

**ORDINANCE NO. 4091-A**

**AN ORDINANCE OF THE CITY OF MUSKOGEE, OKLAHOMA AMENDING CHAPTER 2, ADMINISTRATION, AMENDING ARTICLE V, BOARDS AND COMMISSIONS; AMENDING DIVISION 16, CONTRACTORS PRE-QUALIFICATION BOARD, SECTIONS 2-550, DEFINITIONS; 2-552, GENERAL REQUIREMENTS; 2-553, FEES BY PROVIDING FOR REPEALER, SEVERABILITY AND DECLARING AN EMERGENCY.**

**AN EMERGENCY ORDINANCE**

**WHEREAS**, it is in the intent of the City of Muskogee to encourage open competitive bidding from competent, qualified contractors for public works projects; and

**WHEREAS**, the Public Competitive Bidding Act of 1974, 61 Okla. Stat. §118 permits public agencies such as the City of Muskogee to require prospective bidders, general contractors, subcontractors to prequalify as responsible bidders prior to submitting bids on public contracts;

**WHEREAS**, it is deemed advisable and in the best interests of the citizens of the City of Muskogee that bidders on projects be pre-qualified;

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MUSKOGEE, OKLAHOMA:**

**SECTION 1.** Chapter 2, Administration, Article V, shall be amended adding Division 16, Contractors Pre-Qualification Board to the Muskogee City Code, which shall read as follows to wit;

2-550 Definitions.

A. "Public Contract" means any contract awarded which requires approval of the governing body under the City's Purchasing Policy, for the purpose of performing any public project on behalf of the City of Muskogee, the Muskogee Municipal Authority, or the Urban Renewal Authority.

B. "Public Project" means any highway, street, sewer, pavement, or waterline under contract with the City of Muskogee the Muskogee Municipal Authority, or the Urban Renewal Authority, and which is within the purview of the Public Competitive Bidding Act of 1974, as may be amended from time to time.

C. "Board" is defined to be Contractors Pre-Qualification Board as created and established by this ordinance.

D. "Person" is defined to be any individual, firm or corporation, association, partnership, co-partnership, or any other organization.

E. "Contractors" is defined to be any person, firm or corporation who bids on public works projects. This ordinance applies to general contractors, or subcontractors who are performing said work in a classification in which the general contractor is not pre-qualified. Either the general contractor or the subcontractor shall be pre-qualified within each class of work being bid.

F. "Oklahoma Department of Transportation (ODOT) Pre-Qualified Contractor" is defined as a contractor that has submitted a properly completed Contractor's prequalification Application along with a current Audited Financial Statement; been approved by the ODOT Prequalification Committee; and been sent a "CONTRACTOR CERTIFICATION OF QUALIFICATION" or ODOT Disadvantage Business Enterprise (DBE) Certification.

#### 2-551 Board Membership and Responsibility:

The Contractors Pre-Qualification Board for the City of Muskogee shall as appointed by the City Council, shall consist of the City Manager, two members of City Council, and a representative from the public works department and the planning department. The Board shall be charged with responsibility to meet as often as necessary to examine qualifications, and if appropriate, approve applications for a Certificate of Competency.

#### 2-552 General Requirements:

A. No bid for a public project to be performed for the City of Muskogee the Muskogee Municipal Authority, or the Urban Renewal Authority, for which the amount expended requires the approval of the governing body, shall be considered unless the general contractor who submits said bid or the bidders subcontractor(s) has previously been issued a Certificate of Competency, by the board provided herein, for each class of work being bid. However, the provisions of this Ordinance shall not apply to any public project, which has been declared to be an emergency under the City's purchasing policy, as may be amended from time to time.

B. The City Manager is hereby directed to cause to be prepared an application form for bidder Prequalification as contemplated by this Division. The application shall seek information necessary from the applicant to allow the Board to properly review and consider the qualifications of the applicant to perform the Public Contract. The following information shall be included by the applicant and shall be considered by the Board in determining whether to issue a Certificate of Competency:

1. Licensing, qualifications, and experience of the contractor.

2. Financial information, but not limited to, annual gross receipts, surety and bonding capacity of the contractor. Financial information provided pursuant to said application process shall remain confidential and not subject to public disclosure in accordance with 61 Okla. Stat. §118(A)(2019).
3. Reliability of the contractor based on past performances of previous contracts with the City, the Muskogee Municipal Authority, or the Urban Renewal Authority, and information received from provided references.
4. History of compliance or non-compliance with local, state and federal ordinances, regulations and laws.
5. Availability, ownership and quality of necessary equipment for performance of public contracts.
6. Any other relevant matters that the Board, in its sole discretion, finds may affect the ability of the applicant to perform a Public Works Contract on behalf of the City of Muskogee or the Muskogee Municipal Authority, or the Urban Renewal Authority.

2-553      Fees:

When application is made for a Certificate of Competency under this article it shall be accompanied by the required fee, and if approved shall be renewable on July 1 of each year in accordance with the schedule of fees in Appendix A. All fees associated with this article shall be modified from time to time by the council, as necessary, to defray the expense of processing the application for a Certificate of Competency. The renewal is contingent on the applicant continuing to meet requirements as reviewed by the Board. Provided however, there shall be no application fee required on projects which involve federal or state agencies prohibiting payment of such fees.

2-554      Certificate of Competency:

A. It shall be the duty of the Board to issue a Certificate of Competency to applicants deemed satisfactory to the Board pursuant to the established criteria. In the event the Board, pursuant to the above mentioned criteria, refuses to issue a Certificate of Competency to an applicant, the Board shall specify in writing the reasons for said refusal and shall cause the same to be delivered by Certified mail to the applicant.

B. Any applicant refused a Certificate of Competency as above provided shall have the right to appeal the decision of the Board to the City Council by requesting said appeal within ten (10) calendar days of notice of the refusal. The City Council may, after notice to applicant and an opportunity for hearing, affirm, reverse, or modify the decision of the Board.

C. The Board shall be empowered, upon proper written notice of notice and after a hearing to revoke or suspend a Certificate of Competency for cause shown. Any such suspension or revocation is subject to appeal to the City Council.

D. Because the City of Muskogee uses ODOT Specifications for public works involving street work, only applicants that possess an ODOT CONTRACTOR CERTIFICATION OF QUALIFICATION, or an ODOT DBE certification, shall be eligible to submit an application for a Certificate of Competency to bid street work within the City of Muskogee.

**SECTION 2. SEVERABILITY.** Should any section, subsection, sentence, provision, clause or phrase hereof be held invalid, void or unconstitutional for any reason, such holding shall not render invalid, void or unconstitutional any other section, subsection, sentence, provision, clause or phrase of this ordinance, and the same are deemed severable for this purpose.

**SECTION 3. REPEALER.** All ordinances or parts of ordinances in direct conflict herewith are repealed to the extent of conflict only.

**SECTION 4. EMERGENCY.** This ordinance being designated to protect the public health, safety and welfare of the inhabitants of the City of Muskogee, Oklahoma, and its passage being immediately necessary, an emergency is hereby declared to exist and by reason whereof this ordinance shall take effect immediately upon its passage, approval and publication as provided by law.

**PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MUSKOGEE, OKLAHOMA THIS 9<sup>TH</sup> DAY OF MARCH, 2020.**

  
JANEY BOYDSTON, MAYOR

ATTEST:

  
TAMMY

(SEAL)



Approved as to form and legality this 9 day of March, 2020.

  
ROY D. TUCKER, CITY ATTORNEY