
BILL NO. 61-23

ORDINANCE NO. 10975-23

**AN ORDINANCE OF THE COMMON COUNCIL OF THE CITY OF SOUTH BEND,
AMENDING CHAPTER 6, ARTICLE 13, SECTIONS 6-71 THROUGH 6-78
ADDRESSING RESPONSIBLE BIDDING PRACTICES AND SUBMISSION
REQUIREMENTS ON PUBLIC WORKS PROJECTS**

STATEMENT OF PURPOSE AND INTENT

On April 9, 2018, the Common Council passed Ordinance No. 10594-18, “An Ordinance of the Common Council of the City of South Bend, Indiana, amending Chapter 6 of the South Bend Municipal Code to Include New Article 13 Establishing Responsible Bidding Practices and Submission Requirements on Public Works Projects.”

After more than four years operating under the original ordinance, the proposed amendments represent improvements and updates to the original ordinance to reflect current circumstances and to ensure that the highest quality of standards continue to be utilized during the bidding process.

The amendments include updated apprenticeship requirements. They insert an apprenticeship clause that a contractor is deemed responsible if they are registered in a U.S. Department of Labor (USDOL) recognized apprenticeship program that has graduated at least five (5) apprentices in each of the past five (5) years per construction craft the bidder will perform on the project. Under the proposed amended ordinance, the required evidence includes participation in a USDOL registered apprenticeship program that meets this graduation threshold. The updated language ensures that the highest quality of standards continue to be utilized during the bidding process and communicates the City’s commitment to growing a well-trained, highly qualified, and safe workforce.

Changes in this amended ordinance also include increasing the minimum threshold for applicability from \$150,000 to \$250,000. The increase considers inflation and provides more opportunities for smaller or first-time bidders, including MWBE’s, to participate in bidding on City projects.

**NOW, THEREFORE, BE IT ORDAINED BY THE
COMMON COUNCIL OF THE CITY OF SOUTH BEND, INDIANA, AS FOLLOWS:**

SECTION I. Chapter 6, Article 13, Sections 6-71 through 6-78 of the South Bend Municipal Code shall be amended to read in their entirety as follows:

Sec. 6-71. Bid submission requirements.

- (a) Contractors proposing to submit bids on any City project estimated to be at least two-hundred fifty thousand dollars (\$250,000.00) 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 City and must include:
- (1) 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;
 - (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, within the preceding five (5) years;
 - (4) A statement on staffing capabilities, including labor sources. This statement shall include whether the bidder has sufficient employees on staff to complete the work it is bidding. If not, the bidder shall outline how it intends to meet the staffing needs of the work;
 - (5) A statement that individuals who will perform work on the public work project on behalf of the bidder will be properly classified as an employee or as an independent contractor under all applicable state and federal laws and local ordinances;
 - (6) 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, 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 for each construction craft the bidder will perform on the project;
 - (7) 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;
 - (8) (i) A statement that the contractor submitting a bid or quote on a public work project of the City; and all subcontractors from whom the bidder has accepted a bid and/or intends to hire to perform work, on the public work project, are properly licensed;
(ii) A bidder not so licensed shall be rejected as nonresponsive to the bid or quote request, or the bidder or quoter shall be determined to be a nonresponsive bidder or quoter. It shall be the bidder's or quoter's responsibility to check with the City Building Department to make sure it and all subcontractors have all necessary licenses to undertake the work called for in the bid or quote. The bidder shall immediately remove any subcontractor not so licensed;

-
- (9) Evidence that the contractor is utilizing a surety company which is on the United States Department of Treasury's Listing of Approved Sureties as required in the bid specifications or contract;
 - (10) 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 preceding three (3) years; and,
 - (11) A list of projects of similar size and scope of work that the bidder has performed in all areas, including the State of Indiana, within three (3) years prior to the date on which the bid is due.
- (b) The City reserves the right to request supplemental information from the bidder, additional verification of any information provided by the bidder, and may also conduct random inquiries of the bidder's current and prior customers.

Sec. 6-72. Post-bid submissions.

- (a) All bidders shall collect, maintain, and provide upon request, a current written list that discloses the name, address, licensing status, and type of work for any 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.
- (b) Each subcontractor, whose portion of the project is estimated to be at least two-hundred fifty thousand dollars (\$250,000.00), shall be required to adhere to the requirements of this article as though it were bidding directly to the City, except that the subcontractor shall submit the required information (including the name, address, and type of work) to the successful bidder prior to the commencement of work.
- (c) 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 City may withhold all payments otherwise due for work performed by a subcontractor, until the subcontractor submits the required information and the City approves such information.
- (d) The disclosure of a subcontractor list ("Disclosed Subcontractor(s)") to the City by a bidder shall not create any rights in the Disclosed Subcontractor(s). Thus, a bidder may substitute another subcontractor for a Disclosed Subcontractor by giving the City, upon request, written notice of the name, address, licensing status, and type of work of the substitute subcontractor.

Sec. 6-73. Validity of pre-qualification classification.

Upon designation by the City that a contractor's submission in anticipation of a bid is complete and timely, and upon any further consideration deemed necessary by the City, the contractor may be pre-qualified for future City public works projects. A contractor's classification as "qualified" shall exempt the contractor from the comprehensive submission requirements outlined in Section 6-71(a) of this Article for a period of twelve (12) months, excepting subsections 6-71(a)(1), (a)(4), (a)(9) and (a)(11) which shall be submitted for every bid submission. Thereafter, contractors who are pre-qualified must submit a complete application for continuation of "pre-qualified" standing, 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 pre-qualified

contractor 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 City public works projects.

Sec. 6-74. 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 6-71 of this Article by no later than the public bid opening. Post-bid submissions must be submitted in accordance with foregoing Section 6-73 of this Article. Submissions deemed inadequate, incomplete, or untimely by the City may result in the automatic disqualification of the bid.

Sec. 6-75. 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. The City specifically reserves the right to utilize all information provided in the contractor's submission or any information obtained by the City through its own independent verification of the information provided by the contractor.

Sec. 6-76. Certified payroll.

For any projects estimated to be at least two hundred fifty thousand dollars (\$250,000.00) or more, the successful bidder and all subcontractors working on a public works project are required to submit to the awarding agency, and general contractor if applicable, a detailed certified payroll utilizing the federal form now known as WH-347 or a similar form on a biweekly basis, unless different payroll reporting requirements are stated under the bid specifications or contract. The certified payroll must be prepared on a biweekly basis and submitted to the City within ten (10) calendar days after the end of each biweekly payroll period in which the bidder or subcontractor performed its work on the public works. The certified payroll reports shall identify the job title and craft of each employee on the project. The City may withhold payments due for work performed by a bidder if the bidder or subcontractor fails to submit its certified payroll reports timely or until such certified payroll reports are submitted.

Sec. 6-77. Public records.

All information submitted by a bidder or a subcontractor pursuant to this Article, including certified payrolls, are public records subject to review pursuant to the Indiana Access to Public Records Act (IC 5-14-3) and any other applicable disclosure laws.

Sec. 6-78. Penalties for false, deceptive, or fraudulent statements/information.

- (a) 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.
- (b) For projects that fall under the requirements of Section 6-76 of this Article, the City may engage in an audit and/or verification process of the information provided. To the extent that material errors are identified, the City may do the following;
 - (1) Require the bidder to reimburse the City the actual cost of the audit;
 - (2) Assess a penalty of up to two thousand five hundred dollars (\$2,500.00), it being determined that each material error constitutes a separate violation of this Article.

SECTION II. Severability.

If any part, section, subsection, paragraph, sentence, clause, or phrase of this ordinance is for any reason declared to be unconstitutional or otherwise invalid, such decision shall not affect the validity of the remaining portions of this ordinance.

SECTION III. Effective Date.

This ordinance shall be in full force and effect from and after its passage by the Common Council and approval by the Mayor.

Sharon McBride, Council President
South Bend Common Council

Attest:

Dawn M. Jones, City Clerk
Office of the City Clerk

Presented by me, the undersigned Clerk of the City of South Bend, to the Mayor of the City of South Bend, Indiana on the _____ day of September 2023, at _____ o'clock ____ . m.

Dawn M. Jones, City Clerk
Office of the City Clerk

Approved and signed by me on the _____ day of September 2023, at ____ o'clock

____. m.

James Mueller, Mayor
City of South Bend, Indiana