

SHEBOYGAN COUNTY ORDINANCE NO. 02 (2017/18)

Re: **Amending Chapter 50 of the County Code Establishing County Purchasing Procedures**

WHEREAS, recent changes in Wisconsin State law regarding prevailing wages and its implications for County procurement provide an opportunity to review the County's current purchasing procedures, and

WHEREAS, in many instances, Chapter 50 of the County Code has requirements which are antiquated or unnecessary and which provide little benefit to the public, and

WHEREAS, it is appropriate to reorganize and modernize Chapter 50 so that the public can be assured that the County's procurement practices are as efficient and beneficial to the taxpayers as possible;

NOW, THEREFORE, the County Board of Supervisors of the County of Sheboygan does ordain as follows:

Section 1. **Amending Chapter 50.** Chapter 50 of the Sheboygan County Code of Ordinances is hereby amended as follows (only those sections or portions of sections affected appear)(additions indicated by redlining; deletions by strikeouts):

50.02 (1) Public works construction projects, including construction, repair, remodeling, or improving any structure or road when the estimated cost thereof shall exceed Twenty-five Thousand Dollars (\$25,000.00) and as required by Wis. Stat. §§ 59.52(29) and 66.0901. ~~Such projects shall comply with the provisions of Wis. Stat. § 66.0901.~~

(2) Purchase of equipment, materials, and supplies when the estimated cost thereof shall exceed ~~Twenty-five~~Fifty Thousand Dollars (\$~~25,000.00~~50,000.00), except when purchasing unique one-of-a-kind items or when compatibility with existing equipment is a required condition.

(3) When entering into a group purchasing service contract (that is, where the group is an entity which obtains prices from multiple vendors and passes the best price on to its members for "supplies" [as defined above]) and the quarterly expenditures thereunder shall exceed ~~Ten~~Fifty Thousand Dollars (\$~~10,000.00~~50,000.00), then compliance with this section shall be had by advertising for bids or quotes for such service from any vendor or group service provider.

~~(6) Whenever utilizing Subsections (c), (d), and (e), above, prior thereto the County shall first submit the proposed purchase to public bids so that it may determine whether the non-bid purchase is competitive; and where group purchase service contracts are utilized, at least every two (2) years renewal of the service shall require the bid-testing process.~~

- (76) ~~If the~~The County Board, ~~by a three-fourths (3/4) vote of all the members entitled to a seat, provides that~~ declares that whenever it is in the best interests of the County, as determined by the County Administrator, any class of public work or any part thereof may be done directly by the County, ~~it may do so~~ without submitting the same for bids.
- (87) Public bidding is not required for highway contracts which the County Transportation Committee or the County ~~Highway Commissioner~~Transportation Director is authorized by law to let or make.

50.03 WHEN PUBLIC BIDDING OPTIONAL. Any contracts or purchases not included under Section 50.02, above, or unique one-of-a-kind items may be accomplished either through public bids or solicited quotations, requests for proposals or negotiated price, or any other procedure as the County Committee shall deem appropriate, all subject to Section ~~50.13~~50.11 of this Code. ~~and the following:~~

- (1) ~~When the estimated cost thereof is between Five Thousand Dollars (\$5,000.00) and Twenty-five Thousand Dollars (\$25,000.00), a notice (in the form of a display advertisement) shall be published in the official County newspaper at least one (1) week before the contract is entered into, notifying of the County's intent to acquire the item(s) or to enter into the work.~~
- (2) ~~Such advertisement shall in summary fashion describe the proposed purchase and invite any interested party to submit competitive price quotes for the County Committee's consideration.~~

50.04 CONTRACTS FOR SERVICES. Contracts for services shall be let in the manner approved by the Committee signing them, subject to Section ~~50.13~~50.11, below. Every effort shall be made to ensure competitive pricing and fair and open dealing with regard to such contracts.

50.05 BIDDING PROCEDURE. Where public bidding is required, the procedure set forth in Wis. Stat. § ~~66.29~~66.0901 shall be followed and the following requirements shall also be met:

- (1) Advertisement. A display advertisement shall be published in the official County newspaper, and an ~~Additional publications~~ additional publication may be utilized if deemed appropriate by the County Committee. The ~~optional~~ advertisement shall be published as directed by the Committee.
- (a) ~~The required display advertisement shall be published twice, with the first publication preceding the bidding deadline by at least ten (10) days and the second publication preceding the bidding deadline by at least three (3) days. Where complex or voluminous specifications are~~

~~involved the lead time shall be enlarged to permit adequate time to properly respond to the request for bids. The County Committee involved may vary the above time frame by unanimous vote of the entire Committee but when doing so, the basis for such action shall be set forth in detail in the Committee Meeting Minutes.~~

~~(b) The display advertisement shall consist of an appropriate-sized block newspaper ad sufficient to give interested vendors notice of the anticipated expenditure.~~

~~(c) The advertisement may include the exact specifications upon which the bids are to be prepared or it may indicate the general nature of the anticipated expenditure and indicate where exact specifications can be obtained if any are available.~~

50.06 RESPONSIBLE BIDDERS. In purchase situations where state law does not require bidders' proof of financial responsibility, the County may nevertheless require bidders to submit proof of their financial ability, equipment, and experience for the anticipated expenditures proposed for the public contract. The Committee may consider past workmanship, business dealings, and performance of the bidder in addition to financial aspects when determining the bidder's responsibility. Whenever the Committee is not satisfied with the bidder's responsibility, it may reject said bid or disregard the same, but whenever practical, if the County intends to reject a bid under this SectionChapter, it should be done prior to opening the bid.

~~50.08 USED EQUIPMENT PURCHASES. If the County proposes to purchase used equipment, a notice of such intent complying with the procedures and the time and content requirements set forth in Section 50.03, above, shall be published.~~

50.0908 EXTREME EMERGENCY. The County Board is empowered to declare, by ordinance or resolution, adopted in formal session by 2/3 vote, an emergency existing within the County which shall eliminate the required bidding procedure set forth above.

50.4009 INTERNAL PURCHASING PROCEDURES. The provisions of this Section are for internal procedural purposes and vendors may not challenge the procedure, but such matters are reserved to the County Board:

- (1) Operational Material and Supplies. Under the direction of the County Administrator, eachEach Department Head is authorized to acquire non-capital items for the operation of the involved Department within the limits of the approved budget for that office, Department, or function, subject to the audit of the County Board Committee acting as liaison for that office, Department, or function. Where a County or Committee policy has established a

group purchasing procedure, it shall be followed except when the involved Committee shall have in advance authorized the departure from such procedure. Uniform "requisition" or "invoice" forms, where appropriate, shall be provided by the Finance Department for payment and audit purposes.

- (2) Capital Outlay Items. All approved and budgeted capital outlay purchases items shall first be deemed as approved by the involved Committee. (Approval of budget requests for such items is not the same as purchase approval.)
- (3) Purchase of Non-Budgeted Capital Outlay Items. If purchase of an outlay item is required which was not included in the current budget, after having obtained the approval of the County Administrator, the Department Head shall first then obtain the approval of the involved Committee. After this approval is obtained, the Finance Committee shall be contacted to provide the funds through substitution if substitute funds are available. If the current request is a substitution for an item already in the budget, the Finance Committee may authorize that the funds provided for the original budget item be used for the requested purpose. If no funds are available in the current budget, the involved Committee shall may present a Resolution to the Board to appropriate or transfer funds for said purchase but only in the event of compelling urgency. Appropriation of funds through the budgetary process shall be the preferred method.

50.4410 INTERPRETATION. The herein Ordinance shall be liberally interpreted to permit the County to exercise broad discretion in ensuring that the County obtains the "best" price when spending public funds. It is hereby recognized that the lowest bid may not be the "best" price to the County as maintenance costs, life of the equipment, and other factors may result in the lowest price at the time of purchase becoming the highest price over the life of the product or project. When exercising its discretion as to which bid or quote to accept, the "best" price should be sought, and if such price is not the "lowest," then justification of non-purchase of the low bid shall be set forth in detail in the Committee Minutes. The provisions of this Ordinance are not intended to supersede any requirements of the Wisconsin Statutes.

~~50.12 OFFICIAL COUNTY NEWSPAPER. The County Clerk shall prepare a list of newspapers that comply with the requirements of Wis. Stat. ch. 985 so as to be eligible for use as the publisher of the County's legal notices. The list shall include current charges for publication of notices and audited paid circulation figures and shall be updated every two (2) years. The County Clerk shall present the list to the Finance Committee prior to the Finance Committee's first regular meeting after its organizational meeting. The Finance Committee shall at that meeting designate the official County newspaper, which designation shall be reviewed at the first regular meeting following each organizational meeting thereafter.~~

50.4311 CONTRACT CLAUSES REGARDING LIABILITY. No contract with any contractor, professional, consultant, supplier, or other vendor to Sheboygan County may include any provision limiting or shifting the vendor's potential liability to Sheboygan County. By way of illustration but not limitation, this Section prohibits contract provisions that:

- (1) limit liability to the amount of the purchase price, or any other amount;
- (2) disallow claims for indirect, incidental, special or consequential damages;
- (3) require the County to indemnify the vendor in any circumstance;
- (4) establish the venue for litigation as any situs other than Sheboygan County Circuit Court or, if applicable, the United States District Court, Eastern District of Wisconsin;
- (5) define the substantive and procedural law to be applied in any dispute as the law of any jurisdiction other than Wisconsin;
- (6) shift any vendor's liability to third parties from the vendor to the County;
- (7) shorten the statute of limitations;
- (8) disclaim or waive warranties by the vendor;
- (9) require the County to hold the vendor harmless from third party claims; or
- (10) place responsibility on the County in any circumstance for any part of the vendor's attorneys' fees or other costs.

~~Liaison Committee~~ Department Heads wishing to enter into such contracts shall first work with the County Purchasing Agent and the Corporation Counsel to negotiate for the elimination of the foregoing language.

If a prospective vendor insists on inclusion of contract language that does not comply with this Section, and if the ~~Liaison Committee~~ Department Head still wishes to enter into such contract because of the unavailability of comparable and competitive vendors, the contract may be entered into only if approved by the Corporation Counsel, or the Executive Committee, or the full County Board.

50.4412 PRINTING SERVICES. No expenditure for commercial printing, duplicating, or publishing may be made if the project could be produced by the County Printing Department internally as economically as ~~the~~ by a commercial printer. ~~Exceptions may be authorized by the Information Systems Director. Exceptions may also be authorized by the Liaison Committee if the Information Systems Director declines to authorize an exception, provided that Liaison Committee authorizations must be reported to the Finance Committee in a written report that justifies the reason for the exception.~~

Section 2. **Effective Date.** The herein Ordinance shall take effect upon enactment.

Respectfully submitted this 18th day of July, 2017.

EXECUTIVE COMMITTEE

Thomas Wegner
Thomas Wegner, Chairperson

George Marthenze
George Marthenze, Vice-Chairperson

William C. Goehring
William C. Goehring, Secretary

Vernon Koch
Vernon Koch

Edward J. Procek
Edward J. Procek

Opposed to Introduction:

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Enacted 08.15.17