



**COUNTY OF MILWAUKEE
INTEROFFICE COMMUNICATION**

Office of the Comptroller

DATE : June 4, 2014
TO : Supervisor Marina Dimitrijevic, Chairwoman, County Board of Supervisors
FROM : Scott B. Manske, Comptroller
SUBJECT: Request to Update Milwaukee County General Ordinances Chapters 32, 44, 46, 56 and 110 (REVISED)

Policy Issue

A recent review of the related County Ordinances containing the method for appealing an award from a Request for Proposal (RFP) process results in this request to the County Board to modify the policy contained within the ordinances. The relevant chapters include Chapter 32 on Procurement, Chapter 44 on Public Works Contracts, Chapter 46 on Purchase of Service Contracts, Chapter 56 on Professional Services and Chapter 110 on Municipal Administrative procedure. The recommended changes to the Ordinances are intended to clarify and unify the appeal procedures for all county contracts and bids and to provide further direction to Department Heads in the preparation and execution of RFPs.

Current Ordinances

Chapter 56 establishes the procedure by which contracts for Professional Services are issued and the requirements of departments when executing those contracts. It does not currently specify any procedure to follow in the event of an appeal of a contract resulting from an RFP process. Chapter 46 contains the procedure by which the Department of Health and Human Services (DHHS) awards Purchase of care and services contracts. It does not currently specify any procedure to follow in the event of an appeal of a contract resulting from an RFP process.

Chapters 32 and 44 contain different appeal procedures following the award of a project pursuant to bids and following the award of a contract for non-professional services or for commodities.

Chapter 110 of the Milwaukee County General Ordinances establishes that any person having a substantial interest which is adversely affected by an administrative determination by the County may have such determination reviewed under the specifics laid out in this Chapter.

Recommended Changes

The first major recommended change is to have all awards of contracts or bids by the county be governed by the same appeal process. Thus, any award of a contract for nonprofessional services or for commodities under chapter 32, any award of a project pursuant to a bid process under chapter 44, any award of a contract for a DHHS purchase of service contract under chapter 46 and any award of a contract for professional services under chapter 56 will be governed by one appeal process; that process is contained in a new section 110.20 of the ordinances. Amendments are made to chapters 32, 44, 46, 56 and 110 to cross-reference the new contract award review process now contained in chapter 110.20.

The steps of the new process are as follows:

- a notice is given to the bidders or proposers of the intent to award,
- an aggrieved party may request a review by the authority by filing a request within 10 business days; the request for review must include the party's reasons for reconsideration,
- the authority must provide a response within 15 business days, but that deadline may be extended by the authority up to a total of 45 calendar days;
- the aggrieved party may request a review within 5 business days of the response and must pay a deposit of \$1,000 towards the costs of the review;
- a Contract Award Reviewer is assigned to hear the review and may conduct any type of review proceeding the reviewer deems appropriate;
- The Reviewer is charged with determining if substantial procedural irregularities occurred in the RFP process and if the notice of intent to award should be rescinded;
- The reviewer issues a decision within 45 calendar days of the request.

A pool or panel of three reviewers is created to hear the reviews. The individuals are appointed by the County Executive with confirmation by the County Board. The reviewers must have experience with procurement or legal issues related to procurement. They serve three year terms and may be re-appointed. The reviews are assigned by alphabetical rotation among the reviewers. The reviewers are entitled to payment of an hourly rate set by the budget or, if not set in the budget, set by the Procurement Director. The County authority and the party that requested the review are each responsible for one-half of the cost of review. A requester must pay a \$1,000 deposit towards those costs.

The test to be applied by the reviewer is whether substantial rights of a party were so materially affected by procedural irregularities during the RFP or bid solicitation process that the notice of intent to award should be rescinded.

The existing process contained in chapter 110 remains in place for all other reviews that are not contract award reviews.

Chapter 56 – Professional Services

There are three major changes recommended for Chapter 56. First, the ordinance should be modified to direct all departments to include an appeal provision in their RFP that states that the County will follow the procedure established under Milwaukee County General Ordinances Chapter 110.20 for appeals of awards for RFPs. Second, Chapter 56 should also be modified to state that any appeal of intent to award in an RFP process will follow Chapter 110.20. This provides for instances where a department fails to include the necessary language in their RFP.

The third modification is the inclusion of the following listed requirements in the request to the Board for approval of any professional service contract:

- Department name and number.
- Dollar amount of contract.
- Name of professional services vendor under contract
- Length of time of contract
- Purpose of contract.
- Manner in which County policy on DBE goals was met, if applicable.
- Termination clauses
- Number of responses to RFP
- Whether any appeals were filed

Chapter 32 – Subchapter II - Procurement

Under County Ordinance Chapter 32, the office of procurement has an appeal process for both RFP and bids that is separate from Chapter 110 of the ordinances. The appeal process under Chapter 32 uses a Purchasing Standardization Committee, which generally would consist of other outside procurement directors. The changes proposed under Chapter 32 would be to eliminate the use of a Purchasing Standardization Committee from the appeal process for an RFP. Instead, the appeal would use the new section 110.20 of the County Ordinances, as proposed.

Chapter 44 – Public Works Contracts

Under this chapter a public works contract includes contracts for the purchase of services in connection with public works and facilities management work. This work

shall be issued by competitive bid. The current appeal process under this chapter is Chapter 110, as currently written. The proposal would be to change the appeal process to Chapter 110.20, as proposed in the attached resolution.

Chapter 46 – DHHS Purchase of Service Contracts

Under this chapter, a DHHS purchase of services contract includes contracts in connection with the care or treatment services the DHHS is authorized by statute to provide or purchase; and the services the commission on aging is authorized by law to provide or purchase. DHHS currently uses Chapter 110 as its appeal process by including notification in its RFPs and Intent to Award letters. The proposed changes contained in the attached resolution would be to add the appeal process to Chapter 46 by stating DHHS will use Chapter 110.20 for any appeals.

Committee Action

Approval of the attached ordinance changes are requested by the Comptroller to clarify the County's appeal process in regards to the awarding of contracts under chapter 32, 44, 46 and 56 and the appeal process of Chapter 110 of Milwaukee County Ordinances, as a result of an RFP process.



Scott B. Manske
Comptroller

cc: Chris Abele, County Executive
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Committee
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