

CONSTRUCTION LAWS APPLICABLE TO MUNICIPALITIES

It may be helpful to electrical contractors to have a review of the public bidding laws of the various governmental units in Wisconsin. In the last bulletin, I reviewed the public bidding laws relating to the State of Wisconsin. In this edition, I will review the public bidding laws regarding towns, villages, cities, school districts and municipalities generally.

TOWNS

Under § 60.47 of the Wisconsin Statutes, all public contracts with an estimated cost greater than \$25,000.00 must be let to the lowest responsible bidder. Where the contract has a value of more than \$25,000.00 the town must advertise for proposals to perform the terms of the contract by publishing a class 2 notice which requires two insertions in a newspaper. Otherwise, a class 1 notice is required. The town may also provide for additional means of advertising for bids.

Where the town wishes to enter into a public contract for a sum less than \$5,000.00, no public bidding requirements apply. In addition, the requirements do not apply to public contracts entered into by a town with another municipality. Finally, the town may perform its work directly if it chooses.

A town is subject to the provisions of § 66.0901 that relates to municipalities generally, as I will explain later in this article.

VILLAGES

Under § 61.55 of the Wisconsin Statutes, all contracts for public construction in a village exceeding \$25,000.00 must be let by the village board to the lowest responsible bidder. If the estimated cost exceeds \$5,000.00 but is not greater than \$25,000.00 the village board must give a class 1 notice.

The village statutes also permit the village board to adopt an ordinance to act as a city in

letting contracts in which case the statutes that apply to public works by cities is applicable to the village contracts.

CITIES

Under § 62.15 of the Wisconsin Statutes, cities must let all public construction having an estimated cost exceeding \$25,000.00 to the lowest responsible bidder. All other public construction may be let as the city counsel directs. If the estimated cost of any city construction contract exceeds \$5,000.00 but is not greater than \$25,000.00 the city board of public works must give a class 1 notice before the contract for construction is executed.

The statutes relating to public works by cities contains an express permission to include an escalator clause in the contract contemplating possible additional charges for labor and materials as a result of general inflation of the rates and prices of the same to the contractor, during the performance of the contract. The escalator provision may not exceed 15% of the amount of the bid. Each bid on a city contract contemplating an escalation must be accompanied by a schedule enumerating the estimated rates and prices of items of labor and material used in arriving at the bid. Only those items that are enumerated may be subject to the escalation privilege.

The city statutes also provide that contracts may include clauses providing for increasing the quantity of construction required in the original contract by an amount not to exceed 15% of the original contract price.

The statutes provide for the preparation of plans and specifications for consideration by bidders, and the statutes require that advertisements for bids be published as a class 2 notice. The statutes require that all bids be accompanied by a certified check or bid bond equal to at least 5% but not more than 10% of the bid payable to the city as a guarantee that if the bid is accepted

the bidder will execute the contract. Upon the signing of the contract the certified check acting as a guarantee will be returned to the bidder. Where the successful bidder fails to file a contract and bond for the work, the amount of the bid bond or certified check is forfeited to the city as liquidated damages. If the certified check or bid bond is in substantial compliance with the minimum requirements but not technically adequate, the city, in its discretion, may accept the check or bid bond and allow the bidder 30 days to furnish such additional guarantee as may be required. However, the insufficiency must be no more than one-fourth of 1% of the bid.

The city statutes permit the board of public works to reject any and all bids if in its opinion there has been a conspiracy or combination to prevent free competition. If the city council believes that any of the bids are fraudulent, collusive, excessive or against the best interest of the city, the council may by a two-thirds vote reject any and all of the bids received and order the work done directly by the city.

The statutes also contain a provision aimed at incompetent or otherwise unreliable contractors. Section 62.15(6) expressly states that whenever a bidder in the judgment of the city is incompetent or otherwise unreliable to perform the work contemplated by the bid, the board of public works should report to the city council the schedule of all the bids for such work together with a recommendation to accept the bid of the lowest responsible bidder, accompanied with the board's rationale. The council is authorized to direct the board of public works to either let the work to the lowest responsible bidder or rebid the work.

COUNTIES

Under § 59.52(29) of the Wisconsin Statutes, all public work undertaken by counties where the estimated cost of the work exceeds \$25,000.00 is to be let by contract to the lowest responsible bidder. Any work involving an estimated cost which does not exceed \$25,000.00

may be let as the county board directs. Once again, if the estimated cost of the public work is between \$5,000.00 and \$25,000.00 the board must give a class 1 notice before it contracts with any bidder. If the contract is expected to exceed \$25,000.00 of estimated cost, it is required to be let and entered into under the statutory provisions relating to construction by municipalities which is § 66.0901. Where the estimated cost of a contract exceeds \$25,000.00, the board may by a three-fourths vote of all the members decide to have the county perform the work directly without submitting the same for bids.

SCHOOL DISTRICTS

Public works by school districts may not be subject to the general municipality requirements of § 66.0901 of the Wisconsin Statutes. I will now turn to that general statutory provision on public works and projects.

“Municipality” under § 66.0901 is defined as:

“Municipality” means the state or a town, city, village, school district, board of school directors, sewer district, drainage district, technical college district or other public or quasi-public corporation, officer, board or other public body charged with the duty of receiving bids for and awarding any public contracts.

However, it should be noted that in order for this section of the statute to apply, the public body so defined must be expressly charged with the duty of receiving bids and awarding public contracts. No such provisions appear in the statutes relating to school districts, and therefore school districts may not be subject to the competitive bidding requirements.

Under § 66.0901, any person submitting a bid for the performance of public work who claims to have made a mistake, omission or error in preparing the bid, may, before the bids are opened, ask that the bid be returned to the bidder unopened. However, the bidder may not thereafter bid on the project. This is contrary to the provisions of § 16.855 that pertains to state construction.

Unlike any of the other statutes relating to public construction, § 66.0901(6) provides specifically for the awarding of separate contracts. The statute provides:

SEPARATION OF CONTRACTS; CLASSIFICATION OF CONTRACTORS.

In public contracts for the construction, repair, remodeling or improvement of a public building or structure, other than highway structures and facilities, a municipality may bid projects based on a single or multiple division of the work. Public contracts shall be awarded according to the division of work selected for bidding. The municipality may set out in any public contract reasonable and lawful conditions as to the hours of labor, wages, residence, character and classification of workers to be employed by any contractor, classify contractors as to their financial responsibility, competency and ability to perform work and set up a classified list of contractors. The municipality may reject the bid of any person, if the person has not been classified for the kind or amount of work in the bid.

Electrical contractors should not be reluctant to become familiar with municipal government in their market area. Governmental units often provide a source of work even in a slow-moving private economy.