

LIVINGSTON COUNTY PROCUREMENT POLICY

RESOLUTION #2018-11-189

LIVINGSTON COUNTY, MICHIGAN

APPROVED: 11.19.18

RESOLUTION #2013-09-278

APPROVED: 9.16.13

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APPROVED: 8.27.01

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APPROVED: 4.11.00

SECTION 1. PROCUREMENT POLICY & AUTHORITY

A. POLICY

This policy is to establish standards for the purchase of goods and services with public funds such that the County is able to preserve and enhance public trust by maximizing the procurement value of public dollars by engaging in procurement activities that are fair and equitable.

B. STATUTORY AUTHORITY

The Board of Commissioners (Board) may establish rules and regulations to manage the interest and business of the County. See: MCL 46.11(m); Act 156 of 1851, as amended.

C. PURPOSE AND APPLICATION OF POLICY

The purpose of this policy is to establish a uniform procurement process for Livingston County Elected Officials, Department Directors and employees.

D. EXCLUSIONS

- i. The general terms of intergovernmental contracts or agreements (between the County, other governmental entities, or non-profit organizations) are not subject to the requirements of this policy but may be subject to prior Board approval if unusual (specialized) in nature.
- ii. **Procurements** completed through the utilization of a joint **procurement** program, established by the State or another local unit of government which operates a cooperative **procurement** program if it is determined to be cost-effective, and in the County's best interest (for example, MIDEAL and CoPro+).
- iii. In the event of an emergency, the County Administrator is statutorily enabled to authorize and effectuate the necessary **procurements**, which must then be ratified by the Board.
- iv. The Board reserves the authority to waive any regulations or procedures pertaining to **procurement** contained in this Policy, if the Board deems it is in the best interest of the County to do so.

E. IMPLEMENTATION AUTHORITY

- i. The County Board of Commissioners authorizes the County Administrator, or his/her designee, to effectuate the creation or change of any procedures necessary to implement the Policy.

- ii. Elected Officials, Department Directors, and immediate supervisors are responsible for ensuring that the procurement process is followed under this policy and certify so by approving requisitions via workflow authorization in the County's MUNIS system. Failure to comply with the policy can result in the claim for the purchase being adjusted or disallowed by the Board, and the claim not being paid by the County.

F. PROCUREMENT REQUIREMENTS

The Board of Commissioners has established the following requirements for the various levels of **procurements**. Funds must be budgeted in the appropriate line item PRIOR to purchase. Additional guidance relating to these requirements is included in the "Procedures for **Procurement**".

AMOUNT OF PURCHASE	CONTACT TO INITIATE PURCHASE	TYPE OF QUOTE NEEDED	REQUISITION / PURCHASE ORDER	AWARD AUTHORIZATION REQUIRED BY
\$50 AND UNDER / PETTY CASH	DEPARTMENT DIRECTOR / ELECTED OFFICIAL	N/A	N/A	DEPARTMENT DIRECTOR / ELECTED OFFICIAL
\$3,000 OR LESS	DEPARTMENT DIRECTOR / ELECTED OFFICIAL	N/A	N/A	DEPARTMENT DIRECTOR / ELECTED OFFICIAL
\$3,000.01 - \$25,000	PROCUREMENT COORDINATOR FISCAL SERVICES DEPARTMENT	DOCUMENTED, WRITTEN, SEALED BIDS, RFP OR, QBS	REQUISITION/ PURCHASE ORDER REQUIRED	COUNTY ADMINISTRATOR OR DESIGNEE
\$25,000 - \$100,000 *PLANNED: BUDGETED	FISCAL SERVICES	SEALED BIDS, RFP, OR QBS	REQUISITION/ PURCHASE ORDER/CONTRACT REQUIRED	COUNTY ADMINISTRATOR OR DESIGNEE
\$25,000 - \$100,000 NON BUDGETED	FISCAL SERVICES	SEALED BIDS, RFP, OR QBS	REQUISITION/ PURCHASE ORDER/CONTRACT REQUIRED	BOARD OF COMMISSIONERS
OVER \$100,000	FISCAL SERVICES	SEALED BIDS, RFP, OR QBS	REQUISITION/ PURCHASE ORDER/CONTRACT REQUIRED	BOARD OF COMMISSIONERS
RECEIVING	DEPARTMENT DIRECTORS & ELECTED OFFICIALS ARE RESPONSIBLE FOR DETERMINING THE PROPER QUANTITY AND QUALITY OF GOODS RECEIVED BEFORE FORWARDING THE INVOICE FOR PAYMENT BY THE COUNTY.			

* **Budgeted Line item detail:** On January 1 of each year, Departments with items under \$100,000 with line item detail deemed sufficient by the County Administrator or Deputy County Administrator/Financial Officer, will be authorized to purchase or enter into contract if the item is included in the adopted annual operating budget. The County Administrator is authorized to sign any contracts and purchase orders related to these items.

Variances from the original budgeted amount that are greater than 10 percent, or \$25,000, whichever is lower, will require Board authorization prior to purchase or entering into contract. Variances less than 10 percent, or \$25,000, may be approved by the County Administrator. Purchasing requirements and the Budget Transfer/Amendment policy must be adhered to for all purchases, including those with detail approved through the Operating Budget.

G. EXEMPTED PURCHASES

Professional services, intergovernmental contracts, emergency repairs, and reauthorization of contracts via a renewal option as previously approved by the Board are exempted from this policy. *When it is*

determined to be in the best interests of the County the Board may also exempt other purchases on a case by case basis from some or all of this policy by a majority vote unless it is required by law.

H. POLICY STANDARDS

- i. **Failure to Follow Policy:** The County shall not be responsible for costs of goods and services ordered or purchased by any County official or employee that are not obtained in accordance with this policy. Contracts negotiated outside of this policy will be considered invalid and non-binding. In addition, or in the alternative, the County may impose on a County employee or officer, for any violations of these **Procurement** Policies or ethical standards of conduct set forth in this Policy or State statute, disciplinary action up to and including termination of employment.
- ii. **Law and Guidelines:** When the procurement involves the expenditure of Federal or State assistance or contracts, the procurement shall be conducted in accordance with any mandatory applicable Federal or State law. Livingston County will comply with applicable federal law, guidelines, standards, regulations, and grant terms including, but not limited to those outlined in the Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards; 2 CFR Part 200 (Super Circular). See Appendix A.
- iii. **Credit Card (Purchasing Card) and Online Purchases:** Refer to the Credit Card Policy.
- iv. **Sales Tax Exemption:** The County shall not be charged or pay sales tax. Livingston County, as a Michigan Constitutional Corporation, is exempt from sales tax per Act 167 of Public Acts established in 1933. Per Section 4 of the General Sales Tax Act, MCL ' 205.54(7); MSA ' 7.525(4)(7), and Michigan Sales and Use Tax Rule, 1979 AC, R205.79, provides that sales to the United States government, the State of Michigan, and their political subdivisions, departments and institutions are not taxable when ordered on a Purchase Order and paid for by warrant on government funds. In the alternative, the government may claim exemption at the time of purchase by providing the seller with a signed statement to the effect that the purchaser is a governmental entity. This position was affirmed by the Michigan Department of Treasury through its Revenue Administrative Bulletin 1990-32, approved on October 11, 1990.
- v. **Policy Review:** This Policy shall be reviewed annually by the County Administrator or designee.

SECTION 2. SOURCE SELECTION & CONTRACT FORMATION

A. NO DIVISION OF REQUIREMENT/PURCHASE

Contracts or purchases shall not be artificially divided to circumvent the **procurement** procedures in this policy. An aggregate of regular, reoccurring purchases shall be determined on an annual basis (for example: gasoline, paper products, cleaning supplies, ammunition) to verify this is not occurring and determine if the items should be competitively bid.

B. COMPETITIVE SEALED BIDDING

A procurement method used when (1) the best value is expected to result from the selection of the lowest evaluated priced offer. Competitive Sealed bidding should be used if (2) time permits the solicitation, submission, and evaluation of sealed bids. (3) It is not necessary to conduct discussions with responding offerors about their bids. Also you should consider utilizing competitive sealed bidding if there is (4) a reasonable expectation of receiving more than one sealed bid.

- i. An Invitation for Bids shall be issued and shall include a purchase description, and all contractual terms and conditions applicable to the procurement.

- ii. Adequate public notice of the Invitation for Bids shall be given a reasonable time prior to the date set forth therein for the opening of bids, in accordance with regulations.
- iii. Bids shall be opened publicly in the presence of one or more witnesses at the time and place designated in the Invitation for Bids.
- iv. Bids shall be unconditionally accepted without alteration or correction. Bids shall be evaluated based on the requirements set forth in the Invitation for Bids, which may include criteria to determine acceptability. No criteria may be used in the bid evaluation that are not set forth in the Invitation for Bids.
- v. The contract shall be awarded with reasonable promptness by written notice to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the Invitation for Bids.

C. COMPETITIVE SEALED PROPOSAL

A procurement method utilized when it is either not practicable or not advantageous for the County to procure specified types of supplies, services or construction by competitive sealed bidding.

- i. Proposals shall be solicited through a Request for Proposals.
- ii. Adequate public notice of the Request for Proposals shall be given a reasonable time prior to the date set forth therein for the opening of bids, in accordance with regulations.
- iii. The Request for Proposals shall state the relative importance of price and other factors and subfactors.
- iv. Discussions may be conducted with responsible offerors who submit proposals determined to be reasonably susceptible of being selected for award.
- v. Award shall be made to the responsible offeror whose proposal conforms to the solicitation and is determined in writing to be the most advantageous to Livingston County taking into consideration price and the evaluation factors set forth in the RFP. No other factors or criteria shall be used in the evaluation.
- vi. Debriefings may be provided upon request to demonstrate the basis for the source selection and contract award.

D. LOCAL PREFERENCE

The procurement system is designed to preserve the integrity of Livingston County and promote fair and pure competition for County business. At the same time, when all other factors are equal, vendors/contractors located in Livingston County shall be preferred in the award of purchase orders and contracts in the procurement of goods and services.

E. SINGLE SOURCE

A Single-source procurement is one in which the County has selected a single vendor to supply the products or services over the other possible vendors. This may occur where there is significant justification for the single vendor so that there is no practical value in soliciting competition or for other substantial reasons (i.e. the vendor has the products on hand, the vendor currently supplies or is familiar with the existing County equipment, etc.). Single-source procurements must be justified in sufficient detail and documented on the Sole / Single Source Vendor Form which can be obtained on the county website: <https://www.livgov.com/administration/Pages/policies.aspx>. **Procurement** will evaluate each request and make a determination whether a single source acquisition is appropriate. This form requires the signature of the County Administrator or his/her designee. Single-Source procurements are limited to products or services less than \$25,000.

F. SOLE SOURCE PROCUREMENT

Sole Source providers are used when a particular item or service is procured without a competitive process based on the justification that there is only one (1) appropriate source for the requested product or service. Research and proper justification for awarding to a sole source provider must accompany the Sole / Single Source Vendor Form (Appendix A) which can be obtained on the county website: Employees/County Policies/Forms located on the main ribbon of the home page or through the link below.

<https://www.livgov.com/administration/Pages/policies.aspx>

This form requires the County Administrator signature or his/her designee. The use of the Sole-Source selection should be used as sparingly as possible, to ensure that procurement activities that are fair, equitable and competitive. **G. EMERGENCY PROCUREMENTS**

Notwithstanding any other provisions of this Policy, as provided within the legal authority of the County Board of Commissioners may make, or authorize others to make emergency procurements of supplies, services, or construction items, when there exists a threat to public health, safety, or welfare, or where it is in the County's best interest to do so, provided that such emergency procurements shall be made with as much competition as is practicable under the circumstances, and shall be documented in writing.

H. COOPERATIVE PURCHASING/PROCUREMENT PROGRAMS

Notwithstanding any other provision of this policy, the County may make or authorize the purchase of supplies, equipment or services available through cooperative purchasing/procurement programs and other associations. The decision to purchase from these programs shall be made by the Board of Commissioner's after consultation with the department and considering among other issues: delivery, packaging, minimum order requirements, follow-up service if applicable, product/equipment quality. Bidding requirements shall be waived if it is determined to be in the best interest of the County based on written communication to support the County's findings. The County Administrator is authorized to enter into necessary agreements or contracts on behalf of the County. State of Michigan Extended Purchasing Program (such as MiDeal or other like programs) can be used instead of the normal bidding process.

I. CONTRACT CLAUSES

All County contracts for supplies, services and construction shall include provisions necessary to define the responsibilities and rights of the parties to the contract. The County Administrator or designee, after consultation with the County Civil Counsel, may issue clauses appropriate for supply, service or construction contracts.

Such contracts shall include provisions that require any individual or business entity providing goods and/or services to the County shall be required to comply with current provisions of the Americans with Disabilities Act (ADA); (the Equal Opportunity Act for Individuals with Disabilities 42 USC 12101 et seq.); Equal Employment Opportunities (42 USC 2000e), Section 504 of the Rehabilitation Act of 1973, as amended (29 USC 794); the Elliot-Larsen Civil Rights Act (MCL 37.1201 et. seq.), and the Michigan Person with Disabilities Civil Rights Act (MCL 37.1101 et seq.). Such individual or business entity shall not discriminate against any individual with respect to hire, tenure, terms, conditions or privileges of employment because of a handicap that is unrelated to the individual's ability to perform the duties of a particular job position, or because of race, color, religion, national origin, age, sex, height, weight, or marital status. Breach of this covenant shall be regarded as a material breach of any transaction or agreement between the County and the individual or business entity. The County shall enforce this covenant through use of sanctions available within this Policy, by contract, or other available legal action.

J. AMENDMENTS TO INVITATIONS FOR BIDS OR REQUEST FOR PROPOSALS

An invitation for bids (ITB), a request for proposals (RFP) or other solicitation (RFQ) may be amended by issuance of an addendum prior to the submittal deadline. The addendum shall provide for certain changes, including but not limited to, clarifications in specifications, requirements, and submittals.

K. CANCELLATION or REJECTION OF INVITATIONS FOR BIDS OR REQUEST FOR PROPOSALS

An invitation for bids, a request for proposals or other solicitation may be canceled, or any or all bids or proposals may be rejected in whole or in part as may be specified in the solicitation, at the discretion of the County if such action is in the best interests of the County. The reasons therefore shall be made part of the bid file. Each solicitation issued by the County shall state that the solicitation may be canceled and that any bid or proposal may be rejected in whole or in part when it is in the best interests of the County. Notice of cancellation shall be sent to all businesses solicited. The notice shall identify the solicitation, explain the reasons for cancellation and, where appropriate, explain that an opportunity will be given to compete on any re-solicitation or any future procurement of similar items. Reasons for rejection shall be provided upon request by unsuccessful bidders or offerors.

SECTION 3. ETHICS IN PUBLIC CONTRACTING

A. CONFLICT OF INTEREST

All County employees, Officers (Public Servants) and Elected Officials shall conduct themselves in conformity with 1968 PA 317, MCL ' 15.321, et seq.; MSA ' 4.1700 (51) et seq. This Act establishes standards in respect to governmental decisions and conflicts of interest arising out of the solicitation, negotiation, or approval of contracts between the public servants and public entities such as the County.

B. GRATUITIES, MEALS, FAVORS & GIFTS

County employees, Directors, appointed or Elected Officials, Volunteers, or Agents shall neither solicit nor accept gratuities, meals, favors, gifts, consulting fees, trips, or anything with more than a de minimis value of twenty-five dollars (\$25.00) from a vendor, potential vendor, family or employees of a vendor, contractors or parties to subcontracts.

C. GENERAL ETHICAL STANDARDS FOR EMPLOYEES

Any attempt to realize personal gain through the public employment by conduct inconsistent with the proper discharge of the employee's duties is a breach of a public trust.

D. GENERAL ETHICAL STANDARDS FOR NON-EMPLOYEES

Any effort to influence any public employee to breach the standards of ethical conduct set forth in this Section.

SECTION 4. PROCUREMENT DEFINITIONS

Blanket Purchase Order (BPO) - A purchaser's written document to a supplier formalizing all the terms and conditions of the purchase, including quantity, description of the requested items or services, cost of items being purchased, delivery schedule, terms of payment, and transportation defined over a period of time and up to a maximum dollar amount annually. A purchase order is a legal and binding contract between the County and the vendor.

Competitive Sealed Bid - A method for acquiring goods, services and construction for public use in which award is made to the lowest responsive bid and responsible bidder, based solely on the

response to the criteria set forth in the Invitation for Bids (IFB) (i.e. bid documents); and does not include discussions or negotiations with bidders.

Construction –The process of utilizing labor to build, alter, repair, improve, or demolish any public infrastructure facility, including any public structure, public building, or other public improvements of any kind to real property. It does not include the routine operation, routine repair, or routine maintenance of any existing public infrastructure facility, including structures, buildings, or real property.

Contract - 1. An obligation, such as an accepted offer, between competent parties upon a legal consideration, to do or abstain from doing some act. The essential elements of a contract are an offer and an acceptance of that offer; the capacity of the parties to contract; consideration to support the contract; a mutual identity of consent; legality of purpose; and definiteness. 2. A legally binding promise, enforceable by law. 3. An agreement between parties with binding legal and moral force, usually exchanging goods or services for money or other considerations. ***All types of agreements, regardless of what they may be called, for the procurement or disposal of supplies, services, or construction.***

Petty Cash – A small fund of money for incidental expense maintained by the petty cash custodian within the department.

Procurement – Buying, purchasing, renting, leasing, or otherwise acquiring any supplies, services or construction. It also includes all functions that pertain to the obtaining of any supply, service, or construction, including description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration.

Purchase Order (PO) – A purchaser’s written document to a supplier formalizing all the terms and conditions of the purchase including quantity, description of the requested items, cost of items being purchased, delivery schedule, terms of payment, and transportation. A purchase order is a legal and binding contract between the County and the vendor.

Quality Based Selection (QBS) - Vendor selection based on demonstrated competence and qualifications followed by contract negotiation with the most qualified firm relative to fair and reasonable compensation within the legal parameters.

Quote - An informal purchasing process which solicits pricing information from several sources. Verbal quotes (those not received in writing) must be documented.

Request for Proposals (RFP) - A method for acquiring goods, services and construction for public use in which other factors will be considered in the selection of vendor in addition to price, or when there is not sufficient information to prepare a specification suitable for competitive sealed bidding, or when it is expected that negotiations with one or more vendors may be required with respect to any aspect of the requirements.

Requisition - An internal document by which a department sends details of supplies, services, or materials that are reasonable, required and appropriate for departmental operations to the **Procurement** Department.

Services – The furnishing of labor, time, or effort by a contractor, not involving the delivery of a specific end product other than reports which are merely incidental to the required performance. This term shall not include employment agreements or collective bargaining agreements.

Supplies – All property, including but not limited to equipment, materials, printing, insurance, and leases of real property, excluding land or permanent interest in land.

APPENDIX A

GENERAL PROCUREMENT STANDARDS FOR PURCHASES WITH FEDERAL GRANTS

The following apply to all employees authorized to initiate and/or approve purchases paid for with federal grant funds. The purpose is to ensure that the procurement of the goods and services being purchased is transparent, that they are obtained in a cost-effective manner, and in compliance with the **stricter** of the federal general procurement standards for non-federal entities and the County's Purchasing policy and that the awards are being handled appropriately. At no time can any section of this process supersede the Federal Grant Procurement Requirements set by the grantor. Department employees will be responsible for reading and understanding all requirements of their grant and to work with the Purchasing Department to ensure compliance for all purchases. This section does not address all aspects of the Code of Federal Regulations (2 CFR 200) or information required for the accounting portion of the grant money and any other stated requirements for the procurement.

1. Procuring federal excess and surplus property in lieu of purchasing new equipment and property and whenever such use is feasible and reduces project costs.
2. Value engineering clauses may be used in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost.
3. Contracts shall only be awarded to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.
4. Records will be maintained sufficient to detail the history of procurement. These records will include, but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price. The clerk's office will be the repository for said records and shall be maintained for a period of not less than seven years.
5. Time and material type contracts (open-ended) may be used only after a determination that no other contract is suitable. Time and material type contract means a contract where the cost to the County is the sum of the actual cost of materials and direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit. Each time and material contract will set a ceiling price that the contractor exceeds at its own risk. A higher degree of oversight is required in order to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls.
6. The County alone will be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation, protests, disputes, and claims. These standards do not relieve the County of any contractual responsibilities under its contracts. The federal awarding agency will not substitute its judgment for that of the County unless the matter is primarily a federal concern. Violations of law will be referred to the local, state, or federal authority having proper jurisdiction.

7. Competition

- A. All procurement transactions must be conducted in a manner providing full and open competition. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, and invitations for bids or requests for proposals will be excluded from competing for such procurements. Some of the situations considered to be restrictive of competition include but are not limited to:
- (1) Placing unreasonable requirements on firms in order for them to qualify to do business;
 - (2) Requiring unnecessary experience and excessive bonding;
 - (3) Noncompetitive pricing practices between firms or between affiliated companies;
 - (4) Noncompetitive contracts to consultants that are on retainer contracts;
 - (5) Organizational conflicts of interest;
 - (6) Specifying only a "brand name" product instead of allowing "an equal" product to be offered and describing the performance or other relevant requirements of the procurement; and
 - (7) Any arbitrary action in the procurement process.
- B. Procurements shall be conducted in a manner that prohibits the use of statutorily or administratively imposed state or local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable federal statutes expressly mandate or encourage geographic preference. Nothing in this section preempts state licensing laws. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criterion provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.
- C. All solicitations will incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description must not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured and, when necessary, must set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a "brand name or equivalent" description may be used as a means to define the performance or other salient requirements of procurement. The specific features of the named brand which must be met by offers must be clearly stated.
- D. Bids and proposals shall identify all the requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.
- E. All prequalified lists of persons, firms, or products which are used in acquiring goods and services must be current and include enough qualified sources to ensure maximum open and free competition. Also, potential bidders shall not be precluded from qualifying during the solicitation period.

8. Methods of Procurements. One of the following procurement methods shall be used.

- A. Procurement by micro-purchases. Procurement by micro-purchase is the acquisition of supplies or services, the aggregate dollar amount of which does not exceed \$3,000.00 (or \$2,000.00 in the case of acquisitions for construction subject to the Davis-Bacon Act). Requirements for making such purchases shall comply according to the appropriate County defined thresholds.
- B. Procurement by small purchase procedures. Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or

other property that do not cost more than the Simplified Acquisition Threshold (\$150,000.00). All purchases in excess of \$25,000 for the acquisition of goods and services shall require that formal solicitations be sought in compliance with the County's more restrictive practices for making such purchases.

- C. Procurement by sealed bids (formal advertising). Bids are publicly solicited and a firm fixed price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming to all the material terms and conditions of the invitation for bids, is the lowest in price. The sealed bid method is the preferred method for procuring construction, if the following conditions apply:

- (1) A complete, adequate, and realistic specification or purchase description is available;
- (2) Two or more responsible bidders are willing and able to compete effectively for the business; and
- (3) The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.

If sealed bids are used, the following requirements shall apply:

- (1) The invitation for bids will be publicly advertised at a minimum in the local newspaper, on the Michigan Inter-governmental Trade Network (MITN) website and solicited from an adequate number of known suppliers, providing them sufficient response time prior to the date set for opening the bids;
- (2) The invitation for bids, which will include any specifications and pertinent attachments, must define the items or services in order for the bidder to properly respond;
- (3) All bids will be publicly opened at the time and place prescribed in the invitation for bids;
- (4) A firm fixed price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs must be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and
- (5) Any or all bids may be rejected if there is a sound documented reason.

- D. Procurement by competitive proposals. The technique of competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed price or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids. If this method is used, the following requirements apply:

- (1) Requests for proposals must be publicized at a minimum in the local newspaper and on the Michigan Inter-governmental Trade Network (MITN) website and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals must be considered to the maximum extent practical;
- (2) Proposals must be solicited from an adequate number of qualified sources;
- (3) The following method for conducting technical evaluations of the proposals received and for selecting recipients shall be used:
 - a. After all proposals are opened and recorded, the purchasing department along with the requesting department shall determine if the proposals are responsive. A responsive proposal conforms in all material respects to the RFP.

- b. Select the evaluation committee members. At a minimum, members should consist of the purchasing director and an end user with decision making authority.
 - c. Create a scoring matrix with weighted factors based on the evaluation criteria stated in the RFP.
 - d. Provide members with copies of the proposals and the scoring matrix.
 - e. Members individually review and score all proposals based on the criteria in the RFP. Include written justification for each scoring category.
 - f. Members submit scoring matrices and comments for each responsive proposal to the purchasing department.
 - g. The purchasing department compiles all the members' matrices to arrive at final scorings.
 - h. A meeting is scheduled with all members to discuss all aspects of the proposals and final scorings.
 - i. The members short-list the top candidates.
 - j. Schedule interviews, if necessary with top candidates.
 - k. Ask for best and final offers from top candidates (optional).
 - l. All members make a joint written recommendation. All scoring sheets, justification and rationale for the recommendation and any other variables that may have been considered are sent to the purchasing department.
- (4) Any response that takes exception to any mandatory items in this proposal process may be rejected and not considered;
 - (5) Contracts must be awarded to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and
 - (6) Competitive proposal procedures may be used for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms are a potential source to perform the proposed effort.
- E. Procurement by noncompetitive proposals. Procurement by noncompetitive proposals is procurement through solicitation of a proposal from only one source and may be used only when one or more of the following circumstances apply:
 - (1) The item is available only from a single source;
 - (2) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
 - (3) The federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the non-federal entity; or
 - (4) After solicitation of a number of sources, competition is determined inadequate.
9. Contracting with small and minority businesses, women's business enterprises, and labor surplus area (a place of high unemployment) firms.
- A. All necessary affirmative steps will be taken to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible. Affirmative steps must include:

- (1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
 - (2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
 - (3) 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;
 - (4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
 - (5) 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
 - (6) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs a. through e. of this section.
10. Procurement of recovered materials. The County and its contractors must 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 (EPA) 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 \$10,000.00 or the value of the quantity acquired by the preceding fiscal year exceeded \$10,000.00; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.
11. Contract cost and price.
- A. A cost or price analysis shall be performed in connection with every procurement action in excess of the simplified acquisition threshold (\$150,000.00) including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, independent estimates shall be made prior to receiving bids or proposals.
 - B. Profit shall be negotiated 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 its record of past performance, and industry profit rates in the surrounding geographical area for similar work.
 - C. Costs or prices based on estimated costs for contracts under the federal award are allowable only to the extent that costs incurred or cost estimates included in negotiated prices would be allowable for the County under Subpart E-Cost Principles of Part 200—Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. The County may reference its own cost principles that comply with the federal cost principles.
 - D. The cost plus a percentage of cost and percentage of construction cost methods of contracting shall not be used.
12. Federal awarding agency or pass-thru entity review.
- A. The County shall make available, upon request of the federal awarding agency or pass-through entity, technical specifications on proposed procurements where the federal awarding agency or pass-through entity believes such review is needed to ensure that the item or service specified is the one being proposed for acquisition. This review generally will take place prior to the time the specification is incorporated into a solicitation document. However, if the County desires to have the review accomplished after a solicitation has

been developed, the federal awarding agency or pass-through entity may still review the specifications, with such review usually limited to the technical aspects of the proposed purchase.

B. The County will make available upon request, for the federal awarding agency or pass-through entity pre-procurement review, procurement documents, such as requests for proposals or invitations for bids, or independent cost estimates, when:

- (1) Procurement procedures or operation fails to comply with the procurement standards in this part;
- (2) The procurement is expected to exceed the simplified acquisition threshold (\$150,000.00) and is to be awarded without competition or only one bid or offer is received in response to a solicitation;
- (3) The procurement, which is expected to exceed the simplified acquisition threshold (\$150,000.00), specifies a "brand name" product;
- (4) The proposed contract is more than the simplified acquisition threshold (\$150,000.00) and is to be awarded to other than the apparent low bidder under a sealed bid procurement; or
- (5) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the simplified acquisition threshold (\$150,000.00).

C. The County is exempt from the pre-procurement review in subsection (2) of this section if the federal awarding agency or pass-through entity determines that its procurement systems comply with the standards of this part.

- (1) The County may request that its procurement system be reviewed by the federal awarding agency or pass-through entity to determine whether its system meets these standards in order for its system to be certified. Generally, these reviews must occur where there is continuous high-dollar funding, and third party contracts are awarded on a regular basis;
- (2) The County may self-certify its procurement system. Such self-certification must not limit the federal awarding agency's right to survey the system. Under a self-certification procedure, the federal awarding agency may rely on written assurances from the County that it is complying with these standards. The County must cite specific policies, procedures, regulations, or standards as being in compliance with these requirements and have its system available for review.

13. **Bonding Requirements.** For construction or facility improvement contracts or subcontracts exceeding the County's threshold (\$50,000.00), the federal awarding agency or pass-through entity may accept the bonding policy and requirements of the County provided that the federal awarding agency or pass-through entity has made a determination that the federal interest is adequately protected. If such a determination has not been made, the minimum requirements must be as follows:

- A. A bid guarantee from each bidder equivalent to five percent of the bid price. The "bid guarantee" must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified;
- B. A performance bond on the part of the contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract; and
- C. A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

14. Contract provisions. Contracts and solicitations must contain the applicable provisions described in Appendix II to Part 200 – Contract Provisions for non-federal Entity Contracts Under Federal Awards.
- A. Appendix II to Part 200—Contract Provisions for Non-Federal Entity Contracts Under Federal Awards. In addition to other provisions required by the federal agency or non-federal entity, all contracts made by the non-federal entity under the federal award must contain provisions covering the following, as applicable.
- (1) Contracts for more than the simplified acquisition threshold currently set at \$150,000.00, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.
 - (2) All contracts in excess of \$10,000.00 must address termination for cause and for convenience by the non-federal entity including the manner by which it will be effected and the basis for settlement.
 - (3) Equal employment opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "Federally assisted construction contract" in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."
 - (4) Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-federal entity must report all suspected or reported violations to the federal awarding agency. The contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-federal entity must report all suspected or reported violations to the federal awarding agency.
 - (5) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-federal entity in excess of \$100,000.00 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of

the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

- (6) Rights to inventions made under a contract or agreement. If the federal award meets the definition of "funding agreement" under 37 CFR § 401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.
- (7) Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended-Contracts and subgrants of amounts in excess of \$150,000.00 must contain a provision that requires the non-federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
- (8) Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6201).
- (9) Debarment and Suspension (Executive Orders 12549 and 12689)-A contract award (see 2 CFR 180.220) must not be made to parties listed on the government-wide Excluded Parties List System in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR Part 1986 Comp., p. 189) and 12689 (3 CFR Part 1989 Comp., p. 235), "Debarment and Suspension." The Excluded Parties List System in SAM contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.
- (10) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award of \$100,000.00 or more must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award. Such disclosures are forwarded from tier to tier up to the non-federal award.
- (11) See § 200.322 Procurement of recovered materials.

