX: Incomplete Pre-Bid Submissions by Contractors**

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

#### **SECTION SEVEN: Responsive and Responsible Bidder Determination.**

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

**SECTION EIGHT: Certified Payroll.**

For projects in which the cost is at least \$200,000, the successful bidder and all subcontractors working on a public works projects, upon request by the Town, shall submit a certified payroll report utilizing the federal form now known as WH-347 which must be prepared on a weekly basis and submitted to the Town 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 that 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 Town 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 Town 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 certified payroll reports are submitted. The Town 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 (1) or more other subcontractors failed to timely submit their certified payroll reports.

**SECTION NINE: Public Records.**

All information submitted by a bidder or subcontractor pursuant to this Ordinance, including certified payrolls, are public records subject to inspection and copying pursuant to the Indiana Access to Public Records Law (I.C. §5-14-3), subject to exclusions listed in I.C. §5-14-3-4. .

**SECTION TEN: Penalties for False, Deceptive, or Fraudulent Statements/ Information.**

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 Town shall be disqualified from bidding on all Town public works projects for a period of three (3) years. Thereafter, the disqualified bidder shall comply with all requirements of this Ordinance, as amended from time to time, and the Town thereafter by its Town Council, shall determine in its sole discretion, whether the bidder entity, is again a qualified bidder for Town public works projects.

**SECTION ELEVEN: Conflicting Ordinances.**

Town Ordinances Nos. 1811 and 1162 are hereby specifically repealed. All other Town Ordinances, or parts thereof, which are in conflict with the provisions of this establishment Ordinance are hereby repealed, and any provisions stated elsewhere which are inconsistent with the terms of this Ordinance, are deemed null and void.

**SECTION TWELVE: Severability.**

If any section, clause, provision or portion of this Ordinance shall be held to be invalid or unconstitutional by any Court of competent jurisdiction, such determination shall not affect any other section, clause, provision or portion of this Ordinance.

**SECTION THIRTEEN: Effective date.**

That this Ordinance shall take effect, and be in full force and effect, from and after its approval and adoption by the Town Council of the Town of Schererville, Lake County, Indiana, in conformance with applicable law.

**ALL OF WHICH IS PASSED AND ADOPTED THIS 12<sup>th</sup> DAY OF APRIL, 2017, BY THE TOWN COUNCIL OF THE TOWN OF SCHERERVILLE, LAKE COUNTY, INDIANA.**

**TOWN OF SCHERERVILLE, LAKE COUNTY,  
INDIANA, TOWN COUNCIL**

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ROB GUETZLOFF, President

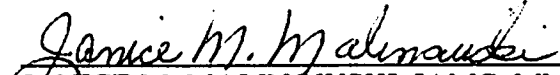
  
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THOMAS J. SCHMITT, Vice-President

  
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MICHAEL A. TROXELL, Councilmember

  
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KEVIN CONNELLY, Councilmember

  
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DAVID DeJONG, Councilmember

ATTEST:

  
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JANICE M. MALINOWSKI, IAMC, MMC  
Clerk Treasurer