

## **Policy to establish Responsible Bidding Practices and**

### **Submission Requirements for Submitting Bids to Perform Construction Work**

WHEREAS, South Bend Community School Corporation is required by law to award capital improvement contracts to the "lowest responsive and responsible" bidder;

WHEREAS, South Bend Community School Corporation, based upon its experience, has determined that quality workmanship, efficient operation, safety, and timely completion of projects requires all bidders meet certain minimum requirements in order to be a "responsive and responsible" bidder;

WHEREAS, applicable state law also requires that bidders meet certain minimum requirements in order to be a "responsive and responsible" bidder;

WHEREAS, South Bend Community School Corporation seeks to enhance its ability to identify "responsive and responsible" bidders on all School construction projects by institution of more comprehensive submission requirements which are in compliance with Indiana State law;

WHEREAS, the "Responsible Bidding Practices and Submission Requirements" Policy will preserve administrative resources by insuring that only qualified contractors and subcontractors are awarded contracts on public works construction projects;

WHEREAS, the "Responsible Bidding Practices and Submission Requirements" Policy will assure efficient use of taxpayer dollars, will promote public safety and is in the public interest; and,

WHEREAS, the "Responsible Bidding Practices and Submission Requirements" Policy will help ensure that no contractor awarded work under this Policy or any subcontractor at any tier working on a project awarded pursuant to this Policy engages in payroll fraud, including the misclassification of employees as independent contractors to avoid paying state, federal or local payroll taxes, workers compensation insurance, unemployment insurance premiums and failing to pay overtime and wages as required by law.

**SECTION 1.** This Policy which is entitled "Responsible Bidding Practices and Submission Requirements for Submitting Bids to Perform Construction Work," is hereby adopted, will be codified as Policy 6320.02, and will read as follows:

#### **I. Bid Submission Requirements**

Contractors proposing to submit bids on any South Bend Community School Corporation ("School") project estimated to be at least one-hundred fifty thousand dollars (\$150,000.00) or more must, prior to the opening of bids, submit a statement made under oath and subject to perjury laws, on a form designated by the School and must include:

- (A) A copy of a print-out of the Indiana Secretary of State's on-line records for the bidder dated within sixty (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 will not apply;

- (B) A list identifying all former business names;
- (C) Any 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;
- (D) A statement on staffing capabilities, including labor sources;
- (E) 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 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, and evidence that each apprenticeship program has graduated at least five (5) apprentices in each of the past five (5) years for each construction craft the bidder will perform work on the project;
- (F) A copy of a written plan for employee drug testing that: (i) covers all employees of the bidder who will perform work on the public work project; and (ii) meets, or exceeds, the requirements set forth in IC 4-13-18-5 or IC 4-13-18-6;
- (G) 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;
- (H) 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 company, or of any director, office or manager employed by the bidder;
- (I) Evidence that the contractor is utilizing a surety company which is on the United States Department of Treasury's Listing of Approved Sureties;
- (J) 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.
- (K) A statement that individuals who will perform work on the public work project on behalf of the bidder will be properly classified as either (i) an employee or (ii) an independent contractor, under all applicable state and federal laws and local ordinances;
- (L) A list of projects of similar size and scope of work that the bidder has performed in the State of Indiana within three (3) years prior to the date on which the bid is due; and

within the discretion of the School and the School specifically reserves the right to change or revoke the designation for a stated written reason(s).

Denial of pre-qualification will be in writing and will be forwarded to the contractor within seven (7) working days of such decision. Any contractor denied or losing pre-qualification status may request reconsideration of the decision by submitting such request in writing to the School within five (5) business days of receipt of notice of denial.

#### **IV. Incomplete Submissions by Bidders**

It is the sole responsibility of the bidder to comply with all submission requirements herein no later than the public bid opening. Submissions deemed inadequate, incomplete, or untimely by the School may result in the automatic disqualification of the bid.

#### **V. Responsive and Responsible Bidder Determination**

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

#### **VI. Certified Payroll**

For projects costing at least one-hundred and fifty thousand dollars (\$150,000), the successful bidder and all subcontractors working on a public works project must submit a certified payroll report utilizing the federal form WH-347 or its successor form, which must be prepared on a weekly basis and submitted to the School within ten (10) calendar days after the end of each week in which the bidder or subcontractor performed its work on the public work project. These certified payroll reports must identify the job title and craft of each employee on the project, e.g. journeyman electrician or apprentice electrician. In the event any successful bidder or subcontractor uses independent contractors to perform work on the project, such individual must be identified on the federal form WH-347 or successor form with the same information as is required for employees.

The School may withhold payment due for work performed by a successful bidder or subcontractor for failure to timely submit their respective certified payroll reports until such time as the reports are submitted. The School may not withhold payment to a successful bidder or subcontractor for failure of the successful bidder or one or more other subcontractors to timely submit their certified payroll reports.

#### **VII. Public Records**

All information submitted by a bidder or a subcontractor pursuant to this Policy, including certified payrolls, are public records subject to review pursuant to the Indiana Access to Public Records law (IC 5-14-3).

- (M) For contracts estimated to cost at least three hundred thousand dollars (\$300,000), certification that all contractors and subcontractors are qualified under IC 4-13.6-4 or IC 8-23-10.

The School reserves the right to demand supplemental information from the bidder, (additional) verification of any of the information provided by the bidder, and may also conduct random inquiries of the bidder's current and prior customers.

## **II. Post-Bid Submissions from Subcontractors**

Each subcontractor, of any tier, must adhere to the requirements of Section 1 of this Policy as though it were bidding directly to the school. Subcontractors must submit the required information to the successful bidder, who must forward the information to the school prior to the subcontractor's first day of work on the public works project.

Failure of a subcontractor to submit the required information will not disqualify the successful bidder from performing work on the project and will not constitute a contractual default or breach by the successful bidder. However, payment may be withheld from any subcontractor who fails to timely submit the information until the information is submitted to and approved by the school. Additionally, the school may require the successful bidder or relevant subcontractor to remove a subcontractor from the project and replace it with a responsive and responsible subcontractor.

The disclosure of a subcontractor ("Disclosed Subcontractor") by a bidder or a subcontractor will not create any rights in the Disclosed Subcontractor. Thus, a bidder and/or subcontractor may substitute another subcontractor ("Substitute Subcontractor") for a Disclosed Subcontractor by giving the School written notice of the name, address, and type of work of the Substitute Subcontractor. The Substitute Subcontractor is subject to all of the obligations of a subcontractor under this policy.

## **III. Validity of Pre-Qualification Classification**

Upon designation by the School that a contractor's or subcontractor's submission in anticipation of a bid is complete and timely, and upon any further consideration deemed necessary by the School, the contractor or subcontractor may be pre-qualified for future School public works projects. A contractor's classification as "qualified" will exempt the contractor or sub-contractor from the comprehensive submission requirements contained herein for a period of twelve (12) months. Thereafter, contractors or subcontractors who are pre-qualified must submit a complete application for continuation of "pre-qualified" standing, on a form provided by the School, (also referred to as the "short form") by December 31<sup>st</sup> for the upcoming calendar year. Failure by any pre-qualified contractor or subcontractor to timely submit its complete application for continuation of "pre-qualified" standing will result in automatic removal of the designation, effective January 1 of the upcoming year. However, the "removed" contractor or subcontractor may still bid on School public works projects.

Any material changes to the contractor's status, at any time, must be reported in writing within ten (10) days of its occurrence to the School. The pre-qualification designation is solely

**VIII. Penalties for False, Deceptive, or Fraudulent Statements/Information**

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 School will be disqualified from bidding on all School projects for a period of three (3) years.

**IX. Conflicting Policies**

Any Policy or provision of any policy in conflict with the provisions of this Policy is hereby repealed.

**X. Severability**

If any provision of this Policy is found to be invalid, the remaining provisions of this Policy will not be affected by such a determination. These other provisions of this Policy will remain in full force and effect without the invalid provision.

This Policy, which is entitled "Responsible Bidding Practices and Submission Requirements for Submitting Bids to Perform Construction Work," is hereby enacted by the South Bend Community School Corporation on the 1st day of June, 2020.

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