

## **672-Rule (1) STANDARDS FOR PERFORMANCE AND PAYMENT ASSURANCES**

### **Introduction**

Section 779.14(1m)(d), Wis. Stats., sets forth certain requirements relating to contracts with the Wisconsin Rapids Public School District (District) for the performance of labor or the furnishing of materials for a public improvement or public work. These requirements are intended to provide reasonable assurance to subcontractors of a prime contractor, that the subcontractors will be paid for their labor and materials provided in connection with the project. The level and type of such assurance is dependent on the contract price with the prime contractor.

### **Assurances**

For a contract having a contract price of less than \$10,000, the prime contractor need not provide any bond, surety or other mechanism providing for prompt payment of claims for labor or materials, unless the District determines otherwise.

For a contract having a contract price in excess of \$10,000 but not exceeding \$50,000, the contract with the prime contractor shall:

Allow the District to make direct payments to subcontractors or to pay the prime contractor with checks that are payable to the prime contractor and to one or more subcontractors; and  
Require the prime contractor to deposit with the District a payment and performance bond assuring payment and performance, unless the bond is waived by application of the standards set forth in the subsection "Standards for Waiving Payment of Performance Bonds and Accepting Alternative Forms of Assurance" below.

For a contract having a contract price exceeding \$50,000 but not exceeding \$100,000, the contract with the prime contractor shall:

Allow the District to make direct payments to subcontractors or to pay the prime contractor with checks that are made payable to the prime contractor and to one or more subcontractors; and  
Require the prime contractor to deposit with the District a payment and performance bond . The District may allow the prime contractor to submit to a different form of assurance, such as an irrevocable letter of credit, a bond or an escrow account. In such instance, the alternative form of assurance must be for an amount at least equal to the contract price and satisfy the standards for waiving bonds or accepting alternative forms of assurance as set forth in subsection "Standards for Waiving Payment of Performance Bonds and Accepting Alternative Forms of Assurance" below.

The foregoing dollar limitations on contract thresholds shall be indexed under Sec 779.41(1s), Wis .Stats., to correspond with adjustments promulgated from time to time by the Wisconsin Department of Workforce Development. Further, the foregoing requirements do not apply to a contract for the direct purchase of materials by the District.

## **Standards for Waiving Payment of Performance Bonds and Accepting Alternative Forms of Assurance**

In circumstances identified in “Assurances” above, the District may waive the requirement for a payment and performance bond and/or may accept an alternative form of assurance because such action is in the best economic interest of the District. In making these determinations, the following matters will be considered, to-wit:

The prime contractor has bonding capacity at least three times the amount of the proposed contract.

The prime contractor has at least five (5) years experience as a prime contractor in the construction industry.

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.

The prime contractor is not a party to any litigation or administrative proceedings, nor so far as is known to the prime contractor, is any litigation or administrative proceeding threatened, which would, if adversely determined, cause any material adverse change in its assets or financial condition of the conduct of its business.

The prime contractor is not a party to or is bound by any agreement, instrument or undertaking, or subject to any other restriction which would materially adversely affect or may in the future so affect the assets, financial condition or business operations of the prime contractor.

The prime contractor is presently and has been authorized to do business in the State of Wisconsin for at least three (3) years prior to the date of the bid; and if the prime contractor is a corporation or similar entity, 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 with the District.

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 has evidence of available credit limits from a lender acceptable to the District.

The prime contractor shall maintain either (a) equity in the contractor’s business; or (b) a commitment for credit in an amount equal to the amount of the contract during the term of the contract and for the one year following substantial completion of the contract, unless otherwise released by the District.

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 the final payment of the contract price or as progress payments are made.

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 those listed above, with regard to whether the bonding requirements should be waived or alternative forms of assurance should be substituted. Examples of such other factors are:

The cost of obtaining a bond when compared to the contract price; or  
Any other factors that will allow the District to evaluate whether a bond or alternative form of assurance is appropriate under the particular/actual circumstances.

**In determining whether or not to grant a waiver or to accept alternative forms of assurance, the District will consider the foregoing matters AND NOTHING CONTAINED HEREIN SHALL BE DEEMED AS OBLIGATING THE DISTRICT TO GRANT SUCH WAIVER OR ACCEPT THE ALTERNATIVE FORM. Such decisions are in the sole discretion of the District.**

LEGAL REF:           Section 779.14, Wis. Stats.

APPROVED:           November 11, 1974

REVISED:            January 14, 2002