

**A RESOLUTION OF THE BOARD OF SCHOOL TRUSTEES OF THE SCHOOL
CITY OF MISHAWAKA REGARDING ESTABLISHING RESPONSIVE AND
RESPONSIBLE VENDOR REQUIREMENTS**

WHEREAS, the School City of Mishawaka, hereafter SCM, has the duty to ensure the conduct of business with responsible vendors for public works projects, encourage the growth of local businesses whose primary place of operation and/or majority of its workforce reside within the region and encourage the investment of taxes paid by Mishawaka residents into the local economy;

WHEREAS, SCM expends Mishawaka taxpayer funds for the construction of public work, a portion of that money being spent derived from local property taxes paid by residents;

WHEREAS, SCM, based upon its experience, has determined that quality workmanship, efficient operation, safety, and timely completion of projects are not necessarily insured by awarding a construction contract solely on the basis of the low bid;

WHEREAS, SCM seeks to enhance its ability to identify the lowest "responsible and responsive bidder" on all public work construction projects by instituting more comprehensive submission requirements which are in compliance with Indiana State Law; and

WHEREAS, "A Resolution Establishing Responsible Vendor Requirements" will help to assure efficient use of taxpayer dollars and is in the public interest.

NOW, THEREFORE, BE IT RESOLVED by the School City of Mishawaka Board of School Trustees that:

Section 1: Public Works (IC 36-1-12-4)

For the purposes of this section, the term "Public Works" has the meaning set forth in IC 36-1-12-4.

Section 4(a) – This section applies whenever the cost of a public work project will be one hundred fifty thousand dollars (\$150,000) or more.

Section 2: Bid Submission Requirements

Contractors proposing to submit bids on qualifying SCM bid projects must, prior to the opening of bids, submit a statement made under oath and subject to perjury laws, on a form designated by the State Board of Accounts:

- A. 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;
- B. A list identifying all former business names;
- C. Any determination 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 relate Acts;
- D. A statement on staffing capabilities;
- E. A listing of three (3) projects the vendor has completed in Indiana which are similar to SCM's projects. Contact information must be included so that SCM can ascertain quality of workmanship on said projects;
- F. 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 requirement set forth in IC 4-13-18 or IC 4-13-18-6;
- G. The name and description of the management experience of each of the bidder's project managers and superintendents that the bidder intends to assign to work on the project;
- H. Proof of any professional or trade license or registration required by law or local ordinance for any trade or specialty area in which the contractor is seeking a contract award and disclosure of any suspension or revocation of such license held by the company, or of any director, officer, or manager of the company;
- I. Evidence that the contractor is utilizing a surety company which is on the United States Department of Treasury's Listing of Approved Sureties;
- J. 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;
- K. 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.
- L. A written statement that bidder does/does not participate in an apprenticeship or training program. Bidder shall provide a written description of their apprenticeship or training program.

SCM 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.

Section 3: Post-Bid Submission from Contractors

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 projects, including individuals performing work as independent contractors, within five (5) business days after the date the bids are due.

In addition, each such first-tier subcontractor shall be required to adhere to the requirements of Section 1 of this Resolution as though it were bidding directly to SCM, 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 work project and the bidder shall then forward said information to SCM. Payment shall be withheld from any first-tier subcontractor who fails to timely submit said information until such information is submitted and approved by SCM.

Upon request, SCM 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-tier contractor who fails to timely submit this information until this information is submitted and approved by SCM. Additionally, SCM 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.

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, SCM may withhold all payment otherwise due for work performed by a subcontractor until the subcontractor submits the required information and SCM approves such information. SCM may also require the successful bidder to remove the subcontractor from the project and replace it with a responsive and responsible subcontractor.

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 SCM 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 Resolution.

Section 4: Incomplete Submission by Bidders and Subcontractors

It is the sole responsibility of the bidder to comply with all of its submission requirements within the time period set forth in this Resolution. Submissions that are inadequate and/or incomplete may result in automatic disqualifications of the bid.

Section 5: Lowest Bidder not Chosen

If the Board awards the contract to a bidder other than the lowest bidder, the Board must state in the minutes or memoranda, at the time the award is made, the factors used to determine which bidder is the lowest responsible and responsive bidder and to justify the

award. The Board shall keep a copy of the minutes or memoranda available for public inspection.

Section 6: Public Records

All information submitted by a bidder or a subcontractor pursuant to this Resolution including certified payrolls, are public records subject to review pursuant to the Indiana Access to Public Records law (IC 5-14-3).

Section 7: 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 SCM shall be disqualified from bidding on all applicable SCM projects for a period of three (3) years.

Section 8: Materiality

The requirements of this Resolution are a material part of the bidding documents and any contract for a public work project subject to this Resolution. SCM shall include a copy of the Resolution and a copy of the forms for submission of the information required in Sections 3 and 4 above, in all bidding documents for all public work projects subject to the Resolution. If SCM fails to include a copy of the Resolution in such bidding documents, SCM may not reject a bid submitted by a bidder on the basis that the bidder failed to submit the information required in Section 3 or 4 in accordance with the applicable time periods; provided, however, that SCM may require bidders to submit such information after bids are submitted and then consider such information in determining whether or not a bidder is "responsible". Regardless of whether or not the Resolution is included in the bidding documents, however, any bidder awarded a contract for a public work project subject to this Resolution is subject to the requirements of this Resolution.

Any bidder awarded a contract for a public work project subject to this Resolution shall insert provisions in all subcontracts for the public work project that require the subcontractor: (ii) to perform the subcontractor's obligation under this Resolution and (i) to include similar language in all lower-tier subcontracts for the public work project; provided, however, that a subcontractor performing any work on a public work project subject to this Resolution shall be subject to this Resolution regardless of whether or not such provisions are included in its subcontract.


Section 9: Severability


If any portion of this Resolution or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other portions or applications of this Resolution which can be given effect without the invalid portion or application and, to this end, the portions of this Resolution are severable.

Section 10: Effective Date


This Resolution is hereby ADOPTED by the Board of School Trustees for the School City of Mishawka this 13th day of September, 2016.


Jeffrey E. Emmons, President


William Pemberton, Member


Larry E. Stillson, Vice-President


Dennis R. Wood, Member


Holly Parks, Secretary

Approved: 09/13/2016