

Subs. of Gen. Ord. No. 9 - 22 - 23. By Alderpersons Felde and Dekker.
September 6, 2022.

AN ORDINANCE establishing a Responsible Bidder Policy for the City of Sheboygan.

WHEREAS, the City is empowered by Wis. Stat. § 66.0901(2) to require any entity desiring consideration for a public contract to supply a sworn statement addressing various aspects of the entity's work experience, safety practices, financial ability, and other factors relating to public welfare and protection; and

WHEREAS, as stewards of City tax dollars, it is vital that public projects are completed timely, professionally, and to a high degree of quality.

THE COMMON COUNCIL OF THE CITY OF SHEBOYGAN DO ORDAIN AS FOLLOWS:

Section 1. Section 2-400 of the Municipal Code entitled "Responsible Bidder" is hereby created so as to read as follows:

"Sec. 2-400. - Responsible Bidder.

- (a) *Purpose.* Pursuant to Wis. Stat. § 66.0901, whenever the City contracts for public works, the contract must be awarded to the lowest responsible bidder. Whether a bidder is "responsible" is a determination requiring the exercise of City discretion. This ordinance is intended to ensure that submitted bids are reviewed by the City and its departments, officials or employees under reasonably consistent responsible bidder criteria when exercising its discretion.
- (b) *Definitions.*
 - (1) "Contractor" means a person, corporation, partnership or any other business entity that performs work in a public works contract as a general contractor, prime contractor or subcontractor at any tier.
 - (2) "Director" shall mean the Director of Public Works or his/her designee.
 - (3) "Multiple-trade public works contract" is a public works project in which no single trade accounts for 85% or more of the total labor cost of the project.

- (4) "Public Works Contract" means a contract for the construction, alteration, execution, repair, remodeling or improvement of a public work or building, or furnishing of supplies or materials of any kind, where the cost of such work will exceed \$25,000 and where the contract is required to be bid pursuant to Wis. Stat 62.15.
- (5) "Registered Apprenticeship Program" means an apprenticeship program that is currently approved by the U.S. Department of Labor or a state apprenticeship agency and has graduated apprentices to journeyperson status for three (3) years. In addition, a new apprenticeship program that has been registered with the federal or state government within the last three (3) years will be considered a Registered Apprentice Program, provided that such new program graduates apprentices to journeyperson status within the indenture period.
- (6) "Single-trade public works contract" is a public works project in which a single trade accounts for 85% or more of the total labor cost of the project.
- (c) *Policy.* When entering into contracts for public construction under Wis. Stat. § 62.15, the City will only award a contract to a contractor who has been prequalified pursuant to Wis. Stat. § 66.0901 and the procedures set forth herein or to a contractor that has timely submitted sufficient information addressing each of the responsible bidder criteria set forth herein for consideration of a particular public works contract.
- (d) *Contractor Prequalification.* The Director shall review contractor prequalification applications and approve those that satisfy the requirements of this ordinance. If a contractor is denied prequalification, the contractor shall have the right to appeal such decision to the Public Works Committee pursuant to the appeal provision set forth in subsection (h) of this section.
- (1) *Application for Prequalification* shall be filed with the Director not less than five ~~business~~ days prior to the time set for opening of bids ~~not less than five business days prior to the time set for opening of bids~~ for a project Contractor desires to bid on, and shall address each of the Responsible Bidder Criteria set forth in subsection (e) of this section. Such applications shall, at a minimum, require a sworn certification by the applicant attesting to the facts contained therein.

- (2) *Application Review.* The Director may request additional information if, in his/her discretion, such information is necessary to make a determination. The Director shall review each application and provide the applicant a written decision within 14 calendar days.
 - (3) *Prequalification Term.* Prequalification shall be valid for one year from the approval date. The Director may suspend or revoke prequalification status for good cause. Such decision shall be made in writing and the contractor shall be provided timely notice and an opportunity to be heard by the Director.
 - (4) *Prequalification Renewal and Disclosure.* It shall be the obligation of the contractor to timely renew its prequalification and to report information regarding any material changes to its business or operations that are relevant to its prequalification application, including information that would affect its ability to make the certifications required by this ordinance. Any such information must be reported within fifteen (15) days of the contractor's knowledge of the information. Failure to report information under this subsection may result in suspension or revocation of the contractor's prequalification, debarment from City contracts for a period of up to three years and other sanctions available under applicable law.
 - (5) *Publication of Prequalified Contractors.* The Director shall publicly post a list of prequalified contractors, which shall include the names, addresses, and prequalification numbers of contractors and applicable dates of prequalification approval. This list shall be updated on a monthly basis.
- (e) *Responsible Bidder Criteria.* For consideration as a "responsible bidder" for purposes of being awarded a public works contract or for prequalification, a contractor shall supply information that satisfies all of the following criteria:
- (1) The contractor maintains a permanent place of business.
 - (2) The contractor is authorized to do business in the State of Wisconsin.
 - (3) The contractor possesses all valid, effective licenses, registrations, or certificates required for the contractor or its employees by federal, state, county or local law, necessary for the type of work it seeks to perform, including,

but not limited to, licenses, registrations or certifications for any type of trade work or specialty work.

- (4) For projects funded in whole or in part by federal or state funding, that the contractor, or any agent, partner, employee or officer of the contractor, is not debarred, suspended, proposed for debarment or declared ineligible from contracting with any unit of federal, state or local government.
- (5) The contractor complies with 42 U.S.C. § 2000e and Federal Executive Order No. 11246 as amended by Executive Order No. 11375 (known as the Equal Opportunity Employer provision).
- (6) The contractor has general liability, workers' compensation and automobile insurance at levels sufficient to protect the city given the size of the project.
- (7) The contractor has complied with 40 U.S.C §§ 3141-3148 (Federal Davis-Bacon related Acts), and all rules and regulation therein, for projects undertaken by the contractor that are covered by these laws, for the past five (5) years.
- (8) For projects funded in whole or in part by federal or state funding, and where the contract amount exceeds ~~public works contracts in excess of~~ \$100,000, the contractor participates in a Registered Apprenticeship Program.
- (9) For projects funded in whole or in part by federal or state funding, that the Contractor has a written substance abuse prevention program meeting the requirements of Wis. Stat § 103.503.
- (10) The employees who will perform work on the project are properly classified as employees or independent contractors under all applicable state and federal laws.
- (11) The contractor has not been the subject of any investigation, order or judgment from any state or federal agency or court concerning an employment practice, including but not limited to, classification of employees, unemployment insurance, wage and hour laws, discrimination. If the contractor has been the subject of any investigation, order or judgment from any state or federal agency or court concerning an employment practice, the contractor must provide copies of the investigation, order or judgment.

- (12) Within the last five (5) years, the contractor has not been found by a final decision of a court or government agency in violation of any other law relating to its contracting business, including but not limited to environmental laws, bid-rigging or price fixing, antitrust or tax laws, where the penalty for such violation resulted in the imposition of fine, back pay damages or any other type of penalty in the amount of more than \$10,000.
- (13) The contractor's employees who will perform work on the project are:
- a. Covered under a current workers' compensation policy; and
 - b. Properly classified under such policy.
- (14) The contractor complies with all laws regarding health insurance coverage for employees.
- (15) The contractor has adequate financial resources to complete the public contract, as well as all other work the bidder is presently under contract to complete.
- (16) The contractor is bondable for the terms of the proposed public works contract.
- (17) If required in the Director's discretion, the contractor has a record, viewable by the City upon request, of satisfactorily completing at least five projects of similar size and complexity within the last five years. Criteria that will be considered in determining satisfactory completion of projects may include, but is not limited to:
- a. Completion of contracts in accordance with drawing and specifications;
 - b. Diligent execution of the work and completed contracts according to the established time schedules unless extensions are granted by the owner; and
 - c. Fulfilled guarantee requirements of the contract documents.
- (18) The contractor has, and diligently maintains, a written safety program.
- (19) The contractor has not received a serious, willful or repeated violation from OSHA in the last ten (10) years.

(20) The contractor has not defaulted on any project in the past three (3) years.

- (f) *No Restriction on Discretion.* If information other than what must be disclosed by the contractor in subsection (e) of this section is discovered by the City or the employee responsible for awarding the public works contract, and such information calls into question the contractor's capacity or competence to faithfully and responsibly comply with the term of a public works contract, that information shall be considered in determining whether the contractor is a responsible bidder.
- (g) *Affidavit of Compliance.* The general or prime contractor bidding on a public works project shall include in its sealed bids an affidavit swearing compliance with the criteria set forth in subsection (e) of this section on the form required by the City; and, within ten days of bid acceptance, an affidavit swearing compliance with the criteria set forth in subsection (e) of this section on the form required by the City from every subcontractor at any tier who will perform work on the project.
- (h) *Appeal.* Any applicant, contractor or subcontractor aggrieved by a determination of the Director under this ordinance may appeal the determination to the Public Works Committee. The appeal shall be taken within fifteen (15) days of the determination to be appealed and shall be filed in writing with the Municipal Clerk. The Public Works Committee shall schedule a hearing on the appeal promptly.

Section 2. All ordinances or parts thereof in conflict with the provisions of this ordinance are hereby repealed to the extent of such conflict, and this ordinance shall be in effect from and after its passage and publication.

I HEREBY CERTIFY that the foregoing Ordinance was duly passed by the Common Council of the City of Sheboygan, Wisconsin, on the _____ day of _____, 20____.

Dated _____ 20____. _____, City Clerk

Approved _____ 20____. _____, Mayor