

ORDINANCE NO. 2022-11

AN ORDINANCE TO ACCEPT THE BIDS FOR THE SOUTH HARTFORD (PHASE 2) AND CHURCH STREET IMPROVEMENT PROJECTS AND TO DECLARE AN EMERGENCY

WHEREAS, Council has determined it appropriate and necessary to proceed with the South Hartford Phase 2 and Church Street Improvement Projects (“Improvement Projects”); and

WHEREAS, the Village Administrator solicited bids for construction of the Improvement Projects in conformance with Resolution 2022-09; and

WHEREAS, bids have been received by the Village Administrator for the work on the Improvement Projects; and

NOW, THEREFORE, be it ordained by the Council of the Village of Centerburg, Ohio as follows:

Section 1: That the Village Administrator is hereby authorized to award the Contract associated with the Improvement Projects to the lowest bidder, **Kokosing Construction Co.** at a cost not to exceed **\$259,000.00** in conformance with attached Exhibit A.

Section 2: That the Fiscal Officer is hereby authorized to make necessary amendments to the 2022 Budget per Ordinance 2021-09 and the Appropriations for 2022 per Ordinance 2021-24 to the extent necessary to reflect the expenditure of funds;

Section 3: That Council declares this to be an emergency measure, immediately necessary for the public health and safety, such emergency rising out of the need to accept the bid in a timely manner while it remains open for acceptance and to meet funding and other deadlines for the Improvement Projects.

WHEREFORE, this Ordinance is declared to be an emergency and shall take effect and be in full force immediately from and after its passage and approval by the Mayor.

DATE PASSED 07/05/2022

ATTEST Signature on file
CLERK OF COUNCIL

Signature on file
PRESIDENT OF COUNCIL

Signature on file
MAYOR

DATE APPROVED 07/05/22

APPROVED AS TO FORM:

Signature on file

LEGAL COUNSEL

I hereby certify that the Ordinance or a summary of the Ordinance was published once a week for two consecutive weeks on 07/09, 2022 and 07/16, 2022 in the *Mount Vernon News* in conformance with the Ohio Revised Code.

Signature on file

FISCAL OFFICER

The person designated as receiving service of an affidavit under Section "5" of the Notice of Commencement may be any public official or administrator designated by the public entity. You may wish to consult with your legal counsel to complete this form.


Further, ORC 9.32 requires the contracting authority to simultaneously give notice of the award to the surety and agent of the surety on the contractor's bond. Failure to do so may prejudice the owner's right to proceed against the surety should that become necessary. Enclosed is a sample Notice to Surety which should be completed and sent out at the same time as a Notice of Award.

H.B. 95 which took effect 1/1/04 includes a provision which requires a "political subdivision" to "verify" that the apparent lowest bidder for goods, services, or construction has not been issued a "finding for recovery" by the auditor of the state. In other words, it must be shown that the low bidder does not owe money to the state resulting from an audit performed on any public entity. The penalty for failing to check and "verify" that there is no finding of recovery on record with the auditor's office is that the bid, if awarded, will be voided. This verification can be completed online from the auditor's website (www.auditor.state.oh.us). The verification form should be downloaded and signed by an appropriate official with a copy forwarded to this office to be included with project contracts. The signed downloaded original should be retained for your records.

Should you have any questions, or require additional information, please do not hesitate to contact this office.

Sincerely,

POGGEMEYER DESIGN GROUP, INC.



Jeffrey T. Yoder, P.E.
Area Manager

Enclosure

Bids Received: Wednesday, June 29, 2022 at 12:00 PM
 Engineer's Estimate: \$190,000

Poggenmeyer Design Group, Inc., A Kleinfelder Company
 1188 North Main Street
 Bowling Green, Ohio 43402

Kokosing Construction Co.
 606 North Main Street
 Mansfield, OH 44902

Ref. No.	Description	Estimated Quantity	Unit	Unit Price	Total Price
PART 1: SOUTH HARTFORD AVENUE IMPROVEMENTS, PHASE 2					
ROADWAY/PAVEMENT					
1-1	202 CATCH BASIN/CURB INLET REMOVED	6	EACH	\$535.00	\$3,210.00
1-2	202 CATCH BASIN/CURB INLET ABANDONED	1	EACH	\$600.00	\$600.00
1-3	202 WALK REMOVED	45	S.F.	\$10.00	\$450.00
1-4	253 PAVEMENT REPAIR	250	S.Y.	\$65.00	\$16,250.00
1-5	254 PAVEMENT PLANING, ASPHALT CONCRETE	4,505	S.Y.	\$2.25	\$10,136.25
1-6	407 NON-TRACKING TACK COAT	630	GAL	\$2.25	\$1,417.50
1-7	441 ASPHALT CONCRETE SURFACE COURSE, TYPE 1, (449), PG64-22, AS PER PLAN	156	C.Y.	\$292.00	\$45,552.00
1-8	441 ASPHALT CONCRETE INTERMEDIATE COURSE, TYPE 1, (449)	156	C.Y.	\$40,248.00	\$40,248.00
1-9	608 4" CONCRETE WALK	211	S.F.	\$22.00	\$4,642.00
1-10	608 CURB RAMP, AS PER PLAN	118	S.F.	\$22.00	\$2,596.00
1-11	609 CURB, TYPE 6	25	FT.	\$52.00	\$1,300.00
1-12	609 CURB, TYPE 6, AS PER PLAN	140	FT.	\$52.00	\$7,280.00
1-13	611 8" CONDUIT, TYPE B	12	FT.	\$60.00	\$720.00
1-14	611 CURB INLET WITH CONCRETE COLLAR	7	EACH	\$6,500.00	\$45,500.00
GENERAL					
1-15	614 MAINTAINING TRAFFIC	1	L.S.	\$7,800.00	\$7,800.00
1-16	624 MOBILIZATION	1	L.S.	\$3,000.00	\$3,000.00
1-17	642 STOP LINE, 24" WHITE	22	FT.	\$9.20	\$202.40
1-18	642 CROSSWALK LINE, 24" WHITE	102	FT.	\$9.20	\$938.40
1-19	SPEC PRECONSTRUCTION VIDEO	1	L.S.	\$500.00	\$500.00
PART 1 SUBTOTAL					\$192,342.55
PART 2: CHURCH STREET RESURFACING					
ROADWAY/PAVEMENT					
2-1	253 PAVEMENT REPAIR	150	S.Y.	\$65.00	\$9,750.00
2-2	254 PAVEMENT PLANING, ASPHALT CONCRETE	1,500	S.Y.	\$1.60	\$2,400.00
2-3	407 NON-TRACKING TACK COAT	130	GAL	\$2.25	\$292.50
2-4	441 ASPHALT CONCRETE SURFACE COURSE, TYPE 1, (449), PG64-22, AS PER PLAN	60	C.Y.	\$282.00	\$17,520.00
2-5	608 CURB RAMP, AS PER PLAN	66	S.F.	\$28.00	\$1,848.00
GENERAL					
2-6	614 MAINTAINING TRAFFIC	1	L.S.	\$2,000.00	\$2,000.00
2-7	624 MOBILIZATION	1	L.S.	\$2,000.00	\$2,000.00
2-8	SPEC PRECONSTRUCTION VIDEO	1	L.S.	\$300.00	\$300.00
PART 2 SUBTOTAL					\$36,110.50
ALTERNATE ITEMS					
A2-1	202 CURB REMOVED	250	FT.	\$9.00	\$2,250.00
A2-2	609 CURB, TYPE 6	250	FT.	\$56.00	\$14,000.00
PART 2 ALTERNATE ITEMS SUBTOTAL					\$16,250.00
TOTAL BID PRICE (PART 1 PLUS PART 2 TOTAL)					\$228,453.05
CORRECTED BASE BID PRICE					\$228,453.05
BASE BID PRICE AS SUBMITTED					\$228,453.05
BID BOND					YES

**THE NEW MECHANIC'S LIEN LAW
PUBLIC PROJECTS
THE CLAIMANT'S PERSPECTIVE**

The parties involved in Public Projects will also benefit from the new law. While it is still a mechanic's lien, when public projects have been involved, the lien was always on the funds due the contractor and not upon the land of the public owner. Historically, the different liens had different filing procedures, different filing times, different requirements for information and even different methods of service. The new law has eliminated many of the differences while at the same time addressing problems that were unique to this type of lien.

The advantages for lien claimants are:

1. More people know you are working on the project.
More chance of payment without the need for lien.
2. The owner will have the right to pay direct.
3. The document needed to file a lien has been simplified.
4. The definitions used by surety companies are now the same as the mechanic lien definitions.
5. Service requirements have been relaxed.
6. Information needed to file a lien should be available to claimants through the PNOC.

The disadvantages are:

1. Additional paperwork
 - A. Request Public Notice of Commencement (PNOC)
 - B. Passing Public Notice of Furnishing (PNOF)
 - C. Preparing information to subcontractors and material suppliers.
2. Loss of lien rights for those who fail to furnish the Public Notice of Furnishing.
3. Loss of lien if lower tier subcontractors or material suppliers fail to serve their subcontractor.

Remember, the object of the new system is to avoid or do away with hidden liens. Public claims only affected the Principal Contractors. Therefore, the PNOF is only served upon the Principal Contractor.

EFFECTIVE DATE

All projects where the contract with the principal contractor is executed after January 1, 1992.

Because of the system of multiple primes used by the State and other public authorities, we could end up with the problem of having both old and new law on the same project. Know your principal contractor and know the date of his contract.

LIEN RIGHTS EXPANDED

There always were lien rights that existed in public projects that did not exist in private. Now the rights are very similar.

1. Demolition is new.
2. Suppliers of materials that were specifically designed or fabricated for the project but not incorporated and not readily resalable.

FILING TIME

The time for filing is no longer four (4) months after the claimant=s last work. It has been changed to 120 days.

PUBLIC INFORMATION

The owner of the Public Project will have to prepare Public Notices of Commencement (PNOC). The PNOC=s should be readily available to those requesting copies from the owner. Then PNOC, as in the case of private projects, should provide the information needed to file both a mechanic=s lien and a claim against the contractor=s bond.

CONTRACTOR INFORMATION - DISTRIBUTION

The name and address of the principal contractor should be passed to lower tier subcontractors and material suppliers as you enter into subcontract or send purchase orders.

PUBLIC NOTICE OF FURNISHING (PNOF)

The Public Notice of Furnishing is even simpler than the Notice of Furnishing required in private projects. A subcontractor or materialmen will serve the notice upon the principal contractor. Material suppliers and subcontractors in privity of contract with a principal contractor do not have to serve the notice. You do not serve owners. You do not serve construction managers.

1. When to Serve: Serve before or within 21 days after starting to provide material or perform work.

2. Service: As in private projects, serve the notice by hand, certified mail or by any means that results in a receipt.

Also, as in private projects, if you serve a PNOF late, the 21 day window allows you to serve the notice late and have it cover all future work and deliveries as well as the work and deliveries which took place within the 21 days prior to service.

PUBLIC AFFIDAVIT OF MECHANIC=S LIEN

AFFIDAVIT OF MECHANIC LIEN/CLAIM AGAINST FUNDS/ATTESTED ACCOUNT

The document claiming the lien has been simplified. It is now an affidavit that, among other things, states the balance due. The awkward and often defective itemized statement is gone. The affidavit is served upon the Public Owner along with evidence that the PNOF was served upon the principal contractor. Failure to provide the owner with evidence of service of the PNOF upon the principal contractor will result in a defective lien. After serving the owner, the affidavit should then be recorded.

Another provision indicates that when the claimant has a contract with a subcontractor, the subcontractor must also be served with a copy of the affidavit within 20 days of serving the affidavit upon the owner.

RIGHT TO DISPUTE

The principal contractor=s right to dispute the claim has been expanded to 20 days after receipt of notice from the owner of the filing of the lien. If the lien claimant was obligated to serve a PNOF on the principal contractor, the failure to do so is reason to dispute the claim.

NOTICE TO COMMENCE

The right to give a lien claimant a notice to commence suit has been expanded to include subcontractors. The requirements have been reduced and the period for filing the suit has been expanded to 60 days.

BONDING

The definitions used in the bonding sections are now the same as the definitions used in the mechanic lien sections. A worrisome problem of inconsistent definitions that confused both the public and the courts has been eliminated.

IV. New Prompt Payment Provisions

A. Purpose of the Prompt Payment Provisions

- Promotes prompt payment to subcontractors and suppliers once the owner pays the original contractor by imposing 18% interest rate on retained funds beginning after ten (10) calendar days.
- Prompt payment provisions cannot be contracted away since such contractual provisions will be regarded as void as against public policy.

B. Coverage of the Prompt Payment Provisions

- All general contractors, subcontractors and suppliers are covered by the prompt payment requirements.

C. Exemptions

- Does not apply to construction of one, two, or three family residential dwellings.

D. How it Works

1) If subcontractor or supplier requests payment in time to allow general contractor to include the request in his pay request to the owner, the general contractor shall pay to the subcontractor within ten 10 days of receiving payment from the owner:

- an amount equal to the percentage of completion allowed by the owner for the amount of labor or work performed by the subcontractor.
- or in the case of the supplier an amount equal to that portion of the general contractor=s invoice for materials which represents materials provided by the supplier.
- EXCEPT that the general contractor may reduce the amount paid to the subcontractor pursuant to any retainage provision in the contract between the general and the subcontractor AND withhold amounts necessary to resolve disputed liens or claims involving the work of that particular subcontractor or supplier.
- failure by the general contractor to make the prompt payment triggers the accrual of 18% interest per annum beginning on the eleventh (11th) day.

- The same procedure applies down the line between each successive layer

of subcontractors (i.e. a timely demand for payment triggers prompt payment provisions).

- The same procedure applies to payment of retainage by the owner to the general contractor and from the general contractor to the subcontractors.

E. Attorney=s Fees

- If payment is not made within thirty (30) days a civil action may be filed to recover payment, 18% interest and attorney fees. The court shall award the prevailing party attorney=s fees.

NOTICE OF COMMENCEMENT OF A
PUBLIC IMPROVEMENT PURSUANT TO
REVISED CODE '1311.252

State of Ohio,)
) ss:
County of)

_____ (the "Affiant"), being first duly sworn, says that:

1. Affiant is the (title) _____ of the
(subdivision name and address) _____ (the APublic Authority@).

2. The Public Authority will be commencing a public improvement identified as follows:
Construction of (name, location and _____
any number) _____

3. The following lists the name, address and trade of each of the principal contractors
working on this public improvement:

<u>NAME</u>	<u>ADDRESS</u>	<u>TRADE</u>	DATE OF FIRST EXECUTED CONTRACT FOR <u>THE PUBLIC</u>
			-

4. The following lists the names and addresses of the sureties for all of those principal contractors:

PRINCIPAL
CONTRACTORS

NAME OF
SURETY

ADDRESS OF
SURETY

5. For the purpose of serving an affidavit pursuant to Revised Code '1311.26, service may be made upon the following representative of the Public Authority: (name) _____, (title) _____, at (address) _____.

FURTHER AFFIANT SAYETH NAUGHT.

Signature

SWORN TO BEFORE ME and subscribed in my presence this _ day of _____, 20_____.

Notary Public

[SEAL]

NOTICE OF COMMENCEMENT OF A
PUBLIC IMPROVEMENT PURSUANT TO
REVISED CODE '1311.252

EXAMPLE

State of Ohio,)
) ss:
County of)

_____ (the "Affiant"), being first duly sworn states that:

1. Affiant is the _____, Village Administrator of the _____
(the APublic Authority@).

2. The Public Authority will be commencing a public improvement identified as follows:

Name of Project
City, State, Zip Code

3. The following lists the name, address and trade of each of the principal contractors working on this public improvement:

a.	Name:	Contractor Company Name
	Address:	Address
		City, State, Zip Code
	Trade:	General Contractor
	Date of First Executed:	x
	Contract for the Public:	x
	Improvements:	x

4. The following lists the names and addresses of the sureties for all of those principal contractors:

a.	Principal Contractor:	x
	Name and Address of Surety:	x

5. For the purpose of serving an affidavit pursuant to Revised Code '1311.26, service may be made upon the following representative of the Public Authority:

Name: x
Title: x
Address: x

FURTHER AFFIANT SAYETH NAUGHT.

Signature

SWORN TO BEFORE ME and subscribed in my presence this _____ day of _____
_____, 20____.

Notary Public

[SEAL]

NOTICE OF SURETY (RC '9.32)

Notice is hereby given to _____
(name and address of surety on contractor=s bond)

surety, and _____
(name and address of agent for surety)

agent for surety, that on _____ 20 _____, the _____

City/County/Village of _____, Ohio awarded a contact for the

_____ of a public improvement owned by
(construction, demolition, alteration, repair, reconstruction)

said City/County/Village to _____
(name and address of contractor)

on whose bond for said contract the names of the aforementioned surety and agent appear.

Owner

By _____
Finance Director/Auditor/Village Clerk/Treasurer

Date

