

Town Road Law



Duty to Maintain the RTW

- Town board must keep town highways passable at all times, s.82.03(1), Wis. Stat.
- Can temporarily close roads, s. 86.06, Wis. Stat.
- May be sued for damages and injuries that arise due to an accumulation of snow or ice that has existed for 3 weeks or more, s. 893.83, Wis. Stat.



Duty to Maintain the RTW

- Authority in charge of the highway shall remove, cut, or trim any tree, shrub, or vegetation in order to provide safety to users of the right of way, s. 66.1037(1)



Duty to Maintain RTW

- Duty to remove fallen trees from highways, s. 86.03



Duty to Maintain RTW

- Removal of highway encroachments, s.86.04



Duty to Maintain Signs in RTW

Initial sign placement decision is legislative (discretionary), but once installed....

- 1) Traffic signs must be installed according to the Manual on Uniform Traffic Controls Devices
- 2) Town has a duty to install, maintain, and replace signs without negligence
- 3) Town has duty to ensure that signs in its right of way remain visible so as not to create a public nuisance, Physicians Plus v. Ins. Corp. v. Midwest Mutual Ins. Co., 2002 WI 80



Establishing ATV/UTV Routes

- By ordinance, a town may “designate” any or all highways under town jurisdiction as ATV (and UTV) routes, s. 23.33(8), Wis. Stats.



ATV / UTV Routes

- Towns may “authorize” the use of ATVs/UTVs on state and county highways within the town’s borders if the state or county highway has a 35 mph or less speed limit (not interstate or defense hwy’s)
- Work with the state or county on signing and enforcement issues



ATV/UTV Routes and Liability

- Potential town liability relates to the negligence question. Is there something the town did or failed to do that caused or contributed to the accident? Route creation alone does not create automatic liability.
- Town is ultimately responsible for proper signing and maintenance of both town roads and town ATV/UTV routes
- Town has burden to ensure safety of all users of the highway
- Better to pick and choose which roads make best/safest routes rather than opening all roads to ATVs and UTVs

Weight Limits, s. 348.15

- Class "A" Highways – (no local wt. limit in place)
 - 20,000 lbs per axle
 - 80,000 lbs maximum
 - IOH 23,000 lbs per axle
 - 92,000 lbs maximum
- Permits may be requested to exceed these amts.
- State law also allows a certain amount of excess weight for milk haulers, certain forest products, etc.

Class "B" Weight Limit, s. 348.16

- Allows for 60% of the weight normally allowed on Class "A" highway
- Typically 48,000 lbs maximum
- But more for certain types of vehicles or commodities, such as 15% more for IOH under state law, etc.

Class "B" Exemptions

- Pick up and delivery vehicles moving or delivering supplies or commodities to or from any place of business or residence that has an entrance on a Class "B" highway can pickup or deliver on a Class "B" highway
- Utilities that provide heat, light, power, or water may respond to service interruptions
- Certain logging equipment (skidder, forwarder, etc.)
- Certain propane delivery trucks filled not more than 50%

Class "B" Exemptions (IOH)

- Empty potato harvester
- Category B IOH - self-propelled combine, forage harvester, pesticide or fertilizer application equipment (not including manure application equipment), towed tillage, planting and cultivation equipment and its towing power unit; or another self-propelled vehicle that directly engages in harvesting farm products, directly applies fertilizer, towed tillage, planting and cultivation equipment and its towing power unit; or another self-propelled vehicle that directly spray, seeds or fertilizer (but not manure) or distributes feed to livestock
- IOH traveling for delivery, service, or repair by dealer or farmer within 75-mile radius of business or farm

Seasonal & Special Weight Limits

- Section 349.16, Wis. Stat. allows for seasonal or special weight limits on roads and bridges
- Ordinance recommended
- Signing required
- Special weight limits require special conditions like weakness of the roadbed, climactic conditions, weak soils, marshy area, etc.

Seasonal & Special Cont'd

- Governing body can exempt or set different weight limitations for vehicles carrying certain commodities or used to perform certain services (i.e. buses, garbage trucks, milk trucks, etc.)
- Exemptions
 - Septic haulers (emergency basis)
 - Utilities responding to heat, light, power or water service interruptions
 - Propane tank haulers not more than 50% full (should try to deliver during time of day roads are least vulnerable)
- No automatic exemptions for IOH, milk trucks, state overweight permit holders, etc. But hauler can request overweight permits from town

Public Contracts

- Bidding is not required when purchasing or disposing of equipment
- Bidding is not required when hiring someone to perform a service
- Ask for quotes, estimates or RFP's instead!

What is a public contract?

- Under s. 60.47(1)(a), Wis. Stat. it is a contract for the construction, execution, repair, remodeling or improvement of any public work or building or for the furnishing of materials or supplies with an estimated cost greater than \$5,000

Bidding, s. 60.47, Wis. Stat.

- For public works contracts \$5,000 or less: No bid requirement
- For contracts between \$5,000.01 - \$25,000: Need to provide a Class 1 notice one week prior to entering into the contract. There is no requirement that the contract be awarded to the lowest bidder since no bids are actually required
- For contracts over \$25,000: There must be a Class 2 bid notice. The bid must be awarded to the lowest "**responsible bidder**"

“Responsible Bidder”, s. 60.47(1)(b)

Definition: a person who, in the judgment of the town board, is financially responsible and has the capacity and competence to faithfully and responsibly comply with the terms of the public contract

Bidder Prequalification

- Under section 66.0901, Wis. Stat. – can require potential bidders to submit sworn statements not less than 5 days prior to the bid opening.
- The statement shall consist of information relating to financial ability, equipment, experience in the work prescribed in the public contract, and other matters that the municipality requires for the protection and welfare of the public in the performance of a public contract.

Bidder Prequalification

- The statement shall be in writing on a standard form of a questionnaire that is adopted and furnished by the municipality
- The contents of the statement shall be confidential and may not be disclosed except upon the written order of the person furnishing the statement, for necessary use by the public body in qualifying the person, or in cases of actions against, or by, the person or municipality
- The governing body of the municipality shall properly evaluate the statement and shall find the maker of the statement either qualified or unqualified to bid

Construction Business Group

- www.cbgwi.com
- Bidder database of over 9,000 contractors (generals and subs)
- 13 categories of publicly available information like: business registrations, environmental and OSHA violations, court judgments and tax liens, labor actions, projects gone bad, etc. (no "rumors", just facts)
- Easy to register and free to all

Surety Bonds

- Bid bonds- a bid bond states that the contractor possesses sufficient financial credentials to accept the job and will enter into a contract with the owner for the contractor's bid.



Surety Bonds

Payment and Performance Bonds, s. 779.14, Wis. Stat.

-**Performance bond** ensures contractor will *perform* contractual duties in accordance with the contract

-**Payment bond** guarantees the contractor will *pay* for all materials and labor (and subcontractors) relating to the contract



Payment and Performance Bonds

When are they required?

- Contract exceeds \$148K? Always required!
- Bond is approved by the town chairperson

(Note: Bonding requirement does not apply to a contract for the direct purchase of materials)



For contracts between \$74k-\$148K

- Contract language must authorize direct payments to subcontractors or checks made payable to prime contractors and one or more subcontractor(s)
- Contract shall require a payment and performance bond unless the town board allows the prime contractor to substitute a different payment assurance in the form of a bond, irrevocable letter of credit or escrow account at least equal to the contract price
- Public body must adopt written standards governing when a different payment and performance assurance may be substituted.
- Note: In this price range, these requirements do NOT apply to contracts for work on transportation facilities

For contracts between \$16k-\$74k

- Contract language must include a provision that allows the governing body to make direct payment to subcontractors or to pay the prime contractor with checks made out to the prime contractor and one or more subcontractors
- The local government may adopt written standards that include criteria for determining whether a contract in this price range will require payment or performance assurances and if so, what kind
- The language requirement does NOT apply to contracts for work on transportation facilities



Questions?


