



Responsible Contractor Ordinance Administrative Rules

Effective: 12/8/2022

Purpose: The purpose of these rules is to establish the rules and procedures for the Responsible Contractor ordinance.

General Statement

Pursuant to the Royal Oak Responsible Contractor Ordinance section 5a the city commission has approved these administrative rules.

The Royal Oak City Commission passed the Responsible Contractor Ordinance on November 8, 2021, to allow the city to use a best overall value to award contracts for projects. The ordinance will go into effect on November 22, 2021. The Finance Department will oversee and administer this ordinance with the partnership of other departments who can provide specific knowledge related to individual projects.

Definitions

Per the ordinance, below are definitions related to the ordinance and administrative rules.

- A. **Construction Project:** Any contract of more than \$250,000 awarded for the construction, alteration, demolition, or repair of any public building or public work of the city of Royal Oak. The labor and material necessary, for the construction, renovation, repair, or improvements to real property, except repair in emergency situations, which requires solicited bids.
- B. **Bidder:** means any person or entity that applies for any contract whether or not the application process is through an invitation for bid, request for proposal, request for qualifications, or other procurement process.
- C. **Responsible Bidder:** A bidder for a construction project that has satisfied the pre-qualifying criteria designated in the bid and as provided in these guidelines.
- D. **Best Value:** A request for proposal procurement method that emphasizes both value and price. Best value is a method that is utilized in the evaluation process of the proposals received and reviewed. Best value for construction will be determined based on a 100 percent distribution looking at construction that includes but is not limited to the

following: quality of workmanship, quality of materials, references, experience (including experience on past city or public works projects), proposed schedule, safety, time, and cost.

- E. Contractor: any person, firm, corporation, partnership, association, or any combination thereof, which enters into a contract with any awarding authority of the city of Royal Oak and includes a recipient of city financial assistance and a public lessee or licensee.
- F. Subcontractor: any person not an employee who enters into a contract with a contractor to assist the contractor in performing a contract, including a contractor or subcontractor of a public lessee or licensee or sublessee or sublicensee, to perform or assist in performing services on the leased or licensed premises. The term subcontractor does not include vendors or suppliers to city purchasing contractors.
- G. Bid: means any application submitted by a bidder in response to an Invitation for bid, request for proposal or request for qualifications, or other procurement process.

Qualifying projects

Any project equal to or over \$250,000 awarded for the construction, alteration, demolition, or repair for any public building or work completed on behalf of the city using public funds.

This ordinance does not apply to:

- Projects costing less than \$250,000.
- Projects which use non-city funding sources which have restrictions contrary to this ordinance.
- Subcontractors completing less than \$50,000 of the total budget.

The engineer's estimate shall be used to determine if projects are above or below the \$250,000 threshold. If the estimate is less than \$250,000 than bidders would not need to include the documentation under this ordinance to comply. This estimate will be provided to the Finance Department prior to the start of the bidding process. In the bid documents it will clearly state if a project is required to comply with this ordinance or not.

In the event that a grant or other funding source requires additional information, or other criteria those may be considered in addition to or in lieu of provisions of this ordinance.

Documentation Required

Contractors and subcontractors should complete Forms A and B with the most current information as it relates to each specific project. These forms will be located on the Finance Department website.

- Form A is intended to cover information as it pertains to the contractor. This

- form may stay the same or change slightly between projects.
- Form B is intended to cover information related to the specific project itself. This form is anticipated to change with each project, but some information may be similar.

Missing Information

Failure to include all documentation required for both contractors and subcontractors will result in the bid not being reviewed. This does not result in the contractor being placed on the non-responsible contractor process.

If a contractor does not have information related to one of the criteria, then they should submit a statement and be aware that their bid may be less competitive than other bids and not selected for that reason.

Multiple Projects

Contractors may bid on multiple projects at the same time. It is understood that Form A and Form B may change between projects and therefore more than one version of the form may be considered valid at the same time for different projects.

Changes to Required Documents

If changes occur at any phase of the project including bidding and while the work is performed, the contractor shall have 30 calendar days to update the appropriate form if the change would not have an effect on their status as a responsible contractor. If the change would affect their status as a responsible contractor or involves a non-responsible subcontractor, then the contractor shall obtain city approval prior to making any such change.

Subcontractors

Contractors are required to use a pre-qualified subcontractor. The city understands that contractors may or may not have selected subcontractors at the time of bidding. Contractors should be as specific as possible when completing Forms A and B and the bidding materials.

Although subcontractors are completing a portion of the project, they are required to complete the same pre-qualification paperwork and the same rules apply to both contractors and subcontractors as outlined in this document. Subcontractors may bid as contractors in the future with pre-qualified status.

Subcontractor List

Contractors may identify multiple potential subcontractors for the city to review as a part of their bid. The contractor should be as specific as possible regarding the subcontractors at the time of the original bid. Each subcontractor will be reviewed, and pre-qualified as a responsible contractor.

If the bid is selected any of the subcontractors originally submitted and pre-qualified as a responsible contractor may be used. The contractor would be required to provide notification to the city within 30 days of when the decision was made to use a specific subcontractor.

If the contractor would like to use a subcontractor that was not listed on the original bid, that subcontractor will need to be pre-qualified and approved. The contractor shall provide written notice to the city that they would like to use a subcontractor that needs to be pre-qualified and submit Forms A and B for the subcontractor. City staff will have no less than 14 days to review the materials and provide written notice that the city accepts the new subcontractor to complete the work. If the subcontractor is pre-qualified than they will be added to the responsible contractor list.

If the city does not pre-qualify the subcontractor, either during the original bid or as change during the project, the contractor can choose to do the work themselves, or select another pre-qualified subcontractor. During the initial bidding a contractor's bid may be disqualified if they are unable to provide a subcontractor and are unable to do the work themselves.

Subcontractors Completing Minimal Work

Subcontractors completing work valued at less than \$50,000 will not need to be reviewed for compliance with this ordinance. Contractors are still obligated to inform the city through the Finance Department that the contractor is doing work valued at less than the amount in the ordinance.

Public Information

Materials submitted as a part of the bid under this ordinance may be subject to the Freedom of Information Act and other laws that require public disclosure.

Responsible List Process

The Finance Department shall maintain a list of contractors who have been determined to be responsible contractors. Contractors who are on this list will remain on the list for up to two years. After two years they will be removed from the list and will need to undergo the pre-qualification screening to determine their status again. If a Contractor

is on the responsible contractor list, they may forego submittal of Form A and its associated documentation for subsequent bids within the two-year timeframe if there are no changes in the information provided. Form B must be submitted for every bid regardless of the Contractor's approval status.

Contractors on this list may be subject to removal if the Finance Department determines there is a violation resulting in a material breach of the contract. Violations may result in the contractor being added to the non-responsible contractor list.

Non-Responsible List Process

The Finance Department shall maintain a list of contractors designated as non-responsible through the review process. A designation can be determined with the initial application, or if the contractor fails to maintain the standards set forth in this ordinance. No matter when the contractor is designated as a non-responsible contractor, the following steps are required.

1. The contractor must be notified through an email to the designated contact person that they are going to be found non-responsible. This notification shall include a summary of the information provided in the application used to make this determination, information on the contractor's right to appeal and the process to be removed from the non-responsible list in the future.
2. The contractor has five days after the receipt of the notice to make a written request to have a hearing regarding their designation. If this request is not made within five days, then the contractor waives their right to a hearing and is added to the list of non-responsible contractors.
3. If the contractor makes an appeal, a hearing shall be scheduled to take place within 10 calendar days.
4. If the hearing officer determines that the contractor is a non-responsible contractor, then they will be added to list of non-responsible contractors.

Removing a Contractor from the List

All contractors who are on the non-responsible contractor list shall not be eligible to bid on contracts that fall under this ordinance while they are on the list. They shall remain on the list for a period of five years unless they successfully appeal to remove their name from the list. After five years the contractor is simply removed and returned to being eligible to apply for all contracts.

After 6 months, contractors may appeal to have their name removed from the list and be eligible to bid on projects. To be removed contractors shall:

1. Make a written request to purchasingagent@romi.gov. The contractor shall include the pre-screening qualifications Form A and Form B as applicable.

2. Staff will have not less than 14 calendar days to review the materials and decide.
 - a. If the contractor can show that they are responsible, then they can be removed from the non-responsible contractor list. Project specific information may not available when considering removal, therefore it is difficult to evaluate some criteria for pre-qualification. The contractor may be removed from the non-responsible contractor list and allowed to bid and become pre-qualified for a future project.
 - b. If the review shows that they are still a non-responsible contractor, then they will remain on the non-responsible contractor list.

Complaints

Any member of the public is able to file a complaint regarding violations of this ordinance with the Finance Department. Forms are located:

1. City Hall, 203 South Troy Street – Finance Department
2. Online at: romi.gov/ResponsibleContractorOrdinance

All forms must be returned to the Finance Department. They can be submitted digitally to purchasingagent@romi.gov or by mailing a hard copy to:

Finance Department
Attention: Purchasing Agent
203 S. Troy Street
Royal Oak, MI 48067

All complaints will be reviewed and if the complainant leaves their contact information, they will be contacted within 21 calendar days of the receipt of the complaint.

Complaints that are made anonymously will not receive a reply although staff will be required to complete the investigation.

Enforcement

Complaints regarding potential violations of this ordinance will result in the Finance Department investigating. If the investigation proves a violation has occurred, the Finance Department will provide a written notification of the violation. The contractor will have 10 calendar days from the date of receipt to fix the violation or take reasonable steps to fix the violation. If this does not occur, then the awarding authority may declare a material breach of the contract and pursue remedies under the contract including terminating the contract. Additionally, the contractor may be declared a non-responsible contractor.

Duty to Report

City of Royal Oak staff members who become aware of violations of this ordinance have a responsibility to report these violations to the Finance Department or City Manager.

Reviewing Bids

After the initial review to determine if the contractor should be pre-qualified, staff will move all qualified contractors into the bid review phase. Under the bid review phase, the criteria under the ordinance will be used, as minimum, to determine which bid is selected. If additional criteria will be used, then those will be provided in the bid instructions.

Criteria

- A. Price (30 percent)
 - B. Corporate Accountability (20 percent)
 - (1) Qualifications of management and supervisory personnel to be assigned by the bidder.
 - (2) References from individuals or entities the bidder has worked for within the last five years including information regarding records of performance and job site cooperation.
 - (3) Evidence of any quality assurance program used by the bidder and the results of any such program on the bidder's previous projects.
 - (4) Assurance that all construction work for this project must proceed economically, efficiently, continuously and without interruption.
 - C. Workplace Safety (25 percent)
 - (1) The ratio of masters or journeypersons to apprentices proposed to be used on the construction project job site if apprentices are to be used on the project.
 - (2) Evidence of the bidder's worker's compensation experience modification rating (EMR). Preference will be given to contractors and subcontractors who exhibit an EMR of 1.0 or less based on a three-year average.
 - (3) Provide a description of safety training programs, including the how often employees complete any relevant training.
 - D. Workforce Development (15 percent)

- (1) Documentation as to pay rates of employees and whether the bidder provides health insurance, pension or other retirement benefits, or other benefits to its employees.
- (2) Documentation if the bidder has participated in a class A apprenticeship program for each separate trade or classification in which it employs craft employees and shall continue to participate in such programs for the duration of the project including the start of the program. Class A apprenticeship program is an apprenticeship program that is currently registered with and approved by the U.S. Department of Labor, or a state apprenticeship agency and has graduated apprentices to trade and classification of craft employees with their names and addresses will be furnished in order to verify participation in a class A apprenticeship program.
- (3) Documentation of how the bidder assesses the skills and qualifications of any employees who do not have master or journeyperson certification or status or are not participants in a registered apprenticeship program.

E. Social Equity (10 percent)

- (1) A statement from the bidder as to what percentage of its workforce can be drawn from Livingston, Macomb, Monroe, Oakland, St. Clair, Washtenaw, and Wayne counties in southeastern Michigan, because a goal of the City is to utilize, in its construction activities, local residents as much as is economically feasible while retaining the high quality of construction required for its construction activities, consistent with applicable law. The City will consider in evaluating which bids best serve its interests the extent to which responsible and qualified bidders are able to achieve this goal.
- (2) Evidence of equal employment opportunity programs for minorities, women, veterans, returning citizens, and small businesses.
- (3) Assurance that the bidder is an equal opportunity employer and does not discriminate on the basis of race, sex, pregnancy, age, religion, national origin, marital status, sexual orientation, gender identity or expression, height, weight, or disability.
- (4) Documentation if contractor and/or subcontractors are certified under the Michigan Department of Transportation Small Business Program or equivalent program.

Notification to contractors shall be sent to the individual listed as the contact for the project on Form B.