

CITY-COUNTY GENERAL ORDINANCE NO. 21, 2016
Proposal No. 160, 2016

PROPOSAL FOR A GENERAL ORDINANCE establishing responsible bidding practices and submission requirements on public works projects.

WHEREAS, the Consolidated City of Indianapolis and Marion County ("City") is required by IC 36-1-12-4 to award certain contracts for public works projects to the "lowest responsible and responsive" bidder;

WHEREAS, IC 36-1-12-4(b)(10) further requires the City entity awarding a public works contract where bids are required to consider certain factors when determining whether a bidder is "responsive", with such factors including: (1) whether the bidder has submitted a bid that conforms in all material respects to the specifications; (2) whether the bidder has submitted a bid that complies specifically with the invitation to bid and the instructions to bidders; and (3) whether the bidder has complied with all applicable statutes, ordinances, resolutions or rules pertaining to the award of a public contract;

WHEREAS, IC 36-1-12-4(b)(11) further requires the City entity awarding a public works contract where bids are required to consider certain factors when determining whether a bidder is "responsible", with such factors including: (1) the ability and capacity of the bidder to perform the work; (2) the integrity, character, and reputation of the bidder; and (3) the competence and experience of the bidder;

WHEREAS, the City seeks to enhance its ability to identify "responsible and responsive" bidders on all City public works construction projects by institution of more comprehensive submission requirements consistent with IC 36-1-12 et seq.;

WHEREAS, this "Responsible Bidding Practices and Submission Requirements" Ordinance will preserve administrative resources by ensuring that only qualified contractors and subcontractors are awarded contracts on public works construction projects; and

WHEREAS, 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; and

WHEREAS, Revised Code Section 261-405(5) provides that the board of public works shall approve the award and amendment of public construction contracts required to be bid under IC 36-1-12; now, therefore:

BE IT ORDAINED BY THE CITY-COUNTY COUNCIL OF THE
CITY OF INDIANAPOLIS AND OF MARION COUNTY, INDIANA:

SECTION 1. Chapter 261, Article IV of the Revised Code of the Consolidated City and County is hereby amended by the addition of a new Section 261-408, to read as follows:

Sec. 261-408. Responsible bidding practices and submission requirements.

(a) Bid submission requirements. Contractors proposing to submit bids on any City public works project estimated to be at least one hundred and fifty thousand dollars (\$150,000) must, prior to the bid submission deadline, submit a statement made under oath and subject to perjury laws, on a form designated by the City (including electronic form at the City's discretion) and must include:

- (1) Certification of eligibility to do business in the State of Indiana. Within 72 hours of bid-opening, the apparent low bidder must provide a copy of a print-out of the Indiana Secretary of State's online 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 describing the bidder's full-time staffing capabilities and intended additional labor (skilled labor and unskilled labor) sources from which labor will be derived on the public works project;
- (5) Certification of bidder's labor force participation in apprenticeship and/or training programs approved by and registered with the United States Department of Labor's Office of Apprenticeship, or its successor organization. Within 72 hours of bid-opening, the apparent low bidder must provide 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 those training programs.
- (6) Certification that the bidder has implemented an employee drug testing plan that meets, or exceeds, the requirements set forth in IC 36-1-12-24. Within 72 hours of the bid-opening, the apparent low bidder must provide a copy of a written plan for employee drug testing that: (1) covers all employees of the bidder who will perform work on the public work project; and (2) meets, or exceeds, the requirements set forth in IC 36-1-12-24;
- (7) Certification that the bidder will utilize project managers and superintendents with sufficient relevant management experience to complete the bidder's scope of work on the project. Within 72 hours of bid-opening, the apparent low bidder must provide a list of the names and description of the relevant management experience of each of the bidder's project managers and superintendents that bidder intends to assign to work on the project;
- (8) Certification that the bidder and/or its management personnel possesses any and all professional or trade licenses required by law for any trade or specialty area in which bidder is seeking a contract award without suspension or revocation of such licensure(s) within the previous five years. Within 72 hours of bid-opening, the apparent low bidder must provide proof of such licensure, as well as disclosure of any letters of 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;
- (9) Certification that the contractor is utilizing a surety company which is on the United States Department of Treasury's listing of approved sureties. Within 72 hours of bid-opening, the apparent low bidder must provide evidence of utilization of a surety company listed as an approved surety by the United States Department of Treasury;
- (10) A written statement listing and describing any federal, state, or local tax liens or tax delinquencies owed to any federal, state, or local taxing body in the last five years; and
- (11) For contracts estimated to be at least three hundred thousand dollars (\$300,000), certification that all contractors and subcontractors are qualified under IC 4-13.6-4 or IC 8-23-10. Within 72 hours of bid-opening, the apparent low bidder must provide evidence that the apparent low bidder and all relevant subcontractors have been qualified under IC 4-13.6-4 or IC 8-23-4.

The City at its sole discretion may rely solely upon the certified statements of bidders without requiring or evaluating submissions of evidentiary support for determining Responsible Bidder status. By submitting a certified statement under this subsection, however, a bidder agrees to provide evidentiary support for all statements made in its certified statement under this subsection. The City reserves the right to require supplemental information from the bidder for verification of any of the information provided by the bidder and may also conduct random inquiries of the bidder's current and prior customers. Notwithstanding the foregoing, this section shall not apply to a public work project performed by the City in accordance with IC 36-1-12-3(b).

(b) Submissions from contractors.

- (1) 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. All bidders shall adhere to City policy and procedures pertaining to minority owned business and women owned business utilization.
- (2) In addition, each such first-tier subcontractor shall be required to adhere to the requirements of subsection (a) of this section 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 bidder and the bidder shall then forward said information to the City. The City must receive this subcontractor information no later than five (5) business days after the subcontractor's first day of work on the public works project. 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.
- (3) Upon request, the City may require any bidder to provide the required information (including name, address, type of work on the project and the name of the higher-tier subcontractor) about its second and lower-tier subcontractors. Subject to IC 36-1-12, payments shall be withheld from any bidder 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 to remove the relevant subcontractor or second or lower-tier subcontractor from the project and replace it with a responsive and responsible subcontractor.
- (4) Subject to IC 36-1-12, the City may withhold all payments otherwise due to a bidder for work performed by a subcontractor until such subcontractor submits the information required pursuant to this chapter and the City approves such information. Successful bidders shall only be permitted to use approved subcontractors which have provided required information to the City about the applicable responsive and responsible subcontractor.
- (5) The disclosure of a subcontractor ("Disclosed Subcontractor") by a bidder or a subcontractor shall not create any rights in the Disclosed Subcontractor. A bidder and/or subcontractor may not substitute another subcontractor ("Substitute Subcontractor") for a Disclosed Subcontractor without written approval of City. The contractor shall provide written notice of the name, address, and type of work of the Substitute Subcontractor. The Substitute Subcontractor shall be subject to all of the obligations of a subcontractor under this chapter.

(c) Validity of Responsible Bidder Status.

- (1) Upon designation by the City 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 City, the contractor or subcontractor may be deemed a Qualified Responsible Bidder for future City public works projects. A contractor's classification as "Qualified Responsible Bidder" 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 deemed a Qualified Responsible Bidder must submit a complete application for continuation of "Qualified Responsible Bidder" status 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 contractor or subcontractor with predetermined "Qualified Responsible Bidder" status to timely submit its complete application for continuation of "Qualified Responsible Bidder" status 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, subject to bid submission requirements under subsections (a) and (b) above.
- (2) 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 Qualified Responsible Bidder designation is solely within the discretion of the City and the City specifically reserves the right to change or revoke the designation for stated written reason(s).

(3) 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 Qualified Responsible Bidder 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 made applicable to the bidder by this section by no later than the public bid opening. Submissions from subcontractors must be in accordance with subsections (a) and (b) above and in a form designated by the City. Submissions deemed inadequate, incomplete, or untimely by the City may result in the 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 pursuant to IC 36-1-12-4. 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 on which the estimated cost is at least is at least Two Hundred and Fifty Thousand Dollars (\$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 the 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 works project. These certified payroll records shall identify the job title, work classification, rate of pay, and craft of each employee on the project, e.g , journeyman electrician or apprentice electrician. As an alternative to using the WH-347 form, the successful bidder and subcontractors may use their own payroll reporting system so long as it conforms to the WH-347 form, contains all the same information, and is accompanied by federal form WH-348, Statement of Compliance.

Subject to IC 36-1-12, the City may withhold payment for work performed by a bidder if the bidder fails to timely submit its certified payroll reports until such times as such certified payroll reports are submitted. Subject to IC 36-1-12, the City may also withhold payment due for the work performed by a subcontractor if the subcontractor fails to timely submit its certified payroll reports until such time the 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 chapter are public records subject to the Indiana Access to Public Records law (IC 5-14-3). Successful bidders and subcontractors shall produce the evidentiary support required by subsections (a) and (b), to the extent not already provided, in response to a public records request for the information, subject to IC 5-14-3.

(h) 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 City may, at the discretion of the City, be disqualified from bidding on all City projects for a period of up to three (3) years.

SECTION 2. This section shall be interpreted and construed in harmony with IC 36-1-12, IC 5-16-13, and all other applicable provisions of the Indiana Code as they pertain to public work projects, and nothing herein shall be interpreted to be in conflict therewith. Should there be a conflict, the applicable provisions of the Indiana Code shall govern.

SECTION 3. The expressed or implied repeal or amendment by this ordinance of any other ordinance or part of any other ordinance does not affect any rights or liabilities accrued, penalties incurred, or proceedings begun prior to the effective date of this ordinance. Those rights, liabilities, and proceedings are continued, and penalties shall be imposed and enforced under the repealed or amended ordinance as if this ordinance had not been adopted.

SECTION 4. Should any provision (section, paragraph, sentence, clause, or any other portion) of this ordinance be declared by a court of competent jurisdiction to be invalid for any reason, the remaining provision or provisions shall not be affected, if and only if such remaining provisions can, without the invalid provision or provisions, be given the effect intended by the Council in adopting this ordinance. To this end the provisions of this ordinance are severable.

SECTION 5. This ordinance shall be in effect from and after July 15, 2016, or its passage by the Council and compliance with IC 36-3-4-14, whichever is later, except for subsection 261-408 (a) (11), which takes effect on January 1, 2017.

The foregoing was passed by the City-County Council this 6th day of June, 2016, at 8:04 p.m.

ATTEST:

NaTrina S. DeBow
NaTrina DeBow
Clerk, City-County Council

Maggie V. Lewis
Maggie V. Lewis
President, City-County Council

Presented by me to the Mayor this 9th day of June, 2016.

NaTrina S. DeBow
NaTrina DeBow
Clerk, City-County Council

Approved and signed by me this 16th day of June, 2016.

Joseph H. Hogsett
Joseph H. Hogsett, Mayor

STATE OF INDIANA, MARION COUNTY)
CITY OF INDIANAPOLIS) SS:

I, NaTrina DeBow, Clerk of the City-County Council, Indianapolis, Marion County, Indiana, do hereby certify the above and foregoing is a full, true, and complete copy of Proposal No. 160, 2016, a Proposal for a GENERAL ORDINANCE, passed by the City-County Council on the 6th day of June, 2016, by a vote of 20 YEAS and 3 NAYS, and was retitled General Ordinance No. 21, 2016, which was signed by the Mayor on the 16th day of June, 2016, and now remains on file and on record in my office.

WITNESS my hand and the official seal of the City of Indianapolis, Indiana, this 16th day of June, 2016.

NaTrina S. DeBow
NaTrina DeBow
Clerk, City-County Council

(SEAL)