

Sec. 2-232 Bidding Practices and Submission Requirements.

(a) *Bid Submission Requirements.* Contractors proposing to submit bids on any Town of Dyer ("Town") project estimated to be at least two hundred thousand dollars (\$200,000.00) or more shall, prior to the opening of bids, submit a statement made under oath and subject to perjury laws, on a form designated by the Town which shall 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 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 a copy of all applicable apprenticeship certificates or standards for these training programs;

(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 I.C. 4-13-18-5 or I.C. 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 (5) years of any professional or trade license held by the company, or of any director, officer or manager employed by the bidder;

(9) Evidence that the contractor is utilizing a surety company which is 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 (5) 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; and

(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.

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

(b) *Post-Bid Submissions from Subcontractors.*

(1) All bidders shall provide a written list that discloses the name, address, and type of work for each first-tier subcontractor from whom the bidder has accepted a bid and/or intends to hire on any part of the public works project, including individuals performing work as independent contractors, within five (5) business days after the date the bids are due.

(2) In addition, each such first-tier subcontractor shall be required to adhere to the requirements of division (a) above as though it were bidding directly to the Town, except that first-tier subcontractors shall submit the required information (including the name, address, and type of work for each of their first-tier subcontractors) to the successful bidder no later than five (5) business days after the subcontractor's first day of work on the public works project and the bidder shall then forward said information to the Town. Payment shall be withheld from any first-tier subcontractor who fails to timely submit said information until such information is submitted and approved by the Town.

(3) Upon request, the Town may require any second and lower-tier subcontractors to provide the required information (including name, address, type of work on the project and the name of the higher-tier subcontractor). Payments shall be withheld from any second or lower-tiered contractor who fails to timely submit this information until this information is submitted and approved by the Town. Additionally, the Town may require the successful bidder and relevant subcontractor to remove the second or lower-tier subcontractor from the project and replace it with a responsive and responsible subcontractor.

(4) 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 Town may withhold all payments otherwise due for work performed by a subcontractor, until the subcontractor submits the required information and the Town approves such information. The Town may also require that successful bidder to remove the subcontractor to the project and replace it with a responsive and responsible subcontractor.

(5) 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 Town 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.

(c) *Validity of Pre-Qualification Classification.*

(1) Upon designation by the Town 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 Town, the contractor or subcontractor may be pre-qualified for future Town public works projects. A contractor's classification as "qualified" shall exempt the contractor or subcontractor from the comprehensive submission requirements contained herein for a period of twelve (12) months. Thereafter, contractors or subcontractors who are pre-qualified must submit a complete application for continuation of "pre-qualified" standing, on a form provided by the Town, (also referred to as the "short form") by December 31 for the upcoming calendar year. Failure by any pre-qualified contractor 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" contractor or subcontractor shall still be permitted to bid on Town public works projects.

(2) Any material changes to the contractor's status, at any time, shall be reported in writing within ten (10) days of its occurrence to the Town. The pre-qualification designation is solely within the discretion of the Town and the Town specifically reserves the right to change or revoke the designation for a stated written reason(s).

(3) 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 Town within five (5) business days of receipt of notice of denial.

(d) *Incomplete Submissions by Bidders.* It is the sole responsibility of the potential bidder to comply with all submission requirements applicable to the bidder in division (a) above by no later than the public bid opening date and time. Post-bid submissions must be submitted in accordance with division (b) above. Submissions deemed inadequate, incomplete, or untimely by the Town may result in the automatic disqualification of the bid.

(e) *Responsive and Responsible Bidder Determination.* The Town, 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 Town specifically reserves the right to utilize all information provided in the contractor or subcontractor's submission or any information obtained by the Town through its own independent verification of the information provided by the contractor.

(f) *Certified Payroll.*

(1) For projects in which the cost is at least two hundred thousand dollars (\$200,000.00), the successful bidder and all subcontractors working on a public works project shall submit a certified payroll report utilizing the federal form now known as a WH-347 which must be prepared on a weekly basis and submitted to the Town within ten (10) calendar days after the end of each week in which the bidder or subcontractor performed its work on the public works project. These 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 contractor or subcontractor uses independent contractors to perform work on the project, such individual must be identified on the WH-347 form with the same information as is required for employees.

(2) The Town may withhold payment due for work performed by a bidder if the bidder fails to timely submit its certified payroll reports until such time as such certified payroll reports are submitted. The Town may also withhold payment due for work performed by a subcontractor if the subcontractor fails to timely submit its certified payroll reports until such time as such certified payroll reports are submitted. The Town shall not withhold payment to a bidder for work performed by the bidder or for work performed by subcontractors who have submitted their certified payroll reports, because one (1) or more other subcontractors failed 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 (I.C. 5-14-3).

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

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