

## ORDINANCE 2021-01

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**AN ORDINANCE TO CREATE SECTION §52-12.5 OF THE VILLAGE OF EAST TROY MUNICIPAL CODE PERTAINING TO RESPONSIBLE BIDDERS**

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WHEREAS, the Village Board for the Village of East Troy has adopted ordinances related to the bidding of public construction projects in the Village; and

WHEREAS, the authority to decide what a "responsible bidder" is falls upon the Village; and

WHEREAS, the burden falls upon the bidder to satisfy the responsible bidder requirements set forth by the Village; and

WHEREAS, the requirements of this bidder responsibility ordinance are for the protection and welfare of the public by setting forth clear standards for both the Village and the bidder, while also meeting the statutory requirement that contracts be awarded to the lowest responsible bidder;

**NOW, THEREFORE**, the Village Board of the Village of East Troy, Walworth County, Wisconsin, do ordain as follows:

**Section 1.** Section §52-12.5 is created to read as follows:

**"§ 52-12.5 Responsible Bidder**

**A.** Definitions. In this section, the following definitions shall apply:

- (1)** "Contractor" means a person, corporation, partnership, or any other business entity that performs work on a public construction contract as a general contractor, prime contractor, or subcontractor at any tier.
- (2)** "Public construction contract" means a contract for the construction, alteration, execution, repair, remodeling or improvement of a public work or building, or for the furnishing of supplies or materials of any kind, proposals for which are required to be bid pursuant to Wis. Stat. §§61.54 and 62.15.

**B.** Requirements of bidder. As a condition of performing work on a public construction contract for the Village of East Troy, a contractor shall first be prequalified by the Village in accordance with the provisions of this ordinance. All contractors for public construction projects are required to submit a full and complete statement, in the form of a questionnaire approved by the Village Board, sworn to before an officer authorized by law to administer oaths, attesting

to the competency and responsibility of a bidder to complete public construction projects. The statement shall include evidence of the following:

- (1) The contractor maintains a permanent place of business.
- (2) The contractor is authorized to do business in the State of Wisconsin.
- (3) The contractor, agent, partner, employee or officer of the contractor, is not debarred, suspended, proposed for debarment or declared ineligible from contracting with any unit of federal, state or local government.
- (4) The contractor is in compliance with 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 Employer provisions).
- (5) The contractor has general liability, worker's compensation, automobile, and unemployment insurance.
- (6) The contractor has complied with all provisions of any prevailing wage laws and federal Davis-Bacon related Acts, and the rules and regulations therein, for projects undertaken by the contractor that are covered by these laws, for the past ten (10) years.
- (7) The contractor has adequate financial resources to complete the public construction project, as well as all other work the bidder is presently under contract to complete.
- (8) The contractor has adequate equipment to complete the public construction project.
- (9) The contractor has adequate skill, judgment, experience and resources to capably complete the public construction project.
- (10) The contractor has a written substance abuse prevention program meeting the requirements of Wis. Stat. §103.503.
- (11) The employees who will perform work on the public construction project are properly classified as employees or independent contractors under all applicable state and federal laws.
- (12) The contractor has not been the subject of any investigation, order or judgment from any state or federal agency or court concerning an employment practice, including but not limited to, classification of employees, unemployment insurance, discrimination or payroll fraud. If the contractor has been the subject of any investigation, 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 judgment and/or may be disqualified.

- (13)** The contractor's employees who will perform work on the public construction project are:

  - a. Covered under a current worker's compensation policy; and properly classified under such policy.
- (14)** The contractor possesses all applicable professional and trade licenses required for performing the public construction project.
- (15)** The contractor is bondable for public construction projects.
- (16)** The contractor has a record of satisfactorily completing projects of similar size and complexity within the last ten (10) years. The criteria which will be considered in determining satisfactory completing projects of similar size may include, but are not limited to:

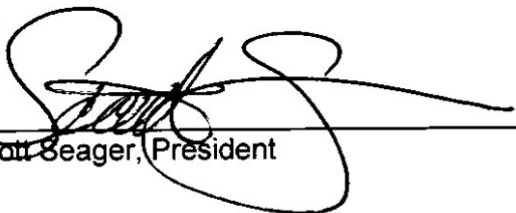
  - a. Completion of contracts in accordance with drawings and specifications.
  - b. Diligent execution of the work and completed contracts according to the established time schedules unless extensions are granted by the owner.
  - c. Fulfilled guarantee requirements of the contract documents.
- (17)** The contractor has, and diligently maintains, a written safety program.
- (18)** The Village reserves the right to require additional qualifications for any specific public construction project. When so required, the advertisement for bids and bidding documents will state this requirement.

**C.** Prequalification Determination and Term. The statement under Subsection 52-12.5(B) shall be in writing and filed with the Village Clerk who shall direct it to the appropriate department head for a written determination as to whether the contractor is prequalified to submit bids and perform work on a public construction contract. Contractors are urged to apply for a prequalification determination well in advance of bidding on any particular Village public construction contract as the Award of Contract and Notice to Proceed to the lowest responsible bidder will not be delayed while a contractor pursues review of a determination that it is not qualified pursuant to Subsection (F)(2) below. Once a contractor is determined to be prequalified, that determination shall remain valid for a period of two years.


- D. Confidentiality. The statement shall be confidential unless otherwise authorized by the contractor or by use of the contractor or Village in actions against each other.
- E. No restriction on discretion. If information other than what was disclosed by the contractor in Subsection 52-12.5(B) is discovered by the Village, its officials, or employees responsible for awarding or making recommendations as to the public construction projects, and such information calls into question the contractor's abilities or competence to faithfully and responsibly comply with the terms of a public works contract, that information shall be considered in determining whether the contractor is a responsible bidder.
- F. Evaluation of a bidder's responsibility.
- (1) The appropriate department head shall review the information provided in the bid and the qualification statement under Subsection 52-12.5(B) to determine if the low bidder is responsible to perform the work. At the request of the department head, the bidder shall provide additional information verifying their responsibility.
  - (2) If the department head determines that a contractor is not a responsible bidder, that bidder shall be notified in writing of the department head's determination, the reasons supporting the decision, and of the contractor's right to seek a review of the determination pursuant to Chapter 6 of the Village's Code of Ordinances pertaining to the review of administrative determinations.
- G. Renewal and Disclosure. It shall be the obligation of the contractor to timely renew its prequalification and to report information regarding any material changes to its business or operations that are relevant to its prequalification submittal, including information that would affect its ability to make the certifications required by this ordinance. Any such information must be reported within fifteen (15) days of the contractor's knowledge of the information. Failure to report information under this subsection may result in suspension or revocation of the contractor's prequalification, and other sanctions available under applicable law."

**Section 2.** This ordinance shall become effective upon passage and posting or publication as provided by law.

Adopted this 4 day of January 2021.

  
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Scott Seager, President

ATTEST:

  
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Lorri Alexander, Village Clerk