

**ORDINANCE NO. 2019-1**  
**An Ordinance to establish Responsible Bidding Practices and**  
**Submission Requirements for Submitting Bids to Perform Construction Work**  
**on Public Works Projects**

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

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

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

**WHEREAS**, the "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**, the "Responsible Bidding Practices and Submission Requirements" Ordinance will help ensure that no contractor awarded work under this Ordinance or any subcontractor at any tier working on a project awarded pursuant to 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 and failing to pay overtime and wages as required by law.

**NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF KOUTS, INDIANA THAT:**

**SECTION 1.** This Ordinance No. 2019-1, which is entitled "Responsible Bidding Practices and Submission Requirements for Submitting Bids to Perform Construction Work on Public Works Projects," is hereby enacted and shall read as follows:

**I. Bid Submission Requirements**

Contractors proposing to submit bids on any Town of Kouts ("Town") 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 Town and must include:

- (A) 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;
- (B) A list identifying all former business names;
- (C) 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;
- (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 work project; and (ii) meets, or exceeds, the requirements set forth in IC 4-13-18-5 or IC 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 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 of 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 years.
- (K) A statement that individuals who will perform work on the public work 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;
- (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; and
- (M) For contracts estimated to cost at least three hundred thousand dollars (\$300,000), certification that all contractors and subcontractors are qualified under IC 4-13.4 or IC 8-23-10.

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

## **II. 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 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 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 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.

Upon request, 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). 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 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 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 Town may withhold all payments otherwise due for work performed by a subcontractor, until the subcontractor submits the required information and the Town approves 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.

## **III. Validity of Pre-Qualification Classification**

Upon designation 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 pre-qualified for future Town public works

projects. A contractor's classification as "qualified" shall exempt the contractor or subcontractor 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 Town, (also referred to as the "short form") by December 31<sup>st</sup> 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 Town 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 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.

#### **IV. 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 Town may result in the automatic disqualification of the bid.

#### **V. 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 requirements, determine whether a bidder is responsive and responsible. 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.

#### **VI. 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 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 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 such 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 or more other subcontractors failed to timely submit their certified payroll reports.

#### **VII. 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).

#### **VIII. 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 projects for a period of three (3) years.

#### **IX. Conflicting Ordinances**

Any ordinance or provision of any ordinance in conflict with the provisions of this Ordinance is hereby repealed.

#### **X. 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 2.** It is hereby found and determined that all formal actions of the Board of Commissioners relating to the passage of this Ordinance were adopted in open meeting(s) of this Board and that all deliberations of this Board and its committees that resulted in such formal actions, were meetings open to the public, in compliance with all legal requirements and that the reading and adoption of this Ordinance complies with the Town Code, as amended.

**SECTION 3.** This Ordinance shall be in full force and effect from and after the date of adoption by the Town Council of the Town of Kouts, Indiana.


**PASSED AND ADOPTED** by the Town Council for the Town of Kouts, Porter County, Indiana on the 18<sup>th</sup> day of March, 2019.

**TOWN COUNCIL**

By:   
\_\_\_\_\_  
Tim Jones, President


By:   
\_\_\_\_\_  
Kevin Sawyer, Vice President

By: \_\_\_\_\_  
Steve Howard, Member

By:   
\_\_\_\_\_  
Blake Jefferson, Member

By: \_\_\_\_\_  
Nicole Markovich, Member

**ATTEST:**

  
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Laurie Tribble, Clerk-Treasurer