

ORDINANCE NO.: 16, 2024

An Ordinance of the Common Council of the City of Valparaiso, Indiana Amending Sections 35.85 – 35.95 of the Valparaiso Municipal Code Concerning Bid Requirements

Whereas, the Valparaiso City Council (“Council”) previously adopted Sections 35.85 – 35.95 of the Valparaiso Municipal Code concerning the Bid Requirements within the City of Valparaiso, Indiana (“City”);

Whereas, the Council desires to make certain changes to Sections 35.85 – 35.95 of the Valparaiso Municipal Code;

Now, Therefore, Be it and it is Hereby Ordained by the Common Council of the City of Valparaiso, Indiana, as follows:

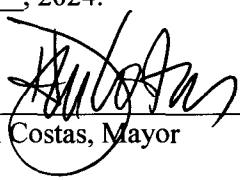
Section 1. That Sections 35.85 – 35.95 of the Valparaiso Municipal Code of the City of Valparaiso, Indiana, shall be amended as follows: **See Exhibit A**

Section 2 Conflicting Ordinances. Any ordinance or provision of any ordinance of the City of Valparaiso, Indiana, in conflict with the provisions of this Ordinance is hereby repealed.

Section 3. Severability. The invalidity of any section, clause, sentence or provision of this Ordinance shall not affect the validity of any other part of this Ordinance which can be given effect without such invalid part or parts.

Section 4. Effective Date. This Ordinance shall be in full force and effect after its passage, approval by the Mayor of the City of Valparaiso and publication as required by law.

PASSED by the Common Council of the City of Valparaiso, Indiana, by a 6-0 vote of all members present and voting, this 8th day of July, 2024.


Jon Costas, Mayor

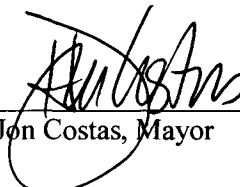
ATTEST:


Holly Taylor, Clerk-Treasurer

Presented by me to the Mayor of the City of Valparaiso, Indiana, this 8th day of July, 2024 at the hour of 6:04 o'clock P.M.


Holly Taylor, Clerk-Treasurer

This Ordinance approved and signed by me this 8th day of July, 2024 at the hour of
6:04 o'clock P. M.


Jon Costas, Mayor

§ 35.85 BID REQUIREMENTS.

(A) (1) Bidders submitting bids on any city project estimated to be \$150,000 or more must submit, with its bid to the city, a statement made under oath and subject to perjury laws, on a form designated by the city including the following:

(a) A copy of a print-out of the Indiana Secretary of State's on-line records for the bidder dated within 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 pending actions or 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 within the last five years;

(d) A statement on staffing capabilities, including labor sources. This statement shall include whether the bidder has sufficient employees on staff to complete the work it is bidding. If not, bidder shall outline how it intends to meet the staffing needs of the work;

(e) A copy of a 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 I.C. 4-13-18-5 or I.C. 4-13-18-6;

(f) 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;

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

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

(i) 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 years;

(j) A statement that individuals who will perform work on the public work project on behalf of the bidder will be properly classified as either:

1. An employee; or
2. An independent contractor, under all applicable state and federal laws and local ordinances;

(k) A list of projects of similar size and scope of work that the bidder has performed in the State of Indiana within three years prior to the date on which the bid is due. If the bidder has engaged in more than ten projects of similar size and scope of work within the last three years, bidder need only list the ten most recent; and

(l) 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. The required evidence includes a copy of all applicable apprenticeship certificates or standards for these training programs and evidence that any applicable apprenticeship program has graduated at least five apprentices in each of the past five years for each of the construction crafts the bidder will perform on the project. Evidence of graduation rates are not required for apprentice able crafts dedicated exclusively to the transportation of material and equipment to and from the public works project.

(2) The city reserves the right to request supplemental information from the bidder, additional verification of any of the information provided by the bidder, and may also contact any of bidder's current and prior customers.

(B) It has been the practice of the Board of Public Works and Safety ("Board of Public Works") when receiving bids for city projects, to take bids it receives under advisement and to request city staff to confirm a bid's compliance with the provisions of the bid document. At a subsequent Board of Public Works' meeting, city staff recommend a bid to the Board of Public Works to be considered. As part of city staff's review and due diligence, city staff shall confirm that the recommended bidder has furnished the information required above. Should the Board of Works reject the recommendation of city staff and prefer another bidder, city staff shall confirm that such bidder has furnished the information required above.

(3) The \$150,000 amount identified in subsection (A)(1) is based on the minimum cost threshold provided in Indiana Code § 36-1-12-4(a)(2). Should the amount in that statute provision change, section (A)(1) will also change to reflect the new amount.

§ 35.86 POST-BID SUBMISSIONS FROM SUBCONTRACTORS.

Within five days after a bid is awarded, the successful bidder shall provide a written list that discloses the name, address, and type of work for each 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 bidders. Although bidder's subcontractors shall not be required to initially furnish the information referenced above, upon written request by the city, the successful bidder shall obtain from any designated subcontractor any information identified in § 35.85. Such shall be provided to the city within five business days of being requested. 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 the City additionally, the 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 the obligations of a subcontractor under §§ 35.85 – 35.95.

§ 35.87 VALIDITY OF PRE-QUALIFICATION CLASSIFICATION.

- (A) Upon determination by the city that a bidder's submission is complete, the bidder may be pre-qualified for future city public works projects. A bidder's classification as "qualified" shall exempt the bidder from the submission requirements contained in § 35.85 for the remainder of the calendar year in which the determination was made. Bidders who are pre-qualified must submit a certification that there have been no material changes in the information provided in § 35.85. To the extent there have been material changes, the bidder must supplement their application. Failure to timely supplement the information provided shall constitute grounds to reject a bidder's bid and/or determine the bidder to be in default.
- (B) The pre-qualification designation is solely within the discretion of the city and the city specifically reserves the right to change or revoke the designation for any stated written reason(s).
- (C) Denial of pre-qualification shall be in writing and shall be forwarded to the bidder within seven working days of such decision. Any bidder denied or losing pre-qualification status

may request reconsideration of the decision by submitting such request in writing to the city within five business days of receipt of notice of denial.

§ 35.88 INCOMPLETE SUBMISSIONS BY BIDDERS.

It is the sole responsibility of the potential bidder to comply with all submission requirements applicable to the bidder in § 35.85. Submissions deemed inadequate, incomplete, or untimely by the city may result in the automatic disqualification of the bid; however, nothing contained herein shall prevent the city from requesting supplemental information from the bidder.

§ 35.89 RESPONSIVE AND RESPONSIBLE BIDDER DETERMINATION.

The city, through the Board of Works, after review of complete and timely submissions, shall, in its sole discretion, after taking into account all information in the submission requirements and any additional information it deems relevant, determine whether a bidder is responsive and responsible. The city specifically reserves the right to utilize all information provided in the bidder's submission or any information obtained by the city through its own independent verification of the information provided by the bidder.

§ 35.90 CERTIFIED PAYROLL.

(A) For projects that qualify under this subchapter, the successful bidder 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 city with its request for payment. These 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 bidder 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 city may, but is under no obligation, to verify information provided by bidder. This may include interviewing employees/independent contractors and others involved in the payment of wages.

(B) Failure of the bidder and/or bidder's employees/independent contractors to fully cooperate with the city and/or the determination by the city of material errors in the bidder's documentation shall result in the bidder being held in default.

(C) The city 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. The city may also withhold payment due 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.

(D) Although bidder's subcontractors shall not be required to initially furnish certified payroll reports, upon written request by the city, the successful bidder shall obtain from any designated subcontractor and provide to the city certified payroll reports. Such shall be provided to the city within five business days of being requested.

§ 35.91 PUBLIC RECORDS.

All information submitted by a bidder pursuant to this subchapter, including certified payrolls, are public records subject to review pursuant to the Indiana Access to Public Records Act.

§ 35.92 PENALTIES FOR FALSE, DECEPTIVE OR FRAUDULENT STATEMENTS/ INFORMATION.

(A) 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 city may be disqualified from bidding on all city projects for a period of up to three years. Notwithstanding the proceeding, a Bidder that is found to have engaged in a pattern of submitting false, deceptive, and/or misleading information to the city, whether willful/intentional or not, shall be subject to the same disqualification.

(B) For projects that fall under the requirements of § 35.90, the city may engage in an audit and/or verification process of the information provided. To the extent that material errors are identified, the city may do the following:

(1) Require the bidder to reimburse the city the actual cost of the audit;

(2) Assess a penalty of up to \$1,000 if it is determined that each material error constitutes a separate violation of this subchapter.

§ 35.93 CONFLICTING ORDINANCES/BID DOCUMENTS.

Any ordinance or provision of any ordinance in conflict with the provisions of this subchapter is hereby repealed only to the extent of such conflict. Nothing in this subchapter shall relieve bidder of any obligation under any bid documents and/or obligations under federal, state and local law, as applicable.

§ 35.94 WAIVER OF REQUIREMENTS.

To the extent that the funding source for a specific project limits or precludes the application of this subchapter (or specific parts of this subchapter), such provisions shall be waived.

§ 35.95 METHOD OF SUBMISSION AND RETENTION OF DOCUMENTATION.

The city may specify in any bid documents the manner in which information is to be provided to the city. Such method may include electronic submission. It shall be the sole responsibility of the bidder to insure that any electronically submitted material is accessible and readable. The city shall not be responsible for any submitted material that cannot be accessed. Documents received under this subchapter shall be held and retained by the City Department overseeing the project.