



Legislation Details (With Text)

File #: 23-0333 **Version:** 1
Type: Ordinance **Status:** Passed
File created: 3/13/2023 **In control:** City Council
On agenda: 3/21/2023 **Final action:** 3/21/2023
Title: Conduct the first reading of the ordinance amending Section 1-9B of the Naperville Municipal Code to modify the City's purchasing policies and guidelines to incorporate changes pertaining to responsible bidders

Sponsors:

Indexes:

Code sections:

Attachments: 1. Sample RBO, 2. Ordinance - Procurement Code - RBO

Date	Ver.	Action By	Action	Result
3/21/2023	1	City Council	waived the first reading and passed	Pass

CITY COUNCIL AGENDA ITEM

ACTION REQUESTED:

Conduct the first reading of the ordinance amending Section 1-9B of the Naperville Municipal Code to modify the City's purchasing policies and guidelines to incorporate changes pertaining to responsible bidders

DEPARTMENT: Finance Department

SUBMITTED BY: Rachel Mayer, Finance Director

BOARD/COMMISSION REVIEW:

N/A

BACKGROUND:

In May 2022, City Council requested information from staff about the possibility of enacting a Responsible Bidder Ordinance (RBO) for the City. A sample ordinance and information were provided to Council in September 2022; a vote to draft an RBO for Naperville based on the sample ordinance failed in a 4-4 tie vote.

During a subsequent discussion in the fall of 2022, Council directed staff to receive input from the Financial Advisory Board (FAB); staff intended to discuss this topic with FAB in April 2023. In February 2023, Council voted 6-3 to have staff bring back the sample RBO for the first reading at the second Council meeting in March (March 21).

DISCUSSION:

At its most basic definition, an RBO is a local policy that establishes objective criteria and verifiable standards for contractors bidding on public infrastructure projects. Put another way, the goal of an

RBO is typically to make public construction projects safer and ensure fair payment and proper training of the awarded contractors' employees. Naperville's Procurement Code (Title 1, Chapter 9, Article B - Purchasing Policies and Guidelines) has similar goals.

To achieve this goal, numerous criteria are part of an RBO, ranging from more straightforward means, such as insurance and references, to more stringent requirements, such as participation in US Department of Labor apprenticeship programs. The attached sample ordinance from the Village of Lisle is the same one brought before Council in September 2022 and includes the State of Illinois requirement for RBOs that requires bidding contractors for publicly funded projects to be part of the US Department of Labor approved apprenticeship programs.

Proponents and opponents of RBOs note numerous benefits and drawbacks to these ordinances. On the one hand, proponents find RBOs the best way to find bidders that can ensure a higher quality level of work, thanks in part to formal apprenticeship requirements that can be completed while being efficient, cost-effective, and safe. Some also cite RBOs as ensuring municipalities hire the most qualified bidders and consider more than price when evaluating bid responses. On the other hand, opponents often cite the more stringent requirements in an RBO as limiting the pool of potential bidders, especially smaller firms with fewer resources to participate not only in apprenticeship programs but also in meeting the graduation guidelines, thus limiting work to union bidders. Additional considerations include the ability of local bidders not to meet requirements, thereby losing out on opportunities to support local economic efforts, as well as the potential for legal challenges by bidders over the definition of what constitutes a responsible bidder.

Rather than looking at the overall pros and cons of RBOs, staff is presenting information to Council as it relates to how an RBO would directly impact Naperville's ability to contract for and achieve its various public capital projects, which impact all of the City's operational departments and, ultimately, its service levels.

Staff Analysis: Current Procurement Code and Sample RBO

Naperville's current Procurement Code already includes most provisions outlined in the sample RBO. These similarities are summarized in the table below.

Sample RBO Provision	Does Naperville's Procurement Code include this provision already?
Compliance with state and local employment laws	Yes
Proof of insurance	Yes
Compliance with the Prevailing Wage Act	Yes
Disclosure of subcontractors	Yes
Participation in US Dept. of Labor apprenticeship training programs for primary and subcontractors	No
Evidence of graduation from a US Dept. of Labor apprenticeship training program of at least 5 apprentices in each of the applicable construction crafts over the past 5 years the bidder will perform on a given project	No

References	Yes
------------	-----

Staff review of additional RBOs, including from the City of Joliet, found that most requirements are already met, albeit in slightly different ways under Naperville's Procurement Code, save for apprenticeship. However, for the two provisions not included, there are potential impacts on the City's procurement process and ability to deliver capital projects should Council direct staff to expand the already codified requirements related to procurements to include the apprenticeship program. These include:

- **Administrative challenges and additional resource needs:** Current workforce challenges have made staffing the City's Procurement Team challenging. Currently, only three of the five positions on the Procurement Team are filled, with these three employees responsible for over \$106 million in construction bids for 2023 alone. These staffing challenges have been amplified due to the increased capital program needed to re-invest in the City's aging infrastructure. In addition, to ensure compliance with any apprenticeship requirements, staff would need to confirm participation by contractors and subcontractors in the program and graduation. This would require additional training and additional staff. Currently, the City does not capture detailed subcontractor information.
- **Timing constraints:** Public works and construction projects in Illinois are highly weather dependent, with a short timeframe to complete work. The additional time it would take staff to ensure a bidder complies with apprenticeship requirements elongates the procurement process. It could result in a project ultimately not being finished in time and pushed to a subsequent year.
- **Enhancing current construction industry challenges:** The City continues to see supply chain issues and workforce challenges in various industries as the nation moves out of the pandemic. Additional requirements in an already challenging environment may lead to fewer project bidders, negatively impacting project costs.
- **Disconnect with the City's DEI priorities:** Due to the apprenticeship requirement, certain businesses with limited resources could not bid on City construction projects. This can include small, local, family-owned, or minority businesses. The City's Procurement Code requires that the Chief Procurement Officer establish and maintain programs to support and enhance opportunities for local businesses to participate in the bid process. In addition, Naperville's reaffirmed commitment to diversity, equity, and inclusion can be seen as incompatible with a policy that may arbitrarily disqualify minority-owned businesses.

The City has not experienced major issues securing qualified vendors to complete projects safely and effectively. Although the two requirements do not mandate that a bidder be union, staff would need to complete several additional steps to verify non-union bidders meet the proposed requirements.

Financial Advisory Board (FAB) Input

Council directed staff to discuss the impacts of an RBO, specifically requirements not already addressed in the City's Procurement Code, with FAB. Staff initially planned to address this topic with FAB in April 2023. Following the February 2023 City Council discussion, staff polled FAB with four

potential meeting dates in the last two weeks of March. Staff is still working to confirm a quorum in order to host a March meeting date.

Due to the challenges mentioned above, staff requests Council put an implementation date of January 1, 2024 for any expanded requirements added to the City's Procurement Code to allow for the appropriate time to address administrative needs before the additional requirements take effect.

City Council Input

Staff recommends a minimum contract/project threshold be identified for the apprenticeship provision to ensure an efficient and effective procurement process can be maintained. Based on current thresholds within the procurement code, the City's budget size and volume of contracts awarded, staff recommends a minimum threshold of five hundred thousand (\$500,000). However, the ordinance as drafted does not include a threshold to be consistent with the sample ordinance.

FISCAL IMPACT:

Based on discussions with other municipalities related to the administrative activities necessary to ensure compliance with the apprenticeship program requirements, staff anticipates that a minimum of one additional full-time staff would need to be added to the Procurement team. The estimated cost of salary and benefits is \$116,600.