

# Responsible Bidder Language: Your Key to Success

Across the United States, public and private construction users are beginning to replace traditional low-bid procurement systems with alternatives that ensure quality and level the playing field.

Some construction users are adopting best-value and quality-contracting bidding procedures, while others

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**The term “responsible bidder” for construction contracts means a bidder who meets all applicable criteria and submits evidence of such compliance.**

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are drafting legislation and regulation requiring contractors to pre-qualify before bidding.

Responsible bidding is the idea that public construction projects paid for by taxpayer money such as schools, libraries and water treatment plants need not automatically be awarded to the lowest bidder. The public body undertaking the project should retain some discretion to award the project to the **lowest responsible bidder**.

**What does this mean?** The term lowest responsible bidder means that the contract may not be awarded to the lowest bidder. However, in the interest of protecting taxpayer dollars, the contract is awarded to the con-

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**Responsible Bidder Ordinances ultimately drive economic development. RBOs increase the likelihood that local contractors will win bids, keeping tax dollars in the community and supporting the local economy through increased consumer demand. RBOs also ensure that infrastructure projects are completed right, on time, the first time at high levels of quality. High-quality infrastructure ensures that schools are safe, bridges are durable and transportation systems are able to efficiently transport goods and people to the global marketplace. Responsible Bidder Ordinances are the best value for taxpayers. (from IllinoisPolicy.org)**

## Responsible Bidder

To be considered a responsible bidder on a construction contract, a bidder must comply with all of the following requirements and must present satisfactory evidence of that compliance to the appropriate construction agency:

(1) The bidder must comply with all applicable laws concerning the bidder's entitlement to conduct business in Illinois.

(2) The bidder must comply with all applicable provisions of the Prevailing Wage Act.

(3) The bidder must comply with Subchapter VI (“Equal Employment Opportunities”) of Chapter 21 of Title 42 of the United States Code (42 USC 2000e and following) and with Federal Executive Order No. 11246 as amended by Executive Order No. 11375.

(4) The bidder must have a valid Federal Employer Identification Number or, if an individual, a valid Social Security Number.

(5) The bidder must have a valid certificate of insurance showing the following coverages: general liability, professional liability, product liability, workers' compensation, completed operations, hazardous occupation, and automobile.

(6) The bidder and all bidder's subcontractors must participate in applicable apprenticeship and training programs approved by and registered with the United States Department of Labor's Bureau of Apprenticeship and Training.

(7) For contracts with the Illinois Power Agency, the Director of the Illinois Power Agency may establish additional requirements for responsible bidders. These additional requirements, if established, shall be set forth together with the other criteria contained in the invitation for bids, and shall appear in the appropriate volume of the Illinois Procurement Bulletin.

(8) The bidder must submit a signed affidavit stating that the bidder will maintain an Illinois office as the primary place of employment for persons employed in the construction authorized by the contract.

Many municipalities are adopting responsible bidder ordinances. These ordinances typically require any contractor wishing to bid on public work to document

- Compliance with prevailing wage laws
  - Provide health insurance for all their employees
  - Affiliated with a state-certified apprenticeship program
  - Classify workers as employees, not independent contractors
  - Pay the appropriate workers compensation insurance for their employees
  - and Comply with local residency and minority participation requirements.
- Contractors who do not pass these pre-qualifications can not bid on public work.

Rather than trying to chase down poor performing contractors after the fact, these ordinances check that all contractors are in compliance and have a good work performance.

### **Critical elements to assess when choosing a contractor...**

- Does the contractor pay a living wage to its employees?
- Does the contractor pay medical benefits for its employees?
- Does the contractor promise a workforce skilled in new materials, procedures and standards?
- Does the contractor bring jobs in safely, on time and within budget with a reputation for honesty and integrity?
- Does the contractor follow all state and federal laws such as the National Labor Relations Act, Federal Labor Standards Act, Prevailing Wage Laws and anti-discrimination laws?

tractor who can show that their work is of the highest quality and in compliance with state law.

**Why have responsible bidder language?** Responsible bidder language protects the municipality from shoddy work and unscrupulous contractors who bid low, bill high and cheat to compete.

More and more public and private construction users are demanding proof of compliance with federal and state laws, researching past performance, and assessing training, skills, productivity and other intangibles. This type of language promotes high quality, highly trained workforce and levels the playing field for all bidders. Moreover, this language does not preclude non-signatory contractors from the bidding process. This language benefits all contractors who are bidding the work.

**Doesn't the Prevailing Wage Clause result in higher construction costs?** The Prevailing Wage Act is an Illinois state law that applies to all public construction projects regardless of whether or not the awarding agency has a Responsible Bidder Ordinance (RBO). The RBO simply reiterates the law, assuring that the contractor hired will follow the law.\*

**Will fewer contractors bid the work if we have an RBO?** Very few contractors will opt to not bid on work covered under an RBO, and the ones that do, are usually not ones you would want on the project anyway. Law abiding contractors that adhere to Illinois contracting laws and desire a fair, competitive bidding landscape will welcome the presence of an RBO.\*

**What type of public bodies can pass RBO's?** Any public taxing body should adopt an RBO, from the State of Illinois, down to the smallest Soil and Water Conservation District.\*

\* - Information obtained from [responsiblebidding.com](http://responsiblebidding.com)