

**TITLE 8  
PUBLIC WORKS**

- Chapter 40 Public Works
- Chapter 41 Solid Waste Management

**CHAPTER 40  
PUBLIC WORKS**

**SUBCHAPTER I  
PUBLIC WORKS ADMINISTRATION**

- 40.01 Intent.
- 40.02 Authority.
- 40.03 Words and Phrases.
- 40.04 Administration.
- 40.05 Applicability.
- 40.06 Procedures.
- 40.07 Public Works Projects, Bids, Contracts.
- 40.08 Outside Consulting Services.
- 40.09 Approval of Plans, Awards of Contracts.
- 40.10 Requirements of Bid Specifications.
- 40.11 Bonding and Insurance Requirements.
- 40.12 Payments to Contractors.
- 40.13 Emergency Situations.
- 40.14 Keeping of Records and Documents of Public Works Projects.
- 40.15 Effect on the Ordinances.
- 40.16 Affirmative Action Required.

**SUBCHAPTER II  
MINIMUM WAGE ORDINANCE**

- 40.17 Intent.
- 40.18 Purpose and Public Policy.
- 40.19 Applicability: Exceptions.
- 40.20 Hours of Labor; Exceptions: Overtime Pay.
- 40.21 Minimum Wage Payable; How Determined.
- 40.22 Minimum Wage Schedule.
- 40.23 Minimum Wage Ordinance Included In County Public Works Contracts By Reference.
- 40.24 Duty Of Contractor And Subcontractor To Make And Keep Payroll Records.
- 40.25 Duty of Contractor And Subcontractor To Furnish Affidavits Of Compliance With The Requirements Of This Subchapter.
- 40.26 Allowance Of Applications For Partial And Final Payments On Contracts; Requirements.
- 40.27 Penalties For Noncompliance With Subchapter II Of Chapter 40.

[40.28 - 40.99 reserved.]

**40.01 INTENT.** This chapter is intended to establish uniform procedure applicable to all public works projects, except highway projects, in which Dane County or its agencies may engage and to create regulations for the conduct and management of all business relating to public works projects and public works contracts which the County is authorized to let or make.

**40.02 AUTHORITY.** This chapter is created and adopted pursuant to the authority of sections 59.02, 59.51, 59.52(29), 66.0901 and 66.0903 and all amendments pertaining thereto.

**40.03 WORDS AND PHRASES.** In this chapter, the following words and phrases have the designated meanings unless a different meaning is expressly provided or the context clearly indicates a different meaning:

**(1) Agency** shall mean any arm of County government authorized to engage in public works projects pursuant to powers delegated by the board.

**(2) Bidder** shall mean all natural persons, corporations, partnerships, associations, joint ventures, trusts or any form of business association whatsoever.

**(3) Board** shall mean the Dane County Board of Supervisors.

**(4) Bond** shall mean the bond issued by a bonding company recognized by, and operating under the laws of the State of Wisconsin.

**(5) Certified check** shall mean a check certified by a bank.

**(6) Commission** shall mean any commission created by the board or by statute, including joint commissions, for which Dane County acts as fiscal agent, authorized to engage in public works projects.

**(7) Committee** shall mean the public works committee.

**(8) Department** shall mean the department of public works.

**(9) Director** shall mean the director of the public works department.

**(10) Outside consulting services** shall include the services of architects, engineers or other technical or professional services related to public works projects.

**(11) Lowest responsible bidder** shall mean a person who has prequalified under the provisions of sec. 40.07(1) and who also shall have submitted the lowest price of all those so qualified. However, no bidder convicted of bid rigging or price fixing, involving a bid submitted to the county, shall, within 3 years of conviction

be considered the lowest responsible bidder. This ordinance shall be applied only to violations occurring subsequent to the adoption and publication of this ordinance.

**(12) Public works** shall mean any work project for the construction, repair, remodeling or improvement of any public property, buildings or facilities, furnishing of supplies or materials of any kind, for which public funds may be lawfully expended when duly appropriated for such purposes by the board. A *public works project* shall also mean all component parts of a project including, but not limited to, both labor and materials.

**(13) Class 1 emergency** shall mean any situation where there exists immediate and substantial danger to the health, life or property of any person, or any situation where there exists potential for increased damage to county property if the situation is not immediately remedied. This definition applies only to emergencies where a public works project is necessary to resolve the emergency and where the bid requirements of section 59.52(29), Wis. Stats., are applicable.

**(14) Class 2 emergency** shall mean any situation where the normal operation of any county department or agency is seriously impaired. This definition applies only to emergencies where a public works project is necessary to resolve the emergency and where the bid requirements of section 59.52(29), Wis. Stats., are applicable.

**State Law Reference:** Sections 59.52(29) and 66.0901, Wis. Stats.

**[History:** (11) am., Sub. 1 to OA 20, 2007-08, pub. 10/26/07, eff. 01/01/08.]

**40.04 ADMINISTRATION. (1)** Responsibility for compliance with the provisions of this chapter, other than section 40.17 of the Dane County Ordinances, rests initially with the agency engaging in the particular public works project.

**(2)** The director's duties shall be to render assistance and give advice to agencies of the county engaged in public works projects. Such assistance shall include: prequalifying contractors; preparing specifications; obtaining cost estimates; preparing all forms and papers, except contract documents, to be used for such purposes; assisting in the appraisal of bids submitted; inspecting projects in progress in order to insure compliance with contract specifications when no architect or engineer is in charge; assisting agencies conducting public works projects in preauditing bills submitted by

contractors for progress payments and final payments, before such bills are forwarded to the county clerk for final audit and payment; and rendering such other assistance as may be requested by agencies engaging in public works.

**(3)** In performance of his or her responsibilities and duties, the director shall exercise supervisory control over all matters of procedure and administration relating to public works, and may take whatever action he or she deems necessary to insure compliance with the provisions of this chapter and all matters concerned therewith.

**(4)** The committee, in addition to its other powers and duties, is hereby designated as the committee responsible for supervising and enforcing this chapter. All matters concerning noncompliance with the provisions of this chapter shall be referred to the committee for appropriate action.

**(5)** The committee shall also be responsible for determining matters of policy and procedure within the scope of this chapter. The director may consult with or refer to the committee any matter relating to his or her assigned duties and responsibilities.

**(6)** It shall be the duty of the purchasing agent to advertise for and solicit bids for all public works projects wherever the cost of the project is expected to exceed the amount specified in section 59.52(29), Wis. Stats.

**(7)** All contract documents not of a routine nature shall be subject to review by the corporation counsel.

**[History:** (2) am., Sub. 1 to OA 20, 2007-08, pub. 10/26/07, eff. 01/01/08.]

**40.05 APPLICABILITY.** The provisions of this chapter hereby established shall apply to, and be complied with by, all Dane County institutions, departments, committees or commissions authorized to engage in and contract for public works except contracts for highway construction and maintenance which the highway committee or department is authorized by law to let or make. This ordinance shall also apply to joint commissions or public agencies engaging in public works projects established by agreement between Dane County and any other municipality where the contracting municipality consents thereto.

**40.06 PROCEDURES. (1)** On each project of public works, the particular agency involved shall determine need for the project and formulate a proposal for the project.

(2) After the determination specified in sub. (1) above is made, the matter shall be referred to the committee. The committee shall evaluate the proposals presented, form any alternative solutions and make its recommendations to the agency, and to the board if board action is required by this chapter.

(3) The procedure specified in this section shall apply to all public works projects where bids are required by state law, and to all purchases of outside consulting services.

**40.07 PUBLIC WORKS PROJECTS, BIDS, CONTRACTS. (1) Best value contracting. (a) Policy.**

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

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

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

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

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

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

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

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

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

**(i) Prequalification enforcement.** The director shall: **1.** Take the necessary actions to ensure that all contractors and subcontractors on public works contracts subject to this section are properly prequalified in accordance with the requirements of this ordinance;

**2.** Require general contractors or prime contractors to verify their prequalification as a condition of being awarded bids on public works contracts;

**3.** Further require general contractors or prime contractors to submit a list of the subcontractors they intend to use in the performance of the contract, with the names and prequalification numbers of such subcontractors. This information may be submitted at the time of the bid, but must be submitted by no later than the time specified in sub. (k). Firms identified on the subcontractor list may be substituted only for good cause shown and with the written approval of the director; and

**4.** Notify subcontractors that they may apply for prequalification under this ordinance.

**(j) Required certifications.** Prequalification applications submitted pursuant to this ordinance shall include all information as determined necessary and appropriate by the director. Such applications shall, at a minimum, require a sworn certification by the applicant attesting to the facts specified in this subsection. In submitting a prequalification application, the applicant shall certify that for any project he or she seeks to perform for the County during the term of prequalification, it shall:

**1.** Possess all technical qualifications and resources, including equipment, personnel and financial resources, necessary to perform the work required for the project or obtain the same through the use of responsible, qualified subcontractors.

**2.** Possess all valid, effective licenses, registrations or certificates required by federal, state, county or local law, which are necessary for the type of work to be performed including, but not limited to, those for any type of trade work or specialty work.

**3.** Meet all bonding requirements as required by applicable law or contract specifications.

**4.** Meet all insurance requirements as required by applicable law or contract specifications, including general liability insurance, workers compensation insurance and unemployment insurance requirements.

**5.** Maintain a substance abuse policy for employees hired for public works contracts that complies with Wis. Stats. sec. 103.503.

**6.** Pay all employees he or she employs on public works projects the wage rates and benefits required under subchapter II of this chapter.

**7.** Participate in a Class A Apprenticeship Program for each separate trade or classification in which he or she employs craft employees and continue to participate in such program or programs for the duration of the project. In applying this requirement, the director shall apply it to all crafts in the same manner as the State of Wisconsin applies the requirements of Wisconsin Executive Order 108 (June 29, 2005).

**8.** Fully abide by the equal employment opportunity and affirmative action requirements of all applicable laws, including County ordinances.

**9.** Provide in the prequalification application a detailed statement regarding related companies if, at any time during the past three (3) years, the contractor has controlled or has been controlled by another corporation, partnership or other business entity operating in the construction industry. This statement shall be included in the prequalification application and shall explain the nature of the contractor relationship.

**10.** Disclose whether for the past three years:

**a.** he or she has had any type of business, contracting or trade license, certification or registration revoked or suspended.

**b.** he or she has been debarred by any federal, state or local government agency.

**c.** he or she has defaulted on any project in the past three years.

**d.** he or she has committed a willful violation of federal or state safety laws as determined by a final decision of a court or government agency authority.

**e.** he or she has been found by a final decision of a court or government agency to be in violation of any other law relating to his or her contracting business including, but not limited to, wage and hour laws, prevailing wage laws, environmental laws, antitrust laws or tax laws, where the penalty for such violation resulted in the imposition of a fine, back pay damages or any other type of penalty in the amount of more than \$10,000.

**11.** Certify that the contractor prequalification application has been executed by a principal or person employed by the applicant who has

sufficient knowledge to address all matters in the prequalification application and shall include an attestation stating, under the penalty of perjury, that all information submitted is true, complete and accurate.

**12.** Certify that all subcontractors shall be properly qualified in accordance with sub. (k).

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

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

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

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

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

**(2)** All public works projects, where the cost is estimated to be less than the amount specified in section 59.52(29), Wis. Stats., or any

amendments thereto, may be contracted for directly by the agency of the county through the office of the director of the department of public works, provided that funds for such purpose have been specifically appropriated therefor in annual budgets or have been provided through authorized budget transfers by the finance committee. The provisions of this subsection shall not preclude obtaining competitive bids for such work where deemed feasible or in the best interest of the county. The granting of a contract under this subsection shall not, however, be subject to sections 59.52(29) and 66.0901, Wis. Stats., and the contract may be awarded to the bidder deemed best qualified to perform the work, in the discretion of the responsible agency.

**(3)** The provisions of subsection (1) are not mandatory for the repair or reconstruction of public facilities when damage or threatened damage thereto creates an emergency, as defined in sections 40.03(13) or section 40.03(14) of this chapter. Whenever the county board by majority vote at a regular or special meeting determines that an emergency no longer exists, this subsection shall no longer apply.

**(4)** The board may, by a three-fourths vote of all members entitled to a seat, provide that any class of public work or any part thereof may be done directly by the county without submitting the same for bids. When the board authorizes the work to be done directly by the county, county employees, equipment, machinery and materials from existing stocks or sources of supply under contract may be utilized subject to the supervision of the agency authorized to undertake the project. Materials and supplies needed for such projects and not available from existing stocks or sources of supply, shall be purchased through the office of the purchasing agent according to established procedures.

**(5)** In the case of equal bids, preference shall be given to the equal bidder whose main place of business is located in Dane County.

**State Law Reference:** Sections 59.52(29) and 66.0901, Wis. Stats.

**[History:** (1) and (4) am., Sub. 1 to OA 20, 2007-08, pub. 10/26/07, eff. 01/01/08; (1) am., Sub. 1 to OA 49, 2007-08, pub. 10/02/08.]

**40.08 OUTSIDE CONSULTING SERVICES. (1)**

No outside consulting service, where the contracted amount exceeds \$25,000, shall be hired or contracted for without prior approval of the board and appropriation of funds for such purpose. Nothing contained herein shall preclude the appropriate agency from conferring with or consulting with and recommending to the

board for selection of outside consultants for a particular public works project provided such interviews for conferences do not create an obligation to the county to pay therefore.

(2) Where outside consulting services are to be recommended to the board for a particular project, such recommendation shall be submitted in the form of a resolution and shall, if approved and passed, include authority to contract for such services by the agency concerned on behalf of the county with authority for the county executive and county clerk to execute the necessary contract on behalf of Dane County. The resolution may include authority for preparation of preliminary plans, feasibility studies and cost estimates and payments for such services.

(3) No contract with outside consulting services, for an amount in excess of \$25,000, shall be authorized without specific approval by the board, but where deemed advisable by the agency, ready-made plans for the purpose of establishing specifications, may be purchased or procured directly for the proposed project in order to permit proper competitive bidding. Responsibility for the technical correctness, adequacy and completeness of plans and specifications procured hereunder and used as a basis for actual construction shall rest with the agency approving the same. Reasonable cost for procured plans shall be determined by the committee and shall be charged to funds allocated for the proposed project.

(4) Where outside consulting services for the proposed project are not hired under a contract authorized by the board, the agency responsible for the project is authorized to hire expert technical advice or service, in order to obtain the necessary information to prepare preliminary cost estimates as accurately as possible and available. Agencies proposing public works projects and requesting appropriations therefore shall endeavor to make cost estimates as accurately as possible and may, where free estimates are not available, pay reasonable fees to qualified persons to obtain such estimates if funds are available for such purpose within applicable budgets.

(5) Where expert technical advice or service is obtained for the purpose of preparing specifications under existing appropriations, fees for such service shall be charged to the appropriations for the proposed project.

[History: (1) and (3) am., OA 19, 2005-06, pub. 12/27/05.]

**40.09 APPROVAL OF PLANS, AWARDS OF CONTRACTS. (1)** After preliminary plans,

studies and cost estimates have been approved by the agency concerned, the same shall be referred to the board for concurrence where the estimated cost of the project exceeds \$40,000, unless the board directs otherwise.

(2) If the board approves preliminary plans and cost estimates as submitted, approval of the same shall be indicated by a resolution which shall include authority for preparation of final plans and specifications, solicitation of bids, a report of the results of said bid-letting to the board and recommendation for award of a contract to the lowest bidder pursuant to statute, or non-award with reasons therefor.

(3) Adoption by the board, of the resolution reporting the bids and awarding a contract or contracts to the lowest responsible bidder or bidders, shall constitute authority to execute the necessary contract documents by the county executive and the county clerk on behalf of Dane County, after all preliminary contract conditions have been met by the bidder and after bonding and insurance requirements have been approved by the corporation counsel.

(4) The resolution awarding the contract shall contain provisions authorizing and directing the responsible committee or agency to supervise and be responsible for the proper execution of the terms of the contract, with the assistance of the architects, engineers or clerk of the works where applicable, and shall contain provisions for approval of change orders within the limits prescribed in the resolution and the appropriation for the work, subject however to submission of change orders to the board for approval where the sum involves \$20,000 or more than 10% of the amount originally approved, whichever is smaller.

(5) On projects where the estimated cost does not exceed \$40,000 and where a specific budget appropriation has been made for the project, the agency of the board concerned may proceed with the taking of bids where required and award a contract without further action of the board, subject however to statutory requirements, the limits of the appropriation (including change orders or contingencies) and approval of insurance certificates and bonds by the corporation counsel. After approval of bonds and insurance certificates, the chairperson and secretary of the agency concerned shall be authorized to execute contract documents where necessary.

(6) Subject to section 40.04(6) of the Dane County Ordinances, all bids for public works projects shall be advertised through the office of

the purchasing agent in such media as is deemed appropriate by the agency charged with the project in order to provide the widest possible solicitation of bids.

(7) No public works project shall be undertaken or commitment made therefor, unless specific appropriations have been made in annual budgets. For proposed projects not authorized in budgets or supported by specific appropriation, if the need therefor is approved by the finance committee, such committee may transfer unexpended funds in annual budgets to an appropriate account pursuant to board rule and authorize expenditure for such projects where the estimated cost does not exceed \$5,000.

[History: (4) am., OA 6, 1991-92, pub. 09/27/91; (4) am., OA 15, 2002-03, pub. 11/19/02; (1), (4) and (5) am., OA 52, 2007-08, pub. 04/10/08.]

#### **40.10 REQUIREMENTS OF BID SPECIFICATIONS.**

(1) Bid specifications shall contain, wherever practicable, maximum available guarantees or warranties for products, supplies, materials or workmanship as the custom of the particular trade permits, to protect the county from defects attributable thereto and to prevent, insofar as possible, costs for future repairs or replacements not otherwise covered by contractor's performance bonds.

(2) Contract performance bonds to guarantee work of the principal contractor and sub-contractors, obtained pursuant to statute, shall cover as long a period as is obtainable and shall be from approved surety companies authorized and licensed to do business in the State of Wisconsin.

(3) Bid specifications shall contain specific reference to statutory requirements for contracting for public works and specific reference to applicable county ordinances, so that all prospective bidders and contractors are fully apprised of such requirements when dealing with Dane County.

(4) Forms for specifications, bonds and contracts setting forth conditions and requirements in accordance with the statutes and this ordinance may be prepared and utilized by the director to standardize and expedite bidding procedures, the same to be drafted with the advice of the corporation counsel as to all legal conditions contained therein.

(5) All specifications, other than technical specifications utilized for solicitation of bids, shall be submitted to the corporation counsel for approval as to form and content before the same are used, if not on standard forms. All executed bids, insurance certificates, bonds or other allied

papers constituting contract documents, shall be submitted to the corporation counsel for approval as to form and content before the same are signed by the designated county officials, after contract awards are made.

#### **40.11 BONDING AND INSURANCE REQUIREMENTS.**

(1) Whenever the amount of the project is expected to exceed the amount specified in section 59.52(29), Wis. Stats., or whenever the director otherwise determines, bid specifications shall require a bid bond or certified check or cash, in an amount not less than 5% of the total bid, to be submitted by prospective bidders as assurance that the bidder, if granted a contract, will execute the same or forfeit the amount of the bid bond as damages for failure to enter the contract.

(2) All contracts involving more than the amount specified in section 779.14, Wis. Stats., or any amendments thereto, for the performance of labor or furnishing of materials, when the same pertains to any public improvement or public work of whatever kind, shall contain a provision for the payment by the contractor of all claims for labor performed and materials furnished, used or consumed in such project including, without limitation because of enumeration, fuel, lumber, building materials, machinery, vehicles, gasoline, motor and lubrication oil, greases and the premiums for worker's compensation insurance and the contributions for unemployment compensation and no such contract shall be made unless the contractor gives a bond issued by a surety company licensed to do business in this state, the penalty of which shall not be less than the contract price, conditioned for the faithful performance of the contract, and the payment of every person entitled thereto of all claims for labor performed and materials furnished under the contract. Such bond shall be approved by the corporation counsel. No assignment, modification or change of the contract or change in the work covered thereunder, nor any extending of time for completion of the contract, shall release the sureties of said bond. Neither the invitation for bids nor the person having the power to approve the contractor's bond shall require that such bond be furnished by a specified insurance company, or through a specified agent or broker. All provisions of sections 779.14, 779.15, 779.155, 779.16 and 779.17, Wis. Stats., and acts amendatory thereto, not specifically described above, shall be deemed to be incorporated herein.

(3) Contractors, and subcontractors where required, shall provide proof of insurance coverage providing public liability, property damage, automobile, worker's compensation and unemployment compensation insurance to protect Dane County from any and all claims attributable thereto in such amounts as are prescribed in the bid specifications for the particular work.

**State Law Reference:** Section 779.14, Wis. Stats.

#### **40.12 PAYMENTS TO CONTRACTORS.**

Contractors shall be paid according to payment schedules set forth in contracts and the agency responsible for the work may authorize periodic progress payments for portions of the work satisfactorily completed according to such schedules. Notwithstanding guarantees made under contract performance and payments bonds, the agency responsible for the work may require lien releases from contractors and/or subcontractors for all claims for labor, materials or supplies provided either before any periodic progress payment or final payment is made under applicable contracts.

**State Law Reference:** Section 66.0901, Wis. Stats.

**40.13 EMERGENCY SITUATIONS.** (1) Any member of the committee shall have the authority to determine the existence of, and to declare, either a Class I emergency or a Class II emergency. In the event no committee member can be contacted promptly, the director is authorized to act in their stead and after consultation with the county executive, if at all possible. In any event, if a committee member is so acting, consultation with the director and the county executive shall be made, and with other committee members if at all possible.

(2) In the event a Class I emergency is declared, the person declaring the same shall also have the authority to resolve the emergency without reference to bidding procedures and without reference to other procedures normally required by this chapter.

(3) In the event a Class II emergency is declared, the declarant shall forthwith consult with the chairman of the finance committee to determine the best method of resolving the emergency. Determination of the necessity of complying with normal procedures mandated by this chapter shall rest with the committee member and the finance committee chairperson acting jointly.

(4) Where an emergency is found to exist, the finance committee is authorized to provide funds

to meet the cost of the necessary repairs either by transfer of funds within budget appropriations or transfer from the contingency fund, if created, pursuant to sec. 65.90(5), Wis. Stats.

(5) Absent its finding that there has been an abuse of discretion, the committee shall approve the findings and actions of the person declaring the emergency and shall report its approval to the board at its meeting. In determining whether there has been an abuse of discretion, the committee shall consider only the process used in arriving at the decision that an emergency existed and not the actual decision itself.

(6) Bonding and insurance requirements shall be made a part of emergency contracts hereunder as for all other public works contracts made pursuant to regular bidding procedures.

(7) Wherever possible in an emergency situation, the person authorized to declare an emergency shall attempt to obtain informal bids or estimates in order to have repairs done at the lowest possible cost. Such informal bids or estimates shall be obtained by telephone or other appropriate means.

**40.14 KEEPING OF RECORDS AND DOCUMENTS OF PUBLIC WORKS PROJECTS.** Copies of all public works records shall be kept in suitable files in the office of the director and shall be properly indexed by him or her. The official copy of the public works contract shall be kept by the county clerk. Copies of change orders shall be kept by the county clerk and the director.

**40.15 EFFECT ON THE ORDINANCES.** (1) Provisions of other ordinances or resolutions of Dane County inconsistent herewith are hereby repealed and superseded except that no repeal or other effect whatsoever is intended as to Chapter 25 of the Dane County Ordinances other than as expressly stated herein.

(2) As to public works projects and as to emergencies of a public works nature, this chapter shall control in the event of a conflict with any other chapter, including Chapter 25 of the Dane County Ordinances.

(3) Except as to emergencies of a public works nature, all public works contracts shall be subject to the equal benefits requirement of s. 25.016.

[History: (3) cr., Sub. 1 to OA 13, 2008-09, pub. 10/03/08, eff. 12/01/08.]

**40.16 AFFIRMATIVE ACTION REQUIRED.** (1) On each project of public works and prior to the



purchase of any goods or services the purchasing agent shall notify any known minority business, dealing in such goods or services, of Dane County's need to purchase such goods or services and encourage them to submit an estimate of cost for such items.

(2) It shall be the duty of the affirmative action officer to determine whether or not a prospective bidder is an equal opportunity employer and which businesses are minority businesses in accordance with general policies set forth in the board's affirmative action plan.

## **SUBCHAPTER II MINIMUM WAGE ORDINANCE**

**40.17 INTENT.** This subchapter is intended to establish an eight hour day and minimum wage rates for skilled and unskilled labor employed by contractors or subcontractors under contracts for any project of public works, except highway, street or bridge construction, to which Dane County is a party.

**40.18 PURPOSE AND PUBLIC POLICY.** It is hereby determined that the purpose of this subchapter is to insure a prevailing minimum wage to all skilled and unskilled laborers employed by contractors or subcontractors under contracts for any project of public works to which Dane County is a party, and at the same time to secure a correspondingly better class of workmanship on such public works.

**40.19 APPLICABILITY: EXCEPTIONS.** This subchapter does not apply to any highway, street or bridge construction or to any public works project for which the estimated project costs of completion is below the amounts separately specified by the Wisconsin Department of Industry, Labor and Human Relations, pursuant to s. 66.0903(3), Wis. Stats., for projects in which one trade is involved and for projects in which more than one trade is involved; nor does this subchapter apply to wage rates and hours of employment of laborers, workmen or mechanics engaged in the processing or manufacture of materials or products or to the delivery thereof by or for commercial establishments which have a fixed place of business from which they regularly supply such processed or manufactured materials or products, except that this subchapter does apply to laborers, workmen or mechanics delivering mineral aggregate such as sand, gravel or stone which is incorporated into

the work under the contract by depositing the material substantially in place, directly or through spreaders, from the transporting vehicle.

**State Law Reference:** Sec. 66.0903(3), Wis. Stats.

**40.20 HOURS OF LABOR; EXCEPTIONS: OVERTIME PAY. (1)** The service of all skilled and unskilled laborers who are now or who may hereafter be employed by any contractor or subcontractor under contracts for public works to which Dane County is a party is hereby limited to days other than Saturdays, Sundays, and legal holidays and restricted to 40 hours per week, of which no more than eight hours shall occur in any one calendar day; provided that the director, the committee, any other committee of the board, or any department of the county having jurisdiction over a county public works contract may, upon a determination that the best interest of Dane County is served thereby and upon the request of such contractor or subcontractor, in order to conform with occupational practices, specifications of the contract or emergencies, permit any such contractor or subcontractor to require or permit any such skilled or unskilled laborers to work on Saturday, Sundays and legal holidays or more than 40 hours per week and eight hours in any calendar day. In such instances, where overtime work has been permitted and skilled or unskilled laborers work more than eight hours per day or 40 hours per week or at times other than the normal work day or week, they shall be paid by the contractor in accordance with the prevailing overtime wage rates and all costs occasioned by such overtime shall be borne by the contractor or subcontractor and no additional compensation from the county shall be allowed therefor. When, and only when, the director, the committee, any other committee of the board, or any department of the county having jurisdiction over a county public works contract, after the signing of such contract, deems an emergency to exist with respect to the performance of such contract or some portion thereof, and declares such an emergency to exist by so ordering the contractor in writing, that the work on the contract or some portion thereof shall be carried on in excess of eight hours per day or 40 hours per week, or at times other than the normal work day or week, it shall be the duty of the county to reimburse the contractor over and above the price agreed upon for the performance of such work in the amount of the premium paid for overtime work, or work performed at times other than the normal work day or work week, in accordance with the

prevailing overtime wage rates plus any premium paid for necessary materials because of delivery during times other than the normal work day or work week. No such order shall be given unless sufficient unencumbered funds specifically allocated to the project are on hand to pay for all overtime and premium payments which will accrue because of the contractor's proceeding in response to such order.

(2) The term *emergency* as used in this subchapter means unforeseen occurrences and combinations of circumstances involving the public welfare or the protection of work already done under the contract or which endanger life or property and call for immediate action or remedy.

**40.21 MINIMUM WAGE PAYABLE; HOW DETERMINED.** Hereafter all skilled and unskilled laborers employed by any contractor or subcontractor under contracts for public works to which Dane County is a party shall receive and be paid a sum not less than the minimum wage rate in said county for each hour of such labor, as established by the board by section 40.22 of this subchapter and in effect on the first day of advertisement for bids; provided that the county shall not be required to reimburse the contractor or subcontractor on any contract for any increase in such minimum wage rate effected after date of execution of such contract.

**40.22 MINIMUM WAGE SCHEDULE.** The most current of the classifications, minimum wage rates, overtime wage rates, and fringe benefits applicable to skilled and unskilled labor service in Dane County, as set forth in schedules published by the Madison Building and Construction Trades Council and the Wisconsin Department of Industry, Labor and Human Relations, are hereby made applicable to county public works contracts. Current schedules shall be obtained by the director and kept on file in his or her office and in the office of the county clerk. The director shall also transmit copies of the current schedules to the county agencies and commissions authorized to engage in public works contracts.

**40.23 MINIMUM WAGE ORDINANCE INCLUDED IN COUNTY PUBLIC WORKS CONTRACTS BY REFERENCE.** This subchapter, including the minimum wage schedule, shall be incorporated in every public works contract by reference, and a statement to this effect shall be published in all notices issued

for the purpose of securing bids and shall be contained in the final contract form.

**State Law Reference:** Sec. 66.0903(3), Wis. Stats.

**40.24 DUTY OF CONTRACTOR AND SUBCONTRACTOR TO MAKE AND KEEP PAYROLL RECORDS.** It is hereby made the duty of every contractor and subcontractor participating in a project of public works covered by this subchapter to keep full and accurate records clearly indicating the name and trade or occupation of every laborer, workman or mechanic employed by him or her in connection with the project, the number of hours worked by each such employee, and the actual wages paid therefor, and to preserve said records in his or her office until said contracts have been completed to the satisfaction of the county. The county by its duly authorized representative may inspect said payroll records at all times prior to the completion of the contract. The contractor shall, upon written demand of the director or such other officer as may be designated by the board, file a true and correct copy of any such payroll records, including those of any subcontractor, with the county clerk. Copies so furnished shall be public records.

**40.25 DUTY OF CONTRACTOR AND SUBCONTRACTOR TO FURNISH AFFIDAVITS OF COMPLIANCE WITH THE REQUIREMENTS OF THIS SUBCHAPTER.** Every principal contractor who engaged in the performance of any contract for public works covered by this subchapter shall submit with any partial and final application for payment for work under said contract, an original and three copies of an affidavit in the form as hereinafter set forth, affirming that all persons employed by him or by any of his subcontractors on such contract have been paid no less than the minimum wages established under this subchapter and in effect at the date of execution of the contract, that full payment of wages earned has been made, and that no rebates either directly or indirectly have been made. The form of such affidavit is as follows:

*[continued on Page 40-11]*

DANE COUNTY, WISCONSIN  
WAGE AFFIDAVIT

CONTRACTOR'S NAME AND ADDRESS  
CONTRACT AND DIVISION OF WORK

AFFIDAVIT

STATE OF WISCONSIN )  
) ss.  
DANE COUNTY )

I, \_\_\_\_\_, (name of person signing affidavit & title) being first duly sworn at \_\_\_\_\_, on oath, depose and say that with respect to the payment of the persons employed by the \_\_\_\_\_ (filing contractor) subcontractors on the \_\_\_\_\_ (division of work) at the \_\_\_\_\_ that during the period commencing \_\_\_\_\_ (date) and ending \_\_\_\_\_ (date) all persons employed on said project have been paid the full wages earned, that no rebates have been or will be made either directly or indirectly by said contractor or subcontractor from the full weekly wages earned by any person, and that no deductions have been made either directly or indirectly from the full weekly wages earned by any person, other than authorized legal deductions (including Federal Income Tax Withholding and Social Security) \_\_\_\_\_

\_\_\_\_\_ (state other legal deductions, if any) and that the provisions and intent of the requirements of subchapter II of Chapter 40 of the ordinances of Dane County (Minimum Wage Ordinance) have been fully complied with. This affidavit is made to induce Dane County to approve the application for payment to which this affidavit is attached.

CONTRACTOR \_\_\_\_\_(Name)  
BY  
TITLE

Sworn to before me this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

(Notary Public)  
My Commission

**40.26 ALLOWANCE OF APPLICATIONS FOR PARTIAL AND FINAL PAYMENTS ON CONTRACTS; REQUIREMENTS.** Neither the director, the committee, any other committee of the board, or any department of the county under whose jurisdiction a public works contract subject to this subchapter is let, nor any officer or

department head of the county who is charged with supervision of the performance of the contract, shall approve or pass any application or estimate for payment on any such contract where the contractor or any subcontractor has failed to comply with all the provisions of this subchapter and any amendments thereto hereafter made, applicable to said contractor or subcontractor, and no such application or estimate shall be so approved and passed for payment until the county is satisfied that the provisions of this subchapter, as the same may be amended, and be applicable, have been fully complied with by said contractor or subcontractor. The filing of the affidavit required by section 40.25 shall be *prima facie* proof of such compliance in the absence of any complaint.

**40.27 PENALTIES FOR NONCOMPLIANCE WITH SUBCHAPTER II OF CHAPTER 40.**

If a contractor or subcontractor shall, in the performance of a public works contract subject to this subchapter, fail to comply with the requirements of this subchapter, the board, the director, the committee, or any other committee of the board charged with supervision of the performance of said contract, may:

(1) By written notice to the contractor declare the contractor in default and terminate his or her right to proceed with the work. In such event, the county may take over the work and prosecute the same to completion by contract or otherwise, in which case the contractor or his or her sureties shall be liable to the county for any excess cost over the contract price occasioned to the county thereby; or require the surety on the contractor's bond to complete the work; provided, however, that said surety or sureties will not be permitted to reemploy the offending contractor or subcontractor in performing such work to completion.

(2) Declare such contractor or subcontractor to be incompetent and unreliable and reject any of said contractor's or subcontractor's future bids on any other work of the county for one year, notwithstanding that such contractor or subcontractor may be listed on a county prequalified contractor's list.

(3) Whenever there is a dispute between the contractor or his or her surety and the county as to determination of whether there is compliance with the contract as respects the provisions of this subchapter, the determination by the county shall be final.

**[History:** Subchapter I of Chapter 40 cr., sub nom. Chapter 23, 62 Bd. Proceedings 115 (1975), and Subchapter II cr., sub. nom. Chapter 17, 62 Bd. Proceedings 75 (1975).]

**[History:** References to various statutes updated throughout entire ordinance, OA 15, 2002-03, pub. 11/19/92.]

*[40.28- 40.99 reserved.]*

END OF CHAPTER