

CHAPTER 22

CONTRACTORS

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22.01 AUTHORITY.

This chapter is adopted pursuant to authority granted by §66.0901 and §61.34, Wis. Stats.

22.02 PURPOSE.

The purpose of this chapter is to ensure that contractors and subcontractors who perform work on public improvement projects within the Town are responsible, competent to perform such work skillfully, capable of completing such work in a timely manner and sensitive to the necessity of performing such work in a manner that protects the health, safety and welfare of the public and minimizes any disturbance, inconvenience or annoyance to the public.

22.03 TITLE.

This chapter shall be known, referred to and cited as the "Contractor Qualification Ordinance of the Town of Somers" or as "Chapter 22 of the Code of the Town of Somers."

22.04 INTERPRETATION.

The provisions of this chapter shall be interpreted to be minimum requirements and shall be liberally construed in favor of the Town. Headings are provided in this chapter for convenience and ease of reference; they shall not be interpreted to limit the applicability, purpose, effect or meaning of any of the provisions of this chapter. Any word or phrase defined in §22.05 of this chapter shall have the meaning stated therein. Undefined words or phrases shall have their common, ordinary meaning unless some other meaning is clearly implied by the context in which the particular word or phrase appears. As used in this chapter, "shall" is mandatory, and "may" is permissive.

22.05 DEFINITIONS.

The following words or phrases, as used in this chapter, shall have the meanings set out below:

(A) **Administrator**. The Town Administrator and/or such other Town staff members or officials as may be designated as the administrators of this chapter by resolutions adopted from time to time by the Town Board; the Town Board, at its discretion, may perform, in the first instance, any function delegated to the Administrator by this chapter.

(B) **Public Improvement Project**. Any project within the Town, or undertaken by or on behalf of the Town, involving the construction, reconstruction, improvement, installation, remodeling or repair of, or any grading, excavation, drilling, filling, landscaping or other work in connection with any public improvement, including without limitation all public buildings, public street improvements (pavement, curbs

and gutters, sidewalks, culverts, street trees, streetlights and street signs), public bridges, public sanitary sewerage system improvements and facilities, public water supply and distribution system improvements and facilities, public storm sewer and drainage system improvements and facilities, and public parks and recreational facilities, or any improvements or facilities that are intended to become public through dedication to the Town in connection with an approved land division or otherwise.

(C) **Person**. Any individual, corporation, partnership, association, trust, body politic or corporate, or any other legal entity.

(D) **Subcontractor**. Any person whose relationship to the principal contractor is substantially the same, with respect to a part of the work on a public improvement project, as the latter's relationship is to the proprietor; a subcontractor takes a distinct part of the work on a project in such a way that the subcontractor does not contemplate doing merely personal service.

(E) **Town**. The Town of Somers.

22.06 QUALIFICATION REQUIREMENT.

No person shall be permitted to obtain bid proposal forms or related plans or specifications from the Town for the purpose of submitting a bid for work on any public improvement project, or to submit a bid for work on any public improvement project without first qualifying for such activities pursuant to the provisions of this Chapter. Subject to §22.07 below, it shall be unlawful to, and no person shall, act as a contractor or subcontractor on any public improvement project within the Town unless such person is duly qualified pursuant to this chapter.

22.07 EXEMPTION.

Any contractor or subcontractor who has submitted a bid to the Town for work on a public improvement project or who has entered into a construction contract for work on a public improvement project prior to the effective date of this chapter shall be exempt from this chapter only to the extent of the work on such project. No lapse, suspension or cancellation of the qualification of a contractor or subcontractor under this chapter shall affect the ability of such contractor or subcontractor to carry out a contract with respect to a public improvement project, without penalty, provided that such contract was entered into in good faith at a time when such contractor or subcontractor was duly qualified.

22.08 QUALIFICATION APPLICATION.

Any person who wishes to obtain bid proposal forms or related plans or specifications from the Town for the purpose of submitting a bid for work on any public improvement project or to act as a contractor or subcontractor on any public improvement project, may become qualified to do so by filing with the Administrator an application for qualification. Each such application shall specify the categories of public improvement projects for which qualification is sought and shall be accompanied by a sworn

statement of qualifications. The applicant shall pay to the Town Clerk/Treasurer, at the time of application, a fee of Seventy-five (\$75.00) Dollars to help defray the costs of reviewing and evaluating the application. All applications for qualification and all sworn statements of qualification shall be submitted on standard forms approved by the Town Board and available from the Administrator.

22.09 STATEMENT OF QUALIFICATIONS.

The statement of qualifications shall be signed and sworn to under oath, in the presence of a notary public or other officer authorized by law to administer oaths, by the applicant or by a representative of the applicant with personal knowledge on behalf of the applicant.

- (A) The statement of qualifications shall contain the following minimum information:
 - (1) Applicant's name;
 - (2) Applicant's address;
 - (3) Applicant's telephone number;
 - (4) Number of years the applicant has been in business under the present name (and the applicant's prior business name if the name has been changed within five (5) years);
 - (5) Type of entity the applicant is (if the applicant is a corporation, state when and in what state incorporated);
 - (6) Categories of work for which qualification is sought and the number of years of applicant's experience as a principal contractor and as a subcontractor in each such category;
 - (7) Names, addresses and telephone numbers of all officers, general partners or other principals;
 - (8) List of all projects started during the past five (5) years, including, with respect to each project, the year, category of work, capacity in which the work was undertaken, contract amount, location of work, and name, address and telephone number of the person for whom the work was performed;
 - (9) Experience of all principal and supervisory individuals, including the following: name, present position, years of experience by categories of work, and capacity in which such work was performed;
 - (10) Major pieces of equipment owned and available when needed, including, with respect to each, the name, description, condition and years of service;

(11) Whether the applicant has failed, during the past five (5) years, to complete satisfactorily and on time any work awarded to it or contracted for by it, and, if so, the full details of each such incident;

(12) Whether any officer, general partner or other principal or supervisory individual associated with the applicant was an officer, general partner, principal or supervisor of any other contractor or subcontractor, during the past five (5) years, when such contractor or subcontractor failed to complete, satisfactorily and on time, a construction contract, and, if so, details of each such incident;

(13) Whether the applicant or any of its officers, directors, general partners or other principal or supervisory individuals have a financial interest in any other contractor or subcontractor qualified to work on public improvement projects in the Town, and, if so, the full details of any such interest;

(14) Whether the applicant has asked to be relieved of a bid submitted by it to a public awarding authority during the past five (5) years, and, if so, the full details of each such incident;

(15) Whether the applicant has been relieved of a bid submitted by it to a public awarding authority during the past five (5) years, and, if so, the full details of such incident;

(16) Whether the applicant has ever been charged with or convicted of a violation of any wage schedule, and, if so, the full details of each such incident;

(17) Whether the applicant or any of its officers, general partners or principal or supervisory individuals has been charged with or convicted of a felony during the past five (5) years, and, if so, the full details of each such incident;

(18) Names, addresses and telephone numbers of bonding companies used by the applicant during the past five (5) years and the amount and issuer of the largest bond provided during such period;

(19) Whether any bonding company has, during the past five (5) years, taken over a contract or made any payments because applicant failed to carry out a contract or performed it unsatisfactorily, and, if so, full details of each incident;

(20) List borrowings during the past five (5) years, including the name of the bank or lending institution, the maximum amount borrowed at any time during such period and the nature of the collateral furnished;

(21) List lines of credit available to the applicant, including name of the bank or financial institution, and the amount of credit;

- (22) Whether the applicant contemplates any change in its capital structure or any substantial increase or decrease in its equity capital, and, if so, the full details;
- (23) Names, addresses and telephone numbers of municipalities and state agencies which have qualified the applicant during the past five (5) years;
- (24) Provide a current balance sheet, together with the name of the preparer, and whether the assets listed are pledged, mortgaged or assigned;
- (25) Average number of individuals employed by the applicant during the past year, in each of the following categories: skilled construction, unskilled construction, office; and
- (26) Summary of any litigation in which the applicant has been involved during the last five (5) years, including, with respect to each case, the caption, court, case number, name of opposing party or parties, nature of claims by or against the applicant, the outcome or status of the case and the identity of the attorneys representing the applicant and the opposing party or parties. Separately list any litigation within the past five (5) years which has involved a public improvement contract.

(B) The Administrator may require from time to time that additional or supplementary information be submitted by any applicant or any qualified contractor or subcontractor with respect to particular categories of public improvement projects, or with respect to a particular public improvement project, or as a follow-up to issues raised by a failure to submit required information, or by the information initially submitted, or by problems or complaints generated by work on current or recent public improvement projects, or by adverse information received from any source.

22.10 QUALIFICATION CATEGORIES.

The following are the categories of public improvement projects on which contractors and subcontractors may be qualified to perform work pursuant to this chapter:

- (A) **General Street Construction.** The construction and performance of a complete unit of street improvement work, including without limitation grading, subbase work, base course, structures, asphaltic or concrete pavement and related work, or any combination thereof.
- (B) **Grading.** The movement of earth, the construction of earthwork and related work.
- (C) **Concrete Pavement.** The construction of concrete pavement and related work.
- (D) **Asphaltic Pavement.** The construction of all types of asphaltic pavement and related work.

(E) **Gravel and Crushed Stone.** The construction of crushed aggregate base course and shoulder and related work.

(F) **Structures.** The construction of masonry, steel or timber bridges, viaducts, culverts, railroad bridges or other similar structures, and related work.

(G) **Rail Construction and Rehabilitation.** The construction or rehabilitation of a section of track, including all or part of the grading, drainage structures, ballasting, laying or replacement of rails, ties, turnouts and crossings, and incidental related items or related work, or any combination thereof; in granting any qualification relating to this category, the Administrator may consider the recommendation of the railroad involved.

(H) **Painting.** Work involving the painting of structures.

(I) **Streetlighting.** Work involving trenching and underground duct work, placing of electrical cable on or under the ground, placing light bases and fixtures, including generators, regulators, transformers and related equipment, and related work.

(J) **General Building Construction.** The construction of a complete unit of work relating to construction of a public building.

(K) **General Sewer Construction.** the construction of a complete unit of sanitary sewerage system improvements work.

(L) **General Water Main Construction.** The construction of a complete unit of water system improvements work.

(M) **Storm Sewer Construction.** The construction of a complete unit of storm sewer and drainage system improvements work.

(N) **Incidental Construction.** Work involving sidewalks, curbs and gutters, small concrete structures, guardrails, fencing, obtaining and planting of plant materials, cutting and spraying of weeds, signage, signals and other work of a minor or incidental character.

22.11 QUALIFICATION DETERMINATION.

The Administrator shall determine whether and with respect to which categories of public improvement projects an applicant is qualified. Such determination shall be made as soon as practical after an application and all required information is filed. In the event that an applicant fails or refuses to file required supporting or supplementary information within a reasonable period of time, the Administrator may deny qualification, entirely or with respect to certain categories of public improvement projects, or subject any qualification granted to reasonable conditions. The Administrator may attach to any determination to qualify a contractor or subcontractor under this chapter such conditions precedent or subsequent as may be reasonable in light of the purposes of this chapter and the information available to the Administrator.

22.12 NOTICE OF DETERMINATION.

The Administrator shall promptly notify the applicant in writing of any determination made with respect to qualification. Any determination to deny any qualification sought by an applicant because of the lack of required information shall specify the missing information. Any determination to deny any qualification sought by an applicant, for any reason other than missing information, shall specify with particularity the reasons for such determination. Any determination to qualify an applicant shall specify for which categories of public improvement projects the applicant is qualified and any conditions to which the qualification is subject. In the absence of a subsequent determination to modify, suspend or cancel the qualification of a contractor or subcontractor, all determinations to qualify an applicant shall be effective for a period of three (3) years from the date of determination with respect to qualification.

22.13 RECONSIDERATION.

An applicant may file an application to reconsider a prior qualification determination at any time. The fee for filing an application to reconsider a prior determination shall be one-half (1/2) the fee for an initial application, and such application shall be processed in the same manner as an initial or renewal application. The applicant shall file with the application an updated sworn statement of qualifications. Any such statement shall correct all outdated or incorrect information on the prior statement and shall include any new information upon which the application is based.

22.14 SUSPENSION, MODIFICATION OR CANCELLATION OF QUALIFICATION.

If a qualified contractor or subcontractor fails or refuses promptly to supply any information requested by the Administrator, or fails to satisfactorily perform work on any public improvement project, or if the Administrator receives material new information regarding the responsibility, competence or capability of the contractor or subcontractor, or its sensitivity to the necessity of performing work on public improvement projects in such a way as to protect the health, safety and welfare of the public and to minimize any disturbance, inconvenience or annoyance to the public, which demonstrates that a prior qualification determination is no longer justified, the Administrator may suspend, modify, cancel or subject to new conditions the qualification of such contractor or subcontractor, as may be reasonable in light of the purposes of this chapter and the information available to the Administrator. If the Administrator determines that materially false information was submitted on a statement of qualifications filed with the Town, the Administrator shall cancel the qualification of such contractor or subcontractor, and such contractor or subcontractor shall be ineligible for qualification for one (1) year.

22.15 APPEAL.

Any person aggrieved by any determination made by the Administrator pursuant to this chapter may appeal such determination to the Town Board by filing with the Town Administrator or the Town Administrator's designee a notice of appeal specifying with particularity the grounds for believing that the Administrator's determination is erroneous. Any such notice of appeal shall be filed within thirty (30) days after the date of mailing to the appellant of the Administrator's written determination on standard forms approved by the Town Board and available from the Town Administrator. The appellant shall pay to the Clerk/Treasurer, at the time of filing the notice of appeal, a fee of Twenty-five (\$25.00) Dollars to help defray the costs of appeal. The appellant shall be given not less than ten (10) days' advance written notice of the date, time and place of the hearing. The appellant may be represented by counsel at the hearing, may present evidence and argument relevant to the issues raised by the notice of appeal, and may question witnesses called to support the Administrator's determination. The appellant shall have the burden of proving that it is qualified and that any conditions imposed on its qualification are not reasonable. The Town Board may reverse, affirm or modify the determination of the Administrator, and the Board's decision shall be final. The Town Board shall promptly notify the appellant of its findings in writing.

22.16 CONFIDENTIALITY.

The contents of any statement of qualifications or any related information, including any additional, updated or supplemental information, filed by a person pursuant to this chapter shall be confidential and shall not be disclosed except upon the written order of such person, or for necessary use by the Administrator or the Town Board in qualifying such person, or in cases of court or administrative action against or by such person, or against or by the Administrator or the Town.

22.17 VIOLATIONS AND PENALTIES.

The Town may institute any appropriate legal actions or proceedings to enforce the provisions of this chapter by means of injunction, forfeitures or otherwise, as provided by law. Any person who violates the provisions of this chapter shall, upon conviction, forfeit not less than Ten (\$10.00) Dollars nor more than Five Hundred (\$500.00) Dollars for each violation, plus the costs of prosecution. The penalty for default of payment of any such forfeiture and costs shall be imprisonment in the Kenosha County Jail until payment thereof, but not exceeding six (6) months. Each day a violation exists or continues shall constitute a separate violation.