

STATE OF ILLINOIS)

COUNTY OF KANE)

**AMENDING CHAPTER 2, ARTICLE VI, DIVISION 3 OF THE KANE COUNTY
CODE TO ESTABLISH RESPONSIBLE BIDDER REQUIREMENTS ON
PUBLIC WORKS PROJECTS**

WHEREAS, the County of Kane ("Kane County") is an Illinois body politic and corporate; and

WHEREAS, Kane County seeks to preserve administrative resources by ensuring that only qualified bidders and subcontractors are awarded contracts on public works construction projects; and

WHEREAS, Kane County 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; and

WHEREAS, Kane County seeks to enhance its ability to identify the lowest "responsible bidder" on all public works construction projects by instituting more comprehensive submission requirements which are in compliance with Illinois law; and

WHEREAS, Kane County 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; and

WHEREAS, securing successful delivery of public works construction projects presents significant challenges due to the complex, unpredictable and inherently dangerous nature of the construction industry, wherein errors in project planning or execution, including those caused by inexperienced or unqualified craft labor personnel, can result in serious safety risks, excessive cost overruns, flawed or inferior project quality, and disruptions in project schedules that may delay the use of critical government functions or facilities; and

WHEREAS, this amendment to the Kane County Code assures efficient use of taxpayer dollars, promotes public safety, and is in the public interest; and

WHEREAS, the State of Illinois has enacted responsible bidder requirements for public works construction contracts under Illinois Procurement Act (30 ILCS 500/30-22) as amended (hereinafter referred to as "the Act"), and

WHEREAS, Kane County seeks to amend its Kane County Purchasing Ordinance to apply similar responsible bidder requirements for construction contracts as set forth in the Act to construction contracts for the County.

NOW, THEREFORE, BE IT ORDAINED by the Kane County Board that the Kane County Code Chapter 2, Article VI, Division 3 (the Kane County Purchasing Ordinance) is amended to add the following as a new section titled "Responsible Bidder Requirements For Public Works Projects":

A. Public Works: For purposes of this section, the term "Public Works" shall mean construction projects advertised and awarded by Kane County, and financed, in whole or in part, with County public funds. Public Works projects shall only include those projects where Kane County is the awarding authority and that require County Board approval as designated by the Kane County Purchasing Ordinance. Additionally, Public Works projects shall only include cost-share drainage projects that exceed One Hundred Thousand Dollars (\$100,000).

B. Bid Submission Requirements:

1. In determining whether a bidder is a "responsible bidder" for the award of a Public Works contract, the bidder must submit the following information and supporting documentation, as directed on corresponding forms designated by the purchasing department, which may include a notarization requirement and/or a requirement that the bidder submits a signed statement as to their compliance with the bid submission requirements supported by affidavit, in order for the bid to be accepted:

a. A copy of the Illinois Secretary of State's Department of Business Services online records evidencing that the bidder has a current corporate annual report on file. If the bidder is an individual, sole proprietor, or partnership, this subsection shall not apply.

b. Documents evidencing current registration with the Illinois Department of Revenue if bidder has employees (e.g. document with account number, Illinois Business Tax number).

c. Documents evidencing current registration with the Illinois Department of Employment Security if bidder has employees (e.g. document with UI account number).

d. Disclosure of any federal, state or local tax liens or tax delinquencies against the bidder or any officers of the bidder in the last five (5) years.

e. A statement that all employees are (i) covered under a current workers' compensation insurance policy and (ii) properly classified under such policy. If the bidder is insured with a carrier, the evidence of workers' compensation insurance shall be a copy of the "Information Page" of the bidder's workers' compensation policy and any continuation of that Information Page which include the name and address of the insured, as well as the class codes the compensation premium is based on and the total estimated remuneration per class code.

f. A statement of compliance with all provisions of the Illinois Prevailing Wage Act (820 ILCS 130/1 et seq.) and all rules and regulations therein, for the past five (5) years. Such statement shall also provide that the bidder has reviewed the Prevailing Wage Act or federal Davis-Bacon and Related Acts, has reviewed and agrees to pay the applicable prevailing wage rates attached to the bid specifications, and will strictly comply with the Prevailing Wage Act

or federal Davis-Bacon and Related Acts and related requirements. A bidder who has been found by the Illinois Department of Labor to be in violation of the Prevailing Wage Act twice within a three (3) year period shall be deemed not to be a Responsible Bidder for two (2) years from the date of the latest finding.

g. 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.).

h. A statement that individuals who will perform work on the Public Works project on behalf of the contractor are properly classified as either (i) an employee or (ii) an independent contractor under all applicable state and federal laws and local ordinances.

i. Documents evidencing any professional or trade license required by law or local ordinance for any trade or specialty area in which the bidder is seeking a contract award. Additionally, the bidder must disclose any suspension or revocation of such license held by the company, or of any director, officer or manager of the company.

j. Evidence of participation in apprenticeship 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; and evidence that any applicable apprenticeship program has graduated at least five (5) apprentices in each of the past five (5) years for each of the construction crafts the bidder will perform on the project. Evidence of graduation rates are not required for apprenticeable crafts dedicated exclusively to the transportation of material and equipment to and from the Public Works project.

The required evidence includes but is not limited to a copy of all applicable apprenticeship standards and Apprenticeship Agreement(s) for any apprentice(s) who will perform work on the Public Works project; and documentation from each applicable apprenticeship program certifying that it has graduated at least five (5) apprentices in each of the past five (5) years for each construction craft the bidder will perform on the project. Additional evidence of participation and graduation requirements may be requested by the purchasing department at its discretion.

k. Bidder shall certify that all employees expected to perform work on the project and who face hazards on the job have completed a 10-hour or greater OSHA safety program. Only workers that 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 the purchasing department may request the bidder provide copies of employees OSHA cards; failure to produce an employee's OSHA card may result in a determination that the bidder is not a responsible bidder.

l. Disclosure of the name and address of each subcontractor from whom the bidder has accepted a bid and/or intends to hire on any part of the project. Further, any subcontractor that will complete either (1) 10% or more of the work on a project, or (2) at least \$100,000 of

the work on a project, shall be required to adhere to all of the requirements set forth herein as though it were bidding directly to Kane County. All other subcontractors shall only be required to adhere to the requirements of subsections (j), (k), and (o) as though it were bidding directly to Kane County. Each bidder shall submit all subcontractor information and supporting documentation to the purchasing department prior to the subcontractor commencing work on the project.

m. Statements as to past performance, which shall give an accurate and complete record of three (3) similar public works projects completed in the past three (3) years by the bidder. Such statements shall include the name of the public body and the project, original contract price, final contract price, the names of all subcontractors used, if applicable, and a statement as to compliance with completion deadlines.

n. Any determinations against the bidder by a court or governmental agency for violations of federal, state, or local laws, including but not limited to serious, willful or repeated violations of the Occupational Safety and Health Act (OSHA), violations of contracting or antitrust laws, tax or licensing laws, environmental laws, or the Federal Davis-Bacon and Related Acts.

o. All bidders will be required to turn in certified payrolls as specified in Illinois Public Act 94-0515, and follow all provisions of the Employee Classification Act, 820 ILCS 185/1 et seq.

2. Any material changes to the bidder's status, at any time, must be reported in writing within fourteen (14) calendar days of its occurrence. Failure to comply with this requirement is grounds for the bidder to be deemed a non-responsible bidder.

3. If a bidder submits proof of appropriate prequalification through the Illinois Capital Development Board or Illinois Department of Transportation, the bidder need only to submit documentation referenced in subsection (B)(1)(j), evidence of participation in apprenticeship training programs applicable to the work to be performed on the project.

C. Incomplete Submissions by Bidders and Subcontractors:

1. It is the sole responsibility of the bidder to comply with all submission requirements at the time it submits its bid to the purchasing department. Bidder submissions deemed incomplete shall result in a determination that the bidder is not a responsible bidder. A submission is deemed incomplete if the Bidder has not cured the deficiency in its submission within seven (7) calendar days after written notice given by the County.

2. The submission requirements also apply to all subcontractors, except that the successful bidder shall submit all applicable subcontractor submissions, as outlined in subsection B(1)(l) prior to the subcontractor commencing work on the project. Failure of a subcontractor to submit the required information shall not disqualify the successful bidder from performing work on the project and shall not constitute a contractual default and/or breach by the successful bidder. However, Kane County shall withhold all payments otherwise due for work performed by a subcontractor, until the subcontractor submits the required information and the director of purchasing approves such information. Where the director of purchasing

deems there to be a non-material error in the submission of the required information for a subcontractor, the director of purchasing can utilize limited discretion in implementing such withholding requirement. Further, where the director of purchasing deems necessary, Kane County may also require that the successful bidder remove the subcontractor from the project and replace it with a responsive and responsible subcontractor.

D. Validity of Pre-Qualification Classification

1. Upon designation by the director of purchasing that a bidder's or subcontractor's submission in anticipation of a bid is complete and timely, and upon any further consideration deemed necessary by the director of purchasing, the bidder or subcontractor may be pre-qualified for future Kane County Public Works projects. A bidder's classification as "qualified" shall exempt the bidder or sub-contractor from the comprehensive submission requirements contained herein for a total period of three (3) calendar years. However, Kane County may ask a bidder to submit additional documents during the time period in which a bidder is pre-qualified. Thereafter, during the three (3) calendar year period, bidders or subcontractors who are pre-qualified must submit a complete application for continuation of "pre-qualified" standing, on a form provided by the purchasing department, (also referred to as the "short form") by December 31st for the upcoming calendar year. Failure by any pre-qualified bidder or subcontractor to timely submit its complete application for continuation of "pre-qualified" standing shall result in automatic removal of the designation, effective January 1 of the upcoming year. However, the "removed" bidder or subcontractor shall still be permitted to bid on Kane County Public Works projects. Kane County may establish rules permitting bidder's to be pre-qualified outside of the bidding process.

2. Any material changes to the bidder's status, at any time, must be reported in writing within fourteen (14) calendar days of its occurrence to the purchasing department. The pre-qualification designation is solely within the discretion of the director of purchasing and Kane County specifically reserves the right to change or revoke the designation for a stated written reason(s).

3. Denial of pre-qualification shall be in writing and shall be forwarded to the bidder within seven (7) calendar days of such decision. Any bidder denied or losing pre-qualification status may request reconsideration of the decision by submitting such request in writing to the director of purchasing within seven (7) calendar days of receipt of notice of denial.

E. Lowest Bidder Not Chosen:

1. When the award is not recommended to be given to the lowest bidder, a statement of the reason for such recommendation shall be prepared by the purchasing department.

2. In the event that there are no bidders pursuant to the Responsible Bidder Ordinance, Kane County may pursue bidders pursuant to the standard provisions otherwise set out by the Kane County Purchasing Ordinance.

F. 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.

G. Public Records: All information submitted by a successful bidder pursuant to this Ordinance are public records subject to review pursuant to the Illinois Freedom of Information Act (5 ILCS 140/1 et seq.).

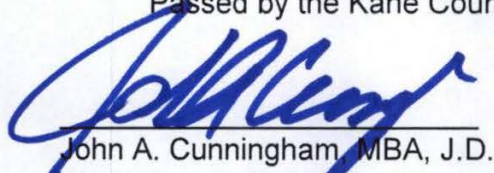
H. Materiality: The requirements of this Ordinance are a material part of the bid documents and the contract and the successful bidder shall insert this Ordinance in all subcontracts.

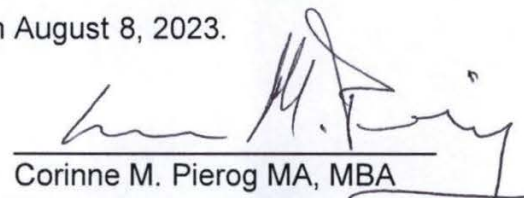
I. Severability: If any portion of this Ordinance or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other portions or applications of this Ordinance which can be given effect without the invalid portions or applications and, to this end, the portions of this Ordinance are severable.

J. Other Ordinances: Any prior ordinance or portion thereof in conflict with this Ordinance is superseded by the requirements of this Ordinance. Where this Ordinance is silent, Kane County may adhere to the requirements laid out in the Kane County Purchasing Ordinance.

K. Effective Date: This ordinance shall take effect upon passage by December 1, 2023.

Passed by the Kane County Board on August 8, 2023.


John A. Cunningham, MBA, J.D.
Clerk, County Board
Kane County, Illinois


Corinne M. Pierog MA, MBA
Chairman, County Board
Kane County, Illinois

Vote:

PASSED