

# Bidding for Public Works Contracts

WTA Videos 2012

Atty. Lee Turonie

# Public Works Contract

- A contract for the construction, execution, repair, remodeling or improvement of any public work or building.
  - E.g., highways, buildings, etc.
- And/or for the furnishing of materials or supplies.
  - E.g., gravel, lumbar, etc.
- Not services & Not equipment.
  - E.g., vehicles, professional services, etc.

# Wis. Stat. s. 60.47

- Requirements triggered by three levels of total project cost:
  - \$0 – 5,000. Town board decision at a properly noticed meeting.
  - \$5,000.01 – 25,000. Class 1 notice, then town board decision at a properly noticed meeting.
  - \$25,000.01 and up. Class 2 notice, sealed bids opened at an open meeting, and award of contract to the lowest responsible bidder.
- Terms of grant award or certain state or federal programs may require bidding no matter the cost.

# s. 60.47 Exceptions

- None of this statute's requirements apply to:
  - Work the town does for itself.
  - Contracts with other governmental entities.
  - All materials were donated.
  - All labor is volunteer.
  - Emergencies:
    - Damage or threatened damage creates an emergency;
    - Emergency is declared by resolution of the town board,
    - Emergency endangers the public health or welfare of the town.

# Notes on Bidding

- Can voluntarily use bidding for smaller projects where it is not required.
- But, if you announce that you will use bidding, then you need to go through with it.
- Town may act as own general contractor. s. 66.0901(6).
- Separating one project into different contracts does not affect the total project cost.

# Notes on Bidding

- There is no “local contractor” preference allowed. s. 66.0901(1m)(b).
- “The right to reject any and all bids” means that you reserve the right to start all over & not that you can simply pick your favorite bid.
- The contract must be awarded to the lowest responsible bidder.

# Lowest Responsible Bidder

- “Responsible bidder’ means a person who, in the judgment of the town board, is financially responsible and has the capacity and competence to faithfully and responsibly comply with the terms of the public contract.”
- Could also utilize a pre-bid questionnaire for evaluation. s. 66.0901(4).
- If someone is not “responsible”:
  - Create a good record of why that is; and
  - The next lowest bidder wins.

# Tips on Bidding

- Use detailed specifications, including deadline.
  - Professional assistance not legally required.
- Require “bid responsiveness” to reject bids with added qualifications, different methods, timeliness or nature of work than asked.
- You can always seek out estimates and quotes before bidding.



# Tips on Bidding

- You can always provide additional notice, like directly calling potential bidders.
- You can use alternative bids: simultaneously ask for bids on different ways of doing a project.
- Town has the option of still accepting late bids as long as no bids have been opened yet.

# Tips on Bidding

- Require a bid bond or certified check.
  - Automatic payment to town if a contractor cannot perform or has an error in a bid.
- A performance bond may be required per s. 779.14(1m)(d). A contractor requirement meant to protect the town. Requirements vary dependent on cost and type of project.
- The best contracts are the ones that come in writing!

# Mistakes & Errors

- If town mistake, you must give notice to all bidders and allow reasonable time to modify their bids.
- If contractor mistake discovered before or after bids have been opened, next steps mandated by s. 66.0901(5).
- Contractor errors made during construction are governed only by the contract's terms.
  - Can specify procedures or left only with court.

# The End

- Especially if there are problems, consult the town attorney.
- Thanks for watching.