

**ORDINANCE NO. 2020-53**

**ORDINANCE ESTABLISHING RESPONSIBLE BIDDER REQUIREMENTS FOR PUBLIC WORKS CONTRACTS IN THE VILLAGE OF PECATONICA, ILLINOIS**

**WHEREAS**, Illinois law requires that all public works contracts be awarded to the lowest responsive responsible bidder; and

**WHEREAS**, the Village of Pecatonica currently does not have a policy on the criteria in determining what criteria constitutes a “responsible bidder”; and

**WHEREAS**, the Village, based upon its experience, has determined that quality workmanship, efficient operation, safety, and timely completion of projects are not necessarily insured by awarding a construction contract solely on the basis of the low bid;

**WHEREAS**, the Village is authorized and empowered to exercise the Village’s police powers and functions to preserve and protect the health, safety, and welfare of its citizens and inhabitants, and is also authorized and empowered to exercise its proprietary powers and functions in order to benefit the health, safety, convenience and welfare of its citizens; and

**WHEREAS**, the Village has a compelling proprietary interest in awarding contracts for public works construction projects in a manner that will yield successful project delivery in terms of work that is performed safely, at the lowest responsible cost, and in accordance with the highest possible standards of quality and efficiency;

**WHEREAS**, the Village has a compelling interest in ensuring that workers on public works construction projects are paid appropriate wages and receive appropriate benefits, as set forth in, and required by, Illinois Prevailing Wage Act;

**WHEREAS**, it is in the mutual interests of both the Village, its citizens and those employed by the Village to promote efficiency of construction operations in its larger construction projects by ensuring that employees are hired who are skilled in their respective crafts; and

**WHEREAS**, establishment of the criteria used by the Village to evaluate bidders on public works projects of the Village assures efficient use of taxpayer dollars, promotes public safety, and is in the public interest; and

**WHEREAS**, the corporate authorities of the Village of Pecatonica have determined that it is essential that it establish criteria for determining what constitutes a “responsible bidder” for public works contracts in fairness to and transparency for all companies bidding said contracts.

**NOW, THEREFORE, BE IT ORDAINED BY THE PRESIDENT AND THE BOARD OF TRUSTEES OF THE VILLAGE OF PECATONICA, ILLINOIS:**

**Section 1. Adoption of Recitals**

The foregoing recitals are incorporated herein as findings of the Village of Pecatonica Board of Trustees.

**Section 2. Adoption of Policy**

That the following policy is hereby adopted and approved as the “Village of Pecatonica Responsible Bidder Requirements for Public Works Contracts Policy”, which *shall* apply to all public works contracts required by law to be formally bid, and for which requirement the Village Board has not formally waived by motion as provided by law, and shall read as follows:

**A. Responsible Bidder, definition.** “Responsible bidder” for the award of a public works contract means a bidder who meets all of the job specifications, complies with the applicable criteria set forth in this ordinance, and includes with their bid submission supporting documentation to demonstrate such compliance:

1. *Compliance with State Local and Federal Law:* Bidder must be in compliance with all applicable laws and prerequisites for doing business in the State of Illinois, including, but not limited to, the following:
  - a. Be currently authorized to do business in the State of Illinois, including evidence that the bidder is registered with and in compliance with the requirements of Illinois Secretary of State’s Department of Business Services, If the bidder is an individual, sole proprietor, or partnership, this subsection shall not apply;
  - b. Possess a valid Federal Tax Payer Identification Number (IRS Form W-9)
  - c. Registration with the Illinois Department of Revenue if bidder has employees (e.g. document with account number, Illinois Business Tax number).
  - d. Registration with the Illinois Department of Employment Security if bidder has employees (e.g. document with UI account number).
  - e. Follow all provisions of the Employee Classification Act, 820 ILCS 185/1 *et seq.*;
  - f. Certify that that all employees are (i) covered under a current workers’ compensation insurance policy and (ii) properly classified under such policy.

- g. Provide certificates of insurance indicating coverages as set forth in a bid specification including general liability, workers' compensation, completed operations, automobile, hazardous occupations and products liability;
  - h. Certify that the Bidder has reviewed and agrees to pay the applicable prevailing wage rates as identified in the bid specifications, and will strictly comply with all provisions and requirements of the Illinois Prevailing Wage Act (820 ILCS 130/1 et seq.), and related reporting requirements.
  - i. Provide a copy of the written program for the prevention of substance abuse to be filed with a public body pursuant to the Substance Abuse Prevention on Public Works Projects Act (820 ILCS 265/1 et seq.).
  - j. Certify that the bidder is in compliance with Equal Opportunity Employer provisions of Section 2000€ 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 Employer provisions);
  - k. Provide evidence demonstrating Bidder's good faith effort toward providing opportunity employment opportunities for residents to work as crafts persons, consistent with the racial, ethnic and gender demographics of the labor force available in the Winnebago County;
  - l. Provide written certification by the bidder and each subcontractor of compliance with the applicable provisions of the Illinois Human Rights Act and the rules of the Illinois Human Rights Commission, including adoption of a written sexual harassment policy and express averment of application of same to all of its workers involved with the project for which the bid is submitted;
2. *Additional Requirements.* Responsible Bidders shall also comply with, and provide supporting documentation for the following:
- a. 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 shall include, but is not limited to, a copy of all applicable apprenticeship standards or Apprenticeship Agreement(s) for any apprentice(s) who will perform work on the public works project.
  - b. Certify that all employees expected to perform work on the project have completed a 10-hour or greater OSHA safety program, and that only workers who have satisfactorily completed a 10-hour or greater OSHA safety program will be allowed to participate on the project. The bidder must have copies of employee OSHA cards on file, and shall provide copies of such cards to the Village upon request.

- c. Possess any professional or trade license required by law or local ordinance for any trade or specialty area in which the contractor is seeking a contract award, and provide documentation of the same. Additionally, the contractor shall disclose any suspension or revocation of such license held by the company, or of any director, officer or manager of the company.
3. *Additional Criteria:* If all of the above criteria are otherwise satisfied, the Village may also consider the following factors in its discretion in awarding the project, and bidder shall provide documentation of such information upon request of the Village.
- a. Past performance of the Bidder. Documentation as to past performance may include a statement of past performance which shall give an accurate and complete record of all public works projects completed in the past three (3) years by the contractor. Such statements shall include the name of the public body and the project, original contract price, final contract price, and the names of all subcontractors used, if applicable, and a statement as to compliance with completion deadlines; and/or
  - b. Any determination 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 or licensing laws, environmental laws, the Occupational Safety and Health Act (OSHA), the National Labor Relations Act (NLRA), or federal Davis-Bacon Act; and/or
  - c. The ability, capacity and skill of the bidder to perform the contract;
  - d. The capacity of the bidder to perform the contract promptly and efficiently, or within the time specified, without delay or interference;
  - e. The character, integrity, reputation, and experience of the bidder based upon and including among other relevant matters or evidence:
    - i. the quality of the bidder's past performance, including performance of the previous contracts, whether or not such contract was with the Village;
    - ii. the previous and existing compliance by the bidder with laws and ordinances relating to the contract;
    - iii. the financial ability of the bidder to perform the contract.
    - iv. any findings of non-responsibility by Federal, state or local agencies
    - v. any additional factors the Village determines relevant for the contract.

**B. Subcontractors.**

- a. The requirements and qualification criteria set forth in this Ordinance shall also apply to all subcontractors selected by the bidder to work on a project awarded by the Village, and each such subcontractor shall be required to adhere to the requirements set forth herein as though it were bidding directly to the Village. Subcontractors not meeting the minimum requirements for Bidders set forth herein, shall be cause to disqualify an otherwise successful Bidder/Contractor from being awarded a contract, or otherwise performing work on the project.
- b. All bidders shall include as part of their bid submission, the names and addresses of each subcontractor from whom the contractor has accepted a bid and/or intends to hire on any part of this project. Prior to the subcontractor commencing work on the project, each contractor shall also submit to the Village all subcontractor information and supporting documentation needed to establish full compliance with all provisions set forth herein.
- c. It shall be the responsibility of the Bidder/Contractor to ensure its subcontractors comply with all of the requirements of this Code, including the timely and complete submittals of all required documentation, and the full compliance with all obligations set forth in this Ordinance and the project specifications. Failure of a successful Bidder to submit the required subcontractor information or documentation may constitute a contractual default and/or breach by the bidder and may disqualify a Bidder/Contractor from performing work on future projects.

**C. Incomplete Submissions by Bidders.**

1. It is the sole responsibility of the contractor to comply with all submission requirements at the time it submits its bid to the Village. Contractor submissions deemed inadequate or incomplete may result in a determination that the contractor is not a responsible bidder.
2. The submission requirements also applies to the documentation required to be submitted for all subcontractors selected by a Bidder. However, a Bidder/Contractor may submit subcontractor documentation to the Village up to - but prior to - the subcontractor commencing work on the project, provided that such documentation is provided in such a timely manner that the Village is able to review such documentation prior to the start of work by a subcontractor.

**D. Local Preference - Credit Toward Bid Award**

1. The Village Board of Trustees may authorize the use of a local preference credit (up to a maximum credit of 5 percent of the contract price) when it approves bid specifications and the letting of a project out for bid. In such instances, the solicitation shall specify that local

credits shall apply, and shall identify the percentage and maximum dollar amount of the credit.

2. When a local preference credit has been authorized, and its application is requested by a local bidder, the following process shall be used to determine the lowest responsible bidder, and for calculating the contract price:
  - a. The Village shall apply a credit of up to 5% of the contract price (or a maximum of \$20,000, whichever is less) toward a local bidder's bid if doing so will cause the local bidder's bid to match the bid of a non-local bidder who would otherwise be the lowest responsible bidder.
  - b. This credit shall be applied to the local bidder's bid as a reduction in the contract price, and any bidder requesting the application of the local bidder preference shall acknowledge and agree to the potential of the reduction in contract price as part of its bid submission.
  - c. Should a bidder requesting the local preference credit as part of their bid submittal be declared the lowest responsible bidder on the basis of a local preference credit, and thereafter decline to be awarded the project, that bidder shall be prohibited from requesting the application of a local preference when bidding on contracts let by the Village for a period of one year.
3. A local bidder is an individual or business entity that (1) established it has a place of business located in Winnebago County for at least 1 year prior to the deadline for submitting bids, as registered with the Secretary of State, and (2) can demonstrate for one year prior to the deadline for submitting bids that the person or entity has paid a minimum of \$5,000 in sales tax in Winnebago County, Illinois.
4. It shall be the responsibility of the Bidder to request that the local preference credit be applied to their bid, and to provide sufficient documentation for the Village to make such a determination. Failure of a bidder to include such a request in its submittal, or failure of the bidder to provide sufficient documentation for the Village to verify eligibility for the credit at the time of the submittal, will cause the Bidder to forfeit the application of the credit to the Bid amount, even if the Bidder would have otherwise been eligible.

#### **E. Multiple Low Bids**

When two or more responsible bidders submit the same low bid, the contract award shall be determined by drawing lots at a public meeting of the Village, unless one bidder is a local contractor and one is a non-local contractor, in which event the local contractor shall be awarded the contract.

**F. Project Labor Agreement**

The Village Board of Trustees may require the use of a Project Labor Agreement when it approves bid specifications and the letting of a project out for bid. When so specified, the public works construction projects covered under this Ordinance shall be performed under a Project Labor Agreement in such form as prescribed and adopted by the Village, and which has been agreed to by the affiliates of the Northwestern Illinois Building Trades Council. Such agreements shall provide for decent wages and working conditions for qualified and skilled craftsmen and craftswomen so as to achieve professionally and competently completed projects; while maintaining labor peace and harmony in and amongst the various trades organizations.

Any firm, union affiliated or not, may bid on any Village project that utilizes a Project Labor Agreement provided that the successful bidder becomes party to the Project Labor Agreement for the duration of the project. However, there shall be no obligation or requirement by any successful bidder to become affiliated with any trade union or association, and any such affiliation, or lack thereof, shall not be used, or considered by the Village in making a determination to award a project to the lowest responsible bidder as defined by this ordinance.

In the event that no qualified bidders bid on a project or portion thereof, the Village reserves the right to request new proposals without including the Project Labor Agreement. Additionally, this Section shall specifically not apply to private construction projects and/or developments which hereinafter occur in the Village.

**G. Applicability.**

The requirements of this section shall only apply to those contracts, which are let out for bid by the Village of Pecatonica.

**Section 3.     **Materiality****

The requirements of this Ordinance are a material part of the bid documents and the contract and the successful bidder shall insert this Ordinance in all subcontracts.

**Section 4.     **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 5.     **Other Ordinances****

Any prior ordinance or portion thereof in conflict with this Ordinance is hereby repealed.

**Section 6.    Effective Date**

This Ordinance shall be in full force and effect from and after its passage, approval, and as otherwise provided for by law. This ordinance shall be published in pamphlet form.

ADOPTED BY THE VILLAGE BOARD OF TRUSTEES this \_\_\_\_ day of \_\_\_\_\_, 2020.

APPROVED BY THE VILLAGE PRESIDENT this \_\_\_\_ day of \_\_\_\_\_, 2020.

Motion by: \_\_\_\_\_

Second by: \_\_\_\_\_

Ayes: \_\_\_\_\_

Nays: \_\_\_\_\_

Absent: \_\_\_\_\_

By: \_\_\_\_\_  
WILLIAM SMULL, Village President  
VILLAGE OF PECATONICA, ILLINOS

ATTEST:

\_\_\_\_\_  
GWENN SHIRLEY, Village Clerk  
VILLAGE OF PECATONICA, ILLINOIS



