



Legislation Text

File #: O-239-23, **Version:** 1

Amending TMC 187.09, 187.28 & 187.27(b)
Finance/Law
B. Benner (x1194)/E. Granata (x1034)

Amending Toledo Municipal Code (“TMC”) Sections 187.09 and 187.28 pertaining to bond requirements; amending TMC subsection 187.27(b) to reduce allowable payment period.

SUMMARY & BACKGROUND:

This Ordinance amends Toledo Municipal Code Section 187.09 and 187.28 for the purpose of reducing required bid bonds for contracts not exceeding seventy-five thousand dollars (\$75,000) and permitting the waiver of surety bonds for projects let pursuant to Code Section 188.07, the Small Business Reserve Program, and to require the surety bond cover performance and payments for benefit of subcontractors consistent with Ohio Revised Code requirements. The Ordinance also amends TMC Subsection 187.27(b) to reduce the contractor payment period to 30 days.

NOW, THEREFORE, Be it ordained by the Council of the City of Toledo:

SECTION 1. That the existing Toledo Municipal Code (“TMC”) Section 187.09 which reads as follows:

187.09 Deposit to guarantee bid

Every bidder shall submit with any bid in an amount less than forty thousand dollars (\$40,000) a bid guaranty in the amount of five percent (5%) of the bid, but in no event less than forty dollars (\$40.00) nor more than one thousand dollars (\$1,000). Any bidder submitting a bid in the amount of forty thousand dollars (\$40,000) or more shall submit a bid guaranty in the amount of five percent (5%) of the bid, subject to a maximum amount of two hundred thousand dollars (\$200,000). The bid guaranty may be a bid bond or a certified check or cashier's check on a solvent bank. The bid guaranty shall provide that if the bid is accepted, the bidder shall enter into a proper contract with the City in accordance with the bid, plans, details, specifications and bills of material. If the bidder fails to enter into a proper contract and the City awards the contract to the next lowest bidder, the bidder and the surety on the bidder's bond shall be liable to the City for the difference between the bid and that of the next lowest bidder up to the amount of the bid guaranty. If the City does not award the contract to the next lowest bidder but resubmits the project for bidding, the bidder failing to enter into the contract and the surety on the bidder's bond are liable to the City for a penal sum not to exceed the amount of the bid bond or five thousand dollars (\$5,000), whichever is less.

is repealed.

SECTION 2. That a new TMC Section 187.09 is enacted to read as follows:

187.09 Deposit to guarantee bid

(a) Every bidder shall submit with any bid in an amount of seventy-five thousand dollars

(\$75,000) or less a bid guaranty in the amount of two and a half percent (2.5%) of the bid, but in no event less than forty dollars (\$40.00) nor more than one thousand eight hundred dollars (\$1,800). However, the Commissioner of Purchases and Supplies may set a reduced required bid guaranty amount for contracts to be let under Code Section 188.07, the Small Business Reserve Program, that is less than two and a half percent of the estimated bid cost but not less than forty dollars.

(b) Any bidder submitting a bid in an amount exceeding of seventy-five thousand dollars (\$75,000) shall submit a bid guaranty in the amount of five percent (5%) of the bid, subject to a maximum amount of two hundred thousand dollars (\$200,000).

(c) The bid guaranty may be a bid bond or a certified check or cashier's check on a solvent bank. The bid guaranty shall provide that if the bid is accepted, the bidder shall enter into a proper contract with the City in accordance with the bid, plans, details, specifications and bills of material. If the bidder fails to enter into a proper contract and the City awards the contract to the next lowest bidder, the bidder and the surety on the bidder's bond shall be liable to the City for the difference between the bid and that of the next lowest bidder up to the amount of the bid guaranty. If the City does not award the contract to the next lowest bidder but resubmits the project for bidding, the bidder failing to enter into the contract and the surety on the bidder's bond are liable to the City for a penal sum not to exceed the amount of the bid bond or five thousand dollars (\$5,000), whichever is less.

SECTION 3. That the existing Toledo Municipal Code Section 187.20 which reads as follows:

187.28. Bond to secure performance of contract.

Every contract involving an expenditure of the amount of forty thousand dollars (\$40,000) or more for the performance of work and labor and for the installation of equipment upon any street, highway, bridge, building or other public improvement in which both labor and material are involved, shall be accompanied by a bond of the contractor to the City in the Ohio statutory form, guaranteeing the performance of the contract and in an amount not less than the bid price. In lieu thereof, the contractor may provide the City with one of the following forms of security from a solvent bank: (a) Certified check, (b) Cashier's check, or (c) Irrevocable letter of credit.

The sureties on such bond or the bank on such performance bond security shall be approved by the Commissioner of Purchases and Supplies and the bond/security shall be filed with the Commissioner of Purchases and Supplies.

is repealed.

SECTION 4. That a new Toledo Municipal Code Section 187.20 in enacted to read:

187.28. Bond to secure performance of contract.

(a) Every contract involving an expenditure of the amount of forty thousand dollars (\$40,000) or more for the performance of work and labor and for the installation of equipment upon any street, highway, bridge, building or other public improvement in which both labor and material are involved, shall be accompanied by a bond in the Ohio statutory form, in an amount not less than the bid price, of the contractor to the City, guaranteeing the performance of the contract according to its provisions and payment of all lawful claims of subcontractors, material suppliers and laborers for work performed or materials furnished in performing the contract, and indemnifying the City against damages suffered by failure to perform the contract. Such bond shall be for the benefit of any subcontractor, material supplier

or laborer having a just claim as well as the City.

(b) The sureties on such bond or the bank on such performance bond security shall be approved by the Commissioner of Purchases and Supplies and the bond/security shall be filed with the Commissioner of Purchases and Supplies. Any surety on a submitted bond must be licensed by the superintendent of insurance to execute such a bond in the state of Ohio.

(c) In lieu of a surety bond, the contractor may provide the City with one of the following forms of security from a solvent bank: (a) Certified check, (b) Cashier's check, or (c) Irrevocable letter of credit.

(d) The bond requirements under this Section may be waived by the Commissioner of Purchases and Supplies for contracts awarded pursuant to Code Section 188.07, the Small Business Enterprise Sheltered Market Program.

SECTION 5. That Toledo Municipal Code Subsection 187.27(b) which reads as follows:

(b) The amounts and time of payments to contractors, engineers, consultants or any other entity entitled to payment for the public improvement ("contractor") that is the subject matter of the contract, shall be governed by this section or, if not specified in this section, by the terms of the written contract between the City and the contractor. Payment on approved invoices or estimates shall be made within forty-five days. The contractor shall not be entitled to interest for late payments.

is repealed.

SECTION 6. That a new Toledo Municipal Code Subsection 187.27(b) is enacted to read as follows:

(b) The amounts and time of payments to contractors, engineers, consultants or any other entity entitled to payment for the public improvement ("contractor") that is the subject matter of the contract, shall be governed by this section or, if not specified in this section, by the terms of the written contract between the City and the contractor. Payment on approved invoices or estimates shall be made within thirty (30) days. The contractor shall not be entitled to interest for late payments.

SECTION 7. That it is found and determined that all formal actions of this Council concerning and relating to the passage of this Ordinance were passed in an open meeting of this Council, and that all deliberations of this Council and any of its committees that resulted in such formal action, were in meetings open to the public, in compliance with all legal requirements including Section 121.22 of the Ohio Revised Code.

SECTION 8. That this Ordinance shall be in full force and effect from and after January 1, 2024.

Passed: May 30, 2023: yeas 12, nays 0.

Attest:

Gerald E. Dendinger
Clerk of Council

Matt Cherry
President of Council

Approved:

May 30, 2023
Wade Kapszukiewicz
Mayor

