

NANCY E. FELLOWS
President of Council

JOHN PLECNIK
Vice President of Council

VICTORIA ANN SAVAGE, CMC
Clerk of Council

City of Willoughby Hills

Council
CHRISTOPHER L. BIRO
DAVID M. FIEBIG
CHRISTOPHER HALLUM
JANET R. MAJKA
LAURA PIZMOHT

ORDINANCE NO. 2017-66

AN ORDINANCE AMENDING PART ONE – ADMINISTRATIVE CODE, TITLE ONE – GENERAL PROVISIONS BY THE ESTABLISHMENT OF A NEW CHAPTER 117 – RESPONSIBLE CONTRACTING OF THE CODIFIED ORDINANCES OF THE CITY OF WILLOUGHBY HILLS; REPEALING CONFLICTING LEGISLATION AND DECLARING AN EMERGENCY.

WHEREAS, the City of Willoughby Hills is required by law to award certain contracts to the lowest and best bidder and, as such, has an affirmative duty to determine which bid is not only the lowest, but also if the bidder is responsible as part of its determination as to which bidder is best; and

WHEREAS, the City of Willoughby Hills, based upon its consideration of other objective evidence, has determined that quality workmanship, efficient operation, safety and timely completion of contracts and construction projects are not necessarily insured by awarding the lowest bidder; and

WHEREAS, the City of Willoughby Hills seeks to enhance its ability to identify the “lowest and best” bidders on public works construction projects by instituting more comprehensive rules and requirements for contracts, labor agreements and required disclosures; and

WHEREAS, the City of Willoughby Hills’ adoption of this Ordinance is for the purpose of acting as a market participant when it purchases construction services, and not as a regulator of private commerce; and

WHEREAS, the City of Willoughby Hills, based upon its experience and its consideration of other objective evidence, has determined that the lowest and best bidder on a construction project can be identified only through the consideration of several factors in addition to whether a bid is the lowest; and

WHEREAS, the City of Willoughby Hills recognizes that responsible contracting has become the model standard for the region and substantially similar responsible contracting laws and required disclosures are already adopted and in force in municipalities and government subdivisions throughout Northeast Ohio, including our neighboring cities of Eastlake, Euclid, Mentor and Willowick, including Lake and Lorain Counties, including the cities of Parma, North Olmstead, Brookpark and Maple Heights, and including the boards of education for Ashtabula, Cleveland, Conneaut and Garfield Heights.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF WILLOUGHBY HILLS, COUNTY OF LAKE, STATE OF OHIO THAT:

SECTION 1. Chapter 117 of the Codified Ordinances of the City of Willoughby Hills, Ohio titled “Responsible Contracting Practices” is hereby established to read and provide as follows:

“CHAPTER 117 Responsible Contracting

117.01 Public Purpose.

117.02 Responsible Contracting Standards and Procedures Established.

117.01 PUBLIC PURPOSE.

It is the purpose of this Chapter to establish new policies to strengthen the procedures for responsible contracting and disclosure. The City finds that articulating standards and establishing reporting requirements to evaluate the responsibility of public contractors as well as critically evaluating each and every contract and labor agreement to which the City is a party and furthers the following public purposes:

- (a) Promotion of better quality workmanship on City building and other public improvement projects, which in turn saves tax dollars and protects the public health, safety and welfare;
- (b) Promotion of labor peace during periods of time when public buildings or other public improvements are under construction, which likewise confers a significant benefit to the public's health, safety and welfare;
- (c) Promotion of a system of checks and balances during challenging fiscal times; and
- (d) Promotion of a Zero Tolerance Policy on Nepotism.

117.02 RESPONSIBLE CONTRACTING STANDARDS AND PROCEDURES ESTABLISHED.

(a) Subsection (b) of this Section 117.02 shall constitute the criteria for evaluating the responsibility of the apparent lowest bidder. The apparent lowest responsible bidder shall provide information necessary to ascertain the pecuniary and financial responsibility, accountability, reliability, skill, capacity, judgment, and integrity to do business in our community. In the event the apparent lowest bidder fails to furnish the requested information and/or the information provided demonstrates a lack of responsibility, the apparent lowest bidder shall be rejected and thereby is disqualified and the next lowest bidder shall become the apparent lowest responsible bidder. The "Contract Registration Pre-Qualification Questionnaire" which meets the requirements of subsection (b) is attached as the Exhibit A.

- (b) The Mayor or his or her designee shall require a bidder to furnish the following items:
 - (1) Description of its experience with projects of comparative size, complexity and cost within recent years, demonstrating the contractor's ability and capacity to perform a substantial portion of the project with its own forces;
 - (2) Disclosure of whether the contractor had been disqualified from any public project by virtue of having been found to be not responsible.
 - (3) Documentation from previous projects regarding timeliness of performance, quality of work, extension requests, fines and penalties imposed and payment thereof, liens filed, history of claims for extra work, contract defaults, together with explanations of same;
 - (4) An adequate demonstration of financial responsibility, which may include, in the Mayor's or his designee's discretion, a certified financial statement prepared by a certified public accountant, to assure that the apparent lowest bidder possesses adequate resources and availability of credit and the means and ability to procure insurance and bonds required for the project;

- (5) Disclosure of any suspension or revocation of any professional license of any director, officer, owner or managerial employee of the apparent lowest bidder, to the extent that any such licensure is necessary to perform the work contemplated by the contract.
- (6) Disclosure of any and all OSHA violations within the previous five years, as well as all notices of OSHA citations filed against the apparent lowest bidder in the same three-year period, together with a description and explanation of remediation or other steps taken regarding such violations and notices of violation;
- (7) Disclosure of any and all violations within the previous five years pertaining to unlawful intimidation or discrimination against any employee by reason of race, creed, color, disability, sex or national origin and/or violations of an employee's civil or labor rights or equal employment opportunities;
- (8) Disclosure of any litigation (including copies of pleadings) in which the apparent lowest bidder has been named as a defendant or third party defendant in an action involving a claim for personal injury or wrongful death arising from performance of work related to any project in which it has been engaged within the previous five years;
- (9) Documentation of whether neither the contractor, high level management personnel nor any owners has been convicted of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion or receiving stolen property.
- (10) Documentation of whether neither the contractor, high level management personnel nor any owners has been convicted of a criminal offense in connection with obtaining, attempting to obtain, and/or performing any public or private contract.
- (11) Disclosure of allegations of violations of the prevailing wage law and any other State or Federal labor law, including, but not limited to, child labor violations, failure to pay wages, or unemployment insurance tax delinquencies or unfair labor practices within the past five years;
- (12) Disclosure of violations of the workers compensation law;
- (13) Disclosure of any criminal convictions or criminal indictments, involving the apparent lowest bidder, its officers, directors, owners and/or managerial employees, within the past five years;
- (14) Disclosure of whether the contractor has a performance bond canceled or had a claim made on a performance bond.
- (15) Documentation of whether the contract has to file any required tax returns or failed to pay any required taxes to any governmental entity.
- (16) Documentation that the contractor has a substance abuse program that includes testing and treatment.

- (17) Documentation that the contractor has a written safety and health program that includes training, inspections and a complaint procedure.
- (18) Documentation that the contractor currently employs or has a reliable source for hiring sufficient qualified skilled, safety-trained workers to perform the project.
- (19) Identification of whether the contractor's workforce is drawn mainly from area residents;
- (20) Identification of whether the contractor's, to any degree, hire independent contractors (Form 1099 Employees) to perform its work
- (21) Disclosure of any and all familial relationships between the contractor, owners of the contractor, or employees of the contractor with any elected or appointed official of the City or managerial employee of the City.
- (22) Identification of all work to be subcontracted. All subcontractors are also subject to the approval of the Mayor or his designee based on the above considerations.

(c) In determining whether a contractor is a responsible bidder under this section, the Mayor or his or her designee shall evaluate the information required to be furnished by bidders. If the contract or agreement exceeds the Mayor's spending authority and a Council vote is required, then the Mayor or the designee shall furnish the required information to Council with his or her recommendation prior to the Council vote on the same. Neither the Mayor, nor the designee, nor Council, nor the City shall have any independent duty to verify the bidder representations and disclosures required Section 1375.02(b). The Mayor, the designee, and Council reserve the right to request additional information of a bidder.

(d) In the event the amount of the lowest bid appears disproportionately low when compared to estimates undertaken by or on behalf of the City and/or compared to other bids submitted, the Mayor or his or her designee reserves the right to inquire further of the apparent lowest bidder to determine whether the bid contains mathematical errors, omissions and/or erroneous assumptions, and whether the apparent lowest bidder has the capability to perform and complete the contract for the bid amount.

(e) In determining whether or not any contract or labor agreement will serve the goals of this Chapter, the City does not cede any of its home rule authority granted by the Ohio Constitution. If the Mayor or his or her designee determines that use of a project labor agreement will serve the goals of this Chapter, the Mayor or the designee, with the assistance of the Law Department, shall meet with the appropriate trade unions, in connection with the public bidding and contract awarding process for every proposed City building and other City improvement project in which the engineering estimate for the project exceeds fifty thousand dollars (\$50,000), which is the current state bid limit as of the passage of this Ordinance, to evaluate whether a project labor agreement will advance the City's procurement interest in cost, efficiency and quality and in promoting labor-management stability as well as compliance with applicable legal requirements governing safety and health, equal employment opportunity, labor and employment standards and other matters. The failure of the Mayor, the designee, or the City to comply with this Chapter shall not cause a contract procured hereunder to be invalid and shall not create a private cause of action by any bidder. If the Mayor or the designee determines that

use of a project labor agreement will serve the goals set forth in this Chapter, the Mayor or the designee shall negotiate a project labor agreement with the appropriate trade unions. The City shall not thereafter enter into any contract with the successful bidder for the construction of any such City building or other improvement unless the contract contains a provision requiring the successful bidder and all of his contractors and subcontractors to comply with and adhere to the provisions of the negotiated project labor agreement. The bidding documents for each such City building or other improvement project shall contain a written provision requiring the successful bidder to comply with and adhere to all of the provisions of any project labor agreement negotiated by the Mayor or the designee for the project. If the Mayor or the designee, with respect to any proposed City building or other improvement project with an engineer estimate in excess of fifty thousand dollars (\$50,000), determines that a project labor agreement will not serve the goals set forth in this Chapter, Council expressly reserves the right to override the Mayor or his designee by simple majority vote.

(f) If any portion of this Chapter is found to conflict with Ohio law that supersedes such portion under Ohio law by a court with competent jurisdiction, that portion shall not apply, but the remainder of this Chapter shall remain in full force and effect.

(g) In evaluating any bid or contract or the award of the same, the City reserves the right to waive any or all of the provisions and requirements of this Chapter by Ordinance where it determines that such provisions or requirements will be detrimental to the public's health, safety and welfare or the city's financial welfare."

SECTION 2. All Ordinances or parts thereof in conflict with the provisions of this Ordinance be, and they are hereby repealed as of the effective date of this Ordinance.

SECTION 3. The actions of this Council concerning and relating to the passage of this legislation were conducted in lawful meetings of this Council and that all deliberations of this Council and any of its committees that resulted in such formal action were in compliance with all legal requirements including Chapter 107 of the Codified Ordinances of the City of Willoughby Hills.

SECTION 4. This Ordinance constitutes an emergency measure in that the same provides for the immediate preservation of the public peace, heath, safety and welfare of the inhabitants of the City of Willoughby Hills insofar as it provides for the usual daily operation of the Finance Department and to immediately allow for a checks and balance system to be implemented; wherefore this Ordinance shall be in full force and effect from and after its adoption and approval by the Mayor.

PASSED: September 14, 2017

Nancy E. Fellows
Nancy E. Fellows
President of Council

Submitted to the Mayor for his approval on this 18th day of September, 2017

Approved by the Mayor
September 18, 2017

ATTEST:
Victoria Ann Savage
Victoria Ann Savage
Clerk of Council

Robert M. Weger
Robert M. Weger
Mayor