

ORDINANCE NO. 80- 812

AN ORDINANCE TO AMEND CHAPTER 2 OF THE CODE OF ORDINANCES RELATING TO PUBLIC CONTRACTS AND RESPONSIBLE BIDDERS

THE CITY OF WARREN ORDAINS:

SECTION 1. That Chapter 2, Article IX, of the Code of Ordinances of the City of Warren, Michigan,

IS HEREBY ESTABLISHED TO READ AS FOLLOWS:

Article IX- Responsible Contractors

Sec. 2-401.- Title

This article shall be known as and may be referred to as the "Responsible Contractor Ordinance."

Sec. 2-402.- Purpose

The City of Warren desires that work performed on publicly financed construction projects in the amount of \$50,000 or more should be performed by responsible and qualified bidders who can successfully complete city projects in a safe, timely, reliable, high-quality, and cost-effective manner. The City of Warren recognizes that it is beneficial to the public to ensure that firms receiving large construction contract awards from the city should provide adequate wages and benefits to their employees and engage in fair business and employment practices. This ordinance is not intended to be burdensome to the bidding process, but rather will provide additional information for consideration when bids are awarded.

Sec 2-403.- General Requirements

This article shall apply to bidders on city construction contracts of \$50,000 or more. Only responsible bidders shall qualify for a contract of more than \$50,000 awarded for the construction, alteration, demolition, or repair of any public building or public works project in the City of Warren. The cost shall include the labor and material necessary, for the construction, renovation, repair, or improvements to city-owned property, except repair in bona fide emergency situations.

2-404.- Prequalification Process

A. All contractors must be deemed a Responsible Contractor prior to submitting bids on City of Warren construction projects of \$50,000 or more. The Purchasing Division shall create an application for prequalification for contractors who wish to bid on city projects of

\$50,000 or more. The Purchasing Division shall be responsible for implementation of this Article. Once approved, a company is prequalified to bid on applicable city projects for a period of three (3) years.

B. The application for prequalification must be signed under penalty of perjury. If any contractor submits false information on the application, the city may terminate any contract and pursue any other remedies under this Article. A contractor is obligated to update its responses to the application during the term of the contract within 30 days after any change to responses previous provided if such change would affect a contractor's fitness and ability to continue performing the contract. The city may consider failure of a contractor to update the application with this information as a material breach of the contract.

2-405. Prequalification Screening

The Purchasing Division shall develop an application for each contractor intending to bid on a city construction project to submit with its bid to determine if it is a responsible contractor based upon the responsible contractor criteria developed in this Article. The application shall be made available to all contractors interested in bidding on city construction projects and available at the purchasing division and on the city website.

2-406.- Responsible Contractor Criteria

The Responsibility Criteria to be considered by the city include:

A. General information about the bidder's company, its ownership structure, and its history, including all former business names, and an explanation of any business name changes.

B. If the bidder has ever operated under another name or is controlled by another company or business entity or in the past five years controlled or was controlled by another company or business entity, whether as a parent company, subsidiary or in any other business relation, it must attach a separate statement that explains in detail the nature of any such relationship. Additional information may be required from such an entity if the relationship in question could potentially impact contract performance.

C. Information regarding state and local licenses and licenses held by the bidder and the associated license numbers; a disclosure if there has been any license disciplinary history regarding any of these licenses.

D. A confirmation that all subcontractors, employees, independent contractors, and other individuals working on the construction project will maintain current applicable licenses required by law for all licensed occupations and professions.

E. Verification that the bidder is in compliance with all applicable state and federal laws and visa requirements regarding the hiring of non-citizens, and disclosure of any work

visas sought or obtained by the bidder, any of the bidder's subcontractors, or any of the bidder's employees or independent contractors, in order to perform any portion of the project.

F. Evidence of experience with construction techniques, trade standards, quality workmanship, project scheduling, cost control, management of projects of comparable size/complexity, and building codes by documenting the bidder's ability and capacity to perform the project. The bidder must identify those portions of the project it reasonably believes will be subcontracted and the names of the subcontractors.

G. A list of all litigation and arbitrations currently pending and within the past five (5) years, including an explanation of each (parties, court/forum, legal claims, damages sought, and resolution).

H. Disclosure of any violations of state, federal or local laws or regulations, including OSHA or MIOSHA violations, state or federal prevailing wage laws, wage and hour laws, worker's compensation or unemployment compensation laws, rules or regulations, issued to or against the bidder within the past five years.

I. Disclosure of any debarment by any federal, state, or local governmental unit and/or findings of non-responsibility or non-compliance with respect to any public or private construction project performed by the bidder.

J. Proof of insurance, including certificates of insurance, confirming existence and amount of coverage for liability, property damage, workers compensation, and any other insurances required by the proposed contract documents.

K. A statement regarding the bidder's staffing capabilities and labor sources including subcontractors and a verification from the bidder that construction workers will not be misclassified as independent contractors in violation of state or federal law.

L. Verification of an existing Fitness for Duty Program (drugs and alcohol) of each employee working on the proposed jobsite.

M. A warranty statement regarding labor, equipment, and materials.

N. A statement affirming that the firm will comply with the Warren Code of Ordinances Sec. 2-334.1 ("Labor harmony through prevailing wage and benefits for city projects").

O. A statement from the contractor or subcontractor acknowledging their obligation to comply with this Ordinance in each contract and subcontract.

P. A statement identifying what possible change orders could be necessary and what their approximate subsequent total costs would be

Q. Evidence of any quality assurance program used by the bidder and the results of any such program on the bidder's previous projects

R. Assurance that all construction work for this project must proceed economically, efficiently, continuously and without interruption.

S. A list of projects completed within the past five (5) years of comparable size/complexity, including dates, clients, approximately dollar value, and size. Documentation from these previous projects including but not limited to all extra costs relating to the bidder's timeliness, performance, quality of work, extension requests, contractual fines and penalties imposed, liens filed, history of claims for extra work and any contract defaults with an explanation of the reason for the default and how the default was resolved.

T. The ratio of masters or journeypersons to apprentices proposed to be used on the construction project job site, if apprentices are to be used on the project.

U. Evidence of the bidder's worker's compensation Experience Modification Rating ("EMR"). Preference will be given to contractors and subcontractors who exhibit an EMR of 1.0 or less based on a three-year average.

V. All craft labor that will be employed by the firm for the project has completed at least the OSHA 10 hour training course of safety established by the U.S. Department of Labor, Occupational Safety & Health Administration.

W. Documentation of master or journeyperson certification or status for masters and journeypersons to be used on the project, and the source of such certification or status

X. A statement from the bidder as to what percentage of its workforce can be drawn significantly from area residents because a goal of the City is to utilize, it is construction activities, local residents as much as is economically feasible while retaining the high quality of construction required for its construction activities, consistent with applicable law. The City will consider in evaluating which bids best serve its interests, the extent to which responsible and qualified bidders are able to achieve this goal.

Y. Evidence of Equal Employment Opportunity Programs for minorities, women, veterans, returning citizens, and small businesses.

Z. Assurance that the bidder is an equal opportunity employer and does not discriminate on the basis of race, sex, pregnancy, age, religion, national origin, marital status, sexual orientation, gender identity of expression, height, weight, or disability.

Sec. 2-407. Bid Evaluation Criteria

A. Once the City prequalifies a responsible bidder, the City must consider the contractor's bid. The City must consider, at minimum, each of the evaluation criteria listed

in this section in determining the best bid. The City may require contractors or subcontractors to provide additional information by inclusion in bid documents. Additionally, the list set forth below in no way limits any additional criteria that the City may deem relevant for purposes of determining of the best bid.

B. Bid documents must require any contractor or subcontractor bidding on the project to submit written responses and other information and documentation regarding the listed criteria and any other criteria specified by the City through the bid documents. The City may request additional information or explanation from any contractor or subcontractor regarding any particular criteria. The bid documents must provide that the City retains the right in its discretion to reject any and all bids. All required contractor financial and privileged information must be kept from public disclosure unless otherwise required by law.

C. For each separate bid package, the City in its discretion will weigh the information provided by the contractor or subcontractor regarding the evaluating criteria, as a whole, to determine the best bid.

D. Except as otherwise required by law, no single criterion will necessarily be determinative in assessing which bid is the best bid. The Purchasing Division must weigh each of the criteria based on a distribution of percentage points on a 100-point scale. The criteria to be considered in bid evaluation on construction projects by the City shall be weighed categorically as follows, and shall include:

(1) Price (30%)

(2) Corporate accountability (20%).

(a) Qualifications of management and supervisory personnel to be assigned by the bidder.

(b) References from individuals or entities the bidder has worked for within the last five years, including information regarding records of performance and job site cooperation

(c) Evidence of any quality assurance program used by the bidder and the results of any such program on the bidder's previous projects.

(d) Assurance that all construction work for this project must proceed economically, efficiently, continuously and without interruption.

(3) Workplace safety (25%).

(a) The ratio of masters or journeypersons to apprentices proposed to be used on the construction project job site if apprentices are to be used on the project.

(b) Evidence of the bidder's workers' compensation experience modification rating (EMR). Preference will be given to contractors and subcontractors who exhibit an EMR of 1.0 or less, based on a three-year average.

(c) All craft labor that will be employed by the firm for the project has completed at least the OSHA ten-hour training course for safety established by the U.S. Department of Labor, Occupational Safety and Health Administration.

(4) Workforce development (15%).

(a) Documentation as to pay rates of employees and whether the bidder provides health insurance, pension or other retirement benefits, or other benefits to its employees.

(b) Documentation if the bidder has participated in a Class A apprenticeship program for each separate trade or classification in which it employs craft employees and shall continue to participate in such programs for the duration of the project including the start of the program. Class A apprenticeship program is an apprenticeship program that is currently registered with and approved by the U.S. Department of Labor or a state apprenticeship agency and has graduated apprentices to journey person status for at least three of the past five years. A role setting forth the trades and classifications of craft employees with their names and addresses will be furnished in order to verify participation in a Class A apprenticeship program.

(c) Documentation of how the bidder assesses the skills and qualifications of any employees who do not have master or journey person certification or status or are not participants in a registered apprenticeship program.

(5) Social equity (10%).

(a) A statement from the bidder as to what percentage of its workforce can be drawn significantly from area residents, because a goal of the City is to utilize, in its construction activities, local residents as much as is economically feasible while retaining the high quality of construction required for its construction activities, consistent with applicable law. The City will consider in evaluating which bids best serve its interests the extent to which responsible and qualified bidders are able to achieve this goal.

(b) Evidence of equal employment opportunity programs for minorities, women, veterans, returning citizens, and small businesses

(c) Assurance that the bidder is an equal opportunity employer and does not discriminate on the basis of race, sex, pregnancy, age, religion, national origin, marital status, sexual orientation, gender identity or expression, height, weight, or disability.

2-408 Subcontractor compliance.

A. A construction manager, general contractor or other lead or prime contractor must not be permitted to use a subcontractor on any work performed for the City unless it has identified the subcontractor on its subcontractor list and a confirmation that the subcontractor has been prequalified as stated in the prequalifying section.

B. A subcontractor listed on a firm's subcontractor list must not be substituted unless written authorization is obtained from the Purchasing Division and the subcontractor has been prequalified as stated in the prequalifying section.

C. In the event that the Purchasing Division determines that a prospective subcontractor listed by the apparent bid awardee does not meet the prequalifying standards of this article, it may, after informing the prospective awardee, exercise one of the following options:

(1) Permit the awardee to substitute a qualified, responsible, subcontractor in accordance with the requirements of this article; or

(2) Require the awardee to self-perform the work in question if the firm has the required experience, licenses, and other qualifications to perform the work in question; or

(3) Disqualify the prospective awardee.

D. In the event that a subcontractor is disqualified under this article, the general contractor, construction manager or other lead or prime contractor must not be permitted to make any type of contractual claim against the Purchasing Division on the basis of a subcontractor disqualification.

E. Subcontractors completing work that is less than \$50,000 of the overall bid price are not required to be designated as a responsible contractor. The contractor shall still notify the City of which subcontractor is being used and the percentage of the overall price for the work performed by that subcontractor.

2-409 Substantially low bid review.

In the event the amount of a bid appears disproportionately low when compared with estimates undertaken by or on behalf of the City and/or compared to other bids submitted, the City reserves the right to inquire further of the bidder to determine whether the bid contains mathematical errors, omissions, and/or erroneous assumptions, and whether the bidder has the capability to perform and complete the contract for the bid amount.

2-410 Enforcement.

A. Contracts must provide that violation of this article must constitute a material breach thereof and entitle the City to terminate the contract and otherwise pursue legal remedies that may be available.

B. Compliance with the prequalifying screening criteria of this article must be required in contract amendments if the initial contract was not subject to the provisions of this article. Contract amendments must provide that violation of prequalifying screening criteria must constitute a material breach thereof and entitle the City to terminate the contract and otherwise pursue legal remedies that may be available.

C. Information that is provided under the processes set forth in this article that is at any point deemed false or in an attempt to mislead the City entitles the City to terminate the contract and otherwise pursue legal remedies that may be available.

D. Violations of this article may be reported to the Purchasing Division which must investigate such complaints. Whether based upon such a complaint or otherwise, if the Purchasing Division has determined that the contractor has violated any provision of this article, the Purchasing Division must issue a written notice to the contractor that the violation is to be corrected within 10 calendar days from receipt of notice. In the event the contractor has not corrected the violation or taken reasonable steps to correct the violation within 10 calendar days, then the Purchasing Division may:

(1) Request the awarding authority to declare a material breach of the contract and exercise its contractual remedies thereunder, which are to include but not be limited to termination of the contract.

(2) Request the awarding authority to declare the contractor to be nonresponsible in accordance with the procedures set forth in prequalifying section of this article.

2-411 Public input.

The Purchasing Division shall develop a complaint form that will allow members of the public to report suspected violations of this article to the Purchasing Division. Members of the public may at any time submit a report of suspected violations of this article. The complaint form must be accessible to the public on the City's website and a physical copy of the form will be available at the Purchasing Division offices.

2-412 Severability.

The terms, conditions, and provisions of this article are hereby declared to be severable and, should any portion, part or provision of this article be found by a court of competent jurisdiction to be invalid, unenforceable, or unconstitutional, the City Council hereby declares its intent that this article shall have been enacted without regard to the invalid, unenforceable or unconstitutional portion, part, or provision of this article.

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