

# The Ins & Outs of Bidding

2008 County Highway Commissioner  
Conference

# Topics to be Covered

- General County Bidding Provisions
  - §59.52(29)
  - Is it covered by §59.52(29)?
  - §66.0901
  - Other Miscellaneous Provisions
- Statutes Specific to County Highway Departments
  - §83.015
  - §83.04
  - §84.06
  - §86.31
- Local Ordinances/Policies
- Design-Build Overview

# General County Bidding Provisions

## §59.52(29)(a) Public Work, How Done; Public Emergencies

- §59.52(29)(a) - applies to all public work, including any contract for the construction, repair, remodeling or improvement of any public work, building or furnishing of supplies or material
  - **DOES NOT** apply to public construction if the materials were donated or the labor was done by volunteers OR to highway contracts which the highway committee or highway commissioner are authorized by law to make

- Estimated cost > \$25,000 must be let by bid to the lowest responsible bidder
  - Must follow procedure set forth in §66.0901, unless by  $\frac{3}{4}$  vote of the County Board, the Board determines that any or all of the work will be done directly by the County without bids
- Estimated cost between \$5,000 and \$25,000 shall be done at the direction of the County Board, but if bids are not requested, the Board must:
  - publish a Class 1 notice under Chapter 985 before entering into a contract or
  - contract with a person qualified as a bidder under §66.0901(2)
- Estimated cost < \$5,000 shall be done at the direction of the County Board

# Is it covered by §59.52(29)

- Is it related to the provision of **supplies** or **materials**?
  - Supplies are something that are used or consumed
  - Materials are things that enter into or form part of a finished structure
- Is it related to the **construction, repair, remodeling** or **improvement** of any public work?
- If the answer to either above is yes and if it falls under the provisions of §66.0901(1) then you must follow the procedures in both §§59.52(29) & 66.0901 as applicable based on \$, **UNLESS** it is an emergency
  - Emergency repair or reconstruction are not required to follow bid requirements

# Things that are not covered by §59.52(29)

- Equipment
- Police Cars
- Dump trucks
- Garbage Removal Services
- Radio Equipment
- Services requiring professional and/or technical expertise

# §66.0901

## Public works, contracts, bids

- §66.0901(1)(c) Public Contract: a contract for the construction, execution, repair, remodeling or improvement of a public work or building or for the furnishing of supplies or material of any kind, proposals for which are required to be advertised for by law
  - Things not required to be advertised for by another law are not covered by §66.0901
    - This allows the purchase of certain supplies & materials w/o following the procedures for public bid & cooperative purchasing
      - i.e. purchase through State contract

- §66.0901(2) Bidder's Proof of Responsibility
  - A sworn statement
  - Contains the following information:
    - Financial Ability
    - Equipment
    - Experience
    - Other things required by the municipality for the protection and welfare of the public
  - Must be in writing on a standard form
    - Form is adopted and furnished by the municipality
  - Must be received at least 5 days prior to the time set for opening bids
  - Contents are confidential and may only be released:
    - Upon written order of the person furnishing the statement
    - For necessary use by the municipality to qualify the person
    - In cases of actions against or by the person or municipality
  - Evaluated by committee, employee or board who is authorized to receive the bids and award the contract

# Sample Contractor's Qualification Statement

- **WAUSHARA COUNTY**
- **CONTRACTOR'S QUALIFICATION STATEMENT**
- **209 South Saint Marie Street**
- **Wautoma, WI 54982**
- The undersigned certifies under oath that the information provided herein is true and sufficiently complete so as not to be misleading.
- SUBMITTED BY: \_\_\_\_\_ Corporation [ ]
- \_\_\_\_\_ Partnership [ ]
- NAME: \_\_\_\_\_ Individual [ ]
- \_\_\_\_\_ Joint Venture [ ]
- ADDRESS: \_\_\_\_\_ LLC [ ]
- \_\_\_\_\_ Other [ ]
- \_\_\_\_\_
- PRINCIPAL OFFICE: \_\_\_\_\_
- \_\_\_\_\_
- ANNUAL QUALIFICATION [ ]
- NAME OF PROJECT (if applicable): \_\_\_\_\_
- TYPE OF WORK (check or explain each type of work performed by your organization):
- \_\_\_\_\_ General Construction \_\_\_\_\_ Electrical
- \_\_\_\_\_ Plumbing \_\_\_\_\_ HVAC
- \_\_\_\_\_ Other \_\_\_\_\_
- \_\_\_\_\_ Please Specify

- **1. ORGANIZATION**
- A. How many years has your organization been in business as a Contractor?
- B. How many years has your organization been in business under its present business name?
- C. Under what other or former names has your organization operated?
- D. If your organization is a Corporation, answer the following:
  - 1. Date of incorporation:
  - 2. State of incorporation:
  - 3. President's name:
  - 4. Vice-President's name:
  - 5. Secretary's name:
  - 6. Treasurer's name:
  - 7. Registered Agent's name:
- E. If your organization is a Partnership, answer the following:
  - 1. Date of organization:
  - 2. Type of partnership (if applicable):
  - 3. Name(s) of general partner(s):
- F. If your organization is individually owned, answer the following:
  - 1. Date of organization:
  - 2. Name of owner:
- G. If your organization is an LLC, answer the following:
  - 1. Date of organization:
  - 2. State of organization:
  - 3. Name(s) of member(s):
  - 4. Registered Agent's name:
  - 5. Is the management vested in the member(s) or manager(s)?
- H. If the form of your organization is other than those listed above, describe it and name the principals:

- **2. LICENSING**

- A. List jurisdictions and trade categories in which your organization is legally qualified to do business, and indicate registration or license numbers, if applicable.
- B. List jurisdictions in which your organization's partnership or trade name is filed.

- **3. INSURANCE**

- A. Indicate the name of your Worker's Compensation Insurance carrier and the effective date dates of your current coverage. (You will be required to provide a copy of the insurance certificate if you are granted the contract.)
- B. Indicate the name of your General Liability Insurance carrier, the amount of the policy and the effective dates of your current coverage. (You will be required to provide a copy of the insurance certificate if you are granted the contract.)

- **4. EXPERIENCE**

- A. List the categories of work that your organization normally performs with its own forces and state how many years your organization has been involved in each.
- B. Claims and Suits. (If the answer to any of the questions below is yes, please attach details.)
  - 1. Has your organization ever failed to complete any work awarded to it?
  - 2. Are there any judgments, claims, arbitration proceedings or suits pending or outstanding against your organization or its officers?
  - 3. Has your organization filed any lawsuits or requested arbitration with regard to construction contracts within the last five (5) years?
- C. Within the last five (5) years, has any officer or principal of your organization ever been an officer or principal of another organization when it failed to complete a construction contract? (If the answer is yes, please attach details.)

- **5. FINANCING**

- A. Financial Statement

- 1. Attach a financial statement, preferably audited, including your organization's latest balance sheet and income statement showing the following items:
  - a. Current Assets (e.g. accounts payable, notes payable, accrued expenses, provision for income taxes, advances, accrued salaries and accrued payroll taxes)
  - b. Other Liabilities (e.g. capital, capital stock, authorized and outstanding shares par values, earned surplus and retained earnings)
- 2. Name and addresses of firm preparing attached financial statement and date of statement:
- 3. Is the attached financial statement for the identical organization named on page 1?
- 4. If the answer to 3 is no, explain the relationship and financial responsibility of the organization whose financial statement is provided to the named organization (e.g. parent-subsiary)
- B. Will the organization whose financial statement is attached act as guarantor of the contract for construction?

- **7. SIGNATURE**

- Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

- NAME OF ORGANIZATION: \_\_\_\_\_

- \_\_\_\_\_

- By: \_\_\_\_\_

- Title: \_\_\_\_\_

- \_\_\_\_\_, being duly sworn on oath states and affirms that the information provided herein is true and sufficiently complete so as not to be misleading.

- Subscribed and sworn to before me

- this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

- \_\_\_\_\_

- Notary Public: \_\_\_\_\_

- My commission expires: \_\_\_\_\_

- §66.0901(3) Proof of Responsibility, Condition Precedent
  - If there is no Contractor's Qualification Statement on file, the person may not submit a bid
    - A new statement does not need to be filed for each project, unless required by the municipality
- §66.0901(4) Rejection of Bids
  - Bids may be rejected or disregarded, if the municipality is not satisfied w/the sufficiency of any answer on the statement

- §66.0901(5) Corrections of Errors in Bids
  - If a mistake, error or omission is made in the preparation of the bid, the bidder must disclose that fact before the bids are opened
    - If disclosed, the bid is returned & that bidder may not bid on that project, unless it is readvertised & relet
  - If the mistake is not discovered until the bids are opened, the bidder must immediately notify the municipality of the mistake, error or omission
    - Must include evidence showing what the mistake, error or omission is
    - Must include evidence to show that it was not caused by carelessness

- If the discovery causes damages, there may be a forfeiture of money by the bidder
  - Moneys forfeited can be recovered if a Court finds that the bidder was free from carelessness, negligence or inexcusable neglect
- §66.0901(6) Separation of Contracts; Classification of Contractors
  - Other than highway structures & facilities, the municipality may bid projects based on a single or multiple divisions of the work
  - May set out reasonable hours of labor, wages, residence, character and classification of workers to be employed
  - May classify contractors as to financial responsibility, competency & ability to perform work & setup classified list of contractors
    - May reject the bid of any contractor, if that contractor has not been classified for the kind or amount of work in the bid

- §66.0901(7) Bidder's Certificate
  - Each bid for work, labor or furnishing of materials, shall include a sworn statement that the bidder or authorized person has examined and carefully prepared the proposal from the plans and specifications and has checked the same in detail before submission
  
  - Shall submit a list of subcontractors & the class of work to be performed by each subcontractor
    - Subcontractor must submit bid in writing to the general contractor @ least 48 hours before the bid closing
    - List may not be added or altered w/o written consent
    - Proposal will be invalid if a subcontractor is omitted & unless it is considered inadvertent or if the bidder will perform the work of the omitted subcontractor

# Other Miscellaneous Provisions

- §66.0131 Local Government Purchasing
  - (2) Intergovernmental Purchases w/o Bids
    - Any local governmental unit may make purchases from another unit of government, including the state & federal government, without bids
- §66.0133 Energy Savings Performance Contracting
  - (1)(c) Performance Contract
    - Contract for the evaluation & recommendation of energy conservation, facility improvement measures & implementation
  - (3) Notice
    - Prior to entering into a performance contract, a local governmental unit shall solicit bids or competitive sealed proposals from qualified providers
      - Must provide 10 days notice of the meeting where award will be made
      - May award to the qualified provider that best meets the needs of the governmental unit
        - » Need not be the lowest cost provider

# Statutes Specific to County Highway Departments

- §83.015 County Highway Committee
  - (2)(a) Powers and Duties
    - Shall determine whether each piece of county aid construction shall be let by contract or done by day labor
    - Enter into contracts & make necessary arrangements for the proper construction & maintenance of highways
  - (b) if there is an appointed highway commissioner, the committee is policy-making body only & the commissioner exercises the duties above

- 83.04 Highway Construction by County; noncontract work; payments
  - (1) All highway improvements made by the county highway committee shall be by contract, unless the committee determines that some other method would better serve the public interest
    - The manner of advertising for bids & the forms of bids, contracts & bonds shall be substantially those used by DOT
  - (2) If deemed inadvisable to let a contract, the committee may direct the commissioner to proceed w/the construction as noncontract work
    - Commissioner employs & purchases necessary labor & materials

- §84.06 Highway Construction
  - (3) If DOT finds that it would be more feasible & advantageous to have an improvement performed by the county in which the improvement is located & w/o bids, DOT may enter into a contract w/the county highway committee
    - DOT may authorize the county to purchase, deliver & store materials
      - This authorization may include how the contracts for these purchases are done
        - » If no direction, may be required to let bids for materials
    - DOT may fix rental rates of small tools & equipment
    - Contract will be between the county & state & not based on bids

- §86.31 Local Roads Improvement Program
  - (2) Administration
    - (b) Except as provided in (d) improvements for highway construction projects shall be under contract awarded on the basis of competitive bids to the lowest responsible bidder
    - (d) County trunk highway improvements funded under the program, may be performed by the county highway department if:
      - 1m. County highway department demonstrates:
        - » That it is cost effective for it to perform the work &
        - » Competitive bidding is to be used for improvements w/an estimated total cost at least equal to the total funds allocated for county highway trunk improvements under the program during the current biennium
      - 4. Contracts for the purchase of asphaltic hot mix shall be awarded on the basis of competitive sealed bidding
      - 5. County Highway Improvement Program District Committee shall review the proposed work for cost effectiveness & approve proposed work before being done by county highway department

# Local Ordinances/Policies

- A County Board may adopt an ordinance or a policy that supplements the statutory provisions relating to bidding
  - i.e. A County Board may adopt a policy or ordinance that requires bids for all projects no matter the cost or may require bids for certain types of projects
- Be sure to review local policies & ordinances or check w/Corporation Counsel if unsure before entering a contract

# Design-Build Overview

- Design-Build is a project delivery method that combines two, usually separate services into a single contract
- There is one contract for a fixed fee for both architectural/engineering services and construction
- The services may performed by a single entity, a consortium or other combination of groups assembled for the project

- Responsibilities

- Designer/builder

- Majority of the design work
    - All construction activities
    - Risk associated w/providing these services for a fixed fee

- Owner

- Financing
    - Operating & maintaining the project
    - Preliminary engineering & project definition in order to be able to prepare the bid documents
      - Not set in stone, but usually means 10-15% complete
    - Award the contract
      - Customary practice is to award based on best value
        - » Best value takes into account the technical capabilities & qualifications of the team & the cost

- Design/Build in Wisconsin
  - Currently no state statutory requirements regarding how to implement design/build
  - DOT has reviewed design/build and issued a report for the Bureau of Highway Construction Division of Transportation Infrastructure Development (dated 11/24/03 & supplemented 12/17/03)
    - The report indicates that one of the purposes is to assist in crafting a plan for implementing design/build in WI for transportation projects
  - May be a viable option for County depending on project & support for concept by the County Board and/or Highway Committee

- Federal Regulations
  - Have adopted some regulations w/respect to transportation projects
  - Title 23 U.S. Code
    - Chapter 1, Subchapter I, §112(b)(3)(A) specifically allows a state or local transportation agency to award a design/build contract for qualified projects
      - (C) Qualified Projects: is project which the Transportation Secretary has approved the use
      - The total costs are estimated to exceed \$5,000,000 for installation of an intelligent transportation system or \$50,000,000 in any other project
- Resources
  - Federal Highway Administration
  - Design-Build Institute of America

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