



***Finance and Administrative Services***

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DATE : February 27, 2019

TO : Amy McEwan, Interim County Administrator

FROM : Patrice Sutton, Chief Financial Officer  
RuthAnne K. Hall, Purchasing Agent

RE : Research regarding Responsible Bidder Ordinances within public sector procurement

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At the February 6, 2019 regular meeting of the Public Works, Planning & Transportation Committee, a request was made for staff to research Responsible Bidder Ordinances in public sector procurement. This memo summarizes the findings to date.

**What is a Responsible Bidder's Ordinance**

A Responsible Bidder Ordinance (RBO) is a policy that sets minimal requirements for all contractors bidding on publicly funded construction projects for local governments. Typically, these requirements include proof of certificates of insurance, compliance with all local, state and federal laws necessary for employment of workers in a trade, and proof of participation in a registered apprenticeship or training program. The purpose is to provide further assurance that the lowest bidder is indeed responsible by requiring upfront proof of compliance with certain standards.

**Key Elements of RBO**

The specific elements of most Responsible Bidder ordinances include the following:

1. The bidder shall be a duly organized legal entity in good standing with the Illinois Secretary of State and in compliance with all laws prerequisite to doing business in Illinois.
2. The bidder shall have a valid Federal Tax Identification Number or Social Security Number.
3. The bidder shall be an equal opportunity employer and comply with Section 2000(e) of Chapter 21, Title 42 of the United States Code and Executive Order No. 11246.
4. The bidder shall provide certificates of insurance indicating the following coverages if called for in the bid solicitation: general liability, workers compensation, completed operations, automobile, hazardous occupation and product liability.

5. The bidder shall comply with all provisions of the Illinois Prevailing Wage Act (820 ILCS 130), including wages, medical and hospitalization insurance and retirement for those trades covered in the Act.
6. For construction projects (construction of new facilities, renovation of existing facilities or road construction projects), the bidder must provide apprenticeship and training programs that are either registered with the United States Department of Labor's Bureau of Apprenticeship and Training or are reasonably equivalent to such programs.

**Lake County's Current Practice:**

The Lake County existing Purchasing Ordinance sets forth the requirements for accepting and evaluating construction bids. Please see Appendix A. Furthermore, successful bidders must agree to Lake County's General Terms and Conditions. Please see Appendix B. As such, all of the elements listed above are already part of the County's standard processes, except for #6, an apprenticeship and training program.

Bids that are issued by the Division of Transportation must also comply with Illinois Department of Transportation (IDOT) prequalification standards. The intent of the prequalification is to ensure that all construction and maintenance contracts awarded by the Lake County Division of Transportation (LCDOT) to the lowest responsive and responsible bidders will be to vendors who have previously shown proof of their qualifications to IDOT standards. Please see Appendix C. For all bids that are issued and funded through Motor Fuel Tax (MFT), IDOT requires that all bidders and bidders' subcontractors must disclose participate in apprenticeship and training programs. Please see Appendix D.

**Comparative Research:**

The research conducted by Purchasing staff included an analysis of 82 RBOs in Illinois as provided by the Indiana, Illinois, Iowa Foundation for Fair Contracting on their website at <https://iiffc.org/resource-category/illinois-ordinances/>. Findings of the research conducted to date are summarized below:

- Earliest RBO adopted in 1997 and most recent adopted in 2016
- Of the 82 RBOs, 9 are county governments.
- The minimum contract amount to which the ordinance applied ranged from \$1,500 to \$100,000. 34 of the entities did not include a threshold.
- The collar counties that have adopted the RBO are Will, Kane, and Cook. DuPage is looking to adopt a RBO this Spring. Only Cook identified a minimum contract amount of \$25,000.
- 61 of the ordinances included standard provisions which required compliances with standard EEOP policies, prevailing wage and apprenticeship program.
- 4 of the RBOs had language that either encouraged local labor and/or good faith effort by vendors to provide a diverse workforce.

- 4 of the RBOs had language that offered an exemption of either highway projects or federally funded projects. (Of note, the City of Waukegan falls into this category).

Purchasing Staff also conducted an analysis of the number of Lake County's contracts awarded for public works construction through a review of Fiscal Year 2018 purchase orders issued through the County's ERP Financial Software System, Oracle. This analysis looked at the total number countywide with and without LCDOT spend.

With LCDOT Spend

Purchase Order Amount	# of Purchase Orders	Purchase Order Total Estimated FY2018 Spend
\$30,000 - \$50,000	16	\$663,351.72
\$50,000 - \$100,000	18	\$1,278,733.77
\$100,000 and over	32	\$14,846,427.11

Without LCDOT Spend

Purchase Order Amount	# of Purchase Orders	Purchase Order Total Estimated FY2018 Spend
\$30,000 - \$50,000	16	\$663,351.72
\$50,000 - \$100,000	15	\$1,105,419.49
\$100,000 and over	19	\$6,619,811.22

**Findings and Recommendations:**

The current procurement processes conducted by Lake County through its Division of Transportation and Purchasing Division as it relates to public works construction is extremely thorough in its approach to vetting the responsibility of vendors providing service to the County. The only aspect of the standard RBO that is not validated through the existing process, except for those funded by MFT, is the requirement for apprenticeship and training programs that are either registered with the United States Department of Labor's Bureau of Apprenticeship and Training or are reasonably equivalent to such programs.

In determining whether or not it is in the best interest of the County to pursue the RBO, the County Board should consider the following:

Pros	Cons
May ensure quality work through a trained workforce	Additional bidding standards may impose additional costs on contractors that are then passed on to the County in its bids

May increase job safety due to apprenticeship training	May preclude smaller contractors from bidding on public projects and thus limit competition, leading to higher cost
Provides additional assurance regarding the responsibility and quality of the contractor	May negatively impact other County initiatives, such as Buy Local. Work Local. Build Local.

To mitigate some of the concerns, the County Board could implement a minimum contract threshold of \$100,000 to which the RBO would be applied. Doing so would alleviate an unduly burdensome requirement for potential local and smaller contractors on the smaller dollar contracts on which they are more likely to bid. This does not increase risk on those projects as they must be in compliance with the existing requirements of the Lake County bidding process. Additionally, the County Board could exempt LCDOT projects and federally funded projects from the RBO as they are already mandated to comply with additional requirements to validate the responsibility of the contractor. Based on the FY2018 data presented above, there would have been 19 projects that would have been subject to the RBO using these parameters.

#### **Attachments:**

- Appendix A – Excerpt from Lake County Purchasing Ordinance
- Appendix B – Excerpt from Lake County General Terms and Conditions
- Appendix C – IDOT Prequalification Rating
- Appendix D – IDOT Apprenticeship or Training Program Certification (MFT funded projects)
- Appendix E - Illinois Department of Transportation – Rules for Prequalification of Contractors, Authorization to Bid and Subcontractor Registration
- Appendix F – Example: Lake County Bid #18103 for General Contracting Services for Depke Roof and Roof Top Units

## **APPENDIX A – Excerpt from Lake County Purchasing Ordinance**

### **Article 4 – Competitive Bidding, Section 102 – Procedures, Paragraph 10 – Bid Evaluation**

*Bids shall be evaluated based on the requirements set forth in the invitation for bids, which may include criteria to determine acceptability such as inspection, testing, quality, workmanship, experience, past performance, financial stability, delivery, and suitability for a particular purpose.*

Contractors interested in doing business with Lake County must complete the following forms as part of a bid submission for construction:

- General Information Form – provides ownership and authorized negotiators and certifies that the vendor is not barred from responding on contract as a result of violation of either Section 33E-3 or 33E-4 of the Illinois Criminal Code, as amended
- Bidder Qualification Form – provides company information, years in business, annual sales, Dunn & Bradstreet #, certification of M/W/DBE. Provides qualification of responsible bidder (i.e. minimum number of years in business, relevant experience with 3 similarly completed projects, safety standards, contract completion history, reference check). List of proposed major subcontractors. Bank Reference. Bonding Company. Insurance Company. Trade References. List of all claims. Financial statement
- Firm References – Requests three to five references to validate work.
- Sustainability Statement – provides form for vendors to identify sustainable practices for the firm in the following categories: waste minimization, energy efficiency, water efficiency, staff and education.
- Vendor Disclosure Statement – provides a form for vendors to disclose familial relationships and campaign contributions.

## **APPENDIX B Excerpt from Lake County General Terms and Conditions**

Standard Requirements in Lake County General Terms and Conditions include, but are not limited to:

- **Bid Security** - Each Bid shall be accompanied by a security in the form of a bond. Acceptable forms of security which may be submitted are: an executed surety bond issued by a company or companies qualified to do business in the State of Illinois with an A.M. Best Rating of at least A-; cash; certified check or cashier's check made payable to Lake County (not including personal or company checks, which are not acceptable); an irrevocable letter of credit; or any other form of deposit issued by a financial institution and acceptable to the Lake County. Bond shall be an amount equal to at least ten (10%) percent of the Total Base Bid Price, payable without condition to the County.
- **Labor Statutes, Records and Rates** – In the employment and use of labor, the Contractor and subcontractor of the Contractor shall conform to all Illinois Constitutional and statutory requirements including, but not limited to the following:
  - Equal Employment Opportunity – Illinois Constitution, Article I, Section 17 & 18
  - Public Works Employment Discrimination Act – 775 ILCS 10/1
  - Illinois Human Rights Act – 775 ILCS 5/1-101 et seq.
  - Veterans Preference Act – 330 ILCS 55/1
  - Servicemen's Employment Tenure Act, as amended – 330 ILCS 60/2
  - Prevailing Wage Act – 820 ILCS 130/1 et seq.
  - Child Labor Law, as amended – 820 ILCS 205/1
  - Illinois Workers on Public Workers Act – 30 ILCS 570/ et seq, including Public Act 096-0929
- **Compliance**: The Contractor shall at all times observe and comply with the drawings, bid specifications, manufacturers' specification and instructions, and the standards published by the relevant manufacturers' association, and by the referenced authorities. The contractor shall at all times comply will all laws, ordinances, regulations and codes of the Federal, State, County, other local governments having jurisdiction or authority, and with the Americans with Disabilities Act and OSHA regulations.
- **Warranty** – Contractor must maintain a warranty for a period of one year after the substantial completion of the work.
- **Contract Performance and Payment Bonds** – Contractor must provide the following bonds upon award of the contract:
  - a. A performance bond satisfactory to the County, executed by a surety company authorized to do business in the State of Illinois, in an amount equal to 100 percent (100%) of the Total Base Bid Price as security for the faithful performance of the Contract; and
  - b. A payment bond satisfactory to the County, executed by a surety company authorized to do business in the State of Illinois, for the protection of all persons supplying labor and materials to the Contractor or Subcontractors for the

performance of Work provided for in the Contract, in an amount equal to 100 percent (100%) of the Contract price.

- Safety - The Contractor must be familiar with the Manual of Accident Prevention in Construction by the Associated General Contractors of America, current edition, and maintain at the Project a copy of said publication and will strictly enforce the applicable requirements of same. Contractor will also state the name of the Contractor's Safety Engineer who will be responsible for enforcing all Safety Requirements.
- Insurance - The Contractor must obtain, for the Contract term and any extension of it, insurance issued by a company or companies qualified to do business in the State of Illinois with an A.M. Best Rating of at least A-based on the insurance requirements provided in the bid document.

## **APPENDIX C – Illinois Department of Transportation Prequalification Rating**

The prequalification rating is a combination of two sub-ratings: the financial and work rating. Vendors interested in doing business with LCDOT must prequalify every 16 months. An application for prequalification shall consist of the following:

- Applicant's name, address, telephone number and telefax number
- Applicant's Federal Employer's Identification Number (F.E.I.N) or social security number if the applicant does not have a F.E.I.N.
- Applicant's Illinois Department of Human Rights Identification Number and registration expiration date.
- Applicant's completed Statement of Experience and Financial Condition.
- All other information that may be required by IDOT as part of the prequalification

*Note: a majority of the federally funded road projects are let by IDOT and, thus, must meet the same requirements as above.*