

33.07 BOARD OF PUBLIC WORKS.(7) Best Value Contracting.

(a) Policy. When entering into contracts for public construction under Wis. Stat. § 62.15, the City of Madison requires bidders to prequalify pursuant to the provisions of Wis. Stat. § 66.0901, and procedures adopted by the City. The City of Madison finds that using the Best Value Contracting procedures set forth in this ordinance will provide the City 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) Definitions.

1. “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 (subject to the limitations for subcontractors in Secs. (j)3. and 4. and (l) of this ordinance) subcontractor at any tier.
2. “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 (3) years. In addition, a new apprenticeship program that has been registered with the federal or state government within the last three (3) years will be considered a Class A Apprenticeship Program, provided that such new program graduates apprentices to journeyman status within the indenture period. Furthermore, an apprenticeship program pre-certified as compliant with Wisconsin Executive Order 108 (June 29, 2005) by the Wisconsin Bureau of Apprenticeship Standards, http://dwd.wisconsin.gov/apprenticeship/pdf/active_wtt.pdf, on the date the bid is opened will be considered a Class A Apprenticeship Program.
3. “Engineer” or “City Engineer” means the City of Madison City Engineer.
4. “Public works contract” means a contract for the City of Madison for the construction, alteration, execution, repair, remodeling or improvement of a public work or building, where the contract is required to be bid pursuant to Wis. Stat. § 62.15.
5. “BVC Contract” is a public works contract where the value of the contract is more than \$48,000 for any single-trade public works project and \$234,000 for any multiple-trade public works project. Every year, the City Engineer shall adjust the minimum estimated project cost of completion figures for both single-trade and multiple-trade public works contracts on the basis of the change in the construction cost index as published in the Engineering News-Record. The adjusted minimum estimated project cost of completion figures shall be rounded to the nearest thousand, and maintained by the City Engineer.
6. “Multiple-trade public works contract” is a public works project in which no single trade accounts for 85% or more of the total labor cost of the project.
7. “Single-trade public works contract” is a public works project in which a single trade accounts for 85% or more of the total labor cost of the project.

(Am. by ORD-09-00095, 6-20-09)

(c) Prequalification Requirement. As a condition of performing work on a public works contract for the City of Madison, a contractor shall first be prequalified by the City in accordance with the provisions of this ordinance and other policies of the City as adopted by the Board of Public Works. This section shall apply to general contractors, prime contractors and (subject to the limitations for subcontractors in Secs. (j)3. and 4. and (l) of this ordinance) subcontractors of any tier.

(d) Additional Qualification Information. In addition to information specified in this ordinance, the City Engineer 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.

- (e) Prequalification Term. Once a contractor's prequalification application is approved by the City Engineer under this ordinance, it shall remain valid for a period of two years to expire on January 31, unless suspended or revoked pursuant to this section.
- (f) 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 application, including information that would affect its 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 City contracts for a period of up to three years and other sanctions available under applicable law.
- (g) Prequalification Approval. The City Engineer shall review contractor prequalification applications and approve applications that comply with the requirements of this ordinance and other applicable standards developed by the City Engineer. If a contractor has been certified by the City as a DBE, MBE, SBE or WBE, and the City Engineer determines that the contractor fails to meet the prequalification requirements under this ordinance, the City Engineer will notify and discuss the determination with the Affirmative Action Division prior to issuing any notice of non-qualification.
- (h) Prequalification List. The City Engineer 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.
- (i) Prequalification Review. The City Engineer shall review the performance of contractors prequalified according to this section periodically, but at least once a year, 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 Engineer 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 City Engineer.
- (j) Prequalification Enforcement. The City Engineer shall:
 - 1. Take the necessary actions to ensure that all contractors and subcontractors on public works contracts and BVC contracts 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 submitting bids on public works contracts and BVC 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 for subcontractors may be submitted at the time of the bid and must be submitted by the time specified in sub. (l). Firms identified on the subcontractor list may be substituted only for good cause shown and with the written approval of the City Engineer.
 - 4. Notify subcontractors that they may apply for prequalification under this ordinance.
- (k) Required Certifications. Prequalification applications submitted pursuant to this ordinance shall include all information as determined necessary and appropriate by the City Engineer. 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 it seeks to perform for the City during the term of its 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 will obtain same through the use of responsible, prequalified subcontractors.
2. Possess all valid, effective licenses, registrations or certificates required for the contractor or its employees by federal, state, county or local law necessary for the type of work it seeks to perform, including, but not limited to, licenses, registrations or certificates for any type of trade work or specialty work.
3. Meet all bonding requirements as required of it by applicable law or contract specifications.
4. Meet all insurance requirements as required of it 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. Stat. § 103.503.
6. Pay all craft employees that it employs on public works projects the wage rates and benefits required under applicable prevailing wage law, Sec. 23.01, MGO.
7. With respect to BVC contracts only, participate in a Class A Apprenticeship Program for each separate trade or classification in which it employs craft employees and continue to participate in such program or programs for the duration of the project. In applying this requirement, the City Engineer 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), including provisions related to hiring apprentices when journeypersons remain laid off.
8. Fully abide by the equal employment opportunity and affirmative action requirements of all applicable laws, including City ordinances.
9. Provide in its 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 prequalification application and shall explain the nature of the contractor relationship.
10. Disclose, whether for the past three years:
 - a. It has had any type of business, contracting or trade license, certification or registration revoked or suspended.
 - b. It has been debarred by any federal, state or local government agency.
 - c. It has defaulted on any project in the past three years;
 - d. It 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. It has been found by a final decision of a court or government agency in violation of any other law relating to its 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 fine, back pay damages or any other type of penalty in the amount of more than \$10,000.

The applicant shall provide an explanation to the City Engineer of any disclosures under this subsection, and the City Engineer shall determine if such incidents are of such a nature as to disqualify the applicant.
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. Understand that in performing under any City public works contract, it will be required to use as subcontractors only those entities that have been properly prequalified in accordance with the requirements of this ordinance.
- (l) 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 City of Madison Public Works Contract, a subcontractor, the value of whose work exceeds the single-trade minimum of Wis. Stat. § 66.0903(5), shall submit the information required under this ordinance to be qualified, and no such subcontractor may begin work on a City of Madison Public Works Project until the City Engineer determines that such subcontractor meets the qualification requirements herein.
- (m) Conditional Approval. The City Engineer may issue conditional approvals of any application for prequalification and shall set out the conditions thereof in writing, provided, however, that no conditional approval of a bidder's application for prequalification that relates to the pending approval of an Affirmative Action Plan shall extend beyond the date of the initial consideration of the award by the Board of Public Works, at which time the contractor must be in full compliance with Sec. 39.02(9)(e), MGO. (Am. by ORD-09-00012, 2-6-09)
- (n) Best Value Contracting in City Supported Projects. In order to achieve the goals set out in this ordinance, it shall be a condition of any City financial support of a development project, in the form of TIF financing, Capital Revolving Loan funds, industrial development bonds, or other City or CDA assistance as designated by the Common Council in the resolution granting such assistance, in an amount that meets the requirements of sub. (7)(b)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 City and the developer.
- (o) Appeal. Any applicant, contractor, or subcontractor aggrieved by a determination of the City Engineer under this ordinance has the right to appeal the City Engineer's determination to the Board of Public Works. The appeal shall be taken by delivery of a letter to the City Engineer within fifteen (15) days of the determination to be appealed. The Board of Public Works will schedule a hearing on the appeal promptly.
- (p) Report by City Engineer. After this ordinance shall have been in effect for two years, the City Engineer shall prepare a report to the Common Council on the effects of the ordinance.

(Cr. by ORD-07-00028, 3-15-07)