



Legislation Text

File #: 130088, Version: 2

130088
SUBSTITUTE 2

ALD. BOHL

A substitute charter ordinance relating to duties, powers, procedures and requirements in city purchasing.

8-02 rc

16-01 cr

16-05 rc

16-07 cr

This charter ordinance defines certain terms used in the city's purchasing regulations. The ordinance also increases the dollar threshold at which formal competitive bidding and formal written contracts are required from \$30,000 to \$50,000. Finally, the ordinance repeals an unused provision related to futures contracting.

The Mayor and Common Council of the City of Milwaukee do ordain as follows:

Part 1. Section 8-02 of the city charter is repealed and created to read:

8-02. Duties, Authority of Commissioner. a. Duties. The duties of the commissioner of building inspection shall be to inspect the construction, alteration, repair, moving, demolition, use of building materials and equipment, plumbing, use and occupancy, housing facilities and the fire hazard condition of all buildings within the city and to ascertain whether such buildings meet the requirements of the laws of the state and the ordinances of the city. It shall also be the duty of the commissioner when he or she shall deem it necessary, to examine all accidents caused by the breaking or falling down of any building in the city, and also to ascertain what buildings in the city are unsafe and dangerous to be occupied, arising either from conditions of the building or the manner in which it is used. The commissioner shall identify all cases of the violation of any laws of the state or of any ordinances of the city relating to buildings.

b. Authority. The commissioner of building inspection shall have full power and authority to provide and contract for the demolition of any building or structure or part thereof being razed pursuant to the Wisconsin statutes, or for the abatement of nuisances in accordance with applicable code provisions.

Part 2. Section 16-01 of the city charter is created to read:

16-01. Definitions. In this chapter:

1. FORMAL COMPETITIVE BIDDING means a process whereby purchases are made from the lowest responsible bidder after due notice inviting bids, subject to bidding requirement exceptions under s. 16-05-3, in accordance with any applicable code provisions for participation of small business or local business enterprises, ethical purchasing, purchase of American-made vehicles, purchase of Milwaukee-, Milwaukee county- or American-made goods, which are in force. Notice shall be published in at least one official paper for at least 2 days preceding the last day set for the

receipt of bids.

2. GOVERNMENT PURCHASER means the federal government, the state, another political subdivision of the state, a cooperative purchasing association or group formed by these entities, or a private entity that has established relationships with these entities.

3. REVERSE AUCTION means a public auction in which vendors bid the lowest price at which they are willing to sell specified materials, supplies, equipment or services. Vendors may be physically present or participate electronically, but in either case, the auction shall provide vendors with sufficient knowledge of bid rankings so that the vendors may competitively bid against others. The auction may be conducted as the sole means of selecting a vendor or in conjunction with formal competitive bidding.

4. SINGLE SOURCE means the selection of a particular vendor when there are other vendors who could potentially provide the good or service, but the particular vendor is specially suited to comply with the specifications.

5. SOLE SOURCE means the selection of a particular vendor when work, services, materials, supplies, equipment, items or commodities can be furnished from only one source.

6. USER AGENCY means a city department, board or commission.

Part 3. Section 16-05 of the city charter is repealed and created to read:

16-05. Purchasing by Purchasing Director. 1. DUTIES, POWERS.

a. Authority to purchase. There is created a division of business operations in the department of administration. The division shall be under the direction and control of the city purchasing director, except as provided in s. 16-07, who shall be subject to the direction and control of the director of administration. The city purchasing director shall have full power, subject to s. 16-02, to purchase or to provide for the purchase of all materials, supplies, equipment and services for the use of all user agencies, including those funded through such special purpose accounts as the common council may indicate, except when otherwise specifically provided by local or state law. Purchases shall be made upon requisition by the proper officials of user agencies from funds provided by the common council, provided that nothing in this section shall be construed to prevent the city purchasing director from making purchases or contracts in anticipation of the needs of user agencies or from maintaining store of commodities in anticipation of needs.

b. Purchase of specialized materials and services. Any user agency may with the authorization of the city purchasing director purchase independently such materials, supplies, equipment or services of a special character as are used only by it, or which may be determined by the city purchasing director may be more efficiently purchased by any such user agency than by the city purchasing director if a user agency acts pursuant to the authority set forth herein, any written contract resulting therefrom shall be executed by the head of the department or the chair of the board of commission as the case may be and to be countersigned by the city purchasing director and the city comptroller. The city purchasing director may promulgate such standards and rules as he or she deems necessary to effectuate the provisions set forth herein.

2. CONTRACTS; FORMAL COMPETITIVE BIDDING AND APPEALS. a. All work, items, materials, supplies, equipment and services, except as otherwise provided herein, when the estimated cost exceeds \$50,000, shall be purchased through formal competitive bidding.

b. All contracts whose actual cost exceeds \$50,000 shall be purchased by formal written contract.

c. The purchasing director may negotiate amendments to any existing contracts subject to sub. 4.

d. Appeals as to specifications established by the purchasing director involving purchases subject to formal competitive bidding shall be heard and determined by the purchasing appeals board.

e. Appeals from recommendations made by the city purchasing director for awards involving purchases subject to formal competitive bidding for which bids were advertised, or for which bids were solicited for a reverse auction, shall be heard and determined by the purchasing appeals board.

3. EXCEPTIONS TO FORMAL COMPETITIVE BIDDING REQUIREMENTS.

Formal competitive bidding shall not be required for the following:

- a. Purchases from federal, state or municipal governments.
- b. Purchases where bid specifications are impossible or impracticable to draft.
- c. Purchases which constitute a special adaptation for a special purpose.
- d. Purchases where the performance of the work or service requires creative, individual or artistic talents.
- e. Purchases where the performance of the work or service requires scientific knowledge or is of a technical or experimental nature.
- f. Purchases where the performance of the work or service requires professional skills or other special skills or training.
- g. Purchases made using a single or sole source as defined in s. 16-01-4 and 5.

4. SINGLE AND SOLE SOURCE CONTRACTS, SPECIAL REQUIREMENTS.

- a. When a single or sole source service contract of \$50,000 or more is executed or an existing single or sole source service contract of less than \$50,000 is amended and the original amount of the contract added to the amended amount of the contract is \$50,000 or greater, the contract or amendment shall not be effective unless approved by the committee on finance and personnel. This requirement shall not apply to one-time contract amendments of less than \$10,000 or to the extension of a single or sole source service contract as specifically contemplated at the time the contract was originally executed, provided that the original contract has already been approved by the committee pursuant to this section. Further, this requirement shall not apply to contracts or contract amendments, upon a written waiver by the city purchasing director, that are necessary to respond to emergency situations that threaten life, health or safety, services provided by the actuary designated under s. 36-15-13, services related to proprietary products or services or procurements authorized under separate common council action.
- b. The purchasing director shall report the circumstances surrounding any waiver granted under par. a to the committee on finance and personnel within the following 2 regularly-scheduled common council cycles following the issuance of the waiver. No waiver granted may be for a contract of longer than one year in duration or may extend the contract for longer than one year after issuance unless otherwise approved by the committee on finance and personnel.

5. COOPERATIVE PURCHASING.

- a. The purchasing director may agree with another government purchaser to jointly purchase an item or service. If that purchase is subject to formal competitive bidding under this chapter, then the purchase shall be accomplished by a process equivalent to formal competitive bidding. Other city code provisions relating to the purchase shall apply to the extent practicable.
- b. The purchasing director may dispense with formal competitive bidding and purchase an item or service on the same terms as another government purchaser. If the purchase is subject to formal competitive bidding under this chapter, then the terms shall be established by the government purchaser after a process equivalent to formal competitive bidding. Other city code provisions relating to the purchase shall apply to the extent practicable.
- c. The purchasing director may allow a government purchaser to purchase items on the same terms as have been established under an existing city contract.

6. REVERSE AUCTION.

- a. The purchasing director shall establish and maintain a reverse auction bidding process, either in-house or through a hosting vendor.
- b. The purchasing director shall, unless contrary to federal, state or local law or regulation, conduct a reverse auction to purchase materials, supplies, equipment or services, whether otherwise required to be purchased by formal competitive bidding under this chapter, whenever the purchasing director determines a reverse auction is likely to yield a significantly lower contract cost.

7. SUPPLIES PURCHASED WITH FEDERAL AND STATE GRANTS. Whenever materials, supplies, equipment or services are to be acquired in connection with federal or state assistance or a grant funded program, the provisions of the city charter, or code of ordinances, rules, regulations or guidelines for procurement shall apply, provided, that such provisions meet the minimum requirements of federal or state laws, rules, regulations and guidelines applicable to such assistance or grant-funded program. If any provisions of the city charter, or code of ordinances, rules, regulations or guidelines contravene such federal or state provisions relating to such assistance or grant-funded program so that the result does not meet the minimum requirements of the federal or state laws, rules, regulations and guidelines, then, to that extent, the provisions of the charter, local ordinances, rules, regulations and guidelines shall be deemed to be superceded by the federal or state laws, rules, regulations or guidelines applicable to such assistance or grant-funded programs.

8. ESCALATOR PROVISIONS. The purchasing director may allow bid invitations and contracts to include an escalator provision for additional charges for goods, supplies, materials or equipment if, as a result of limited supplies or general inflation, the rates and prices of the same to the contractor increase during the performance of the contract. An escalator provision, if utilized, shall be applicable to all bidders and shall not exceed 15% of the bid per year during the period of the performance of a contract; however, in no event shall any escalation amount exceed the amount of increase actually incurred during the year by the contractor, and only if sufficient funds have been appropriated or are available. The increase shall be substantiated to the satisfaction of the purchasing director and shall not be effective until approved by the director. Each bid on a contract which is to contain multiple items and which is to include an escalator provision only as to some items shall be accompanied by a schedule enumerating the estimated rates or prices of items or goods, materials, supplies or equipment used in arriving at the bid, and only as to such items so enumerated shall an increased charge be allowed to the contractor.

9. DE-ESCALATOR PROVISIONS. The purchasing director may allow bid invitations and contracts to include a de-escalator provision which would provide that any goods, supplies, materials or equipment being purchased by the city shall be subject to any price reductions which are announced by the bidder following execution of the purchase contract, and such price reductions are then to be passed on to the city as reductions in the total costs of the goods, supplies, materials or equipment being purchased.

10. ARBITRATION OF DISPUTES. The purchasing director may include provisions of ch. 788, Wis. Stats., into a contract when he or she deems appropriate.

Part 4. Section 16-07 of the city charter is created to read:

16-07. Other Purchasing Authority.

1. COMMISSIONER OF PUBLIC WORKS. The commissioner of public works shall have full power and authority over contracts for public works as provide in ch. 7, including those contracts where materials, supplies or equipment are furnished by the contractor as part of the contract.
2. COMMISSIONER OF NEIGHBORHOOD SERVICES. The commissioner of neighborhood services shall have full power and authority to provide and contract for the demolition of any building or structure or part thereof being razed pursuant to the Wisconsin statutes, or for the abatement of nuisances in accordance with applicable city code provisions as provided in chs. 7 and 8.

Part 5. This is a charter ordinance and shall take effect 60 days after its passage and publication, unless within such 60 days a referendum petition is filed as provided in s. 66.0101(5), Wis. Stats., in which event this ordinance shall not take effect until submitted to a referendum and approved by a majority of the electors voting thereon.

APPROVED AS TO FORM

Legislative Reference Bureau

Date: _____

IT IS OUR OPINION THAT THE ORDINANCE
IS LEGAL AND ENFORCEABLE

Office of the City Attorney

Date: _____

LRB138034-3

Mary E. Turk

7/16/2013