

MUSKEGON COUNTY BOARD OF COMMISSIONERS

RESPONSIBLE ENGINEERING AND CONSTRUCTION CONTRACTING

POLICY NO. #2007-512

APPROVAL DATE: October 9, 2007

REVISED DATE: May 23, 2013

I. POLICY

This policy outlines the procedure by which the Muskegon County Board of Commissioners will review and evaluate bids received for construction contracting and engineering for all county-owned buildings and properties.

II. PURPOSE

The purpose of this policy is to:

- A. provide guidance for Construction Contracting pre-bid considerations, bid review and evaluation policies and procedures
- B. to provide an outline for preparing engineer's estimates and for reviewing bids prior to award, and
- C. to ensure competitive bidding procedures.

III. BACKGROUND

Muskegon County's procedures for soliciting and awarding construction contracts are an important part of the open-competitive bidding process. To ensure a competitive contracting environment, the following procedures have been developed to ensure fairness in the pre-bid solicitation process and post award review of construction bids. In addition, the procedures for developing a reliable engineer's estimate are critical to the success of our program. The engineer's estimate will reflect fair and reasonable cost in sufficient detail to provide an accurate estimate of the financial obligations to be incurred by the County and permit an effective review and comparison of the bids received.

IV. GENERAL BIDDING CONSIDERATIONS

In general, contractor qualification reviews will be used to help determine the quantity and type of work a contractor is capable of undertaking. Typically the contractor's resources, its financial assets, work experience, and its staffing capability are all part of this review.

In conjunction to the aforementioned qualifications, Muskegon County will also rely on the contractor's ability to provide and/or obtain insurance, as well as bid, performance and payment bonds. Muskegon County does not require contractor pre-qualification to bid but will undertake such reviews prior to the award.

Specific bidder information that will be reviewed includes the following: financial resources, principal individuals in the firm (anyone having a 10 percent or more interest in the firm), all affiliates or subsidiary companies including material sources, available equipment, work experience, individuals and organizations that have control or influence over the firm's bidding and operational procedures, Contractor Solicitation Report, Contractor/Subcontractor Employment Data report and whether the firm has ever been suspended or debarred from bidding and the related circumstances surrounding such.

The work experience review requires that the firm identify all projects for which it was the prime contractor within the past two years and those on which it worked as a subcontractor during at least the past two years. The contracting agency(ies) for such projects should be identified for reference.

V. CONTRACTOR CERTIFICATIONS

Non-collusion and Non-discrimination statements are part of the bid proposal package.

Non-collusion and Non-discrimination statements may be either an un-sworn declaration made under penalty of perjury under the laws of the U.S., or a sworn affidavit executed and sworn before a person who is authorized to administer oaths by laws of the State of Michigan. Non-collusion and Non-discrimination certifications will be retained by the County and could serve as important evidence in the event that collusion, bid rigging or discrimination is discovered at a later date. If any bidder submits a false statement, sanctions could be taken against the firm. Those specifications that currently address this item generally specify that the County may determine that the bidder is not responsible and reject his/her proposal based on evidence of collusion. In addition to rejection of a firm's proposal, the specification advises that collusive bidding is a violation of the law and could result in criminal prosecution, civil damage actions, and County, State and/or Federal administrative sanctions.

VI. COMPETITION

Competition for projects by bidders is an integral part of the successful construction program. An effort will be made to maximize competition by a number of methods.

Advertisement will be widespread enough to advise potential bidders (including nontraditional bidders, i.e., small and disadvantaged business enterprises) of the type of work and size of project involved. Depending on the complexity of the project, extended advertisement periods may be used.

Consideration will be given to the project's estimated cost/size to maximize the number of bidders. The size may vary depending on the makeup of the potential construction industry. In some situations, it may be desirable to divide the project into several smaller contracts to foster competition. Competition will be considered excellent when there are six or more bids within 10 percent of the low bid, including the low bid. Fewer competitive bids require an evaluation to determine whether competition was adequate, and whether additional competition or better prices could be obtained.

VII. ENGINEER'S ESTIMATE

The critical review of any bid depends on the reliability of the estimate it will be compared to. The engineer's estimate will reflect the amount that Muskegon County considers fair and reasonable and is willing to pay for the performance of the contemplated work. In addition, the engineer's estimate will serve as the benchmark for analyzing bids and project approval. There are three basic approaches to estimating that may be considered: actual cost, historic data, and a combination of historic data and actual cost.

Estimating Methods:

Actual Cost Approach

The actual cost approach will take into consideration factors related to actual performance of the work (i.e. the current cost of labor, equipment, and materials; sequence of operations; production rates; and a reasonable value of overhead and profit). This approach is used when the estimator has good working knowledge of the construction methods and equipment necessary for performance.

While adjustments for current market conditions may be required, this approach typically produces an accurate estimate and is useful in the bid review process in aiding the decision to award or reject the project. While this method may be more time consuming and may not be practical for all projects, it is preferable.

Historic Data Approach

The use of historic data from recently awarded contracts is another cost-effective method to develop the engineer's estimate. However, solely relying on historic data may not be appropriate when the data is based on a noncompetitive bidding environment.

Under this approach, bid data is summarized and adjusted for project conditions (i.e., project location, size, quantities, etc.) and the general market conditions. This approach requires the least amount of time and personnel to develop and produces an adequate estimate for use in budgeting/programming, as long as competitive bid prices are used to build the estimate.

Combination Approach

This approach combines the use of historic bid data with actual cost data. Most projects contain a small number of items that together comprise a significant portion (e.g. 75 percent) of the total cost. To the extent practical, Engineers should collect information on local market prices of materials, equipment manufacturers, dealers, and rental companies, and material suppliers to obtain current cost information on a regular basis. Davis-Bacon, State and local prevailing construction wage rates could be easily incorporated to provide labor costs. Current material costs are obtained from local approved sources. Equipment costs can be obtained through rental companies or equipment dealers based on a reasonable depreciation schedule. The remaining items are estimated based on historical prices and adjusted as appropriate for the specific project.

The engineer's estimate should be a fair and reasonable value for the work to be performed. It should result in responses that are plus or minus 10% of the low bid for at least 50% of the responsive bidders. Estimates that consistently fall outside of this range will signify the need for review of the estimating process.

VIII. BID ANALYSIS AND CONTRACT AWARD

Bid Review Factors

Factors that may be considered in reviewing the bids received for a project include the following:

- a. Comparison of the bids against the engineer's estimate;
- b. Number of bids submitted;
- c. Distribution or range of bids received;
- d. Identity and geographic location of the bidders;
- e. Potential for savings if the project is re-advertised;
- f. Bid prices for the project under review versus bid prices for similar projects;
- g. Urgency of the project;
- h. Current market conditions/workload;
- i. Any unbalancing of bids;
- j. Which unit bid prices differ significantly from the estimate, and from other bids?
- k. If there is a justification for the difference; and
- l. any other factors the bid reviewer(s) determines to be important.

Payment of Prevailing Wage

The payment of prevailing wages under both state and federal law is an important part of the evaluation of the bidder's qualifications to be awarded the bid. Certain questions will be asked of the bidders, including whether they have ever been on the Prevailing Wage Violator Registry, whether they are currently being investigated, and to name all of the DBAs, corporate names, subsidiaries or other business entities under which they have operated in the last three years. They will also be required to gather the same information for their subcontractors and present it as part of their bid.

Review Committee

A multi-disciplined review committee may be used to analyze the bids received so that various perspectives are represented and are provided with technical and managerial input. If a review committee is not utilized for analyzing bids, as a minimum, the estimators should be involved. If a significant number of firms take out a set of plans and bid proposal but only a small percentage, perhaps less than 30 percent, actually submits a bid, an effort should be made to determine the reasons for the lack of interest. If the cause for lack of interest can be identified, appropriate steps should be taken to improve the situation.

IX. POST-AWARD REVIEWS

a. Evaluation Period

A conscientious effort should be made to determine if bid rigging has occurred in the recent past. In making this determination, a number of projects awarded over a sufficient time period must be evaluated. A time period of approximately 5 years will be used for the initial evaluation to determine if any abnormal competitive bid patterns exist.

b. Review Considerations

The following information will be considered in the post-award review for abnormal bid patterns: (1) number of contract awards to a specific firm; (2) project bid tabulations; (3) firms that submitted a bid and later became a subcontractor on that project; (4) rotation of firms being the low bidder; (5) a consistent percentage differential between the various firms' bids; (6) a specific percentage of the available work in a geographic area to one firm or to several firms over a period of time; (7) a consistent percentage differential between the low bid and the engineer's estimate; (8) location of the low bidder versus location of the second and third low bidders; (9) variations in unit bid prices submitted by a bidder on different projects in the same letting;

(10) type of work involved; (11) number of firms that took out a set of plans and a proposal versus the number actually submitting a bid; and, (12) any other items discovered in the review that may indicate noncompetitive bidding. Re-advertised projects should be checked to determine if the eventual low bidder was also low in the first letting.

X. REMOVAL FROM THE BIDDERS LIST (Debarment)

Suspensions and debarments are discretionary administrative actions taken to protect Muskegon County by preventing persons and/or companies from receiving additional contracts and/or subcontracts. At the Federal Government level, a notice of suspension or debarment ensures that the Federal Government does not conduct business with a person or a company who has an unsatisfactory record of integrity and business ethics. Suspension and debarment actions are administered government wide; consequently, a person excluded by a Federal agency is excluded from doing business with any Governmental agency.

The Federal Excluded Parties Listing can be found at <http://www.sam.gov> it is a web based list that is updated daily for individuals and firms that are currently suspended or debarred. Contracting agencies may rely on this list to confirm eligibility prior to awarding any federally assisted contract or subcontract.

Any contractor or subcontractor and/or its successor shall be ineligible to submit a bid on or be awarded a construction contract or subcontract with Muskegon County when the Board has authorized its debarment. Such debarment may include but is not limited to either of the following:

- a. Two (2) willful determinations have been rendered against that contractor or subcontractor and/or its successor within any consecutive five-year period.
- b. Any willful determination that involves the falsification of payroll records or the kickback of wages or supplements.
- c. Failure to completely disclose any information requested by the County as part of the bid process, including without limitation, information related to the violator's registry or prior business entities names under which the contractor operated, will be considered a material breach of the contract and may disqualify the contractor or the subcontractor from future County bids.

XI. EXCLUSIONS

This policy does not apply to projects which are subject to requirements of the Federal Aviation Administration, Federal Transit Administration or Michigan Department of Transportation and the Disadvantaged Business Enterprise program adopted by the Muskegon County Board of Commissioners for Department of Transportation Financial Assistance Programs approved on March 22, 2012.