

ORDINANCE 31-2011

AN ORDINANCE ESTABLISHING PROCEDURES TO DETERMINE THE LOWEST AND BEST BID FOR THE CONSTRUCTION OF PUBLIC IMPROVEMENTS IN THE CITY OF MASSILLON, OHIO AND TO ALLOW THE USE OF PROJECT LABOR AGREEMENTS FOR THE CONSTRUCTION OF CERTAIN PUBLIC IMPROVEMENTS IN THE CITY OF MASSILLON, OHIO

WHEREAS, throughout the United States, private and public construction users have regularly utilized and required project labor agreements to establish uniform terms and conditions of employment for contractors and craft construction employees; and, project labor agreements have been shown to provide an effective mechanism for overall construction project staffing, planning and labor stability on job sites; and

WHEREAS, uniformity of terms and conditions and efficient administration of public works is especially needed given the current levels of unemployment generally, and more profoundly in the construction industry; and

WHEREAS, the City has determined that the continued growth and health of the construction industry in the city of Massillon and Stark County is vital to the growth and stability of the general economy of the city of Massillon; and

WHEREAS, project labor agreements are legal under federal and Ohio law, have been successfully utilized on a large number of major public improvement projects throughout the United States, and neither union nor non-union contractors and employees are precluded from competitively bidding or working under project labor agreements; and

WHEREAS, in order to provide for project labor agreements with the East Central Ohio Building and Construction Trades Council, AFL-CIO and its affiliated local unions for construction projects undertaken by the city of Massillon, the enactment of this Ordinance is required;

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MASSILLON, STATE OF OHIO, THAT:

Section 1. This Ordinance, establishing Procedures to Determine the Lowest and Best Bid for the Construction of Public Improvements and to allow for the use of Project Labor Agreements for the Construction of certain public improvements, is hereby enacted and shall read as follows:

CONSTRUCTION CONTRACTS.

(a) Definitions.

For purposes of this chapter, the following definitions shall apply:

- (1) "Public Contract" or "Construction Project" means either of the following:

- (a) Any new construction of any public improvement, the total overall project cost of which is estimated to be more than \$100,000.00 and performed by other than full-time employees of the City who have completed their probationary periods in the classified service. Determination of project cost shall be subject to the biennial increase or decrease provided for by Ohio R.C. 4115.034; or
 - (b) Any construction, reconstruction, improvement, enlargement, renovation, alteration, repair, painting or decorating of any public improvement, which is estimated to be more than \$20,000.00 and performed by other than full-time employees of the City who have completed their probationary periods in the classified service. Determination of project cost shall be subject to the biennial increase or decrease provided for by Ohio R.C. 4115.034.
- (2) "Public improvement" includes all buildings, roads, streets, alleys, sewers, ditches, sewage disposal plants, water works and all other structures or works constructed by the City or by any person or entity, who, pursuant to a contract with the City, constructs any public improvement for the City. A public improvement shall be considered as one project where a review of the nature, scope and objective, as well as the interrelationship of time and purpose of the project, evidences the undertaking of a single public improvement pursuant to Ohio R.C. 4115.033 and O.A.C. 4101:9-4-17.

B. "Local employee" means:

- (1) A person residing within the City of Massillon or Stark County;
- (2) A person working for a contractor or from a pool of labor located within the City of Massillon or Stark County; or
- (3) Due to the specialty nature of the employment to be performed, where a suitable person meeting either subsection (a)(3)A. or B. hereof is not available, a person residing or working within a location as close to Massillon as is available. A "suitable person" means a person who is qualified to perform the work or trainable within a reasonable period of time.

(b) Project Labor Agreements.

- (i) In connection with the public bidding and contract awarding process for every proposed public contract or construction project, the Mayor, or his designee, shall evaluate whether a project labor agreement will advance the City's procurement interest in cost, efficiency, and quality while 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 related matters.

- (ii) If the Mayor, or his designee, determines that a project labor agreement will serve the goals set forth above, the Mayor, or his designee, shall negotiate a project labor agreement with the East Central Ohio Building and Construction Trades Council and its affiliated local unions, or said Council's successor.
- (iii) The bidding documents for each such construction 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 for the project.
- (iv) The City shall not thereafter enter into any contract with the successful bidder for the construction of any such city building unless the contract contains a provision requiring the successful bidder, and all of the bidder's contractors and subcontractors, to comply with and adhere to the provisions of the negotiated project labor agreement.
- (v) If the Mayor, or his designee, with respect to any proposed construction project, determines that a project labor agreement will not serve the goals set forth in subsection (b)(1), the Mayor shall submit a written report to the Clerk of Council that shall state the reasons for concluding that a project labor agreement for the project will not substantially further the purposes of this section.

(c) Bids and Required Bidder Information.

Upon Council approval, the Director of Public Service and/or Director of Public Safety shall advertise and accept bids for a construction project in accordance with the following procedures:

- (i) Contracts shall be bid as follows:
 - A. An aggregate bid from a general contractor; or
 - B. Separate bids for work and materials from multiple prime contractors.
- (ii) The Board of Control shall be responsible for awarding all contracts for construction projects under this Chapter. Bidders for all proposed construction projects shall be required to furnish the following information to the Board of Control:
 - A. The work, supplies and materials covered by the bidder's

bid.

- B. Identification of all work to be subcontracted. All subcontractors are also subject to the approval of the Board of Control based on the criteria contained in this section.
- C. Descriptions of bidder's experience with projects of comparative size, complexity and cost within recent years, demonstrating the bidder's ability and capacity to perform a substantial portion of the project with its own forces.
- D. Documentation from previous similar projects regarding timeliness of performance, quality of work, extension requests, fines and penalties imposed and payments thereof, liens filed, history of claims for extra work, contract defaults, together with explanations of the same.
- E. The number of years the bidder has been actively engaged as a contractor in the construction industry.
- F. The bidder's recent experience record in the construction industry, including the original contract price for each construction job undertaken by the bidder, the amount of any change orders or cost overruns on each job, the reasons for the change orders or cost overruns, and the bidder's record for complying with and meeting completion deadlines on construction projects.
- G. Identification of any projects within the previous five years that the bidder was determined by a public entity not to be a responsible bidder, the reasons given by the public entity, together with an explanation thereof.
- H. Demonstration of financial responsibility to assure that the bidder possesses adequate resources and availability of credit, the means and ability to procure insurance and acceptable performance bonds required for the project and whether any claims have been made against performance bonds secured by the bidder on other construction projects.
- I. Disclosure of any suspension or revocations of any professional license of any director, officer, owner, or managerial employees of the bidder, to the extent that any work to be performed is within the field of such licensed profession.

- J. Disclosure of any and all OSHA violations within the previous three years; as well as all notices of OSHA citations filed against the 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.
- K. 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, gender, or national origin and/or violations of an employee's civil or labor rights or equal employment opportunities.
- L. Disclosure of any litigation (including copies of pleadings) in which the 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.
- M. 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.
- N. Disclosure of violations of the workers compensation law.
- O. Disclosure of any criminal convictions or criminal indictments, involving the bidder, its officers, directors, owners, and/or managers within the past five years.
- P. Disclosure of any violation within the past five years or pending charges concerning federal, state, or municipal environmental and/or health laws, codes, rules and/or regulations.
- Q. Documentation that the bidder provides health insurance and pension benefits to its employees.
- R. The experience and the continuity of the bidder's work force.
- S. The identity of the bidder's permanent work force that will

be employed on the public contract, to include the number of employees (or contract labor) to be assigned to the contract, their city and state of residence, and their job descriptions or trade specialties.

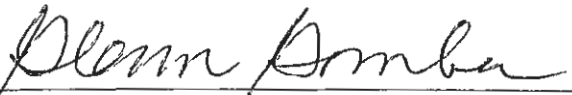
- T. The identity of any temporary work force that will be employed on the public contract, to include the number of employees (or contract labor) to be assigned to the contract, their city and state of residence, and their job descriptions or trade specialties.
 - U. Whether the bidder's work force is drawn mainly from local employees. The number of local employees, as defined in paragraph (a)(3), and their job descriptions or trade specialties that the bidder will employ on the public contract.
 - V. When a bidder claims that non-local employees (or non-local contract labor) are to be assigned to the public contract instead of local employees, the reasons therefor.
 - W. When a bidder claims that local employees are not intended to be used by the bidder on the public contract because they are not available, qualified or trainable within a reasonable period of time, the reasons therefor.
 - X. Whether the bidder participates in a bona fide apprenticeship program that is approved by the Ohio State Apprenticeship Council and the United States Department of Labor.
 - Y. Whether the bidder has adopted and implemented a comprehensive drug and alcohol testing program for its employees.
 - Z. Whether the bidder's employees are OSHA-10 and/or OSHA-30 certified.
- (d) Each factor enumerated in subsection (c)(2), standing alone, shall not be considered as determinative of the lowest and best bid. The Board of Control shall have complete discretion in assessing the level of importance to be placed upon any one or more of the factors enumerated and in determining the lowest and best bid and in awarding the construction contract.
- (e) All bid invitations and specifications for construction, repair and

renovation work shall advise prospective bidders of all of the factors that will be taken into consideration by the Board of Control in determining whether a bid is not only the "lowest" but the "best" bid. Bid specifications shall contain provisions conforming to this Chapter, including a form or forms to enable a bidder to provide evidence to the Board of Control of the bidder's compliance with, adherence to, or satisfaction of, the various factors that shall be considered by the Board of Control in determining the lowest and best bid.

Section 4. All ordinances or parts of ordinances in conflict with this ordinance are repealed.

Section 5. This ordinance shall take effect from and after the earliest period allowed by law.

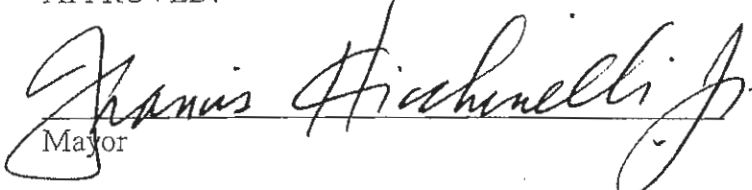
PASSED:




President of Council

ATTEST:

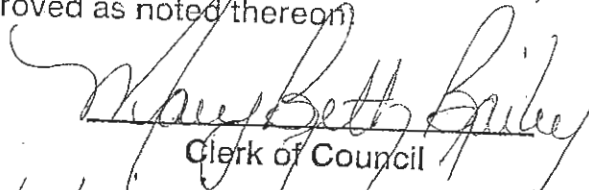
APPROVED:



Mayor


Clerk of Council

I hereby certify that the foregoing ordinance is a true copy of the original, as passed by the Council of the City of Massillon, Ohio, and approved as noted thereon.



Clerk of Council

Date 4/4/11