

**COMMITTEE OF
THE WHOLE**

Monday, May 10, 2021

5:00 PM

McFarland Municipal Center
Community Room

AGENDA

You are invited to this meeting through a Zoom webinar. The Public is strongly encouraged to watch and participate in these meetings remotely through either the webinar or telephone options listed below.

PLEASE CLICK THE LINK BELOW TO JOIN THE ZOOM WEBINAR:

<https://us02web.zoom.us/j/81934686730>

Or by Telephone: +1 (312) 626-6799
Webinar ID: 819 3468 6730

1. CALL TO ORDER.
2. ATTENDANCE/ROLL CALL.
3. PUBLIC APPEARANCES.
 - a. This is an opportunity for members of the public to address the Village Board. Please remember this is a virtual meeting conducted through the Zoom online meeting platform. Zoom meeting attendees wishing to address the board may do so using the Question and Answer feature within the Zoom online meeting platform. You may state your name, address, and provide your comments to the board for their consideration. Members of the public who are present in person and wish to address the board should fill out a public comment form and turn into the meeting chairperson. Members of the public may speak during public appearances or during their selected agenda item as they designate on the public comment form. Please adhere to the 3-minute time limit. Additionally, you may send your public comments to cassandra.suettinger@mcfarland.wi.us to be included as part of the meeting.
4. APPROVAL OF MINUTES.
 - a. Discussion and action regarding minutes of the meeting held on February 8, 2021.
5. BUSINESS.
 - a. Presentation and discussion regarding the drafting of a responsible bidders ordinance.
6. SCHEDULE NEXT MEETING DATE.

- a. To be determined.

7. ADJOURNMENT.

This meeting notice constitutes an official meeting of the above referenced group and was posted in accordance with all applicable laws related to Open Meetings Law. It is possible that members of and possibly a quorum of members of other governmental bodies of the municipality may be in attendance at the above stated meeting to gather information. No action will be taken by any governmental body at the above stated meeting other than the governmental body specifically referred to above in this notice. Upon reasonable notice, efforts will be made to accommodate the needs of disabled individuals. For additional information or to request this service, contact the McFarland Municipal Center at (608) 838-3153 or cassandra.suettinger@mcfarland.wi.us.

VILLAGE OF MCFARLAND
Committee of the Whole Minutes

Monday, February 8, 2021 - 5:30 PM

1. CALL TO ORDER.

Village President Czebotar called the regular meeting of the McFarland Committee of the Whole to order at 5:30 pm in the Community Room of the McFarland Municipal Center.

2. ATTENDANCE/ROLL CALL.

Village Board members present: Village President Brad Czebotar; Village Trustee Stephanie Brassington, Carolyn Clow, Michael Flaherty (arrived at 5:35 pm), Eric Kryzenske, Justin Rupert, and Clair Utter (arrived at 5:36 pm).

Village Board members not present: None.

Staff Present: Administrator Matt Schuenke, Interim Police Chief Brian Redman, and Fire and Rescue Chief Chris Dennis.

3. PUBLIC APPEARANCES.

- a. This is an opportunity for members of the public to address the Village Board. Please remember this is a virtual meeting conducted through the Zoom online meeting platform. Zoom meeting attendees wishing to address the board may do so using the Question and Answer feature within the Zoom online meeting platform. You may state your name, address, and provide your comments to the board for their consideration. Members of the public who are present in person and wish to address the board should fill out a public comment form and turn into the meeting chairperson. Members of the public may speak during public appearances or during their selected agenda item as they designate on the public comment form. Please adhere to the 3-minute time limit. Additionally, you may send your public comments to cassandra.suettinger@mcfarland.wi.us to be included as part of the meeting.*

None.

4. APPROVAL OF MINUTES.

- a. Discussion and action regarding the minutes of the meeting held on January 25, 2021.*
The minute of the meeting held on January 25, 2021 was approved by unanimous consent.

5. BUSINESS.

- a. Presentation and discussion regarding Phase 2 Design Development for the Public Safety Center.*

The Village Administrator provided a brief recap of the previous meeting stating all of the information for this item was included as background following its presentation at the last meeting. The information contained the site plan, elevations, floor plan, sustainability recommendations, and cost estimates. No action is needed nor was taken on this item.

- b. Discussion and action regarding proposed alternates for the Public Safety Center project.*

The Village Administrator presented information on the four alternates that are proposed for the project including a description of the item and their estimated cost. This included alternates to install in floor heat in the Police garage, epoxy flooring material in the Police garage, terrazzo flooring in the Lobby, and to plan for the future construction of a second floor above the Police Department. All four items were discussed and the Committee was agreeable to proceeding with the first three alternates while eliminating the fourth alternate to not plan for a second floor over the Police Department. The reasoning being for cost consideration, unknown functionality in the future, and availability of other options that would be more cost effective. No further action was taken on this item.

c. Discussion and action regarding proposed sustainability recommendations for the Public Safety Center project.

The Village Administrator summarized the sustainability recommendations that had been presented at the previous meeting. This included the use of geothermal for the HVAC system and adding solar power to achieve net zero energy use for the facility. The Committee provided direction to pursue achieving net zero energy use which when operational the facility would create as much energy as it uses in order to function. No further action was taken on this item.

6. SCHEDULE NEXT MEETING DATE.

a. To be determined.

No additional meetings in the future have been scheduled at this time.

7. ADJOURNMENT.

A motion was made by Trustee Flaherty, seconded by Trustee Rupert, and unanimously carried to adjourn the meeting at 6:28 pm.

Pursuant to law, written notice of this meeting was given to the public and posted on the public bulletin boards in accordance with Open Meetings Law.

Respectfully submitted,
Matthew G. Schuenke
Village Administrator

McFarland
SUMMARY SHEET

MEETING DATE: Monday, May 10, 2021

SECTION: Business

DEPARTMENT: Administration

CONTACT: Matt Schuenke, Village Administrator

AGENDA ITEM: Presentation and discussion regarding the drafting of a responsible bidders ordinance.

PREVIOUS ACTION:

None.

ISSUE SUMMARY:

Enclosed is background on developing a responsible bidding ordinance for the Village.

Attachment #1 is a template provided to communities to follow as a sample. Attachment #2 is a draft prepared initially by the Village Attorney working from the sample. The markups shown in his draft note changes he is suggesting from the sample. Attachment #3 is a draft or sample affidavit that would be used. We would have to update this later once the ordinance language was finalized so that it is consistent. Attachment #4 is a summary sheet on the background behind the responsible bidding ordinance and some communities that employ this already.

The ordinance establishes criteria in which prospective contractors have to follow in order to be able to bid on our public works construction projects as defined by State law. Many of these criteria are already required within the bidding documentation, but are not mandated by ordinance as they are simply rules applied in order to bid. There are 18 different criteria to consider within the draft prepared by the Attorney (second attachment), some of which are new to our process. A listing of the language for each along with a summary is provided as follows:

1. *"The contractor maintains a permanent place of business."* – This is acceptable, and already required.
2. *"The contractor is authorized to do business in the State of Wisconsin."* – This is acceptable, and already required.
3. *"The contractor, or an agent, partner, or officer of the contractor, or any employee who will perform work on the project is not debarred, suspended, or declared ineligible from contracting with any unit of the federal government."* – This would be a new provision and mean that if the contractor has been debarred, suspended, or declared ineligible that they would automatically be disallowed from bidding on our projects. Likely the Village would want the prospective contractor to disclose some facts surrounding the matter and the board should maintain discretion as to whether or not those facts warrant the disallowance.



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).”* – This is acceptable, and already required.

5. *“The contractor has general liability, workers’ compensation, unemployment, and automobile insurance at levels sufficient to protect the Village given the size of the public construction project, as specified in the bid specifications.”* – This is acceptable, and already required.

6. *“The contractor has complied with all provisions of Wisconsin prevailing wage law and federal Davis-Bacon related Acts, and all rules and regulations therein, for projects undertaken by the contractor that were covered by these laws, for the past five (5) years.”* – This is acceptable, and already required.

7. ***“For any contractor with more than 10 employees, the contractor participates in an Apprenticeship program.”*** – This is a new requirement. Mandating all bidders to have an apprenticeship program will likely rule out some amount of our regular contractors looking to bid on our projects. There is an exemption for smaller contractors but this is presented as a mandate whereby if they cannot meet it then they are not a responsible bidder.

8. *“The contractor has a written substance abuse prevention program meeting the requirements of Wis. Stat. § 103.503. As required by Wis. Stat. § 103.503, all employees must be subject to drug and alcohol testing before commencing work on the public works project, except that testing of an employee before commencing work on a project is not required if the employee has been participating in a random testing program during the 90 days preceding the date on which the employee commenced work on the public works project.”* – This is acceptable, and already required.

9. *“The employees who will perform work on the project are properly classified as employees or independent contractors under all applicable state and federal laws.”* – This is acceptable, and already required.

10. ***“The contractor has not been the subject of any order or judgment from any state or federal agency or court finding an unlawful employment practice, including but not limited to violations relating to classification of employees, unemployment insurance, or discrimination.”*** – This would be a new requirement, and likely wise to implement so long as the board maintains discretion to evaluate whatever order or judgement is disclosed by the prospective contractor.

11. *“The contractor’s employees who will perform work on the project are:*
a. *Covered under a current workers’ compensation policy; and*
b. *Properly classified under such policy.”*

This is acceptable, and already required.



12. ***“The contractor is in compliance with the applicable requirements of the federal Affordable Care Act.”*** – This would be a new provision and would rely on the contractor’s ability to comply with the Affordable Care Act versus simply mandating that they carry health insurance. It should be noted that the sample ordinance mandates that health insurance be provided in addition to basic compliance with the ACA. If that were enacted, its unclear how many contractors would be able to comply with this standard.

13. *“The contractor possesses all applicable professional and trade licenses required for performing the public construction project.”* – This is acceptable, and already required.

14. *“The contractor has adequate financial resources to complete the public construction contract, as well as all other work the bidder is presently under contract to complete.”* – This is acceptable, and already required.

15. *“The contractor is bondable for the terms of the proposed public construction contract.”* – This is acceptable, and already required.

16. ***“The contractor has a record of satisfactorily completing at least three projects of similar size and complexity within the last five years. Criteria which will be considered in determining satisfactory completion of projects 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; and
c. Fulfilled guarantee requirements of the contract documents.”

This is a new requirement where the absolutism of what is required may disqualify some contractors who are otherwise qualified to do the work. Especially larger contractors where projects might take more than a year to complete. Suggested to leave the years threshold unchanged and lower the project number to provide some flexibility to span multiple years.

17. *“The contractor has, and diligently maintains, a written safety program.”* – This is acceptable, and already required.

18. *“The contractor has not been determined to have committed a serious, willful or repeated violation of OSHA safety standards in the last ten years.”* – This is acceptable, and already required.

Several of these points are listed in BOLD to call out areas where the board will want to discuss and provide feedback on the language (3, 7, 10, 12, and 16). This feedback can be used by the Attorney to assist in guiding the drafting of the code. There are several items where the new provisions might rule out some contractors with the concern being that fewer contractors will lead to less competitive bids and in theory may drive up costs. The Village Attorney was mindful of this in the drafting of the ordinance and included Section 23-95(d) to give the board discretion on a few of these items. This is provided as follows:

“(d) Additional Information. In the event the contractor is currently under consideration



for debarment as described in par. (c)(3), or is under investigation for, or has been charged with, any violations regarding matters described in pars. (c)(3), (4), (6), (9), (10) or (18), or if any action or proceeding is pending which might result in a limitation upon, or revocation of, any license required to perform the public construction contract, the contractor shall provide an explanation of the facts, circumstances and allegations involved in such matter at the time of submission of its bid. The Village Board will review any such information provided and any other information it discovers related to any matter bearing on the contractor's qualification to do the work and determine whether such information is sufficiently reliable and relevant to demonstrate the contractor is not responsible to perform the public construction project."

The intent of including this language as drafted is to give the Village Board flexibility when awarding a contract. This is more flexible than the sample given that we will want to address issues as they arise on a case by case basis and review them objectively as possible depending on what is presented.

FINANCIAL/BUDGET IMPACT:

There are no known direct cost implications of this action. There are likely secondary cost considerations for enacting such an ordinance. As is theorized, competition may be limited if fewer contractors are able to bid on the projects. If that happens, then usually pricing is less favorable.

VILLAGE PLAN REFERENCE:

None.

ORDINANCE REFERENCE:

None.

BOARD, COMMISSION OR COMMITTEE RECOMMENDATION:

No action for this meeting. Information is presented for background and discussion in order to provide feedback on what has been prepared thus far. If agreeable, action can be referred to the Village Board meeting on May 24th.

ATTACHMENTS:

1. 9-23-10 Model Responsible Bidder Ordinance SAMPLE
2. Ord 21-XXX Responsible Bidder (rev. 5-5-21)
3. Affidavit of Compliance Template SAMPLE
4. CBG_Why_Responsible_Bidder

Model Responsible Bidder Ordinance

1) Purpose. Pursuant to Wis. Stat. §§ [59.52(29) for counties; 62.15(1) and (6) for cities; 61.54 and 62.15(1) and (6) for villages; 60.47(3) for towns] and 66.0901, whenever the [county/city/ village/town] lets public works by contract, the contract must be awarded to the lowest responsible bidder. What constitutes a responsible bidder is a determination that requires the exercise of discretion by the [county/city/ village/town]. This ordinance is intended to ensure that bids are reviewed by the [county/city/ village/town] and its departments, officials or employees under reasonably consistent responsible bidder criteria when exercising its discretion.

2) Definitions. In this section, the following definitions shall apply.

- a) “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.
- b) “Apprenticeship program” means a program that is approved by the U.S. Department of Labor or a state apprenticeship agency and has graduated apprentices to journeyperson status for three (3) years or a program that has been registered with the federal or state government within the last three (3) years, provided that such program graduates apprentices to journeyperson status within the indenture period EXCLUDED from the meaning of Apprenticeship program is any Industry-Recognized Apprenticeship Program.
- c) “Public works contract” means a contract 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. § [59.52(29) for counties; 62.15(1) and (6) for cities; 61.54 and 62.15(1) and (6) for villages; 60.47(3) for towns].

3) Responsible Bidder Criteria. In order to be a responsible bidder for purposes of being awarded a public works contract, the contractor must meet the following criteria.

- a) The contractor maintains a permanent place of business.
- b) The contractor is authorized to do business in the State of Wisconsin.
- c) The contractor, or 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.
- d) 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).
- e) The contractor has general liability, workers' compensation, unemployment, and automobile insurance at levels sufficient to protect the [city/ village/town] given the size of the public works.
- f) The contractor has complied with all provisions of Wisconsin prevailing wage law and federal Davis-Bacon related Acts, and all rules and regulations therein, for projects undertaken by the contractor that are covered by these laws, for the past five (5) years.
- g) The contractor participates in an Apprenticeship program [ALTERNATIVE LANGUAGE--For any contractor with more than 10 employees, the contractor participates in an Apprenticeship program or has a written alternative training program sufficient to ensure that its employees may safely perform the work required by the public works contract].

- h) The contractor has a written substance abuse prevention program meeting the requirements of Wis. Stat. § 103.503. As required by Wis. Stat. § 103.503, all employees must be subject to drug and alcohol testing before commencing work on the public works project, except that testing of an employee before commencing work on a project is not required if the employee has been participating in a random testing program during the 90 days preceding the date on which the employee commenced work on the public works project.
- i) The employees who will perform work on the project are properly classified as employees or independent contractors under all applicable state and federal laws.
- j) 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, or discrimination. 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. The [county/city/village/town] shall review the investigation, order or judgment and determine whether the facts and circumstances are such that the contractor is not a responsible bidder.
- k) The contractor's employees who will perform work on the project are:
 - i) Covered under a current workers' compensation policy; and
 - ii) Properly classified under such policy.
- l) The contractor's employees who will perform work on the project have the health insurance coverage required by the federal Affordable Care Act.

- m) The contractor possesses all applicable professional and trade licenses required for performing the public works.
- n) The contractor has adequate financial resources to complete the public works contract, as well as all other work the bidder is presently under contract to complete.
- o) The contractor is bondable for the terms of the proposed public works contract.
- p) The contractor has a record of satisfactorily completing at least five projects of similar size and complexity within the last five years. Criteria which will be considered in determining satisfactory completion of projects may include, but are not limited to:
 - i) Completion of contracts in accordance with drawings and specifications;
 - ii) Diligent execution of the work and completed contracts according to the established time schedules unless extensions are granted by the owner; and
 - iii) Fulfilled guarantee requirements of the contract documents.
- q) The contractor has, and diligently maintains, a written safety program.
- r) The contractor has not received a serious, willful or repeated violation from OSHA in the last ten years.

4) No Restriction on Discretion. If information other than what must be disclosed by the contractor in subsection 3 is discovered by the [county/city/ village/town] or the department, official or employee responsible for awarding the public works contract, and such information calls into question the contractor's capacity 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.

5) Affidavit of Compliance. The general or prime contractor bidding on a public works project must include in its sealed bid;

- a) its own affidavit swearing compliance with the criteria set forth in subsection 3) on the form required by the [county/city/ village/town]; and
- b) an affidavit swearing compliance with the criteria set forth in subsection 3) on the form required by the [county/city/ village/town] from every subcontractor at any tier who will perform work on the project.

Failure to submit the required affidavit, or providing incorrect, false, or misleading information shall automatically disqualify the contractor's bid.

ORDINANCE 2021-XX

AN ORDINANCE CREATING §23-95 OF THE MCFARLAND MUNICIPAL CODE ESTABLISHING CRITERIA FOR DETERMINING THE QUALIFICATION OF BIDDERS ON VILLAGE CONTRACTS.

Purpose: To establish uniform standards for determining whether the lowest bidder on a public contracts is considered qualified to provide the work or services.

Sponsor: Carolyn Clow, Village President

Recommended Referral:

Public Hearing: Not Required

WHEREAS, §§61.54, 62.15 and 66.0901(1m)(a)2. of the Wisconsin Statutes and Section 23-92(a) of the McFarland Municipal Code require that public construction contracts exceeding \$25,000 in costs be let to the lowest qualified bidder; and

WHEREAS, §62.15(6) of the Wisconsin Statutes requires the Village Board to determine whether any bidder is, in the judgment of the board, incompetent or otherwise unreliable for the performance of the work on which the bidder bids, and to award the contract only to the lowest responsible bidder; and

WHEREAS, the Village Board has determined that consistency in the determination of bidder responsibility will be promoted by the establishment of objective standard by which the Board will determine a bidder's qualification; and

NOW, THEREFORE, the Village Board of the Village of McFarland does ordain as follows:

Section 1. Section 23-93(b)(5)(intro) of the McFarland Municipal Code is amended to read as follows:

(5) Bidding procedures. When a formal bid is required or deemed to be in the best interests of the Village, the bidding procedure shall comply with formal bid solicitation standards identified in the Village's Purchasing Policies and Procedures and the bid solicitation notice shall contain at least the following information:

Section 2. Section 23-93(b)(5)e. of the McFarland Municipal Code is amended to read as follows:

e. A section on special provisions including guarantees and service considerations, trade-in considerations, and other information relating to special conditions.

Section 3. Section 23-93(b)(5)f. of the McFarland Municipal Code is created to read as follows:

f. A notice that bidders must supply the information required by Section 23-95, if applicable.

Section 4. Section 23-95 of the McFarland Municipal Code is created to read as follows:

- (a) Applicability. The requirements of this section shall apply to each contractor submitting a bid for public construction when state statutes or Village ordinances require the contract to be awarded to the lowest qualified bidder.
- (b) Definitions. In this section, the following definitions shall apply.
 - (1) “Contractor” means a person, corporation, partnership or any other business entity that submits a bid proposing to perform work on a Village public construction contract.
 - (2) “Apprenticeship program” means a program that is approved by the U.S. Department of Labor or a state apprenticeship agency and has graduated apprentices to journey person status.
 - (3) “Public works contract” means a contract for the construction, alteration, remodeling or improvement of a public work or building, where the contract is required to be bid pursuant to Wis. Stat. §§ 61.54 and 62.15.
- (c) Responsible Bidder Criteria. In order to be a responsible bidder for purposes of being awarded a public construction contract, the contractor and all of its subcontractors providing labor must meet the following criteria:
 - (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, or an agent, partner or officer of the contractor, or any employee who will perform work on the project is not debarred, suspended or declared ineligible from contracting with any unit of the federal 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, unemployment, and automobile insurance at levels sufficient to protect the Village given the size of the public construction project, as specified in the bid specifications.
 - (6) The contractor has complied with all provisions of Wisconsin prevailing wage law and federal Davis-Bacon related Acts, and all rules and regulations therein, for projects undertaken by the contractor that were covered by these laws, for the past five (5) years.

- (7) For any contractor with more than 10 employees, the contractor participates in an Apprenticeship program.
- (8) The contractor has a written substance abuse prevention program meeting the requirements of Wis. Stat. § 103.503. As required by Wis. Stat. § 103.503, all employees must be subject to drug and alcohol testing before commencing work on the public works project, except that testing of an employee before commencing work on a project is not required if the employee has been participating in a random testing program during the 90 days preceding the date on which the employee commenced work on the public works project.
- (9) The employees who will perform work on the project are properly classified as employees or independent contractors under all applicable state and federal laws.
- (10) The contractor has not been the subject of any order or judgment from any state or federal agency or court finding an unlawful employment practice, including but not limited to violations relating to classification of employees, unemployment insurance, or discrimination.
- (11) The contractor's employees who will perform work on the project are:
 - a. Covered under a current workers' compensation policy; and
 - b. Properly classified under such policy.
- (12) The contractor is in compliance with the applicable requirements of the federal Affordable Care Act.
- (13) The contractor possesses all applicable professional and trade licenses required for performing the public construction project.
- (14) The contractor has adequate financial resources to complete the public construction contract, as well as all other work the bidder is presently under contract to complete.
- (15) The contractor is bondable for the terms of the proposed public construction contract.
- (16) The contractor has a record of satisfactorily completing at least five projects of similar size and complexity within the last five years. Criteria which will be considered in determining satisfactory completion of projects 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; and
 - c. Fulfilled guarantee requirements of the contract documents.

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

(18) The contractor has not been determined to have committed a serious, willful or repeated violation of OSHA safety standards in the last ten years.

(d) Additional Information. In the event the contractor is currently under consideration for debarment as described in par. (c)(3), or is under investigation for, or has been charged with, any violations regarding matters described in pars. (c)(3), (4), (6), (9), (10) or (18), or if any action or proceeding is pending which might result in a limitation upon, or revocation of, any license required to perform the public construction contract, the contractor shall provide an explanation of the facts, circumstances and allegations involved in such matter at the time of submission of its bid. The Village Board will review any such information provided and any other information it discovers related to any matter bearing on the contractor's qualification to do the work and determine whether such information is sufficiently reliable and relevant to demonstrate the contractor is not responsible to perform the public construction project.

(e) **Affidavit of Compliance.** The general or prime contractor bidding on a public works project must include in its sealed bid;

(1) its own affidavit swearing compliance with the criteria set forth in sub.(c) on the form required by the Village; and

(2) an affidavit swearing compliance with the criteria set forth in sub.(c) on the form required by the Village from every subcontractor at any tier who will perform work on the project.

(3) a sworn statement containing the information required by sub. (d).

Failure to submit the required affidavit prior to the opening of bids, or providing any materially incorrect, false, or misleading information shall automatically disqualify the contractor's bid.

AFFIDAVIT OF COMPLIANCE

_____ (“Affiant”), as a potential contractor or subcontractor, on a project for the [County/City/Village/Town] of _____, swears, under oath and penalty of perjury, as follows:

1. Affiant’s permanent place of business is located at _____.
2. Affiant is authorized or registered to transact business in the state by the Department of Financial Institutions in compliance with Wis. Stat. chs. 178, 179, 180, 181, or 183.
3. Neither the Affiant, nor or agent, partner, employee or officer of the Affiant, is debarred, suspended, proposed for debarment or declared ineligible from contracting with any unit of federal, state or local government.
4. Affiant 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. Affiant has general liability, workers’ compensation, unemployment, and automobile insurance at levels sufficient to protect the [County/City/Village/Town] given the size of the public works.
6. Affiant has complied with all provisions of Wisconsin prevailing wage law and federal Davis-Bacon related Acts, and all rules and regulations therein, for projects undertaken by the contractor that are covered by these laws, for the past five (5) years.
7. Affiant has _____ employees. Affiant [STRIKE ONE] does / does not participant in an Apprenticeship program.
8. Affiant has a written substance abuse prevention program meeting the requirements of Wis. Stat. § 103.503. As required by Wis. Stat. § 103.503, all employees are subject to drug and alcohol testing before commencing work on the public works project, except that testing of an employee before commencing work on a project is not required if the employee has been participating in a random testing program during the 90 days preceding the date on which the employee commenced work on the public works project.
9. Affiant represents and warrants that all employees who will perform work on the project are properly classified as employees or independent contractors under all applicable state and federal laws.
10. Affiant [STRIKE ONE] has / 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, or discrimination. [STRIKE IF NOT APPLICABLE] Copies of any investigation, order or judgment are attached.

11. Affiant's employees who will perform work on the project are:

- a. Covered under a current workers' compensation policy; and
- b. Properly classified under such policy.

12. Affiant's employees who will perform work on the project have the health insurance coverage required by the federal Affordable Care Act.

13. Affiant possesses all applicable professional and trade licenses required for performing the public works.

14. Affiant has adequate financial resources to complete the public works contract, as well as all other work the bidder is presently under contract to complete.

15. Affiant is bondable for the terms of the proposed public works contract.

16. Affiant has satisfactorily completing at least five projects of similar size and complexity within the last five years as follows:

a. Project 1:

b. Project 2:

c. Project 3:

d. Project 4:

e. Project 5:

17. Affiant has, and diligently maintains, a written safety program.

18. Affiant was not placed in OSHA's severe violator enforcement program in the previous two years.

19. The person signing below has the authority to sign on behalf of, and bind, the Affiant.

20. Affiant understands that failing to submit the required affidavit, or providing incorrect, false, or misleading information, shall automatically disqualify the Affiant from be awarded the public works contract and/or performing work on the project.

Name: _____
Title: _____

DRAFT

RESPONSIBLE BIDDER ORDINANCE

Why Municipalities Should Enact A Responsible Bidder Ordinance (RBO)?

Current statutes and state administrative regulations provide little guidance on what constitutes a responsible bidder. As a result, many public project owners are reluctant to award the work to anyone other than the lowest bidder, even if there is good reason to believe that these bidders may end up costing the taxpayers more due to poor work quality, project delays, and change orders. Out-of-state and low-quality bidders are then able to:

- **Undercut law-abiding organizations**
- **Shift the financial burden to local taxpayers**
- **Provide substandard work on public projects**
- **Provide insufficient pay, hours, training and protection for employees**

RBO's provide objective, uniform criteria and protection from financial mishandling, on-the-job injuries and other careless errors made by irresponsible bidders.

An RBO should require bidders to disclose:

- ✓ Debarments in Wisconsin or other states
- ✓ OSHA violations
- ✓ Investigations, orders and judgments concerning prevailing wage violations, misclassification of employees, unemployment insurance violations, or discrimination
- ✓ Safety, training and apprenticeship programs
- ✓ A written substance abuse prevention program meeting the requirements of Wis. Stat. § 103.503
- ✓ Proper general liability, workers' compensation, unemployment, and automobile insurance at levels sufficient to protect the local government
- ✓ Classification of employees for purposes of workers' compensation, unemployment and employment taxes
- ✓ Professional and trade licenses required for the project
- ✓ Financial fitness and sufficient bonding for the project
- ✓ Experience with similar projects

Adopting Responsible Bidder Ordinances in local governments, public officials, taxpayers, and Wisconsin communities are able to determine which bidders deliver the **highest-quality work for the most cost-effective price and with the lowest burden on community members.**

Examples of enacted RBO's

[Brown County, Ch. 3, § 3.01\(5\)](#) 

[City of Delavan, Title 3, Ch. 1, § 17](#) 

[City of Superior, Ch. 2, Art. XII](#) 

[Douglas County, Ch. 1, § 1.32](#) 

[City of Fitchburg, Ch. 10, § 10-431](#) 

[Village of Blue Mounds, Ch. 1, Art. III](#) 