# ELGIN RESPONSIBLE BIDDER'S ORDINANCE

Ordinance No. GXX-24

AN ORDINANCE
AMENDING TITLE 5 OF THE
ELGIN MUNICIPAL CODE, 1976, AS AMENDED,
ENTITLED "PROCUREMENTS"

WHEREAS, the City of Elgin is a home rule unit pursuant to Subsection (a) of Section 6 of Article VII of the Illinois Constitution of 1970; and

WHEREAS, pursuant to such section of the Illinois Constitution a home rule unit may exercise any power and perform any function pertaining to its governmental affairs; and

WHEREAS, the City of Elgin pursuant to its home rule powers has previously adopted a procurement ordinance pursuant to Title 5 of the Elgin Municipal Code, 1976, as amended, entitled "Procurements"; and

WHEREAS, the purpose of such procurement ordinance includes providing for the fair and equitable treatment of all persons involved in public purchasing by the city, to maximize the purchasing value of public funds and procurement, to obtain the best value for using departments, and to provide safeguards for maintaining a procurement system of quality and integrity; and

WHEREAS, On March 23, 2011, the city council of the City of Elgin adopted an ordinance amending the procurement ordinance to provide for a more comprehensive definition of a responsible bidder for certain contracts involving the city; and

WHEREAS, the city council of the City of Elgin has determined that it is appropriate to further amend the definition of a responsible bidder set forth in the procurement ordinance; and

WHEREAS, defining what constitutes a responsible bidder for certain city contracts and otherwise providing for procurements regulations for City of Elgin procurements pertains to the government and affairs of the city.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ELGIN, ILLINOIS:

Section 1. That within Section 5.04.005 of the Elgin Municipal Code, 1976, as amended, entitled "Definitions generally," the definition of "Responsible bidder or offeror" be and is hereby further amended to read as follows:

> ""Responsible bidder or offeror" means a person who has the capability in all respects to perform fully the contract requirements, and the tenacity, perseverance, experience, integrity, reliability, capacity, facilities, equipment, and credit which will assure good faith performance. In addition to meeting such criteria a responsible bidder must also submit evidence of compliance with the following specific applicable criteria:

A. Documents evidencing compliance with all applicable laws and ordinances prerequisite to doing business in the state, including but not limited to: (i) a copy of the Illinois Secretary of State's Department of Business Services online records evidencing that the bidder has a current corporate annual report on file, to the extent applicable; (ii) documents evidencing current registration with the Illinois Department of Revenue if bidder has employees (e.g., a document with account number, Illinois Business Tax number); (iii) documents evidencing current registration with the Illinois Department of Employment Security if bidder has employees (e.g. document with Unemployment Insurance account number).

B. Disclosure of any federal, state, or local tax liens or tax delinquencies against the bidder or any officers of the bidder in the last five (5) years.

C. A valid federal employer tax identification number or, if an individual, a valid Social Security number.

D. A statement of compliance with the equal opportunity employer provisions of Section 2000e of chapter 21, title 42 of the United States Code and federal executive order number 11246, as amended, by Executive Order 11375 and evidence of compliance with the equal opportunity employer provisions of section 3.12.100, as amended.

E. Certificates of insurance indicating insurance coverages as set forth in a bid specification including general liability, workers' compensation, completed operations, automobile, hazardous occupations, and products liability. Bidders shall also submit a statement that all employees are (i) covered under a current workers' compensation insurance policy and (ii) properly classified under such policy. If the bidder is insured with a carrier, the evidence of workers' compensation insurance shall be a copy of the "Information Page" of the bidder's workers' compensation policy and any continuation of that Information Page which include 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.

F. Evidence of a written sexual harassment policy in compliance with the provisions of the Illinois Human Rights Act (775 ILCS 5/2-105(A)(4), as amended).

G. A statement of compliance with the provisions of the Illinois Prevailing Wage Act (820 ILCS 130/1 *et seq*., as amended) and all rules and regulations therein, for the past five (5) years. Such statement shall also provide that the bidder has reviewed the Prevailing Wage Act or federal Davis Bacon and Related Acts, has reviewed and agrees to pay the applicable prevailing wage rates attached to the bid specifications, and will strictly comply with the

Prevailing Wage Act or federal Davis Bacon and related acts and requirements. A bidder who has been found by the Illinois Department of Labor to be in violation of the Prevailing Wage Act twice within a three (3) year period shall be deemed not to be a responsible bidder for two (2) years from the date of the latest finding.

H. Evidence of compliance with the Substance Abuse Prevention on Public Works Projects Act (820 ILCS 265/1 *et seq*., as amended).

I. A statement that individuals who will perform work on the Public Works project on behalf of the contractor are properly classified as either (i) an employee or (ii) an independent contractor under all applicable state and federal laws and local ordinances.

J. Documents evidencing any professional or trade license required by law or local ordinance for any trade or specialty area in which the bidder is seeking a contract award. Additionally, the bidder must disclose any suspension or revocation of such license held by the company, or of any director, officer or manager of the company.

K. Evidence of relevant experience that indicates the necessary capacity to perform the project and adequate references verifying the quality of work performed. Such evidence shall include any evidence of similar public works projects completed in the past three (3) years by the bidder, including the name of the public body and the project, original contract price, final contract price, the names of all subcontractors used, if applicable, and a statement as to compliance with completion deadlines.

L. For city construction projects (construction of new city facilities, renovation of existing city facilities, or city road construction projects) over Thirty Thousand Dollars ($30,000), evidence of participation in apprentice 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 Office of Apprenticeship and Training or its successor organization; and evidence that any applicable apprenticeship program has graduated some number of apprentices in the past three (3) years for 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 subject 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 project. Additional evidence of participation and graduation requirements may be requested by the purchasing department at its discretion.

M. A statement that the bidder will maintain an Illinois office as the primary place of employment for the persons employed in the construction authorized by the contract.

N. Any determinations against the bidder by a court or governmental agency for violations of federal, state, or local laws, including but not limited to serious, willful, or repeated violations of the Occupational Safety and Health Act (OSHA), violations of contracting or antitrust laws, tax or licensing laws, environmental laws, or the Federal Davis Bacon and related acts.

O. For city construction projects (construction of new city facilities, renovation of existing facilities, or city road construction projects), bidders must demonstrate a good faith effort toward providing equal employment opportunities for persons to work as craftspersons, laborers, workers, or mechanics consistent with the racial, ethnic and gender demographics of the labor force available in the state department of employment security Chicago-Naperville-Joliet metropolitan division which consists of Cook, DeKalb, DuPage, Grundy, Kane, Kendall, McHenry, and Will Counties.

P. Disclosure of 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. Further, any subcontractor that will complete either (i) 10% or more of the work on a project, or (ii) at least $100,000 of the work on a project, shall be required to adhere to all of the requirements set forth herein as though it were bidding directly to the City of Elgin. Each bidder shall submit all subcontractor information and supporting documentation to the purchasing department prior to the subcontractor commencing work on the project."

Section 2. If any provision, clause, sentence, paragraph, section or part of this ordinance, or application thereof, to any person or circumstance, shall for any reason be adjudged by a court of competent jurisdiction to be unconstitutional or invalid, said judgment shall not affect, impair, or validate the remainder of this ordinance and the application of such provisions to other persons or circumstances shall be confined in its operation to the provision, clause, sentence, paragraph, section or part thereof directly involved with the controversy in which such judgment shall have been rendered and to the person or circumstance involved. It is hereby declared to be the legislative intent of the city council that this chapter would have been adopted had such constitutional or invalid provisions, clause, sentence, paragraph, section or part thereof not been included.

Section 3. That all ordinances or parts or ordinances in conflict with the provisions of this ordinance be and are hereby repealed.

Section 4. That this ordinance shall be in full force and effect upon its passage and publication in the manner provided by law. The amendatory provisions of this ordinance shall be applicable to bids issued after the effective date of this ordinance.

David J. Kaptain, Mayor

Presented:
Passed:
Omnibus Vote: Yeas: Nays:
Recorded:
Published:

Attest:

Kimberly A. Dewis, City Clerk

**CITY OF ELGIN, ILLINOIS**
**RESPONSIBLE BIDDER AFFIDAVIT**

State of _____ ss.

County of _____

_____, being first duly sworn, hereby deposes and states:

(1) That s/he is the _____ of the party making the bid (the "bidder") of which this affidavit is a part thereof.

(2) That the bidder has a valid federal employer tax identification number or, if an individual, a valid social security number, such number being as follows: _____.

(3) That bidder is in compliance with and has attached documents evidencing compliance with all applicable laws and ordinances prerequisite to doing business in the state, including but not limited to: (i) a copy of the Illinois Secretary of State's Department of Business Services online records evidencing that the bidder has a current corporate annual report on file, to the extent applicable; (ii) documents evidencing current registration with the Illinois Department of Revenue if bidder has employees (e.g., a document with account number, Illinois Business Tax number); (iii) documents evidencing current registration with the Illinois Department of Employment Security if bidder has employees (e.g. document with Unemployment Insurance account number).

(4) That the bidder agrees to and shall comply with the Equal Opportunity Employer provisions of Section 2000e of Chapter 21, Title 42 of the United States Code and Federal Executive Order Number 11246, as amended, by Executive Order 11375, and shall provide evidence of compliance with the Equal Opportunity Employer provisions of the Elgin Municipal Code, Section 5.02.040, as amended.

(5) That bidder has the insurance coverages as set forth in a bid specification including general liability, workers' compensation, completed operations, automobile, hazardous occupations, and products liability. Bidders shall submit a statement that all employees are (i) covered under a current workers' compensation insurance policy and (ii) properly classified under such policy. If the bidder is insured with a carrier, the evidence of workers' compensation insurance shall be a copy of the "Information Page" of the bidder's workers' compensation policy and any continuation of that Information Page which include 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. Copies of certificates of insurance indicating such insurance coverages are attached.

(6) That bidder has a written sexual harassment policy in compliance with the provisions of the Illinois Human Rights Act (775 ILCS 5/2-105(A)(4), as amended). A copy of bidder's written sexual harassment policy is attached.

(7) That bidder hereby certifies that it has been in compliance with the provisions of the Illinois Prevailing Wage Act (820 ILCS 130/1 *et seq*., as amended) and all rules and regulations therein, for the past five (5) years. Bidder hereby further certifies that it has reviewed the Prevailing Wage Act or federal Davis Bacon and Related Acts, has reviewed and agrees to pay the applicable prevailing wage rates attached to the bid specifications, and will strictly comply with the Prevailing Wage Act or federal Davis Bacon and related acts and requirements. A bidder who has been found by the Illinois Department of Labor to be in violation of the Prevailing Wage Act twice within a three (3) year period shall be deemed not to be a responsible bidder for two (2) years from the date of the latest finding.

(8) That the bidder hereby certifies: [check all that apply]

- _____ Bidder has not received =or been subject to any federal, state, or local tax liens or tax delinquencies against the bidder or any officers of the bidder in the last five (5) years.

- _____ Bidder has not received any notices of violations of the Illinois Prevailing Wage Act (820 ILCS 130/0.01 *et seq.)*.

- _____ In the event any such tax liens, tax delinquencies, or notices of violations have been received by bidder, a copy of any such notices are attached hereto.

- _____ In the event that bidder has received any such tax liens, tax delinquencies, or notices of violations, any documentation demonstrating the resolution of any such liens, delinquencies, or notice is attached hereto.

- _____ For each such lien, delinquency, or other notice received by bidder, the matter has been resolved as follows:

  _____
  _____
  _____.

(9) As a condition of the agreement for the project, bidder shall have in place a written substance abuse prevention program which meets or exceeds the program requirements of the Substance Abuse Prevention on Public Works Act (820 ILCS 265/1 *et seq*., as amended). A copy of such policy shall be provided to the city's purchasing director prior to the entry into and execution of the agreement for the project.

10) Bidder represents and warrants that it has relevant experience that indicates the necessary capacity to perform the project and adequate references verifying the quality of work performed. Such evidence shall include any evidence of similar public works projects completed in the past three (3) years by the bidder, including the name of the public body and the project,

original contract price, final contract price, the names of all subcontractors used, if applicable, and a statement as to compliance with completion deadlines. Relevant experience of the bidder includes the following projects:

_____
_____
_____
_____

Bidder's references verifying the quality of the work performed on such projects are as follows:

_____
_____
_____
_____

(11) For city construction projects (construction of new city facilities, renovation of an existing facility, or city road construction projects) over thirty thousand dollars ($30,000) bidder hereby certifies, evidence of participation in apprentice 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 Office of Apprenticeship and Training or its successor organization; and evidence that any applicable apprenticeship program has graduated some number of apprentices in the past three (3) years for the construction crafts the bidder will perform on the 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 project.

Evidence of graduation rates are not required for apprenticeable crafts dedicated exclusively to the transportation of material and equipment to and from the subject 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 project. Additional evidence of participation and graduation requirements may be requested by the purchasing department at its discretion. Evidence of such participation is hereby attached:

_____ Yes _____ No _____ Not applicable to this project
(check response which applies)

(12) For city construction projects (construction of new city facilities, renovation of existing facilities or city road construction projects) bidder must demonstrate a good faith effort toward providing equal employment opportunities for persons to work as craftspersons, laborers, workers or mechanics consistent with the racial, ethnic and gender demographics of the labor force available in the Illinois Department of Employment Security Chicago-Naperville-Joliet Metropolitan Division which consists of Cook DeKalb, DuPage, Grundy, Kane, Kendall, McHenry and Will counties. The following is bidder's description of bidder's good-faith efforts toward providing such equal employment opportunities:

_____
_____
_____
_____
_____

(13) Bidder hereby certifies that individuals who will perform work on the Public Works project on behalf of the contractor are properly classified as either (i) an employee or (ii) an independent contractor under all applicable state and federal laws and local ordinances.

(14) That bidder is in compliance with and has attached documents evidencing any professional or trade license required by law or local ordinance for any trade or specialty area in which the bidder is seeking a contract award. Additionally, the bidder hereby certifies that it has disclosed any suspension or revocation of such license held by the company, or of any director, officer or manager of the company.

(15) Bidder hereby certifies that it will maintain an Illinois office as the primary place of employment for the persons employed in the construction authorized by the contract.

(16) Bidder hereby certifies that it has disclosed and has attached documents evidencing any determinations against the bidder by a court or governmental agency for violations of federal, state, or local laws, including but not limited to serious, willful, or repeated violations of the Occupational Safety and Health Act (OSHA), violations of contracting or antitrust laws, tax or licensing laws, environmental laws, or the Federal Davis Bacon and related acts.

(17) Bidder hereby certifies that it has disclosed and has attached documents evidencing 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. Bidder hereby further certifies that any subcontractor that will complete either (i) ten percent (10%) or more of the work on a project, or (ii) at least $100,000 of the work on a project, shall be required to adhere to all of the requirements set forth herein as though it were bidding directly to the City of Elgin. Each bidder shall submit all subcontractor information and supporting documentation to the purchasing department prior to the subcontractor commencing work on the project.

Signature of bidder, if an individual:

_____

Signature of bidder, if a corporation:

_____
President

_____
Secretary

Signature of bidder, if a partnership:

_____
Partner (indicate General or Limited)

Signature of bidder, if a limited liability company:

_____
Member or Manager

Subscribed and sworn to before me this _____ day
of _____, 20_____.

My Commission expires: _____

FOR CITY PURCHASING DEPARTMENT ONLY:

Attachments - Insurance certificates: _____
Bidder's sexual harassment policy: _____
Bidder's substance abuse prevention program: _____
Apprenticeship and training program documentation: _____
If applicable, Illinois Prevailing Wage Act violation notice(s): _____
If applicable, documentation resolving IPWA violation notice(s): _____
Illinois Secretary of State's Department of Business Services Online Records ___
References_____
Statement classifying individuals as employee or contractors _____
Statement that the bidder will maintain an Illinois office as the primary place of employment ___
If applicable, professional or trade license _____
If applicable, OSHA violation determinations _____
If applicable, list of subcontractors _____