

MICHIGAN CITY COMMON COUNCIL

ORDINANCE NO. 4718

**AN ORDINANCE TO ESTABLISH RESPONSIBLE BIDDING PRACTICES AND
SUBMISSION REQUIREMENTS ON PUBLIC WORKS PROJECTS & CREATING
SEC. 2-345 IN THE MICHIGAN CITY MUNICIPAL CODE**

WHEREAS, the City of Michigan City, Indiana 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, this "Responsible Bidding Practices and Submission Requirements" Ordinance will preserve administrative resources by ensuring that only qualified contractors and subcontractors are awarded contracts on public works construction projects; and

WHEREAS, this "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, this "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 Michigan City, La Porte County, Indiana, that Sec. 2-345 is hereby created in the Michigan City Municipal Code, 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:

Sec. 2-345. Responsible Bidding Practices and Submission Requirements for Submitting Bids to Perform Construction Work on Public Works Projects.

A. Bid Submission Requirements

Contractors proposing to submit bids on any City of Michigan City, Indiana ("City") project estimated to be at least Three Hundred Thousand Dollars (\$300,000.00) or more must, in order to be considered a responsible bidder, 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;
- 4) A statement on staffing capabilities, including labor sources;
- 5) 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; and evidence that any applicable apprenticeship program has graduated at least five (5) apprentices in each of the past five (5) years for each of the construction crafts the bidder will perform on the project. Evidence of graduation rates are not required for apprentice able crafts dedicated exclusively to the transportation of material and equipment to and from the public works project;

The required evidence includes but is not limited to a copy of all applicable apprenticeship standards and Apprenticeship Agreement(s) for any apprentice(s) who will perform work on the public works project; and documentation from each applicable apprenticeship program certifying that it 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. Additional evidence of participation and graduation requirements may be requested by the City at its discretion;

- 6) 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 works project; and (ii) meets, or exceeds, the requirements set forth in Ind. Code § 4-13-18-5 or Ind. Code § 4-13-18-6;
- 7) 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;
- 8) 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;
- 9) Evidence that the bidder is utilizing a surety company on the United States Department of Treasury's Listing of Approved Sureties;
- 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 last five years;
- 11) 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;
- 12) 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; a
- 13) For contracts estimated to cost at least Three Hundred Thousand dollars (\$300,000), certification that the bidder and all subcontractors are qualified under Ind. Code § 4-13.6-4 or Ind. Code 8-23-10; and
- 14) A written list that discloses the name, address, and type of work for each subcontractor the bidder intends to employ on any part of the public works project, including individuals performing work as independent contractors.

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

B. Post-Bid Submissions from Subcontractors

Each subcontractor of any tier shall be required to adhere to the requirements of subsection (A) of this Section, but subcontractors shall submit the required information to the successful bidder, who shall then submit 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 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 by a bidder or a subcontractor shall not create any rights in the disclosed subcontractor. Thus, a bidder and/or a subcontractor may substitute another subcontractor for a disclosed subcontractor by giving the City written notice of the name, address, and type of work the substitute subcontractor will perform. The substitute subcontractor is subject to all of the obligations of a subcontractor under this Section.

C. Validity of Pre-Qualification Classification

Upon designation by the City that a bidder's or subcontractor's submission is complete and timely, and upon any further consideration deemed necessary by the City, the bidder or subcontractor may be pre-qualified for future City public works projects. Pre-qualification shall exempt the bidder or subcontractor from the comprehensive submission requirements contained herein for a period of twelve (12) months. Thereafter, bidders or subcontractors who are pre-qualified must submit a complete application for continuation of pre-qualified standing, on a form provided by the City, (i.e. a "short form") by December 31st for the upcoming calendar year. Failure by any pre-qualified bidder 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 bidder or subcontractor shall still be permitted to bid on or perform work on City public works projects.

Any material changes to a 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.

D. 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.

E. 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.

F. Certified Payroll

For projects in which the cost is at least Three Hundred Thousand Dollars (\$3000,000), 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 may withhold payment due for work performed by a successful bidder or subcontractor for failure to timely submit their respective certified payroll reports until such time as the reports are submitted. 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.

G. 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 (Ind. Code 5-14-3).

H. Penalties for False, Deceptive, or Fraudulent Statements/Information

Any bidder or subcontractor 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 or working on all City projects for a period of three (3) years.

I. Conflicting Ordinances

Any ordinance or provision of any ordinance in conflict with this Section is hereby repealed.

J. Severability

If any provision of this Section is found to be invalid, the remaining provisions of this Section shall not be affected by such a determination; such provisions shall remain in full force and effect.

This Ordinance is to be effective upon passage by the Council, approval by the Mayor, and any necessary publication.

INTRODUCED BY: /s/ Angie Nelson Deutch, Member

/s/ Don Przybylinski, Member

/s/ Paul Przybylinski, Member

/s/ Vidya Kora, Member

Passed by the Common Council of the City of Michigan City, Indiana, this 5th day of December, 2023 by a vote of 9 to 0.

/s/ Sean Fitzpatrick, President
Michigan City Common Council

Approved/**Vetoed** (*circle appropriate action*) by me, this 15th day of December, 2023.

/s/ Duane Parry, Mayor
City of Michigan City, Indiana

ATTEST:

/s/ Gale A. Neulieb, Clerk 12/19/2023
City of Michigan City, Indiana

Prepared by Harris Law Firm, P.C. Upon Request

NOTE: Mayor Parry vetoed this ordinance on December 15, 2023; at the December 19th, 2023 Council meeting the Council overrode his veto with a vote of 8 -0. Ordinance passes.