



City of Duluth

411 West First Street
Duluth, Minnesota 55802

Master

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**Agenda
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Title: AN ORDINANCE AMENDING SECTION 41-23 OF DULUTH CITY CODE, 1959, AS AMENDED, TO ALLOW ELECTRONIC BID POSTINGS, BIDS, AND SECURE BONDS FOR CITY CONTRACTS EXCEEDING \$100,000.

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Drafter: slapaugh@duluthmn.gov

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Text of Legislative File 16-025-O

AN ORDINANCE AMENDING SECTION 41-23 OF DULUTH CITY CODE, 1959, AS AMENDED, TO ALLOW ELECTRONIC BID POSTINGS, BIDS, AND SECURE BONDS FOR CITY CONTRACTS EXCEEDING \$100,000.

CITY PROPOSAL:

The city of Duluth does ordain:

Section 1. That Section 41-23 of the Duluth city code, 1959, as amended, is hereby amended to read as follows:

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

Purchase of all supplies and contractual services exceeding an estimated cost of \$100,000 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, 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 said website. Published Such 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 shall state where bid blanks and specifications may be secured and the time by which bids must be received by City and web address or physical address where bids must be received by city and place of opening bids;

(2) Bidders list. The city purchasing agent shall also solicit ~~sealed~~ 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 ~~a copy of such newspaper notice or such other notice~~ in the form requested informing as will acquaint them of with the proposed purchase, or 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, ~~or corporate surety bond; or electronic bond in the format specified in the published notices;~~

(c) Bid opening procedure;

(1) ~~Sealed~~ 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 ~~be submitted sealed to the purchasing agent and shall be identified as bids on the envelope;~~

(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.

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

STATEMENT OF PURPOSE: The purpose of this ordinance is to allow the city to utilize an electronic bidding process for contracts exceeding \$100,000. Electronic bidding is beneficial to the city because it will eliminate many common errors in the bidding process, such as unsigned forms, missed addenda acknowledgments, mathematical errors in unit pricing and other irregularities. Utilizing an electronic bid process would also provide a streamlined framework for creating bid packages and documents. Finally, documents would be exchanged more securely and reliably. Municipalities are authorized to utilize electronic bidding pursuant to Minn. Stats. 471.345, Subd. 18.