



**COUNTY OF MILWAUKEE
INTEROFFICE COMMUNICATION**

Office of the Comptroller

DATE: March 23, 2016

TO: Supervisor Willie Johnson, Jr., Co-Chairman, Finance, Personnel & Audit Committee
Supervisor James Schmitt, Co-Chairman, Finance, Personnel & Audit Committee
Finance, Personnel & Audit Committee

FROM: Scott B. Manske, Comptroller

SUBJECT: Updated Contract Types Exempt from County Board Review (Informational Only)

Policy Issue

2015 Wisconsin Act 55, enacted on July 13, 2015, transferred several responsibilities from the Milwaukee County Board to the Milwaukee County Executive. Act 55 provides that per Wis. Stats. §§ 59.17(2)(b)(3) and 59.52(6), without County Board approval, the County Executive may sell, acquire, or lease land that is not zoned as a park and also the Downtown Transit Center parcel. The County Executive may also “construct, purchase, acquire, lease, develop, improve, extend, equip, operate and maintain all county buildings, structures and facilities” on land not zoned as a park and at the Transit Center.

With one exception, this authority remains subject to Wis. Stats. § 59.60(12), which states, “The board shall make or approve by resolution each contract, lease or other obligation requiring the payment of funds from the appropriations of a later fiscal year or of more than one fiscal year.” As with any contract issued by the Executive under Act 55 authority, funds must still be provided through budget action, and multi-year contract obligations require board approval.

The exception is leases. My office’s original list of contract types exempt from County Board review reflected our initial understanding that the County Executive had the authority specified above if a lease used funds only from this fiscal year or an adopted future fiscal year. We felt that a lease that would use funds from a not yet adopted fiscal year would require County Board approval based on § 59.60(12).

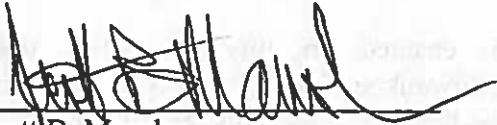
However, we recently received advice from Corporation Counsel that the County Executive’s authority to lease land or facilities under Wis. Stats. §§ 59.17(2)(b)(3)

and 59.52(6) takes precedence over the Wis. Stats. § 59.60(12) provision. Leases, essentially by definition, are multi-year contracts. (Under basic real-estate law, an agreement to let property for more than one year must be memorialized in a written lease. See Wis. Stats. §§ 706.001(2)(c), 706.02.)

Leasing out a county facility does not require a budget authorization, since it generates revenue rather than requiring a budget appropriation. However, acquiring space through a lease requires a future budget commitment. But Corporation Counsel has advised that either of these situations creates a specific exception to the general requirement for board approval of multi-year obligations in § 59.60(12). This is also consistent with the law's treatment of leases as a different sort of obligation than a contract for goods or services. Easements receive a similar analysis. Therefore, the County Executive may make multiyear leasing and easement decisions related to leases or easements for land not zoned as a park and at the Transit Center without County Board approval. Accordingly, my office has updated Exemption C in the list of contract types exempt from County Board review (attached) to include leases and easements.

Committee Action

This memo is intended to provide additional information.


Scott B. Manske
Comptroller

Attachment

Cc: Theo Lipscomb, Sr., Chairperson, County Board of Supervisors
Chris Abele, County Executive
Rick Norris, Director, Community Business Development Partners, Department of Administrative Services
Kelly Bablitch, Chief of Staff, County Board
Raisa Koltun, Chief of Staff, Office of the County Executive
Teig Whaley-Smith, Director, Department of Administrative Services
Steve Cady, Research & Policy Director, Research Services Division, Office of the Comptroller
Janelle Jensen, Senior Committee Coordinator, Office of the County Clerk
Paul Bargren, Corporation Counsel

Exemption Types

A - Mental Health Board jurisdiction: Pursuant to Wis. Stats. 46.21(2)(j), the County Board “may not exercise approval or disapproval power over any contract relating to mental health or mental health institutions, programs, or services.” Furthermore, Wis. Stats. 51.41(10) requires “Any contract related to mental health with a value of at least \$100,000, to which Milwaukee County is a party may take effect only if the Milwaukee County mental health board votes to approve, or does not vote to reject, the contract within 28 days after the contract is signed or countersigned by the county executive.”

B - Service contracts less than \$100,000 using funds only from this fiscal year: Wis. Stats. 59.52(31) authorizes the execution of a service contract with a value of less than \$100,000 without County Board or FPA Committee review unless that contract requires funds from a future fiscal year which has not yet been adopted. This applies to both professional service contracts under Milwaukee County General Ordinance (MGO) Ch. 56 and to nonprofessional service contracts under MGO Ch. 32.

C - County Executive jurisdiction using only funds from this fiscal year: Per Wis. Stats. 59.17(2)(b)(3) and 59.52(6), without County Board approval, the County Executive may sell, acquire, or lease land that is not zoned as a park ~~with the exception of and the Downtown-Transit Center parcel.~~ The County Executive may also “construct, purchase, acquire, lease, develop, improve, extend, equip, operate and maintain all county buildings, structures and facilities” ~~except on most park zoned land as noted above on land that is not zoned as a park land and at the Transit Center. However, a contract that uses funds from a future fiscal year which has not yet been adopted will still require County Board approval.~~ Generally a contract that uses funds from a future fiscal year which has not yet been adopted will require County Board approval, but a lease or an easement of land not zoned park or of the Transit Center which uses funds from a not yet adopted fiscal year will not require County Board approval.

D - Public Works contracts: Wis. Stats. 59.52(29) provides that any public work contract over \$25,000 be let to the lowest responsible bidder. MGO Ch. 44.14 authorizes the director of transportation or the director of administrative services to enter into contracts with a value up to \$25,000 provided that certain criteria are met.

E - Other: Several contracts were executed prior to the changes introduced by 2013 Wisconsin Act 14. Subsequent amendments to some of those contracts have been grandfathered so they continue to follow the old rules. Those exemptions will phase out as Milwaukee County completely transitions to the new rules.

Corporation Counsel is reviewing the applicability of Wis. Stats. 59.52(31) to the procurement of supplies, materials, equipment and other commodities. Until such review is completed, purchases of goods and commodities continue to be made by the Procurement Director pursuant to MGO Ch. 32.

F - Community Based Residential Facilities: Contracts with community based residential facilities are exempt from County Board approval under Wisconsin Statutes. As set forth in MGO 46.09(3), “Pursuant to s. 46.215(2), Wis. Stats., the county board may not exercise approval or disapproval power over contracts and purchases of the director of the department relating to community living arrangements, as defined in s. 46.03(22)(a), Wis. Stats., or foster homes, and entered into pursuant to a coordinated plan and budget, regardless or whether the coordinated plan and budget mentions the provider.”