

TOWNSHIP OF WALL

ORDINANCE NO. 7-2016

AN ORDINANCE OF THE TOWNSHIP COMMITTEE OF THE TOWNSHIP OF WALL, IN THE COUNTY OF MONMOUTH, STATE OF NEW JERSEY AMENDING AND SUPPLEMENTING CHAPTER 173 PUBLIC CONTRACTING REGULATIONS TO PROVIDE FOR THE DISQUALIFICATION OF A BIDDER IF THE GOVERNING BODY FINDS THAT IT HAS HAD PRIOR NEGATIVE EXPERIENCE WITH THE BIDDER

WHEREAS, the Township Committee regulates public contracting by and through Chapter 173 of the Code of the Township of Wall; and

WHEREAS, the Township Committee wishes to amend Chapter 173 to provide for the disqualification of a bidder if the governing body finds that it has had a prior negative experience with the bidder; and

WHEREAS, the Township Committee of the Township of Wall finds that it is in the best interest of the citizens of the Township of Wall to supplement and amend Chapter 173 to provide for the disqualification of a bidder if the governing body finds that it has had a prior negative experience with the bidder.

NOW, BE IT ORDAINED by the Township Committee of the Township of Wall, in the County of Monmouth, in the State of New Jersey, as follows:

Section 1. Chapter 173, Section 7, "Disqualification of a Bidder" shall be adopted to provide as follows:

a. The governing body of a contracting unit may, by resolution approved by a majority of the governing body and subject to subsections b. and c. of this section, disqualify a bidder who would otherwise be determined to be the lowest responsible bidder, if the governing body finds that it has had prior negative experience with the bidder.

b. As used in this section, "prior negative experience" means any of the following:

(1) the bidder has been found, through either court adjudication, arbitration, mediation, or other contractually stipulated alternate dispute resolution mechanism, to have: failed to provide or perform goods or services; or failed to complete the contract in a timely manner; or otherwise performed unsatisfactorily under a prior contract with the contracting unit;

(2) the bidder defaulted on a contract, thereby requiring the local unit to utilize the services of another contractor to provide the goods or perform the services or to correct or complete the contract;

(3) the bidder defaulted on a contract, thereby requiring the local unit to look to the bidder's surety for completion of the contract or tender of the costs of completion; or

(4) the bidder is debarred or suspended from contracting with any of the agencies or departments of the executive branch of the State of New Jersey at the time of the contract award, whether or not the action was based on experience with the contracting unit.

c. The following conditions apply if the governing body of a contracting unit is contemplating a disqualification based on prior negative experience:

(1) The existence of any of the indicators of prior negative experience set forth in this section shall not require that a bidder be disqualified. In each instance, the decision to disqualify shall be made within the discretion of the governing body and shall be rendered in the best interests of the contracting unit.

(2) All mitigating factors shall be considered in determining the seriousness of the prior negative experience and in deciding whether disqualification is warranted.

(3) The bidder shall be furnished by the governing body with a written notice (a) stating that a disqualification is being considered; (b) setting forth the reason for the disqualification; and (c) indicating that the bidder shall be accorded an opportunity for a hearing before the governing body if the bidder so requests within a stated period of time. At the hearing, the bidder shall show good cause why the bidder should not be disqualified by presenting documents and testimony. If the governing body determines that good cause has not been shown by the bidder, it may vote to find the bidder lacking in responsibility and, thus, disqualified.

(4) Disqualification shall be for a reasonable, defined period of time which shall not exceed five years.

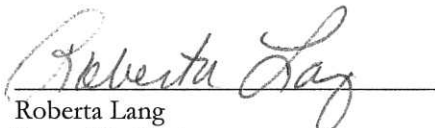
(5) A disqualification, other than a disqualification pursuant to which a governing body is prohibited by law from entering into a contract with a bidder, may be voided or the period thereof may be reduced, in the discretion of the governing body, upon the submission of a good faith application under oath, supported by documentary evidence, setting forth substantial and appropriate grounds for the granting of relief, such as reversal of a judgment, or actual change of ownership, management or control of the bidder.

(6) An opportunity for a hearing need not be offered to a bidder whose disqualification is based on its suspension or debarment by an agency or department of the executive branch of the State of New Jersey. The term of such a disqualification shall be concurrent with the term of the suspension or debarment by the State agency or department.

Introduced on: May 25, 2016

Adopted: June 22, 2016

Attest:


Roberta Lang
Township Clerk

Approve:


Ann Marie Conte
Mayor