



# Memorandum

To: M/W/E/DBE Committee

From: Lara Biggs, City Engineer

Subject: Responsible Bidder Ordinance

Date: December 18, 2024

Bureau of Capital Planning staff have the following feedback regarding the implementation of a Responsible Bidder's Ordinance (RBO). Two provisions of the RBO are particularly concerning:

- Participation in a Registered Apprenticeship Program - The proposed ordinance requires a contractor to demonstrate that they are participating in a program certified by the US Department of Labor, and that they have graduated apprentices each year for at least 5 years. The Department of Labor [database](#) indicates that there are no such programs with an Evanston address, although there are a number of nonprofit workforce development and trade union apprenticeship programs in the Chicagoland area that Evanston businesses may participate in. The committee may wish to consider the impact this ordinance would have on Evanston small businesses.

Under typical circumstances only a contractor signatory to a trade union is likely to be able to meet this provision, thus blocking non-union contractors from bidding. Most Evanston small businesses are not union contractors and would not qualify. Suggestions have been made about designating a single local business, such as Evanston Rebuilding Warehouse (ERW), to provide an apprenticeship program to local businesses. However, this would make ERW a "gatekeeper" for local businesses to participate in Evanston projects. They would get to decide whether or not a non-union contractor would be eligible to participate in an Evanston bid based on their choice to partner with the business or not. This is not appropriate in municipal contracting.

- Prequalification of Bidders - The City of Evanston generally relies on other entities, such as IDOT or City of Chicago, to "certify" contractors. For the City to take on this burden and then track who is prequalified and not will require additional staff resources. In addition, if the 12 month prequalification period starts on a different date for each contractor, the tracking becomes more complex, and introduces a possibility of an error that can lead to a bid challenge.

Based on these provisions, staff has the following concerns:

1. Increased Contract Costs - The primary purpose of an RBO is to limit bidding to union contractors. Whether or not there is value to only allowing union contractors, it restricts who can bid on projects. Restricting bidders and adding requirements will generally increase the costs of City contracts. Evanston already has a number of onerous requirements that contractors have to meet, some that are common to all government contracting and some that are Evanston-specific. Staff receives significant feedback from community members and council members that Evanston contracts cost more than neighboring municipalities and this should be addressed to drive down costs. Adopting an RBO will further increase contract costs.

Union contractor availability is also dependent on the type of contract. Almost all transportation contractors on City contracts are union contractors that would likely meet the RBO requirements. However, many contractors on parks and facilities contracts are not union contractors.

2. Limited Quality Improvement - An argument for implementing an RBO is that it will improve the quality of constructed projects. Historically, the poorest-performing contractors in Evanston are union contractors that would have met all of the requirements of the draft RBO. For example, when bidding on the Fountain Square project, the successful bidder, Copenhagen Construction, was a union contractor that would likely have met all of the requirements.
3. Impact to Evanston Businesses - Historically, there has been concern that not enough Evanston small businesses participate in City construction contracts. Many Evanston businesses are not union contractors and would not meet the requirements of the RBO. The additional paperwork requirements in submitting a bid would also be a barrier for small businesses. Staff recommends that, if adopting an RBO, the City exempt Evanston businesses from complying with the RBO provisions.
4. Competing Priorities - Historically, union contractors for specialized trades (such as masonry) have had significant challenges meeting the requirements for the Local Employment Program. This is because many trade unions do not have a significant membership of Evanston residents, increasing the likelihood that there is not an available Evanston resident to work on a specific contract, particularly for parks and facilities contracts. If an RBO is adopted, staff would expect LEP waiver requests and non-compliance to increase.

If the RBO is adopted, staff recommends the following:

- A. Limit the RBO provisions to contracts over \$500,000. It makes significantly less economic sense for a contractor to complete an extended list of bid requirements

if the bid is for a smaller amount as it raises the extra cost of bidding beyond their profit margin.

- B. Exempt Evanston businesses from the requirements of key provisions, such as the apprenticeship program, in order to reduce the burden for small local businesses to bid on Evanston contracts.
- C. Minimize the additional bid forms and submissions to those that are truly value-added for the City.

More complex bid requirements can have the following impacts:

- More staff resources are needed to review the bids. (This can be mitigated by adding additional staff positions.)
  - Fewer bidders choose to submit bids, ultimately increasing bid prices.
  - Bidders are more likely to make a paperwork error when submitting a bid. This requires additional effort by staff to request the needed information, can disqualify a bidder automatically and/or can introduce an opportunity for a bid challenge. This situation occurred on the Water Plant Intake project and, while mostly frivolous, the second-low bidder's challenge was held up in court. Awarding the second lowest bidder increased the base price of the project by \$2.5M (\$44.7M to \$47.2M).
- D. If a waiver to comply with the RBO in whole or in part is provided, clearly state what circumstances would receive a waiver in the policy; do not leave it up entirely to staff or the City Council to decide. This is because with up-front clarity, bidders can choose to participate or not.