



SNOHOMISH COUNTY COUNCIL
SNOHOMISH COUNTY, WASHINGTON

ORDINANCE NO. 10-054

RELATING TO PUBLIC WORKS BIDS AND CONTRACTS; ESTABLISHING
MANDATORY AND PERMITTING SUPPLEMENTAL BIDDER
RESPONSIBILITY CRITERIA; AMENDING CHAPTER 3.04 SCC

WHEREAS, by Section 2, Chapter 133, Laws of 2007, the Washington legislature added a new section to Chapter 39.04 RCW (subsequently codified as RCW 39.04.350) establishing mandatory bidder responsibility criteria applicable to all public works projects and authorizing municipalities to develop optional supplemental bidder responsibility criteria applicable to particular public works projects; and

WHEREAS, the amendments to Chapter 39.04 RCW provide a process by which municipalities are to implement those supplemental bidder responsibility criteria if they choose to apply them; and

WHEREAS, the County's use of supplemental bidder responsibility criteria on particular public works projects will permit it to establish minimum qualifications for bidders that will secure, for the benefit of the County and its taxpayers, the performance of its public works by responsible contractors offering the lowest bid;

NOW, THEREFORE, BE IT ORDAINED:

Section 1. Snohomish County Code Section 3.04.130, last amended by Ordinance No. 92-085 on August 12, 1992, is amended to read:

3.04.130 Procedures. Except where otherwise exempt or provided for under express provisions of this chapter, all solicitations, advertising, opening, consideration, and awards of bids and other related functions on any purchase, lease, or contract to purchase or lease personal property, public work, labor and materials, or services shall be made in accordance with the following provisions:

(1) Requisitions and specifications shall be prepared by the interested department or with assistance of the division at the request of such department. All requisitions must be signed by a department head or his authorized representative as indicated on the authorized signature form on file in the division. The call for bids shall then be prepared by the division and filed in the division for public inspection. The package for bidders may either contain detailed plans and specifications or may require the bidder to submit detailed plans and specifications prepared by him in response to performance and general requirements submitted by the county. Plans and

1 specifications will be made available for purchase at the office of the department head
2 preparing the plans and specifications or the division.
3

4 (2) An advertisement stating the date and hour after which bids will not be
5 received, the scheduled time for opening bids, the character of the work to be done, or
6 material, equipment, or services to be furnished, that the specifications therefor may be
7 seen at the office of the division, and the location where plans and specifications may
8 be obtained shall be published in the county official newspaper; PROVIDED, That
9 advertisements for public work contracts for construction, alteration, repair, or
10 improvement of public facilities shall be additionally published in a legal newspaper of
11 general circulation in or as near as possible ((as)) to that part of the county in which said
12 work is to be done; and PROVIDED FURTHER, That if the county official newspaper is
13 a newspaper of general circulation covering at least forty percent of the residences of
14 that part of the county in which such public works are to be done publication of an
15 advertisement in the county official newspaper only shall be sufficient. Such
16 advertisements for public work shall be published at least once, at least ten (10) days
17 prior to the last date upon which bids will be received. Additional advertisements, as
18 may be deemed necessary, may be made. Bid openings will not normally be scheduled
19 in less than ten (10) days from the date of the last advertising notice unless specifically
20 authorized by the manager.
21

22 (3) Bids shall be made in writing on forms included in the call for bids and signed
23 by the party or parties bidding thereon. The bids shall indicate the status of the bidder
24 and the position of the party signing the bid in its behalf. If the bid is made by a joint
25 venture, the bid shall include the names of all joint venturers and shall be signed by
26 each joint venturer or its authorized agent. Any bid may be rejected if it does not
27 include all information required, contains any qualification of any bid or change in the
28 proposal, is not properly signed or is otherwise incomplete, or in the opinion of the
29 awarding authority is irregular in any respect. An unsigned bid shall not be considered
30 for acceptance unless other related bid documents from the bidder are signed by an
31 authorized person which indicates that the bid was tendered in good faith as an entire
32 bid proposal.
33

34 (4) All bids shall be sealed with the bid number and opening date on the outer
35 cover of the bid and mailed or delivered to the division or such other location as
36 designated in the call for bids prior to the time specified for the closing of bids in the call.
37 Upon receipt each bid shall be time-stamped and initialed by an employee of the
38 division or other authorized county employee. No bid shall be accepted after the time
39 and date specified in the call for bids, and there shall be no exceptions to this
40 requirement. After the expiration of the time for the receipt of bid proposals, those
41 proposals which have been timely filed shall be delivered by the division to the bid
42 board for opening. Bid openings shall be held immediately after the expiration of the
43 time permitted for receipt of bids unless continued as provided in this section.
44

1 (5) The bid board shall consist of the county executive or his designee, the
2 manager or his designee and a bid opening official designated by the manager. The
3 chairman of the county council, or his designee, may also serve as a board member
4 when he elects to attend. The board shall be present at the opening of all bids and
5 exercise surveillance and control over the bid openings. Sealed bids delivered to the
6 bid board shall be publicly opened by a representative of the division after the time
7 specified; PROVIDED, That the opening of bids may be continued by the county
8 executive, for cause, for a period not to exceed 15 days, and PROVIDED Further, that
9 notice of such continuance shall be given orally at the time and place set for the
10 opening of bids and then in writing to all bidders who have submitted bids. Following
11 the opening of a bid, the total amount of the bid and such breakdown of the bid as is
12 deemed appropriate by the bid board shall immediately be read aloud by a
13 representative of the division or a member of the bid board. The division shall check the
14 bids for mathematical accuracy and then prepare a written summary of all bids showing
15 the amount bid on each item contained in the bid and all mathematical corrections. Unit
16 prices will be the basis for making awards of bids. However, the total of extensions,
17 corrected as needed, will be used for the purpose of determining the amounts of the bid
18 and the contractor's performance bond.

19
20 (6) No bid shall be considered for a public work project unless accompanied by a
21 bid deposit in the form of a surety bond, cash, postal money order, cashier's check, or
22 certified check payable to the county treasurer in an amount equal to five percent of the
23 amount bid. A bid deposit may be required by the manager or the director on bids for
24 contracts other than public work and may be specified as a dollar figure rather than a
25 percentage.

26
27 As soon as bid prices have been compared, the manager will return the bid
28 deposits accompanying such of the bids as in his judgment would not be considered in
29 making the award. All other bid deposits may be held until the contract and
30 performance bond, if required, have been executed, after which all bid deposits, except
31 such as have been forfeited, will be returned to the bidders submitting them and except
32 that the bid deposit of the successful bidder may be held for a longer period if provided
33 for in the invitation to bid or specifications.

34
35 (7) The rights to reject any or all bids before opening or any or all bids or portions
36 of a bid or bids after opening, republish the call for bids, revise or cancel the work, or do
37 the work by day labor in conformance with state law or negotiate as provided in
38 ~~((section))~~ SCC 3.04.170, are reserved to the county representatives making the award
39 if in their judgment the best interest of the county is served thereby.

40
41 (8) If awarded, the contract shall be awarded to the lowest responsible bidder
42 meeting the bid requirements as determined by the awarding authority. For all county
43 contracts for public work (as those terms are defined in RCW 39.04.010(2) and RCW
44 39.04.010(4)), the bidder shall meet the mandatory bidder responsibility criteria set forth
45 in SCC 3.04.131 and, if required by the invitation to bid or bidding documents, the

1 supplemental bidder responsibility criteria established for the contract pursuant to SCC
2 3.04.132. In determining the responsibility of a bidder the awarding authority may also
3 consider the quality and nature of the material and/or services to be supplied, their
4 conformity or lack of conformity with specifications, their suitability to meet the
5 requirements of the county as evidenced by the specifications, compatibility with other
6 equipment, procedures or systems of the county, time and other terms of delivery, ~~((the~~
7 ~~ability, capacity and skill of the bidder to perform, the character, integrity, reputation,~~
8 ~~judgment, experience and efficiency of the bidder, the financial situation of the bidder,))~~
9 equipment available to the bidder, location and adequacy of repair facilities of the
10 bidder, subcontractors to be utilized, whether the bidder can perform the contract within
11 the time specified, ~~((the performance of the bidder on previous contracts or services,))~~
12 and such other information or factors as may affect the bidder's ability to perform the
13 project in accord with the specifications. If the bid is based upon plans and
14 specifications submitted by the bidder, the overall capability of such plans and
15 specifications to meet performance requirements of the county as stated in the call for
16 bids, may also be considered. Prior to award of public work construction contracts
17 involving non-county agencies, approvals required from such agencies shall be secured
18 by the originating department.

19
20 (9) Decisions with respect to award disposition shall be made within thirty (30)
21 days of the time set for opening of the bids unless continued to a later date by the
22 authority charged with the responsibility of making the award. No continuance shall be
23 made for more than thirty (30) additional days except with the consent of the bidders
24 who are being considered for the award.

25
26 (10) The division shall notify the successful bidder of the award in writing and
27 deliver or mail to him appropriate contract and other forms. Signed contract forms,
28 together with such performance bond, certificate of insurance, and other documents as
29 are required of the successful bidder shall be returned to the division within fifteen (15)
30 days of delivery or mailing of the contract forms unless such time is extended by the
31 awarding authority. If the successful bidder fails to return the executed contract and a
32 satisfactory performance bond within the time allowed, his bid deposit shall be forfeited
33 to the county, and the contract may be awarded to the next lowest responsible bidder.
34 Notice and award of contract form shall then be forwarded to the successful bidder, and
35 if he shall not respond within the times as indicated above, his deposit shall be forfeited,
36 and in a like manner the contract may be awarded to subsequent responsible bidders
37 until the contract, bond and other documents are executed and returned by a
38 responsible bidder or all bid proposals are exhausted through this process.

39
40 (11) If the county executive elects to trade in used equipment on the purchase of
41 new equipment, the call for bids on the new equipment shall include a notice that the
42 county has for sale or trade-in used equipment of a specified type and description which
43 will be sold or traded in on the same day and hour that the bids on the new equipment
44 are awarded. Any bidder on the new equipment may include in his offer to sell, an offer
45 to accept all or part of the used equipment as a part payment of the new equipment

1 purchase price, setting forth the amount of such allowance as required by the
2 specifications.

3
4 In determining the lowest responsible bid on the new equipment, the awarding
5 authority shall consider the net cost to the county of such new equipment after trade-in
6 allowances have been deducted. The awarding authority as provided in SCC 3.04.140
7 may accept the new equipment bid of any bidder without trading in the used equipment
8 but may not require any such bidder to purchase the used equipment without awarding
9 the bidder the new equipment contract. Nothing in this section shall bar anyone from
10 making an offer for the purchase of the used equipment independent of a bid on the
11 new equipment and the awarding authority shall consider such offers in relation to the
12 trade-in allowances offered to determine the net best sale and purchase combination for
13 the county. Delivery of the used equipment to the successful bidder may, at the
14 county's option, be delayed until receipt of the new equipment.

15
16 (12) The county may call for bids for a fixed number of items sought to be
17 purchased "or more", in which case the vendor shall be deemed to have irrevocably
18 offered to supply such additional items above the number specified as the county at its
19 option may order from the supplier for a period of one year from the date of award, or
20 for such other period as is stated in the call for bids or a bidder's response. The bidder
21 may indicate a maximum number of items that can be obtained at the bid price over and
22 above the quantity cited on the bid form. This subsection shall not require that the
23 county purchase any particular number above the number stated nor that the county
24 satisfy its needs for the item by purchases above the number stated. Reference to this
25 section shall be included in all calls for bids on an "or more" basis.

26
27 (13) Any department preparing specifications and bid packages((;)) shall provide
28 its proposed bid package to the division for review and approval prior to publication.
29 Excluded from this approval requirement are bid packages requiring approval from other
30 regulatory agencies.

31
32 (14) When two or more low bids are equal, considering all factors, the award shall
33 be determined through a drawing by lot, which shall be witnessed by at least two
34 members of the bid board other than the person supervising the drawing. The full
35 names and addresses of the witnesses to such drawing shall be included on or attached
36 to the abstract of bids.

37
38 (15) The manager may request clarification of any ambiguous entry in a bid prior
39 to the award of a contract. Following such clarification, the manager, with the
40 concurrence of the prosecuting attorney, may recommend rejection of the bid if it is still
41 unclear or ambiguous. Any request for withdrawal of a bid following opening because of
42 a claimed mistake in the bid shall be granted by the manager only upon approval by the
43 prosecuting attorney.

1 (16) If the invitation for bids so provides, a bid is not rendered non-responsive if
2 the bidder specifies that the award will be accepted only on an all, or a specified
3 group((-)) of fewer than all ((less)), items included in the invitation.
4

5 Section 2. A new section is added to Chapter 3.04 of the Snohomish County
6 Code to read:
7

8 **3.04.131 Mandatory Bidder Responsibility Criteria.**
9

10 (1) The bidder responsibility criteria set forth in this section shall be used by the
11 interested department, in consultation with the division, to establish the minimum
12 requirements for all contractors and subcontractors bidding on county contracts for
13 public work (as those terms are defined in RCW 39.04.010(2) and RCW 39.04.010(4)).
14 The bid documents shall set forth the documentation to be submitted by bidders to
15 demonstrate their compliance with the mandatory bidder responsibility criteria.
16

17 (2) To be considered a responsible bidder and qualified to be awarded a county
18 contract for public work, the bidder must:

19 (a) At the time of bid submittal, have a certificate of registration in
20 compliance with chapter 18.27 RCW;

21 (b) Have a current state unified business identifier (UBI) number;

22 (c) If applicable, have:

23 (i) industrial insurance coverage for the bidder's employees working
24 in Washington as required in Title 51 RCW;

25 (ii) a state employment security department number as required in
26 Title 50 RCW; and

27 (iii) a state excise tax registration number as required in Title 82 RCW;

28 (d) Not be disqualified from bidding on any public works contract under
29 RCW 39.06.010 or RCW 39.12.065(3); and

30 (e) Until December 31, ((2012)) 2013, not have violated section ((2)) 1,
31 chapter 276, Laws of 2010, more than one time as determined by the state department
32 of labor and industries.
33

34 (3) A bidder must verify mandatory responsibility criteria for each first tier
35 subcontractor, and a subcontractor of any tier that hires other subcontractors must
36 verify mandatory responsibility criteria for each of its subcontractors. Verification shall
37 include that each subcontractor, at the time of subcontract execution, meets the
38 responsibility criteria listed in RCW 39.04.350(1) and SCC 3.04.131(2) and possesses
39 an electrical contractor license, if required by chapter 19.28 RCW, or an elevator
40 contractor license, if required by chapter 70.87 RCW. This verification requirement, as
41 well as the mandatory responsibility criteria, must be included in every public works
42 contract and subcontract of every tier.
43

44 Section 3. A new section is added to Chapter 3.04 of the Snohomish County
45 Code to read:

ORDINANCE NO. 10-254
RELATING TO PUBLIC WORKS BIDS AND CONTRACTS;
ESTABLISHING MANDATORY AND PERMITTING SUPPLEMENTAL
BIDDER RESPONSIBILITY CRITERIA; ETC. – 6

1
2 **3.04.132 Supplemental Bidder Responsibility Criteria.**
3

4 (1) In addition to the mandatory bidder responsibility criteria set forth in SCC
5 3.04.131, the interested department, in consultation with the division, may adopt in
6 connection with a particular project relevant supplemental bidder responsibility criteria
7 which the bidder must meet. Those supplemental criteria, including the basis for
8 evaluation and the deadlines for requesting modification of the supplemental bidder
9 responsibility criteria and for appealing a determination that a low bidder is not
10 responsible under the supplemental bidder responsibility criteria, shall be provided in
11 the invitation to bid or bidding documents.
12

13 (2) As relevant to a particular project, supplemental bidder responsibility criteria
14 may be included to require that:

15 (a) The bidder shall not owe delinquent taxes to the Washington state
16 department of revenue without a payment plan approved by the department of
17 revenue;

18 (b) The bidder shall not currently be debarred or suspended by the federal
19 government;

20 (c) The bidder shall have complied with minority and women's business
21 enterprises, disadvantaged business enterprises, or other similar utilization
22 requirements or goals on federally-funded public works projects with such
23 requirements completed by the bidder within three years of the bid submittal date,
24 unless there are extenuating circumstances acceptable to the county;

25 (d) The bidder shall not be listed as an ineligible contractor on the federal
26 GSA Excluded Parties List System set forth by 31 U.S.C § 6101 and Executive
27 Order 13496;

28 (e) If bidding on a public works project subject to the apprenticeship
29 utilization requirements in chapter 3.05 SCC, the bidder:

30 (i) shall not have been found out of compliance with apprenticeship
31 requirements of chapter 3.05 SCC unless otherwise excepted or waived in
32 writing by the executive or the executive's designee pursuant to SCC
33 3.05.040 for a one-year period immediately preceding the date of the bid
34 submittal deadline; and

35 (ii) shall have complied with apprenticeship utilization goals on public
36 works projects having such requirements that were completed by the bidder
37 within a three-year period immediately preceding the date of the bid submittal
38 deadline, unless there are extenuating circumstances acceptable to the
39 county;

40 (f) The bidder shall not have been convicted of a crime involving bidding on
41 a public works contract within five years from the bid submittal deadline;

42 (g) The bidder's standard subcontract form shall include the subcontractor
43 responsibility language required by RCW 39.06.020, and the bidder shall have an
44 established procedure which it utilizes to validate the responsibility of each of its
45 subcontractors. The bidder's subcontract form shall also include a requirement

1 that each of its subcontractors shall have and document a similar procedure to
2 determine whether the sub-tier subcontractors with which it contracts are also
3 “responsible” subcontractors as defined by RCW 39.06.020;

4 (h) The bidder shall not have a record of excessive claims filed against the
5 retainage or payment bonds for public works projects during the previous three
6 years that demonstrate a lack of effective management by the bidder of making
7 timely and appropriate payments to its subcontractors, suppliers, and workers,
8 unless there are extenuating circumstances acceptable to the county;

9 (i) The bidder shall have successfully completed projects of a similar size
10 and scope as required by the contract documents for the project. In evaluating
11 whether projects were successfully completed, the county may check owner
12 references for previous projects and evaluate the owner’s assessment of bidder
13 performance, including but not limited to quality control, safety record, timeliness of
14 performance, use of skilled personnel, management of subcontractors, availability
15 of and use of appropriate equipment, compliance with contract documents, and
16 management of submittals process, change orders and close-out;

17 (j) The bidder shall not have had any public works contract terminated for
18 cause by a government agency during the five year period immediately preceding
19 the bid submittal deadline for the project, unless there are extenuating
20 circumstances acceptable to the county;

21 (k) The bidder shall not have judgments entered by a court of law against
22 the bidder within five years of the bid submittal date that demonstrate a pattern of
23 failing to meet the terms of contracts, unless there are extenuating circumstances
24 acceptable to the county; and

25 (l) The bidder shall not have a documented pattern of prevailing wage
26 complaints filed against it within five years of the bid submittal date that
27 demonstrates a failure to pay workers prevailing wages, unless there are
28 extenuating circumstances acceptable to the county.

29
30 (3) Supplemental bidder responsibility criteria may include any other criteria
31 determined by the county to be relevant to the particular project being bid, including but
32 not limited to the ability, capacity and skill of the bidder to perform, the experience and
33 efficiency of the bidder, the financial situation of the bidder, and the performance of the
34 bidder on previous contracts or services.

35
36 (4) In a timely manner before the bid submittal deadline, a potential bidder may
37 request that the county modify the supplemental bidder responsibility criteria. The
38 county must evaluate the information submitted by the potential bidder and respond
39 before the bid submittal deadline. If the evaluation results in a change of the criteria,
40 the county must publish an addendum to the bidding documents identifying the modified
41 criteria.

42
43 (5) If the bidder fails to supply information requested concerning responsibility
44 within the time and manner specified in the bid documents, the county may base its

1 determination of responsibility upon any available information related to the
2 supplemental criteria or may find the bidder not responsible.

3
4 (6) If the county determines a bidder to be not responsible, the county must
5 provide, in writing, the reasons for the determination. The bidder may appeal the
6 determination within the time period specified in the bidding documents by presenting
7 additional information to the county. The county must consider the additional
8 information before issuing its final determination. If the final determination affirms that
9 the bidder is not responsible, the county may not execute a contract with any other
10 bidder until two business days after the bidder determined to be not responsible has
11 received the final determination.

12
13 (7) The invitation to bid or bidding documents shall specify the times, manner and
14 means of communications, deadlines and determinations required by this section.

15
16 PASSED this 4th day of Aug., 2010.

17
18 SNOHOMISH COUNTY COUNCIL
19 Snohomish County, Washington

20
21 *Dave Gustaf*
22 Chairperson

23
24 ATTEST:

25 *Barbara Sitorasti*
26 Clerk of the Council, Asst.

- 27
28
29 APPROVED
30 EMERGENCY
31 VETOED

32 DATE: 8-20-2010

33
34 *Aaron Reardon*
35 County Executive

36 ATTEST:

37 *Jan H. Ostergaard*
38

39
40 **AARON REARDON**
41 County Executive

42 Approved as to form only:

43 *Jan H. Ostergaard 6/10/10*
Deputy Prosecuting Attorney

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