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Title: AN ORDINANCE AMENDING SECTIONS 41-23 AND 41-24 OF THE DULUTH CITY CODE, 1959, AS AMENDED, REGARDING PURCHASING THRESHOLDS.

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AN ORDINANCE AMENDING SECTIONS 41-23 AND 41-24 OF THE DULUTH CITY CODE, 1959, AS AMENDED, REGARDING PURCHASING THRESHOLDS.

CITY PROPOSAL:

The city of Duluth does ordain:

Section 1. That Sections 41-23, 41-23.1 and 41-24 of the Duluth city code, 1959, as amended, are hereby amended to read as follows:

Sec. 41-23. Contract procedure--contracts exceeding ~~\$100,000~~ \$150,000.

Purchase of all supplies and contractual services exceeding an estimated cost of ~~\$100,000~~ \$150,000 shall be made by the purchasing agent pursuant to the provisions of this section either by formal written contract or upon a properly executed purchase order, whichever method such purchasing agent deems appropriate, from the lowest responsible bidder after due notice inviting proposals. All sales of personal property when the estimated value shall exceed ~~\$100,000~~ \$150,000, shall be made by formal written contract or such other means of conveyance as the city attorney may prescribe to the highest responsible bidder after due notice inviting proposals.

(a) Notice inviting bids;

(1) Published notice. Notice inviting bids shall be published in at least two issues of the official newspaper of the city or shall be published on the city's website or on such other internet website as is designated by the purchasing agent. If another website is designated for publication of any such notice by the purchasing agent, a list of notices currently published on any such website, the web address and other pertinent instructions for viewing any such notice shall be published on the city's website. If requested, written copies of bid documents, plans and specifications and bid forms will be provided to a requester; a fee to cover the cost of reproduction may be required. The time set for the opening of such bids shall be not less than ten days from the date of the last publication of such notice in said newspaper or not less than 11 days after its publication on any such website. Published notice shall include a general description of the articles to be purchased or sold, or the work to be performed as applicable, shall provide instructions for viewing and submitting bid documents electronically or physically, the date and time by which bids must be received by City and web address or physical address where bids must be received by city.

(2) Bidders list. The city purchasing agent shall also solicit bids in written or electronic form from all responsible prospective suppliers who have requested their names to be added to a "bidders list," which the purchasing agent shall maintain, by sending them such notice in the form requested informing them of the proposed purchase, sale or work. In any case, invitations sent to the vendors on the bidders list shall be limited to commodities that are similar in character and ordinarily handled by the trade group to which the invitations are sent;

(b) Bid deposits. When deemed necessary by the city purchasing agent, bid deposits shall be prescribed in the public notices inviting bids. Unsuccessful bidders shall be entitled to return of such deposits where the purchasing agent has required such. A successful bidder shall forfeit any such deposit required by the purchasing agent upon failure on his part to enter a contract within ten days after the award. For the purpose of this subsection, the term "deposit" shall mean cash, cashier's check, certified check, corporate surety bond; or electronic bond in the format specified in the published notices

(c) Bid opening procedure;

(1) Bids. Bids submitted shall conform to the requirements of the published notice but may be in either electronic or written form at the option of the bidder.

(2) Opening. Bids shall be opened in public at the time and place stated in the public notices;

(3) Tabulation. A tabulation of all bids received shall be posted for public inspection;

(d) Rejection of bids. The city purchasing agent shall have the authority to reject all bids, parts of all bids or all bids for any one or more supplies or contractual services included in the proposed contract when the public interest will be served thereby. The purchasing agent may reject the bid of a contractor who is in default on the payment of taxes, licenses or other money due the city;

(e) Award of contract;

(1) Authorization by city council. Contracts within the purview of this section shall be awarded only after authorization by resolution of the city council;

(2) Lowest responsible bidder. Contracts shall be awarded to the lowest responsible bidder. In determining lowest responsible bidder, in addition to price, the purchasing agent shall consider:

(A) The ability, capacity and skill of the bidder to perform the contract or provide the service required;

(B) Whether the bidder can perform the contract or provide the service promptly or within the time specified without delay or interference;

(C) The character, integrity, reputation, judgment, experience and efficiency of the bidder;

(D) The quality of performance of previous contracts or services;

(E) The previous and existing compliance by the bidder with laws and ordinances relating to the contract or service;

(F) The sufficiency of the financial resources and ability of the bidder to perform the contract or provide the service;

(G) The quality, availability and adaptability of the supplies or contractual services to the particular use required;

(H) The ability of the bidder to provide future maintenance and service for the use of the subject of the contract;

(I) The number and scope of conditions attached to the bid;

(J) The new best-value contracting law for construction projects only;

(3) Award to other than low bidder. When the award is not given to the lowest bidder, a full and complete statement of the reason for placing the order elsewhere shall be prepared by the purchasing agent and filed with the other papers relating to the transaction;

(4) Tie bids;

(A) Local vendors. If all bids received are for the same total amount or unit price, quality and service being equal, the contract shall be awarded to a local bidder. If two or more local bidders submit tie bids, the purchasing agent shall award the contract to one of the tie bidders by drawing lots in public;

(B) Outside vendors. Where tie bids are submitted by outside vendors, the

purchasing agent shall award the contract to one of the tie bidders by drawing lots in public;

(5) Performance bonds. The city purchasing agent shall have the authority to require a performance bond, before entering a contract, in such amount as he shall find reasonably necessary to protect the best interests of the city. He shall require a performance bond in every case where a law specifically requires the furnishing of a bond as a condition precedent to the awarding of a contract for the doing of any public work or the making of any public improvement;

(f) Prohibition against subdivision. No contract or purchase shall be subdivided to avoid the requirements of this Section. (Ord. No. 7050, 6-25-1956, § 10; Ord. No. 7381, 2-24-1964, § 1; Ord. No. 7418, 10-5-1964, § 1; Ord. No. 7697, 4-14-1969, § 1; Ord. No. 7866, 8-30-1971, § 1; Ord. No. 8892, 5-23-1988, § 1; Ord. No. 9409, 4-12-1999, § 1; Ord. No. 9809, 12-4-2006, § 1; Ord. No. 9981, 6-15-2009, § 8; Ord. No. 10269, 12-16-2013, § 1. Ord. No. 10452, 6-13-2016, §1)

Sec. 41-23.1. Best value procurement over ~~\$100,000~~ \$150,000.

(a) Pursuant to the authority contained in Minnesota Statutes Section 471.345 subd. 3(a) and Section 16C.28 subd 1(a)(2) and statutes cited therein, notwithstanding the provisions of Section 41-23 above, the city shall have the option of awarding contracts for construction, alteration, repair or maintenance work by means of best value contracting as described in this section where amount of the contract for the subject work is estimated to exceed ~~\$100,000~~ \$150,000;

(b) The use of best value contracting procedures shall be available for the award of contracts:

~~(1) From and after the effective date of this ordinance and through the end of the year ending three years after that date, best value contracting shall be used for no more than 20 percent of the city's contracts for construction, alteration, repair or maintenance work having an estimated cost in excess of \$100,000 in any one such year;~~

~~(2)~~(1) Any city official wishing to use best value contracting to contract for such construction, alteration, repair or maintenance shall obtain written approval therefore from the head of the department for which such work is to be performed and from the chief administrative officer;

~~(3)~~(2) Upon approval of proceeding with best value contracting for subject work, the above city official shall cause to be prepared a request for proposals for the provision of the subject work. Such request for proposals shall contain a listing of criteria that will be considered in determining which proposer offers, in aggregate, the best value to the city for the performance of the work, including minimum specifications for the work to be performed and a requirement that the proposer state the maximum price which the proposer will charge to perform the specified work. Said criteria shall take into account any special issues related to the work and may include, but shall not be limited to:

- (A) The quality of the contractor's performance on previous projects;
- (B) The timeliness of the contractor's performance on previous projects;
- (C) The level of customer satisfaction with the contractor's performance on previous projects;
- (D) The contractor's record of performing previous projects on budget and ability to minimize cost overruns;
- (E) The contractor's ability to minimize change orders;
- (F) The vendor's or contractor's ability to prepare appropriate project plans;
- (G) The contractor's technical capacities;
- (H) The individual qualifications of the contractor's key personnel; or
- (I) The contractor's ability to assess and minimize risks;

~~(4)~~(3) The relative weight to be given to each of the criteria shall be set forth in the request for proposals, including the criteria of price, in determining which proposal offers the best value to the city;

~~(5)~~(4) The request for proposals shall include the right of the city to reject all proposals;

(c) Upon opening of the proposals, the above department head shall select a proposal evaluation committee who shall review the proposals and shall assign a weighted value to each of the criteria for each of the proposals in accordance with the weights as set forth in the request for proposals. In evaluating the performance of any proposer on previous projects, the exercise or assertion of said proposer's legal rights with regard to such previous project shall not be considered as a factor in evaluating such proposer's previous

performance. The proposal having the highest aggregate criteria score shall be deemed to offer the best value to the city for the work and shall be recommended to the city council for award;

(d) The city council shall either vote to award the contract to the recommended proposer, shall vote to not so award the contract to the recommended proposer or shall vote to reject all proposals. (Added by Ord. No. 10289, 4-14-2014, § 1.)

Sec. 41-24. Contract procedure--contracts of ~~\$100,000~~ \$150,000 or less.

Purchases of supplies and contractual services and all sales of personal property involving ~~\$100,000~~ \$150,000 or less shall be made pursuant to the provisions of this section either by formal written contract or upon a properly executed purchase or sale order, whichever method is deemed appropriate.

(a) Bidding procedures;

(1) Contracts between \$25,000 and ~~\$100,000~~ \$150,000. If the amount of the contract is estimated to exceed \$25,000 but not to exceed ~~\$100,000~~ \$150,000 the purchasing agent shall make such purchases or sales by direct negotiation, obtaining two or more quotations when possible. All quotations obtained shall be kept on file for a period of at least one year after receipt thereof;

(2) Contracts of \$25,000 or less. If the amount of the contract is estimated to be \$25,000 or less, the purchasing agent may, in his discretion, make the purchase or sale either upon quotation or in the open market. If the contract is made upon quotation, it shall be based, so far as practicable, on at least two quotations, which shall be kept on file for a period of at least one year after receipt thereof;

(3) Purchases of \$5,000 or less. In the case of purchases estimated to be \$5,000 or less, department heads or their designees are authorized to make such purchases without the approval of the purchasing agent. Such purchases may be made either upon quotation or in the open market. If such purchases are made upon quotation, they shall be based, so far as practicable, on at least two quotations, which shall be kept on file for a period of at least one year after receipt thereof;

(b) Rejection of bids. The purchasing agent or other person authorized to make purchases shall have the authority to reject all bids, parts of all bids or all bids for any one or more supplies or contractual services included in the proposed contract when the public interest will be served thereby. The purchasing agent or other person authorized to make purchases may reject the bid of a contractor who is in default on the payment of taxes, licenses or other money due the city;

(c) Award of contract. The purchasing agent or, subject to the limitations of paragraph (a)(3)

Section 2. That this ordinance shall take effect 30 days after its passage and publication.

STATEMENT OF PURPOSE: This ordinance approves increases to the formal competitive bidding and best value purchasing thresholds. The purpose of this ordinance is to update the city's purchasing thresholds to more closely align with the Uniform Municipal Contracting Law, Minnesota Statute §471.345, which increased the formal bid and best value thresholds from \$100,000 to \$175,000 effective August 1, 2018. The city is adopting a threshold of \$150,000 to match the current city investment threshold for project labor agreements.