

CHAPTER 49: CONTRACTING WORK

Flagg Creek Water Reclamation District - Contracting Work

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' 49-1.01 ENGINEERING REPORT REQUIRED PRIOR TO DETERMINATION TO LET CONTRACTS.

The President and Board of Trustees have unanimously agreed that a determination of whether to add to the works of the system or to acquire materials or supplies for use in the operation of the works of the system for projects, the cost of which shall exceed \$10,000, shall require the following:

(A) An engineering report from the District=s state registered professional engineer recommending the work to be done and/or the materials and supplies to be purchased and the approximate cost thereof;

(B) A review of the report by the Board of Trustees and a determination by the Board whether sufficient funds are available and have been appropriated to do the entire work or only a portion thereof;

(C) The enactment of a motion by the Board of Trustees by majority vote at a meeting of the Board directing the District Engineer to prepare the documents necessary for the District to let bids and enter into a contract to have such work done and/or purchase of materials and supplies; and

(D) The subsequent preparation by the Engineer of the bid documents and contract documents, all of which shall conform to state law.

(Ord. 719, passed 11-2-1999)

' 49-1.02 CONDITION PRECEDENT.

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(A) Under 50 ILCS 330/3, the adoption of a budget and passage of an annual appropriation ordinance specifying the objects and purposes for which the appropriation is made and the amount appropriated for each object or purpose, is a prerequisite to entering into any contract for the expenditure of District Funds.

(B) It is, therefore, a condition precedent to the solicitation for bids for expenditure of any funds for construction of additions to the works of the system or acquisition of materials or supplies that the District appropriate funds for the project.

(C) No contract shall be solicited or contract let for work for which there is no specific appropriation in the appropriation ordinance for the fiscal year in which the obligation is undertaken.
(Ord. 719, passed 11-2-1999)

' 49-1.03 STATUTES RELATING TO BIDDING AND CONTRACTING PROCEDURES.

All bidding and contracting procedures adopted by the District shall be in accordance with the governing statutes, including, but not limited to, the following:

(A) 70 ILCS 2405/1 et seq., the Sanitary District Act of 1917: 70 ILCS 2405/11 contracts for purchases or sales by sanitary districts; competitive bidding requirements provides, in part, for the following:

(1) Public notice of the terms and conditions upon which the contract is to be let not less than 14 days prior to the opening of bids;

(2) Award to the lowest responsible bidder. State case law has interpreted the statutory provision to require that a successful bidder's bid must be responsive in all material parts to the invitation for bids;

(3) In determining the lowest responsible bidder, the Board shall take into consideration the qualities and serviceability of the articles supplied, their conformity with the specifications, their suitability to the requirements of the district, the availability of support services and the uniqueness of the service, materials or supplies;

(4) The Board may reject any and all bids and may re-advertise; and

(5) For the specific details of bidding, the section refers to 65 ILCS 5/9-2-1 et seq.

(B) 720 ILCS 5/33E Public Contracts: Article 33E provides, in part, for the following:

(1) Subsection 5/33E-1 Interference with Public Contracting provides:

It is the finding of the General Assembly that the cost to the public is increased and the quality of goods, services and construction paid for by

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public monies is decreased when contracts for such goods, services or construction are obtained by any means other than through independent noncollusive submission of bids or offers by individual contractors or suppliers and the evaluation of those bids or offers by the governmental unit pursuant only to the criteria public announced in advanced.@

(2) (a) Subsection 5/33E-2 specifies the definitions which are applicable to public contracts.

(b) Subsequent subsections of Article 33E prohibit and make illegal certain actions which are adverse to a fair and proper bid process, being described in the following items.

(3) Subsection 5/33E-3 - Bid-rigging defines and prohibits bid-rigging;

(4) Subsection 5/33E-4 - Bid Rotating defines and prohibits bid-rotating as a combination of persons purposefully bidding in such a manner as allows them to take turns in being the low bidder;

(5) Subsections 5/33E-5 and 5/33E-6 - Certain illegal actions by employees of the governmental unit;

(6) Subsection 5/33E-7 - Kickbacks defines and prohibits kickbacks;

(7) Subsection 5/3 3E-8 - Bribery of Inspector Employed by Contractor defines and prohibits bribery;

(8) Subsection 5/33E-9 - Change Orders establishes a proper procedure for use of change orders;

(9) Subsection 5/33E-10 - Establishes rules of evidence and presumption of proper bid if none of the foregoing apply; and

(10) (a) Subsection 5/33E-11 Certification requires:

A(a) Every bid submitted to and public contract executed pursuant to such bid by....a unit of local government shall contain a certification by the prime contractor that the prime contractor is not barred from contracting with any unit of State or local government as a result of a violation of Section 33E-3 or 33E-4.@

(b) And that the state and units of local government shall provide the appropriate forms for such certification.

(C) 820 ILCS 130 - Prevailing Wage Act:

(1) Subsection 130/4 Ascertaining Prevailing Wages - Call for bids to specify prevailing wages - contracts - bonds;

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(2) The section provides in part the following:

(a) The public body awarding any contract for public work...shall ascertain the general prevailing rate of hourly wages in the locality in which the work is to be performed, for each craft or type of worker or mechanic needed to execute the contract...and such public body shall specify in the resolution or ordinance and in the call for bids for the contract, that the general prevailing rate of wages in the locality for each craft or type of worker needed to execute the contract or perform such work, also the general prevailing rate for legal holiday and overtime work as ascertained by the public body or by the Department of Labor shall be paid for each craft or type of worker needed to execute the contract...and it shall be mandatory upon the contractor to whom the contract is awarded and upon any subcontractor under him or her...to pay not less than the specified rates to all laborers, workers and mechanics employed by them in the execution of the contract or such work.

(b) The section gives the public body the alternative to have the Department of Labor ascertain the prevailing rate of hourly wages for work under contract...for each craft or type of worker or mechanic needed to execute the contract.

(c) The public body awarding the contract shall cause to be inserted in the contract a stipulation to the effect that not less than the prevailing rate of wages as found by the public body or Department of Labor or determined by the court on review shall be paid to all laborers, workers and mechanics performing work under the contract.

(d) It shall also require, in all such contractor=s bonds, that the contractor include such provision as will guarantee the faithful performance of such prevailing wage clause as provided by the contract.

(e) It requires that the bid specifications shall list the specified rates to all laborers, workers and mechanics in the locality for each craft or type of worker or mechanic needed to execute the contract.

(f) It further provides that, if the Department of Labor revises the prevailing wage rates, the revised rate shall apply to such contract and the public body shall be responsible to notify the contractor and each subcontractor of the revised rate.

(3) Section 130/5 Records of employees and wages paid - the contractor and subcontractors or the officer of the public body in charge of the project to keep accurate records showing the names and occupation of all of the employees on the job and to keep those records open for inspection;

(4) Section 130/6 relates to enforcement of the requirements against both the representative of the public body and the contractor and subcontractor;

(5) Section 130/9 requires an annual review and public posting or availability of wage rates in the main office of the public body for inspection by any interested party; and

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(6) Section 130/11a provides that the Department of Labor shall keep a list (published once in each calendar quarter) of contractors and subcontractors who violate the Act and penalizes contractors and subcontractors who disregard their obligations under the Act in the following manner:

A No contract shall be awarded to any contractor or subcontractor appearing on the list, or to any firm, corporation, partnership or association in which such contractor or subcontractor has an interest until four years have elapsed from the date of publication of the list containing the name of such contractor or subcontractor.@

(D) 65 ILCS 5/9-2-100 et seq. of the municipal code:

(1) 5/9-2-100 Letting Contracts - Performance of Work by Municipality provides that any public work shall be contract let to the lowest responsible bidder. Such contracts shall be approved by the president of the municipality. The same case law which affects all bids of the A lowest responsible bidder@ affects this provision.

(2) 5/9-2-103 Notice for Letting Contract - Bids:

(a) Provides that notice shall be in accordance with the ordinance therefore. It shall state the time of the opening of bid and shall further state where the specifications are to be found and that the contract amount is to be paid in cash;

(b) Provides that the proposals shall be accompanied by cash, or by a check payable to the order of the President...in his or her official capacity, certified by a responsible bank for an amount not less than 10% of the aggregate proposal; and

(c) Provides that the Board, in open session, shall examine and publicly declare the proposals or bids and that no proposal or bid shall be considered unless accompanied by such check or cash.

(3) 65 ILCS 5/9-2-104 - Bond of Contractor - Suit on Bond:

(a) Provides that the successful bidder shall be required to provide a performance bond before entering into a contract, in such amounts as it shall find reasonably necessary to protect the best interests of the District and to conform to the statutory requirements;

(b) Provides that the bond shall provide that the contractor shall well and faithfully perform and execute the work in all respects according to the complete and detailed specifications, full and complete drawings, profiles and models therefor, and according to the time and terms and conditions of the contract, and also that the bidder and contractor shall promptly pay all debts incurred by him or her in the prosecution of the work, including those for labor and materials furnished; and

(c) Provides that any performance bond forfeited may be prosecuted, and the amount due thereon collected and paid to the fund for the repairing and maintenance of like improvements.

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(E) 775 ILCS 5/2/105 Human Rights - Equal Employment Opportunities - Affirmative Actions:

(1) Subsection A provides that every party to a public contract and every eligible bidder shall:

(a) Refrain from unlawful discrimination and undertake affirmative action to assure equality of employment opportunity;

(b) Comply with the procedures and requirements of the Department concerning same;

(c) Provide such information with respect to employees and applicants and assistance as the Department requests;

(d) Have written sexual harassment policies that shall include, at a minimum, the following information:

1. The illegality of sexual harassment;
2. The state law definition of sexual harassment;
3. A description thereof, with examples;
4. The vendor=s internal complaint process;
5. A description of the legal recourse mechanism through the Department and Commission;
6. Directions on how to contact the Department and Commission; and
7. Protection against retaliation under ' 6-101 of the Act.

(2) Division (C) of 775 ILCS 5/2/105 cited above points out that a certain additional actions may result in a Civil Rights violation for any public contractor or eligible bidder.
(Ord. 719, passed 11-2-1999)

' 49-1.04 PRELIMINARY REQUIREMENTS BEFORE SEEKING BIDS FOR ENTRY INTO A CONTRACT FOR A DISTRICT PROJECT.

After the Board determines to have contract work done or purchases made on behalf of the District, the cost of which exceeds \$10,000, the District shall:

(A) Pursuant to 65 ILCS 5/9-2-105, compile a list of persons, if any, whom it believes to be disqualified from performing work on any District job as a result of delinquent or unfaithful performance in any former contract with the District, for its use in rejecting the bid of any such person;

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(B) Obtain from the State Department of Labor the applicable lists of contractors and subcontractors who have been found to be in violation of the prevailing wage act for use in rejecting the bid of any such person who is disqualified from doing public work; and

(C) Obtain a list of wages required under the Prevailing Wage Act, being 820 ILCS 130, for incorporation into the bid documents.
(Ord. 719, passed 11-2-1999)

' 49-1.05 ADOPTION OF RULES AND REGULATIONS FOR BIDDING AND ENTERING INTO CONTRACTS FOR CONSTRUCTION AND/OR PURCHASE OF GOODS AND SUPPLIES, THE COST OF WHICH EXCEEDS \$10,000.

In furtherance of the duty of the District to guarantee adherence to the applicable statutes and award contracts only by the competitive bidding process, the Board of Trustees of the District hereby adopts the rules and regulations for contracting for work to be performed for the District for non-emergency contracts the cost of which is in excess of \$10,000, dated November 1, 1999, as the rules and regulations applicable for all District projects falling thereunder, together with the sample forms which are attached thereto and adopts the printed standard general conditions of the construction contract, prepared by the Engineers Joint Contract Documents Committee, 1990 edition, except as such standard general conditions require amendment to conform to the applicable statutes and court jurisdiction over the actions of the District.
(Ord. 719, passed 11-2-1999)

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