



Agenda Report

2725 Judge Fran Jamieson
Way
Viera, FL 32940

Consent

F.22.

7/9/2024

Subject:

Legislation Intent and Permission to Advertise Revisions to Ordinance No. 98-37, also known as Chapter 2, Article VII of the Brevard County Code of Ordinances, entitled "Construction and Improvement of Public Buildings."

Fiscal Impact:

No fiscal impact.

Dept/Office:

Central Services/Purchasing Services

Requested Action:

It is requested that the Board of County Commissioners approve legislative intent and grant permission to advertise a public hearing on revisions to Chapter 2, Article VII, Brevard County Code or Ordinances, "Construction and Improvement of Public Buildings."

Summary Explanation and Background:

Ordinance No. 98-37 ("Ordinance"), "Construction and Improvement of Public Buildings," codified as Chapter 2, Article VII, Brevard County Code of Ordinances, was adopted by the Board of County Commissioners ("Board") on July 7, 1998. Since the adoption of this Ordinance, there have been a number of changes to Section 255.20, Florida Statutes, which generally provide guidelines and standards for local bids and contracts for public construction works. For example, Section 255.20, Florida Statutes requires certain projects to be competitively procured based on minimum thresholds, identifies which qualifications responsive bidders should have depending on certain projects, and provides for certain exemptions to the procurement requirements depending on factors like acts of God or whether the proposed work qualifies as repair or maintenance. The proposed Code changes are generally summarized as follows:

1. Section 1. Chapter 2, Article VLL, Section 2-226, entitled "Definitions," is amended to include or amend the following terms -
 - a. Audited Financial Statements - added this term.
 - b. Competitive Solicitation or Solicitation- added this term.
 - c. County - added this term.
 - d. Maintenance - added this term.
 - e. Public Construction Works - added this term.
 - f. Qualified Bidder - moved to alphabetical order.
 - g. Repair - added this term.

2. Section 2. Chapter 2, Article VII, Section 2-227, entitled "Award of contract generally,"

amended this Section to remove “in accordance with general accounting principles” since the definition in the revised Ordinance “Public Construction Works” mirrors the definition in Section 255.20(1), Florida Statutes. The revised Ordinance also includes increased construction costs from \$50,000 to \$200,000. The \$200,000 threshold aligns with Section 255.05, Florida Statutes, pertaining to the dollar threshold established for bonds, and Board Policy BCC-27, “CONSTRUCTION CONTRACTS,” contractor bonding requirements.

3. Section 3. Chapter 2, Article VII, Section 2-228, entitled “Prequalification and competitive bidding,” includes an update in language and the County Manager’s established procedures for the affected party appeal process to Section 4. Chapter 2, Article VII, Section 2-229, entitled “Qualifications of bidders.”
4. Section 4. Chapter 2, Article VII, Section 2-229, entitled “Qualifications of bidders,” has been revised to include prequalification by the Florida Department of Transportation (FDOT), added documents required for contractors that are not FDOT qualified to perform County “Public Construction Works” on County projects, and established procedures for any affected party allegedly aggrieved to any recommendation or finding made pursuant to this article. This language is also in the County’s procurement documents.
5. Section 5. Chapter 2, Article VII, Section 2-230, entitled “Debarment,” only minor grammatical changes were made.
6. As required by Section 125.66(3), Florida Statutes, provides that a business impact estimate must accompany a proposed county ordinance unless the ordinance is otherwise exempt from such a requirement. The proposed edits to the Ordinance appear to be exempt, at least in part, from this requirement because the changes are procurement related. See Section 125.66(3)(c)6., Florida Statutes. With that being said, considering the changes to the Ordinance impact more than procurement related issues, the business impact estimate has been completed as follows:
 - a. **Public Purpose:** Pursuant to Section 255.20, Florida Statutes, and to ensure that a contractor is qualified to perform public works construction projects such as work required by the County to construct or improve bridges, roads, streets, and highways, over \$200,000 and to provide the public an opportunity to comment on these procedures in a public hearing prior to the Board of County Commissioners adoption.
 - b. **The Direct Economic Impact:** Contracting with a qualified contractor to perform public works construction projects will provide greater security to the public through the County’s ability to review resumes and references, the Contractor’s ability to obtain a Public Construction Bond, and greater reliability on the public works project. Additionally, potential bidders may not have to incur the expenses of gathering certain documentation to establish they prequalify for projects that they otherwise would have been expected to provide due to the increased dollar threshold.
 - c. **New Charges or Fees:** The County’s current ordinance (Ordinance 98-37) d and the proposed revisions thereto, do not provide charges or assessment to determine a bidder’s qualifications.

- d. The Number of Businesses that will be Impacted by this Ordinance: The current ordinance (Ordinance 98-37) established a prequalification of the County's public construction works projects of more than \$50,000. The revisions to this Ordinance will increase the threshold for public construction works projects of more than \$200,000. This will decrease the number of contractors required to be prequalified by the County before performing the public construction work project.

Clerk to the Board Instructions:



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July 10, 2024

MEMORANDUM

TO: Kathy Wall, Central Services Director

RE: Item F.22., Legislative Intent and Permission to Advertise Revisions to Ordinance No. 98-37, Also Known as Chapter 2, Article VII of the Brevard County Code of Ordinances, Entitled "Construction and Improvement of Public Buildings"

The Board of County Commissioners, in regular session on July 9, 2024, approved legislative intent and granted permission to advertise a public hearing on revisions to Chapter 2, Article VII, Brevard County Code of Ordinances, "Construction and Improvement of Public Buildings."

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
RACHEL M. SADOFF, CLERK

Kimberly Powell, Clerk to the Board

/tr

ORDINANCE NO. 2024- _____

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, AMENDING CHAPTER 2, ARTICLE VII OF THE BREVARD COUNTY CODE OF ORDINANCES, ENTITLED "CONSTRUCTION AND IMPROVEMENT OF PUBLIC BUILDINGS"; AMENDING SECTION 2-226, BREVARD COUNTY CODE, ENTITLED "DEFINITIONS", TO DEFINE CERTAIN TERMS; AMENDING SECTION 2-227, BREVARD COUNTY CODE, ENTITLED "AWARD OF CONTRACTS GENERALLY", TO INCREASE THE MINIMUM DOLLAR THRESHOLD OF CERTAIN PUBLIC PROJECTS FROM \$50,000.00 TO \$200,000.00; AMENDING SECTION 2-228, BREVARD COUNTY CODE, ENTITLED "PREQUALIFICATION AND COMPETITIVE BIDDING"; AMENDING SECTION 2-229, BREVARD COUNTY CODE, ENTITLED "QUALIFICATIONS OF BIDDERS"; AMENDING SECTION 2-230, ENTITLED "DEBARMENT"; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR CONFLICTING PROVISIONS; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Section 255.20, Florida Statutes, generally requires that standards and procedures for determining the lowest qualified and responsive bidder or award of a construction contract under any delivery method be established if a bidder is selected for any reason other than price; and

WHEREAS, the Board of County Commissioners (the "Board") adopted Ordinance No. 98-37, also known as Chapter 2, Article VII of the Brevard County Code, entitled "Construction and Improvement of Public Buildings", in order to establish a procedure for prequalifying construction contractors, for competitive bidding criteria, and for debarment of construction contractors and sureties, as well as for developing alternative construction delivery methods, establishing prequalification and competitive bidding criteria and procedures, and handling the debarment of contractors; and

WHEREAS, the Board has determined that it is in the County's best interest to update Chapter 2, Article VII of the Brevard County Code to incorporate changes made to State law, including increases to the cost of constructing or improving public buildings, structures, or other public construction works; and

WHEREAS, the Board finds it in the best public interest to adopt the following amendments to the Brevard County Code pertaining to the construction and improvement of public buildings.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, as follows:

Underline indicates additions.

~~Strikethrough indicates deletions.~~

Section 1. Chapter 2, Article VII, Section 2-226, entitled “Definitions,” is hereby amended as follows:

The following words shall have these meanings throughout this article:

“AFFECTED PARTY” means an individual or business which has submitted a bid, offer, proposal, quotation or response which is rejected, or is found unqualified under the provisions of this article, or which would be selected if a lower bidder was found unqualified or nonresponsive.

“AUDITED FINANCIAL STATEMENTS” means the most recent financial statements of an individual or business organization that have been examined by a Certified Public Accountant (CPA) and which were prepared within the last fifteen (15) months.

“BOARD” means the Board of County Commissioners of Brevard County, Florida.

“COMMITTEE” means two or more persons designated to evaluate prequalification and responsiveness criteria. Committees established by the County Manager may be intradepartmental, or include representatives of several departments interested in the administration and success of the public construction works project.

“COMPETITIVE SOLICITATION” or “SOLICITATION” means an award based on a publicly advertised solicitation that the County received a bid, request for proposal, or request for qualification.

“COUNTY” means Brevard County, Florida, a political subdivision of the State of Florida.

“DEBARMENT” means the exclusion for cause of a vendor or contractor, or subcontractor from bidding or doing business with the County on a temporary or permanent basis.

“MAINTENANCE” means a preventive or corrective action to maintain an existing public facility in an operational state or to preserve the facility from failure or decline.

“MINOR IRREGULARITY” means a variation from ~~the invitation to bid~~ which does not affect the price of the bid, or give the bidder an advantage or benefit not enjoyed by other bidders, or does not adversely impact the interests of the

agency.

~~“QUALIFIED BIDDER” means an individual or business which has submitted a bid, offer, proposal, quotation, or response, which has the capability in all respects to fully perform the contract requirements, and has the financial stability, honesty, integrity, skill, business judgment, experience, facilities and reliability necessary to give reasonable assurance of good faith and performance.~~

“PUBLIC CONSTRUCTION WORKS” means constructing any new building, structure, or other public construction project that is above \$200,000.00 or any substantial addition, extension, or upgrade to an existing public facility. Such additions, extensions, or upgrades shall be considered “substantial” if the estimated cost of the additions, extensions, or upgrades included as part of the repair or maintenance project exceeds \$200,000.00. Additional exceptions identified under Section 255.20(1)(c), Florida Statutes, as may be amended, may apply.

~~“QUALIFIED BIDDER” means an individual or business which has submitted a bid, offer, proposal, quotation, or response, which has the capability in all respects to fully perform the contract requirements, and has the financial stability, honesty, integrity, skill, business judgment, experience, facilities and reliability necessary to give reasonable assurance of good faith and performance.~~

“REPAIR” means a corrective action to restore an existing public facility to a safe and functional condition.

REQUEST FOR QUALIFICATION” (“RFQ”) means the process by which the County may prequalify individuals or businesses for a particular project or group of projects before requesting bids for the project, thereby limiting the pool of bidders to those pre-qualified.

“RESPONSIVE BIDDER” means an individual or business which has submitted a bid, offer, proposal, quotation, or response, which conforms in all material respects to the solicitation, including but not limited to compliance with the submittal of specified insurance and bond requirements.

Section 2. Chapter 2, Article VII, Section 2-227, entitled “Award of contracts generally,” is hereby amended as follows:

Any County contract for the construction or improvement of a public construction works project~~public building, structure, or other public construction~~

~~work~~ that is estimated ~~in accordance with general accounting principles~~ to have construction costs of more than ~~two hundred fifty~~ thousand dollars ~~(\$200,000.00)(\$50,000.00)~~ shall be competitively awarded to the lowest, qualified and responsive bidder in accordance with this article, unless the project (1) fits within exceptions set forth in s. 255.20, Fla. Stat., as amended from time to time, (2) is a contract governed by the Consultant's Competitive Negotiation Act, or (3) is awarded under another contract delivery method authorized by this article. Nothing in this article shall be construed to require a competitive award of every County construction work, ~~nor~~ to prohibit the Board ~~or its designee~~ from rejecting all bids if competitively bid, or to prevent ~~the Board~~ from waiving minor irregularities in any solicitation bid.

Section 3. Chapter 2, Article VII, Section 2-228, entitled "Prequalification and competitive bidding," is hereby amended as follows:

(a) Potential lump sum bidders responding to a request for qualifications (RFQ) are required to submit information required by this article and as identified in the RFQ package. A committee identified in ~~the RFQ package~~ a Board Policy will determine whether a potential bidder is qualified and responsive, as defined in this article.

(b) For projects advertised for lump sum bid without prior prequalification, the ~~intended award recommendation apparent low bidder~~, after the formal bid opening, will be required to submit the prequalification information identified in the bid package within five (5) business days after the bid opening. Failure to provide prequalification information within this time frame may be considered as grounds for finding the ~~intended award recommendation apparent low bidder~~ nonresponsive. If the ~~intended award recommendation apparent low bidder~~ cannot provide adequate documents for review, or the submitted documents indicate the ~~intended award recommendation apparent low bidder~~ or any subcontractors are not qualified, or if the bidder's package is determined to be non-responsive, the committee will reject the bidder or any of its subcontractors. In the event the bidder is found unqualified or nonresponsive the ~~intended award recommendation apparent second low bidder~~ will be contacted and afforded the previous mentioned five (5) days to submit prequalification documents. This process will continue until the lowest qualified and responsive bidder is established. In the event that a subcontractor is found unqualified or nonresponsive, the potential bidder or prime contractor will have five (5) business days to submit a substitute subcontractor for the same bid price or withdraw the original bid.

(c) In addition to lump sum contracts for construction, the Board may use the following delivery methods for construction or improvement of a public building, structure, or other public construction work: construction manager, design/build,

or continuing contracts based on unit prices. The Board may also enter into continuing contracts with construction managers using the prequalification procedure set forth herein for potential lump sum bidders. The individual projects shall be awarded under a continuing contract using the following criteria:

Ability of professional personnel given project's special characteristics; past performance; willingness to meet time and budget requirements; location; recent, current, and projected workloads of the firms available under continuing contract; volume of work previously awarded to each firm under a continuing contract provided distribution does not violate the principle of selection of the most qualified firm for the project; previous experience on County projects.

~~(d) The County Manager will establish procedures for the Board to hear any affected party with a complaint or appeal as to any recommendation or finding made pursuant to this article. Any affected party's complaint or appeal must be presented, in writing, to the County Manager's office within five (5) business days of the posting of a committee's decision.~~

(ed) At the completion of each competitively awarded County public construction works project, the County department ~~which that~~ administered the construction contract shall complete an evaluation of the contractor's performance on a form to be established by the County Manager. The department may also complete evaluations of critical subcontractors using the same form. All such records shall be copied to the party evaluated and maintained by County Purchasing. Any party evaluated may submit a written response of any length, which response shall be filed with the evaluation.

Section 4. Chapter 2, Article VII, Section 2-229, entitled "Qualifications of bidders," is hereby amended as follows:

(a) A prequalified contractor considered eligible by the Florida Department of Transportation (FDOT) to bid to perform the type of work described in the County's solicitation is presumed qualified to perform the work identified in the County's solicitation.

(b) Potential bidders, the intended award recommendation to apparent lowest bidder, or the person providing services under any other contract delivery method, and applicable subcontractors identified in the ~~bid or request for qualification solicitation~~ package for any County public construction works project which is to be competitively awarded shall be evaluated to determine whether the bidder and its subcontractors are qualified. In evaluating qualifications, the County shall consider the following prequalification criteria information:

- i. A Contractor's Prequalification Statement for the prime contractor and subcontractors performing parts of work identified in the bidding documents as critical to the project's success. The Prequalification Statement shall be provided on a form AIA Document A305, most recent edition to be established by the County Manager;
- ii. Most ~~current~~ recent Financial Statement, of an individual or business organization that has been examined by a Certified Public Accountant (CPA) and which was prepared within the last fifteen (15) months but not more than one (1) year old, the indication of bondability, or, if a project is under \$100,000.00 ~~\$200,000.00~~, other may require other evidence of financial capacity as identified in the bid solicitation documents;
- iii. Resumes of Contractor and Subcontractor's key personnel, including project manager and superintendent levels, showing job history, education related to work to be performed and any license, training, and experience related to the work which that individual will perform;
- iv. List of subcontractors and suppliers, and items of work to be performed by the Contractor's own ~~work force~~ workforce;
- v. County evaluations of the performance on County projects;
- vi. References obtained from individuals or businesses with whom the contractor or subcontractor has performed work or conducted business; and
- vii. Any other information identified in the County's solicitation that is necessary to the success of the project, including, but not limited to, pertinent, relevant qualifications, such as having certifications or being prequalified by the FDOT to perform the type of work described in the County's solicitation; evaluation from past projects; or reports or other data that staff determines critical data or information identified in the bidding documents to be critical to the success of the project.
- viii. The County shall establish a process for appeals of or objections to the prequalification procedures for public construction works, which must provide for an appeal process for making objections to the prequalification process to the circuit court within 30 days of such determination by the County.

(c) (d) The County Manager will establish procedures for the Board to hear any affected party allegedly aggrieved with a complaint or appeal as to any

recommendation or finding made pursuant to this article. Any affected party's alleged grievance complaint or appeal must be presented, in writing, as follows: to the County Manager's office within five (5) business days of the posting of a committee's decision.

- i. Any bidder who is allegedly aggrieved in connection with the solicitation of the intended award recommendation must file a written protest with the Purchasing Manager no later than 5:00 p.m. on the 5th full business day after the intended award is posted.
- ii. The written protest shall reference the bid, proposal, or qualification number; identify the protestor; contain a factual summary upon which the protest is based, including full details of adverse effects; and the relief sought.
- iii. Within seven (7) business days of receiving the written protest, the Purchasing Manager will meet with the protestor to attempt to resolve the protest and issue a written decision on the merits of the protest.
- iv. The protestor may appeal the Purchasing Manager's decision in writing no later than 5:00 p.m. on the 5th full business day after the date of the written decision. This appeal by the protestor elevates the matter to a formal Protest Committee.
- v. Within seven (7) business days after receipt of the protestor's appeal of the Purchasing Manager's written decision, the Purchasing Manager will arrange a meeting of the Protest Committee and the protestor. The Protest Committee shall consist of two (2) Department Directors, or designees, both of whom must be from an organizational group to which the user department or office is not assigned, and one (1) Assistant County Manager, who must be from an organizational group which the user department or office is not assigned under.
- vi. The Purchasing Manager shall act as a non-voting Hearing Coordinator, and the County Attorney or designee may be requested to attend as a non-voting member. Public meeting notices will be posted.
- vii. The Purchasing Analyst responsible for the solicitation will record the meeting and provide any information the Protest Committee may request. The purpose of the Protest Committee meeting is to evaluate the facts and merits of the protest and reach a final resolution.

vii-viii. Failure to observe any or all of the above procedures shall constitute a waiver of the right to protest an intended award recommendation. In the event of a timely protest under these procedures, the County shall not proceed further with the solicitation or the award until a recommendation is made by the Protest Committee.

Section 5. Chapter 2, Article VII, Section 2-230, entitled "Debarment," is hereby amended as follows:

(a) The County Manager will establish committees which may debar a contractor, contractor's key personnel, contractor's surety, subcontractor and subcontractor's key personnel, or any entity by which key personnel are later employed or retained by in a supervisory position, from bidding on any County project under the circumstances enumerated below. The decision to disbar is discretionary, the seriousness of the offense and all mitigating factors should be considered in making the decision to disbar. The notice of debarment shall state the time when such debarment will be lifted, if ever, and the contractor's right to appeal such debarment to the Board of County Commissioners under the Board's regular agenda. The Board reserves the power to waive or lift any committee imposed suspension or debarment.

(b) An individual or business may be *permanently* debarred for any of the following reasons:

(i) Conviction or a judgment obtained in a court of competent jurisdiction for:

1. Commission of a fraud or a criminal offense as an incident to obtaining, attempting to obtain, or in the performance of a public contract;
2. Violation of any Federal or State of Florida anti-trust or anti-racketeering statutes arising out of submission of bids or proposals;
3. Commission of embezzlement, theft, forgery, bribery, falsification of or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which seriously and directly affects the question of present responsibility as a County contractor, subcontractor or vendor;
4. If the conviction or judgment is reversed on appeal, the debarment shall be removed upon receipt of notification thereof.

(ii) Competent and substantial evidence of a violation of a County contract provision, as set forth below, when the violation is of a character so as to

justify debarment action such as:

1. Failure to perform in accordance with the specifications or delivery requirements in a contract;
2. A history of failure to perform, or of unsatisfactory performance, in accordance with the terms of one or more contracts; provided, that such failure or unsatisfactory performance is within a reasonable period of time preceding the determination to debar. Failure to perform for unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered as a basis of debarment.

(c) Upon adequate evidence, an individual or business may be *temporarily* debarred for a period up to three (3) years based upon substantial evidence of involvement in any of the causes cited in paragraph (b) above.

Section 6. Inclusion in Code. It is the intention of the Board of County Commissioners that the provisions of this Ordinance shall become and be made a part of the Brevard County Code of Ordinances, and that the sections of this Ordinance may be renumbered or re-lettered and that the word "Ordinance" may be changed to "Chapter", "Section", "Article", or such other appropriate word or phrase in order to accomplish such intentions.

Section 7. Conflict. In the case of a direct conflict between any provision of this Ordinance and a provision of County law, rule, or regulation, the more restrictive shall apply.

Section 8. Severability. If any provision of this ordinance is held to be illegal or invalid, the other provisions shall remain in full force and effect.

Section 9. Effective Date. This ordinance shall become effective upon filing as provided by law. A certified copy of the ordinance shall be filed with the Office of the Secretary of State, State of Florida, within ten (10) days of enactment.

DONE, ORDERED, AND ADOPTED in Regular Session, this ____ day of _____, 2024.

ATTEST:

BOARD OF COUNTY COMMISSIONERS
OF BREVARD COUNTY, FLORIDA

By: _____
Rachel Sadoff, Clerk of Court

By: _____
Jason Steele, Chair