

From the Director, Architecture, Engineering, and Environmental Services Section, Facilities Management Division, Department of Administrative Services, requesting authorization to amend Sections 43.01, 43.02(1), 44.01, 44.02, 44.03, 44.04, 44.05, and creating (1) and (2), 44.06, 44.07(b), 44.08, 44.09(a), 44.13(2), 44.14(1) and (3), and creating 111.01(e) of the Milwaukee County Code of General Ordinances to allow for online public works bidding, by recommending adoption of the following:

A RESOLUTION

WHEREAS, the Department of Administrative Services and the Department of Transportation are responsible for administering public works bids; and

WHEREAS, under the current Milwaukee County Code of General Ordinances (the Code), the departments are unable to bid projects using online bidding; and

WHEREAS, online bidding has become an industry standard bidding process; and

WHEREAS, the process allows for bids to be submitted online instead of with the Milwaukee County Clerk, and when used effectively, online bidding has the potential to reduce bidding errors, improve the number and quality of bids, and save staff time in processing traditional paper bids; and

WHEREAS, the proposed modifications to Chapters 43, 44, and 111 of the Code provide flexibility by allowing both online bidding and traditional bidding in the Milwaukee County bidding process; and

WHEREAS, online bidding is not prohibited under Sections 59.52(29) and 66.0901, Wisconsin State Statutes, which govern public bidding; and

WHEREAS, the Committee on Transportation, Public Works, and Transit, at its meeting of June 6, 2018, recommended adoption of File No. 18-221 (vote 5-0); now, therefore,

BE IT RESOLVED, the Milwaukee County Board of Supervisors hereby amends Chapters 43, 44, and 111 of the Milwaukee County Code of General Ordinances by adopting the following:

41 **AN ORDINANCE**

42
43 The County Board of Supervisors of the County of Milwaukee does ordain as
44 follows:

45
46 **SECTION 1.** Chapter 43 of the Milwaukee County Code of General Ordinances is
47 amended as follows:

48
49 43.01. - Applicability of Wis. Stats.

50
51 It is hereby ordained that the provisions of ss. 59.52(29) and 66.0901, Wis. Stats.
52 shall be and are applicable to all contractors desiring to bid on public works construction
53 projects for the Milwaukee County on contracts where the estimated costs of such work
54 will exceed twenty-five thousand dollars (\$25,000.00), except highway contracts which
55 the county committee on transportation, and public works, and transit is authorized by
56 law to let or make.

57
58 43.02. - Filing qualifications statement.

59
60 (1) Bidders who want to be approved for award of contract on public works projects
61 shall submit ~~to the county clerk two (2) copies of a completed contractor~~
62 qualification statement of financial ability, equipment, experience in the work
63 prescribed in the contract for the protection and welfare of the public in
64 performance of any public contract. Statement shall be in the form required by
65 section 43.04 of the Code. The completed qualification statement shall be
66 received by the ~~county clerk~~ Bidding Department not less than five (5) calendar
67 days prior to the bid due date. Contractor qualification statement is valid for a
68 three-year period commencing on the date ~~filed with the county clerk and will~~
69 ~~terminate in three (3) years after the last date of the month the qualification~~
70 ~~statement was filed with the county clerk~~ accepted.

71
72 **SECTION 2.** Chapter 44 of the Milwaukee County Code of General Ordinances is
73 amended as follows:

74
75 44.01. - Public bid required; exemptions.

76
77 All construction, repair, remodeling or improvement contracts for any public work
78 shall be awarded by competitive bids to the lowest qualified, responsible, responsive
79 bidder when the estimated project cost exceeds twenty-five thousand dollars
80 (\$~~205~~,000.00). A responsible bidder is hereby defined as one qualified in conformance
81 with chapter 43 and who responds to all the terms and conditions of the bid solicitation.
82 This section shall not apply:

83
84 (a) Where the county board, by three-fourths vote of all members entitled to a
85 seat, provides that any class of work or any part thereof may be done directly
86 by county work forces.

87
88 (b) To repair or reconstruct public facilities when the county board, by resolution,
89 determines that damage or threatened damage creates an emergency in
90 which the public health or welfare of the county is endangered.

91
92 44.02. - Separate letting.
93

94 For purposes of this chapter for contracts calling for the construction, repair,
95 remodeling, or improvement of any public building or structure or utility usage other than
96 highway structures and facilities, the appropriate director of transportation (or designee)
97 or the director of administrative services (or designee), together hereafter referred to as
98 "Bidding Department," may bid projects based on a single or multiple division of work.
99 Contracts shall be awarded according to the division of work selected for bidding. The
100 county may set out in any public contract reasonable and lawful conditions, as to the
101 hours of labor, wages, residence, character and classification of workers to be
102 employed by any contractor, and to classify such contractors as to financial
103 responsibility, competency and ability to perform work.
104

105 44.03. - Solicitation of bids.
106

107 ~~The appropriate department of transportation or the department of administrative~~
108 ~~services~~ Bidding Department shall solicit sealed bids by public notice inserted at least
109 twice in a newspaper and/or trade magazine of county-wide circulation with the last
110 publication occurring at least seven (7) days prior to bid opening.
111

112 44.04. - Bidding and contract documents.
113

114 Bidding and contract documents shall be prepared by the ~~appropriate department~~
115 ~~of transportation or the department of administrative services~~ Bidding Department or
116 private consultants and reviewed by the ~~appropriate director of transportation (or~~
117 ~~designee) or the director of administrative services (or designee),~~ Bidding Department,
118 for conformity with project requirements. Such project requirements may include special
119 employment considerations and goals as determined by the ~~director~~ Bidding
120 Department. Single source or brand name products, materials or processes may be
121 specified whenever the department ascertains the need for such specifications;
122 otherwise, the term "or approved equal" shall be used and the department shall
123 establish uniform and fair rules for such approvals.
124

125 44.05. - Delivery of bid and contract documents.

126
127 Bid and contract documents shall be delivered by the appropriate department of
128 ~~transportation or the department of administrative services~~ Bidding Department to
129 prospective bidders who deposit cash or credit in an amount determined by the
130 appropriate director of transportation (or designee) or the director of administrative
131 services (or designee) to cover cost of document preparation. In lieu of deposit, the
132 appropriate department of transportation or the department of administrative services
133 may accept deposit guarantee cards issued by organized contractor associations,
134 approved by the appropriate director of transportation (or designee) or the director of
135 administrative services (or designee), guaranteeing return of plans and specifications or
136 payment of deposit. Cash or credit deposits shall be refunded upon return of the
137 documents in good order and condition, reasonable wear and tear excepted, within ten
138 ~~(10) days after bid opening, or be forfeited by one of the following methods depending~~
139 on the bid type specified in the contract documents:

- 140
141 1. Online bid projects: The Bidding Department makes electronic documents
142 available to bidders who deposit cash or credit in the amount determined by
143 the Bidding Department to cover any administrative costs.
144
145 2. Paper bid projects: The Bidding Department makes paper documents
146 available to bidders who deposit cash or credit in the amount determined by
147 the Bidding Department to cover any administrative costs.
148

149 44.06. - Bid opening.

150
151 Bid opening times shall be scheduled by the appropriate department of
152 ~~transportation or the department of administrative services~~ Bidding Department. A
153 member of that department shall be present at all such bid openings. All sealed
154 electronic or paper bids shall be delivered to, and received by, the office of the county
155 clerk prior to the time set for the opening of said bid submitted as specified in the
156 contract documents. The county clerk Bidding Department, or designee, shall open bids
157 of qualified bidders only, and shall inspect each bid to ascertain whether it conforms to
158 the bid signature affidavit, qualifications requirements of MCGO 43, and bond
159 requirements, and shall reject any bid found not to be in compliance with said elements.
160 Evidence of failure of compliance shall be retained by the county clerk Bidding
161 Department and said rejected bid shall be immediately returned to the bidder
162 accompanied by notice of reason for rejection sent to the bidder.

164 44.07. - Bid requirements, disqualification and rejection of bids.

- 165
166 (b) *Bidder's certificate.* A sworn statement shall be incorporated in the bid that the
167 bidder has examined and carefully completed the bid and contract documents
168 supplied by the appropriate department of transportation or the department of
169 administrative services Bidding Department and checked it in detail before
170 submission. The sworn statement shall affirm that the bidder is aware of any and

all residency goal provisions of the contract and will comply with them, including penalty provisions.

44.08. - Bid rejection and forfeiture.

~~Bids received after the time set for closing and bids of contractors not qualified by the appropriate director of transportation (or designee) or the director of administrative services (or designee) shall be returned unopened to bidders. Bids which fail to conform to signature, affidavit and bond requirements, shall be rejected by the director and returned to the bidder. If a bidder awarded a contract fails to return the signed contract and executed performance bond within ten (10) days from receipt thereof or within such additional time for which there exists an excusable delay approved by the director Bidding Department, the bid bond and/or deposit shall may be forfeited as liquid damages. Upon such forfeiture inexcusable delay, the contract may be awarded by the director Bidding Department to the next lowest, responsible, responsive bidder or readvertised and/or relet to public bid or cancelled if the next lowest responsive, responsible bidder is not within the project budget. The ~~director~~ Bidding Department is authorized to reject all bids, or cancel the entire bid, after consultation with corporation counsel has determined that such action is in the best interest of the county. The rejected bidder may appeal the decision in accordance with chapter 110 of the Code. The county, through its ~~appropriate director of transportation (or designee) or the director of administrative services (or designee)~~ Bidding Department, reserves the right to accept or reject all bids, or cancel the entire bid, in its best interest.~~

44.09. - Bid withdrawal, correction and contract award.

- (a) *Bid withdrawal.* A bidder may withdraw at any time prior to the time set for bid closing and submit a new bid if done prior to bid closing. A bidder claiming an error or omission after bid closing but prior to bid opening shall immediately notify the ~~appropriate department of transportation or the department of administrative services (or designee)~~ Bidding Department and the bid shall be returned immediately and the bidder shall not be eligible to bid on the work unless it is relet by advertisement.

44.13. - Allowance of partial payments on county public works contracts; who to authorize.

- (2) Partial payments may include the cost of building and construction materials and equipment for future incorporation in the work, upon presentation by contractors of receipted bills or other satisfactory evidence of payment, and proof of proper storage and protection as required by the ~~appropriate department of transportation or the department of administrative services~~ Bidding Department.

214 44.14. - Award of public works contracts.

215
216 (1) The appropriate ~~director of transportation (or designee) or the director of~~
217 ~~administrative services (or designee)~~ Bidding Department shall, in his or
218 her sole discretion, establish procedures for awarding all public works
219 contracts where the aggregate amount of any such contract is less than
220 five thousand dollars (\$5,000.00). Except as provided in the preceding
221 sentence and in subsection (4) below, a minor public works contract less
222 than twenty-five thousand dollars (~~\$205~~,000.00) may be awarded to the
223 lowest qualified responsible bidder after solicitation of three (3) informal
224 bids, or may be performed by county forces, provided sufficient county
225 funds are available. Contracts greater than twenty-five thousand dollars
226 (~~\$205~~,000.00) shall be awarded to the lowest, responsive, responsible
227 bidder after solicitation of formal bids.

228
229 (3) All public works contracts shall be administered by the ~~department of~~
230 ~~public works~~ Bidding Department pursuant to s. 59.52, Wis. Stats.

231
232 **SECTION 3.** Chapter 111 of the Milwaukee County Code of General Ordinances is
233 amended as follows:

234
235 111.01. - Policy.

236
237 (e) Public Works contracts as defined by MCGO 44.001(a).

238
239 **SECTION 4.** The provisions of this ordinance shall be effective upon passage and
240 publication.

241
242
243 kae
244 06/06/18
245 s:\committees\2018\jun\tpwt\resolutions\18-221 public works bidding ordinance change.docx