
PURCHASING AGENT RELATED ORDINANCES

Charter Ordinances

ARTICLE II. - OFFICERS AND EMPLOYEES

DIVISION 1. - GENERALLY

Sec. 2-2. Term of office.

All appointments to the following offices shall be for an indefinite term, subject to removal by the common council for cause under the conditions prescribed by General Ordinance section 2-441: City clerk, assessor, city attorney, commissioner of public works, chief information officer, ~~purchasing agent~~, human resources director, traffic engineer, chief building inspector, chief plumbing inspector, and chief electrical inspector.

~~*DIVISION 10. PURCHASING AGENT*~~

~~Sec. 2-206. Department created; appointment.~~

~~There is hereby created a purchasing department. The purchasing agent shall be the head of the department. He shall be appointed by the mayor, subject to confirmation by the common council.~~

Code of Ordinances

CHAPTER 2 – ADMINISTRATION

ARTICLE IV - DEPARTMENTS

DIVISION 4. DEPARTMENT OF FINANCE

Sec. 2-361. Created; functions.

There is hereby created a department of finance, which shall be charged with the duties of the city treasurer and city comptroller as provided by the state statutes and the ordinances and resolutions of the city and, in addition, shall include ~~the payroll department~~ and ~~the purchasing department~~ functions.

CHAPTER 42 – ENVIRONMENT

ARTICLE VI - LOST, JUNKED, WRECKED, SEIZED, ABANDONED PROPERTY

DIVISION 2. ABANDONED, NUISANCE, OR JUNKED VEHICLES

Sec. 42-185. Removal of condemned vehicles.

Not less than seven days after the mailing or service and posting of any order and notice under section 42-184, if no petition for a hearing has been filed or received by the health officer or chief building inspector, and if the vehicle has not been removed or its condition corrected, the health officer or chief building inspector may have the vehicle removed, impounded, destroyed, and/or sold as salvage as provided in Wis. Stats. § 342.40, at the city's expense. At such sale, the highest bid for such vehicle shall be accepted unless deemed inadequate by the ~~purchasing agent~~ finance director, who shall report each sale to the public safety and licensing committee. If the ~~purchasing agent~~ finance director deems the highest bid inadequate, he shall forward the bids to the public safety and licensing committee for approval or for recommendation of denial by the common council, in which event all bids may be rejected. The costs of such action may be collected from the owner of the premises at which the vehicle had been stored or may be charged against the premises and assessed as other special taxes are, upon notification by the health officer or chief building inspector to the city treasurer. The finance director may designate a member of the finance department to review bids under the authority of the finance director.

CHAPTER 46 – FINANCE

ARTICLE II – PURCHASING PROCEDURE

Sec. 46-26. Purchasing ~~department~~function; duties.

~~There is hereby created a~~ The purchasing department function shall be under the supervision authority of the finance ~~department~~ director. ~~The purchasing agent shall be the head of the department.~~ The ~~purchasing agent~~ finance director shall purchase or contract for all materials, supplies, equipment and contractual services for all city departments except those for which other provision is made by law and except for the purchase of books for the library. Public work, the estimated cost of which exceeds \$25,000.00, shall be under the jurisdiction of the commissioner of public works. The finance director may designate any member of the finance department to perform any action in this article under the authority of the finance director.

Sec. 46-27. Requisitions.

The head of the department which requires the materials, supplies, equipment or contractual services shall file a requisition therefor with the ~~purchasing agent, who~~ finance department, which shall proceed as set forth in this article.

Sec. 46-28. Purchases; advertising for bids.

- (a) Bids shall be required for every purchase of materials, supplies, equipment or contractual services other than professional services, the estimated cost of which exceeds \$50,000.00. Bids shall be advertised in the manner provided in Wis. Stats. § 62.15, except that the notice shall be published not less than twice and bids shall be received not less than ten days after first publication. Participation in a bidding process for the same or similar items in association with other governmental units fulfills the bidding requirement.

Advertisement for bids shall not be required for any purchase, except for public construction, the estimated cost of which does not exceed \$50,000.00, but in such case the ~~purchasing agent~~ finance department shall secure and record at least three informal bids, if practicable.

If the estimated cost of public construction exceeds \$5,000.00 but is not greater than \$25,000.00, the ~~purchasing agent~~ finance department shall publish one notice of the proposed construction before a contract for

the construction is executed. This provision does not apply to public construction if the materials for such a project are donated or if the labor for such a project is provided by volunteers.

The common council may, by resolution, dispense with the requirement of advertising for bids in any particular case.

- (b) A summary of the bids received for each item listing the name of each bidder and a copy of his bid shall be submitted to the appropriate committee of the common council for its recommendation to the common council. The adoption of the committee report by the common council shall constitute the final action of the council upon the bids and shall authorize the purchasing agent finance department to issue a purchase order, ~~counter~~signed by the finance director as to availability of funds, for the purchase of the items on which such bids were received.

Sec. 46-29. Bidding procedure.

- (a) *Prequalification.* Before delivering any form for bid proposals, plans and specifications pertaining thereto to any person who has not previously been found qualified under the provisions of this article, excepting delivery to materialmen, suppliers and others not intending to submit a direct bid, the purchasing agent finance department shall require such person to submit a full and complete statement, sworn to before an officer authorized by law to administer oaths, of financial ability, equipment, experience in the work prescribed in the proposed bid, and of such other matters as the purchasing agent finance department may deem necessary for the protection and welfare of the public in the performance of any contract for such purchase. Such statement shall be on forms to be furnished by the purchasing agent finance department. Such statements shall be filed with the purchasing agent finance department not less than five days prior to the time set for opening of bids. The contents of such statements shall be confidential and shall not be disclosed except upon the written order of the person furnishing such bid, or for necessary use in qualifying such person, or in cases of action against or by such person or the city. The purchasing agent finance department shall evaluate the sworn statements and shall find the maker of such statements either qualified or unqualified. No bid shall be received from any person who has not submitted the statement provided in this section and has been found qualified.
- (b) *Notice to bidder.* Whenever a contract is awarded to any person other than the lowest responsible bidder, the person submitting the lowest bid shall be given written notice within 48 hours of the award of the contract, indicating the action of the common council and setting forth the reasons for awarding the contract to other than the lowest bidder.

Sec. 46-30. Contents of contract.

The specifications for every contract for public work entered into by the city through the purchasing finance department shall contain a schedule of the prevailing rate of wages to be paid each trade or occupation required in the work contemplated and which schedule has been adopted and is in effect at the time of advertising for such public work. Such specifications shall also contain the following provisions:

- (1) The contractor hereby agrees that all persons employed by him or by any subcontractor in the performance of this contract shall be paid wages which are not less than those established by the common council in this article.
- (2) The contractor hereby agrees that he will make a sworn biweekly report and will procure and make a like biweekly report for every subcontractor employed by him to the commissioner of public works of every employee employed in carrying out his contract, showing such employee's name, address, type of work performed by him, number of hours employed during such weeks and the hourly rate of pay. Such reports shall include a statement that each and every employee has been paid in full the amount prescribed by the common council and that there has been or is to be no rebate or refund of any part of such wages by such employee.

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- (3) It is agreed that no estimates for payments shall be given at any time when there is any default in compliance with this provision, either in making such reports or making such payments without rebate or refund.

Sec. 46-31. Small purchases, procedure.

All purchases other than those specified in section 46-28 shall be made without advertising, but the ~~purchasing agent finance director~~ shall so far as possible solicit prices from at least three dealers or contractors. A record shall be kept of all such purchases and the prices so received. The ~~purchasing agent finance director~~ may complete such purchases without referring the purchases to the common council.

Sec. 46-32. Disposal of personal property.

- (a) Any personal property no longer usable in or suited to a particular department shall be turned over to the ~~purchasing finance~~ department to be disposed of in the manner provided in this section. The ~~purchasing agent finance department~~ may assign any such property not exceeding \$1,000.00 in value to any city department for further use, or may sell such property and pay the proceeds into the city treasury. No such property having a value in excess of \$1,000.00 shall be assigned or sold without the approval of the mayor.
- (b) The ~~purchasing agent finance department~~ shall hold an annual auction sale to dispose of all surplus personal property not otherwise disposed of during the year.

Sec. 46-33. Purchases less than the micro-purchase threshold.

The provisions of section 46-29 shall not apply to the purchase or contract for materials, supplies, equipment and contractual services amounting to less than the micro-purchase threshold set forth in 41 U.S.C. § 1902, as it may be amended from time to time. When materials, supplies, equipment and contractual services amounting to less than the micro-purchase threshold set forth in 41 U.S.C. § 1902, as it may be amended from time to time are required, the department head shall purchase and pay for the same in cash or on the city purchasing card and receive a receipted invoice therefor, which shall be presented to the city treasurer, who shall reimburse the purchaser for such expenditure.

Sec. 46-34. Unauthorized purchases.

It is unlawful for any city officer to order the purchase of any materials, supplies or equipment other than through the ~~purchasing finance~~ department, and if such purchase is ordered contrary to the provisions of this section such contract of purchase shall not be approved by the city officials, and the city shall not be bound thereby.

Sec. 46-35. Restraint of trade or commerce.

Any corporation, organization or individual violating Wis. Stats. § 133.01 et seq. regarding the restraint of trade or commerce shall, upon conviction thereof, be thereby disqualified as a bidder on any city project or purchase for a period of three years from the date of such conviction; however, nothing therein shall be interpreted to preclude such corporation, organization or individual from completing any and all contracts he may already have with the city at the time of such conviction, nor shall this section be applied retroactively to convictions occurring prior to the adoption and publication of this article. This prohibition applies with like force to individuals, members or officers of organizations or corporations convicted under such statute who thereafter have a business interest in new corporations or business enterprises of whatever kind or description.

Sec. 46-36. Public works contracts.

The city shall comply with all statutory requirements contained in Wis. Stats, §§ 66-0901—66.0903 and all administrative rules promulgated by the Department of Workforce Development pursuant to Wis. Stats. § 66.0903(12)(e).

Sec. 46-37. Same—Bids; procedure.

All bids for public work received by the commissioner of public works, together with a letter summarizing copies of the bids, shall be submitted to the appropriate committee. The committee shall report on the contract to the common council and recommend passage of an appropriate resolution awarding the contract to the bidder designated in the report.

Sec. 46-38. Purchasing coalitions.

When it is in the best interest of the city and consistent with competitive purchasing practices and regulations set forth in Chapter 16, Wis. Stats., the ~~purchasing agent-finance department~~ may enter into agreements with purchasing agents of the federal government or of any other state or municipality or group of municipalities under which any of the parties may agree to participate in, administer or conduct purchasing of materials, supplies, equipment, permanent personal property or contractual services.

Sec. 46-39. Procurement of professional services.

The city may contract for the procurement of professional services.

- (1) *Definition.* For the purposes of this section, "professional services" means services that are intellectual in character, including consultation, analysis, evaluation, prediction, planning, programming, or recommendation, and result in the production of a report or the completion of a task.

Such services include, but are not restricted to, services of the type required or permitted to be furnished by a professional under a license, registration or certificate issued by the State of Wisconsin to practice architecture, engineering, surveying, landscape architecture, geoscience, certified interior design, medicine and surgery, chiropractic, optometry, psychology, dentistry, dental hygiene, accountancy or law, or under a license or certificate issued by another state under similar laws.

- (2) *Council approval.* Except as otherwise directed by the common council, contracts for the purchase of professional services may be entered into without council resolution when all of the following conditions are met:
- a. The funds for the services are included in the approved city budget.
 - b. The city has engaged in a competitive selection process for professional services (or in the case of the water and wastewater utilities, Wis. Stats. § 62.15 and ch. 200, and sections 46-36 and 46-38 of the Code of Ordinances) or the contract is exempt from such a requirement pursuant to subsection (3) of this section.
 - c. The contract complies with other laws, resolutions and ordinances.
 - d. The contract is for a period of one year or less, or the contract is for a period of more than one year but not more than three years, and the cost of the professional services does not average more than \$50,000.00 per year of the contract, provided that this subsection is subject to subsection (3)b. for noncompetitive contracts.

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- (3) *Exceptions to selection process.* The city may enter into negotiated contracts for professional services without a competitive selection process for the procurement of professional services if the following are met:
- a. One or more of the following criteria are present as found by the ~~purchasing agent~~ finance department or appropriate department head:
 1. Public exigency will not permit the delay incident to advertising or other competitive processes;
 2. The service required is available from only one person or firm;
 3. The services are for professional services to be provided by attorneys who charge on an hourly basis or who are approved by CVMIC or the city's liability insurance carriers. In all other matters, where the aggregate legal fees exceed \$50,000.00, the city attorney shall notify the common council of the status and seek approval for further expenditures.
 4. No acceptable bids have been received after formal advertising;
 5. Service fees are established by law or professional code;
 6. A particular consultant has provided services to the city on a similar or continuing project in the recent past, and it would be economical to the city on the basis of time and money to retain the same consultant;
 7. The contract is for \$50,000.00 or less; or
 8. Otherwise authorized by law, rule, resolution, or regulation.
 - b. In the case of sole source, public exigency or previous provider exemptions, the department head ~~or purchasing agent~~ shall fill out the city's approved form for such and file it with the finance director and city administrator.

If the aggregate amount of the fee for services will exceed \$50,000.00 and the contract was not subject to a competitive selection process, the contract shall meet one of the requirements of subsection (3)a. and be approved by the common council by resolution.

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 percent 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 journeyperson 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 journeyperson 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.

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- (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.

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- (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 journeymen 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. § 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 section 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 section 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 section 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.
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- (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 finance director 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 finance director~~ determines to be appropriate. None of the personnel reviewing the appeal shall have participated in the prior review of the application. The ~~purchasing agent finance director~~ and appropriate staff will examine the appeal and the facts surrounding the determination before making a decision. The ~~purchasing agent finance director~~ 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 finance director~~ 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.

Sec. 46-41. Racine Works Program.

- (a) *Purpose.* U.S. Department of Labor statistics show that the unemployment rate in the City of Racine is one of the highest in the state and is consistently higher than other parts of the State of Wisconsin. The City of Racine Common Council finds that the high unemployment rate, especially among low-and moderate-income groups, has a substantial adverse impact on the social and economic fiber of the entire community. The Racine Works Program is designed and intended to reduce unemployment by creating work opportunities for Racine residents and by retaining current jobs of residents through imposition of a requirement that, for certain public works contracts, a designated percent of project hours worked under the contract be performed by qualified low-income Racine residents with a certification. Through targeted strategies to include more city residents in city funded projects, the objective of the Racine Works Program is to support more families joining the middle class.

- (b) *Definitions.* The following words and phrases have the meaning indicated for this section:

Apprenticeship program means a Class A Apprenticeship Program that is currently approved by the U.S. Department of Labor or a state apprenticeship agency and has graduated apprentices to journeyperson 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 journeyperson status within the indenture period and has a bonafide training program.

Certification means a participant having qualified as an eligible resident as determined by the ~~purchasing agent finance director~~.

Direct financial assistance means the value of below-market land sales, any direct subsidies to developers, and city expenditures for private improvements, with a combined value of \$1,000,000.00 or

more, as determined by the director of city development, targeted specifically to a project. It includes the value of tax increment financing and below-market-rate loans provided by the city.

Eligible resident means an individual who resides in the City of Racine, Wisconsin, for contracts awarded by the city, or an individual who resides in a municipality served by the water utility for water utility contracts, and who meet the underemployed or income limit requirements as set forth below. City residency for eligibility shall be maintained for the life of the resident's certification. Such residents shall have completed at a minimum a pre-apprenticeship program geared toward a specific trade. Residents who possess an apprenticeship or journeyman status shall also be eligible provided their current income status makes them eligible.

To be eligible and receive certification to participate under this section, the resident new applicant or inactive employee must be:

- Underemployed: having worked 1,200 or less in the preceding 12 months from the date of application, or
- Underemployed as meeting income eligibility guidelines pursuant to the HUD income limits for low- and/or very low-income households as not exceeding 80-percent of county median income.

Once certified, that certification shall be valid if the participant continues to maintain residency in the City of Racine.

Other resident means an individual who resides in the City of Racine, Wisconsin, for contracts awarded by the city, or an individual who resides in a municipality served by the water utility for water utility contracts, who does not meet the underemployed or income limit requirements as set forth for eligible residents.

Racine Works Program (RWP) means the residents' preference program created and implemented in this section.

Resident means a person who resides in the City of Racine, Wisconsin. Residency may be demonstrated by tendering two of the following items or copies as proof:

- (1) Voter's certification form;
- (2) Internal Revenue Service, Form 1040, from the prior tax year;
- (3) Current Wisconsin Driver's license or State Identification card; or
- (4) Utility bill, lease, property tax bill, or other government or business document with name and address.

Qualified low-income Racine resident means a person who resides in the City of Racine, Wisconsin, who meets income eligibility guidelines pursuant to the HUD income limits for low- and/or very low-income households as not exceeding 80-percent of county median income, and who has completed or maintains a pre-apprenticeship, apprenticeship, or journeyman program or status in a particular trade such as carpentry, cement finishing, iron worker, plumbing, electrical, and similar trades.

Qualifying contract means a contract that is in an amount greater than \$100,000.00 and paid by city-source funds for city public works contracts or by water utility funds for water utility contracts, and is (1) a public works contract, as defined in Wis. Stats. § 66.0901(1)(c), awarded by the city or its water utility; or (2) a contract for site preparation, including, but not limited to, razing of buildings, filling, grading, and other similar work; or (3) a construction contract or contract for site preparation awarded by a developer for a development that received direct financial assistance from the city or from the community development authority. A contract shall constitute a qualifying contract irrespective of the funding source to the fullest extent possible considering the requirements of state and federal law.

Qualifying work means all labor, including skilled and non-skilled labor, and including but not limited to, general laborer, labor performed in journeyman, sub-journey, pre-apprenticeship, apprenticeship, and on-the-job training programs.

Worker hours means the total hours qualifying work performed pursuant to a qualifying contract, whether those workers are employed by the contractor or any subcontractor. In determining the total worker hours to be furnished at a construction site, the number of hours devoted to all tasks customarily performed on a construction site shall be included, whether or not such tasks are performed on the construction site. Worker hours includes work performed by persons filling apprenticeships and participating in on-the-job training programs and work performed by supervisors and superintendents on job sites who are not hourly wage workers.

- (c) *Applicability; exceptions.* RWP applies to all qualifying contracts, excepting that in exceptional circumstances and where substantial grounds exist to exempt a contract from RWP, such contracts may be exempted from RWP requirements.

Any exceptions under this subsection require compliance with the following procedure:

- The bidding contractor requesting an exception shall submit a written proposal identifying the exceptional circumstances, and substantial grounds as the basis for the exception. Substantial grounds may include a contract or project requiring special skill or experience.
- The written proposal shall be submitted to the mayor and city administrator for consideration.

- (d) *Worker hours requirement.* Contractors performing work under a non-exempt qualifying contract shall either:

- Employ or ensure employment of eligible residents in the work under such contract and subcontracts to the extent that eligible residents perform qualifying work in the amount of no less than 20 percent of the total project worker hours; or
- Employ or ensure employment of eligible employees to perform qualifying work for at least 15 percent but less than 20 percent of the total project worker hours and employ or ensure employment of other residents to perform qualifying work in the following ratio of eligible residents to other residents in the work under such contract and subcontracts:

Eligible Residents	Other Residents
15 percent*	10 percent*
16 percent*	8 percent*
17 percent*	6 percent*
18 percent*	4 percent*
19 percent*	2 percent*

* Percentage of the total project worker hours

For example, if a contractor employs eligible residents to perform qualifying work in 15 percent of the total project worker hours, the contractor must employ other residents in the work under such contract and subcontracts to the extent that such other residents perform qualifying work in an additional amount of no less than ten percent of the total project worker hours.

- (e) *Verification; documentation.* The contractor shall submit a monthly workforce participation report. Such report shall include the name, street address, municipality of residence, race, gender, and total hours worked of each employee used for the contract, including such records of subcontractors for work under subcontracts. All reports and documents regarding workforce participation shall be submitted to the city ~~purchasing agent finance department~~. At the completion of the contract and before final payment under the contract, the contractor shall certify by affidavit whether it has complied with the RWP to the city ~~purchasing~~

~~agent-finance department~~. Contractors shall maintain personnel records listing the name, address, race, and gender of each employee used for the contract as well as payroll records that provide information from which compliance with RWP requirements can be determined, including such records of subcontractors for work of eligible residents under the subcontract. The contractor shall provide such documents to city upon reasonable notice during the pendency of the contract and shall maintain such payroll records for a period of at least three years after city's final payment under the contract. Contractors and subcontractors shall permit a city representative to engage in on-the-job interviews with employees to assist in determining compliance with RWP.

- (f) *Administration.* RWP shall be administered by the city ~~purchasing-agent-finance director~~, or other city employee as designated by the ~~purchasing-agent-finance director~~, who shall provide prospective contractors with information regarding RWP, with forms required for compliance certification, who shall also determine compliance with RWP requirements. The city ~~purchasing-agent-finance director~~ shall, on an annual basis, provide the common council with information regarding RWP and the common council shall review the program and determine whether to enact revisions to RWP.
- (g) *Prohibition and penalty.* No contractor or agent thereof shall fail to comply with the worker hours requirement under paragraph (d), above.
- (1) Upon failure of a contractor or agent to timely submit any monthly workforce participation report or the required final affidavit required under paragraph (e), above, the city, for contracts paid by city-source funds, or the water department, for contracts paid by water utility funds, may withhold payment and such contractor or agent shall be prohibited from bidding on any qualifying contract until such report or affidavit is submitted.
 - (2) Upon failure of a contractor to comply with the worker hour requirements under paragraph (d), above, such failure shall be considered by the public works and services committee for contracts paid by city-source funds or by the waterworks commission for contracts paid by water utility funds at the time the contract is considered for final payment. Upon demonstration by the ~~purchasing-agent-finance director~~ or the general manager of the water department that the contractor has failed to comply with such worker hour requirements, for such failure the public works and services committee or the waterworks commission shall reduce the final payment for such contract by \$10,000.00, or two and one-half percent of the total cost of the qualifying contract as awarded, whichever is greater. The ~~purchasing-agent-finance director~~ or the general manager of the water department, as appropriate, shall provide written notice to the contractor within ten days of the decision of the public works and services committee or the waterworks commission.
 - (3) A contractor may appeal the decision of the public works and services committee or the waterworks commission under subparagraph (2), above, within ten days from the date of the notice.
 - a. The appeal shall be in writing and must be delivered to ~~purchasing-agent-finance director~~ or the general manager of the water department, who issued the notice, or their designee as indicated in the notice. As soon as practicable thereafter, but not more than 30 days from the date of the written appeal, the due process board shall hear the appeal and allow the contractor an opportunity to present evidence as to why the contractor did not fail to comply with the worker hour requirements under paragraph (d), above.
 - b. Within ten days after the appeal is heard, the contractor shall be notified in writing of the board's decision to either affirm or reverse the decision of the public works and services committee or the waterworks commission. Any contractor adversely affected by a decision of the due process board in this respect may seek review by filing a petition in circuit court within 30 days of the date of the decision or be forever barred.
 - c. For purposes of this section, the city elects not to be bound by Wis. Stats. ch. 68 with respect to administrative procedure.

Following the expiration of any period for appeal, or following the completion of any appeal, any penalty assessed under paragraph(g)(2) shall be allocated to support pre-apprenticeship programs associated with this RWP.

- (h) *Debarment.* If after recommendation of the public works and services committee or the waterworks commission, the due process board determines that a contractor or agent thereof has failed to comply with the worker hour requirements under paragraph (d), above, the common council, for city-source funded contracts, and the waterworks commission, for water utility contracts, may not award any contract to such person unless otherwise recommended by the public works and services committee and approved by the common council or recommended by such general manager and approved by the water works commission, respectively, or unless three years have elapsed from the date the due process board made its determination, or three years have elapsed from the date of final determination by a court of competent jurisdiction that is adverse to the contractor, whichever is later.