

GENERAL ORDINANCE 4, 2024

AN ORDINANCE AMENDING CHAPTER 7 ARTICLE 2 OF THE *TERRE HAUTE CITY CODE* RELATING TO RESPONSIBLE BIDDERS.

SECTION 1. *Terre Haute City Code*, Chapter 7, Article 2. Responsible Bidder is hereby amended by deleting all of the current text and replacing it with all of the text as follows:

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ARTICLE 2. RESPONSIBLE BIDDER.

- Sec. 7-80 Purpose.
- Sec. 7-81 Applicability.
- Sec. 7-82 Criteria.
- Sec. 7-83 Post-Bid Submissions from Contractors.
- Sec. 7-84 Validity of Pre-Qualification Classification.
- Sec. 7-85 Incomplete Submissions by Bidders.
- Sec. 7-86 Responsive and Responsible Bidder Determination.
- Sec. 7-87 Certified Payroll.
- Sec. 7-88 Public Records.
- Sec. 7-89 Penalties for False, Deceptive, or Fraudulent Statements/Information.
- Sec. 7-90 Lowest Bidder Not Chosen.
- Sec. 7-91 Multiple Low Bids.
- Sec. 7-92 Conflicting Ordinances.
- Sec. 7-93 through Sec. 7-94 Reserved for Future Use.

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ARTICLE 2. RESPONSIBLE BIDDER.

Sec. 7-80 Purpose.

The Responsible Bidder Ordinance shall serve to define the term "responsive and responsible" as used in Indiana Code § 36-1-12-4, regarding competitive bidding.

Sec. 7-81 Applicability.

This Article of the *Terre Haute City Code* shall apply when:

- a. The City is seeking a contract or service to perform public work. Public work, in this context, means the construction, reconstruction, alteration, or renovation of a public building, or other structure that is paid for out of a public fund or out of a special assessment. The term includes the construction, alteration, or repair of a highway, street, alley, bridge, sewer,

drain, or other improvement that is paid for out of a public fund or out of a special assessment. The term also includes any public work leased by the City under a lease containing an option to purchase; and

b. The cost of the contract or service will be at least one-hundred fifty thousand dollars (\$150,000.00).

Sec. 7-82 Criteria.

A "responsive and responsible bidder" shall meet all the bid and contract specifications, and shall:

a. Affirm compliance with all applicable laws pre-requisite to doing business in Indiana. Additionally, Contractors proposing to submit bids on any City of Terre Haute ("City") project estimated to be at least one-hundred fifty thousand or more, in order to be considered a "responsible bidder" prior to the opening of bids, shall submit a statement made under oath and subject to perjury laws, on a form designated by the City and must include:

(1) Evidence of a federal employer taxpayer identification number or social security number (for sole proprietors);

(2) Confirmation that bidder shall not discriminate against an employee or applicant for employment because of race, color, religion, sex, national origin, gender identity, sexual orientation or disability and that the bidder shall ensure that applicants are employed, and employees are treated during employment, without regard to their race, color, religion, sex or national origin, gender identity, sexual orientation or disability;

(3) Confirmation that bidder has not been found in violation of any federal, state or local law, ordinance or regulation with regard to an employee or applicant for employment because of race, color, religion, sex, national origin, gender identity, sexual orientation or disability within the last three (3) years;

(4) Certificates of insurance indicating the coverage, when such is required in the bid or contract specifications;

(5) Affirmation, where workers' compensation insurance is required under the bid specifications, that all employees are (1) covered under a current worker's compensation insurance policy and (2) properly classified under such policy; and also, where workers' compensation insurance is required under the bid specification, submit a copy of the "declarations page(s)" of the contractor's workers' compensation insurance policy if the contractor is insured with a carrier, and any continuation of the workers' compensation insurance "declarations page(s)" which includes the name and address of the insured, as well as the class codes the compensation premium is based on and the total estimated remuneration per class code; and, upon the City's request, submit a copy of any workers' compensation insurance

annual premium audit documents;

(6) A statement of whether the bidder has been found in violation of any Indiana or federal laws regarding wage rates and wage payments including, but not limited to, the federal Davis Bacon Act, by the U.S. Department of Labor, the Indiana Department of Labor, an Indiana State Court or a U.S. District Court within the three (3) years preceding the submission of its bid on the public works project; and provide 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;

(7) Proof of any professional or trade license required by law for any trade or specialty area in which a bidder is seeking a contract award; and disclose any suspension or revocation within the previous five (5) years of any professional trade license held by the company, or of any director, officer, or manager employed by bidder;

(8) At the time of submitting the bid, disclose the name and address of each subcontractor from whom the bidder has accepted a bid and/or intends to hire on any part of the project, and disclose the amount of each subcontractor's bid to the general contractor; each subcontractor who will perform work valued in excess of the threshold set forth in Section 7-81(b) of this Article shall be required to adhere to the submission requirements set forth herein as though it were bidding directly to the City of Terre Haute, and must file the appropriate required documents at least five (5) days prior to commencement of work by the subcontractor;

(9) Statement that individuals who will perform work on the public works project on behalf of the contractor are properly classified as either (1) an employee or (2) an independent contractor under all applicable state and federal laws and local ordinances;

(10) A copy of the bidder's written plan for employee drug testing that: (1) covers all employees of the bidder who will perform work on the public work project; and (2) meets, or exceeds, the requirements set forth in Indiana Code § 4-13-18-5 or Indiana Code § 4-13-18-6;

(11) 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;

(12) A list identifying all former business names;

(13) A statement on staffing capabilities, including labor sources;

(14) 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 apprenticeable 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 Council at its discretion;

(15) 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;

(16) Evidence that the bidder is utilizing a surety company on the United States Department of Treasury's Listing of Approved Sureties;

(17) 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 ten (10) years;

(18) 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;

(19) For contracts estimated to cost at least three hundred thousand dollars (\$300,000.00), certification that the bidder and all subcontractors are qualified under IC 4-13.6-4 or IC 8-23-10; and,

(20) 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.

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

Sec. 7-83 Post-Bid Submissions from Contractors.

Each subcontractor of any tier shall be required to adhere to the requirements of Section I of this Ordinance, but subcontractors shall submit the required information to the successful bidder, who shall then submit said information to the City Engineering Department 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 City. Additionally, 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 Ordinance.

Sec. 7-84 Validity of Pre-Qualification Classification.

Upon designation by City that a bidder's or subcontractor's submission is complete and timely, and upon any further consideration deemed necessary by City, the bidder or subcontractor may be pre-qualified for future City public works projects. Prequalification 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 prequalified must submit a complete application for continuation of pre-qualified standing, on a form provided by 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 City. The pre-qualification designation is solely within the discretion of City and 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 prequalification status may request reconsideration of the decision by submitting such request in writing to City within five (5) business days of receipt of notice of denial.

Sec. 7-85 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 City shall result in the automatic disqualification of the bid.

Sec. 7-86 Responsive and Responsible Bidder Determination.

After its review of complete and timely submissions, taking into account all information in the submission requirements, City shall in its sole discretion, determine whether a bidder or subcontractor is responsive and responsible. City reserves the right to utilize all information provided in the bidder or subcontractor's submission or any information obtained by City through its own independent verification of the information provided.

Sec. 7-87 Certified Payroll.

For projects in which the cost is at least one-hundred fifty thousand dollars (\$150,000.00), 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 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.

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. 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.

Sec. 7-88 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).

Sec. 7-89 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 City shall be disqualified from bidding or working on all City projects for a period of three (3) years.

Sec. 7-90 Lowest Bidder Not Chosen.

When a contract is awarded to a bidder other than the lowest bidder, a statement of the reasons for such award shall be prepared by City Legal in conjunction with the City Board or

Entity awarding the contract.

Sec. 7-91 Multiple Low Bids.

When two (2) or more responsive and responsible bidders submit the same low bid, the contract shall be granted to the bidder whose headquarters are geographically closest to the City of Terre Haute's corporate boundary. If both low bidders are headquartered within the City of Terre Haute, the winning bid shall be determined by drawing lots in a public meeting of the Board of Public Works and Safety.

Sec. 7-92 Conflicting Ordinances.

Any ordinance or provision of any ordinance in conflict with the provisions of this Ordinance is hereby repealed.

Sec. 7-93 through Sec. 7-94 Reserved for Future Use.

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SECTION 2. The illegality or invalidity, for any reason, of any of the sections of this ordinance, or parts thereof, shall invalidate only such section or sections as are so determined to be illegal or invalid, any such invalidity shall have no effect on the remaining sections of this ordinance.

SECTION 3. All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed.

SECTION 4. This ordinance shall be in full force and effect from and after the date of its passage by the Common Council of Terre Haute, Indiana and approval of the Mayor and upon publication as required by law.

Introduced by: Tammy Boland Tammy Boland, Councilperson

Passed in open Council this 6th day of June, 2024.

Tammy Boland Tammy Boland, President

ATTEST: Michelle L. Edwards Michelle L. Edwards, City Clerk

Presented by me to the Mayor this 6th day of June, 2024
at 9:05pm o'clock.

Michelle L. Edwards Michelle L. Edwards, City Clerk

Approved by me, the Mayor, this 6th day of June, 2024.

 Brandon C. Sakbun, Mayor

ATTEST: Michelle L. Edwards Michelle L. Edwards, City Clerk