

General Provisions

State law requires a contract for any public improvement or public work in excess of \$10,000 to include provisions requiring the prime contractor to give payment and performance assurances for the performance of the contract and the payment for the labor performed and materials furnished under the contract. The level of payment and performance assurance required is dependent upon the price of the contract.

1. For a contract exceeding \$10,000 but not exceeding \$50,000, the contract shall:
 - a. Allow the district to make direct payments to subcontractors or pay the prime contractor with checks that are made payable to the prime contractor and one or more subcontractors.
 - b. Require a performance and payment bond unless waived as outlined by the standards for waiving bonds or accepting alternative forms of assurance.
2. For a contract exceeding \$50,000 but not exceeding \$100,000, the contract shall:
 - a. Allow the district to make direct payments to subcontractors or pay the prime contractor with checks that are made payable to the prime contractor and one or more subcontractors.
 - b. Require a performance and payment bond, an irrevocable letter of credit, or an escrow account, if the contractor meets the standards for waiving bonds or accepting alternative forms of assurance listed below. In any instance, an alternative form of assurance must be equal to the contract price.

Standards for Waiving Bonds or Accepting Alternative Forms of Assurance

The district may find that waiving the requirement for a bond or accepting an alternative form of assurance may in some circumstances be in the best economic interest of the district. The following standards shall be utilized to authorize, but not require, the waiver of a bond or the acceptance of an alternative form of assurance for the performance of the contract and the payment for labor performed and materials furnished under a contract for public improvement or public works.

1. The prime contractor has bonding capacity at least three times the amount of the proposed contract.
2. The prime contractor has at least five (5) years experience as a prime contractor in the construction industry.

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3. No meritorious claims for nonpayment for labor performed or materials furnished have been asserted or liens filed against the prime contractor within the prior three years with respect to any contract.
4. No meritorious claim has been alleged against any performance bond or payment bond furnished by the prime contractor in the last three years with respect to any contract.
5. The prime contractor is not a party to any litigation or administrative proceeding, nor so far as is known by the prime contractor is any litigation or administrative proceeding threatened which would, if adversely determined, cause any material adverse change in its assets, financial condition or the conduct of its business.
6. The prime contractor is not a party to or is bound by any agreement, instrument or undertaking, or subject to any other restriction (a) which would materially adversely affect or may in the future so affect the assets, financial condition or business operations of the prime contractor, or (b) under or pursuant to which the prime contractor is or will be required to place (or under which any other person may place) a lien upon any of its securing indebtedness either upon demand or upon the happening of a condition, with or without such demand.
7. The prime contractor is presently and has been authorized to do business in the State of Wisconsin for at least three (3) years and is in good standing under the laws of the State of Wisconsin, and has complied with all certifications, filings and requirements necessary to continue doing construction work with the district. The prime contractor has the valid power and authority to enter into a contract to perform construction work with the district.
8. The prime contractor is financially able to meet the terms of the contract, as verified by the current financial statement of the contractor submitted to the district and evidence of available credit from a lender acceptable to the district, if applicable.
9. The prime contractor shall maintain either (a) equity in the contractor business or (b) a commitment for credit in an amount equal to the amount of the contract during the term of the contract and one year following substantial completion of the contract unless otherwise released from its obligation hereunder by the district.
10. The prime contractor obtains lien waivers from any and all subcontractors on the project and provides copies of said lien waivers to the district prior to final payment of contract price.

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11. The prime contractor provides the district with a list of all subcontractors. If a waiver or alternative form of assurance is accepted, the district will notify each of the subcontractors named of the waiver and the anticipated date of final payment to the prime contractor.

The district may, but shall not be obligated to, consider other factors, in addition to the representations and warranties listed above, with regard to whether the bonding requirements should be waived or alternative forms of assurance should be substituted including, but not limited to:

1. The increased costs of requiring a bond issued by a licensed surety company in comparison to the contract price.
2. Any other factors that will allow the district to evaluate whether a bond or alternative form of assurance is required from a prime contractor; such as one that the district has had a long standing relationship.

Legal References:

Cross References:

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