



Legislation Text

File #: 141330, **Version:** 3

141330

SUBSTITUTE 3

ALD. ZIELINSKI AND KOVAC

A substitute ordinance relating to requirements for the procurement of service contracts.

310-17-0	am
310-17-1-a	am
310-17-1-d	am
310-17-2-e	rn
310-17-2-e	cr
310-17-2-g	cr
310-17-2-h	cr
310-17-4-0	am
310-17-4-a	am
310-17-4-b	am
310-17-4-c	rn
310-17-4-d	rn
310-17-4-e	rn
310-17-4-c	cr
310-17-4-d	rc
310-17-4-e	am
310-17-4-f	cr
310-17-4-g	am

For the procurement of service contracts, this ordinance establishes that the city award service contracts only to responsible contractors, and requires contractors to:

1. Provide certificates of insurance indicating coverage, proof of required industry licenses or permits, and federal identification numbers.
2. Agree to make sworn reports or affidavits disclosing violations of any federal, state or local wage and hour or employment discrimination laws in the past 5 years.

This ordinance also establishes penalties for violation of these regulations, including the withholding of payment on the contract; termination, suspension or cancelation of the contract; and denial of the right to participate in future contracts.

Whereas, The City of Milwaukee expends substantial municipal funds, a large portion of which are derived from taxes paid by its residents, for public services, including contracting for the delivery of services from private-sector contractors; and

Whereas, The prudent expenditure of public dollars requires that the City's procurement process

results in the selection of qualified and responsible contractors; and

Whereas, According to a 2013 U.S. Senate report titled *Acting Responsibly? Federal Contractors Frequently Put Workers' Lives and Livelihoods at Risk*, "Federal law is intended to prevent taxpayer dollars from increasing the profits of companies with a record of violating federal law in two ways: by requiring contracting officers to assess a prospective contractor's responsible compliance with federal law prior to awarding a contract, and by allowing agencies to suspend or debar contractors for certain behavior, including violations of federal law, in order to protect the integrity of taxpayer dollars"; and

Whereas, According to this same report, given the increasing reliance of federal agencies on service contracts, it is imperative that contracting officers adequately consider prospective contractors' compliance with federal labor law prior to awarding contracts; and

Whereas, On July 31, 2014, President Obama signed the Fair Pay and Safe Workplaces executive order, requiring prospective federal contractors for goods and services to disclose labor law violations within the last 3 years, as well as efforts to correct them; and

Whereas, Many major cities, including Los Angeles
<<http://www.inthepublicinterest.org/sites/default/files/LA%20Contractor%20Responsibility%20Ordinance.pdf>> and New York,
<http://www.nyc.gov/html/mocs/downloads/pdf/1_VENDEX_statute.pdf> have implemented responsible bidder programs to improve contractor quality by identifying companies with records of violating workplace laws; and

Whereas, Industry associations, such as the American National Standards Institute, commonly recommend evaluating the workplace safety record of companies bidding for contracts in the private sector; and

Whereas, When the City solicits work from the private sector, it should use taxpayer dollars in a way that promotes compliance with federal law; and

Whereas, As a participant in the marketplace, the City chooses to allocate its purchasing dollars to enhance the economic and social well-being of people, while acquiring the best possible services at the lowest cost; and

Whereas, The City strives to ensure that law-abiding companies are not put at a competitive disadvantage in bidding for City contracts, compared to companies which reduce costs by cutting corners on workplace safety; and

Whereas, According to a 2013 report by the Center for American Progress Action Fund, companies having workplace health and safety violations frequently deliver low-quality services and poor contract performance; and

Whereas, Workers in the security, janitorial, and food service industries are commonly subject to unfair treatment and labor abuses; and

Whereas, The City of Milwaukee believes that employees of City contractors should be treated with dignity and respect; now, therefore

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

Part 1. Section 310-17-0 of the code is amended to read:

310-17. Ethical ~~[[Purchasing]]~~ >> **Procurement** <<.

Part 2. Section 310-17-1-a of the code is amended to read:

1. PURPOSE.

a. It is in the city's best interest to procure items >>and services<< from responsible vendors and manufacturers who provide a safe, non-discriminatory work environment, and who compensate their employees with non-poverty wages.

Part 3. Section 310-17-1-d of the code is amended to read:

d. As a participant in the marketplace, the city chooses to expend its purchasing dollars to enhance the economic and social well-being of people, while acquiring the best possible quality goods >>and services<< at the lowest cost.

Part 4. Section 310-17-2-e of the code is renumbered 310-17-2-f.

Part 5. Section 310-17-2-e, g and h of the code is created to read:

2. DEFINITIONS.

e. "Responsible contractor" means an entity, other than a contractor or subcontractor operating as a small business enterprise as defined in s. 370-17, engaged in custodial, janitorial, security or food services that can demonstrate that neither the entity nor any parent company or subsidiary has violated any federal, state or local wage and hour or employment discrimination laws within the past 5 years, including any violation of the following:

e-1. Any federal occupational safety and health administration law or regulation.

e-2. The Equal Employment Opportunity Act of 1972.

e-3. The McNamara Service Contract Act.

g. "Service contract" means a contract subject to formal competitive bidding that directly engages the time and effort of a contractor whose primary purpose is to perform tasks related to security, janitorial, or food services, rather than to furnish an end item of supply.

h. "Violation" means findings of fault by a court or other regulatory agency.

Part 6. Section 310-17-4-0 and a of the code is amended to read:

4. REQUIREMENTS FOR NON-APPAREL ~~[[PURCHASES]]~~ >> **PROCUREMENT** <<.

a. Application. Unless contrary to federal, state or local law, contracting agencies shall award contracts to responsible manufacturers for all non-apparel items, materials, supplies and equipment that are subject to formal competitive bidding>>, and shall award service contracts to responsible contractors<<. The requirements of this paragraph shall not apply to items, materials, supplies and equipment to be furnished as part of a public works contract subject to s. 66.0903, Wis. Stats.

Part 7. Section 310-17-4-b of the code is amended to read:

b. ~~[[Specifications]]~~>>Bid specifications<<. No contracts for the ~~[[purchase]]~~>>procurement<< of non-apparel items >>or services<<referenced in this subsection shall be entered into by a contracting agency unless the bidder affirms on the bid that he or she is familiar with the requirements of this subsection and affirms that he or she will comply with the requirements contained in this subsection. The request for bid shall state that failure to comply shall result in bid rejection.

Part 8. Section 310-17-4-c to e of the code is renumbered 310-17-4-d, e and g.

Part 9. Section 310-17-4-c of the code is created to read:

c. Specifications for Service Contracts. Bids for service contracts shall include each of the following:

c-1. A certificate of insurance indicating the following coverage necessary for the contract and in amounts specified in the bid specifications: general liability, automobile liability, workers' compensation, and product liability.

c-2. Proof of any industry licenses or permits required by law for any trade or specialty area in which the bidder is seeking a contract award, including disclosure of any suspension or revocation of a license held by the company or of any director, officer or manager employed by the bidder.

c-3. A federal employer tax identification number or, for a sole proprietor, a social security number.

Part 10. Section 310-17-4-d of the code is repealed and recreated to read:

d. Affidavits. d-1. No contracts for non-apparel items, materials, supplies or equipment shall be entered into by contracting agencies unless the lowest responsible bidders first submit sworn reports or affidavits which identify any manufacturers to be used in fulfillment of the contract and include a statement by the bidders that the manufacturer's facilities identified pursuant to this subsection are responsible manufacturers of non-apparel items, materials, supplies and equipment that demonstrate all of the requirements contained in sub. 2-f-1 to 4.

d-2. No service contract shall be entered into by a contracting agency unless the lowest responsible bidder first submits a sworn report or affidavit which identifies any contractor to be used in the fulfillment of the contract and includes a statement by the bidder that the contractor is a responsible contractor.

Part 11. Section 310-17-4-e of the code is amended to read:

e. Monitoring and Enforcement. The purchasing director and any other contracting agency that executes a contract to which this subsection applies shall be responsible for monitoring contracts for

compliance with this paragraph. >>If any information provided by the contractor or subcontractor changes during the specified period of the contract, the contractor shall submit or cause to be submitted to the purchasing director or the director's designee a sworn report or affidavit relating to the updated information.<<

Part 12. Section 310-17-4-f of the code is created to read:

f. Availability of Records for Inspection. The purchasing director or the director's designee shall maintain and make available for public inspection all items submitted by the contractor or subcontractor pursuant to this section, including affidavits, insurance certification, and industry licenses or permits.

Part 13. Section 310-17-4-g of the code is amended to read:

g. Sanctions. Any contractor engaged in a contract who has been found by the purchasing director and any other contracting agency that executes a contract to which this subsection applies to have submitted any false, misleading or fraudulent information or has otherwise failed to comply with the provisions of this subsection may be subject to the sanctions provided in sub. 3-f [[:]] >>, according to the following schedule:

g-1. Contractors shall be subject to withholding of payment after 30 days of non-compliance.

g-2. Contractors shall be subject to termination, suspension or cancellation of the contract in whole or in part after 60 days of non-compliance.<<

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: _____

LRB 155418-5
Andrew R. VanNatta
04/28/2015