

1 **2020 OA-058**

2
3 **AMENDING CHAPTER 40 OF THE DANE COUNTY CODE OF ORDINANCES,**
4 **REVISING THE PUBLIC WORKS ORDINANCE**

5
6 The County Board of Supervisors of the County of Dane does ordain as follows:

7
8 **ARTICLE 1.** Unless otherwise expressly stated herein, all references to section
9 and chapter numbers are to those of the Dane County Code of Ordinances.

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11 **ARTICLE 2.** Chapter 40 is amended to read as follows:

12
13 **CHAPTER 40**
14 **PUBLIC WORKS**

15
16 **SUBCHAPTER I**
17 **PUBLIC WORKS ADMINISTRATION**

- 18
- 19 40.01 Intent.
- 20 40.02 Authority.
- 21 40.03 Words and Phrases.
- 22 40.04 Administration.
- 23 40.05 Applicability.
- 24 40.06 Procedures.
- 25 40.07 Public Works Projects, Bids, Contracts.
- 26 40.08 Outside Consulting Services.
- 27 40.09 Approval of Plans, Awards of Contracts.
- 28 40.10 Requirements of Bid Specifications.
- 29 40.11 Bonding and Insurance Requirements.
- 30 40.12 Payments to Contractors.
- 31 40.13 Emergency Situations.
- 32 40.14 Keeping of Records and Documents of Public Works Projects.
- 33 40.15 Effect on the Ordinances.
- 34 40.16 Affirmative Action Required.

35
36 **SUBCHAPTER II**
37 **MINIMUM WAGE ORDINANCE**

- 38
- 39 ~~40.17 Intent.~~
- 40 ~~40.18 Purpose and Public Policy.~~
- 41 ~~40.19 Applicability: Exceptions.~~
- 42 ~~40.20 Hours of Labor; Exceptions: Overtime Pay.~~
- 43 ~~40.21 Minimum Wage Payable; How Determined.~~
- 44 ~~40.22 Minimum Wage Schedule.~~
- 45 ~~40.23 Minimum Wage Ordinance Included In County Public Works Contracts By~~
- 46 ~~Reference.~~

47 ~~40.24 Duty Of Contractor And Subcontractor To Make And Keep Payroll~~
48 ~~Records.~~

49 ~~40.25 Duty of Contractor And Subcontractor To Furnish Affidavits Of Compliance~~
50 ~~With The Requirements Of This Subchapter.~~

51 ~~40.26 Allowance Of Applications For Partial And Final Payments On Contracts;~~
52 ~~Requirements.~~

53 ~~40.27 Penalties For Noncompliance With Sub-chapter II Of Chapter 40.~~

54
55 **40.01 INTENT.** This chapter is intended to establish uniform procedure
56 applicable to all public works projects, except highway projects, in which Dane
57 County or its agencies may engage and to create regulations for the conduct and
58 management of all business relating to public works projects and public works
59 contracts which the County is authorized to let or make.

60
61 **40.02 AUTHORITY.** This chapter is created and adopted pursuant to the
62 authority of sections 59.02, 59.51, 59.52(29), and 66.0901 ~~and 66.0903~~ and all
63 amendments pertaining thereto.

64
65 **40.03 WORDS AND PHRASES.** In this chapter, the following words and
66 phrases have the designated meanings unless a different meaning is expressly
67 provided or the context clearly indicates a different meaning:

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

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

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

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

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

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

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

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

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

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

86 **(11)** *Lowest responsible bidder* shall mean a person who has prequalified under
87 the provisions of sec. 40.07(1) and who also shall have submitted the lowest
88 price of all those so qualified. However, no bidder convicted of bid rigging or
89 price fixing, involving a bid submitted to the county, shall, within 3 years of
90 conviction be considered the lowest responsible bidder. This ordinance shall be
91 applied only to violations occurring subsequent to the adoption and publication of
92 this ordinance.

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

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

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

110
111 **40.04 ADMINISTRATION. (1)** Responsibility for compliance with the provisions
112 of this chapter, ~~other than section 40.17 of the Dane County Ordinances,~~ rests
113 initially with the agency engaging in the particular public works project.

114 (2) The director's duties shall be to render assistance and give advice to
115 agencies of the county engaged in public works projects. Such assistance shall
116 include: prequalifying contractors; preparing specifications; obtaining cost
117 estimates; preparing all forms and papers, except contract documents, to be
118 used for such purposes; assisting in the appraisal of bids submitted; inspecting
119 projects in progress in order to insure compliance with contract specifications
120 when no architect or engineer is in charge; assisting agencies conducting public
121 works projects in preauditing bills submitted by contractors for progress
122 payments and final payments, before such bills are forwarded to the county clerk
123 for final audit and payment; and rendering such other assistance as may be
124 requested by agencies engaging in public works.

125 (3) In performance of ~~his or her~~ their responsibilities and duties, the director
126 shall exercise supervisory control over all matters of procedure and
127 administration relating to public works, and may take whatever action ~~he or~~
128 ~~shethey~~ deems necessary to ~~ie~~nsure compliance with the provisions of this
129 chapter and all matters concerned therewith.

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

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

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

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

143

144 **40.05 APPLICABILITY.** The provisions of this chapter hereby established shall
145 apply to, and be complied with by, all Dane County institutions, departments,
146 committees or commissions authorized to engage in and contract for public
147 works except contracts for highway construction and maintenance which the
148 highway committee or department is authorized by law to let or make. This
149 ordinance shall also apply to joint commissions or public agencies engaging in
150 public works projects established by agreement between Dane County and any
151 other municipality where the contracting municipality consents thereto.

152

153 **40.06 PROCEDURES. (1)** On each project of public works, the particular
154 agency involved shall determine need for the project and formulate a proposal for
155 the project.

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

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

163

164 **40.07 PUBLIC WORKS PROJECTS, BIDS, CONTRACTS. (1)** *Best value*
165 *contracting. (a) Policy.* When entering into contracts for public construction that
166 exceed the minimum amount ~~specified in sub (b), under Wis. Stats. sec.~~
167 ~~66.0903(5),~~ Dane County requires bidders to prequalify pursuant to the
168 provisions of Wis. Stats. sec. 66.0901, and procedures set forth in this section.
169 The Dane County Board of Supervisors finds that using the Best Value
170 Contracting procedures set forth in this section will provide the County with the
171 best value for its public construction while also meeting requirements that
172 contracts be awarded to the lowest responsible bidder, and that the requirements
173 of this ordinance are for the protection and welfare of the public in the
174 performance of public contracts.

175 (b) *Prequalification requirement.* As a condition of performing work on a public
176 works contract for Dane County that exceeds ~~the minimum amount specified in~~
177 ~~Wis. Stats. sec. 66.0903(5) \$50,000 for a single-trade project or \$100,000 for a~~
178 ~~multi-trade project,~~ a contractor shall first be prequalified in accordance with the
179 provisions of this ordinance. This section shall apply to general contractors,
180 prime contractors and (subject to the limitations for subcontractors in secs. (i)3.
181 and 4. and (k) of this ordinance) subcontractors of any tier.

182 (c) *Additional qualification information.* In addition to information specified in this
183 ordinance, the director may request, in prequalification applications or separately

184 on a project by project basis, any other information ~~he or she~~ they determines
185 necessary to ensure that prospective contractors meet the contractor
186 responsibility standards established by this ordinance and otherwise possess
187 sufficient qualifications and capabilities in all respects to successfully qualify for
188 and perform public works contracts.

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

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

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

205 **(f) *Prequalification approval.*** The director shall review contractor prequalification
206 applications and approve applications that comply with the requirements of this
207 ordinance and other applicable standards developed by the director. If a
208 contractor has been certified as a targeted business as defined by sec.
209 19.51(22), and the director determines that the contractor fails to meet the
210 prequalification requirements under this section, the director will notify and
211 discuss the determination with the Contract Compliance Officer prior to issuing
212 any notice of non-qualification.

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

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

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

230 2. Require general contractors or prime contractors to verify their prequalification
231 as a condition of being awarded bids on public works contracts;
232 3. Further require general contractors or prime contractors to submit a list of the
233 subcontractors they intend to use in the performance of the contract, with the
234 names and prequalification numbers of such subcontractors. This information
235 may be submitted at the time of the bid, but must be submitted by no later than
236 the time specified in sub. (k). Firms identified on the subcontractor list may be
237 substituted only for good cause shown and with the written approval of the
238 director; and
239 4. Notify subcontractors that they may apply for prequalification under this
240 ordinance.
241 (j) *Required certifications.* Prequalification applications submitted pursuant to
242 this ordinance shall include all information as determined necessary and
243 appropriate by the director. Such applications shall, at a minimum, require a
244 sworn certification by the applicant attesting to the facts specified in this
245 subsection. In submitting a prequalification application, the applicant shall certify
246 that for any project ~~he or she~~ they seeks to perform for the County during the
247 term of prequalification, it shall:
248 1. Maintain a verifiable permanent place of business.
249 2. Authorized to do business in the State of Wisconsin.
250 3.4. Possess all technical qualifications and resources, including equipment,
251 personnel and financial resources, necessary to perform the work required for
252 the project or obtain the same through the use of responsible, qualified
253 subcontractors.
254 4.2. Possess all valid, effective licenses, registrations or certificates required by
255 federal, state, county or local law, which are necessary for the type of work to be
256 performed including, but not limited to, those for any type of trade work or
257 specialty work.
258 5.3. Meet all bonding requirements as required by applicable law or contract
259 specifications.
260 6. State whether the contractor has been subject to any order or judgment
261 governmental agency or court concerning an employment practice, including but
262 not limited to classification of employees, unemployment insurance, payroll fraud
263 or workplace safety. If the contractor has been subject to any order or judgment
264 from any court or governmental agency concerning an employment practice or
265 workplace safety, the contractor must provide all copies of the order or judgment
266 or may be disqualified. As determined appropriate and necessary by the
267 director, the contractor may be required to provide copies of any documents
268 related to an investigation regarding employment practices or workplace safety.
269 7.4. Meet all insurance requirements as required by applicable law or contract
270 specifications, including general liability insurance, workers compensation
271 insurance and unemployment insurance requirements, and that all employees
272 are properly classified and covered by said insurance policies.
273 8. If the contractor provides health insurance to its employees, that all of
274 contractor's employees who will perform work on the project have such health
275 insurance coverage available to them.

276 **9.5.** Maintain a substance abuse policy for employees hired for public works
277 contracts that complies with Wis. Stats. sec. 103.503.

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

280 **10.7.** Participate in a Class A Apprenticeship Program for each separate trade or
281 classification in which ~~he or she~~they employs craft employees and continue to
282 participate in such program or programs for the duration of the project. As used
283 herein, Class A Apprenticeship Program means a program that is approved by
284 the U.S. Department of Labor or a state apprenticeship agency, provided that
285 such program graduates apprentices to journey person status within the indenture
286 period. ~~In applying this requirement, the director shall apply it to all crafts in the~~
287 ~~same manner as the State of Wisconsin applies the requirements of Wisconsin~~
288 ~~Executive Order 108 (June 29, 2005).~~

289 **11.8.** Fully abide by the equal employment opportunity and affirmative action
290 requirements of all applicable laws, including County ordinances.

291 **12.9.** Provide in the prequalification application a detailed statement regarding
292 related companies if, at any time during the past three (3) years, the contractor
293 has controlled or has been controlled by another corporation, partnership or other
294 business entity operating in the construction industry. This statement shall be
295 included in the prequalification application and shall explain the nature of the
296 contractor relationship.

297 **13.** The contractor has a written safety program.

298 **14.** The employees who will perform the work are properly classified as
299 employees or independent contractors under all state and federal laws.

300 **15.** Describe all projects of similar size and scope that the contractor has
301 satisfactorily completed. If the contractor has not completed a similar project, the
302 contractor will provide a statement explaining why the contractor is qualified to
303 perform the contract.

304 **16.** Disclose whether for the past three years:

305 a. ~~he or she~~they ~~has~~ has had any type of business, contracting or trade license,
306 certification or registration revoked or suspended.

307 b. ~~he or she~~they ~~has~~ has been debarred by any federal, state or local government
308 agency.

309 c. ~~he or she~~they ~~has~~ has defaulted on any project in the past three years.

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

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

318 **17.** Certify that the contractor prequalification application has been executed by
319 a principal or person employed by the applicant who has sufficient knowledge

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

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

325 **(k) Subcontractors.** Subcontractors may, but are not required to, apply for and
326 obtain prequalification status under this ordinance. At least ten (10) days prior to
327 commencing work under any Dane County Public Works contract subject to this
328 section, a subcontractor, the value of whose work exceeds ~~the single-trade~~
329 ~~minimum amount specified in Wis. Stats. sec. 66.0903(5) \$50,000 for a single-~~
330 ~~trade project or \$100,000 for a multi-trade project~~, shall submit the information
331 required under this ordinance to be qualified, and no such subcontractor may
332 begin work on a Dane County Public Works project until the director determines
333 that such subcontractor meets the qualification requirements herein.

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

336 **(m) Best value contracting in county supported projects.** In order to achieve the
337 goals set out in this ordinance, it shall be a condition of any ~~C~~county financial
338 support of a development project, as designated by the Board of Supervisors in
339 the resolution granting such assistance, in an amount that ~~meets the~~
340 ~~requirements of Wis. Stats. sec. 66.0903(5) exceeds~~ \$50,000 for a single-trade
341 project or \$100,000 for a multi-trade project, that the developer utilize for
342 construction those firms that have met the prequalification requirements of this
343 ordinance. This provision will be included as a developer obligation in any
344 agreement between the County and the developer.

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

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

353 **(2)** All public works projects, where the cost is estimated to be less than the
354 amount specified in section 59.52(29), Wis. Stats., or any amendments thereto,
355 may be contracted for directly by the agency of the county through the office of
356 the director of the department of public works, provided that funds for such
357 purpose have been specifically appropriated therefor in annual budgets or have
358 been provided through authorized budget transfers by the finance committee.
359 The provisions of this subsection shall not preclude obtaining competitive bids for
360 such work where deemed feasible or in the best interest of the county. The
361 granting of a contract under this subsection shall not, however, be subject to
362 sections 59.52(29) and 66.0901, Wis. Stats., and the contract may be awarded to
363 the bidder deemed best qualified to perform the work, in the discretion of the
364 responsible agency.

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

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

380 (5) In the case of equal bids, preference shall be given to the equal bidder
381 whose main place of business is located in Dane County.
382

383 **40.08 OUTSIDE CONSULTING SERVICES. (1)** No outside consulting service,
384 where the contracted amount exceeds ~~\$25,000~~ \$100,000, shall be hired or
385 contracted for without prior approval of the board and appropriation of funds for
386 such purpose. Nothing contained herein shall preclude the appropriate agency
387 from conferring with or consulting with and recommending to the board for
388 selection of outside consultants for a particular public works project provided
389 such interviews for conferences do not create an obligation to the county to pay
390 therefore.

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

399 (3) No contract with outside consulting services, for an amount in excess of
400 ~~\$25,000~~ \$100,000, shall be authorized without specific approval by the board, but
401 where deemed advisable by the agency, ready-made plans for the purpose of
402 establishing specifications, may be purchased or procured directly for the
403 proposed project in order to permit proper competitive bidding. Responsibility for
404 the technical correctness, adequacy and completeness of plans and
405 specifications procured hereunder and used as a basis for actual construction
406 shall rest with the agency approving the same. Reasonable cost for procured
407 plans shall be determined by the committee and shall be charged to funds
408 allocated for the proposed project.

409 (4) Where outside consulting services for the proposed project are not hired
410 under a contract authorized by the board, the agency responsible for the project

411 is authorized to hire expert technical advice or service, in order to obtain the
412 necessary information to prepare preliminary cost estimates as accurately as
413 possible and available. Agencies proposing public works projects and requesting
414 appropriations therefore shall endeavor to make cost estimates as accurately as
415 possible and may, where free estimates are not available, pay reasonable fees to
416 qualified persons to obtain such estimates if funds are available for such purpose
417 within applicable budgets.

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

421
422 **40.09 APPROVAL OF PLANS, AWARDS OF CONTRACTS. (1)** After
423 preliminary plans, studies and cost estimates have been approved by the agency
424 concerned, the same shall be referred to the board for concurrence where the
425 estimated cost of the project exceeds \$40,000, unless the board directs
426 otherwise.

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

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

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

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

456 (6) Subject to section 40.04(6) of the Dane County Ordinances, all bids for
457 public works projects shall be advertised through the office of the purchasing
458 agent in such media as is deemed appropriate by the agency charged with the
459 project in order to provide the widest possible solicitation of bids.

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

467
468 **40.10 REQUIREMENTS OF BID SPECIFICATIONS.** (1) Bid specifications
469 shall contain, wherever practicable, maximum available guarantees or warranties
470 for products, supplies, materials or workmanship as the custom of the particular
471 trade permits, to protect the county from defects attributable thereto and to
472 prevent, insofar as possible, costs for future repairs or replacements not
473 otherwise covered by contractor's performance bonds.

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

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

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

487 (5) All specifications, other than technical specifications utilized for solicitation of
488 bids, shall be submitted to the corporation counsel for approval as to form and
489 content before the same are used, if not on standard forms. All executed bids,
490 insurance certificates, bonds or other allied papers constituting contract
491 documents, shall be submitted to the corporation counsel for approval as to form
492 and content before the same are signed by the designated county officials, after
493 contract awards are made.

494
495 **40.11 BONDING AND INSURANCE REQUIREMENTS.** (1) Whenever the
496 amount of the project is expected to exceed the amount specified in section
497 59.52(29), Wis. Stats., or whenever the director otherwise determines, bid
498 specifications shall require a bid bond or certified check or cash, in an amount
499 not less than 5% of the total bid, to be submitted by prospective bidders as
500 assurance that the bidder, if granted a contract, will execute the same or forfeit
501 the amount of the bid bond as damages for failure to enter the contract.

502 (2) All contracts involving more than the amount specified in section 779.14,
503 Wis. Stats., or any amendments thereto, for the performance of labor or
504 furnishing of materials, when the same pertains to any public improvement or
505 public work of whatever kind, shall contain a provision for the payment by the
506 contractor of all claims for labor performed and materials furnished, used or
507 consumed in such project including, without limitation because of enumeration,
508 fuel, lumber, building materials, machinery, vehicles, gasoline, motor and
509 lubrication oil, greases and the premiums for worker's compensation insurance
510 and the contributions for unemployment compensation and no such contract shall
511 be made unless the contractor gives a bond issued by a surety company
512 licensed to do business in this state, the penalty of which shall not be less than
513 the contract price, conditioned for the faithful performance of the contract, and
514 the payment of every person entitled thereto of all claims for labor performed and
515 materials furnished under the contract. Such bond shall be approved by the
516 corporation counsel. No assignment, modification or change of the contract or
517 change in the work covered thereunder, nor any extending of time for completion
518 of the contract, shall release the sureties of said bond. Neither the invitation for
519 bids nor the person having the power to approve the contractor's bond shall
520 require that such bond be furnished by a specified insurance company, or
521 through a specified agent or broker. All provisions of sections 779.14, 779.15,
522 779.155, 779.16 and 779.17, Wis. Stats., and acts amendatory thereto, not
523 specifically described above, shall be deemed to be incorporated herein.

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

529 ~~State Law Reference: Section 779.14, Wis. Stats.~~

530

531 **40.12 PAYMENTS TO CONTRACTORS.** Contractors shall be paid according to
532 payment schedules set forth in contracts and the agency responsible for the work
533 may authorize periodic progress payments for portions of the work satisfactorily
534 completed according to such schedules. Notwithstanding guarantees made
535 under contract performance and payments bonds, the agency responsible for the
536 work may require lien releases from contractors and/or subcontractors for all
537 claims for labor, materials or supplies provided either before any periodic
538 progress payment or final payment is made under applicable contracts.

539 ~~State Law Reference: Section 66.0901, Wis. Stats.~~

540

541 **40.13 EMERGENCY SITUATIONS. (1)** Any member of the committee shall
542 have the authority to determine the existence of, and to declare, either a Class I
543 emergency or a Class II emergency. In the event no committee member can be
544 contacted promptly, the director is authorized to act in their stead and after
545 consultation with the county executive, if at all possible. In any event, if a
546 committee member is so acting, consultation with the director and the county
547 executive shall be made, and with other committee members if at all possible.

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

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

557 (4) Where an emergency is found to exist, the finance committee is authorized
558 to provide funds to meet the cost of the necessary repairs either by transfer of
559 funds within budget appropriations or transfer from the contingency fund, if
560 created, pursuant to sec. 65.90(5), Wis. Stats.

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

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

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

574

575 **40.14 KEEPING OF RECORDS AND DOCUMENTS OF PUBLIC WORKS**
576 **PROJECTS.** Copies of all public works records shall be kept in suitable files in
577 the office of the director and shall be properly indexed ~~by him or her~~. The official
578 copy of the public works contract shall be kept by the county clerk. Copies of
579 change orders shall be kept by the county clerk and the director.

580

581 **40.15 EFFECT ON THE ORDINANCES.** (1) Provisions of other ordinances or
582 resolutions of Dane County inconsistent herewith are hereby repealed and
583 superseded except that no repeal or other effect whatsoever is intended as to
584 Chapter 25 of the Dane County Ordinances other than as expressly stated
585 herein.

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

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

591

592 **40.16 AFFIRMATIVE ACTION REQUIRED.** (1) On each project of public
593 works and prior to the purchase of any goods or services the purchasing agent

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

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

601

602

603

SUBCHAPTER II MINIMUM WAGE ORDINANCE

604

605

606 ~~**40.17 INTENT.** This subchapter is intended to establish an eight hour day and
607 minimum wage rates for skilled and unskilled labor employed by contractors or
608 subcontractors under contracts for any project of public works, except highway,
609 street or bridge construction, to which Dane County is a party.~~

610

611 ~~**40.18 PURPOSE AND PUBLIC POLICY.** It is hereby determined that the
612 purpose of this subchapter is to insure a prevailing minimum wage to all skilled
613 and unskilled laborers employed by contractors or subcontractors under
614 contracts for any project of public works to which Dane County is a party, and at
615 the same time to secure a correspondingly better class of workmanship on such
616 public works.~~

617

618 ~~**40.19 APPLICABILITY: EXCEPTIONS.** This subchapter does not apply to any
619 highway, street or bridge construction or to any public works project for which the
620 estimated project costs of completion is below the amounts separately specified
621 by the Wisconsin Department of Industry, Labor and Human Relations, pursuant
622 to s. 66.0903(3), Wis. Stats., for projects in which one trade is involved and for
623 projects in which more than one trade is involved; nor does this subchapter
624 apply to wage rates and hours of employment of laborers, workmen or
625 mechanics engaged in the processing or manufacture of materials or products or
626 to the delivery thereof by or for commercial establishments which have a fixed
627 place of business from which they regularly supply such processed or
628 manufactured materials or products, except that this subchapter does apply to
629 laborers, workmen or mechanics delivering mineral aggregate such as sand,
630 gravel or stone which is incorporated into the work under the contract by
631 depositing the material substantially in place, directly or through spreaders, from
632 the transporting vehicle.~~

633

634 ~~**40.20 HOURS OF LABOR; EXCEPTIONS: OVERTIME PAY.** (1) The service
635 of all skilled and unskilled laborers who are now or who may hereafter be
636 employed by any contractor or subcontractor under contracts for public works to
637 which Dane County is a party is hereby limited to days other than Saturdays,
638 Sundays, and legal holidays and restricted to 40 hours per week, of which no
639 more than eight hours shall occur in any one calendar day; provided that the~~

640 director, the committee, any other committee of the board, or any department of
641 the county having jurisdiction over a county public works contract may, upon a
642 determination that the best interest of Dane County is served thereby and upon
643 the request of such contractor or subcontractor, in order to conform with
644 occupational practices, specifications of the contract or emergencies, permit any
645 such contractor or subcontractor to require or permit any such skilled or unskilled
646 laborers to work on Saturday, Sundays and legal holidays or more than 40 hours
647 per week and eight hours in any calendar day. In such instances, where
648 overtime work has been permitted and skilled or unskilled laborers work more
649 than eight hours per day or 40 hours per week or at times other than the normal
650 work day or week, they shall be paid by the contractor in accordance with the
651 prevailing overtime wage rates and all costs occasioned by such overtime shall
652 be borne by the contractor or subcontractor and no additional compensation from
653 the county shall be allowed therefor. When, and only when, the director, the
654 committee, any other committee of the board, or any department of the county
655 having jurisdiction over a county public works contract, after the signing of such
656 contract, deems an emergency to exist with respect to the performance of such
657 contract or some portion thereof, and declares such an emergency to exist by so
658 ordering the contractor in writing, that the work on the contract or some portion
659 thereof shall be carried on in excess of eight hours per day or 40 hours per week,
660 or at times other than the normal work day or week, it shall be the duty of the
661 county to reimburse the contractor over and above the price agreed upon for the
662 performance of such work in the amount of the premium paid for overtime work,
663 or work performed at times other than the normal work day or work week, in
664 accordance with the prevailing overtime wage rates plus any premium paid for
665 necessary materials because of delivery during times other than the normal work
666 day or work week. No such order shall be given unless sufficient unencumbered
667 funds specifically allocated to the project are on hand to pay for all overtime and
668 premium payments which will accrue because of the contractor's proceeding in
669 response to such order.

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

674
675 **40.21 MINIMUM WAGE PAYABLE; HOW DETERMINED.** Hereafter all skilled
676 and unskilled laborers employed by any contractor or subcontractor under
677 contracts for public works to which Dane County is a party shall receive and be
678 paid a sum not less than the minimum wage rate in said county for each hour of
679 such labor, as established by the board by section 40.22 of this subchapter and
680 in effect on the first day of advertisement for bids; provided that the county shall
681 not be required to reimburse the contractor or subcontractor on any contract for
682 any increase in such minimum wage rate effected after date of execution of such
683 contract.

684

685 ~~**40.22 MINIMUM WAGE SCHEDULE.** The most current of the classifications,~~
686 ~~minimum wage rates, overtime wage rates, and fringe benefits applicable to~~
687 ~~skilled and unskilled labor service in Dane County, as set forth in schedules~~
688 ~~published by the Madison Building and Construction Trades Council and the~~
689 ~~Wisconsin Department of Industry, Labor and Human Relations, are hereby~~
690 ~~made applicable to county public works contracts. Current schedules shall be~~
691 ~~obtained by the director and kept on file in his or her office and in the office of the~~
692 ~~county clerk. The director shall also transmit copies of the current schedules to~~
693 ~~the county agencies and commissions authorized to engage in public works~~
694 ~~contracts.~~

695
696 ~~**40.23 MINIMUM WAGE ORDINANCE INCLUDED IN COUNTY PUBLIC**~~
697 ~~**WORKS CONTRACTS BY REFERENCE.** This subchapter, including the~~
698 ~~minimum wage schedule, shall be incorporated in every public works contract by~~
699 ~~reference, and a statement to this effect shall be published in all notices issued~~
700 ~~for the purpose of securing bids and shall be contained in the final contract form.~~

701
702 ~~**40.24 DUTY OF CONTRACTOR AND SUBCONTRACTOR TO MAKE AND**~~
703 ~~**KEEP PAYROLL RECORDS.** It is hereby made the duty of every contractor and~~
704 ~~subcontractor participating in a project of public works covered by this~~
705 ~~subchapter to keep full and accurate records clearly indicating the name and~~
706 ~~trade or occupation of every laborer, workman or mechanic employed by him or~~
707 ~~her in connection with the project, the number of hours worked by each such~~
708 ~~employee, and the actual wages paid therefor, and to preserve said records in~~
709 ~~his or her office until said contracts have been completed to the satisfaction of~~
710 ~~the county. The county by its duly authorized representative may inspect said~~
711 ~~payroll records at all times prior to the completion of the contract. The contractor~~
712 ~~shall, upon written demand of the director or such other officer as may be~~
713 ~~designated by the board, file a true and correct copy of any such payroll records,~~
714 ~~including those of any sub-contractor, with the county clerk. Copies so furnished~~
715 ~~shall be public records.~~

716
717 ~~**40.25 DUTY OF CONTRACTOR AND SUBCONTRACTOR TO FURNISH**~~
718 ~~**AFFIDAVITS OF COMPLIANCE WITH THE REQUIREMENTS OF THIS**~~
719 ~~**SUBCHAPTER.** Every principal contractor who engaged in the performance of~~
720 ~~any contract for public works covered by this subchapter shall submit with any~~
721 ~~partial and final application for payment for work under said contract, an original~~
722 ~~and three copies of an affidavit in the form as hereinafter set forth, affirming that~~
723 ~~all persons employed by him or by any of his subcontractors on such contract~~
724 ~~have been paid no less than the minimum wages established under this~~
725 ~~subchapter and in effect at the date of execution of the contract, that full payment~~
726 ~~of wages earned has been made, and that no rebates either directly or indirectly~~
727 ~~have been made. The form of such affidavit is as follows:~~

728
729 **DANE COUNTY, WISCONSIN**
730 **WAGE AFFIDAVIT**

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~~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~~

777 subcontractor, and no such application or estimate shall be so approved and
778 passed for payment until the county is satisfied that the provisions of this
779 subchapter, as the same may be amended, and be applicable, have been fully
780 complied with by said contractor or subcontractor. The filing of the affidavit
781 required by section 40.25 shall be *prima facie* proof of such compliance in the
782 absence of any complaint.

783
784 ~~**40.27 PENALTIES FOR NONCOMPLIANCE WITH SUBCHAPTER II OF**~~
785 ~~**CHAPTER 40.**~~ If a contractor or subcontractor shall, in the performance of a
786 public works contract subject to this subchapter, fail to comply with the
787 requirements of this subchapter, the board, the director, the committee, or any
788 other committee of the board charged with supervision of the performance of said
789 contract, may:

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

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

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

806
807 *[EXPLANATION: This amendment revises Subchapter I and rescinds*
808 *Subchapter II.]*