

**TOWN OF MINONG
ESTABLISHING A CODE OF ETHICS
ORDINANCE 2024-35**

The Town of Minong hereby ordains as follows:

I. Scope of Policy

- a. Purpose of Ordinance. This Conflict of Interest Ordinance establishes ethical standards for Town of Minong officials, and also governs ethical standards relating to Town contracts that must comply with federal law.
- b. If a federal statute, regulation, or the terms of a financial assistance agreement applicable to a particular form of Federal Financial Assistance conflicts with any provision of this ordinance, such federal statute, regulation, or terms of the financial assistance agreement shall govern.

II. Conflicts of Interest

a. Conflicts of Interest Generally.

- i. Definitions. Except as otherwise specified, the terms used in this section shall have the same meaning as those defined by Wis. Stat. § 19.42.
- ii. No public official shall do any of the following:
 1. Use his or her public position or office to obtain financial gain or anything of substantial value for the private benefit of himself or herself or his or her immediate family, or for an organization with which he or she is associated. This paragraph does not prohibit a local public official from using the title or prestige of his or her office to obtain campaign contributions that are permitted and reported as required by chapter 11 of the Wisconsin Statutes.
 2. Solicit or accept from any person, directly or indirectly, anything of value if it could reasonably be expected to

influence the person's vote, official actions or judgment, or could reasonably be considered as a reward for any official action or inaction. This paragraph does not prohibit a local public official from engaging in outside employment.

3. Directly or by means of an agent, give, or offer or promise to give, or withhold, or offer or promise to withhold, his or her vote or influence, or promise to take or refrain from taking official action with respect to any proposed or pending matter in consideration of, or upon condition that, any other person make or refrain from making a political contribution, or provide or refrain from providing any service or other thing of value, to or for the benefit of a candidate, a political party, any committee registered under chapter 11 of the Wisconsin Statutes, or any person making a communication that contains a reference to a clearly identified local public official holding an elective office or to a candidate for local public office.
 4. Take any official action substantially affecting a matter in which the public official or a member of his or her immediate family or an organization with which the person is associated has a substantial financial interest.
 5. Use his or her office or position in a way that produces or assists in the production of a substantial benefit, direct or indirect, for the person, one or more members of the person's immediate family either separately or together, or an organization with which the person is associated.
- b. Conflicts of Interest when Federal Law Applies. In contracts that require the Town to comply with federal procurement requirements, the following restrictions apply.

i. Definitions. For purposes of this subsection, the following definitions shall apply.

1. “*Direct Benefit*” means, with respect to a Public Official or employee of the Town, or the spouse of any such Public Official or employee, (i) having a ten percent (10%) ownership interest or other interest in a Contract or Subaward; (ii) deriving any income or commission directly from a Contract or Subaward; or (iii) acquiring property under a Contract or Subaward.
2. “*Federal Financial Assistance*” means Federal financial assistance that the Town receives or administers in the form of grants, cooperative agreements, non-cash contributions or donations of property (including donated surplus property), direct appropriations, food commodities, and other Federal financial assistance (except that the term does not include loans, loan guarantees, interest subsidies, or insurance).
3. “*Immediate Family Member*” means: (i) a spouse; (ii) a child or spouse of a child; (iii) a parent or spouse of a parent; (iv) a sibling or spouse of a sibling; (v) a grandparent or grandchild, or their spouse; (vi) domestic partners or their parents, including domestic partners of any individual in (ii) through (v) of this definition; and (vii) any individual related by blood or affinity whose close association with the person is the equivalent of a family relationship.
4. “*Involved in Making or Administering*” means (i) with respect to a Public Official or employee, (a) overseeing the performance of a Contract or Subaward or having authority to make decisions regarding a Contract or Subaward or to interpret a Contract or Subaward, or (b) participating in the

development of specifications or terms or in the preparation or award of a Contract or Subaward, (ii) only with respect to a Public Official, being a member of a board, commission, or other body of which the Public Official is a member that is taking action on the Contract or Subaward, whether or not the Public Official actually participates in that action.

5. *“Pass-Through Entity”* means a non-Federal entity that provides a Subaward to a Subrecipient to carry out part of a Federal program.
6. *“Public Official”* means an individual who is elected or appointed to serve or represent the Town (including, without limitation, any member of the Town Board), other than an employee or independent contractor of the Town.
7. *“Recipient”* means an entity, usually but not limited to a non-Federal entity, that receives a Federal award directly from a Federal awarding agency. The term does not include Subrecipients or individuals that are beneficiaries of the award.
8. *“Related Party”* means (i) an Immediate Family Member of a Public Official or employee, (ii) a partner of a Public official or employee, or (iii) a current or potential employer (other than the Town) of a Public official or employee, of a partner of a Public Official or employee, or of an Immediate Family Member of a Public Official or employee.
9. *“Subaward”* means an award provided by a Pass-Through Entity to carry out part of a Federal award received by the Pass-Through Entity. It does not include payments to a contractor or payments to an individual that is a beneficiary of a Federal program.

10. “*Subcontract*” means mean any agreement entered into by a Subcontractor to furnish supplies or services for the performance of a Contract or a Subcontract. It includes, but is not limited to, purchase orders and changes and modifications to purchase orders.

11. “*Subcontractor*” means an entity that receives a Subcontract.

12. “*Subrecipient*” means an entity, usually but not limited to a non-Federal entity, that receives a subaward from a Pass-Through Entity to carry out part of a Federal award, but does not include an individual that is a beneficiary of such award. A subrecipient may also be a recipient of other Federal awards directly from a Federal awarding agency.

ii. Prohibited Conflicts of Interest in Federal Contracts. Without limiting any specific prohibition set forth in Section II(a), elected officials, appointed officials, or employees shall not participate in the selection, award, or administration of a contract if the person has a real or apparent conflict of interest.

1. Real Conflict of Interest. A real conflict of interest shall exist when the Public Official or employee or any Related Party has a financial or other interest in or a tangible personal benefit from a firm considered for a Contract or Subaward.

2. Apparent Conflict of Interest. An apparent conflict of interest exists where a real conflict of interest may not exist, but where a reasonable person with knowledge of the relevant facts would find that an existing situation or relationship creates the appearance that an elected official, appointed official, or employee, or any Related Party has a financial or other interest in or a tangible personal benefit from a firm considered for a Contract or Subaward.

3. Gift Standards. No elected official, appointed official, or employee shall solicit or accept gratuities, favors, or anything of monetary value from a Contractor or a Subcontractor.

III. Violations of Policy

- a. Disciplinary Actions for Public Official or Employees. Any elected official, appointed official, or employee that fails to disclose a real, apparent, or potential real or apparent conflict of interest arising with respect to the person or the person's Related Party may be subject to disciplinary action, including, but not limited to, an employee's termination or suspension of employment with or without pay, the consideration or adoption of a resolution of censure, prosecution under this Ordinance, or termination of the contract with the Town.
- b. Penalties. Any violation of this Ordinance shall be punishable by a forfeiture not to exceed \$500.
- c. Disciplinary Actions for Contractors and Subcontractors. The Town shall terminate any Contract with a Contractor or Subcontractor that violates any provision of this Ordinance.
- d. Protections for Whistleblowers. In accordance with 41 U.S.C. § 4712, the Town shall not discharge, demote, or otherwise discriminate against an employee in reprisal for disclosing information to a member of Congress or a representative of a committee of Congress; an Inspector General; the Government Accountability Office; a Treasury or other federal agency employee responsible for grant oversight or management; an authorized official of the Department of Justice or other law enforcement agency; a court or grand jury; a management official or other employee of the Town; or a Contractor or Subcontractor who has the responsibility to investigate, discover, or address misconduct that the employee reasonably believes is evidence of gross mismanagement of a federal contract or grant; a gross waste of federal funds; an abuse of authority relating to a federal contract or

grant; a substantial and specific danger to public health or safety; or a violation of law, rule, or regulation related to a federal contract (including the competition for or negotiation of a contract) or grant.

The Town of Minong hereby adopts this policy (“Policy”) governing selection of contractors for Town projects involving the construction, execution, repair, remodeling or improvement of any public work or building or for the furnishing of materials or supplies (“Public Contract”).

1. Adoption of State Standards. Except as otherwise provided by this Policy, the Town shall abide by Wis. Stat. § 60.47 and any other applicable Wisconsin statutes prior to entering into a Public Contract.
2. Procurement Standards Mandated by Federal Law. In addition to complying with the requirements of Section 1, the Town shall use the following standards for contracts for the construction, execution, repair, remodeling or improvement of a public work or building; the furnishing of supplies, materials, or equipment; or services that require adherence to federal procurement laws. If any federal provision conflicts with state law, the federal requirement shall apply for projects that require adherence to federal law. Where state law is more restrictive than federal law, state law shall apply.
 - a. The following requirements apply to projects where the total costs exceed the federal simplified acquisition threshold, as defined by 48 CFR § 2.101, which, as of 2022, is \$250,000:
 - i. The Town shall only select contractors through a full and open competition. All contracts shall be awarded to lowest responsible bidder.
 - ii. The Town shall select a contractor based on sealed bids, unless either of the following apply:
 1. The Town Board determines that it may seek proposals for a fixed price or cost-reimbursement contract, and it is not appropriate to use sealed bids. Contracts awarded using proposals must adhere to the following requirements:
 - a. The requests for proposals must be publicized and identify all evaluation factors along with their relative importance.

- b. Proposals must be solicited from an adequate number of qualified offerors.
 - c. The Town must prepare a written method for conducting technical evaluations of the proposals received and making selections.
 - d. The contract must be awarded to the responsible offeror whose proposal is the most advantageous to the Town.
 - e. The Town may use competitive proposal procedures for architectural or engineering services where the qualifications are evaluated and the most qualified entity is selected, subject to negotiation of fair and reasonable compensation. Price is not required to be a selection factor for architectural or engineering services. The Town cannot use this method to purchase other types of services through architectural or engineering firms that are a potential source to perform the proposed project.
2. The Town may use a noncompetitive procurement if one of the following apply:
- a. The contract is for acquisition of property or services, and the aggregate dollar amount does not exceed the self-certified micro-purchase threshold as established below
 - b. The item is only available from a single source.
 - c. There is a public emergency where the Town cannot delay in awarding the contract.
 - d. The federal agency awarding the grant or funds expressly authorized a noncompetitive procurement.

- e. After solicitation of a number of sources, competition is determined inadequate.
- iii. The project shall be publicly advertised and provide bidders sufficient time to respond. For advertising purposes, the Town shall, at a minimum, comply with the requirements of Wis. Stat. § 60.47.
- iv. The Town will develop a clear and accurate description of the technical requirements for the material, product, or service to be procured that does not unduly restrict competition. The specifications will identify all requirements that contractors must fulfill.
- v. Contractors that assist in developing specifications for the project to be bid cannot submit bids.
- vi. Bids shall be opened publicly at the time and place specified by the bid invitation.
- vii. The Town shall only award contracts to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. In determining if a contractor is responsible, the Town can consider factors such as:
 - 1. The integrity of the contractor.
 - 2. The contractor's past performance of contracts or projects.
 - 3. The financial and technical resources of the contractor.
- viii. Any or all bids may be rejected if there is a sound documented reason.
- ix. The Town shall maintain records, pursuant to its records retention policy, of its procurement history involving the use of federal funds. These records will include:
 - 1. The Town's rationale for the procurement method used.
 - 2. How the Town selected the contract and contractor.
 - 3. Records indicating the basis for a contract price.

- x. The Town shall avoid acquisition of unnecessary or duplicative items.
- xi. The following bonding requirements shall apply to construction or facility improvement contracts:
 - 1. Each bidder must submit a bid guarantee equal to five percent of the total bid price.
 - 2. The selected contractor must submit a performance bond for 100 percent of the contract price
 - 3. The selected contractor must submit a payment bond for 100 percent of the contract price.
- xii. The Town shall perform a cost or price analysis in connection with every procurement. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but shall include making independent estimates before receiving bids or proposals.
- xiii. The Town's strong preference shall be to select contractors that do not use estimated costs in their bids. However, the Town may accept time and materials type contracts (defined a contract whose cost to the Town is the total of the actual cost of materials and the direct labor hours charged at fixed hourly rates) only if it determines that no other contract is suitable and the contract includes a ceiling price that the contractor exceeds at its own risk.
- b. The Town shall competitively bid projects in conformance with Section 1 of this Policy for projects involving the use of federal funds where the total project costs are greater than the town's self-certified micro-purchase threshold, but less than the federal simplified acquisition threshold.
- c. In accordance with 2 CFR § 200.320(a)(1)(iv)(C), the Town self-certifies that its micro-purchase threshold shall be \$25,000. The self-certification is

based on Wis. Stat. § 60.47, which only requires towns to competitively bid public works contracts in excess of \$25,000.

d. The following requirements apply to projects involving the use of federal funds where the total project costs do not exceed the Town's self-certified micro-purchase threshold, which, as of 2022, is \$25,000.

i. The Town shall follow Section 1 of this Policy.

ii. If no bid is required, the Town may enter into a contract if, based on research, experience, purchase history or other information, the price is reasonable.

iii. The Town shall review its self-certified micro-purchase threshold annually after the effective date of this Policy. If Wisconsin's bidding laws have not changed and the Town has not taken any formal action to revise its self-certified micro-purchase threshold, the Town will have been deemed to have self-certified the micro-purchase threshold used from the previous year.

e. The Town shall take the following steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible:

i. Placing qualified small and minority businesses and women's business enterprises on any solicitation lists;

ii. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;

iii. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;

iv. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;

- v. Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
 - vi. Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (i) through (v) of this subsection.
- f. When required by federal law, the Town should, to the greatest extent practicable provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States.
- g. The Town shall comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; and procuring solid waste management services in a manner that maximizes energy and resource recovery.
- h. The Town shall negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration must be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of the contractor's record of past performance, and industry profit rates in the surrounding geographical area for similar work.

- i. Every contract executed by the Town shall include all provisions required by 2 CFR § 200.327 and 2 CFR Part 200, Appendix II.

This Ordinance shall be effective upon passage and publication as provided by law, and shall repeal and replace all previous establishing a code of ethics ordinances heretofore enacted by the Town of Minong.

Adopted this _____ day of _____, 2024.

By the Town Board of the Town of Minong.

CHAIRMAN

ATTESTED BY: TOWN CLERK

Please note that this ordinance shall take effect upon publication or posting as set forth in s. 60.80, Wis. Stats.

To Wisconsin Towns Association
From Rick Manthe and Larry Konopacki
Date July 25, 2022
Re Model Conflict of Interest and Procurement Policies

At the request of Mike Koles and Carol Nawrocki, we have prepared a model conflict of interest policy and a model procurement policy. Below is an explanation of both policies.

1. Conflict of Interest Policy.

The conflict of interest policy was drafted to comply with Wisconsin law, but also includes provisions required when a government accepts federal money for a project. For contracts that do not involve federal money, the policy simply adopts the state ethics code, which only applies to elected officials and positions appointed for a specified term, but excludes many other types of employees. This conflict of interest policy necessarily imposes requirements that are stricter than the state ethics code for contracts involving federal funds. First, the policy applies to elected officials and all employees when using federal funds. Second, the policy prohibits actual conflicts of interests and apparent conflicts of interest. Apparent conflicts of interest are where the facts surrounding the contract creates the appearance that an official or employee will receive a benefit from the contract. This policy will satisfy legal requirements for contracts involving federal funds.

2. Procurement Policy.

The second policy is a procurement policy. Like the conflict of interest policy, it creates two sets of requirements. One set of requirements adopts the state public bidding law for non-federal contracts involving construction, execution, repair, remodeling or improvement of any public work or building, or for the furnishing of materials or supplies. In accordance with state law, non-federal contracts must be publicly bid if the value is over \$25,000.

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The other portion of the procurement policy applies to contracts using federal funds and involves the construction, execution, repair, remodeling or improvement of a public work or building; the furnishing of supplies, materials, or equipment; or services that require adherence to federal procurement laws. Unlike state law, these requirements apply to contracts for equipment and services.

Below is a brief, bullet point summary of some of the provisions required in all procurements using federal funds.

- Towns must negotiate profit as a separate element for each contract which is not competitively bid, or where a town performs a cost analysis prior to advertising the project.
- Towns must take specified steps to assure minority businesses, women's business enterprises, and labor surplus area firms are used when possible.
- Towns must provide a preference for goods produced in the United States.

Within this subset, there are three different types of requirements based on the value of the contract.

a. Federal contracts exceeding \$250,000.

While state law requires bidding for certain "public contracts" over \$25,000, federal contracts involving more than \$250,000 must generally be competitively bid and awarded to the lowest responsible bidder even if they are for things like services or equipment which are not required to be bid out under state law. Below is a non-exhaustive summary of other requirements for these types of contracts.

- Any firm that assists in development of specifications for the project cannot bid on the contract.
- The town must have a clear and accurate description of the project in the proposal specifications.
- The town must retain records regarding the procurement of the contract.
- Bidders must submit specified bonds.
- The town must conduct a price analysis for every contract.
- Bids must be publicly opened.
- Projects must avoid purchase of unnecessary or duplicative items.

The policy does allow for using a fixed price or cost-reimbursement contract, or a noncompetitive method if certain criteria are satisfied.

b. Federal contracts valued between \$25,000.01 and \$250,000.

The procurement policy adopts state bidding requirements for contracts between \$25,000.01 and \$250,000. Notably, this would apply state law to acquisition of equipment and services when using federal funds.

Another important aspect of this policy is that it self-certifies a town for a threshold of \$25,000. Under federal law, contracts would be competitively bid if the value exceeds \$10,000. Federal law, however, allows a municipality to increase the minimum threshold if doing so comports with state bidding requirements. This policy incorporates that option and requires a town to self-certify the \$25,000 amount every year.

c. Federal contracts with a value of \$25,000 and less.

For federal contracts with a value of \$25,000 and less, the policy imposes the same requirements as Wisconsin law. With that said, if no bids are solicited, the town must determine that the price is reasonable based on its own research, experience, or any other relevant information.