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09/02/2008

1 **AN ACT** *to repeal* 61.55 and 61.56; *to amend* 61.57, 62.15 (5), 66.0133 (3), 66.1103
 2 (11) (a) and 86.25 (4); *to repeal and recreate* 61.54; and *to create* 62.15 (5) (b) and
 3 (c) of the statutes; **relating to:** village contracts for public construction.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

4 **SECTION 1.** 61.54 of the statutes is repealed and recreated to read:

5 **61.54 Public works.** All contracts for public construction shall be let by a village board
 6 in accordance with s. 62.15. The village board, or a person or body designated by the village
 7 board, shall exercise the powers and duties of the board of public works under s. 62.15.

NOTE: Sections 61.54, 61.55, and 62.15, stats., regulate the manner in which villages and cities contract for public works projects. The basic format is similar for both municipalities: (1) contracts exceeding \$25,000 must be let to the lowest responsible bidder; (2) contracts exceeding \$5,000 but not greater than \$25,000 must be preceded by notice to the public of proposed construction before contract execution; (3) and exceptions to the preceding requirements apply when certain emergencies occur, material or labor are donated, it is determined that bids are fraudulent, collusive, or excessive, or, in the case of city, the work is done directly by the city.

However, s. 62.15, stats., specifically applies the following regulations to the public works contracting process engaged in by a city:

1. A contract may include an escalator clause for additional charges for labor and materials as a result of general inflation. Such a clause may not exceed 15% of the amount bid nor the amount of the increase paid by the contractor. A similar clause may be included for increasing the quantity of construction required in the original contract by an amount not to exceed 15% of the original contract price.

2. When work is let to the lowest responsible bidder, the board of public works must prepare plans, specifications, and a form contract for inspection by potential bidders.

3. A bidder must submit specified financial security as a guarantee that if the bid is accepted, the bidder will execute and file the proper contract and bond.
4. A bidder must provide sufficient sureties or provide financial security during the performance of the contract.
5. The board of public works may reject any bid if, in the board's opinion, any combination has been entered into to prevent free competition. Also, the city's common council may, if in its opinion any of the bids are fraudulent, collusive, excessive, or against the best interests of the city, by resolution adopted by two-thirds of its members, reject any and all bids and direct the work to be done by the city directly under the supervision of the board of public works.
6. If the board of public works determines that a bidder is incompetent to perform the work, the board must report to the council a schedule of all of the bids for the work, together with a recommendation to accept the bid of the lowest responsible bidder. The common council may let the work to that bidder or re-advertise the contract.
7. A public work may be undertaken by the use of patented articles, materials, or processes if the owner of the patent permits the use of the patent or sells it.
8. Different plans and specifications for a public work may be prepared requiring the use of different kinds of materials.
9. A contract may include a provision requiring the contractor to keep the work done under the contract in good order or repair for a period not to exceed 5 years.
10. A specified amount of the contract payment may be retained by the city to ensure adequate performance of the contract.
11. A contractor must maintain barriers and lights to prevent accidents on streets or sidewalks. A contractor also will be liable for all damages caused by the negligent digging up of streets, alleys, or public grounds, or that result from the contractor's carelessness.
12. If an ordinance authorizes any work to be done directly by the city without submitting a proposal for bids, the board of public works must keep an accurate account of the cost of the public work, including necessary overhead expenses. The board must make a complete report of the work to the common council.

Finally, s. 61.56, stats., provides that a village board may elect to comply with the statutory contracting provisions applicable to cities, as described

above, in lieu of the more minimal provisions of ss. 61.54 and 61.55, stats.

This SECTION provides that a village that lets a contract for public construction must comply with the procedures applicable to a city in s. 62.15, stats.

Additional public construction procedures in s. 66.0901, stats., apply to a number of municipal entities, including cities and villages.

1 **SECTION 2.** 61.55 and 61.56 of the statutes are repealed.

NOTE: See Note to SECTION 1.

2 **SECTION 3.** 61.57 of the statutes is amended to read:

3 **61.57 Acquisition of recycling or resource recovery facilities without bids.** A
4 village may contract for the acquisition of any element of a recycling or resource recovery
5 facility without submitting the contract for bids as required under ~~ss. 61.54 to 61.56~~ s. 61.54
6 if the village invites developers to submit proposals to provide a completed project and
7 evaluates proposals according to site, cost, design and the developers' experience in other
8 similar projects.

NOTE: Corrects cross-reference necessitated by SECTIONS 1 and 2 of this bill draft.

9 **SECTION 4.** 62.15 (5) of the statutes is amended to read:

10 62.15 (5) REJECTION OF BIDS. (a) The power to reject any and all bids shall exist unless
11 expressly waived. The board of public works may reject any and all bids, if, in their opinion,
12 any combination has been entered into to prevent free competition. The council may, if it be
13 of the opinion that any of the bids are fraudulent, collusive, excessive or against the best
14 interests of the city, by resolution adopted by two-thirds of its members, reject any or all of
15 the bids received and order the work done by the city directly under the supervision of the
16 board of public works and ~~s. 61.54 (2) and (3)~~ shall apply to the performance of such work.

NOTE: See Note to SECTION 5.

1 **SECTION 5.** 62.15 (5) (b) and (c) of the statutes are created to read:

2 62.15 (5) (b) If a city performs the work directly under par. (a), it may purchase and
3 secure all necessary and proper tools to perform the work.

4 (c) The cost and expense of all work done and all materials furnished by a city under this
5 subsection shall be collected in the same manner as if done and furnished by any other person
6 under contract with the city and the city may levy special assessments for the work. The
7 amounts assessed against any lands or interests specially benefited or otherwise liable under
8 a special assessment may not exceed the amounts which would have been assessed against the
9 land or interests had the lowest bid received under par. (a) been accepted and costs and
10 expenses in excess of that bid shall be borne by the city.

NOTE: Section 62.15 (5), stats., provides that when a city directly performs public construction because it has been determined that bids are fraudulent, collusive, excessive, or not in the best interests of the city, the provisions of s. 61.54 (2) and (3), stats., will apply. The latter statute provides that in a similar situation a village (1) may purchase all necessary and proper tools and equipment; (2) may levy special assessments up to the amount of the lowest rejected bid; and (3) and must bear any costs in excess of the lowest rejected bid. Because SECTION 1 in part repeals s. 61.54, this SECTION incorporates the substance of s. 61.54 (2) and (3) in s. 62.15 (5).

11 **SECTION 6.** 66.0133 (3) of the statutes is amended to read:

12 66.0133 (3) NOTICE. Notwithstanding ss. 27.065 (5) (a), 30.32, 38.18, 43.17 (9) (a),
13 59.52 (29) (a), 59.70 (11), 60.47 (2) to (4), 60.77 (6) (a), ~~61.55, 61.56~~ 61.54, 61.57, 62.15 (1),
14 62.155, 66.0131 (2), 66.0923 (10), 66.0925 (10), 66.0927 (11), 66.1333 (5) (a) 2., 200.11 (5)
15 (d) and 200.47 (2), before entering into a performance contract under this section, a local
16 governmental unit shall solicit bids or competitive sealed proposals from qualified providers.
17 A local governmental unit may only enter into a performance contract if the contract is
18 awarded by the governing body of the local governmental unit. The governing body shall give

1 at least 10 days' notice of the meeting at which the body intends to award a performance
2 contract. The notice shall include a statement of the intent of the governing body to award the
3 performance contract, the names of all potential parties to the proposed performance contract,
4 and a description of the energy conservation and facility improvement measures included in
5 the performance contract. At the meeting, the governing body shall review and evaluate the
6 bids or proposals submitted by all qualified providers and may award the performance
7 contract to the qualified provider that best meets the needs of the local governmental unit,
8 which need not be the lowest cost provider.

NOTE: Correct cross-reference necessitated by SECTIONS 1 and 2 of this
bill draft.

9 **SECTION 7.** 66.1103 (11) (a) of the statutes is amended to read:

10 66.1103 **(11)** (a) With respect to the enforcement of any construction lien or other lien
11 under ch. 779 arising out of the construction of projects financed under this section, no
12 deficiency judgment or judgment for costs may be entered against the municipality. Projects
13 financed under this section are not public works, public improvements or public construction
14 within the meaning of ss. 59.52 (29), 60.47, ~~61.55~~ 61.54, 62.15, 779.14, 779.15 and 779.155
15 and contracts for the construction of the projects are not public contracts within the meaning
16 of ss. 59.52 (29) and 66.0901 unless factors including municipal control over the costs,
17 construction and operation of the project and the beneficial ownership of the project warrant
18 the conclusion that they are public contracts.

NOTE: Corrects cross-reference necessitated by SECTIONS 1 and 2 of this
bill draft.

19 **SECTION 8.** 86.25 (4) of the statutes is amended to read:

20 86.25 **(4)** Sections ~~61.55~~ 61.54, 62.15 and 66.0901 shall not apply to funds provided
21 or agreements made pursuant to this section.

NOTE: Corrects cross-reference necessitated by SECTIONS 1 and 2 of this bill draft.

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(END)