

ORDINANCE NO.: O—2023-24

TO THE HONORABLE, THE OUTAGAMIE COUNTY BOARD OF SUPERVISORS

LADIES AND GENTLEMEN:

MAJORITY

1 The Property, Airport, Recreation and Economic Development Committee is requesting to
2 amend the County Code of Ordinances as pertains to Chapter 22, Finance and Taxation, as
3 listed below.

4
5 NOW THEREFORE, the undersigned members of the Property, Airport, Recreation and
6 Economic Development Committee recommend adoption of the following ordinance.

7 BE IT ORDAINED, that the Outagamie County Board of Supervisors does amend Chapter 22,
8 Finance and Taxation; Article II, Purchases and Contracts of the Outagamie County Code of Ordinances
9 by creating Section 22-24 of Division 1. – Generally, to read as follows:

10 **Sec. 22-24. – Responsible Bidder Criteria.**

- 11 (a) Purpose. Pursuant to Wisconsin Statutes Sections 66.0901 and 59.52(29), all public works
12 contracts, including any contract for the construction, repair, remodeling or improvement
13 of any public work, building, or furnishing of supplies or material of any kind where the
14 estimated cost of such work will exceed \$25,000, shall be let by contract to the lowest
15 responsible bidder. What constitutes a “responsible bidder” is a determination that requires
16 the exercise of discretion by the county and its departments, officials and/or employees
17 under reasonably consistent responsible bidder criteria, and this Ordinance is intended to
18 provide that criteria.
- 19 (b) Definitions. In this section, the following definitions shall apply.
- 20 1. "Contractor" means a person, corporation, partnership or any other business entity that
21 performs work on a public works contract as a general contractor, prime contractor or
22 subcontractor at any tier.
- 23 2. "Registered Apprenticeship Program" means an apprenticeship program that is currently
24 registered with either a State or Federal governmental entity and that has a graduated
25 apprentices to journeyman job classification system process as well as a bonafide
26 training program.
- 27 3. "Public Works Contract" includes any contract for the construction, repair, remodeling
28 or improvement of any public work, building, or furnishing of supplies or material of
29 any kind where the estimated cost of such work will exceed \$25,000.
- 30 (c) Responsible Bidder Criteria. In order to be considered a responsible bidder by Outagamie
31 County for purposes of being awarded a public works contract, the following criteria must
32 be met:
- 33 1. The contractor must maintain a permanent place of business;
- 34 2. The contractor must be authorized to do business in the State of Wisconsin;
- 35 3. The contractor, agent, partner, employee and/or officer of the contractor, must not be
36 debarred, suspended, or declared ineligible from contracting with any unit of federal,
37 state or local government;

- 1 4. The contractor must be in compliance with the provisions of Section 2000e of Chapter
2 21, Title 42 of the United States Code, and Federal Executive Order No. 11246, as
3 amended by Executive Order No. 11375 (known as the Equal Opportunity Employer
4 provisions);
- 5 5. The contractor must have adequate and appropriate:
6 a) General liability insurance;
7 b) Automobile insurance, except when a licensed motor vehicle is not used in the
8 performance of the contract; and
9 c) Workers' compensation and unemployment insurance, except when the contractor
10 does not have employees.
- 11 6. The contractor must have complied with all provisions of any prevailing wage laws and
12 federal Davis-Bacon related Acts, and the rules and regulations therein, for projects
13 undertaken by the contractor that are covered by these laws, for the past five (5) years;
- 14 7. Regarding a Public Works Contract estimated to be in excess of two million dollars, and
15 if determined to be appropriate in the discretion of the Outagamie County Procurement
16 Coordinator at the time a Request for Bids or Request for Quotes is issued, then in order
17 to be considered a responsible bidder, the contractor must participate in a Registered
18 Apprenticeship Program;
- 19 8. The contractor must have a written substance abuse prevention program meeting the
20 requirements of Wisconsin Statutes Section 103.503;
- 21 9. The employees who will perform work on the project for the contractor must be properly
22 classified as employees or independent contractors under all applicable laws;
- 23 10. If the contractor has been the subject of any order or judgment from any state or federal
24 agency or court concerning an employment practice, the contractor must provide copies
25 of the investigation, order or judgment for the county to consider as a factor in
26 determining whether the contractor is a responsible bidder. The contractor may be
27 disqualified for failing to provide said documentation;
- 28 11. The contractor's employees who will perform work on the project must be covered
29 under a current workers' compensation policy and must be properly classified under
30 such policy;
- 31 12. The contractor must be in compliance with all laws regarding health insurance coverage
32 for employees;
- 33 13. The contractor must possess all applicable professional and trade licenses required for
34 performing the public works;
- 35 14. The contractor must have adequate financial resources to complete the public works
36 contract, and to complete all other work the bidder is presently under contract to
37 complete;
- 38 15. The contractor must be bondable for the terms of the proposed public works contract;
- 39 16. If required in the discretion of the Outagamie County Procurement Coordinator at the
40 time a Request for Bids or Request for Quotes regarding a contract of any amount is
41 issued, then in order to be considered a responsible bidder, the contractor must have a
42 record of satisfactorily completing a specific number of projects of similar size and
43 complexity within the last specific number of years, with the required specific number
44 of projects and years to be determined by the Procurement Coordinator prior to the
45 Request for Bids or Request for Quotes being issued;
- 46 17. The contractor must have a history of satisfactorily completing projects. Criteria which
47 will be considered in determining whether the contractor is a responsible bidder
48 regarding satisfactorily completing projects may include, but are not limited to,
49 whether the contractor has an acceptable past history of:

- 1 a) Completing contracts in accordance with drawings and specifications;
- 2 b) Diligently performing work and completing contracts in accordance with
- 3 established time schedules, including any granted extensions of time;
- 4 c) Fulfilling guarantee requirements of the contract documents; and
- 5 18. The contractor must have, and diligently maintain, a written safety program.
- 6 19. The general or prime contractor bidding on a public works contract must include in its
- 7 sealed bid an affidavit swearing compliance with the criteria set forth in subsection (c)
- 8 on the form required by the county. The general or prime contractor awarded the
- 9 public works contract must also provide to the county an affidavit swearing
- 10 compliance with the criteria set forth in subsection (c) on the form required by the
- 11 county from every subcontractor at any tier who will perform work on the project prior
- 12 to that subcontractor commencing work on the project.
- 13 (d) No Restriction on Discretion. If information is discovered or comes into the possession of
- 14 the county or a county department, official and/or employee responsible for awarding the
- 15 public works contract, and if such information calls into question the contractor's abilities
- 16 or competence to faithfully and responsibly comply with the terms of a public works
- 17 contract and is considered to be both credible and verifiable, then that information shall be
- 18 considered in determining whether the contractor is a responsible bidder.
- 19

20 BE IT FURTHER ORDAINED, that this ordinance shall be in effect upon completion of
21 publication in accordance with Wisconsin State Statutes, and

22 BE IT FINALLY ORDAINED, that the Outagamie County Clerk be directed to forward a copy of
23 this ordinance to the Outagamie County Corporation Counsel and Municipal Code Corporation for
24 inclusion in the Outagamie County Code of Ordinances.

25 Dated this ____ day of March 2024

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Respectfully submitted,

PROPERTY, AIRPORT, RECREATION &
ECONOMIC DEVELOPMENT COMMITTEE

Dean Culbertson

Lee W. Hammen

Ronald Klemp

Yvonne Monfils

Jayson Winterfeldt

Duly and officially adopted by the County Board on: _____

Signed: _____
Board Chairperson

County Clerk

Approved: _____

Vetoed: _____

Signed: _____
County Executive

- CODE OF ORDINANCES
Chapter 22 FINANCE AND TAXATION

Chapter 22 FINANCE AND TAXATION¹

ARTICLE I. IN GENERAL

Sec. 22-1. Leasing or permitting use of county facilities.

Use of county property or facilities on a rental or no charge basis for special events or promotional events shall be permitted.

(Code 1992, § 3.16)

Sec. 22-2. Underpayments and overpayments.

- (a) The county may retain overpayments made to departments, which do not exceed \$2.00, unless a request for a refund for the overpayment is made to the department in writing within 30 business days, in accordance with Wis. Stats. § 59.54(24)(b).
- (b) The county may waive underpayments made to a county department, which does not exceed \$2.00 if the department determines that the cost of collecting the underpayment would exceed the amount of the underpayment in accordance with Wis. Stats. 59.54(24)(b).
- (c) Any person who issues a worthless payment to any county department or agency may be charged a \$20.00 fee or the amount of any bank service fee.

(Ord. No. E-2005-2006, § 3.50, 5-24-2005)

Sec. 22-3. Penalty.

- (a) Except as otherwise provided, any person who shall violate any provision of this chapter or any rule, regulation or order made hereunder shall be subject to a penalty as provided by section 1-10.
- (b) In addition to a penalty, violation of any of the provisions of this chapter by a county employee or supervisor may be considered as a basis for disciplinary action or other appropriate measures. Violations by a supplier may be considered as a basis for temporary or permanent suspension of their right to solicit county business.
- (c) Failure to comply with the provisions of section 22-41 shall result in bidder's submission being declared null and void.

(Code 1992, § 3.25; Ord. No. D-2021-22 , 9-28-2021)

¹State law reference(s)—Financial matters, Wis. Stats. § 59.60 et seq.; finance and revenue, Wis. Stats. § 66.0601 et seq.; property taxes, Wis. Stats. § 70.01 et seq.; tax appeals, ed dd 73.01 et seq.; property tax collection, Wis. Stats. § 74.01 et seq.; tax sales, Wis. Stats. § 75.001 et seq.; sales and use tax, Wis. Stats. § 77.51 et seq.; revenue sharing, Wis. Stats. § 79.005 et seq.

Secs. 22-4—22-24. Reserved.

ARTICLE II. PURCHASES AND CONTRACTS²

DIVISION 1. GENERALLY

Sec. 22-24. – Responsible Bidder Criteria.

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 - 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 journeyperson 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.
- (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.

²State law reference(s)—Public works contracts, Wis. Stats. § 66.0901.

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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 (5) years;
7. Regarding a Public Works Contract estimated to be in excess of two million dollars, 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 Wisconsin Statutes Section 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;
 - c) Fulfilling guarantee requirements of the contract documents; and
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

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DIVISION 1. GENERALLY

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.

Sec. 22-25. Purchasing function.

The purchasing function will acquire on a competitive basis all goods and services at the best value and will operate in the most efficient manner to maximize the effectiveness of services provided by the county.

(Code 1992, § 3.01; Ord. No. F-1995-1996, 6-13-1995)

Sec. 22-26. Statutory authority.

This chapter is created and adopted pursuant to authority granted by Wis. Stats. § 59.51.

(Code 1992, § 3.02)

Sec. 22-27. Administration.

The provisions of this chapter and regulations adopted hereunder shall be administered by the county executive as a function of the finance department under the supervision of the procurement coordinator.

(Code 1992, § 3.03; Ord. No. F-1995-1996, 6-13-1995; Ord. No. D-2021-22, 9-28-2021)

State law reference(s)—Purchasing agent, Wis. Stats. § 59.52(9); finances and budget provisions, Wis. Stats. § 59.60.

Sec. 22-28. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Agent means the office of the county executive or their authorized appointee.

Board means the County Board of Supervisors.

Contractual services includes, but may not be limited to, all telephone, gas, water, electric light, power and heating services; towel and cleaning services; leases for all grounds, buildings, equipment, office or other space required by the using department; and the rental, repair or maintenance of equipment, machinery or other personal property owned by the county.

Department means all agencies, departments or offices of the county, when applicable unless otherwise provided by statute, those committees, boards or commissions which manage or operate other county properties, installations or activities.

Regulations means those administrative rules adopted to implement the provision of this chapter, applicable to departments, institutions, officers and employees of the county.

(Code 1992, § 3.04; Ord. No. D-2021-22 , 9-28-2021)

Sec. 22-29. Purchasing agent.

The agent shall adopt, promulgate and from time to time amend rules and regulations to ensure the proper and efficient administration of county purchasing. The purchasing agent will also be referred to as procurement coordinator.

(Code 1992, § 3.05; Ord. No. F-1995-1996, 6-13-1995; Ord. No. D-2021-22 , 9-28-2021)

State law reference(s)—Purchasing agent, Wis. Stats. § 59.52(9).

Sec. 22-30. Competitive bids, proposals or quotations.

All purchases and/or contracts for all procurement excluding professional services and public works shall be based on competitive bids or proposals wherever practicable.

- (1) Purchases up to \$10,000 may be purchased from a vendor of choice. The purchasing agent may delegate purchasing authority to the departments as determined appropriate, but the purchasing agent shall coordinate the purchase of like items where such purchase is beneficial and practical to the county.
- (2) Purchases \$10,000.00 to \$25,000.00 require three documented proposals/quotes direct from the vendor and/or vendor website. This documentation shall be retained by the department. The purchasing agent may delegate purchasing authority to the departments as determined appropriate, but the purchasing agent shall coordinate the purchase of like items where such purchase is beneficial and practical to the county.
- (3) Purchases of more than \$25,000.00 must be formally solicited through a Request for Bid or Proposal, unless determined by the purchasing agent, due to time constraints, quotes would be sufficient. The purchasing agent shall coordinate the purchase of like items where such purchase is beneficial and practical to the county.
- (4) Sole source. Purchases of goods and materials may be made without competition when the purchasing agent and corporation counsel determines there is a valid reason to purchase from one source or that only one source is available. The reason for invoking this provision shall be documented in writing, retained by the purchasing agent and reported to the County Board.
- (5) Purchases with non-county funding sources. Any purchases made using federal, state and/or other funding sources may be more stringent and vice versa. Departments and/or purchasing agent shall comply with the most stringent regulations or procedures.

(Code 1992, § 3.06(1); Ord. No. F-1995-1996, 6-13-1995; Ord. No. D-2021-22 , 9-28-2021)

Sec. 22-31. Lowest responsible bidder / proposer and best value concepts.

- (a) All open market orders of contracts made by the agent shall be awarded to the lowest responsible proposer taking into consideration the qualities of the articles to be supplied, the conformity with the specifications, product compatibility, maintenance costs, vendor support after the purchase and the delivery terms.
- (b) If two or more low qualified bids or proposals are for the same total amount or unit price, quality and service being equal, the contract shall be awarded to a local proposer. Where this is not practicable, the purchasing agent shall award the contract to one of the proposers by drawing lots in public.
- (c) The purchasing agent shall have the authority to require a performance bond or other similar instrument before entering a contract in such amount as they shall find reasonably necessary to protect the best interest of the county.
- (d) All contracts shall be approved as to form and sufficiency by the corporation counsel.

(Code 1992, § 3.06(2); Ord. No. F-1995-1996, 6-13-1995; Ord. No. D-2021-22 , 9-28-2021)

Sec. 22-32. Serial contracting.

No contract or purchase shall be subdivided to avoid the requirements of this article. Serial contracting is the practice of issuing a series of purchasing orders to the same vendor for the same commodity or service in any 90-day period to avoid purchasing procedures.

(Code 1992, § 3.06(3); Ord. No. F-1995-1996, 6-13-1995)

Sec. 22-33. Challenges and appeals.

Challenges to purchasing procedure and awards may be made by proposers or the administrator of a using department as follows:

- (1) All objections to form and content of proposals/quotation solicitation and specifications shall be received by the purchasing agent not less than 96 hours prior to the time scheduled for bid opening. Objections shall be in writing with the specific objection stated.
- (2) After proposal opening, written objections shall be submitted to the agent within 48 hours.
- (3) The agent shall evaluate objections and notify the objector of the decision in writing and no award of contract or purchase order shall be made until the expiration of 72 hours after the objector has been notified of the decision. The decision of the agent shall be final and binding on all parties.
- (4) Computation of all time limits shall exclude Saturdays, Sundays and Federal holidays.

(Code 1992, § 3.06(4); Ord. No. F-1995-1996, 6-13-1995; Ord. No. D-2021-22 , 9-28-2021)

Sec. 22-34. Emergency purchases.

The county executive or designee may authorize any county department to purchase in the open market, without filing a requisition or estimate, any supplies, materials or equipment for immediate delivery to meet actual emergencies arising from unforeseen causes. The reason for invoking this provision shall be documented in writing, retained by the county executive or designee and reported to the County Board. Any emergency purchases made using federal, state and/or other funding sources may have different guidelines and the most restrictive would be followed.

(Code 1992, § 3.07; Ord. No. F-1995-1996, 6-13-1995; Ord. No. D-2021-22 , 9-28-2021)

Sec. 22-35. Unlawful purchases.

Whenever any county department, committee, commission, board, officer or employee shall purchase or contract without proper authority for any supplies, materials, equipment or contractual services contrary to the provisions of this chapter or rules and regulations made thereunder, such order or contracts shall be void and of no effect.

(Code 1992, § 3.08)

Sec. 22-36. Cooperative purchasing.

The agent shall have authority to join with other units of government, with quasi-governmental agencies funded in whole or in part by the county, and with other purchasing associations in cooperative purchasing plans when the best interest of the county would be served.

(Code 1992, § 3.09; Ord. No. F-1995-1996, 6-13-1995; Ord. No. D-2021-22 , 9-28-2021)

Sec. 22-37. Purchasing from governmental units.

Materials, supplies, machinery and equipment offered for sale by the federal or state government or by any municipality may be purchased without proposals at prices to be agreed upon between the purchasing agent and the respective department for whom the item is to be acquired. Expert assistance for appraisal of such items may be employed at the discretion of the agent.

(Code 1992, § 3.10)

Sec. 22-38. Highway purchases.

The highway commissioner shall be authorized to make purchases in accordance with state statutes and without reference to this chapter for those items of equipment and supplies used for highway construction, maintenance or repair, including machinery, road materials or similar equipment or supplies. Purchases for items of equipment or supplies not directly related to highway construction shall be through the agent and the highway commissioner may at their discretion utilize the services of the agent for any supplies or equipment which are required by the highway department.

(Code 1992, § 3.11; Ord. No. D-2021-22 , 9-28-2021)

Sec. 22-39. Appropriations.

All purchases by contract or otherwise as herein authorized shall be made in accordance with such appropriations as have been made by the County Board for the operation of the respective county departments and the responsibility for not exceeding existing appropriations rests with the department head making the requisitions, not with the agent.

(Code 1992, § 3.12)

Sec. 22-40. December purchases prohibited.

With the exception of repair parts, foods and expendable maintenance supplies, fuel, gas and oil for vehicles and equipment, pharmaceuticals and other miscellaneous expendable or operating supplies under \$1,000.00, there shall be no purchasing during the month of December in any year, except if approved by the county executive. Purchases made under requisitions approved prior to the month of December in any year are exempt from the provisions of this section.

(Code 1992, § 3.13; Ord. No. F-1995-1996, 6-13-1995; Ord. No. D-2021-22 , 9-28-2021)

Secs. 22-41—22-51. Reserved.

Ord. No. D-2021-22 , adopted September 28, 2021, repealed § 22-41, which pertained to proposer qualification statement and derived from Code 1992, § 3.15; Ord. No. F-1995-1996, 6-13-1995.