

Ordinance 0008-23 – Public Works Contractor Prequalification

An ordinance to create Chapter 46, Article II, Section 46-40 of the Municipal Code of the City of Racine, Wisconsin.

The Common Council of the City of Racine, Wisconsin, do ordain as follows:

Part 1: Chapter 46, Article II, Section 46-40 of the Municipal Code of the City of Racine as follows:

Sec. 46-40. - Responsible bidder; prequalification requirements.

- (a) Definitions. The following words, terms and phrases, when used in this section, shall have the following meanings ascribed to them, except where the context clearly indicates a different meaning:

Associated business means any business with which any owner, general partner, limited partner, officer, or LLC member of the contractor was an owner, general partner, limited partner, officer, or LLC member at any time during the previous five years. In this context, “owner” and “partner” refer to ownership of ten per cent or more of the business, or ten per cent or more of its stock, if the business is a corporation.

Class A Apprenticeship Program means an apprenticeship program that is currently approved by the U.S. Department of Labor or a state apprenticeship agency and has graduated apprentices to journeyman status for three years. In addition, a new apprenticeship program that has been registered with the federal or state government within the last three years will be considered a Class A Apprenticeship Program, provided that such new program graduates to journeyman status within the indenture period and has a bonafide training program.

Contractor means a person, corporation, partnership, or any other business entity that performs work on a public works contract as a general contractor, prime contractor, or subcontractor at any tier.

Public works contract means a contract for the construction, execution, repair, remodeling, or improvement of a public work or building or for the furnishing of supplies or material of any kind, proposals for which are required to be advertised for by law pursuant to Wis. Stat. § 62.15.

- (b) Requirements of bidder. As a condition of performing work on a public works contract, a contractor shall first be prequalified by the city in accordance with the provisions of this section. All contractors for public works projects are required to submit a full and complete statement, in the form of a questionnaire approved by the

commissioner of public works, sworn to before an officer authorized by law to administer oaths, attesting to the competency and responsibility of a bidder to complete public works projects. The statement shall include evidence of the following:

- (1) The contractor maintains a permanent place of business.
- (2) The contractor is authorized to do business in the State of Wisconsin.
- (3) The contractor, agent, partner, employee, or officer of the contractor is not debarred, suspended, proposed for debarment or declared ineligible from contracting with any unit of federal, state, or local government.
- (4) The contractor is in compliance with provisions of Section 2000e of Chapter 21, Title 42 of the United States Code and Federal Executive Order No. 11246 as amended by Executive Order No. 11375 (known as the "equal opportunity employer" provisions).
- (5) The contractor has general liability, workers' compensation and employer's liability, automobile liability, and unemployment insurance.
- (6) The contractor has complied with all provisions of any prevailing wage laws and federal Davis-Bacon related acts, and the rules and regulations therein, for projects undertaken by the contractor that are covered by these laws, for the past ten years.
- (7) The contractor understands and will comply with the requirements of the City of Racine's Racine Works program as set forth in Racine Ordinance section 46-41.
- (8) There has not been more than one occasion when the contractor has been penalized for failure to comply with a contractually required local hiring preference program, such as the "Racine First" program, "Racine Works" program, the City of Milwaukee's "Residents Preference Program," or the Milwaukee Metropolitan Sewerage District's "Local Workforce Participation" program.
- (9) The contractor has adequate financial resources to complete the public works project, as well as all other work the bidder is presently under contract to complete.
- (10) The contractor has adequate equipment to complete the public works project.
- (11) The contractor has adequate skill, judgment, experience, and resources to capably complete the public works project.

(12) The contractor has a written substance abuse prevention program meeting the requirements of Wis. Stat. § 103.503.

(13) The employees who will perform work on the public works project are properly classified as employees or independent contractors under all applicable state and federal laws.

(14) The contractor has not been the subject of any investigation, order or judgment from any state or federal agency or court concerning an employment practice, including, but not limited to, classification of employees, unemployment insurance, discrimination or payroll fraud. If the contractor has been the subject of any investigation, order or judgment from any state or federal agency or court concerning an employment practice, the contractor must provide copies of the investigation, order or judgment and/or may be disqualified.

(15) The contractor's employees who will perform work on the public works project are covered under a current workers' compensation policy and properly classified under such policy.

(16) The contractor possesses all applicable professional and trade licenses required for performing the public works project.

(17) The contractor is bondable for public works projects.

(18) The contractor participates in a Class A Apprenticeship Program and employs apprentices at numeric ratio of apprentices to journeyworkers consistent with proper supervision, training, safety, and continuity of employment, and in compliance with Wis. Admin. DWD sec. 295.02(2)(b)9 and Wis. Stats. sec. 106.015.

(19) The contractor has a record of satisfactorily completing projects of similar size and complexity within the last ten years. The criteria which will be considered in determining satisfactory completion of projects of similar size may include, but are not limited to:

(a) Completion of contracts in accordance with drawings and specifications.

(b) Diligent execution of the work and completed contracts according to the established time schedules unless extensions are granted by the owner.

(c) Fulfilled guarantee requirements of the contract documents.

(20) The contractor has, and diligently maintains, a written safety program.

(21) The contractor, or any associated business, has not initiated or maintained a

lawsuit against the City of Racine, the Community Development Authority of the City of Racine, or any of its elected or appointed officials, officers, or employees for actions taken in their official capacity within the past five years.

- (a) *Lawsuit* means a claim or dispute brought to a court of law for adjudication.
- (b) *Lawsuit* does not include a claim or dispute initiated or maintained by a contractor to enforce any public works contract let by the City of Racine or the Community Development Authority of the City of Racine or for the review of a determination that a contractor is not a responsible bidder.

(22) The city reserves the right to require additional qualifications for any specific public works project. When so required, the advertisement for bids and bidding documents will state this requirement.

- (c) Prequalification determination and term. The statement under Sec. 46-40(b) shall be in writing and filed with the commissioner of public works for a written determination as to whether the contractor is prequalified to submit bids and perform work on a public works contract. Contractors are urged to apply for a prequalification determination well in advance of bidding on any particular public works contract as the award of contract and notice to proceed to the lowest responsible bidder will not be delayed while a contractor pursues review of a determination that it is not qualified. Once a contractor is determined to be prequalified, that determination shall remain valid for a period of one year.
- (d) Confidentiality. The statement shall be confidential unless otherwise authorized by the contractor or by use of the contractor or City in actions against each other.
- (e) No restriction on discretion. If information other than what was disclosed by the contractor in Sec. 46-40(b) is discovered by the city, its officers, officials, or employees responsible for awarding or making recommendations as to the public works projects, and such information calls into question the contractor's abilities or competence to faithfully and responsibly comply with the terms of a public works contract, that information shall be considered in determining whether the contractor is a responsible bidder.
- (f) Evaluation of a bidder's responsibility.
 - (1) The commissioner of public works, or designee, shall review the information provided in the bid and the qualification statement under Sec. 46-40(b) to determine if the low bidder is responsible to perform the work. At the request of the commissioner of public works, the bidder shall provide additional information verifying their responsibility.

- (2) If the commissioner of public works determines that a contractor is not a responsible bidder, that bidder shall be notified, in writing, of the commissioner of public work's determination, the reasons supporting the decision, and of the contractor's right to seek a review of the determination.
 - (3) The review of a determination that a contractor is not a responsible bidder shall be performed by the purchasing agent shall review the appeal, aided by members of the Department of Public Works, the Water and Wastewater Utilities, and/or the Parks, Recreation, and Cultural Services Department as the purchasing agent determines to be appropriate. None of the personnel reviewing the appeal shall have participated in the prior review of the application. The purchasing agent and appropriate staff will examine the appeal and the facts surrounding the determination before making a decision. The purchasing agent may contact third parties to verify information provided in the application and the appeal, and may consult with the city attorney during the review. The purchasing agent shall render the city's final administrative decision within 30 calendar days of receipt of the appeal.
 - (4) Contractors seeking review of a determination that a contractor is not a responsible bidder shall not be permitted to submit bids on public works contracts while the review is pending.
 - (5) For purposes of this section, the city elects not to be bound by Wis. Stats. ch. 68 with respect to administrative procedure.
- (g) Renewal and disclosure. It shall be the obligation of the contractor to timely renew its prequalification and to report information regarding any material changes to its business or operations that are relevant to its prequalification submittal, including information that would affect its ability to make the certifications required by this section. Any such information must be reported within 30 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 and other sanctions available under applicable law.

Part 2: This ordinance shall take effect upon passage by a majority vote of the members-elect of the City of Racine Common Council and publication or posting as required by law.

Fiscal Note: Registration fee as determined by the budget as set forth in the fee schedule and established by the common council for each property to be exempted.

Pursuant to Wisconsin Statutes section 62.09(8)(c), the mayor shall have the veto power as to all acts of the common council, except such as to which it is expressly or by necessary implication otherwise provided. All such acts shall be submitted to the mayor by the clerk and shall be in force upon approval evidenced by the mayor's signature, or upon failing to approve or disapprove within five days, which fact shall be certified thereon by the clerk. If the mayor disapproves the mayor's objections shall be filed with the clerk, who shall present them to the

council at its next meeting. A two-thirds vote of all the members of the council shall then make the act effective notwithstanding the objections of the mayor.