

# MARINETTE COUNTY



## PROCUREMENT POLICY

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# MARINETTE COUNTY PROCUREMENT POLICY

## **Sec. 1.01 - Application**

This Policy applies to contracts for the procurement of supplies, services, and construction entered into by this County. When the procurement involves the expenditure of Federal or State assistance or contract funds, in addition to this procurement policy, the procurement shall be conducted in accordance with the County's Uniform Grant Guidance Policies and Procedures (UGGPP) and any applicable Federal or State law or regulations which are not reflected in the County's policies. Nothing in the policy shall prevent the County from complying with the terms and conditions of any grant, gift or bequest which are otherwise consistent with law. In addition, deviations from this policy may occur as a result of the authority granted to the Highway Commissioner by the State Statutes and the authority granted to the Mar-Oco Landfill Committee in the § 66.30 agreement between the Counties.

## **Sec. 1.02 - Purchasing agents**

### *(1) Designated Purchasing Agent.*

- (a) *Appointment.* The purchasing agents shall be the department head of each County department or his/her designee, unless others are appointed by the County Administrator.

### *(2) Authority.*

- (a) *Principal public purchasing official.* The purchasing agents shall serve as the principal purchasing official of each department in accordance with this policy.
- (b) *Duties.* In accordance with this subchapter and subject to the supervision of the County Administrator, the purchasing agents shall:
  1. Purchase or supervise the purchasing of all supplies, materials, equipment, services and construction needed by each department.
  2. Prepare a listing of supplies, material, and equipment considered surplus and provide the list to the Infrastructure Committee for approval of disposal and method of disposal.
  3. Insure proper use of all supplies, services, and materials in accordance with County Policies.
  4. Ensure all procurement contracts are in accordance with County Ordinance 3.01 (2) – Agreements.
  5. Ensure the funds have been appropriated prior to any purchases.

## **Sec. 1.03 - Source selection and contract formation**

### *(1) Sealed bid.*

- (a) *Conditions for use.* All contracts of this County shall be awarded by sealed bidding, except as otherwise provided in subsections (2), (3), (4), (5) and § 1.07(1) of this subchapter.
- (b) *Proof of responsibility.* Proof of responsibility may be required of all bidders under § 66.0901(2), (3) and (4), Wis. Stats.

- (c) *Invitation for bids.* An invitation for bids shall be issued and shall include specifications and all contractual terms and conditions applicable to the procurement.
  - (d) *Public notice.* A minimum public notice of not less than 10 calendar days shall be given for sealed bids. Such notice shall, when required by law, include publication in the official newspaper of the County. The public notice shall state the date, time and place of bid deadline in addition to bid specifications.
  - (e) *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 name of each bidder, amount of each bid and such other relevant information as the purchasing agent deems appropriate shall be recorded. This information shall be open to public inspection.
  - (f) *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. 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, such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose, as well as compatibility with existing property, equipment, inventory, and/or maintenance costs. Purchases \$25,000 or greater shall be approved by the Purchasing Agents Committee of Jurisdiction and the County Board.
  - (g) *Withdrawal or modification of bids.* Bids may be withdrawn or modified any time prior to the time of opening bids. No bid may be withdrawn or modified after the bids have been opened unless the bidder can show by clear and convincing evidence that a mistake was made, and the nature of the mistake and the bid price actually intended.
  - (h) *Rejection of bids.* The County reserves the right to reject any or all bids or parts thereof, and to award to the bidder who, in the judgment of the County, will best serve the County. A bid which has not been prepared according to the instructions set forth in the invitation for bids or which does not include a price which is both adequate and reasonable on each and every item named in the bid may be subject to rejection.
  - (i) *Award.* The bid shall be awarded with reasonable promptness by written notice to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the invitation for bids. The bid shall be approved by the purchasing agent's committee of jurisdiction and county board.
  - (j) *Multi-step sealed bidding.* When it is considered impractical to initially prepare a bid request to support an award based on price, an invitation for bids may be issued requesting the submission of unpriced offers to be followed by an invitation for bids limited to those bidders whose offers have been determined to be technically acceptable under the criteria set forth in the first solicitation.
- (2) *Sealed proposals.*
- (a) *Conditions for use.* When the purchasing agents determine that the use of sealed bidding is not practicable because of complexity of the project/bidding documents or the determination that sealed bids may not be advantageous to the County, sealed proposals may be accepted provided in compliance with State law.
  - (b) *Request for proposals.* Proposals shall be solicited through a request for proposals.

- (c) *Public notice.* Public notice of the request for proposals shall be given in the same manner as provided in subsection (1)(d) Sealed Bid, Public Notice.
  - (d) *Receipt of proposals.* Proposals shall be opened publicly in the presence of one or more witnesses at the time and place designated in the request for proposals. The name of each offeror, amount of each proposal and such other relevant information as the purchasing agent deems appropriate shall be recorded. This information shall be open to public inspection. The proposals shall be in the custody of the purchasing agent who shall maintain same.
  - (e) *Evaluation factors.* The request for proposals shall set forth the evaluation factors to be used with the County reserving the right to accept or reject proposals if deemed in the best interest of the County.
  - (f) *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 request for proposals. 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 information derived from proposals submitted by competing offerors.
  - (g) *Award.* Award shall be made to the responsible offeror whose proposal is determined to be the most advantageous to the County taking into consideration past performance, price and the evaluation factors set forth in the Request for Proposals, as well as the criteria set forth in Section 1.04(1)(f) of this Code. The proposals shall be approved by the purchasing agent's committee of jurisdiction and county board.
- (3) *Small purchases procedure.* Any purchase which is less than \$25,000 may be made in accordance with the following procedure; however, purchases shall not be artificially divided so as to constitute a less than \$25,000 purchase. All public work contracts \$5,000 or greater or purchases over \$10,000.00 shall require notice on the County website and through a class one notice of the details of the contract and/or purchase and the opportunity to submit a quote. Regardless of dollar amount of any purchase every effort shall be made to obtain multiple quotes and/or compare prices between vendors a minimum of three quotes from which the lowest acceptable quotation shall be selected. The name of the business, the date, amount of each quotation shall be recorded and maintained as a public record by the purchasing agent.
- (4) *Sole source procurement.* A purchase may be warranted without competition when the purchasing agent determines after conducting a good faith review of available source information that there is only one source for the required supply, service or construction item and when allowed by law. The reasons for the sole source procurement shall be documented. The County Administrator shall approve any sole source procurement. The purchasing agent shall conduct negotiations, as appropriate, as to price, delivery and terms. A record of sole source procurements shall be maintained by the purchasing agent that lists contractor's name, amount, and item or service purchased along with the sole source procurement documentation. Any purchase related to the sole source procurement \$25,000 or greater shall be approved by the committee of jurisdiction and County Board.
- (5) *Emergency procurements.* After approval from either the County Administrator or the County Board Chairperson, a purchasing agent may make or authorize others to make non-appropriated

emergency procurements of supplies, services or construction items when there exists a threat to public health, welfare or safety. The procurement must be allowed by the Wisconsin Statutes. Emergency procurements shall be made with such competition as is practicable under the circumstances. The basis for the emergency, reason for the selection of the particular contractor, type of contract, and a listing of items/services procured shall be reported to the Purchasing Agent's Committee of Jurisdiction, and County Board, if applicable as soon as practicable.

- (6) *Cancellation of invitations for bids or requests for proposals.* An invitation for bids, a request for proposals or other solicitation may be cancelled, or any or all bids or proposals may be rejected in whole or in part as may be specified in the solicitation, when same is in the best interests of the County. The reasons thereof shall be made part of the contract file. Each solicitation issued by the County shall state that the solicitation may be cancelled and that any bid or proposal rejected in whole or in part when in the best interest of the County. Written notice of cancellation shall be sent to all businesses solicited.
- (7) *County procurement records.*
  - (a) *Contract file.* All determinations and other written records pertaining to the solicitation, award or performance of a contract shall be maintained for the County in a contract file by the purchasing agent.
  - (b) *Retention of procurement records.* All procurement records shall be retained for seven years. If a contract is being funded in whole or in part by assistance from a federal or State agency, then all procurement records pertaining to that contract shall be maintained for seven years from the closeout date of the assistance agreement or the final disposition of any controversy arising out of the assistance agreement.
- (8) *Purchase of used items.* If the Purchasing Agent and the County Administrator concur that the purchase of used property, equipment, or supplies would be in the best financial interest of the County, nothing herein shall prevent said purchase provided that the procedure set forth in Section 1.05(1) and (2) are complied with. The advertisement or solicitation shall set forth, as far as practicable, the minimum standards for the item to be purchased.

#### **Sec. 1.04 - Specifications**

- (1) *Maximum practicable competition.* All specifications shall be drafted so as to promote overall economy for the purposes intended and encourage maximum free and open competition in satisfying the County's needs and shall not be unduly restrictive. The section applies to all specifications including those prepared for the County by architects, engineers, designers and draftsmen.
- (2) *Buy American.* If a contract is being funded in whole or in part by assistance from a federal agency, then the County shall adhere to the appropriate "Buy American" requirements of the federal agency providing the assistance. In all other cases, the purchasing agent shall make every reasonable effort to purchase products manufactured in the United States, as is not inconsistent with lowest responsible bidder statutory requirements.

#### **Sec. 1.05 - Bonds and bid security**

- (1) *Bid security.*
  - (a) *Requirement for bid security.* Bid security shall be required for sealed bids for construction projects estimated to exceed \$100,000. Bid security shall be a bond provided by a surety

company authorized to do business in this State, the equivalent in cash or otherwise supplied in a form satisfactory to the County.

- (b) *Amount of bid security.* Bid security shall be in an amount equal to at least ten percent of the amount of the bid.
- (c) *Rejection of bids for noncompliance with bid security requirements.* When the invitation for bids requires security, noncompliance requires that the bid be rejected.
- (d) *Withdrawal of bids.* If a bidder is permitted to withdraw its bid before award as provided in section 1.04(1)(f), no action shall be taken against the bidder or the bid security.

(2) *Contract performance and payment bonds.*

- (a) *When required—Amounts.* When a construction project is awarded, the following bonds or security shall be delivered to the County and shall become binding on the parties upon the execution of the contract:
  - 1. A performance bond satisfactory to the County, executed by a surety company authorized to do business in this State or otherwise secured in a manner satisfactory to the County, in an amount equal to 100 percent of the price specified in the contract; or
  - 2. A payment bond satisfactory to the County, executed by a surety company authorized to do business in this State or otherwise 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 in an amount equal to 100 percent of the price specified in the contract.

**Sec. 1.06 – Architect, Engineer or Land Surveying Services**

- (1) *Applicability.* Architect, Engineer and Land Surveying services shall be procured as provided in this section except as authorized by Sections 1.04(3) (Small Purchases), 1.04(4) (Sole Source) and 1.04(5) (Emergency Procurements).
- (2) *Public announcement.* It is the policy of this County to publicly announce all requirements for architect-engineer and land surveying services and to negotiate such contracts on the basis of demonstrated competence and qualifications and past performance with existing contracts as determined in prequalifying procedures. In the procurement of architect-engineer and land surveying services, the purchasing agent shall request firms to submit a statement of qualifications and performance data.
- (3) *Selection process.* The purchasing agent and/or the County Administrator shall conduct discussions with no less than three firms regarding the contract and shall select from among them the firm deemed most qualified to provide the required services. The selection shall be made in order of preference, based on criteria established and published by the purchasing agent and/or the County Administrator.
- (4) *Negotiation.* The purchasing agent and/or County Administrator shall negotiate a contract with the highest qualified firm for architect, engineer or land surveying services at compensation which the purchasing agent or County Administrator determines to be fair and reasonable to the County. In making this decision, the purchasing agent shall take into account the estimated value, scope, complexity, extension of existing contracts and the professional nature of the services to be

rendered. Should the purchasing agent or County Administrator be unable to negotiate a satisfactory contract with the firm considered to be the most qualified at a price the purchasing agent and/or County Administrator determines to be fair and reasonable to the County, negotiations with that firm shall be formally terminated. The purchasing agent and/or County Administrator shall then undertake negotiations with the second most qualified firm. Failing accord with the second most qualified firm, the purchasing agent and/or County Administrator shall formally terminate negotiations. The purchasing agent and/or County Administrator shall then undertake negotiations with the third most qualified firm. Should the purchasing agent and/or County Administrator be unable to negotiate a contract at a fair and reasonable price with any of the selected firms, the purchasing agent and/or the County Administrator shall select additional firms in order of their competence and qualifications, and the purchasing agent and/or County Administrator shall continue negotiations in accordance with this section until an agreement is reached. Any contract shall be approved by the purchasing agent's committee of jurisdiction and if greater than \$25,000 the county board.

### **Sec. 1.07 - Debarment or suspension**

After reasonable notice to the person involved and reasonable opportunity for that person to be heard, the County Administrator in consultation with the Corporation Counsel is authorized to debar or suspend a person for cause from consideration for award of contracts. The debarment shall not be for a period of more than three years.

After consultation with the Corporation Counsel, the County Administrator is authorized to suspend a person from consideration for award of a contract if there is probable cause to believe that the person engaged in any activity which might lead to debarment.

The causes for debarment include:

- (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.
- (2) Conviction under State and federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property or other offense indicating a lack of business honesty which currently, seriously and directly affects responsibility as a County contractor.
- (3) Conviction under State or federal antitrust statutes arising out of the submission of bids or proposals.
- (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:
  - (a) Deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or
  - (b) 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.
- (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 subchapter.

(6) For violation of the standards set forth in the County's Uniform Grant Guidance Policy.

**Sec. 1.08 - Assistance to small and disadvantaged businesses**

(1) *Solicitation of small and disadvantaged businesses.* The purchasing agents shall assure that both small and disadvantaged businesses are solicited whenever funding is received from a federal agency.

**Sec. 1.09 - Application**

- (1) This subchapter applies to all departments, officers, and committees of the County, as well as all entities directly or indirectly using County funds.
- (2) Should any provision of this subchapter be held invalid or unenforceable by a court of competent jurisdiction, or appear to be so based upon review by authorized legal counsel of County, the remainder of this subchapter, or the application of such term or provision to persons and circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby and each provision of this subchapter shall be valid and shall be enforceable to the fullest extent provided and permitted by law.
- (3) It is intended that this subchapter shall be interpreted in a manner consistent with and applied in harmony with current and future State and Federal statutes, rules and regulations.

**Sec. 1.10 – Cooperative Purchasing under contract negotiated by the State of Wisconsin**

- (1) *Conditions for use.* When the purchasing agent determines that it is advantageous for the County to use a purchasing contract previously negotiated by the State of Wisconsin as allowed by State Statute.
- (2) *Factors to consider:*
  - Time required to research specification
  - Minimization of bidding requirements
  - Time required to identify new vendors
  - Quality and Price
- (3) *Authorization.* Any procurement by Cooperative Purchasing shall be approved by the County Administrator.