

## RESOLUTION # 6-R-24

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

*Submitted by:* Alderperson Fenton – District 6, Alderperson Van Zeeland – District 5 & Alderperson Smith – District 4

*Date:* May 15, 2024

*Referred To:* Finance Committee

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; and

WHEREAS, the City of Appleton recognizes the need to ensure that work on public projects is performed by firms that meet established standards regarding worker safety and employment law compliance; and

WHEREAS, due to the critical impact that skilled craft labor has on public projects, it is important that contractors participate in proven apprenticeship training programs to promote successful project delivery and to help ensure future workforce development.

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

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

Article VII. - Responsible Bidder.

- (1) *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.
- (2) *Definitions.*
  - (a) "Contractor" means a person, corporation, partnership, or any other business entity that performs work on a public works contract as a general contractor, prime contractor, or subcontractor at any tier.
  - (b) "Public Works Contract" means any contract subject to Wis. Stat. §62.15 for the construction, execution, repair, remodeling, or improvement of any public work or

building, or for the furnishing of supplies or material of any kind, where the estimated cost of such work will exceed the threshold amount set forth in Wis. Stat. §62,15(1) for contracts that shall be let to the lowest responsible bidder.

- (c) "Registered Apprenticeship Program" means an apprenticeship program that is currently registered with either a State or federal government entity and that has a graduated apprentices to journey person job classification system process as well as a bona fide training program.
- (3) *Responsible Bidder Criteria.* To be considered a responsible bidder by the City for purposes of being awarded a public works contract, all the following criteria must be met:
- (a) The contractor must maintain a permanent place of business.
  - (b) The contractor must be authorized to do business in the State of Wisconsin.
  - (c) The contractor and any agent, partner, employee, and/or officer of the contractor must not be debarred, suspended, proposed for debarment, or declared ineligible from contracting with any unit of federal, state, or local government.
  - (d) The contractor, must follow the provisions of Section 2000e of Chapter 21, Title 42 of the United States Code, and Federal Executive Order No. 11246, as amended by Executive Order No. 11375 (known as the Equal Opportunity provisions).
  - (e) The contractor must have adequate and appropriate:
    - General liability insurance;
    - Automobile insurance, except when a licensed motor vehicle is not used in the performance of the contract; and
    - Worker's compensation and unemployment insurance, except when the contractor does not have employees.
  - (f) For all projects undertaken within the past five (5) years in any jurisdiction in which state or federal prevailing wage laws apply, the contractor must have complied with all provisions of such laws. This provision is intended to include projects that are federally funded or otherwise subject to federal Davis-Bacon-related laws.
  - (g) If determined to be appropriate in the discretion of the Director of the Department of Public Works at the time a Request for Bids or Request for Quotes is issued where the public works contract exceeds one million dollars, the contractor must participate in a Class A Registered Apprenticeship Program.
  - (h) The contractor must have a written substance abuse prevention program that meets the requirements of Wis. Stat. § 103.503.
  - (i) The contractor must have, and diligently maintain, a written safety program.
  - (j) The employees who will perform work on the project for the contractor must be properly classified as employees or independent contractors under all applicable laws.
  - (k) If the contractor has been the subject of any 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 judgement for the City to consider as a factor in determining whether the contractor is a responsible bidder. The contractor may be disqualified for failing to provide the required documentation.

- (l) The contractor's employees who will perform work on the project must be covered under a current worker's compensation policy and must be properly classified under such policy.
- (m) The contractor must be in compliance with all laws regarding health insurance coverage for employees.
- (n) The contractor must possess all applicable professional and trade licenses required for performing the public works contract.
- (o) The contractor must have adequate financial resources to complete the public works contract, and to complete all other work the bidder is presently under contract to complete.
- (p) The contractor must be bondable for the terms of the proposed public works contract.

(4) *Exemptions.*

- (a) This Ordinance does not apply to public construction if the materials for the project are donated or if the labor for the project is provided by volunteers, pursuant to Wis. Stats. § 62.15(1).
- (b) This Ordinance does not apply for public emergencies, when damage or threatened damage creates a public emergency as determined by the governing body pursuant to Wis. Stats. § 62.15(1b).
- (c) No Restriction on Discretion. If information is discovered or comes into the possession of the City or a City department, official, and/or employee responsible for awarding the public works contract, and if such information calls into question the contractor's abilities or competence to faithfully and responsibly comply with the terms of a public works contract, and such information is considered to be both credible and verifiable, then that information shall be considered in determining whether the contractor is a responsible bidder.

**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.

**Section 3.** Effective date. This ordinance shall take effect on and after its passage and publication.