

ORDINANCE NO. ____

**AN ORDINANCE ESTABLISHING RESPONSIBLE BIDDER
REQUIREMENTS ON PUBLIC WORKS PROJECTS**

WHEREAS, _____ is a municipal corporation organized and operating under federal and state laws;

WHEREAS, _____ seeks to preserve administrative resources by ensuring that only qualified contractors and subcontractors are awarded contracts on public works construction projects;

WHEREAS, _____, based upon its experience, has determined that quality workmanship, efficient operation, safety, and timely completion of projects are not necessarily insured by awarding a construction contract solely on the basis of the low bid;

WHEREAS, _____ seeks to enhance its ability to identify the lowest “responsible bidder” on all public works construction projects by instituting more comprehensive submission requirements which are in compliance with Illinois law;

WHEREAS, _____ has a compelling proprietary interest in awarding contracts for public works construction projects in a manner that will yield successful project delivery in terms of work that is performed safely, at the lowest responsible cost, and in accordance with the highest possible standards of quality and efficiency;

WHEREAS, securing successful delivery of public works construction projects presents significant challenges due to the complex, unpredictable and inherently dangerous nature of the construction industry, wherein errors in project planning or execution, including those caused by inexperienced or unqualified craft labor personnel, can result in serious safety risks, excessive cost overruns, flawed or inferior project quality, and disruptions in project schedules that may delay the use of critical government functions or facilities;

WHEREAS, “An Ordinance Establishing Responsible Bidder Requirements on Public Works Projects” assures efficient use of taxpayer dollars, promotes public safety, and is in the public interest.

NOW, THEREFORE, BE IT ORDAINED by _____, that:

Section 1. Public Works

For purposes of this chapter, the term “public works” shall mean the following: any constructing, altering, reconstructing, repairing, rehabilitating, refinishing, refurbishing, remodeling, remediating, renovating, custom fabricating, maintenance, landscaping, improving, moving, wrecking, painting, decorating, demolishing, and adding to or subtracting from any public building, structure, airport facility, highway, roadway, street, alley, bridge, sewer, drain, ditch, sewage disposal plant, water work, parking facility, railroad, excavation, or other project,

development, real property, or improvement, or to do any part thereof, whether or not the performance of the work herein described involves the addition to, or fabrication into, any structure, project or development, real property or improvement herein described of any material or article of merchandise, which is paid for out of a public fund or out of a special assessment. The term also includes any public works leased by a political subdivision under a lease containing an option to purchase.

Section 2. Bid Submission Requirements

In determining whether a bidder is a “responsible bidder” for the award of a public works contract, the bidder must submit the following information and supporting documentation verified under oath on a form designated by _____, in order for the bid to be accepted:

- A. A copy of the Illinois Secretary of State’s Department of Business Services online records evidencing that the bidder has a current corporate annual report on file. If the bidder is an individual, sole proprietor, or partnership, this subsection shall not apply;
- B. Documents evidencing current registration with the Illinois Department of Revenue if bidder has employees (e.g. document with account number, Illinois Business Tax number).
- C. Documents evidencing current registration with the Illinois Department of Employment Security if bidder has employees (e.g. document with UI account number).
- D. Disclosure of any federal, state or local tax liens or tax delinquencies against the contractor or any officers of the contractor in the last five (5) years.
- E. A statement that all employees are (i) covered under a current workers’ compensation insurance policy and (ii) properly classified under such policy. If the bidder is insured with a carrier, the evidence of workers’ compensation insurance shall be a copy of the “Information Page” of the bidder’s workers’ compensation policy and any continuation of that Information Page which include the name and address of the insured, as well as the class codes the compensation premium is based on and the total estimated remuneration per class code.
- F. A statement of compliance with all provisions of the Illinois Prevailing Wage Act (820 ILCS 130/1 et seq.) and all rules and regulations therein, for the past five (5) years. Such statement shall also provide that the contractor has reviewed the Prevailing Wage Act or federal Davis-Bacon and Related Acts, has reviewed and agrees to pay the applicable prevailing wage rates attached to the bid specifications, and will strictly comply with the Prevailing Wage Act or federal Davis-Bacon and Related Acts and related requirements. A contractor who has been found by the Illinois Department of Labor to be in violation of the Prevailing Wage Act twice within a three (3) year period shall be deemed not to be a Responsible Bidder for two (2) years from the date of the latest finding.
- G. A copy of the written program for the prevention of substance abuse to be filed with a public body pursuant to the Substance Abuse Prevention on Public Works Projects Act (820 ILCS 265/1 et seq.).

- H. A statement that individuals who will perform work on the public works project on behalf of the contractor are properly classified as either (i) an employee or (ii) an independent contractor under all applicable state and federal laws and local ordinances.
- I. Documents evidencing any professional or trade license required by law or local ordinance for any trade or specialty area in which the contractor is seeking a contract award. Additionally, the contractor must disclose any suspension or revocation of such license held by the company, or of any director, officer or manager of the company.
- J. Evidence of participation in apprenticeship 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; and evidence that any applicable apprenticeship program has graduated at least five (5) apprentices in each of the past five (5) years for each of the construction crafts the bidder will perform on the project. Evidence of graduation rates are not required for apprenticeable crafts dedicated exclusively to the transportation of material and equipment to and from the public works project.

The required evidence includes but is not limited to a copy of all applicable apprenticeship standards and Apprenticeship Agreement(s) for any apprentice(s) who will perform work on the public works project; and documentation from each applicable apprenticeship program certifying that it has graduated at least five (5) apprentices in each of the past five (5) years for each construction craft the bidder will perform on the project. Additional evidence of participation and graduation requirements may be requested by the _____ at its discretion.

- K. Bidder shall certify that all employees expected to perform work on the project have completed a 10-hour or greater OSHA safety program. Only workers that have satisfactorily completed a 10-hour or greater OSHA safety program will be allowed to participate on the project. The bidder must have copies of employee OSHA cards on file, and _____ may request the bidder provide copies of employees OSHA cards; failure to produce an employee's OSHA card may result in a determination that the bidder is not a responsible bidder.
- L. Disclosure of the name and address of each subcontractor from whom the contractor has accepted a bid and/or intends to hire on any part of the project. Further, each such subcontractor shall be required to adhere to the requirements set forth herein as though it were bidding directly to _____. Each contractor shall submit all subcontractor information and supporting documentation to _____ prior to the subcontractor commencing work on the project.
- M. Statements as to past performance, which shall give an accurate and complete record of all public works projects completed in the past three (3) years by the contractor. Such statements shall include the name of the public body and the project, original contract price, final contract price, the names of all subcontractors used, if applicable, and a statement as to compliance with completion deadlines.

N. Any determinations by a court or governmental agency for violations of federal, state, or local laws, including but not limited to serious, willful or repeated violations of the Occupational Safety and Health Act (OSHA), violations of contracting or antitrust laws, tax or licensing laws, environmental laws, or the Federal Davis-Bacon and Related Acts.

Any material changes to the contractor's status, at any time, must be reported in writing within fourteen (14) calendar days of its occurrence. Failure to comply with this requirement is grounds for the contractor to be deemed a non-responsible bidder.

Section 3. Incomplete Submissions by Bidders and Subcontractors

It is the sole responsibility of the bidder to comply with all submission requirements at the time it submits its bid to _____. Bidder submissions deemed inadequate or incomplete may result in a determination that the bidder is not a responsible bidder.

The submission requirements also apply to all subcontractors, except that the successful bidder shall submit all subcontractor submissions to _____ prior to the subcontractor commencing work on the project. 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, _____ may withhold all payments otherwise due for work performed by a subcontractor, until the subcontractor submits the required information and _____ approves such information. Further, where _____ deems necessary, _____ may also require that the successful bidder remove the subcontractor from the project and replace it with a responsive and responsible subcontractor.

Section 4. Validity of Pre-Qualification Classification

Upon designation by the _____ 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 _____, the contractor or subcontractor may be pre-qualified for future _____ 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 _____, (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 _____ 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 _____. The pre-qualification designation is solely within the discretion of the _____ and the _____ 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 _____ within five (5) business days of receipt of notice of denial.

Section 5. Lowest Bidder Not Chosen

When the award is not recommended to be given to the lowest bidder, a statement of the reason for such recommendation shall be prepared by _____.

Section 6. Multiple Low Bids

When two or more responsible bidders submit the same low bid, the contract award shall be determined by drawing lots at a public meeting of _____, unless one bidder is a local contractor and one is a non-local contractor, in which event the local contractor shall be awarded the contract.

Section 7. Public Records

All information submitted by a successful bidder pursuant to this Ordinance are public records subject to review pursuant to the Illinois Freedom of Information Act (5 ILCS 140/1 et seq.).

Section 8. Materiality

The requirements of this Ordinance are a material part of the bid documents and the contract and the successful bidder shall insert this Ordinance in all subcontracts.

Section 9. Severability

If any portion of this Ordinance or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other portions or applications of this Ordinance which can be given effect without the invalid portions or applications and, to this end, the portions of this Ordinance are severable.

Section 10. Other Ordinances

Any prior ordinance or portion thereof in conflict with this Ordinance is hereby revoked.

Section 11. Effective Date

This ordinance shall take effect upon passage by _____.

This ordinance was passed by _____ on this ____ day of _____, 2020.