

Highway Department – CTH KK Pavement Repairs
Attachment B – Insurance Requirements for Independent Contractors & Vendors

Section 1 – Indemnification and Hold Harmless Clause

_____ (*Contractor / Vendor Name*) agrees at all times during the term of the agreement to indemnify, hold harmless and defend the County, its Boards, Committees, Officers, Employees, Authorized Representatives and Volunteers against any and all liabilities, losses, damages, costs or expenses (including, without limitation, actual attorney’s and consultant’s fees) which the County, its Boards, Committees, Officers, Employees and Representatives may sustain, incur or be required to pay by reason of or in any way related to bodily injury, personal injury or property damage of whatsoever nature or in connection with or in any way related to the performance of the work by _____ (*Contractor/Vendor Name*), its employees, agents and anyone employed directly or indirectly by any of them or by anyone for whose acts any of them may be liable, provided, however, that the provisions of this section shall not apply to liabilities, losses, charges, costs or expenses caused solely by or resulting from the gross negligent acts or omissions of the County, its Agencies, Boards, Committees, Officers, Employees, Authorized Representatives or Volunteers. It is agreed that Contractor/Vendor will be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable. Contractor’s/Vendor’s indemnity obligations shall not be limited by any worker’s compensation statute, disability benefit or other employee benefit or similar law or by any other insurance maintained by or required of Contractor/Vendor.

Section 2 – Compliance with Laws, Regulations, Permits, Etc. Clause

_____ (*Contractor/Vendor Name*) shall comply with all Federal, State and local codes, laws, regulations, standards, and ordinances, including, without limitation, those of the Occupational Safety and Health Administration (OSHA), the Wisconsin Department of Safety and Professional Services and all County rules, ordinances, and orders governing the performance of the work performed by _____ (*Contractor/Vendor Name*), its employees, agents and subcontractors or anyone employed directly or indirectly by any of them or by anyone for whose acts any of them may be liable. In addition, any material, equipment or supplies provided to the County must comply with all safety requirements as set forth by the Wisconsin Administrative Code, Rules of the Industrial Commission on Safety and all applicable OSHA Standards. Effective May 1, 2007 employers performing work on qualified public works construction projects in Wisconsin for municipal government and state building projects will be required to have a written substance abuse testing program in place. The provisions of this requirement are contained in Wisconsin Statute § 103.503.

Section 3 – Subcontractor Clause

_____ (*Contractor/Vendor Name*) shall require each of their Subcontractor(s) to take out and maintain, during the life of their subcontract, the same insurance coverages as required under section 6, below, including without limitation naming the County, its Boards, Committees, Officers, Employees, Authorized Representatives and Volunteers as additional insureds with respect to all commercial general liability insurance policies. Each Subcontractor shall furnish to the _____ (*Contractor/Vendor Name*) two (2) copies of all certificates of insurance in a form acceptable to the County. _____ (*Contractor/Vendor Name*) shall furnish one copy of each of the certificates of insurance, and any other evidence of insurance requested by the County, to the County prior to the commencement of any work to be performed by _____ (*Contractor/Vendor Name*) or its Subcontractor(s). The County reserves the right to immediately terminate the contract with no liability or obligation to Contractor/Vendor or its Subcontractor(s), if the Subcontractor is not in compliance with these insurance requirements.

Section 4 – Proof of Insurance

Policies shall be issued by a company or companies authorized to do business in the State of Wisconsin and licensed by the Wisconsin Insurance Department and having an “AM Best” rating of A- or better. Acceptance of Contractor’s insurance by County shall not relieve or decrease the liability of the Contractor/Vendor hereunder. Any deductible or self-insured retention amount or other similar obligation under the policies shall be the sole responsibility of the Contractor/Vendor. Coverage afforded shall apply as primary and non-contributory, with the County, its Boards, Committees, Officers, Employees, Authorized Representatives and Volunteers named as **additionally insureds (with respects to any and all insurance policies identified in Section 6, as allowed by law).**

All liability insurance policies (*except professional liability*) to be maintained hereunder by _____ (*Contractor/Vendor Name*) shall be occurrence based and not claims made policies. The County shall be given thirty (30) days advance notice of cancellation or nonrenewal of any and all required insurance coverages during the term of this agreement. Prior to the execution of this agreement, _____ (*Contractor/Vendor name*) shall furnish the County with certificates of insurance (Acord Form 25-S or equivalent) signed by the insurer’s representative and, upon request, certified copies of the required insurance policies and any other insurance related information, evidencing the insurance coverage requirements referenced below. **Certificates of insurance shall be provided with RFP response or sealed bid, or mailed to the following address: Outagamie County Highway Department, Attention: Risk Administrator, 1313 Holland Road, Appleton, WI 54911.** The County reserves the right to immediately terminate the contract with no liability or obligation to Contractor/Vendor or any of its Subcontractor(s), if _____ (*Contractor/Vendor Name*) is not in compliance with these insurance requirements.

Section 5 – Applicable Law

Any lawsuit(s) related to or arising out of disputes under this agreement shall be commenced and tried in the Circuit Court of Outagamie County, Wisconsin and the County and _____ (*Contractor/Vendor Name*) shall submit exclusively and specifically to the jurisdiction of the Outagamie County Circuit Court for such lawsuits. This agreement will be governed and construed according to the laws of the State of Wisconsin.

Section 6 – Responsible Bidder Requirements

_____ (*Contractor/Vendor Name*) agrees to comply with the responsible bidder criteria found in Outagamie County Code of Ordinances Section 22-24, Article II, Division I (*attached for reference*).

Section 7 – Insurance Coverage Requirements

The insurance requirements herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract. **Outagamie County in no way warrants that the minimum limits contained herein are sufficient to protect the Contractor/Vendor from liabilities that might arise out of the performance of work under this contract by the Contractor, its agents, representatives, employees or subcontractors, and Contractor is free to purchase additional insurance.** _____ (*Contractor/Vendor Name*) agrees that in order to protect itself and the County, its Boards, Committees, Employees, Authorized Representatives and Volunteers under the indemnity provisions of Section 1, it will at all times during the term of the agreement provide and maintain at its own expense, the following minimum limits of insurance covering its operations:

Minimum Insurance Coverages and Limits

1) Worker's Compensation & Employer's Liability

- a) Applicable State – Statutory Limits as Required by the State of Wisconsin
- b) Applicable Federal (e.g. U.S. Longshoremen's and Harbor Worker's Act, Admiralty (Jones) Act, and Federal Employer's Liability Act) – Statutory Limit
- c) Employer's Liability - \$100,000 each occurrence / \$100,000 each person (disease) / \$500,000 total limit (disease)

Except as may be otherwise set forth herein, the County shall not be liable to _____ (*Contractor/Vendor Name*), its employees, or subcontractors, or anyone employed directly or indirectly by any of them or by anyone for whose acts any of them may be liable, for any injuries to any of them arising out of or in any way related to the performance of the work under this agreement. _____ (*Contractor/Vendor Name*) agrees that the indemnification and hold harmless provisions within this agreement extend to any claims brought by or on behalf of any such employees, subcontractors or anyone employed directly or indirectly by any of them or by anyone for whose acts any of them may be liable.

2) Automobile Liability – Owned, Non-Owned, Hired

- a) Bodily Injury and Property Damage Combined - \$1,000,000 for bodily injury and property damage per occurrence limit covering all vehicles to be used in connection with the performance of Contractor's/Vendor's obligations under this Agreement.
- b) Coverage for commercial automobile liability insurance shall be at least as broad as Insurance Services Office (ISO) Business Auto Coverage (Form CA 0001), covering Symbol 1 (any vehicle).

If Contractor/Vendor/Subcontractor or Contractor's/ Vendor's/Subcontractor's employees use personal vehicles to perform any services or work to be performed by Contractor/Vendor or Subcontractor under this Agreement, the Contractor/Vendor/Subcontractor must provide, to the County, a copy of the Certificate of Insurance (and any other documentation requested by the County) for Personal Automobile Liability coverage for each employee of Contractor/Vendor/Subcontractor who will be using their personal vehicle to perform such services or work as evidence of satisfactory compliance.

3) Comprehensive General Liability (Including Broad Liability Endorsement)

- a) Bodily Injury and Property Damage Combined - \$1,000,000, Each Occurrence
- b) Personal Injury - \$1,000,000
- c) X,C,U – \$1,000,000, Each Occurrence
- d) Coverage for commercial general liability insurance shall be at least as broad as Insurance Services Office (ISO) Commercial General Liability Coverage (Occurrence Form CG 0001)

4) Umbrella or Excess Liability

- a) \$1,000,000 following form excess of the primary General Liability, Automobile Liability and Employers Liability Coverages.

5) Completed Operations / Product Liability

- a) \$1,000,000 / Each Accident

Coverage shall be maintained for a period of two (2) years after the final payment to Contractor/Vendor.

Sec. 22-24. - Responsible bidder criteria.

- (a) *Purpose.* Pursuant to Wis. Stats. §§ 66.0901 and 59.52(29), all public works contracts, including any contract for the construction, repair, remodeling or improvement of any public work, building, or furnishing of supplies or material of any kind where the estimated cost of such work will exceed \$25,000.00, shall be let by contract to the lowest responsible bidder. What constitutes a "responsible bidder" is a determination that requires the exercise of discretion by the county and its departments, officials and/or employees under reasonably consistent responsible bidder criteria, and this section is intended to provide that criteria.
- (b) *Definitions.* In this section, the following definitions shall apply:
- (1) "*Contractor*" means a person, corporation, partnership or any other business entity that performs work on a public works contract as a general contractor, prime contractor or subcontractor at any tier.
 - (2) "*Registered apprenticeship program*" means an apprenticeship program that is currently registered with either a state or federal governmental entity and that has a graduated apprentices to journey person job classification system process as well as a bonafide training program.
 - (3) "*Public works contract*" includes any contract for the construction, repair, remodeling or improvement of any public work, building, or furnishing of supplies or material of any kind where the estimated cost of such work will exceed \$25,000.00.
- (c) *Responsible bidder criteria.* In order to be considered a responsible bidder by Outagamie County for purposes of being awarded a public works contract, the following criteria must be met:
- (1) The contractor must maintain a permanent place of business;
 - (2) The contractor must be authorized to do business in the State of Wisconsin;
 - (3) The contractor, agent, partner, employee and/or officer of the contractor, must not be debarred, suspended, or declared ineligible from contracting with any unit of federal, state or local government;
 - (4) The contractor must be in compliance with the provisions of Section 2000e of Chapter 21, Title 42 of the United States Code, and Federal Executive Order No. 11246, as amended by Executive Order No. 11375 (known as the equal opportunity employer provisions);
 - (5) The contractor must have adequate and appropriate:
 - a. General liability insurance;
 - b. Automobile insurance, except when a licensed motor vehicle is not used in the performance of the contract; and
 - c. Workers' compensation and unemployment insurance, except when the contractor does not have employees.

- (6) The contractor must have complied with all provisions of any prevailing wage laws and federal Davis-Bacon related Acts, and the rules and regulations therein, for projects undertaken by the contractor that are covered by these laws, for the past five years;
- (7) Regarding a public works contract estimated to be in excess of \$2,000,000.00, and if determined to be appropriate in the discretion of the Outagamie County Procurement Coordinator at the time a request for bids or request for quotes is issued, then in order to be considered a responsible bidder, the contractor must participate in a registered apprenticeship program;
- (8) The contractor must have a written substance abuse prevention program meeting the requirements of Wis. Stats. § 103.503;
- (9) The employees who will perform work on the project for the contractor must be properly classified as employees or independent contractors under all applicable laws;
- (10) If the contractor has been the subject of any order or judgment from any state or federal agency or court concerning an employment practice, the contractor must provide copies of the investigation, order or judgment for the county to consider as a factor in determining whether the contractor is a responsible bidder. The contractor may be disqualified for failing to provide said documentation;
- (11) The contractor's employees who will perform work on the project must be covered under a current workers' compensation policy and must be properly classified under such policy;
- (12) The contractor must be in compliance with all laws regarding health insurance coverage for employees;
- (13) The contractor must possess all applicable professional and trade licenses required for performing the public works;
- (14) The contractor must have adequate financial resources to complete the public works contract, and to complete all other work the bidder is presently under contract to complete;
- (15) The contractor must be bondable for the terms of the proposed public works contract;
- (16) If required in the discretion of the Outagamie County Procurement Coordinator at the time a request for bids or request for quotes regarding a contract of any amount is issued, then in order to be considered a responsible bidder, the contractor must have a record of satisfactorily completing a specific number of projects of similar size and complexity within the last specific number of years, with the required specific number of projects and years to be determined by the procurement coordinator prior to the request for bids or request for quotes being issued;
- (17) The contractor must have a history of satisfactorily completing projects. Criteria which will be considered in determining whether the contractor is a responsible bidder regarding satisfactorily completing projects may include, but are not limited to, whether the contractor

has an acceptable past history of:

- a. Completing contracts in accordance with drawings and specifications;
- b. Diligently performing work and completing contracts in accordance with established time schedules, including any granted extensions of time; and
- c. Fulfilling guarantee requirements of the contract documents.

(18) The contractor must have, and diligently maintain, a written safety program;

(19) The general or prime contractor bidding on a public works contract must include in its sealed bid an affidavit swearing compliance with the criteria set forth in subsection (c) on the form required by the county. The general or prime contractor awarded the public works contract must also provide to the county an affidavit swearing compliance with the criteria set forth in subsection (c) on the form required by the county from every subcontractor at any tier who will perform work on the project prior to that subcontractor commencing work on the project.

(d) *No restriction on discretion.* If information is discovered or comes into the possession of the county or a county department, official and/or employee responsible for awarding the public works contract, and if such information calls into question the contractor's abilities or competence to faithfully and responsibly comply with the terms of a public works contract and is considered to be both credible and verifiable, then that information shall be considered in determining whether the contractor is a responsible bidder.

(Ord. No. O-2023-24, 3-12-2024)

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