

Item 24-0664: Resolution #6-R-24 establishing an Ordinance for a Responsible Bidder Policy

Finance Committee

Mon, May 20, 2024 5:30PM

Aldersperson Brad Firkus (District 3) 1:24:05

So, with that we'll move on to our next item 24-0664 resolution 6-R-24 establishing an ordinance for a responsible bidder policy.

Aldersperson Denise Fenton (District 6) 1:24:14

Move to approve.

Aldersperson Katie Van Zeeland (District 5) 1:24:15

Second.

Aldersperson Brad Firkus (District 3) 1:24:16

All right, we have a motion a second. I guess what I'd like to turn this over to the author of this resolution to just kind of set the table for us before we move into any discussion.

Aldersperson Denise Fenton (District 6) 1:24:27

Thank you, chair. This is something that I had been kicking around for probably a couple of years in terms of contracts that the city executes for public works. I've talked to the mayor about it more than once. And honestly this was brought to me by city staff, with the—thanks to the attorney's office—with the language actually written in the format that I as a non-lawyer are not—am not capable of doing.

Aldersperson Denise Fenton (District 6) 1:25:06

But we saw the importance of some of the some of the portions of this ordinance back when we applied for an energy efficiency grant for the library and were told kind of at the last minute through no fault of anybody but that this—and I think it was relatively small, what \$170,000 or something? But that we could not apply this to the library prod—project directly, because that project hadn't been bid under the federal Davis Bacon law which lays out things like prevailing wage and some requirements for contractors bidding on jobs that involve federal or state funds. So, I think it's a—this is a really good idea.

Aldersperson Denise Fenton (District 6) 1:26:05

And something else that I think is important in this ordinance is, with a fair amount of discretion for the Director of Public Works, we are asking companies that bid on really large jobs (over a million dollars) to participate in a class A apprenticeship program. We all know that there's a shortage of skilled trades around now. And they're—so in order to keep a skilled workforce available, I think it behooves us to put some incentives to companies that want to do business with the city to provide these training programs. So again, I think, you know, this comes with staffs' recommendations and blessing. It's something I've been wanting for a long time. And I think it—I hope that there is a lot of infrastructure funding and that can be available and that this will put us in a better position to get those grants. Thank you.

Aldersperson Brad Firkus (District 3) 1:27:17

As co-sponsor...?

Aldersperson Katie Van Zeeland (District 5) 1:27:18

Thank you, Chair. I signed on to this for a couple other reasons. First and foremost because I believe with the lack of competition that we have, I would like to have a set out list of things that actually make someone a responsible bidder as something that we can look at and show to our constituents that says "We chose this one over this one, because," and also because I had had a constituent contact me—they work in the trades, and they were concerned about some of the workers working on a project downtown. And their take as a skilled tradesmen was that the people who were working on that project were not likely trained appropriately, and that's a concern that we should all be thinking about when we're investing our taxpayer funding in new buildings and in development. We want to make sure that the people who are working on them are skilled and that those buildings are going to be around forever, or that our constituents are getting their money's worth in those projects. Thank you.

Aldersperson Brad Firkus (District 3) 1:28:29

All right, Alder Hartzheim.

Aldersperson Sheri Hartzheim (District 13) 1:28:31

Thank you, Chair. Hey, I'm going to be a bad guy again. Not a shock for a lot of you.

Aldersperson Sheri Hartzheim (District 13) 1:28:37

I feel like this is government for the sake of government. I fear that what was just mentioned by Alder van Zeeland, about a lack of competition will get more difficult. We will have more of a problem with that. And unless those concerns could be addressed, this this has to be a no for me, because it feels like it's just another layer of governance that will just make it more difficult for the city to get appropriate contractors to do the work that we need to get done. We already have one and two bidders potentially on a lot of these things.

Aldersperson Sheri Hartzheim (District 13) 1:29:12

The question I also have for some of staff who is here, Director Gazza and Director Block, are we having a problem with getting good bids? Do we need to have this because we don't have enough bidders or that we can't get responsible bidders, or is this something that just as Alder Fenton explained might get us more federal dollars?

Aldersperson Brad Firkus (District 3) 1:29:38

Microphone number please. District one.

Director Dean Gazza (Parks, Recreation, and Facilities) 1:29:43

Thank you. I would answer it a little bit different. It's not about getting enough bidders. It's more about getting enough qualified bidders that are not individuals that are not providing a safety program, their employees aren't trained properly, they're not provide good craftsmanship. I won't say contractors specifically, but we've experienced some less than better contract work that we've had. And all of the qualified ones that utilize, you know, apprentice labor and so forth, you know, them are the ones that are ensuring that the Appleton's tax dollars are being used, because we're going to ensure quality, we're going to ensure safety, and we're going to ensure a project gets well done for years.

Director Dean Gazza (Parks, Recreation, and Facilities) 1:30:32

You know, a lot of this, I think, did happen when the state prevailing wage went away. You know, you get, you know, everybody and their brother bidding on jobs, you know, regardless with no specific requirements, and if we have no way to disqualify them, if they're low bid we have to take them. A lot of times, we don't know a lot of information about them. Where this gives us a little bit more certainty that we're getting qualified bidders

that are actually the ones that are bidding on our project, and not just some others that we just don't have a lot of knowledge about.

Director Dean Gazza (Parks, Recreation, and Facilities) 1:31:09

Well what—yeah, when we bid we won't discriminate against any specific company for whatever reason if they're qualified to do the job. The qualification is the issue, more than anything, to make sure that they're qualified and they're a solid contractor that can do that job.

Aldersperson Sheri Hartzheim (District 13) 1:31:09

Thank you. Can I follow up, please, Chair? Our—have there been—like, are there not federal and state laws that give minimums for some of these things that you mentioned as concerns? Are they're not rules that they have to—like the Equal Opportunity clause within this—that's a federal law. Why do we need it as an additional piece to this responsible bidder?

Aldersperson Sheri Hartzheim (District 13) 1:31:50

So, would this particular piece of legislation guarantee that qualification?

Director Dean Gazza (Parks, Recreation, and Facilities) 1:31:57

There's no guaran—I would say guarantees, because even—I would say there's, you know, companies that we've worked with in the past, sometimes, yeah, you can have a bad employer on that job, but at least we do know that the company is concerned and that they do provide adequate training at—or higher-level training to their employees in not only safety, but in the ability to do their work.

Aldersperson Sheri Hartzheim (District 13) 1:32:25

Of course, those are my concerns as well, because for the taxpayers, we want to make sure that their—things are being done appropriately for what we are paying for. But I'm not sure that this particular piece of legislation won't impact the problem or will—won't do two things. One, not correct, the problem that you're seeing potentially, and maybe not even seeing, but also won't solve won't get us more bidders who are qualified under these responsible bidder code.

Director Dean Gazza (Parks, Recreation, and Facilities) 1:33:00

Sure, it would be hard to address that, but I'm assuming, you know, the bidders that we deal with that, the ones that are the competent bidders that we would want on our projects would meet this, you know, demand. It's those that we just don't have enough information about I guess, you know. I guess, you know, it's amazing, the level of quality how it has dropped over the years. And I think that's driving—you know, some of this is just that. You get less quality each time, you know, with different companies and subcontractors a lot of times even. This helps guarantee not only that the general contractor's competent but the subcontractors that they hire.

Aldersperson Sheri Hartzheim (District 13) 1:33:53

My concerns then are a multitude of things, but that this might cost more because the bidders are saying well, we have to follow all these rules so now we have to spend more money on apprenticeship programs, etc., etc., which means our bids will increase, which means it costs the taxpayers more money. And if we get to—do we not already have a policy where if there's one bidder and we don't really know enough about them that we can just say "We reject these bids," or "We reject this bid because we don't trust that particular bidder."

Director Dean Gazza (Parks, Recreation, and Facilities) 1:34:25

They may literally have the, you know, say they've got five years' experience in this particular trade. They may indicate that they meet, you know, their financial requirements and so forth that are met. But in this case,

they're swearing that that's the case where in other cases, we don't know. Once you get them in under contract then you're under that risk of them honoring that contract. The other piece that you had mentioned was would we get less bidders? Quite possibly, but it's the less bidders that we don't want.

Aldersperson Sheri Hartzheim (District 13) 1:35:00

I understand that and I appreciate your frank answers. Thank you.

Director Dean Gazza (Parks, Recreation, and Facilities) 1:35:04

You're welcome.

Aldersperson Brad Firkus (District 3) 1:35:05

All right. Are there any other questions? Alder Schultz.

Aldersperson Alex Schultz (District 9) 1:35:10

Thank you, chair. Just to follow up on a couple of those comments, and then maybe direct another question to staff. I'm—generally I support this idea and the notion that we can put a little bit more—some more tools in place to evaluate what's being submitted to the city when we put up put out RFPs for these large projects that we really want qualified contractors to bid on and we want to weed out those who aren't. And so, I think, generally speaking, this co—code of sort of constraints and rules and what you should and shouldn't do is probably a good thing. And I would suspect that most of the contractors that are bidding on projects that are as large as what the city is doing, can handle this quite readily, and that it will weed out some of the smaller ones.

Aldersperson Alex Schultz (District 9) 1:35:57

The only concern I have with this one is sub paren one which talks about the state statute and whether the city contracts for public works, that contract must be awarded to the lowest responsible bidder. And I only bring that up because I've been sitting in this chamber for a number of years now, and there's been a lot of occasions where, even recently, we had a couple of bids, and upon evaluation, maybe they would have been weeded out. But upon evaluation we didn't award it to the lowest bidder because we had a relationship with maybe the next highest. And that difference might be a half a percent or 1%. I mean, those dollars are so close sometimes when those bids come in. It's a difference of a couple hundred dollars or a couple thousand dollars. And we're trying to make that judgment call about which contractor to go with, and we might have one that we are familiar with who's worked with us a dozen time on projects, extremely comfortable with, totally trust their work, know that it'll be done right. They might come in \$1,000 over the lowest bidder who we have no con—basically history with. And we're going to trust that our process for selecting them is solid.

Aldersperson Alex Schultz (District 9) 1:37:01

So that's the only part of this that I feel a little funky about supporting because I think, given what staff knows about the big contractors in this community outside of it that we've worked with, I would trust them to make some judgment calls not based specifically on the lowest bidder. And I get that that's sort of the tool we have to use to award contracts, but again, we've been in situations where we've gone outside of that—if we don't have three bids, we're maybe selecting one or two. But I do believe there are times when staff has selected the next higher bid because of that relationship we've had and the knowledge that we know what's going to be done right.

Aldersperson Alex Schultz (District 9) 1:37:39

So, yeah, generally supportive of this to give staff tools, and maybe it'll do everything it needs to do to weed out those who shouldn't be requesting work from the city, but, again, I would hope we could somehow give ourselves a little bit of wiggle room in there to allow staff to make choices when it comes to situations where

we're looking at two bids that are really close with knowledge of one and no knowledge of another, but we're going to be forced to choose the lowest bid. That scares me. I'm in the trades; I know what it means to pick the lowest bidder. It might mean labor for people that are on the job that aren't getting paid a living wage, and that even if the contractor is trusted that can be a situation where you're going to pick the lowest bid, but maybe you shouldn't. Thank you.

Alderman Brad Firkus (District 3) 1:38:27

All right, Director Gazza. Is—um sure. Microphone number please. Director one. Go ahead.

Attorney Christopher Behrens 1:38:34

What scares me is when we don't follow the law. And the law allows for the city to pick the lowest responsible bidder. If you have two bids that come in that are very close, the lowest bidder may get that. Even though you have a good working relationship with the second highest bidder, you have to be able to articulate a reason why you are—that second highest bidder as the lowest responsible bidder. I just want to clear that up because there are a lot of statements and looking for words like "wiggle room", and that makes lawyers nervous, believe it or not. So, I just want to clear that up.

Attorney Christopher Behrens 1:39:20

There have been times when we have not selected the lowest bidder, but we've selected the lowest responsible bidder. And each of those times, staff works with my office to make sure we articulate in a memo, why that decision is being made so that you all understand the recommendation, and then can make a decision based on that. I just wanted to clear that up.

Alderman Brad Firkus (District 3) 1:39:41

Thank you for clarifying. Yes.

Attorney Christopher Behrens 1:39:43

Making me wiggle in my chair.

Alderman Brad Firkus (District 3) 1:39:46

Thank you. Thank you. Director Gazza then and then—

Director Dean Gazza (Parks, Recreation, and Facilities) 1:39:48

Now, I think, where some confusion might come in—and it might be when we go for it for our RFQ or RFP for professional services, and that's a point-based system. And in many times, we will come in here and say, even though this person scored more points, we don't feel that—they're missing some key areas or one areas got a really big hole that we're not comfortable with. And even though they didn't score as high, we want number—you know, number two, we think is in the best interest of the city. So, I think that might would be the case, but I don't recall like a public bid situation.

Director Dean Gazza (Parks, Recreation, and Facilities) 1:39:48

Yes, thank you. Much of what attorney Behrens said is exactly what actually I was gonna say in regards to that. I don't recall a time that we ever not took the lowest bidder, but for some reason, I do think there was one time when I was in Attorney Behrens' office and we were discussing this. But this involves other departments to like Utilities and Department of Public Works. Because if we don't have that reason, because we don't know enough about them, you know, if they're not on the disbarred list for the state or something, you end up having to take them and sometimes.

Alderson Brad Firkus (District 3) 1:41:08

Thank you. Alder Croatt.

Alderson Chris Croatt (District 14) 1:41:11

Oh, thank you, Chair. I was going to ask for some clarification on some of those comments, because I don't think that was common or standard practice to not take the lowest bid. I had a couple things written down prior to the earlier comments made like "Where's this coming from?" I think Alder Fenton and Alder Van Zeeland, addressed that. I also wrote down "What problem is this fixing?" So, I think we heard some of the issues that this would address.

Alderson Chris Croatt (District 14) 1:41:35

I do share the concerns though, about whether or not this will actually result in less bids. I'm always one of the ones that asked "Have we ever done business with that company? Or what—have they ever done work for the city?" when we get an a request to award a contract to a bidder. So obviously, it's important that we're getting good, responsible, qualified visitors. I just hope it doesn't drive up the price to Alder Hartzheim's concerns, and hopefully it doesn't limit the pool and maybe increase the pool. So, Director Gazza I believe wants to comment.

Director Dean Gazza (Parks, Recreation, and Facilities) 1:42:11

So, a couple of things I want to comment on. There's several municipalities, most of your major cities our size, larger or smaller, do have this in place. So, it is not something that we would be on the leading edge of. Actually, we're dragging on it. You know, it's surprising that we didn't have one in place to some degree.

Director Dean Gazza (Parks, Recreation, and Facilities) 1:42:33

The other thing I think that's important is if you look under 3G, it says "if determined to be appropriate in the discretion of the Director of the Department of Public Works at the time a request for bids, a request for quotes, is issued, or public works contract exceeds \$1 million, the contractor must participate." So, there is discretion of whether that is required to be participated in. So, if it was felt that there was a specific area that there just some unique scenario where the competition for a unique product or unique process or something, the director would have that discretion not to require that and just take the bids as traditional without the requirement.

Alderson Brad Firkus (District 3) 1:43:20

Anything else?

Alderson Chris Croatt (District 14) 1:43:21

Nothing from over here.

Alderson Brad Firkus (District 3) 1:43:22

All right, thank you. Alder Hartzheim, I just want to point out that Parks and Rec has not met yet. We're an hour past their time, and on top of that there is a Board of Zoning appeals that starts at 7:30. So please, let's try and be concise so we can at least not block up too many more people's evening here.

Alderson Sheri Hartzheim (District 13) 1:43:39

Thank you. I just wanted to mention that what Director Gazza just stated makes me much more clear about being able to support this. Thank you.

Alderson Brad Firkus (District 3) 1:43:47

Oh, sorry. Go ahead.

Aldersperson Chris Croatt (District 14) 1:43:48

One last comment too. Director Gazza hit on it. I would—you know, when I saw this, I thought, "Well, this looks great. But what do we have today?" And it sounds like not much of anything. Is that—?

Director Dean Gazza (Parks, Recreation, and Facilities) 1:43:58

Just the statute that we use—the Wisconsin statutes for public construction, which is the lowest responsible bidder.

Aldersperson Chris Croatt (District 14) 1:44:05

Right. But there's a lot in here that I like about what I'm seeing about requirements to be a responsible bidder. So, I'll be supporting this.

Director Dean Gazza (Parks, Recreation, and Facilities) 1:44:13

Because the statutes really cover cost.

Aldersperson Chris Croatt (District 14) 1:44:15

Yeah.

Director Dean Gazza (Parks, Recreation, and Facilities) 1:44:15

Their responsibility is qualification, but you have to prove it, where this they actually are sworn by their bid.

Aldersperson Brad Firkus (District 3) 1:44:24

All right, thank you. Is there anything else? Anyone else? Seeing none, we'll go ahead and vote. All those in favor? Aye. Opposed? Abstentions? Motion passes five to zero.