

Bill No. 21-18

ORDINANCE NO. 10594-18

AN ORDINANCE OF THE COMMON COUNCIL OF THE CITY OF SOUTH BEND,
INDIANA, AMENDING CHAPTER 6 OF THE SOUTH BEND MUNICIPAL CODE
TO INCLUDE A NEW ARTICLE 13 ESTABLISHING RESPONSIBLE BIDDING
PRACTICES
AND SUBMISSION REQUIREMENTS ON PUBLIC WORKS PROJECTS

STATEMENT OF PURPOSE AND INTENT

The City of South Bend ("City") is required by State law to award capital improvement contracts to the "lowest responsive and responsible" bidder (IC §36-1-12-4(b)(8)). The City pursuant to (IC 36-1-12-4(b)(10)) considers the following factors when determining whether a bidder is a "responsive" bidder: (a) whether the bidder has submitted a bid or quote that conforms in all material respects to the specifications; (b) whether the bidder has submitted a bid that complies specifically with the invitation to bid and the instructions to bidders; and (c) whether the bidder has complied with all applicable statutes, ordinances, resolutions, or rules pertaining to the award of a public contract. The City pursuant to Indiana Code 36-1-12-4(b)(11) considers the following factors when determining whether a bidder is a "responsible" bidder: (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. State law also requires that bidders meet certain minimum requirements in order to be a "responsive and responsible" bidder.

The City, based upon its experience, has determined that quality workmanship, efficient operation, safety, and timely completion of projects requires all bidders to meet minimum requirements in order to be a "responsive and responsible" bidder. The City seeks to enhance its ability to identify "responsive and responsible" bidders on all City public works projects by instituting more comprehensive submission requirements which are in compliance with State law.

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. This Ordinance will also help ensure that no contractor awarded work under this Ordinance, or any subcontractor working on a project award pursuant to this Ordinance, engages in payroll fraud, tax 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.

NOW, THEREFORE, BE IT ORDAINED BY THE
COMMON COUNCIL OF THE CITY OF SOUTH BEND, INDIANA, AS FOLLOWS:

SECTION I. Chapter 6 (Building) of the South Bend Municipal Code is hereby amended to add a new Article 13 that shall read in its entirety as follows:

ARTICLE 13. RESPONSIBLE BIDDING PRACTICES AND SUBMISSION
REQUIREMENTS ON PUBLIC WORKS PROJECTS

Sec. 6-63. Bid submission requirements.

(a) Contractors proposing to submit bids on any City project estimated to be at least one-hundred fifty thousand dollars (\$150,000.00) 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 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, within the preceding five years;
- (4) A statement on staffing capabilities, including labor sources. This statement shall include whether the bidder has sufficient employees on staff to complete the work it is bidding. If not, the bidder shall outline how it intends to meet the staffing needs of the work;
- (5) A statement that individuals who will perform work on the public work project on behalf of the bidder will be properly classified as an employee or as an independent contractor under all applicable state and federal laws and local ordinances;
- (6) 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. Copies of all applicable apprenticeship certificates or standards for these training programs may be requested at any time and shall be furnished upon request;
- (7) 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;
- (8)(i) A statement that the contractor submitting a bid or quote on a public work project of the City; and all subcontractors from whom the bidder has accepted a bid and/or intends to hire to perform work, on the public work project, are properly licensed;
 - (ii) A bidder not so licensed shall be rejected as nonresponsive to the bid or quote request, or the bidder or quoter shall be determined to be a nonresponsive bidder or quoter. It shall be the bidder's or quoter's responsibility to check with the City Building Department to make sure it and all subcontractors have all necessary licenses to

undertake the work called for in the bid or quote. The bidder shall immediately remove any subcontractor not so licensed;

(9) Evidence that the contractor is utilizing a surety company which is on the United States Department of Treasury's Listing of Approved Sureties as required in the bid specifications or contract;

(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 preceding three years; and,

(11) A list of projects of similar size and scope of work that the bidder has performed in all areas, including the State of Indiana, within three (3) years prior to the date on which the bid is due.

(b) The City reserves the right to request 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.

Sec. 6-64. Post-bid submissions.

(a) All bidders shall collect, maintain, and provide upon request, a current written list that discloses the name, address, licensing status, and type of work for any 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.

(b) Each subcontractor, whose portion of the project is estimated to be at least one-hundred fifty thousand dollars (\$150,000.00), 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 the subcontractor shall submit the required information (including the name, address, and type of work) to the successful bidder prior to the commencement of work.

(c) 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.

(d) The disclosure of a subcontractor list ("Disclosed Subcontractor(s)") to the City by a bidder shall not create any rights in the Disclosed Subcontractor(s). Thus, a bidder may substitute another subcontractor for a Disclosed Subcontractor by giving the City, upon request, written notice of the name, address, licensing status, and type of work of the substitute subcontractor.

Sec. 6-65. Validity of pre-qualification classification.

Upon designation by the City that a contractor's submission in anticipation of a bid is complete and timely, and upon any further consideration deemed necessary by the City, the contractor may be pre-qualified for future City public works projects. A contractor's classification as "qualified" shall exempt the contractor from the comprehensive submission requirements outlined in Section 6.63(a) of this Article for a period of twelve (12) months, excepting subsections 6.63(a)(1), (a)(4), (a)(9) and (a)(11) which shall be submitted for every bid

submission. Thereafter, contractors 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 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.

Sec. 6-66. 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 6.63 of this Article by no later than the public bid opening. Post-bid submissions must be submitted in accordance with foregoing Section 6.65 of this Article. Submissions deemed inadequate, incomplete, or untimely by the City may result in the automatic disqualification of the bid.

Sec. 6-67. 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's submission or any information obtained by the City through its own independent verification of the information provided by the contractor.

Sec. 6-68. Certified payroll.

For any projects estimated to be at least one-hundred fifty thousand dollars (\$150,000.00) or more, the successful bidder and all subcontractors working on a public works project are required to submit to the awarding agency, and general contractor if applicable, a detailed certified payroll utilizing the federal form now known as WH-347 or a similar form on a biweekly basis, unless different payroll reporting requirements are stated under the bid specifications or contract. The certified payroll must be prepared on a biweekly basis and submitted to the City within ten (10) calendar days after the end of each biweekly payroll period in which the bidder or subcontractor performed its work on the public works. The certified payroll reports shall identify the job title and craft of each employee on the project.

The City may withhold payments due for work performed by a bidder if the bidder or subcontractor fails to submit its certified payroll reports timely or until such certified payroll reports are submitted.

Sec. 6-69. Public records

All information submitted by a bidder or a subcontractor pursuant to this Article, including certified payrolls, are public records subject to review pursuant to the Indiana Access to Public Records Act (IC 5-14-3) and any other applicable disclosure laws.

Sec. 6-70. Penalties for false, deceptive, or fraudulent statements/information

(a) 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 (3) years.

(b) For projects that fall under the requirements of Section 6-68 of this Article, the City may engage in an audit and/or verification process of the information provided. To the extent that material errors are identified, the City may do the following;

- (i) Require the bidder to reimburse the City the actual cost of the audit;
- (ii) Assess a penalty of up to \$2,500, it being determined that each material error constitutes a separate violation of this Ordinance.

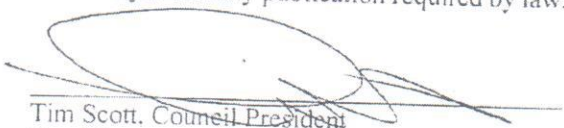
Secs. 6-71 –6.73. Reserved.


SECTION II. Severability. If any provision of this Ordinance is found to be invalid, the remaining provisions of this Ordinance shall not be affected by such a determination. These other provisions of this Ordinance shall remain in full force and effect without the invalid provision.

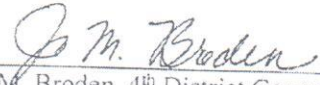
SECTION III. Implementation Date.

The Board of Public Works shall apply this ordinance on all applicable bids advertised on or after July 1, 2018.

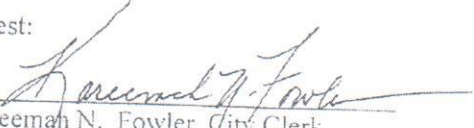
SECTION IV. This Ordinance shall be in full force and effect from and after the date of adoption by the Common Council, approval of the Mayor and any publication required by law.


Tim Scott, Council President
South Bend Common Council

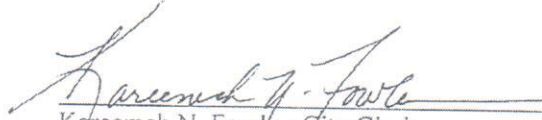

Karen L. White, At Large Council Member
South Bend Common Council


Jo M. Broden, 4th District Council Member
South Bend Common Council

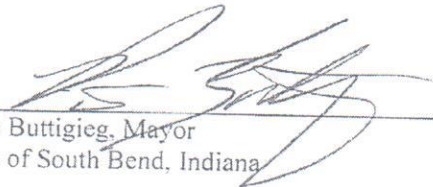
Attest:


Kareemah N. Fowler, City Clerk
Office of the City Clerk

Presented by me, the undersigned Clerk of the City of South Bend, to the Mayor of the City of South Bend, Indiana on the _____ day of _____, 2018, at _____ o'clock ____ m.


Kareemah N. Fowler, City Clerk
Office of the City Clerk

Approved and signed by me on the _____ day of _____, 2018, at ____ o'clock ____m.


Pete Buttigieg, Mayor
City of South Bend, Indiana

1st Reading 3/26/18
2nd READING 4/9/18
3rd READING 4/9/18
NOT APPROVED
REFERRED
PASSED 4/9/18

ORDINANCE No. 10594-18

Passed by the Common Council of the City of South Bend, Indiana _____

April 9, 2018

Attest: Kareemah N. Fowler City Clerk
Kareemah N. Fowler

Attest: _____ President of Common Council

Presented by me to the Mayor of the City of South Bend, Indiana _____

April 9, 2018

Kareemah N. Fowler City Clerk
Kareemah N. Fowler

Approved and signed by me April 11th 2018

[Signature] Mayor
