

ORDINANCE NO. 17-17

AN ORDINANCE ESTABLISHING RESPONSIVE AND RESPONSIBLE VENDOR REQUIREMENTS AND A COMMITMENT TO COMMUNITY ECONOMIC INVESTMENT

WHEREAS, the County has the duty to ensure the conduct of business with responsible vendors for public works projects, protect and encourage the growth of local businesses whose primary place of operation and/or majority of its workforce reside within the County limits, and encourage the investment of taxes paid by County residents into the local economy.

WHEREAS, Indiana Code § 36-1-3-1 et seq. permits any County in the State of Indiana to exercise any power or perform any function necessary to the public interest in the context of its local affairs, which is not prohibited by the Constitution of the United States or of the State of Indiana, or denied or preempted by any other law, or is not expressly granted by any other law to another governmental entity;

WHEREAS, the County government expends substantial funds for the construction of public work, a portion of that money being derived from taxes paid by residents;

WHEREAS, the County government seeks to preserve administrative resources by ensuring that only qualified contractors and subcontractors are awarded contracts on public work construction projects;

WHEREAS, the County government, 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, the County government 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, "An Ordinance Establishing Responsive and Responsible Vendor Requirements and a Commitment to Community Economic Investment" will assure efficient use of taxpayer dollars, will promote public safety, and is in the public interest.

NOW, THEREFORE, BE IT ORDAINED by the County Council of St. Joseph County, Indiana (hereinafter "County"), that:

Section 1. Public works

For purposes of this chapter, the term "public work" has the meaning set forth in IC 36-1-12-2.

Section 2. Application

This ordinance applies whenever the cost of the public work project is estimated to be at least one hundred fifty thousand dollars (\$150,000) or more. Any provisions of this Ordinance that conflict with any applicable federal statute, regulation and/or rule that applies to a federally-funded construction project shall not apply to said federally-funded construction project.

Section 3. Bid Submission Requirements

Contractors proposing to submit bids on any County project must, prior to the opening of bids, submit a statement made under oath and subject to perjury laws, on a form designated by the County and must include:

- (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 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;
- (D) A statement on staffing capabilities, including labor sources;
- (E) 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.
- (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 requirements set forth 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 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 work 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
- (L) 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 County 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 4. Subcontractor Requirements

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 work project, 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 may be required to adhere to the requirements of Section I of this Ordinance as though it were bidding directly to the County, 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 the County. Any contract bidder has with a first-tier subcontractor must state that the subcontractor understands and agrees that the County may withhold payment if the subcontractor fails to timely submit said information, until such information is submitted and approved by the County.

Upon request, the County 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). Any contract a subcontractor has with a second or lower-tier subcontractor must state that the second or lower-tier subcontractor understands and agrees that the County may withhold payment from any second or lower-tier subcontractor who fails to timely submit this information, until this information is submitted and approved by the County. Additionally, the County 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, as set forth above, the County may withhold all payments otherwise due for work performed by a subcontractor, until the subcontractor submits the required information and the County approves such information. The County may also require that 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 the County 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.

Section 5. Validity of Pre-Qualification Classification

Upon designation by the County 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 County, the contractor or subcontractor may be pre-qualified for future County public works projects. A contractor's classification as "qualified" shall exempt the contractor or sub-contractor 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 County, (also referred to as the "short form") by December 31st 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 County public works projects.

Any material changes to the contractor's status, at any time, must be reported in writing within ten (10) days of its occurrence to the County. The pre-qualification designation is solely within the discretion of the County and the County 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 County within five (5) business days of receipt of notice of denial.

Section 6. Credit Toward Bid Award

The following criteria shall be used as credit toward a bid in determining the lowest responsible bidder if the County provides in the solicitation that local credits shall apply. A maximum credit of 5% is allowable. If the County applies any credit(s) towards a bid, the credit(s) will not reduce the amount of a contract.

EXAMPLE: \$1,000,000 bid, receives \$50,000 local bidder credit. For purposes of determining the lowest bidder, the contractor's bid -is \$950,000. However, the contract price will remain \$1,000,000.

(A) The County shall apply a credit equal to 5% or \$50,000, whichever is less, based on the local bidder's bid. A local bidder is an individual or business entity that (1) establishes it has a place of business located in the county where the work is to be performed for at least 1 year prior to the deadline for submitting bids, as registered in official documents with the Indiana Secretary of State; and (2) can demonstrate for one year prior to the deadline for submitting bids that it has paid a minimum of \$5,000 of sales tax in the county where the work is to be performed.

In the event a local bidder does not bid on the project, a bidder that establishes it has a place of business located within an Indiana county contiguous to the county where the work is to be performed for at least one year prior to the deadline for submitting bids, as registered in official documents with the Indiana Secretary of State, will receive a credit equal to 1% or \$10,000, whichever is less; and

- (B) The County shall apply a credit equal to 2% or \$20,000, whichever is less, towards the bid of a bidder with a local workforce. "Local workforce" means at least 25% of the bidder's construction employees reside in the county where the work is to be performed or Indiana counties contiguous to the county where the work is to be performed. The bidder is not required to have a place of business in the county where the work is to be performed for this credit to apply.

The bidder is responsible for requesting credit based upon any of the above criteria.

Section 7. Price Preferences for local Indiana Businesses

A price preference for project supplies purchased from a local Indiana Business Indiana shall apply toward a bid in determining the lowest responsible bidder if the County provides in the solicitation that IC 5-22-15-20.9 applies.

Section 8. Incomplete Submissions by Bidders and Subcontractors

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

Section 9. Lowest Bidder Not Chosen

If the County awards the contract to a bidder other than the lowest bidder, the County 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 County shall keep a copy of the minutes or memoranda available for public inspection.

Section 10. Certified Payroll Reports

For projects in which the cost is at least \$250,000, the successful bidder and all subcontractors working on a public work 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 County within ten (10) calendar days after the end of each week in which the bidder or subcontractor performed its work on the public work project. These certified payroll reports shall identify the job title and craft of each employee on the project, e.g. journeyman craftsperson or apprentice craftsperson. 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.

The County 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. Any contract bidder has with a first-tier subcontractor, or contract a subcontractor has with a second or lower-tier contractor, must state that the subcontractor understands and agrees that the County may withhold payment 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 County 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 or more other subcontractors failed to timely submit their certified payroll reports.

Section 11. 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 (IC 5-14-3).

Section 12. 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 County shall be disqualified from bidding on all County projects for a period of three (3) years.

Section 13. Materiality

The requirements of this Ordinance are a material part of the bidding documents and any contract for a public work project subject to this Ordinance. The County shall include a copy of the Ordinance and a copy of the forms for submission of the information required in Section 3 and 4 above, in all bidding documents for all public work projects subject to the Ordinance. If the County fails to include a copy of the Ordinance in such bidding documents, the County 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 the County 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 Ordinance is included in the bidding documents, however, any bidder awarded a contract for a public work project subject to this Ordinance is subject to the requirements of this Ordinance.

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

Section 14. Severability

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

Section 15. Other Ordinances

Any prior ordinance or portion thereof in conflict with this Ordinance is hereby revoked.

Section 16. Effective Date

This Ordinance shall take effect upon passage by the County Council of St. Joseph County, Indiana.

IN WITNESS WHEREOF, the above-stated Ordinance has been duly adopted this ___ day of February 14, 2016

PASSED by the County Council of St. Joseph County, Indiana by a ___ vote of all members present and voting this 14 day of February, 2016.

This Ordinance approved and signed by me this ___ day of _____, 2016 at the hour of ___ o'clock P.M.

Rafael Martin
St. Joseph County Council Member

- FILED -
NOV 16 2016
AUDITOR
ST JOSEPH COUNTY

1st READING 8-9-16
PUBLIC HEARING 8-11-17
2nd READING
NOT APPROVED
REFERRED
PASSED 4-3

FILED
NOV 16 2016
COUNTY COUNCIL
ST. JOSEPH COUNTY INDIANA

Bill No. 52-16

AMENDMENT NO. _____

ORDINANCE NO. 25-17

AN ORDINANCE ESTABLISHING RESPONSIVE AND RESPONSIBLE VENDOR REQUIREMENTS AND A COMMITMENT TO COMMUNITY ECONOMIC INVESTMENT PETITIONER: ROBERT L. KRUSZYNSKI, JR AND DIANA HESS

On the 14th day of March, 2017, Mr(s). Hess moved to sustain/override the Commissioner's Veto. Motion was seconded by Mr(s). Kruszynski. The motion was ~~denied~~/passed.



President, County Council

VOTES

YES 7

NO 3

Against - Mr. O'Brien, Mr. Telloyan, Mr. Root

ATTEST:



Auditor, St. Joseph County