

Responsible Contracting Policy



The Background

- Fewer people are entering the trades professions
- Significant construction work is occurring in our area
- AAPS receives minimal number of contractors bidding on many of our projects
- Previous two years, when a union contractor bids on a Sinking Fund project, **86% of the time it is the winning bid**

What is a responsible contractor policy?

- A responsible contractor policy is a method for awarding contracts based on the best value
- Under a responsible contractor policy, bidders submit information based on various “responsibility criteria”

Examples of Responsibility Criteria

- General information about the bidder's company, its principals and history, including state and date of incorporation
- Verification that subcontractors and employees will maintain current applicable required licenses
- Documentation of MIOSHA approved safety training
- Evidence of a worker's compensation Experience Modification Rating (EMR)
- List of similar projects completed, including clients, dollar value, size, and documentation regarding timeliness, extension requests, any fines or penalties imposed, liens filed, claims for extra work and any contract defaults

Examples of Responsibility Criteria

- Identification of subcontractors to be used and for what portions of the project
- Audited financial information current within the past 12 months, including bonding capacity
- Evidence of quality assurance programs used by the contractor
- Evidence as to whether all individual workers on the project will be “W-2” employees or if any will be 1099 “independent contractors”
- Verification of criminal records check on each employee to be used on the construction site
- Description and verification of fitness for duty program, including drug testing, for workers to be used on projects
- References from former clients from the last 5 years

Examples of Responsibility Criteria

- Proof of insurance including workers compensation, public liability, property damage and other applicable insurance
- Evidence of compliance with Fair Labor Standards Act, state and federal prevailing wage requirements, and any citations by OSHA or other regulatory agencies
- Evidence that contractor participates in a bona fide apprenticeship program and if so, ratio of journeypersons to apprentices to be used on the jobsite
- Documentation as to whether the bidder provides employee fringe benefits, including health insurance, retirement and savings plans
- Identification of litigation and arbitrations currently pending and within the past five years, including claims filed against contractor, explanation and resolution

Responsible Contractor Policy

- In summary, Responsible Contracting policies or “best value” policies seek the lowest and ***most responsible*** bid

PA 105

- Public Act 105 of 2015 is known as the **“local government labor regulatory limitation act”** and prohibits most local units of government from adopting or enforcing ordinances or policies which require certain minimum labor standards by employers
- Under PA 105, local units of government are **prohibited from:**
 - **Requiring** that employers pay minimum wages higher than the applicable state or federal minimum wage
 - **Requiring** that employers pay wages and fringe benefits based on prevailing wages and benefits in the locality (local prevailing wage ordinance)
 - **Requiring** that employers provide paid or unpaid leave time
 - **Regulating** the hours and scheduling an employer is required to provide, such as break times and rest periods

PA 105

- Under PA 105, local units of government are also prohibited from:
 - **Requiring** an employer or its employees to participate in any apprenticeship or training program not otherwise required by state or federal law
 - **Requiring** an employer to provide any specific fringe benefit or any other benefit

PA 105

- In short, PA 105 prohibits local units of government from requiring **certain minimum terms of employment** such as participation in apprentice programs, or minimum wages or fringe benefits
- **But PA 105 does not prohibit local units of government from considering these items as one of many factors to be weighed in determining whether a bidder is a responsible contractor and, if so, more or less responsible than other bidders**
- In other words, while local governments cannot **require** a contractor or its employees to participate in an apprentice program, it can consider whether a contractor participates in a bona fide apprentice program and consider such participation favorably in determining the contractor's responsibility status

PA 105

- PA 105 applies to public school districts, charter schools, and community colleges, but **not** to state universities
- While PA 105 prohibits future enactment of prevailing wage or living wage laws, it does not affect those that were already on the books

Conclusion

The Ann Arbor Public Schools already practices many of the elements of a responsible contracting policy and is working to strengthen its procurement policy and regulations to encourage more qualified contractors to bid for work in Ann Arbor Public Schools