passed 7-0
Rollo, wisler absent

ORDINANCE 09-18

TO AMEND TITLE 2 OF THE BLOOMINGTON MUNICIPAL CODE ENTITLED "ADMINISTRATION AND PERSONNEL" -
Re: Responsible Bidding Practices and Requirements to Perform Construction Work on City of Bloomington Projects

WHEREAS, the City of Bloomington expends substantial funds for public works construction and maintenance, a portion of that money being derived from taxes paid by residents;

WHEREAS, the City of Bloomington seeks to preserve administrative resources by ensuring that only qualified contractors and subcontractors are awarded City contracts;

WHEREAS, the City of Bloomington endeavors to identify the lowest responsible bidder on all City contracts;

WHEREAS, the City of Bloomington is entitled to state the specific requirements of City contracts and to establish criteria bidders must satisfy to be considered for City contracts;

WHEREAS, the "City of Bloomington Responsible Bidder Ordinance" will assure efficient use of taxpayer dollars and will promote public safety;

NOW THEREFORE, BE IT HEREBY ORDAINED BY THE COMMON COUNCIL OF THE CITY OF BLOOMINGTON, INDIANA, THAT:

Section 1. Chapter 2.29 of the Bloomington Municipal Code is hereby adopted and shall read as follows:

Chapter 2.29 Responsible Bidder Ordinance

2.29.010	Purpose
2.29.020	Applicability
2.29.030	Criteria
2.29.040	Certified Payroll
2.29.050	Additional Criteria
2.29.060	Lowest Bidder Not Chosen
2.29.070	Multiple Low Bids
2.29.080	Access to Public Records Act

2.29.010 Purpose.

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

2.29.020 Applicability.

This Chapter of the Bloomington Municipal 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).

2.29.030 Criteria.

A "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;

(b) Produce evidence of a federal employer taxpayer identification number or social security number (for sole proprietors);

(c) Confirm compliance with Section 2000(e) of Chapter 21, Title 42 of the United States Code and Federal Executive Order No. 11375 (known as the Equal Opportunity Employer Provisions);

(d) State compliance with Bloomington Municipal Code § 2.21.070(8); additionally, the bidder must include sexual orientation and gender identity in the affirmative action plan required under § 2.21.070(8);

(e) Provide the City with certificates of insurance indicating the following coverage, when such is required in the bid or contract specifications, and in amounts stated in the bid specifications or contract:

(1) General liability;
(2) Worker's compensation;
(3) Completed operations;
(4) Automobile;
(5) Hazardous occupation;
(6) Product liability;
(7) Professional liability;
(8) Pollution liability;
(9) Asbestos abatement liability;
(10) Property insurance; and
(11) Any additional insurance required by the bid specifications or contract;

(f) Affirm, 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 worker's compensation insurance is required under the bid specifications, 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 worker's 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 worker's compensation insurance annual premium audit documents.

(g) Indicate compliance with Indiana Code § 5-16-7 et. seq., the Indiana Common Construction Wage Act;

(h) Submit 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 the bidder;

(i) 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 2.29.020(b) of the Bloomington Municipal Code shall be required to adhere to the submission requirements set forth herein as though it were bidding directly to the City of Bloomington, and must file the appropriate required documents at least five (5) days prior to commencement of work by the subcontractor;

(j) State 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;

(k) Provide information as to the substance abuse policy that pertains to all of the bidder's employees working on the project; and

(l) Confirm that all apprentices to be used on the project are registered with an apprenticeship and training program approved and registered with the United States Department of Labor, Bureau of Apprenticeship and Training (or any state or federal successor agency).

2.29.040 Certified Payroll.

All contractors and subcontractors are required to submit to the awarding agency, and General Contractor if applicable, an approved and detailed certified payroll on a weekly basis, unless different payroll reporting requirements are stated under the bid specifications or contract.

2.29.050 Additional Criteria.

The City may also request evidence of and/or consider the following factors when identifying responsible bidders for the purpose of awarding contracts under this Chapter:

(a) The ability, capacity, and skill of the bidder to perform the contract;

(b) The capacity of the bidder to perform the contract promptly and efficiently, or within the time specified, without delay or interference;

(c) The character, integrity, reputation, and experience of the bidder;

(d) The quality of the bidder's past performance, including performance of previous contracts, whether or not such performance was with the City;

(e) The bidder's default under previous contracts, whether or not such contract was with the City;

(f) The bidder's failure to pay or satisfactorily settle bills due on former contracts, whether or not such contract was with the City;

(g) The previous and existing compliance by the bidder with laws and ordinances relating to the contract;

(h) The financial ability of the bidder to perform the contract;

(i) A statement regarding and/or disclosures of:

(1) Any determination by a court or government 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), the National Labor Relations Act (NLRA), Common Construction Wage Law, or the federal Davis-Bacon Act;

(2) Any findings of "non-responsibility" by federal, state, or local departments;

(j) Any additional factors the City determines relevant for the contract.

2.29.060 Lowest Bidder Not Chosen.

When the contract is awarded to a bidder other than the lowest bidder, a statement of the reasons for such award shall be prepared by the City of Bloomington.

2.29.070 Multiple Low Bids.

When two or more responsible bidders submit the same low bid, the contract shall be granted to the bidder whose headquarters are geographically closest to the City of Bloomington's corporation boundary; but if both low bidders are headquartered within the City of Bloomington's corporation boundary, then the winning bid shall be determined by drawing lots in public at a meeting of the Common Council;

2.29.080 Access to Public Records Act.

All submissions tendered under this Chapter by a contractor or sub-contractor shall be public records subject to review pursuant to Indiana Code § 5-14-3-1 et seq., the Indiana Access to Public Records Law.

Section 2. 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 3. Effective Date. This ordinance shall be in full force and effect from and after its passage by the Common Council of the City of Bloomington and approval of the Mayor.

PASSED AND ADOPTED by the Common Council of the City of Bloomington, Monroe County, Indiana, upon this 21st day of OCTOBER, 2009.

ANDY RUFF, President
Bloomington Common Council

ATTEST:

REGINA MOORE, Clerk
City of Bloomington

PRESENTED by me to the Mayor of the City of Bloomington, Monroe County, Indiana, upon this 22nd day of OCTOBER, 2009.

REGINA MOORE, Clerk
City of Bloomington

SIGNED and APPROVED by me upon this 22nd day of OCTOBER, 2009.

MARK KRUZAN, Mayor
City of Bloomington

SYNOPSIS

This ordinance is co-sponsored by Councilmembers Piedmont-Smith and Ruff and amends Title 2 of the Bloomington Municipal Code entitled "Administration and Personnel" to insert a new chapter entitled "the Responsible Bidder Ordinance."

Note: On October 21, 2009 the Council adopted Am 01 which affected Section 2.29.030(i).

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