

IPTC Responsible Bidding Practices & Submission Requirements Policy

PROPOSAL FOR A GENERAL POLICY establishing responsible bidding practices and submission requirements on public works projects.

WHEREAS, the Indianapolis Public Transportation Corporation ("IPTC") is required by IC 36-1-12-4 to award certain contracts for public works projects to the "lowest responsible and responsive" bidder;

WHEREAS, IC 36-1-12-4(b)(10) further requires IPTC awarding a public works contract where bids are required to consider certain factors when determining whether a bidder is "responsive", with such factors including: (1) whether the bidder has submitted a bid that conforms in all material respects to the specifications; (2) whether the bidder has submitted a bid that complies specifically with the invitation to bid and the instructions to bidders; and (3) whether the bidder has complied with all applicable statutes, ordinances, resolutions or rules pertaining to the award of a public contract;

WHEREAS, IC 36-1-12-4(b)(11) further requires IPTC awarding a public works contract where bids are required to consider certain factors when determining whether a bidder is "responsible", with such factors including: (1) the ability and capacity of the bidder to perform the work; (2) the integrity, character, and reputation of the bidder; and (3) the competence and experience of the bidder;

WHEREAS, IPTC seeks to enhance its ability to identify "responsible and responsive" bidders on all IPTC construction projects by institution of more comprehensive submission requirements consistent with IC 5-16-13 et seq. and IC 36-1-12 et seq.;

WHEREAS, this "Responsible Bidding Practices and Submission Requirements" Policy will preserve administrative resources by ensuring that only qualified contractors and subcontractors are awarded contracts on IPTC construction projects; and

WHEREAS, this "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, IPTC shall approve the award and amendment of public construction contracts required to be bid under IC 36-1-12; now, therefore:

SECTION 1. Responsible bidding practices and submission requirements.

(a) Bid submission requirements. Contractors proposing to submit bids on any IPTC project estimated to be at least three hundred thousand dollars (\$300,000) must, with their bid submission, submit a statement made under oath and subject to perjury laws, on a form designated by the IPTC (including electronic form at the IPTC's discretion) and must include:

- (1) Certification of eligibility to do business in the State of Indiana. Within 72 hours of bid-opening, the apparent low bidder must provide a copy of a print-out of the Indiana Secretary of State's online 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 shall not apply;
- (2) A list identifying all former business names.
- (3) 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;
- (4) A statement describing the bidder's full-time staffing capabilities and intended additional labor

(skilled labor and unskilled labor) sources from which labor will be derived on the public works project;

- (5) Certification of bidder's labor force participation in training programs applicable to the tasks to be performed on the project, and/or participation in apprenticeship and/or training programs approved by and registered with the United States Department of Labor's Office of Apprenticeship, or its successor organization, if required under IC 5-16-13-12. Within 72 hours of bid-opening, the apparent low bidder must provide evidence of participation in apprenticeship and/or training programs, applicable to the work to be performed on the project. The required evidence includes a copy of all applicable apprenticeship certificates or standards for those training programs.
- (6) Certification that the bidder has implemented an employee drug testing plan that meets, or exceeds, the requirements set forth in IC 36-1-12-24. Within 72 hours of the bid-opening, the apparent low bidder must provide a copy of a written plan for employee drug testing that: (1) covers all employees of the bidder who will perform work on the public work project; and (2) meets, or exceeds, the requirements set forth in IC 36-1-12-24;
- (7) Certification that the bidder will utilize project managers and superintendents with sufficient relevant management experience to complete the bidder's scope of work on the project. Within 72 hours of bid-opening, the apparent low bidder must provide a list of the names and description of the relevant management experience of each of the bidder's project managers and superintendents that bidder intends to assign to work on the project;
- (8) Certification that the bidder and/or its management personnel possesses any and all professional or trade licenses required by law for any trade or specialty area in which bidder is seeking a contract award without suspension or revocation of such licensure(s) within the previous five years. Within 72 hours of bid-opening, the apparent low bidder must provide proof of such licensure, as well as disclosure of any letters of 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;
- (9) Certification that the contractor is utilizing a surety company which is on the United States Department of Treasury's listing of approved sureties. Within 72 hours of bid-opening, the apparent low bidder must provide evidence of utilization of a surety company listed as an approved surety by the United States Department of Treasury.
- (10) A written statement listing and describing any federal, state, or local tax liens or tax delinquencies owed to any federal, state, or local taxing body in the last five years; and
- (11) Certification that the contractor is qualified under IC 4-13.6-4 or IC 8-23-10, or will be prior the commencement of any work, and that all subcontractors utilized on the job will likewise meet the qualification requirements of IC 5-16-13-10(c). The apparent low bidder must provide evidence that the apparent low bidder has been qualified under IC 4-13.6-4 or IC 8-23-4 prior to issuance of the Notice to Proceed.

The IPTC at its sole discretion may rely solely upon the certified statements of bidders without requiring or evaluating submissions of evidentiary support for determining Responsible Bidder status. By submitting a certified statement under this subsection, however, a bidder agrees to provide evidentiary support for all statements made in its certified statement under this subsection. The IPTC reserves the right to require supplemental information from the bidder for verification of any of the information provided by the bidder and may also conduct random inquiries of the bidder's current and prior customers. Notwithstanding the foregoing, this section shall not apply to a public work project performed by the IPTC in accordance with IC 36-1-12-3(b).

(b) Submissions from contractors.

- (1) All bidders shall provide a written list that discloses the name, address, and type of work for each first-tier subcontractor from whom the bidder has accepted a bid and/or intends to hire on any part of the public work project, including individuals performing work as independent contractors. All bidders shall adhere to IPTC policy and procedures pertaining to minority owned business and women owned business utilization.
- (2) In addition, each such first-tier subcontractor shall be required to adhere to the requirements of subsection (a) of this section as though it were bidding directly to the IPTC, except that first-tier subcontractors shall submit the required information to the bidder and the bidder shall then forward said information to the IPTC. The IPTC must receive this subcontractor information no later than five (5) business days after the subcontractor's first day of work on the public works project. Payment shall be withheld from any first-tier subcontractor who fails to timely submit said information until such information is submitted and approved by the IPTC.
- (3) Upon request, the IPTC may require any bidder to provide the required information (including name, address, type of work on the project and the name of the higher-tier subcontractor) about its second and lower-tier subcontractors. Subject to IC 36-1-12, payments shall be withheld from any bidder who fails to timely submit this information until this information is submitted and approved by the IPTC. Additionally, the IPTC may require the successful bidder to remove the relevant subcontractor or second or lower-tier subcontractor from the project and replace it with a responsive and responsible subcontractor.
- (4) Subject to IC 36-1-12, the IPTC may withhold all payments otherwise due to a bidder for work performed by a subcontractor until such subcontractor submits the information required pursuant to this chapter and the IPTC approves such information. Successful bidders shall only be permitted to use approved first tier subcontractors which have provided required information to the IPTC about the applicable responsive and responsible subcontractor.
- (5) The disclosure of a subcontractor ("Disclosed Subcontractor") by a bidder or a subcontractor shall not create any rights in the Disclosed Subcontractor. A bidder and/or subcontractor may not substitute another subcontractor ("Substitute Subcontractor") for a Disclosed Subcontractor without written approval of IPTC. The contractor shall provide written notice of the name, address, and type of work of the Substitute Subcontractor. The Substitute Subcontractor shall be subject to all of the obligations of a subcontractor under this chapter.

(c) Validity of Responsible Bidder Status.

- (1) Upon designation by the IPTC that a contractor's bid submission is complete and timely, and upon any further consideration deemed necessary by the IPTC, the contractor or subcontractor may be deemed a Qualified Responsible Bidder for future IPTC public works projects. A contractor's or subcontractor's classification as "Qualified Responsible Bidder" shall exempt the contractor or subcontractor from the comprehensive submission requirements contained herein for as long as contractor remains qualified under IC 4-13.6-4 or IC 8-23-10, or for a period of twelve (12) months, whichever is shorter. Thereafter, contractors or subcontractors who are deemed a Qualified Responsible Bidder must submit a complete application for continuation of "Qualified Responsible Bidder" status, subject to bid submission requirements under subsections (a) and (b) above, with its next bid submission to IPTC.
- (2) 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 IPTC. The Qualified Responsible Bidder designation is solely within the discretion of the IPTC and the IPTC specifically reserves the right to change or revoke the designation for stated written reason(s).
- (3) Denial of pre-qualification shall be in writing and shall be forwarded to the contractor within seven (7) working days of such decision. Any contractor denied or losing Qualified Responsible Bidder status may request reconsideration of the decision by submitting such request in writing to the

IPTC within five (5) business days of receipt of notice of denial.

(d) Incomplete submissions by bidders. It is the sole responsibility of the bidder to comply with all submission requirements made applicable to the bidder by this section by no later than the public bid opening. Submissions from first tier subcontractors, and any other lower tier subcontracts as required by IPTC, must be in accordance with subsections (a) and (b) above and in a form designated by the IPTC. Submissions deemed inadequate, incomplete, or untimely by the IPTC may result in the disqualification of the bid.

(e) Responsive and responsible bidder determination. The IPTC, after review of complete and timely bid submissions, shall, in its sole discretion, after taking into account all information in the submission requirements, the invitation to bid and bid documents, determine whether a bidder is responsive and responsible pursuant to IC 36-1-12-4. The IPTC specifically reserves the right to utilize all information provided in the contractor or subcontractor's submission or any information obtained by the IPTC through its own independent verification of the information provided by the contractor.

(f) Certified payroll. For projects on which the estimated cost is at least is at least Two Hundred and Fifty Thousand Dollars (\$250,000), the successful bidder and all subcontractors working on a public work project shall submit a certified payroll report utilizing the federal form now known as the WH-347 which must be prepared on a weekly basis and submitted to the IPTC within ten (10) calendar days after the end of each week in which the bidder or subcontractor performed its work on the public works project. These certified payroll records shall identify the job title, work classification, rate of pay, and craft of each employee on the project, e.g., journeyman electrician or apprentice electrician.

Subject to IC 36-1-12, the IPTC may withhold payment for work performed by a bidder if the bidder fails to timely submit its certified payroll reports until such times as such certified payroll reports are submitted. Subject to IC 36-1-12, the IPTC may also withhold payment due for the work performed by a subcontractor if the subcontractor fails to timely submit its certified payroll reports until such time the certified payroll reports are submitted. The IPTC shall not withhold payment to a bidder for work performed by the bidder or for work performed by subcontractors who have submitted their certified payroll reports, because one or more other subcontractors failed to timely submit their certified payroll reports.

(g) Public records. Unless otherwise prohibited by applicable federal law and/or regulations, all information submitted by a bidder or a subcontractor pursuant to this chapter are public records subject to the Indiana Access to Public Records law (IC 5-14-3). Evidentiary support required by subsections (a) and (b), to the extent provided, may be produced as required in response to a public records request for the information, subject to IC 5-14-3.

(h) 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 bid submission made to the IPTC may, at the discretion of the IPTC, be disqualified from bidding and deemed not responsible in accordance with IC 36-1-12 on future IPTC projects for a period of up to three (3) years.

SECTION 2. This policy and all requirements set forth herein shall be interpreted and construed in harmony with IC 36-1-12, IC 5-16-13, and all other applicable provisions of the Indiana Code as they pertain to public work projects, and nothing herein shall be interpreted to be in conflict therewith. Should there be any conflict, the applicable provisions of the Indiana Code shall control and govern.

SECTION 3. Should any provision (section, paragraph, sentence, clause, or any other portion) of this policy conflict with the particular requirements set forth in the bid documents of a given project, the terms of the bid documents shall control and govern.

SECTION 4. The expressed or implied repeal or amendment by this policy of any other policy or part of any other policy does not affect any rights or liabilities accrued, penalties incurred, or proceedings begun prior to the effective date of this policy. Those rights, liabilities, and proceedings are continued, and

penalties shall be imposed and enforced under the repealed or amended ordinance as if this policy had not been adopted.

SECTION 5. Should any provision (section, paragraph, sentence, clause, or any other portion) of this policy be declared by a court of competent jurisdiction to be invalid for any reason, the remaining provision or provisions shall not be affected, if and only if such remaining provisions can, without the invalid provision or provisions, be given the effect intended by the IPTC in adopting this ordinance. To this end the provisions of this policy are severable.

SECTION 6. This resolution shall be in effect from its passage by the IPTC Board.

The foregoing was passed by the IPTC Board of Directors this 23 day of February, 2017, at 6:15 p.m.

ATTEST:

Jill W. Fessenden
General Counsel