

ORDINANCE NO. 5890

AN ORDINANCE TO ESTABLISH RESPONSIBLE BIDDING PRACTICES AND  
SUBMISSION REQUIREMENTS ON PUBLIC WORKS PROJECTS

---

WHEREAS, the City of Elkhart is required by law to award capital improvement contracts to the “lowest responsive and responsible” bidder; and

WHEREAS, the City, 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; and

WHEREAS, applicable state law also requires that bidders meet certain minimum requirements in order to be a “responsive and responsible” bidder; and

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

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; and

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 COMMON COUNCIL OF THE CITY OF ELKHART, INDIANA:

**SECTION 1.** This Ordinance, 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 City of Elkhart (“City”) project estimated to be at least one-hundred fifty thousand dollars (\$150,000.00) or more must, in order to be considered a “responsive” bidder, submit a statement with the bid, made under oath and subject to perjury laws, on a form designated by the City 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 within the last ten (10) years;
- (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);
- (D) 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. The required evidence includes, but may not be limited to, evidence that each apprenticeship program has graduated at least five (5) apprentices in each of the past five (5) years
- (E) The name and description of the experience of each of the bidder's project managers and superintendents that bidder intends to assign to work on the project;
- (F) A statement that all employees of the bidder who will perform work on the public works project will be in compliance with any drug testing requirements set forth in IC 4-13-18-5 or IC 4-14-18-6

- (G) 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;
- (H) 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;
- (I) 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;
- (J) 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.
- (K) A completed Contractor's Bid for Public Works – Form 96 (latest revision) prescribed by the State Board of Accounts, which includes a list of projects completed within the last year or currently under construction and a list of names and addresses of all subcontractors from whom the bidder intends to hire on any part of the public works project.

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

## **II. Post-Bid Submissions from Subcontractors**

Each subcontractor, of any tier, and regardless of the subcontract bid amount, shall be required to adhere to the requirements of Section I of this Ordinance as though it were bidding directly to the City. Subcontractors shall submit the required information to the successful bidder, who shall then forward said information to the City prior to the subcontractor's first day of work on the public works 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, payment shall be withheld from any subcontractor who fails to timely submit said information until such information is submitted and approved by the City. Additionally, the City may require the successful bidder and/or relevant subcontractor to remove a 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 City 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**

When pre-qualification is required by the City, as specified within the project bidding documents, 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 pre-qualified for future City 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.

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 pre-qualification designation is solely within the discretion of the City and the City 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 City within five (5) business days of receipt of notice of denial.

### **IV. Incomplete Submissions by Bidders**

It is the sole responsibility of the bidder to comply with all submission requirements herein no later than the public bid opening. Submissions deemed inadequate, incomplete, or untimely by the City shall result in the automatic disqualification of the bid.

### **V. Projects in Good Standing**

All projects the bidder currently has under contract with the City shall be in good standing. A responsive and responsible bidder shall have no City contract that is currently past contractual time limits, or assessed liquidated damages for any reason. The City may, through its City Engineer and Board of Public Works, in its sole discretion, classify a bidder non-responsive and disqualify a bidder for a period up to two (2) years after a liquidated damage is assessed.

### **VI. Responsive and Responsible Bidder Determination**

After its review of complete and timely submissions, taking into account all information in the submission requirements, the City shall in its sole discretion, determine whether a bidder or subcontractor is responsive and responsible. The City reserves the right to utilize all information provided in the bidder or subcontractor's submission or any information obtained by the City through its own independent verification of the information provided.

### **VII. Certified Payroll**

When requested by the City, for projects in which the cost is at least one-hundred fifty thousand

dollars (\$150,000), the successful bidder and all subcontractors working on a public works project shall submit a certified payroll report utilizing federal form WH-347 or its successor form, 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 successful bidder or subcontractor performed on the public works project. 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 successful bidder or subcontractor uses independent contractors to perform work on the project, such individual must be identified on the federal form WH-347 or successor form with the same information as is required for employees.

The City shall not withhold payment to a successful bidder or subcontractor for failure of the successful bidder or one or more other subcontractors to timely submit their certified payroll reports, unless Federal or State funds are withheld from the City due to failure to submit certified payroll.

**VIII. 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).

**IX. 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 shall be disqualified from bidding on all City projects for a period of three (3) years.

**X. Conflicting Ordinances**

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

**XI. 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; such provisions shall remain in full force and effect.

**XII. No Private Cause of Action**

This ordinance does not create a private right of action by or on behalf of any person or entity based on a complaint that a bidder or contractor has violated this ordinance or the contractor's agreement with the City. This ordinance is not intended either to expand or to limit rights provided by other local, state, or federal laws.

**SECTION 2.** This Ordinance shall be in full force and effect from and after the date of adoption by the City Council of the City of Elkhart, Indiana.

So ORDAINED this 14<sup>th</sup> day of February, 2022.

  
\_\_\_\_\_  
Arvis Dawson  
President of the Common Council


ATTEST:

  
\_\_\_\_\_  
Debra D. Barrett, City Clerk

PRESENTED to the Mayor by me this 15<sup>th</sup> day of February, 2022  
at 8:50 (a.m.) p.m.

  
\_\_\_\_\_  
Debra D. Barrett, City Clerk

Approved by me this 22<sup>ND</sup> day of February, 2022.

  
\_\_\_\_\_  
Rod Roberson, Mayor

ATTEST:

  
\_\_\_\_\_  
Debra D. Barrett, City Clerk