

SUB. 1 TO ORD. AMDT. 49, 07-08

**AMENDING CHAPTER 40 OF THE DANE COUNTY CODE OF ORDINANCES,
CLARIFYING APPLICATION OF BEST VALUE CONTRACTING FOR PUBLIC WORKS CONTRACTS**

The County Board of Supervisors of the County of Dane does ordain as follows:

ARTICLE 1. Unless otherwise expressly stated herein, all references to section and chapter numbers are to those of the Dane County Code of Ordinances.

ARTICLE 2. Section 40.07 is amended to read as follows:

40.07 PUBLIC WORKS PROJECTS, BIDS, CONTRACTS. (1) *Best value contracting.* (a) *Policy.* When entering into contracts for public construction that exceed the minimum amount under Wis. Stats. sec. 66.0903(5), Dane County requires bidders to prequalify pursuant to the provisions of Wis. Stats. sec. 66.0901, and procedures set forth in this section. The Dane County Board of Supervisors finds that using the Best Value Contracting procedures set forth in this section will provide the County with the best value for its public construction while also meeting requirements that contracts be awarded to the lowest responsible bidder, and that the requirements of this ordinance are for the protection and welfare of the public in the performance of public contracts.

(b) *Prequalification requirement.* As a condition of performing work on a public works contract for Dane County that exceeds the minimum amount specified in Wis. Stats. sec. 66.0903(5), a contractor shall first be prequalified in accordance with the provisions of this ordinance. This section shall apply to general contractors, prime contractors and (subject to the limitations for subcontractors in secs. (i)3. and 4. and (k) of this ordinance) subcontractors of any tier.

(c) *Additional qualification information.* In addition to information specified in this ordinance, the director may request, in prequalification applications or separately on a project by project basis, any other information he or she determines necessary to ensure that prospective contractors meet the contractor responsibility standards established by this ordinance and otherwise possess sufficient qualifications and capabilities in all respects to successfully qualify for and perform public works contracts.

(d) *Prequalification term.* 1. For any public works contracts advertised for bid on or after January 1, 2008, a contractor must be prequalified under this ordinance.

2. Once a contractor's prequalification application is approved by the director under this ordinance, it shall remain valid for a period of two years, unless suspended or revoked pursuant to this section.

(e) *Renewal and disclosure.* It shall be the obligation of the contractor to timely renew his or her prequalification and to report information regarding any material changes to the business or operations that are relevant to the prequalification application, including information that would affect his or her ability to make the certifications required by this ordinance. Any such information must be reported within fifteen (15) days of the contractor's knowledge of the information. Failure to report information under this subsection may result in suspension or revocation of the contractor's prequalification, debarment from County contracts for a period of up to three years and other sanctions available under applicable law.

(f) *Prequalification approval.* The director shall review contractor prequalification applications and approve applications that comply with the requirements of this ordinance and other applicable standards developed by the director. If a contractor has been certified as a targeted business as defined by sec. 19.51(22), and the director determines that the contractor fails to meet the prequalification requirements under this section, the director will notify and discuss the determination with the Contract Compliance Officer prior to issuing any notice of non-qualification.

(g) *Prequalification list.* The director shall publicly post a list of prequalified contractors which shall include the names, addresses and prequalification numbers of contractors and applicable dates of prequalification approval. This list shall be updated on a monthly basis.

(h) *Prequalification review.* The director shall periodically, but at least once a year, review the performance of contractors prequalified according to this section to determine whether contractors are performing satisfactorily. This review shall examine all relevant areas of contractor performance including, but not limited to, project cost and schedule, compliance with plans and specifications, quality of workmanship and compliance with applicable laws and regulations. For good cause shown, the director may suspend or revoke a contractor's prequalification status at any time after providing the contractor with notice and the opportunity to be heard by the director.

- (i) Prequalification enforcement.** The director shall:
- 1.** Take the necessary actions to ensure that all contractors and subcontractors on public works contracts subject to this section are properly prequalified in accordance with the requirements of this ordinance;
 - 2.** Require general contractors or prime contractors to verify their prequalification as a condition of **being awarded** bids on public works contracts;
 - 3.** Further require general contractors or prime contractors to submit a list of the subcontractors they intend to use in the performance of the contract, with the names and prequalification numbers of such subcontractors. This information may be submitted at the time of the bid, but must be submitted by no later than the time specified in sub. (k). Firms identified on the subcontractor list may be substituted only for good cause shown and with the written approval of the director.
 - 4.** Notify subcontractors that they may apply for prequalification under this ordinance.
- (j) Required certifications.** Prequalification applications submitted pursuant to this ordinance shall include all information as determined necessary and appropriate by the director. Such applications shall, at a minimum, require a sworn certification by the applicant attesting to the facts specified in this subsection. In submitting a prequalification application, the applicant shall certify that for any project he or she seeks to perform for the County during the term of prequalification, it shall:
- 1.** Possess all technical qualifications and resources, including equipment, personnel and financial resources, necessary to perform the work required for the project or obtain the same through the use of responsible, qualified subcontractors.
 - 2.** Possess all valid, effective licenses, registrations or certificates required by federal, state, county or local law, which are necessary for the type of work to be performed including, but not limited to, those for any type of trade work or specialty work.
 - 3.** Meet all bonding requirements as required by applicable law or contract specifications.
 - 4.** Meet all insurance requirements as required by applicable law or contract specifications, including general liability insurance, workers compensation insurance and unemployment insurance requirements.
 - 5.** Maintain a substance abuse policy for employees hired for public works contracts that complies with Wis. Stats. sec. 103.503.
 - 6.** Pay all employees he or she employs on public works projects the wage rates and benefits required under subchapter II of this chapter.
 - 7.** Participate in a Class A Apprenticeship Program for each separate trade or classification in which he or she employs craft employees and continue to participate in such program or programs for the duration of the project. In applying this requirement, the director shall apply it to all crafts in the same manner as the State of Wisconsin applies the requirements of Wisconsin Executive Order 108 (June 29, 2005).
 - 8.** Fully abide by the equal employment opportunity and affirmative action requirements of all applicable laws, including County ordinances.
 - 9.** Provide in the prequalification application a detailed statement regarding related companies if, at any time during the past three (3) years, the contractor has controlled or has been controlled by another corporation, partnership or other business entity operating in the construction industry. This statement shall be included in the prequalification application and shall explain the nature of the contractor relationship.
 - 10.** Disclose whether for the past three years:
 - a.** he or she has had any type of business, contracting or trade license, certification or registration revoked or suspended.
 - b.** he or she has been debarred by any federal, state or local government agency.
 - c.** he or she has defaulted on any project in the past three years.
 - d.** he or she has committed a willful violation of federal or state safety laws as determined by a final decision of a court or government agency authority.
 - e.** he or she has been found by a final decision of a court or government agency to be in violation of any other law relating to his or her contracting business including, but not limited to, wage and hour laws, prevailing wage laws, environmental laws, antitrust laws or tax laws, where the penalty for such violation resulted in the imposition of a fine, back pay damages or any other type of penalty in the amount of more than \$10,000.
 - 11.** Certify that the contractor prequalification application has been executed by a principal or person employed by the applicant who has sufficient knowledge to address all matters in the prequalification application and shall include an attestation stating, under the penalty of perjury, that all information submitted is true, complete and accurate.
 - 12.** Certify that all subcontractors shall be properly qualified in accordance with sub. (k).

(k) Subcontractors. Subcontractors may, but are not required to, apply for and obtain prequalification status under this ordinance. At least ten (10) days prior to commencing work under any Dane County Public Works contract subject to this section, a subcontractor, **the value of whose work exceeds the single-trade minimum of Wis. Stats. Sec. 66.0903(5)**, shall submit the information required under this ordinance to be qualified, and no such subcontractor may begin work on a Dane County Public Works project until the director determines that such subcontractor meets the qualification requirements herein.

(L) Conditional approval. The director may issue conditional approvals of any application for prequalification and shall set out the conditions thereof in writing.

(m) Best value contracting in county supported projects. In order to achieve the goals set out in this ordinance, it shall be a condition of any County financial support of a development project, as designated by the Board of Supervisors in the resolution granting such assistance, in an amount that meets the requirements of Wis. Stats. sec. 66.0903(5), that the developer utilize for construction those firms that have met the prequalification requirements of this ordinance. This provision will be included as a developer obligation in any agreement between the County and the developer.

(n) Appeal. Any applicant, contractor or subcontractor aggrieved by a determination of the director under this ordinance has the right to appeal the director's determination to the committee. The appeal shall be taken by delivery of a letter to the director within fifteen (15) days of the determination to be appealed. The committee will schedule a hearing on the appeal promptly.

(o) Report by director. After this ordinance has been in effect for two years, the director shall prepare a report to the Board of Supervisors on the effects of the ordinance.