



Procurement Policy 5.02

Board Approval Date: 10/9/2018

Supersedes Policy Dated: 09/12/2017

I. Policy Statement

The intent of this policy is to provide a framework for Winona County officials and employees to efficiently and effectively operate within state and federal statutory requirements related to the activities and processes of purchasing, contracting, and grant procedures.

It is the County's objective to conduct purchasing of goods and services in the most professional, ethical, legal, economical, and efficient manner possible, and to enhance the public confidence in the integrity and transparency of the County's practices in contract and grant procedures.

All purchases shall be made in compliance with Minnesota Statutes 375.21¹ Contracts of County Boards and 471.345 Uniform Municipal Contracting Law or other relevant statutes unless the County Board authorized by statute approves a different process.

II. Definitions

Contract (MN Statutes 471.345) A "contract" means an agreement entered into by the County for the sale or purchase of supplies, materials, equipment or the rental thereof, or the construction, alteration, repair or maintenance of real or personal property.

Electronic Sale of surplus, supplies, materials, and equipment. (MN Statutes 471.345 Subd. 17) The County may contract to sell supplies, materials, and equipment which is surplus, obsolete, or unused, using an electronic selling process in which purchasers compete to purchase surplus, at the highest purchase price, in an open and interactive environment.

Grant Agreement refers to a written contract between two parties, through which the Grantor gives a sum of money to the Grantee on the condition that the Grantee uses the money for specific purposes of the grant, often to benefit a third party that is not a party to the grant agreement.

Joint Powers Agreement (MN Statutes 471.59) refers to a written contract where two or more governmental units, working together by agreement to exercise any power common to them; or an agreement between governmental units where one unit performs a service or activity on behalf of another unit(s).

Professional Service Contract means contracting for services that are intellectual in character, including architectural, engineering, medical, auditing, legal, real estate, consulting, analysis, evaluation,



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planning, programming, or recommendation, and results in the production of a report or the completion of a task. Professional service contracts do not include the provision of supplies or materials.

Reverse Auction Purchasing (MN Statutes 471.345 Subd. 16) The County may contract to purchase supplies, materials, and equipment using an electronic purchasing process in which vendors compete to provide the supplies, materials, or equipment at the lowest selling price in an open and interactive environment. A County may not use this process to contract for services, as defined by section 16C.02, subdivision 17, or a service contract, as defined by section 16C.02, subdivision 7a.

III. General

A. Conflict of Interest

No employee, officer, or agent may participate in the selection, award or administration of a contract if he or she has a real or apparent conflict of interest. Such conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract. The officers, employees, and agents of Winona County may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or subcontractors.

IV. Authority

A. Authority to enter into agreements for the purchase of goods and services required by the County is delegated as follows:

1. County Board - Purchases up to the amount of the adopted budget unless Board action authorizes spending from reserves.
2. County Administrator - Purchases up to the amount of the Board adopted budget or up to \$5,000 for unbudgeted items.
3. Department Heads - Purchases up to the amount of the Board adopted budget or \$500 if unbudgeted.

B. Purchases shall be made within the budget that has been adopted by the County Board for the Department.



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1. Expenditures that require transfers between departments may be made upon request to the County Administrator provided the net effect to the budget is zero.
 2. Expenditures without associated revenue either new or unbudgeted, that require funds not included in the County Board adopted budget for the Department, may be made in accordance with the provisions of this policy or with specific board approval. If approved, the Finance Director will initiate board action and document said action by a resolution of the County Board.
- C. The general overarching principle is that negotiation to purchase goods may occur with the outcome predicated on an award based on the least cost to the county for services or products meeting the County's specifications and requirements.
- D. The Board may grant exceptions to the competitive bid process if acceptable written justification for a single source award is submitted. The County Attorney shall review any exceptions prior to submission to the Board.
- E. Departments are responsible for ensuring compliance with the competitive bid process and maintaining all related procurement records unless the Finance Department assumes responsibility.
- F. Centralized purchasing.
1. The purchase of all telecommunication and data processing equipment, system software, computer forms, and computer related supplies shall be coordinated through the Winona County Information Technology Department.
 2. The purchase of all desks, chairs, file cabinets, and workstations shall be coordinated through the Maintenance Department with ergonomic issues coordinated through the Safety Committee.
- G. Leases
1. The Finance Department shall be involved in decisions to use leasing as a financing method for purchases.
 2. The lease-buy decision will be based on an analysis of the implicit interest rate charged in the potential lease transaction and other factors such as cash flow.
 3. The Finance Department will recommend the best avenue for the County in a lease-buy proposal.



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V. Cooperative Purchasing

Cooperative purchasing (MN Statutes 471.345 Subd. 15), allows for the purchase of supplies, materials, or equipment by utilizing contracts that are available through the state's cooperative purchasing venture authorized by MN Statutes 16C.11. For a contract estimated to exceed \$25,000, the County must consider the availability, price and quality of supplies, materials, or equipment available through the state's cooperative purchasing venture before purchasing through another source.

If the County does not utilize the state's cooperative purchasing venture, it may contract for the purchase of supplies, materials, or equipment without regard to the competitive bidding requirements of this section if the purchase is through a national municipal association's purchasing alliance or cooperative created by a joint powers agreement that purchases items from more than one source on the basis of competitive bids or competitive quotations.

A. Professional Services

An agreement of a professional nature creates a different relationship than normally exists in a buyer-seller transaction. The purchasing protocol needs to take into consideration qualifications, competency, character, availability and mutual trust. For these reasons, such Professional Service contracts may use a non-competitive procurement process when selecting providers.

B. Emergency Purchases

Emergency Purchasing refers to a case of an emergency arising from the destruction or impassability of roads or bridges by floods, rain, or snow, or other casualty, for the breaking or damaging of any property in the County, if the public health, safety, or welfare would suffer by delay, contracts for purchase or repairs may be made without advertising for bids but, in that case the action of the board shall be recorded in its official proceedings (See MN Statutes 375.21).

C. Rental of Equipment

According to MN Statute 471.345 Subd. 5a, when the County contracts for the rental of equipment are estimated to be \$60,000 or less may, at the discretion of the Board, be made by direct negotiation by obtaining two or more quotations when possible and without advertising



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for bids or otherwise complying with the requirements of competitive bidding. All quotations shall be kept on file for at least one year.

D. Best value alternative

As an alternative to the above (1-3), a County Board may award a contract for construction, building, alteration, improvement, or repair work to the vendor or contractor offering the best value under a request for proposals (RFP). The County will comply with all requirements under MN Statutes 16C.28 Subd. 1. Before administering best value procurement procedure, personnel must be trained in the best value RFP process (MN Statutes 16C. 28 Subd. 1d).

VI. Contract Provision

A. General

All contractual agreements (new contracts and contracts at renewal times) must be read and understood to be certain that the obligations and expectations of each party are clearly identified in the agreement.

Contracts approved by the County Board should have three signature lines for: Chair of Board to approve the contract, County Administrator to attest to the Chair's signature and County Attorney for review as to form. Contracts not requiring County Board approval may be signed by the County Administrator.

The County will maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

Contracts between the County and a prime contractor require the prime contractor to pay subcontractors within ten days of receipt of payment from the government entity or pay interest at ½ percent per month or any part of the month (MN Statutes 471.425 Subd. 4a).

Before making final settlements with any contractor under a contract requiring employment of employees for wages by said contractor and by subcontractors, a certificate by the Commissioner of Revenue that the contractor or subcontractor has complied with the



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withholding requirements of MN Statutes 290.92 (either Form IC134 or a Contract's Withholding Affidavit Confirmation) shall be obtained.

Contracts must conform to all applicable Federal, State and local statutes, laws, and regulations. If there is a discrepancy between this policy and federal/state law or rule, the latter governs.

B. Managing Risks

The obligations and expectations of each party, including insurance coverage must be clearly identified in the agreements with vendors/suppliers. Risks/Exposures that are not covered by Minnesota Counties Intergovernmental Trust (MCIT) must be approved by the County Administrator in advance.

Contracts shall include the following insurance requirements:

- 1. Insurance Type and Limits.** Information regarding the type of coverage a vendor/provider carries is required for all agreements except for select Letters of Agreement. At a minimum, insurance coverage should reflect an occurrence limit that is consistent with MN Statutes 466 which provides tort liability damage caps of \$1,500,000 per occurrence. The aggregate limit should be two times the occurrence limit of \$3,000,000. If insurance increments are difficult to reach, the contractor may have the option of meeting the required limits by purchasing a combination of primary and excess limits (umbrella coverage).
- 2. Certificate of Insurance.** Current insurance certificates are required throughout the term of the contract. It is the responsibility of the respective department staff to ensure the receipt of the current insurance certificate according to the bid/proposal requirements. This should be requested at an early stage in the contract process to avoid delays. The contractor must provide a minimum of 30 days advance notice to the Winona County of any substantial change to or cancellation of any insurance policies listed on the Certificate.
- 3. Indemnification.** The agreements shall have a clause which sets out the liability of the Contractor for its acts and when appropriate, contracts should contain an indemnification provision holding Winona County harmless and indemnifying the County for any loss it may have to pay due to activities of those performing the contract.



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4. **Other.** The contractor's insurance must be primary, not excess, to any coverage of Winona County. The contractor's insurance carrier must be acceptable to Winona County. Coverage must be in force for the complete term of the contract. The contractor is responsible for any deductible or self-insurance retention contained within their insurance program. The County must be listed as an additional insured on the contractor's policy (except under worker's compensation or professional liability policies).

C. Bonds

Bond requirements provide additional security for projects.

1. **Payment Bond** (MN Statutes 574.26) is a bond which assures payments, as required by law, to all persons supplying labor or material (subcontractors) for the completion of work under the contract. It is required for contracts over \$175,000.

2. **Performance Bond** (MN Statutes 574.26) is a bond executed subsequent to award by a successful bidder to protect the County from loss due to the bidder's inability to complete the contract as agreed. It is required for contracts over \$175,000.

3. **Bond Value.** The performance and payment bonds shall each be equal to or be greater than the contract price. If the value of the contract increases after bonds are provided, supplemental bonds must be provided.

4. **Bid Bonds** are required on all bid projects that are subject to the competitive purchasing process. Bid Bonds shall equal 5% of the contract's bid amount.

D. Termination

If issues arise between the parties and cannot be resolved termination can be appropriate and accomplished by:

1. **Mutual Convenience.** When both parties agree that they will no longer be subject to the terms of the agreement.

2. **Non-appropriation.** This termination occurs when governmental funding sources do not appropriate funds for future payment obligations.

3. **For Cause.** When one party is in breach or default.



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E. Documentation

Please note, the department with the contract is responsible for making sure copies of the newspaper affidavit, all invoices, IC-134 and any other required information is kept in the department for 10 years after the contract is completed.

VII. Property Disposal

A. Sale of Public Property to Public Officers and Employees

Generally, political subdivisions may not sell property or materials owned by the political subdivision to its officers or employees.

The MN Statute 15.054, contains an exception to this general prohibition for employees, but not for officers, if the property or materials are no longer needed by the political subdivision and the sale is made after reasonable public notice (at least one week's published notice) at a public auction or by sealed bids. To qualify for the exception, the employee must not be directly involved in the auction or the sealed bid process. The general prohibition also does not apply to property or materials acquired or produced by the political subdivision for sale to the general public in the ordinary course of business.

B. Large Sale of Personal Property (MN Statute 373.01)

A sale of personal property with a value estimated to be \$15,000 or more may be made only after advertising for bids or proposals in the County's official newspaper, on the County's website, or in a recognized industry trade journal. At the same time it posts on its website or publishes in a trade journal, the County must also publish a summary of all requests for bids or proposals in the official newspaper. The summary may be published as part of the minutes of a regular meeting of the County board or in a separate notice. After publication, bids or proposals may be solicited and accepted using the electronic selling process authorized in MN Statutes, section 471.345, Subd. 17.

A sale of personal property with a value estimated to be less than \$15,000 may be made either on competitive bids or in the open market, at the discretion of the County Board.

C. Sale of Real Estate (MN Statute 373.01)



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The County must advertise for bids or proposals any sale, lease, or conveyance of real estate owned by the County. The advertisement must run in the official newspaper of the County for three consecutive weeks and once in a newspaper or general circulation in the area where the property is located. With the exception of a lease of a residence acquired by the County as part of an approved capital improvement project, any sale, lease or conveyance that has not first been advertised as required is invalid.

The notice must state the time and place of considering the proposals, and contain a legal description of any real estate and a brief description of any personal property. Leases that are less than \$15,000 in any one year may be negotiated and are not subject to the competitive bid procedures of this section. All proposal estimated to be more than \$15,000 will be considered at the time set for the bid opening, and the bid most favorable to the County will be accepted. However, the County Board may, in the interest of the County, reject any or all proposals.

D. Exchange of Real Property (MN Statute 373.01)

A County may exchange parcels of real property of substantially similar or equal value without advertising for bids. When acquiring real property for County highway right-of-ways, the estimated values for these parcels shall be determined by the County Assessor.

When acquiring real property for purposes other than County highway right-of-ways, the County may exchange similarly valued parcels and the estimated values for these parcels must be determined by the County Assessor or a private appraisal performed by a licensed Minnesota real estate appraiser. In addition, before giving final approval to an exchange of land the County Board shall hold a public hearing on the exchange. At least two weeks before the hearing, the County shall post a notice in the official newspaper of the County of the hearing that contains a description of the lands affected.

VIII. Federal awards

Procurement of goods and services whose costs are charged to federal awards received by the County are subject to all the specific procurement policies of the County. Federal grants and programs need to conform to applicable Federal statutes and the procurement requirements identified in 2CFR part 200.



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A. General Procurement Standards under Federal Awards (2 CFR 200.318)

Procurements associated with Federal awards are subject to the following:

1. County will avoid acquisition of unnecessary or duplicative items. Consideration will be given to consolidating or breaking out procurements to obtain a more economical purchase.
2. 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.
3. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.
4. County will consider entering into state and local intergovernmental agreements or inter-entity agreements where appropriate for procurement or use of common or shared goods and services, and using Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.
5. For construction projects of sufficient size to offer reasonable opportunities for cost reductions is encouraged to use value engineering clauses in contracts.
6. County will award contracts only 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.
7. County will maintain records 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.
8. Time and material type contracts may be used only after a determination is made that no other contract is suitable and if the contract includes a ceiling price that the contractor exceeds at its own risk. Such a contract requires a high degree of oversight in order to obtain reasonable assurance that the contractor is using efficient methods and effective costs controls.



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9. The non-Federal entity may use time and material type contracts only after a determination that no other contract is suitable and if the contract includes a ceiling price that the contractor exceeds at its own risk. Time and material type contract means a contract whose cost to a non-Federal entity is the sum of:

- a) The actual cost of materials
- b) Direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit.

10. Since the formula generates an open-ended contract price, a time- and materials contract provides no positive profit incentive to the contractor for cost control or labor efficiency. Therefore, each contract must set a ceiling price that the contractor exceeds at its own risk. Further, the non-Federal entity awarding such a contract must assert a high degree of oversight in order to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls.

11. The County is responsible for the settlement of all contractual and administrative issues arising out of procurements, which include, but are not limited to source evaluations, protests, disputes and claims.

12. All procurement files will be made available for inspection upon request by a Federal awarding agency.

B. Competition

1. All Procurement transactions must be conducted in a manner providing full and open competition consistent with the standards of this section. 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 must be excluded from competing for such procurements. Some of the situations considered to be restrictive of competition include but are not limited to:

- a) Placing unreasonable requirements on firms in order for them to qualify to do business
- b) Requiring unnecessary experience and excessive bonding
- c) Noncompetitive pricing practices between firms or between affiliated companies
- d) Noncompetitive contracts to consultants that are on retainer contracts



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- e) Organizational conflicts of interest
 - f) 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 procurements.
 - g) Any arbitrary action in the procurement process.
2. The non-Federal entity must conduct procurements 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.
3. The non-Federal entity must have written procedures for procurement transactions. These procedures must ensure that all solicitations:
- a) 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;
 - b) Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.
4. The non-Federal entity must ensure that all prequalified list of persons, firms, or products which are used in acquiring goods and services are current and include enough



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qualified sources to ensure maximum open and free competition. Also the non-Federal entity must not preclude potential bidders from qualifying during the solicitation period.

C. Methods of Procurement (2 CFR 200.320)

The County will use one of the following methods of procurement.

1. **Procurement by micro-purchases.** Procurement by micro-purchase is the acquisition of supplies or services, the aggregate dollar amount of which does not exceed \$10,000 (or \$2,000 in the case of acquisitions for construction subject to the Davis-Bacon Act). To the extent practicable, the non-federal entity must distribute micro-purchases equitably among qualified suppliers. Micro-purchases may be awarded without soliciting competitive quotations if the non-Federal entity considers the price to be reasonable.
2. **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. If small purchase procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources.
3. **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.
4. **All purchases in excess of \$5,000** shall be made by obtaining oral or written quotations from at least two responsible contractors. All purchases of at least \$25,000, but less than \$175,000, shall be made by obtaining written quotations from at least two responsible vendors. All purchases of \$175,000 or more shall be made by obtaining competitive proposals from at least two responsible vendors. Sealed bids shall be utilized when required by the Federal awarding agency.
 - a) In order for sealed bidding to be feasible, the following conditions will be present:
 - (1) A complete, adequate, and realistic specification or purchase description is available;



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(2) Two or more responsible bidders are willing and able to compete effectively for the business;

(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.

b) If sealed bids are used, the following requirements apply:

(1) The invitation for bids will be publicly advertised and bids must be 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.

5. **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:

a) Requests for proposals must be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals must be considered to the maximum extent practical;



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b) Proposals must be solicited from an adequate number of qualified sources;

c) The non-Federal entity must have a written method for conducting technical evaluations of the proposals received and for selecting recipients;

d) Contracts must be awarded to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and

e) Competitive proposal procedures 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.

6. **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:

a) The item is available only from a single source;

b) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;

c) The Federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the non-Federal entity; or

d) After solicitation of a number of sources, competition is determined inadequate.

D. Cost and Price Analysis (2 CFR § 200.323)

A cost or price analysis must be performed in connection with every procurement action in excess of the Simplified Acquisition Threshold (\$250,000) including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular



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procurement situation, but as a starting point, the County will make independent estimates before receiving bids or proposals. The cost plus a percentage of cost and percentage of construction cost methods of contracting must not be used.

E. Suspension and Debarment (2 CFR 200.212 & 180.300)

The County will review all grant purchases to verify that purchases will not be made against contractors that are on the Debarment or Suspension list supplied by the Government. The County will review all requisition requests submitted for all grant accounts to make sure the contractor is not on the debarment list. This list is available at - <https://www.sam.gov/>. If a match is found, the County will not process the purchase order. All results of searches will be attached to the filed paperwork for verification of search.

All contracts will require the contractor to certify in writing that it has not been suspended or disbarred from doing business with any federal agency.

F. Contract Provisions under Federal Awards (2 CFR 200.326)

It is the policy of the County to include all of the following provisions, as applicable, in all contracts (including small purchases) with contractors and sub awards:

1. **Remedies:** All contracts in excess of the small purchase threshold fixed at 41 U.S.C. 403(11) (currently \$150,000) shall contain contractual provisions or conditions that allow for administrative, contractual, or legal remedies in instances in which a contractor violates or breaches the contract terms.
2. **Termination:** All contracts in excess of \$10,000 shall contain suitable provisions for termination by the County, including the manner by which termination shall be effected and the basis for settlement. In addition, such contracts shall describe the conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated due to circumstances beyond the control of the contractor.
3. **Equal Employment Opportunity:** All contracts shall contain a provision requiring compliance with E.O. 11246, "Equal Employment Opportunity," as amended by E.O. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and as supplemented by regulations at 41 CFR part 60, "Office of Federal



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Contract Compliance Programs, Equal Employment Opportunity, and Department of Labor."

4. **Davis-Bacon Act, as amended (40 U.S.C. 3141-3148):** If included in the federal agency's grant program legislation, all construction contracts of more than \$2,000 awarded by the County and its sub recipients shall include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 276a to a-7) and as supplemented by Department of Labor regulations (29 CFR part 5, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction"). Under this Act, contractors are required to pay wages to laborers and mechanics at a rate not less than the minimum wages specified in a wage determination made by the Secretary of Labor. In addition, contractors shall be required to pay wages not less than once a week. It is the policy of the County to place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation and the award of a contract shall be conditioned upon the acceptance of the wage determination. The county shall also obtain reports from contractors on a weekly basis in order to monitor compliance with the Davis-Bacon Act. The County shall report all suspected or reported violations to the Federal awarding agency. 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



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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. 327-333):** [Where applicable] All contracts awarded by the County excess of \$100,000 for contracts that involve the employment of mechanics or laborers shall 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:** Contracts or agreements for the performance of experimental, developmental, or research work shall provide for the rights of the Federal Government and the County in any resulting invention in accordance with 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 sub awards of amounts in excess of \$150,000 shall contain a provision that requires the recipient to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 et seq.). Violations shall be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

8. **Debarment and Suspension (E.O.s 12549 and 12689):** For all contracts, the County shall obtain from the contractor a certification that neither the contractor nor any of its principal employees are listed on the Excluded Parties List System in System of Award Management.



Procurement Policy 5.02

Board Approval Date: 10/09/2018

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9. **Byrd Anti-Lobbying Amendment (31 U.S.C. 1352):** For all contracts or sub grants of \$100,000 or more, the County shall obtain from the contractor or sub-grantee a certification 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. Likewise, since each tier provides such certifications to the tier above it, the County shall provide such certifications in all situations in which it acts as a sub-recipient of a sub-grant of \$100,000 or more.

10. See §200.322 Procurement of recovered materials.

11. 200.322: A non-Federal entity that is a state agency or agency of a political subdivision of a state 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 or the value of the quantity acquired by the preceding fiscal year exceeded \$10,000; 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.

ⁱ Contracts of County Boards <https://www.revisor.mn.gov/statutes/?id=375.21>

ⁱⁱ Uniform Municipal Contract Law <https://www.revisor.mn.gov/statutes/?id=471.345&year=2011>

ⁱⁱⁱ Title 2 Subtitle A Chapter II Part 200 http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title02/2cfr200_main_02.tpl

^{iv} System for Award Management <https://www.sam.gov/portal/SAM/##11>