

Category: 200

Number: 241

Subject: **PURCHASING POLICY**

1. **PURPOSE:** The purpose of this Policy is to provide for the fair and equitable treatment of all persons involved in public purchasing by Saginaw County, to maximize the purchasing value of public funds in procurement, and to provide safeguards for maintaining a procurement system of quality and integrity.
2. **AUTHORITY:** The Saginaw County Board of Commissioners.
3. **APPLICATION:** This Policy applies to contracts for the procurement of supplies, services and construction entered into by Saginaw County after the effective date of this Policy. It shall apply to every expenditure of public funds by Saginaw County for public purchasing irrespective of the source of the funds. When the procurement involves the expenditure of federal or state assistance or contract funds, the procurement shall be conducted in accordance with any mandatory applicable federal or state laws and regulations. Nothing in this Policy shall prevent any public agency from complying with the terms and conditions of any grant, gift or bequest that is otherwise consistent with law.
4. **RESPONSIBILITY:** The Controller/CAO shall be responsible for the implementation and administration of this policy.
5. **DEFINITION(S):**
  - 5.1 **Brand Name or Equal Specification.** A specification limited to one or more items by manufacturers' names or catalogue numbers to describe the standard of quality, performance and other salient characteristics needed to meet County requirements and which provides for the submission of equivalent products.
  - 5.2 **Brand Name Specification.** A specification limited to one or more items by manufacturers' names or catalogue numbers.
  - 5.3 **Business.** Any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture or any other private legal entity.
  - 5.4 **Change Order.** A written order signed and issued by the Purchasing Agent, directing the contractor to make changes which the "Changes" clause of the contract authorizes the Purchasing Agent to order without the consent of the contractor.
  - 5.5 **Contract Modification (bilateral change).** Any written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity or other provisions of any contract accomplished by mutual action of the parties to the contract.

- 5.6 Confidential Information. Any information which is available to an employee only because of the employee's status as an employee of the County and is not a matter of public knowledge or available to the public on request.
- 5.7 Construction. The process of building, altering, repairing, improving or demolishing any public structure or building, or other public improvements of any kind to any public real property. It does not include the routine operation, routine repair, or routine maintenance of existing structures, buildings or real property.
- 5.8 Contract. All types of County agreements, regardless of what they may be called, for the procurement of supplies, services or construction.
- 5.9 Contractor. Any person having a contract with the County or using an agency thereof.
- 5.10 Cost Analysis. The evaluation of cost data for the purpose of arriving at costs actually incurred or estimates of costs to be incurred, prices to be paid, and costs to be reimbursed.
- 5.11 Cost Data. Factual information concerning the cost of labor, material, overhead and other cost elements which are expected to be incurred or which have been actually incurred by the contractor in performing the contract.
- 5.12 Cost Reimbursement Contract. A contract under which a contractor is reimbursed for costs which are allowable and allocable in accordance with the contract terms and the provisions of this Policy, and a fee or profit, if any.
- 5.13 County Attorney. Attorney appointed and retained by the Saginaw County Board of Commissioners to represent the County of Saginaw in legal disputes and charged with rendering legal advice on County activities.
- 5.14 County Controller. Board appointed Chief Administrative and Financial Officer of the County of Saginaw charged with implementing all policies and procedures adopted by the Board of Commissioners.
- 5.15 Direct or Indirect Participation. Involvement through decision, approval, disapproval, recommendation, preparation of any part of a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing or in any other advisory capacity.
- 5.16 Disadvantaged Business. A small business which is owned or controlled by a majority of persons, not limited to members of minority groups, who have been deprived of the opportunity to develop and maintain a competitive position in the economy because of social advantages.

- 5.17 Employee. An individual drawing a salary or wages from the County, whether elected or not; any non compensated individual performing personal services for the County or any department, agency, commission, council, board or any other entity established by the executive or legislative branch of the County; and any non compensated individual serving as an elected official of the County.
- 5.18 Financial Interest.
- 5.18.1 Ownership of any interest or involvement in any relationship from which, or as a result of which, a person within the past year has received, or is presently or in the future entitled to receive more than \$500 per year, or its equivalent;
- 5.18.2 Ownership of 25 percent (25%) of any property or business; or
- 5.18.3 Holding a position in a business such as officer, director, trustee, partner, employee or the like, or holding any position of management.
- 5.19 Gratuity. A payment, loan subscription, advance, deposit of money, service, or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is received.
- 5.20 Immediate Family. A spouse, children, parents, brothers and sisters.
- 5.21 Invitation for Bids. All documents, including criteria for Responsible Contractors whether attached or incorporated by reference, utilized for soliciting sealed bids.
- 5.22 Person. Any business, individual, union, committee, club, other organization or group of individuals.
- 5.23 Prevailing Wages. That wage which is common to contractors operating within the Saginaw County Area.
- 5.24 Price Analysis. The evaluation of price data, without analysis of the separate cost components and profit as in cost analysis, which may assist in arriving at prices to be paid and costs to be reimbursed.
- 5.25 Price Data. Factual information concerning prices for items substantially similar to those being procured. Prices in this definition refer to offered or proposed selling prices, historical selling prices and current selling prices. The definition refers to data relevant to both prime and sub contract prices.
- 5.26 Procurement. The buying, purchasing, renting, leasing or otherwise acquiring of 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.

- 5.27 Public Agency. A public entity subject to or created by the County.
- 5.28 Purchasing Agent. Principal purchasing official for the County, responsible for the procurement of supplies and services, and the management and disposal of supplies.
- 5.29 Qualified Products List. An approved list of supplies, services or construction items described by model or catalog numbers, which, prior to competitive solicitation, the County has determined will meet the applicable specification requirements.
- 5.30 Request for Proposals. All documents, including criteria for Responsible Contractors whether attached or incorporated by reference, utilized for soliciting proposals.
- 5.31 Responsible Bidder or Offeror. A person who has the capability in all respects to perform fully the contract requirements, and the tenacity, perseverance, experience, integrity, reliability, capacity, facilities, equipment and credit which will assure good faith performance.
- 5.32 Responsive Bidder. A person who has submitted a bid that conforms in all material respects to the requirements set forth in the invitation for bids.
- 5.33 Saginaw County Area. To include Contractors with normal business operations in Saginaw County and/or based in the surrounding counties of Bay, Genesee, Gratiot, Midland, Shiawassee and Tuscola.
- 5.34 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.
- 5.35 Small Business. A United States business which is independently owned and which is not dominant in its field of operation or an affiliate or subsidiary of a business dominant in its field of operation.
- 5.36 Specification. Any description of the physical or functional characteristics or of the nature of a supply, service or construction item. It may include a description of any requirement for inspecting, testing or preparing a supply, service or construction item for delivery.
- 5.37 Supplies. All property, including but not limited to equipment, materials, printing, insurance and leases of real property, excluding land or a permanent interest in land.
- 5.38 Using Agency. Any department, commission, board or public agency requiring supplies, services or construction procured pursuant to this Policy.

6. POLICY:

6.1 Public Access to Procurement Information.

6.1.1 Procurement information shall be a public record to the extent provided in Act 442 of the Public Acts of 1976 (Michigan Compiled Laws (MCL) 15.231 et seq.), as amended, and shall be available to the public as provided in said statute.

6.2 Office of the Purchasing Agent.

6.2.1 Establishment, Appointment, and Tenure

6.2.1.1 Establishment of the position of Purchasing Agent. There is hereby created the position of Purchasing Agent, who shall be the County's principal public purchasing official.

6.2.1.2 Appointment. The Purchasing Agent shall be appointed by the County Controller. He/she shall meet the minimum standards set forth in the Purchasing Agent's job description promulgated by the County Board.

6.2.1.3 Tenure. Purchasing is a division of the County Controller's Office. The Purchasing Agent shall serve an indefinite term and may be removed from the position according to the procedures established in the County's Personnel Policies.

6.2.2 Authority and Duties

6.2.2.1 Principal Public Purchasing Official. Except as otherwise provided herein, the Purchasing Agent shall serve as the principal public purchasing official for the County, and shall be responsible for the procurement of supplies, services and construction in accordance with this Policy, as well as the management and disposal of supplies.

6.2.2.2 Duties. In accordance with this Policy, and subject to the supervision of the County Controller, the Purchasing Agent shall:

6.2.2.2.1 Procure or supervise the procurement of supplies, services and construction needed by the County, including vendor solicitation and contract negotiation;

6.2.2.2.2 Sell, trade or otherwise dispose of surplus supplies belonging to the County;

6.2.2.2.3 Maintain an on line purchasing system;

6.2.2.2.4 Establish and maintain programs for specifications development and contract administration, inspection and acceptance, in cooperation with the public agencies using the supplies, services and construction;

6.2.2.2.5 Other duties as assigned by the County Controller.

6.2.2.3 Operational Procedures. Consistent with this Policy and with the approval of the County Controller, the Purchasing Agent may adopt operational procedures relating to the execution of his/her duties.

6.2.3 Delegations to Other County Officials.

6.2.3.1 With the approval of the County Controller, the Purchasing Agent may delegate authority to purchase certain supplies, services or construction items to other County officials, if such delegation is deemed necessary for the effective procurement of those items.

6.3 Source, Selection and Contract Formation.

6.3.1 Methods of Source Selection

6.3.1.1 Competitive Sealed Bidding

6.3.1.1.1 Conditions for Use. All procurement contracts of the County shall be awarded by competitive sealed bidding except as otherwise provided in Sections 6.3.1.2 (Competitive Sealed Proposals), 6.3.1.3 (Small Purchases), 6.3.1.4 (Sole Source Procurement), and 6.3.1.5 (Emergency Procurements) of this Policy.

6.3.1.1.2 Invitation for Bids. An invitation for bids shall be issued and shall include specifications, and all contractual terms and conditions applicable to the procurement.

6.3.1.1.3 Public Notice. Adequate public notice of the invitation for bids shall be given a reasonable time (not less than 10 calendar days prior to the date set forth therein for the opening of bids). Such notice may include publication in a newspaper of general circulation for a reasonable time prior to the bid opening. The public notice shall state the place, date and time of bid opening.

- 6.3.1.1.4 Bid Opening. Bids shall be opened publicly in the presence of one or more witnesses at the time and place designated in the invitation for bids. The amount of each bid, and such other relevant information as the Purchasing Agent deems appropriate, together with the name of each bidder shall be recorded; the record and each bid shall be open to public inspection in accordance with Section 6.1.2 (Public Access to Procurement Information).
- 6.3.1.1.5 Bid Acceptance and Bid Evaluation. Bids shall be unconditionally accepted without alteration or correction, except as authorized in this Policy. Bids shall be evaluated based on the requirements set forth in the invitation for bids, which may include criteria to determine acceptability such as inspection, testing, quality, workmanship, delivery and suitability for a particular purpose. Bids that do not comply with all criteria set forth in the invitation to bid may, at the discretion of the Purchasing Agent, be deemed not qualified bids. Those criteria that will affect the bid price and be considered in evaluation for award shall be objectively measurable, such as discounts, transportation costs and total or life cycle costs. The invitation for bids shall set forth the evaluation criteria to be used. No criteria may be used in bid evaluation that is not set forth in the invitation for bids.
- 6.3.1.1.6 Correction or Withdrawal of Bids; Cancellation of Awards. Correction or withdrawal of inadvertently erroneous bids before or after bid opening or cancellation of awards or contracts based on such bid mistakes, may be permitted where appropriate. Mistakes discovered before bid opening may be modified or withdrawn by written notice received in the office designated in the invitation for bids prior to the time set for bid opening. After bid opening, corrections in bids shall be permitted only to the extent that the bidder can show by clear and convincing evidence that a mistake of a non judgmental character was made, the nature of the mistake and the bid price actually intended. After bid opening, no changes in bid prices or other provisions of bids prejudicial to the interest of the County or fair competition shall be permitted. In lieu

of bid correction, a low bidder alleging a material mistake of fact may be permitted to withdraw its bid if:

6.3.1.1.6.1 The mistake is clearly evident on the face of the bid document, but the intended correct bid is not similarly evident; or

6.3.1.1.6.2 The bidder submits evidence, which clearly and convincingly demonstrates that a mistake was made. All decisions to permit the correction or withdrawal of bids, or to cancel awards or contracts based on bid mistakes, shall be supported by a written determination made by the Purchasing Agent.

6.3.1.1.7 Award. When purchasing goods and services, whenever possible, preference shall be given to vendors who are located within Saginaw County, the State of Michigan, and the U.S.A.

6.3.1.1.7.1 Non construction Goods and Services: The contract shall be awarded with reasonable promptness by appropriate written notice to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the invitation for bids. No contract or purchase order shall be entered into with any company or business, which is in bankruptcy or receivership. In case of a tie between the lowest responsible and responsive bidders, preference shall be given to the local vendor.

6.3.1.1.7.2 Construction Projects: In awarding construction contracts over \$50,000, the County will consider the company's compliance with the Prevailing Wage Policy in their bid submittal. In addition, for contracts \$50,000 to 1,000,000 and \$1,000,000



or more, contractors must comply with County Policy #244. Additional consideration shall be given to companies that employ residents of the Saginaw County area. Such additional consideration shall be specified in the bid documents and subsequent bids shall be weighted based on the purchase price and use of local labor. Additional consideration to be given for in state employment and Saginaw County area employment is as follows:

| In County Area        | In State Area |     |
|-----------------------|---------------|-----|
| Under \$100,000       | 5 %           | 2%  |
| \$100,000 - \$499,999 | 3 %           | 2%  |
| \$500,000 and over    | 2%            | 1 % |

In the event the lowest responsive and responsible bid for a construction project exceeds available funds as certified by the County Controller, the Purchasing Agent is authorized, when time or economic considerations preclude re solicitation of work of a reduced scope, to negotiate an adjustment of the bid price with the lowest responsive and responsible bidder, in order to bring the bid within the amount of available funds. Any such negotiated adjustment shall be based only upon eliminating independent deductive items specified in the invitation for bids. No contract or purchase order shall be entered into with any company or business that is within bankruptcy or receivership. In case of a tie between the lowest responsible and responsive bidders, preference shall be given to the local vendor.

6.3.1.1.8 Multi Step Sealed Bidding. When it is considered impractical to prepare initially a purchase description to support an award based on price, an invitation for bids may be issued requesting the submission of un priced offers to be followed by an invitation for bids limited to those bidders who offers have been determined to be technically acceptable under the criteria set forth in the first solicitation.

6.3.1.2 Competitive Sealed Proposals.

6.3.1.2.1 Conditions for Use. When the Purchasing Agent determines that the use of competitive sealed bidding is either not practicable or not advantageous to the County, a contract may be entered into by use of the competitive sealed proposal method.

6.3.1.2.2 Request for Proposals. Proposals shall be solicited through a request for proposals.

6.3.1.2.3 Public Notice. Adequate public notice of the request for proposals shall be given in the same manner as provided in Section 6.3.1.1.3 (Competitive Sealed Bidding, Public Notice).

6.3.1.2.4 Receipt of Proposals. No proposals shall be handled so as to permit disclosure of the identity of any offeror or the contents of any proposal to competing offerors during the process of negotiation. A register of proposals shall be prepared containing the name of each offeror, the number of modifications received, if any, and a description sufficient to identify the item offered. The register of proposals shall be open for public inspection only after contract award.

6.3.1.2.5 Evaluation Factors. The request for proposals shall state the relative importance of price and other evaluation factors.

6.3.1.2.6 Discussion with Responsible Offerors and Revisions to Proposals. As provided in the request for proposals, discussions may be conducted with responsible offerors who submit proposals determined to be reasonably susceptible of being

selected for award for the purpose of clarification to assure full understanding of, and conformance to, the solicitation requirements. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals and such revisions may be permitted after submissions and prior to award for the purpose of obtaining best and final offers. In conducting discussions, there shall be no disclosure of the identity of competing offerors or of any information derived from proposals submitted by competing offerors.

6.3.1.2.7 Award. Award shall be made to the responsible offeror whose proposal is determined to be the most advantageous to the County, taking into consideration price and the evaluation factors set forth in the request for proposals. The bid file shall contain the basis on which the award is made.

### 6.3.1.3 Small Purchases

6.3.1.3.1 General. Any contract not exceeding \$20,000 may be made in accordance with the small purchase procedures authorized in this Section. Contract requirements shall not be artificially divided so as to constitute a small purchase under this Section.

6.3.1.3.2 Medium Purchases Over \$10,000 but less than \$20,000. When purchases are estimated to fall between \$10,000 and \$20,000, competitive sealed proposals shall be obtained as described in Section 6.3.1.2, unless a waiver is approved in advance by the Purchasing Agent.

6.3.1.3.2.1 No Purchase Orders shall be issued for purchases in amounts less than \$1000.00, unless deemed necessary by the Purchasing Agent.

6.3.1.3.3 Small Purchases Over \$1,000, But Less Than \$10,000. Insofar as it is practical for small purchases in excess of \$1,000, no less than three businesses shall be solicited to submit quotations. Award shall be made to the business offering the lowest acceptable quotation. The names of the businesses submitting quotations and the date and amount of

each quotation shall be recorded and maintained as a public record.

6.3.1.3.4 Small Purchases Under \$1,000. The Purchasing Agent shall adopt operational procedures for making small purchases of \$1,000 or less. Such operational procedures shall provide for obtaining adequate and reasonable competition for the supply, service or construction being purchased.

#### 6.3.1.4 Sole Source Procurement

6.3.1.4.1 A contract may be awarded without competition when the Purchasing Agent determines, after conducting a good faith review of available sources, that there is only one source for the required supply, service or construction item. The Purchasing Agent shall conduct negotiations, as appropriate, as to price, delivery and terms. The County Controller shall approve all sole source purchases. All purchases of utilities where there is a single source, (i.e., electric, water, sewer, etc.) shall be purchased without bid.

#### 6.3.1.5 Emergency Procurements

6.3.1.5.1 Notwithstanding any other provisions of this Policy, the Purchasing Agent with the approval of the Controller/CAO may make or authorize others to make emergency procurements of supplies, services or construction items when there exists a threat to public health, welfare or safety, provided that such emergency procurements shall be made with such competition as is practicable under the circumstances.

#### 6.3.1.6 Cancellation of Invitations for Bids or Requests for Proposals

6.3.1.6.1 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, when it is for good cause and in the best interests of the County. The reasons therefor 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

for good cause 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.

## 6.3.2 Qualifications and Duties

### 6.3.2.1 Responsibility of Bidders and Offerors

6.3.2.1.1 Determination of Non-responsibility. If a bidder or offeror who otherwise would have been awarded a contract is found non-responsible, a written determination of non-responsibility, setting forth the basis of the finding, shall be prepared by the Purchasing Agent. The unreasonable failure of a bidder or offeror to promptly supply information in connection with an inquiry with respect to responsibility may be grounds for a determination of non responsibility with respect to such bidder or offeror.

A copy of the determination shall be sent promptly to the non-responsible bidder or offeror. The final determination shall be made part of the bid file and be made a public record.

### 6.3.2.2 Bid, Payment, and Performance Bonds on Supply or Service Contracts

6.3.2.2.1 Bid surety, payment bonds, performance bonds or other security may be required for supply contracts or service contracts in conformance with State law or as the Purchasing Agent or head of a using agency deems advisable to protect the County's interests. Any such bonding requirements shall be set forth in the solicitation. Bid or performance bonds shall not be used as a substitute for a determination of a bidder or offeror's responsibility. Financial statements or performance bonds may be required from any company which has been in operation for less than one year.

### 6.3.3 Types of Contracts and Contract Administration

#### 6.3.3.1 Types of Contracts

6.3.3.1.1 General Authority. Subject to the limitations of this Section, any type of contract which is appropriate to the procurement and which will promote the best interest of the County may be used, provided that the use of a cost plus a percentage contract is prohibited. A cost reimbursement contract may be used only when a determination is made that such contract is likely to be less costly to the County than any other type or that it is impracticable to obtain the supply, service or construction item required except under such a contract.

#### 6.3.3.1.2 Multi Term Contracts

6.3.3.1.2.1 Specified Period. Unless otherwise provided by law, a contract for supplies or services may be entered into for any period of time deemed to be in the best interests of the County, provided the term of the contract and conditions of renewal or extension, if any, are included in the solicitation and funds are available for the first fiscal period at the time of contracting.

Payment and performance obligations for succeeding fiscal periods shall be subject to the availability and appropriation of funds therefor.

6.3.3.1.2.2 Determination Prior to Use. Prior to the utilization of a multi term contract, it shall be determined:

6.3.3.1.2.2.1. That estimated requirements cover the period of the contract and are reasonably firm and continuing; and

6.3.3.1.2.2.2. That such a contract will serve the best interests of the County by encouraging effective

competition or otherwise promoting economies in County procurement.

6.3.3.1.2.3 Cancellation Due to Unavailability of Funds in Succeeding Fiscal Periods. When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the contract shall be canceled and the contractor shall be reimbursed for the reasonable value of any non recurring costs incurred but not amortized in the price of the supplies or services delivered under the contract. The cost of cancellation may be paid from appropriations available for such purposes.

#### 6.3.3.1.3 Multiple Source Contracting

6.3.3.1.3.1 General. A multiple source award is an award of an indefinite quantity contract for one or more similar supplies or services to more than one bidder or offeror. The obligation to order the County's actual requirements is limited by the provision of Uniform Commercial Code Section 2 306(1).

6.3.3.1.3.2 Limitations on Use. A multiple source award may be made when award to two or more bidders or offerors for similar products is necessary for adequate delivery, service or product compatibility. Any multiple source award shall be made in accordance with the provisions of Section 6.3.1.1 (Competitive Sealed Bidding), Section 6.3.1.2 (Competitive Sealed Proposals), Section 6.3.1.4 (Small Purchases), and Section 6.3.1.5 (Emergency Procurements), as applicable. Multiple source awards shall not be made when a single award will meet the County's needs

without sacrifice of economy or service. Awards shall not be made for the purpose of dividing the business, making available product or supplier selection to allow for user preference unrelated to utility or economy or avoiding the resolution of tie bids. Any such awards shall be limited to the least number of suppliers necessary to meet the valid requirements.

6.3.3.1.3.3 Contract and Solicitation Provisions. All eligible users of the contract shall be named in the solicitation and it shall be mandatory that the actual requirements of such users that can be met under the contract be obtained in accordance with the contract, provided that:

6.3.3.1.3.3.1. The County shall reserve the right to take bids separately if a particular quantity requirement arises which exceeds its normal requirement or an amount specified in the contract; and

6.3.3.1.3.3.2. The County shall reserve the right to take bids separately if the Purchasing Agent approves a finding that the supply or service available under the contract will not meet a nonrecurring special need of the County.

6.3.3.1.3.4 Intent to Use. If a multiple source award is anticipated prior to issuing a solicitation, the County shall reserve the right to make such an award and the criteria for award shall be stated in the solicitation.

6.3.3.1.3.5 Determination Required. The Purchasing Agent shall make a written determination setting forth



the reasons for a multiple source award, which shall be made a part of the procurement file.

### 6.3.3.2 Contract Clauses and Their Administration

6.3.3.2.1 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 Purchasing Agent, after consultation with the County Attorney, may issue clauses appropriate for supply, service or construction contracts, addressing among others the following subjects:

6.3.3.2.1.1 The unilateral rights of the County to order in writing changes in the work within the scope of the contract;

6.3.3.2.1.2 The unilateral right of the County to order in writing temporary stopping of the work or delaying performance that does not alter the scope of the contract;

6.3.3.2.1.3 Variations occurring between estimated quantities of work in the contract and actual quantities;

6.3.3.2.1.4 Defective pricing;

6.3.3.2.1.5 Liquidated damages;

6.3.3.2.1.6 Specified excuses for delay or nonperformance;

6.3.3.2.1.7 Termination of the contract for default;

6.3.3.2.1.8 Termination of the contract in whole or in part for the convenience of the County;

6.3.3.2.1.9 Suspension of work on a construction project ordered by the County; and

6.3.3.2.1.10 Site conditions differing from those indicated in the contract, or

ordinarily encountered, except that a differing site conditions clause need not be included in a contract:

6.3.3.2.1.10.1. When the contract is negotiated;

6.3.3.2.1.10.2. When the contractor provides the site or design; or

6.3.3.2.1.10.3. When the parties have otherwise agreed with respect to the risk of differing site conditions.

6.3.3.2.2 Price Adjustments. Adjustments in price resulting from the use of contract clauses required by Section 6.3.3.2.1 shall be computed in one or more of the following ways:

6.3.3.2.2.1 By agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;

6.3.3.2.2.2 By unit prices specified in the contract or subsequently agreed upon;

6.3.3.2.2.3 By the costs attributable to the events or situations under such clauses with adjustment of profit or fee, all as specified in the contract or subsequently agreed upon;

6.3.3.2.2.4 In such other manner as the contracting parties may mutually agree; or

6.3.3.2.2.5 In the absence of agreement by the parties, by a unilateral determination by the County of the costs attributable to the events or situations under such clauses with adjustment of profit or fee as computed by the County as accounted for in accordance with generally accepted accounting

procedures and subject to the provisions of Section 6.7 (Appeals and Remedies).

6.3.3.2.3 Standard Clauses and Their Modification. The Purchasing Agent, after consultation with the County Attorney, may establish standard contract clauses for use in County contracts. If the Purchasing Agent establishes any standard clauses addressing the subjects set forth in Section 6.3.3.2.1, such clauses may be varied provided that the circumstances justify such variations, and provided that notice of any such material variation be stated in the invitation for bids or request for proposals.

6.3.3.3 Contract Administration. A contract administration system designed to ensure that a contractor is performing in accordance with the solicitation under which the contract was awarded, and the terms and conditions of the contract, shall be maintained.

6.3.3.4 Approval of Accounting System. Except with respect to firm fixed price contracts, no contract type shall be used unless it has been determined by the Purchasing Agent that:

6.3.3.4.1 The proposed contractor's accounting system will permit timely development of all necessary cost data in the form required by the specific contract type contemplated; and

6.3.3.4.2 The proposed contractor's accounting system is adequate to allocate costs in accordance with generally accepted cost accounting principles.

6.3.3.5 Right to Inspect Plant. The County may, at reasonable times, inspect the part of the plant, place of business or worksite of a contractor or subcontractor at any tier which is pertinent to the performance of any contract awarded or to be awarded by the County.

6.3.3.6 Right to Audit Records.

6.3.3.6.1 Audit of Cost or Pricing Data. The County may at reasonable times and places, audit the books and records of any contractor who has submitted cost or pricing data as a part of its bid or proposal for three

years from the date of final payment under the contract.

6.3.3.6.2 Contract Audit. The County shall be entitled to audit the books and records of a contractor or a subcontractor at any tier under any negotiated contract or subcontract other than a firm fixed price contract to the extent that such books, documents, papers and records are pertinent to the performance of such contract or subcontract. Such books and records shall be maintained by the contractor for a period of three years from the date of final payment under the prime contract and by the subcontractor for a period of three years from the date of final payment under the subcontract.

6.3.3.7 Reporting of Anti-competitive Practices. When for any reason collusion or other anticompetitive practices are suspected among any bidders or offerors, a notice of the relevant facts shall be transmitted to the State Attorney General and the Saginaw County Prosecutor.

6.3.3.8 County Procurement Records

6.3.3.8.1 Bid File. All determinations and other written records pertaining to the solicitation and award of a contract shall be maintained for the County in a bid file by the Purchasing Agent.

6.3.3.8.2 Retention of Procurement Records. All procurement records shall be retained and disposed of by the County in accordance with records retention guidelines.

6.4 Specifications.

6.4.1 Maximum Practicable Competition.

6.4.1.1 All specifications shall be drafted so as to promote overall economy for the purposes intended and encourage competition in satisfying the County's needs while still providing a fair opportunity to all businesses, including small and/or disadvantaged, and shall not be unduly restrictive. The policy enunciated in this Section applies to all specifications including but not limited to, those prepared for the County by architects, engineers, designers, and draftsmen.

## 6.4.2 Brand Name or Equal Specification

6.4.2.1 Use. Brand name or equal specifications may be used when the Purchasing Agent determines that:

6.4.2.1.1 No other design or performance specifications or qualified products list is available;

6.4.2.1.2 Time does not permit the preparation of another form of purchase description, not including a brand name specification;

6.4.2.1.3 The nature of the product or the nature of the County's requirements makes use of a brand name or equal specification suitable for the procurement; or

6.4.2.1.4 Use of a brand name or equal specification is in the County's best interests.

6.4.2.2 Designation of Several Brand Names. Brand name or equal specifications shall seek to designate three, or as many different brands as are practicable, as "or equal" references and shall further state that substantially equivalent products to those designated will be considered for award.

6.4.2.3 Required Characteristics. Unless the Purchasing Agent determines that the essential characteristics of the brand names included in the specifications are commonly known in the industry or trade, brand name or equal specifications shall include a description of the particular design, functional or performance characteristics which are required.

6.4.2.4 Nonrestrictive Use of Brand Name or Equal Specifications. Where a brand name or equal specification is used in a solicitation, the solicitation shall contain explanatory language that the use of a brand name is for the purpose of describing the standard of quality, performance and characteristics desired and is not intended to limit or restrict competition.

## 6.4.3 Brand Name Specification

6.4.3.1 Use. Since use of a brand name specification is restrictive of product competition, it may be used only when the Purchasing Agent makes a determination that only the identified brand name item or items will satisfy the County's needs.

6.4.3.2 Competition. The Purchasing Agent shall seek to identify sources from which the designated brand name item or items can be obtained and shall solicit such sources to achieve whatever degree of price competition is practicable. If only one source can supply the requirement, the procurement shall be made under Section 6.3.1.4 (Sole Source Procurement).

6.4.4 Nondiscrimination

6.4.4.1 Every contract or purchase order issued by Saginaw County shall be entered into under the provision which requires the contractor, subcontractor or vendor not to discriminate against any employee or applicant for employment because of his/her race, color, religion, age, sex, disability or ancestry. Failure to meet this provision shall be grounds for termination of the contract or purchase order.

6.5 Procurement of Construction Services.

6.5.1 Management of Construction Contracting

6.5.1.1 Responsibility for Selection of Methods of Construction Contracting Management. The County Controller shall have discretion to select the appropriate method of construction contracting management for a particular project. In determining which method to use, the County Controller shall consider the County's requirements, its resources and the potential contractor's capabilities.

6.5.2 Bid Security and Performance Bonds

6.5.2.1 Bid Security

6.5.2.1.1 Requirement for Bid Security. Bid security may be required for competitive sealed bidding for construction contracts when the price is estimated to exceed \$50,000. Bid security shall be a bond provided by a surety company authorized to do business in the State of Michigan, or the equivalent in cash, or otherwise supplied in a form satisfactory to the County. Nothing herein shall prevent the requirement of such bonds on construction contracts under \$50,000 when the circumstances warrant.

- 6.5.2.1.2 Amount of Bid Security. Bid security shall be in an amount equal to at least 5% of the amount of the bid.
- 6.5.2.1.3 Rejection of Bids for Noncompliance with Bid Security Requirements. When the invitation for bids requires security, noncompliance requires that the bid be rejected.
- 6.5.2.1.4 Withdrawal of Bids. If the bidder is permitted to withdraw its bid before award as provided in Section 3 101 (6) (Competitive Sealed Bidding; Correction or Withdrawal of Bids; Cancellation of Awards), no action shall be had against the bidder or the bid security.

#### 6.5.2.2 Contract Performance and Payment Bonds

- 6.5.2.2.1 When Required Amounts. When a construction contract is awarded the following bonds or security may be required and shall become binding on the parties upon the execution of the contract:
  - 6.5.2.2.1.1 A performance bond satisfactory to the County, executed by a surety company authorized to do business in the State of Michigan or otherwise secured in a manner satisfactory to the County, in an amount equal to 100% of the price specified in the contract; and
  - 6.5.2.2.1.2 A payment bond satisfactory to the County, executed by a surety company authorized to do business in the State of Michigan or otherwise secured in a manner satisfactory to the County, for the protection of all persons supplying labor and material to the contractor or its subcontractors for the performance of the work provided for in the contract. The bond shall be an amount equal to 100% of the price specified in the contract.

6.5.2.2.2 Authority to Require Additional Bonds. Nothing in this Section shall be construed to limit the authority of the County to require a performance bond or other security in addition to those bonds, or in circumstances other than specified in Section 6.5.2.2.1.

6.5.2.2.3 Suits on Payment Bonds Right to Institute. Unless otherwise authorized by law, any person who has furnished labor or material to the contractor or subcontractors for the work provided in the contract, for which a payment bond is furnished under this Section and who has not been paid in full within 90 days from the date on which that person performed the last of the labor or supplied the material, shall have the right to sue on the payment bond for any amount unpaid at the time the suit is instituted and to prosecute the action for the amount due that person. However, any person having a contract with a subcontractor of the contractor, but no express or implied contract with the contractor furnishing the payment bond, shall have a right of action upon the payment bond upon giving written notice to the contractor within 90 days from the date on which that person performed the last of the labor or supplied the material. That person shall state in the notice the amount claimed and the name of the party to whom the material was supplied or for whom the labor was performed. The notice shall be served personally or by registered or certified mail, postage prepaid, in an envelope addressed to the contractor at any place the contractor maintains an office or conducts business.

6.5.2.2.4 Suits on Payment Bonds Where and When Brought. Unless otherwise authorized by law, every suit instituted upon a payment bond shall be brought in a court of competent jurisdiction for the county or district in which the construction contract was to be performed.

6.5.2.3 Copies of Bond Forms. Any person may request and obtain from the County a copy of a bond upon payment of the cost of reproduction of the bond and postage, if any.



### 6.5.3 Fiscal Responsibility

- 6.5.3.1 Every contract modification, change order or contract price adjustment in excess of 15% of the total contract amount under a construction contract with the County shall be subject to prior approval by the County Board of Commissioners after receiving a report from the County Controller as to the effect of the contract modification, change order or contract price adjustment on the total project budget or the total contract budget.

### 6.5.4 Prevailing Wage

- 6.5.4.1 On all construction contracts with a total value exceeding \$50,000, all craftsman, mechanics and laborers employed directly on the site of work shall receive at least the commercial prevailing wage rates as established by the State of Michigan, Bureau of Safety and Regulation, Wage and Hour Division, for commercial prevailing wage rates for the Saginaw County area.

- 6.5.4.1.1 All construction subcontracts entered into by the Contractor for work performed directly on site, shall contain the provisions for prevailing wages as set forth above. The Contractor and all subcontractors shall, at the request of the County, provide proof satisfactory (in the form of certified payrolls or audit) to the County that the contractor and subcontractors are in compliance with this policy.

On all construction contracts involving federal or state projects which require other specific prevailing wage rates, such rates shall supersede the County rates established above. All applicable purchase orders and contracts over \$50,000 shall contain the appropriate prevailing wage rate clause as determined by the Purchasing Agent.

- 6.5.4.1.2 Saginaw County will not enforce the provisions pertaining to prevailing wages as reflected in Sections 5.23, 6.3.1.1.7.2 and 6.5.4.1 of this Policy unless: (1) the Wage and Hour Division of the Department of Labor starts collecting data with respect to prevailing wages; or (2) the law governing prevailing wages in Michigan is reenacted by the state legislature.

6.6 Debarment or Suspension.

6.6.1 Authority to Debar or Suspend.

6.6.1.1 After reasonable notice to the person involved and reasonable opportunity for that person to be heard, the Purchasing Agent, after consulting with the County Controller, is authorized to debar a person for cause from consideration for award of contracts. The debarment shall be for a period of not more than three years. After consultation with the County Controller, the Purchasing Agent is authorized to suspend a person from consideration for award of contracts if there is probable cause to believe that the person has engaged in any activity which might lead to debarment. The suspension shall be for a period not to exceed three months. The causes for debarment include:

6.6.1.1.1 Conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract;

6.6.1.1.2 Conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which seriously and directly affects responsibility as a County contractor;

6.6.1.1.3 Conviction under state or federal antitrust statutes arising out of the submission of bids or proposals;

6.6.1.1.4 Violation of contract provisions, as set forth below, of a character which is regarded by the Purchasing Agent to be so serious as to justify debarment action:

6.6.1.1.4.1 deliberate failure without good cause to perform in accordance with the specification or within the time limit provided in the contract; or

6.6.1.1.4.2 a recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts, provided that failure to perform or unsatisfactory

performance caused by acts beyond the control of the contractor shall not be considered to be a basis for debarment;

6.6.1.1.5 Any other cause the Purchasing Agent determines to be so serious and compelling as to affect responsibility as a County contractor, including debarment by another governmental entity for any cause listed in this Policy; and for violation of the ethical standards set forth in Section 6.8 (Ethics in Public Contracting).

6.6.2 Decision to Debar or Suspend.

6.6.2.1 The Purchasing Agent shall issue a written decision to debar or suspend. The decision shall state the reasons for the action taken and inform the debarred or suspended person involved of his/her rights concerning judicial or administrative review.

6.6.3 Notice of Decision.

6.6.3.1 A copy of the decision required by Section 6.6.2 (Decision to Debar or Suspend) shall be mailed or otherwise furnished immediately to the debarred or suspended person.

6.6.4 Finality of Decision.

6.6.4.1 A decision under Section 6.6.2 (Decision to Debar or Suspend) shall be final and conclusive, unless fraudulent, or the debarred or suspended person within 10 days after receipt of the decision makes an appeal to the County Controller or commences a timely action in court in accordance with applicable law.

6.7 Appeals and Remedies.

6.7.1 Bid Protests

6.7.1.1 Right to Protest. Any actual or prospective bidder, offeror or contractor who is aggrieved in connection with the solicitation or award of a contract may protest to the County Controller. Protestors are urged to seek resolution of their complains initially with the Purchasing Agent. A protest with respect to an invitation for bids or request for proposals shall be submitted in writing prior to the opening of bids or the closing date of proposals, unless the aggrieved person did not know and

should not have known of the facts giving rise to such protest prior to bid opening or the closing date for proposals. On the day submitted or the first business day thereafter, the County Controller shall provide a copy of the protest to the Purchasing Agent. The protest must be submitted within seven (7) calendar days after such aggrieved person knows or should have known of the facts giving rise thereto.

6.7.1.2 Stay of Procurements During Protests. In the event of a timely protest under Section 6.7.1.1, the Purchasing Agent shall not proceed further with the solicitation or award of the contract until all administrative and judicial remedies have been exhausted or until the County Controller makes a determination on the record that the award of a contract without delay is necessary to protect substantial interests of the County.

## 6.7.2 Contract Claims

6.7.2.1 Decision of the Purchasing Agent. All claims by a contractor against the County relating to a contract, except bid protests, shall be submitted in writing to the Purchasing Agent for a decision. The contractor may request a conference with the Purchasing Agent on the claim. Claims include, without limitation, disputes arising under a contract and those based upon breach of contract, mistake, misrepresentation or other cause for contract modification or rescission.

6.7.2.2 Notice to the Contractor of the Purchasing Agent's Decision. The decision of the Purchasing Agent shall be promptly issued in writing and shall be immediately mailed or otherwise furnished to the contractor. The decision shall state the reasons for the decision reached and shall inform the contractor of its appeal rights under Section 6.7.2.3.

6.7.2.3 Finality of Purchasing Agent's Decision; Contractor's Right to Appeal. The Purchasing Agent's decision shall be final and conclusive unless, within seven (7) calendar days from the date of receipt of the decision, the contractor mails or otherwise delivers a written appeal to the County Controller or commences an action in a court of competent jurisdiction.

6.7.2.4 Failure to Render Timely Decision. If the Purchasing Agent does not issue a written decision regarding any contract controversy within seven (7) days after written request for a final decision or within such longer period as may be agreed upon between

the parties, then the aggrieved party may proceed as if an adverse decision had been received.

6.7.3 Authority of the Purchasing Agent to Settle Bid Protests and Contract Claims

6.7.3.1 The Purchasing Agent is authorized to settle any protest regarding the solicitation or award of a County contract or any claim arising out of the performance of a County contract, prior to an appeal to the County Controller or the commencement of an action in a court of competent jurisdiction.

6.7.4 Remedies for Solicitations or Awards in Violation of Law

6.7.4.1 Prior to Bid Opening or Closing Date for Receipt of Proposals. If prior to the bid opening or the closing date for receipt of proposals, the Purchasing Agent, after consultation with the County Attorney, determines that a solicitation is in violation of federal, state or municipal law, then the solicitation shall be canceled or revised to comply with applicable law.

6.7.4.2 In the case of Federal Awards, all subrecipients, regardless of award size, must be monitored under SubPart D of OMB 2 CFR 200 (Uniform Guidance).

6.7.4.3 Prior to Award. If after bid opening or the closing date for receipt of proposals, the Purchasing Agent, after consultation with the County Attorney, determines that a solicitation or a proposed award of a contract is in violation of federal, state or municipal law, then the solicitation or proposed award shall be canceled.

6.7.4.4 After Award. If, after an award, the Purchasing Agent, after consultation with the County Attorney, determines that a solicitation or award of a contract was in violation of applicable law, then:

6.7.4.4.1 If the person awarded the contract has not acted fraudulently or in bad faith;

6.7.4.4.1.1 The contract may be ratified and affirmed, provided it is determined that doing so is in the best interest of the County; or

6.7.4.4.1.2 The contract may be terminated and the person awarded the contract

shall be compensated for the actual costs reasonably incurred under the contract, plus a reasonable profit, prior to the termination; or

6.7.4.4.2 If the person awarded the contract has acted fraudulently or in bad faith the contract may be declared null and void or voidable, if such action is in the best interests of the County.

## 6.8 Ethics in Public Contracting.

### 6.8.1 Criminal Penalties

6.8.1.1 To the extent that violations of the ethical standards of conduct set forth in this Article constitute violations of the Michigan Penal Code they shall be punishable as provided therein. Such penalties shall be in addition to the civil sanctions set forth in this Part. Criminal, civil and administrative sanctions against employee or nonemployees, which are in existence on the effective date of this Policy, shall not be impaired.

### 6.8.2 Employee Conflict of Interest

6.8.2.1 It shall be unethical for any County employee to participate directly or indirectly in a procurement contract when the County employee knows that:

6.8.2.1.1 The County employee, officer, or agent, any member of his or her immediate family, his or her partner, or any 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; or

6.8.2.1.2 Any other person, business or organization with which the County employee or any member of a County employee's immediate family is negotiating or has an arrangement concerning prospective employment is involved in the procurement contract.

### 6.8.3 Gratuities and Kickbacks

6.8.3.1 Gratuities. It shall be unethical for any person to offer, give or agree to give any County employee or former County

employee, or for any County employee or former County employee to solicit, demand, accept or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation or preparation of any part of a program requirement of a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy or other particular matter pertaining to any program requirement or a contract or subcontract or to any solicitation or proposal therefor.

6.8.3.2 The officers, employees, and agents of Saginaw County must neither solicit nor accept gratuities, favors or anything of monetary value from contractors or parties to subcontracts.

6.8.3.3 Kickbacks. It shall be unethical for any payment, gratuity or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract or order.

#### 6.8.4 Prohibition Against Contingent Fees

6.8.4.1 It shall be unethical for a person to be retained or to retain a person, to solicit or secure a County contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies for the purpose of securing business.

#### 6.8.5 Contemporaneous Employment Prohibited

6.8.5.1 It shall be unethical for any County employee who is participating directly or indirectly in the procurement process to become or to be, while such a County employee, the employee of any person contracting with the governmental body by whom the employee is employed.

#### 6.8.6 Waivers from Contemporaneous Employment Prohibition and Other Conflicts of Interest

6.8.6.1 The County Controller with approval by the Chairman may grant a waiver from the employee conflict of interest provision, or the contemporaneous employment provision, upon making a written determination that:

6.8.6.1.1 The contemporaneous employment or financial interest of the County employee has been publicly disclosed;

6.8.6.1.2 The County employee will be able to perform his/her procurement functions without actual or apparent bias or favoritism; and

6.8.6.1.3 The award will be in the best interests of the County.

6.8.6.2 A report of all waivers granted by the Controller and Chairman shall be made to the Board.

#### 6.8.7 Use of Confidential Information

6.8.7.1 It shall be unethical for any employee or former employee knowingly to use confidential information for actual or anticipated personal gain, or for the actual or anticipated personal gain of any other person.

#### 6.8.8 Sanctions

6.8.8.1 Employees. The County Controller may impose any one or more of the following sanctions on a County employee for violations of the ethical standards in this Article:

6.8.8.1.1 Oral or written warnings or reprimands;

6.8.8.1.2 Suspension with or without pay for specified periods of time; or

6.8.8.1.3 Termination of employment.

6.8.8.2 Non employees. The County Controller may impose any one or more of the following sanctions on a non employee for violations of the ethical standards:

6.8.8.2.1 Written warnings or reprimands;

6.8.8.2.2 Termination of contracts; or

6.8.8.2.3 Debarment or suspension as provided in Section 6.6.1 (Authority to Debar or Suspend).

6.8.8.3 A report of all sanctions will be prepared by the Controller and submitted to the Board.



6.8.9 Recovery of Value Transferred or Received in Breach of Ethical Standards

6.8.9.1 General Provisions. The value of anything transferred or received in breach of the ethical standards of this Policy by a County employee or a non employee may be recovered from both County employee and non employee.

6.8.9.2 Recovery of Kickbacks by the County. Upon a showing that a subcontractor made a kickback to a prime contractor or a higher tier subcontractor in connection with the award of a subcontract or order thereunder, it shall be conclusively presumed that the amount thereof was included in the price of the subcontract or order and ultimately borne by the County and will be recoverable hereunder from the recipient. In addition, that amount may also be recovered from the subcontractor making such kickbacks. Recovery from one offending party shall not preclude recovery from other offending parties.

6.9 Purchasing Procedures.

6.9.1 Establishment of Purchasing Procedures. The Purchasing Agent, with the approval of the County Controller and the Saginaw County Board of Commissioners, shall promulgate procedures for the purchase of goods and services for County departments based upon the Saginaw County Purchasing Policy. If necessary, these procedures shall be updated at least annually.

7. ADMINISTRATIVE PROCEDURES: NONE

8. CONTROLLER/CAO LEGAL COUNSEL REVIEW: The Controller/CAO has determined that this policy as submitted to the Board of Commissioners contains the necessary substance in order to carry out the purpose of the policy. County Civil Counsel has determined that this policy as submitted contains content that appears to be legal activities of the Saginaw County Board of Commissioners.

Approved As to Substance:

Approved As to Legal Content:

\_\_\_\_\_  
Saginaw County Controller

\_\_\_\_\_  
Saginaw County Civil Counsel

ADOPTED: November 23, 1999

AMENDED: December 14, 1999 (Sect. 6.5.4. Prevailing Wage, Subparagraph 6.5.4.1.1);  
September 19, 2017; and February 16, 2021