



# MARATHON COUNTY HUMAN RESOURCES, FINANCE & PROPERTY COMMITTEE MEETING AGENDA

Date & Time of Meeting: **Tuesday, April 27, 2021 4:00 p.m.**

Meeting Location: **Marathon County Courthouse, County Board Assembly Room 500 Forest Street, Wausau WI 54403**

Members: John Robinson, Chair; Alyson Leahy, Vice-Chair; Craig McEwen, Kurt Gibbs, Yee Leng Xiong, Jonathan Fisher, EJ Stark

**Marathon County Mission Statement:** *Marathon County Government serves people by leading, coordinating, and providing county, regional, and statewide initiatives. It directly, or in cooperation with other public and private partners, provides services and creates opportunities that make Marathon County and the surrounding area a preferred place to live, work, visit, and do business. (Last updated: 12/20/05)*

The meeting site identified above will be open to the public. However, due to the COVID-19 pandemic and associated public health directives, Marathon County encourages Public Safety Committee members and the public to attend this meeting remotely. Instead of attendance in person, Committee members and the public may attend this meeting by **telephone conference**. If Committee members or members of the public cannot attend remotely, Marathon County requests that appropriate safety measures, including adequate social distancing, be utilized by all in-person attendees.

Persons wishing to attend the meeting by phone may call into the **telephone conference beginning five (5) minutes prior to the start time indicated above using the following number:**

**Phone#: 1-408-418-9388**

**Access Code: 146 078 0067**

When you enter the telephone conference, **PLEASE PUT YOUR PHONE ON MUTE!**

- 1. Call Meeting to Order**
- 2. Public Comment Period**
- 3. Approval of the Minutes of the April 6, 2021 Human Resources, Finance and Property Committee Meeting**
- 4. Educational Presentations/Outcome Monitoring Reports**
  - A. American Rescue Plan-Update
  - B. Department Head Recruitment and Appointment Process
  - C. Discussion of UWSP letter to County Administration in regards to the UWSP Dorm agreement
  - D. Update on the ongoing HR/Finance Enterprise Replacement Project and considerations moving forward
  - E. Inflationary Pressures on CIP
- 5. Operational Functions required by Statute, Ordinance, or Resolution:**
  - A. Discussion and Possible Action by Human Resources and Finance and Property Committee
    1. Consideration of agreement between Wausau Area Access Media (WAAM) and Marathon County to broadcast monthly Marathon County Standing Committee Meetings
  - B. Discussion and Possible Action by Committee to Forward to the County Board for its consideration
    1. Review of Marathon County Procurement Code; Discussion Regarding Possible Amendment or Repeal and Creation of New Code
- 6. Policy Issues Discussion and Committee Determination**
  - A. Should County Administration Conduct a Public Listening Session Relative to potential use of the American Rescue Plan Funds?
- 7. Announcements:**

Next Meeting Date- **May 11, 2021 at 3:30 p.m.**
- 8. Adjourn**

*Any person planning to attend this meeting who needs some type of special accommodation in order to participate should call the County Clerk's Office at 715 261-1500 or e-mail [infomarathon@mail.co.marathon.wi.us](mailto:infomarathon@mail.co.marathon.wi.us) one business day before the meeting.*

**SIGNED** J Robinson/s/K Palmer  
Presiding Officer or Designee

NOTICE POSTED AT COURTHOUSE

FAXED TO: Wausau Daily Herald, City Pages, and

FAXED TO: Other Media Groups, Record Review

FAXED BY: K. Palmer

FAXED DATE: 4/23/2021 at 3:20 pm

FAXED TIME: \_\_\_\_\_

BY: K. Palmer

DATE: 4-23-2021 at 3:20 pm

TIME: \_\_\_\_\_

**Posted to the County Website: <https://www.co.marathon.wi.us/Home/Calendar.aspx>**



# MARATHON COUNTY HUMAN RESOURCES, FINANCE & PROPERTY COMMITTEE MEETING MINUTES

Tuesday, April 6, 2021 3:30 p.m.

WebEx/Marathon County Courthouse, County Board Assembly Room 500 Forest Street, Wausau WI 54403

Members	Present/Web-Phone	Absent
Chair John Robinson	P	
Vice Chair Alyson Leahy	W	
Craig McEwen	W	
Kurt Gibbs		X
Yee Leng Xiong	W	
Jonathan Fisher	W	
EJ Stark	W	

**Also Present:** Lance Leonhard, Kristi Palmer, Jason Hake, Molly Adzic, Scott Corbett, Citizen Attendance

**VIA Web or Phone:** Jean Maszk, Dejan Adzic, Kim Trueblood, Mike Puerner, Connie Beyersdorff, Joan Theurer, R Krigs, Kim Trueblood, John Happli, Michael Loy, Gerry Klein, Terry Kaiser

- 1. Call Meeting to Order**-Chair Robinson called the meeting to order at 3:30 pm
- 2. Public Comment Period** - None
- 3. MOTION BY McEwen; SECOND BY FISHER TO APPROVE THE MARCH 23, 2021 HUMAN RESOURCES, FINANCE AND PROPERTY COMMITTEE MEETING MINUTES; MOTION CARRIED.**

**4. Educational Presentations/Outcome Monitoring Reports**

A. American Rescue Plan Act (ARPA)

**Discussion:** This information is for information only at this time and we will continue to update the committee as additional information is available. Marathon County’s allocation is \$ **\$26,316,628**. We are waiting for more clarity from the US Treasury for providing guidelines on eligible expenditures.

**Follow up:** The committee will continue the discussion the ARPA as information becomes available

B. Presentation/Update on the NCHC Renovation Project and Upcoming Financial Next Step

**Discussion:** Michael Loy from NCHC provided information on the NCHC renovation projects. There is a potential short fall and there may be a request for an additional authorization for borrowing.

**Follow up:** The committee will continue the discussion on NCHC facility consolidation.

**5. Operational Functions required by Statute, Ordinance, or Resolution:**

A. Discussion and Possible Action by Human Resources and Finance and Property Committee

1. Tax Deed Bid Opening/Approval

2020-21 Forest Street Value of the property is \$13,000

Bid 1 \$14,500 with 10% down payment and Bid 2 \$31,000 with 10% down payment

**MOTION BY McEWEN; SECOND BY XIONG TO APPROVE THE BID FOR \$31,000; MOTION CARRIED**

Partridge Drive Rib Mountain bid 1 for \$25,000 with the 10% down payment and bid 2 for \$24,600 with 10% down payment

**MOTION BY FISHER; SECOND BY LEAHY TO APPROVE THE BID FOR \$25,000; MOTION CARRIED**

2021-4 2<sup>ND</sup> AVE Wausau, WI bid1 is \$27,800 with a 10% down payment and bid 2 \$12,000 with a 10% down payment the value or \$12,000 on the property

**MOTION BY McEWEN; SECOND BY LEAHY TO APPROVE THE BID FOR \$27,800; MOTION CARRIED**

2005-6, 2005-7 each property is listed at \$16,000

Bid on 2005-7 \$1,000 with 10% down. The value of the property in 2005 is listed as \$16,000

Bid on 2005-6 \$1,000 with 10% down. The value of the property in 2005 is listed as \$16,000

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**MOTION BY MCEWEN; SECOND BY LEAHY TO REJECT THE TWO BIDS; MOTION CARRIED**

Corbett recommends that the committee should instruct the Clerk to get a new appraisal on each property for the purpose of advertising the properties and that a motion to that effect would be good

**MOTION BY FISHER; SECOND BY McEWEN TO HAVE THE TWO PROPERTIES IN KRONENWETTER SENT FOR REAPPRAISAL; MOTION CARRIED**

2. Approval of March Claims and Questioned Costs

**MOTION BY STARK; SECOND BY LEAHY TO APPROVE THE MARCH CLAIMS; MOTION CARRIED**

3. Potential Grant Opportunity-Social Services Department Position Working Closely with Wausau Police Department-Tylka

**Discussion:** In light of additional information, they are not moving forward with this grant proposal at this time

**Follow up:** No additional information is needed at this time

4. Request for Funding from the Wausau Regional Chamber of Commerce for an Economic Impact Analysis as Part of a Recreational Needs Assessment for Rib Mountain State Park

**Discussion:** Presentation by the Chamber representative in regards to the Rib Mountain State Park Recreational Needs Assessment Study. Robinson stated that this may be a project that FRF funds could be used to pay for the study. The request is for the amount of \$2,500. There would be funding that will be available based on how the study will meet the strategic planning goals of Marathon County. Stark-Rib Mountain is not kicking in any funds for the study.

**MOTION BY McEWEN; SECOND BY XIONG TO APPROVE THE \$2,500 FUNDING FOR THE STUDY WITH FUNDING SOURCE BE DETERMINED BY COUNTY ADMINISTRATION; MOTION CARRIED**

5. Consideration to continue face covering policy at County Facilities-Leonhard

**Discussion:** County Administrator Leonhard discussed the face covering policy for the County facilities. The question for the committee is whether we continue the face covering policy for the County facilities. We will keep it as a work rule and should we keep it as a policy at our facilities? Our policy is to sign the facilities that you should wear a mask and our practice will remain the same. The policy would be for employees and guests coming into the County Facilities.

**MOTION BY FISHER; SECOND BY LEAHY TO MAINTAIN THE FACE COVER POLICY FOR THE NEXT 60 DAYS AS DETERMINED BY OUR PUBLIC HEALTH DEPARTMENT; MOTION CARRIED**

B. Discussion and Possible Action by Committee to Forward to the County Board for its consideration

1. Intergovernmental Budget Transfers

**MOTION BY FISHER; SECOND BY McEWEN TO APPROVE THE INTERGOVERNMENTAL BUDGET TRANSFERS; MOTION CARRIED**

**6. Policy Issues Discussion and Committee Determination**

A. Update from *Capital Improvement Plan* workgroup and consideration of next steps

1. Hybrid work arrangements and impact on Facility Planning efforts – what direction does this Committee wish to provide

**Discussion:** Vice Chair Leahy, updated the committee on the work moving the Capital Improvement Plan forward. This included discussions on how this work relates to further operational topics such as a hybrid work arrangements and how these policies would drive facility plans for new facilities. Does the County HRFC want to weigh in on looking at a policy for hybrid working arrangements at the County? What are the County's current policies? We would look at the Human Resources side of this issue. We will need policies that reflect the current/future state of the workforce. Leonhard-County Administrator has the authority to approve many work rules and policies. This strike me that the Committee would take a stand to let us know the goal will be in regards to hybrid workplace policies.

**Follow up:** The County Administrator will come up additional information in the future. At this time we are trying to develop the CIP plan and this is an operational issue that need to be addressed.

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2. Westside Master Planning – Recent discussion at the Infrastructure Committee

**Discussion:** County Administrator Leonhard discussed the Westside master plan that was created in 2007-2008. One question to determine at that time was that the Highway Department would be moved from its current location as described in the Westside master plan. Infrastructure Committee requested that the assumption was that the Highway Department would move off of West Street. Where are moving with this plan?

**Follow up:** The committee will continue the discussion.

## 7. Announcements:

Next Meeting Date- **April 27, 2021 at 4:00 p.m.**

## 8. **ADJOURN-MOTION BY XIONG; SECONDED BY LEASHY TO ADJOURN AT 5:40 PM**



April 20, 2021

Lance Leonhard, Marathon County Administrator  
500 Forest St.  
Wausau WI 54403  
sent via email only to [lance.leonhard@co.marathon.wi.us](mailto:lance.leonhard@co.marathon.wi.us)

Dear Administrator Leonhard,

With much regret but also much gratitude, on January 1, 2022, the UW-Stevens Point at Wausau campus will turn over Marathon Hall to Marathon County for all operations. While our campus and the county have enjoyed a long and fruitful collaboration to operate the residence hall, the campus no longer needs to house students in dormitory-style housing.

Hence, at the end of this calendar year, all obligation for operating and maintaining the building, including utilities, will fall to the county. All utilities are currently metered separately for the hall, so responsibility can be transferred to the county on January 1. The exception is heat, which comes from the central heating plant that heats the rest of the campus. Should the county decide to continue to heat the building, we can certainly make arrangements to bill the county for heat.

The university could also gift the county with enough dressers, bed frames, mattresses, desks, and chairs to furnish rooms on the first two floors, if the county needs the furnishings to house 4-H kids during fair week. If that is the county's preference, please let me know by July 1, 2021.

The Wausau campus has a long history on these grounds and the relationship with the county has been positive and productive. Our ability to deliver a high-quality but affordable education to local students has been possible because of the county's investment and commitment. While our collaboration in operating a residence hall is ending, know that we value the county as a strategic partner and look forward to many more years of working together to serve the residents of Marathon County.

Please share our thanks with the county board of supervisors for their enduring support.

All the best,

A handwritten signature in black ink that reads "Thomas Gibson".

Thomas Gibson  
Chancellor

# Q1



**AGC**  
THE CONSTRUCTION  
ASSOCIATION

# 2022

## CONSTRUCTION INFLATION ALERT

The construction industry is currently experiencing an unprecedented mix of steeply rising materials prices, snarled supply chains, and staffing difficulties, combined with slumping demand that is keeping many contractors from passing on their added costs. This combination threatens to push some firms out of business and add to the industry's nearly double-digit unemployment rate.

The situation calls for immediate action by federal trade officials to end tariffs and quotas that are adding to price increases and supply shortages. Officials at all levels of government need to identify and remove or lessen any unnecessary or excessive impediments to the importation, domestic production, transport, and delivery of construction materials and products. Project owners need to recognize how much conditions have changed for projects begun or awarded in the early days of the pandemic or before and to consider providing greater flexibility and cost-sharing. Contractors should become even more vigilant about changes in materials costs and expected delivery dates and should communicate the information promptly to current and prospective clients.

This report is intended to provide all parties with better understanding of the current situation, the impact on construction firms and projects, its likely course in the next several months, and possible steps to mitigate the damage. The document will be revised to keep it timely as conditions change. Please send comments and feedback to AGC of America's chief economist, Ken Simonson, [ken.simonson@agc.org](mailto:ken.simonson@agc.org).

[www.agc.org](http://www.agc.org)

# Rising costs, flat project pricing

Figure 1 illustrates the threat to contractors from fast and steeply rising prices for materials, both for projects that have already been bid or started and for preparing -price or guaranteed-maximum-price bids. The red line shows the change since April 2020 in the price of all materials and services used in

nonresidential construction, while the blue line measures the change—or lack of change—in what contractors say they would charge to erect a set of nonresidential buildings. This blue line, essentially a measure of bid prices, has remained virtually stable, rising only 0.5% from April 2020 to February 2021. In contrast, the red line, measuring the cost of contractors' purchases, has soared nearly 13% over the same 10 months.

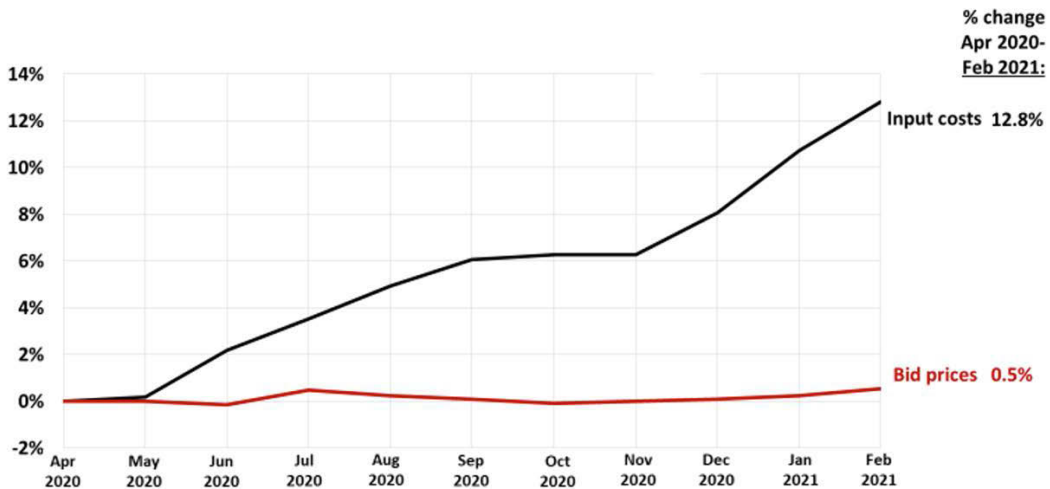
In other words, if a contractor or subcontractor submitted a fixed-price bid in April 2020 based on materials costs at that time but did not buy the materials until February 2021, its cost for the materials would have risen an average of nearly 13%. Given that materials often represent half or more of the cost of a contract, such an increase could easily wipe out the profit from a project and create severe financial hardship for the contractor.

## 12.8%

Input costs for general contractors have soared nearly 13% from April 2020 to February 2021

**FIGURE 1**

**Change in construction input costs and bid prices**  
April 2020-February 2021



Source: Bureau of Labor Statistics, producer price indexes (PPIs) for new nonresidential building construction (bid prices) and inputs to nonresidential construction (input costs), not seasonally adjusted

In fact, Figure 1 understates the severity of the current situation for many contractors, in three respects. First, the two lines are calculated from producer price indexes (PPIs) posted monthly by the Bureau of Labor Statistics (BLS). The most recent PPIs are based on prices BLS collected around February 11.

Since then, numerous materials have risen even more steeply in price. For instance, the national average retail price of on-highway diesel fuel climbed from \$2.80 per gallon on February 8 to \$3.19 on March 22, a rise of 1% in just six weeks, according to a weekly truckstop survey posted by the Energy Information Administration. Private price-tracking services have reported similarly steep increases for a variety of steel, lumber, and engineered wood products.

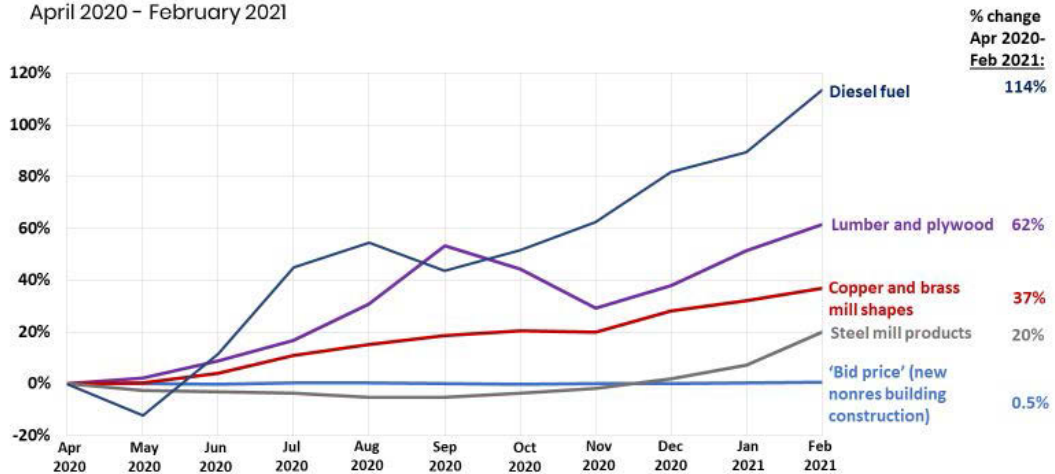
Second, contractors are incurring costs not captured by this measure. Delayed deliveries, higher expenditures for personal protective equipment and other sanitation measures, and shortages of employees or subcontractors' workers on jobsites due to coronavirus impacts are all driving up contractors' costs. In some cases, project completions are being delayed, meaning contractors receive needed payments later and may incur penalties for missed deadlines.

Third, many projects or subcontractors' packages are heavily weighted toward materials that have risen much more in price than the overall PPI for inputs. As Figure 2 shows, the PPI for diesel fuel (at the fuel terminal, not retail) increased 114% between April 2020 and February 2021. The PPI for lumber and plywood jumped 62%. The index for copper and brass mill shapes climbed 37% and the PPI for steel mill products rose 20%.

**114%**  
 Diesel fuel PPI (Producer Price Index) has increased more than 114% between April 2020 to February 2021

**FIGURE 2**

**Price changes for construction and selected materials**  
 April 2020 - February 2021



Source: Bureau of Labor Statistics, producer price indexes (PPIs) for new nonresidential building construction (bid prices), diesel fuel, wood, and metal products, not seasonally adjusted

**270%**  
 Due to extreme weather conditions and general demand, PVC prices have increased over 270% from March 2020 to March 2021

Some broad categories of products have not gone up dramatically, but narrower classes of products within those categories have. For instance, the PPI for plastic construction products rose “only” 6% from March 2020 to January. But an AGC member reported on March 5 that for polyvinyl chloride (PVC) “used in electric utility work the price from [March 2020] to January 2021 had a general increase of 85%.” Following extreme winter weather in Texas that knocked out production facilities and created a surge in demand for pipe to replace broken lines, “Now that increase is 270% from March 2020” to March 4, 2021.

In recent weeks, producers and distributors of many additional materials have announced large price increases. Some have already been imposed, while others are scheduled to take effect in the next few weeks.

For example, a leading producer of spray polyurethane products, used for building sealants and insulation, announced on March 12 that it would increase prices 12-15%, “effective for all new and existing orders shipping after April 12.” On March 4 another supplier



notified customers of two price increases of 10% each, effective on April 5 and May 1. On March 10, a major building-products distributor announced 19 broad categories of price increases, ranging as high as a 20% increase effective on April 5 for “all wallboard and glass mat products.”

In addition to sudden price increases, contractors are experiencing delivery times that have stretched or become completely unreliable. A producer of building mesh told customers on March 15, “Volatility in the costs associated with producing and shipping standard welded wire reinforcement has made it necessary for us to withdraw all previously issued price lists. The availability of SWWR has been negatively impacted by the shortage of raw materials; therefore, lead times previously quoted will require review.”

## Not a short-term problem

Some might assume contractors will simply raise their prices to cover the added costs. But current conditions in the industry, as well as the record from previous episodes of escalating materials costs, suggest that the mismatch between materials costs and contractors’ prices is likely to persist for an extended period.

The pandemic has caused current production and delivery of many materials to fall short of demand. Initially, a wide range of factories, mills, and fabrication facilities were shut down on their owners’ initiative or because government orders deemed them to not be “essential.” In some cases, contractors—particularly homebuilders—canceled orders because they no longer saw demand for construction. Once production facilities were allowed to re-open, many of them had trouble getting up to full capacity because their own workers or those of their suppliers and freight haulers may have been ill, quarantined, or required to care for family members at home.

Imported products and components also were subject to production and shipping shutdowns in the early months of the pandemic. This particularly affected many products from China and northern Italy, ranging from kitchen cabinets and appliances to tile flooring to elevators. In recent months, production has increased but containers, ships, port space, and trucking capacity have all experienced bottlenecks that have slowed deliveries.

Dramatic shifts in demand triggered, at least in part, by the pandemic have added to price pressures and shortages of goods. Housing starts have increased between 15% and 20% from year-earlier levels, creating huge additional demand for wood products and other items that are also used in nonresidential construction. Restaurants that added decks and railings for outdoor dining, along with offices and other buildings undergoing remodeling, added to demand for these products.

A more recent source of price increases and extended lead times was the extreme winter weather that struck Texas in February. Widespread, unanticipated power failures and unusual freezing temperatures shut down petrochemical plants that normally operate around the clock. Frozen pipes burst, adding to the damage. Repairing the damage and getting complex facilities back to full operating rates is likely to take several months in some cases.

Loss of this production affects plastic resins and other “building blocks” for a wide range of construction products, including: PVC pipe and other hard plastic products like plumbing fittings

**15-20%**

Housing starting costs have increased between 15% to 20% from year-earlier levels

and fixtures; vinyl siding and vapor barriers; binders or "glue" for the particles and layers of plywood and oriented strand board (OSB), and adhesives for backing/facing for wallboard. Various types of cardboard, paper, and plastic packaging, tapes, and fasteners, including ones for shipping and protecting construction materials, also depend on resins. The freeze also added to demand for plastic pipe and fittings to replace broken water lines, adding to the demand-supply imbalance.

Yet another cause of higher prices and tighter supply is trade policy actions imposed in 2018-2020. Tariffs or quotas on steel and aluminum from many countries, along with tariffs on hundreds of parts and materials from China, drove up the cost of many construction products and limited the number of suppliers, which has led to longer delivery times. Failure to renew a longstanding softwood lumber agreement with Canada has added to lumber costs.

Although the ostensible purpose of some of the trade actions was to protect and create jobs in the U.S. manufacturing sector, steel in particular, very little capacity has been added so far. Many manufacturers merely raised their prices in tandem with the imposition of tariffs.

## PAST EPISODES

# 12.9%

In the past price inflation, materials costs experienced an annual growth rate increase of 12.9% in September 2008

The construction industry has endured previous spells of rapid cost escalation. For instance, the PPI for goods used in new nonresidential construction accelerated from a 3.6% year-over-year rate of increase in January 2004 to 10.0% by October of that year and remained above a 5% annual rate for a total of 31 months, before subsiding to a 3.2% rate in October 2006.

Less than a year later, materials costs soared again, rising from a 1.6% annual growth rate in August 2007 to 12.9% in September 2008. The financial crisis that fall brought rates down rapidly but, again, only for about a year. The growth rate spiked from 0.4% year-over-year in December 2009 to 5.8% the following April and remained above or close to 5% until early 2012.

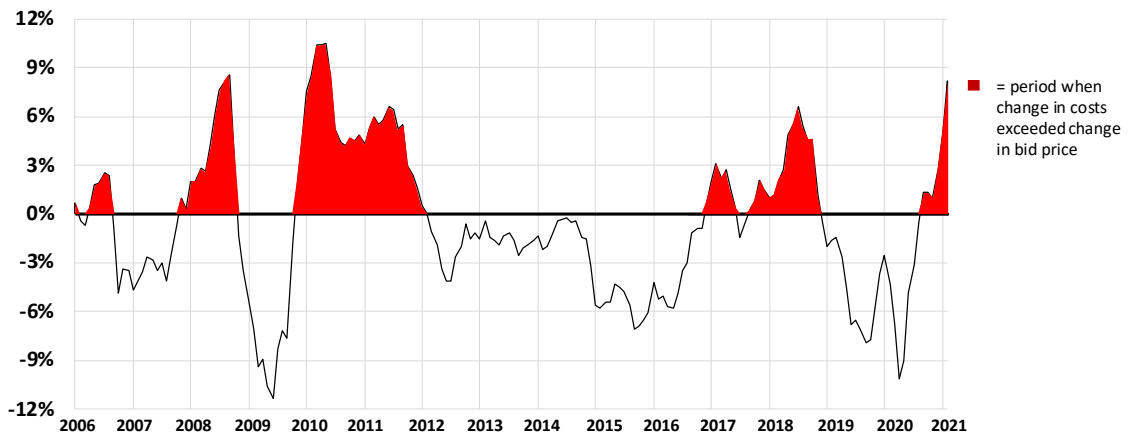
The most recent episode of high materials cost increases was from November 2018 through November 2019, when the year-over-year price change ranged from 4.9% to 9.2%.

While each of these price spikes eventually subsided, they caused enormous harm to contractors, who generally were not able to pass along the increases for an extended period. Not only were firms that had already signed contracts to deliver a project at a fixed price caught by the increases, but competition kept contractors from raising bids to match for a year or longer. A comparison of the year-over-year change in the PPI for materials with the PPIs for five types of new nonresidential buildings shows there were periods as long as 28 consecutive months with such price disparities. That is, contractors' bid prices rose less—or decreased—relative to the cost of the goods they purchased. For the most part, these months coincided with periods in which the value of nonresidential construction was stagnating or shrinking.

Figure 3 shows this comparison for one building type, new warehouse building construction. Periods in which the PPI for goods used in nonresidential construction exceeded the PPI for warehouse contractors' bid prices appear in red. The longer these intervals last and the higher the peak—i.e. the larger the gap between costs and bid prices—the more likely it is that some contractors will have financial difficulties. The current period already has one of the highest peaks.

**FIGURE 3**

**Change in material costs vs. change in warehouse bid prices** Jan. 2006 -Feb. 2021  
Difference between year-over-year change in costs vs. bid prices



Source: Bureau of Labor Statistics, producer price indexes for goods inputs to nonresidential construction (material costs) and new warehouse construction (bid prices)

## CURRENT DEMAND FOR CONSTRUCTION

The construction market currently is marked by a huge disparity. Residential construction spending—comprising new single- and multifamily structures along with additions and renovations to owner-occupied housing—jumped 21% from January 2020 to January 2021. Over the same 12 months, private nonresidential construction spending tumbled 10%.

Employment data show a similar story. Both residential and nonresidential construction employment plunged by 14-15% from February to April 2020. But over the next nine months, through January 2021, employment among residential building and specialty trade contractors rebounded to the same level as in February 2020, immediately before the pandemic struck. In contrast, in those nine months nonresidential building, specialty trade and heavy and civil engineering contractors added back little more than half of the employees they lost between February and April 2020.

AGC has surveyed its members repeatedly since March 2020 to gauge the impact of the pandemic on their businesses. Consistently, and as recently as March 2021, only about one-third of firms reported the volume of their business had matched or exceeded the levels of one year before, while an equal share predicted they would not return to that level for more than six months. The remainder either thought it would take 1-6 months to reach year-ago levels or didn't know. These results, like the spending and employment data, point to a large amount of downward pressure on contractors' ability to pass along material cost increases. (Full survey results are available here: <https://www.agc.org/news/2021/03/11/march-2021-agc-coronavirus-survey-results>.)

**21%**

Residential construction spending jumped 21% from January 2020 to January 2021

# What can contractors and owners do?

While contractors cannot unplug ports or rescind tariffs, they can provide project owners with timely and credible third-party information about changes in relevant material costs and supply-chain snarls that may impact the cost and completion time for a project that is underway or for which a bid has already been submitted.

Owners can authorize appropriate adjustments to design, completion date, and payments to accommodate or work around these impediments. Nobody welcomes a higher bill, but the alternative of having a contractor stuck with impossible costs or timing is likely to be worse for many owners.

For projects that have not been awarded or started, owners should start with realistic expectations about current costs and the likelihood of increases. They should provide potential bidders with accurate and complete design information to enable bidders to prepare bids that minimize the likelihood of unpleasant surprises for either party.

Owners and bidders may want to consider price-adjustment clauses that would protect both parties from unanticipated swings in materials prices. Such contract terms can enable the contractor to build in a smaller contingency to its bid, while providing the owner an opportunity to share in any savings from downward price movements (which are likely at some point, particularly for long-duration projects). The ConsensusDocs suite of contract documents ([www.ConsensusDocs.org](http://www.ConsensusDocs.org)) is one source of industry-standard model language for such terms. The ConsensusDocs 200.1 Materials Price Escalation Addendum offers the only standard contract document that addresses price escalation.

The parties may also want to discuss the best timing for ordering materials and components. Buying items earlier than usual can provide protection against cost increases but it comes with the need to pay sooner for the items and potentially paying for storage, security against theft and damage, and the possibility of design changes that make early purchase unwise.

# Conclusion

The construction industry is in the midst of a period of exceptionally steep and fast-rising costs for a variety of materials, compounded by major supply-chain disruptions and stagnant or falling demand for projects—a combination that threatens the financial health of many contractors. No single or simple solution will resolve the situation, but there are steps that government officials, owners, and contractors can take to lessen the pain.

Federal trade policy officials can act immediately to end tariffs and quotas on imported products and materials. With many U.S. mills and factories already at capacity, bringing in more imports at competitive prices will cool the overheated price spiral and enable many users of products that are in short supply to avoid layoffs and shutdowns.

Officials at all levels of government should review all regulations, policies, and enforcement actions that may be unnecessarily driving up costs and slowing importation, domestic production, transport, and delivery of raw materials, components, and finished goods.

Owners need to recognize that significant adjustments are probably appropriate regarding the price or delivery date of projects that were awarded or commenced early in the pandemic or before, when conditions at suppliers were far different. For new and planned projects, owners should expect quite different pricing and may want to consider building in more flexibility regarding design, timing, or cost-sharing.

Contractors need, more than ever, to closely monitor costs and delivery schedules for materials and to communicate information with owners, both before submitting bids and throughout the construction process.

Materials prices do eventually reverse course. Owners and contractors alike will benefit when that happens. Until then, cooperation and communication can help reduce the damage.

**No single or simple solution will resolve the situation, but there are steps that government officials, owners, and contractors can take to lessen the pain**

## **PRODUCTION AGREEMENT BETWEEN MARATHON COUNTY AND CITY OF WAUSAU**

This Agreement is dated this \_\_\_\_\_ day of \_\_\_\_\_, 20 20 and is by and between Marathon County, hereinafter referred to as "COUNTY" and the City of Wausau, hereinafter referred to as "CITY."

In consideration of the mutual covenants and agreements set forth herein, the parties hereby agree as follows:

### **TERMS**

The term of this Production Agreement shall be from January 1, 20 21 through December 31, 20 22.

### **SCOPE OF WORK**

It is the intent of this Agreement that CITY will provide a one camera, one person shoot, or recording through digital format, of a meeting or event, which includes production work, and broadcast live those meetings or events when a connection is available, notwithstanding technical difficulties which would prevent a live broadcast. "Production" includes the setup and take down of equipment, the actual recording of the event, and post recording editing work to produce a finished DVD of the recording. The final production will represent the meeting or event in its entirety.

### **COST**

CITY agrees to provide to the COUNTY the production of (2) meetings or events per calendar month for \$ 3,650 per year. While the term of this Agreement covers 24 months, it is the intent of the parties that payment would be made on an annual basis for a total cost under the contract of \$ 7,300 for (2) years. There is no additional charge if the COUNTY meetings are produced within the corporate city limits of the City of Wausau, Wisconsin; if any of the (2) meetings in a given month should occur outside of the city limits of the City of Wausau, CITY will bill the COUNTY at the rate of \$30.00 per hour for travel time from City Hall to the meeting or event and the IRS mileage rate as a separate charge. With a minimum two (2) weeks advance notice, CITY will produce additional events, beyond the minimum (2) each month for an additional production charge, beyond the contract rate, at \$30.00 per hour, plus the standard IRS mileage charges, which additional charges shall be billed monthly and due within 30 days of receipt by the COUNTY.

CITY requires two weeks advance notice of any change in meeting dates.

### **RECORD**

One (1) copy of any recording produced under this Agreement will be delivered to Marathon County Clerk in DVD form.

**OWNERSHIP**

COUNTY shall own the DVD's and their content, but agree to let CITY sell copies of recorded events in the form of DVD's or electronic files. CITY agrees to sell the DVD copies for a fee that covers only its costs.

**ACCESS**

All productions will be rebroadcast at a minimum of (2) times a week for (2) weeks following the meeting or event.

Once the production has been broadcast, it will be uploaded for viewing on demand, on Wausau Area Access Media's website, and CITY will provide a hyperlink to COUNTY for each production, within a week following the meeting or event.

**REPRESENTATIVE**

City of Wausau: David Dickinson  
407 Grant Street  
Wausau WI 54403

Marathon County : Lance Leonhard  
500 Forest Street  
Wausau, WI 54403

This covers all the terms of the Agreement and any changes or amendments to the Agreement shall be reduced to writing by both parties and signed by both parties.

IN WITNESS WHEREOF, the parties have signed this Agreement the date and year first above written.

MARATHON COUNTY

CITY OF WAUSAU

\_\_\_\_\_  
Lance Leonhard, County Administrator

\_\_\_\_\_  
Katie Rosenberg, Mayor

\_\_\_\_\_  
Leslie Kremer, City Clerk

Drafted by:  
Anne L. Jacobson  
City Attorney





## PROCUREMENT PROCEDURE (O-3-88)

## Sec. 3.01. - Purpose.

The purpose of this subchapter is to provide for the fair and equitable treatment of all persons involved in public purchasing by this County, to maximize the purchasing value of public funds in procurement and to provide safeguards for maintaining a procurement system of quality and integrity.

## Sec. 3.02. - Application.

This Policy applies to contracts for the procurement of supplies, services, and construction entered into by this County after the effective date of this Policy unless the parties agree to its application to contracts entered into prior to the effective date. It shall apply to every expenditure of public funds by a public agency for public purchasing irrespective of its source. When the procurement involves purchase from another governmental entity or the expenditure of Federal or State assistance or contract funds, the procurement shall be conducted in accordance with any applicable Federal or State law and regulation which are not reflected in this policy. Nothing in the policy shall prevent any public agency from complying with the terms and conditions of any grant, gift or bequest which are otherwise consistent with law.

(O-6-98)

## Sec. 3.03. - Definitions.

*Architect-engineer and land surveying services.* Those professional services within the scope of the practice of architecture, professional engineering or land surveying, as defined by the laws of this State.

*Blind trust.* An independently managed trust in which the employee-beneficiary is not given notice of alterations in or other dispositions of the property subject to the trust.

*Brand name specification.* A specification limited to one or more items by manufacturers' names or catalogue numbers.

*Brand name or equal specifications.* A specification limited to one or more items by manufacturers' names or catalogue numbers to describe the standard or quality, performance and other salient characteristics needed to meet County requirements and which provides for the submission of equivalent products.

*Business.* Any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture or any other private legal entity.

*Change order (unilateral).* A written order signed and unilaterally 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.

*Confidential information.* Any information which is available to an employee only because of the employee's status as an employee of this County and is not a matter of public knowledge or is not available to the public on request.

*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.

*Contract.* All types of County agreements, regardless of what they may be called, for the procurement of supplies, services or construction.

*Contract modification.* Any written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity or other provision of any contract accomplished by mutual action of the parties to the contract.

*Contractor.* Any person having a contract with a public agency of the County.

*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.

*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.

*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 subchapter and a fee or profit, if any.

*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.

*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 disadvantages.

*Employee.* An individual drawing a salary from the County, whether elected or not, and any noncompensated 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 this County.

*Financial interest.*

- (a) Ownership of any interests 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 \$1 per year or its equivalent;
- (b) Ownership of any property or business; or
- (c) Holding a position in a business such as an officer, director, trustee, partner, employee or the like, or holding any position of management.

*Gratuity.* A payment, loan, subscription, advance, deposit of money, services or anything of value, present or promised, unless consideration of substantially equal or greater value is received.

*Immediate family.* A spouse, children, parents, brothers and sisters.

*Invitation for bids.* All documents, whether attached or incorporated by reference, utilized for soliciting sealed bids. No confidential or proprietary data shall be solicited in any invitation for bids.

*Lease.* A contract for the use of equipment or other supplies or real property under which title will not pass to the County at any time.

*Lease with option.* A lease contract with a renewal and/or purchase option whereby title may pass to the County. (Cr. #O-23-95)

*Person.* Any business, individual, union, committee, club, other organization or group of individuals.

*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.

*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 subcontract prices.

*Public agency.* A public entity subject to or created by local ordinance.

*Qualified products list.* An approved list of supplies, services or construction items described by model or catalogue numbers which, prior to competitive solicitation, the County has determined will meet the applicable specification requirements.

*Request for proposals.* All documents, whether attached or incorporated by reference, utilized for soliciting proposals.

*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.

*Responsive bidder.* A person who has submitted a bid which conforms in all material respects to the invitation for bids.

*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.

*Small purchases.* Any purchase not exceeding \$20,000.00 when made according to the small purchase procedures in § 3.05(3) of this subchapter.

*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.

(O-23-95)

#### Sec. 3.04. - Purchasing agents.

(1) *Establishment and appointment.*

(a) *Position of purchasing agents.* The purchasing agents shall be the County's principal public purchasing officials.

(b)

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

(2) *Authority and duties.*

- (a) *Principal public purchasing officials.* The purchasing agents shall serve as the principal public purchasing official of each department and shall be responsible for the procurement of supplies, services and construction in accordance with this subchapter as well as the management and disposal of supplies, materials and equipment.
- (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. Sell, trade or otherwise dispose of supplies, materials and equipment.
  - 3. Establish and maintain programs for specifications development, contract administration and inspection and acceptance, in cooperation with the public agencies using the supplies, services, materials and construction.
- (c) *Operational procedures.* Consistent with this subchapter and with the approval of the County Administrator, the purchasing agents may adopt operational procedures relating to the execution of his duties.

Sec. 3.05. - Source selection and contract formation.

(1) *Competitive sealed bidding.*

- (a) *Conditions for use.* All contracts of this County shall be awarded by competitive sealed bidding, except as otherwise provided in subsections (2), (3), (4), (5) and § 3.10(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.* Adequate public notice of the invitation for bids shall be given a reasonable time prior to the date set forth therein for the opening of bids consonant with the provisions of the State Statutes, which shall provide for a minimum of not less than 14 calendar days. Such notice shall, when required by law, include publication in a newspaper of general circulation. The public notice shall state the date, time and place of bid opening.

- (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 amount of each bid and such other relevant information as the purchasing agents deems appropriate, together with the name of each bidder, shall be recorded. The record and each bid shall be open to public inspection.
- (f) *Bid acceptance and bid evaluation.* Bids shall be unconditionally accepted without alternation 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. Nothing herein shall prevent the Purchasing Agent from standardizing property, inventory, supplies, and equipment if by so doing it is determined by the Purchasing Agent to be in the best interest of the County by minimizing life cycle maintenance and inventory costs. In purchases over \$20,000.00, the County Administrator and the Finance and Property Committee shall approve the purchasing decision.
- (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 time of opening bids has passed, however, correction in bids shall be permitted only to the extent that the bidder can show by clear and convincing evidence that a mistake was made, the nature of the mistake and the bid price actually intended. However, downward correction of a bid, which would displace the apparent low bidder, shall only be permitted if the error made and the intended bid price can be

determined solely from the bid documents. 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 County Administrator.

- (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 contract shall be awarded with reasonable promptness by written notice to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the invitation for bids.
  - (j) *Multi-step sealed bidding.* When it is considered impractical to initially prepare a purchase description 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) *Competitive sealed proposals.*
- (a) *Conditions for use.* When the purchasing agents determine 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 proposals method as is consistent with State law.
  - (b) *Request for proposals.* Proposals shall be solicited through a request for proposals.
  - (c) *Public notice.* Adequate public notice of the request for proposals shall be given in the same manner as provided in subsection (1)(d) (Competitive Sealed Bidding, Public Notice), provided the minimum time shall be 14 calendar days.
  - (d) *Receipt of proposals.* No proposals shall be handled so as to permit disclosure of 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. The register of 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 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 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 3.05(1)(f) of this Code.
- (3) *Small purchases procedure.* Any contract not exceeding \$30,000.00 may be made in accordance with small purchase procedures, however, purchases shall not be artificially divided so as to constitute a small purchase under this section. If possible, for purchases over \$10,000.00, three businesses shall be solicited to submit quotations from which the lowest acceptable quotation shall be selected. The name of the business submitting a quotation and the date and amount of each quotation shall be recorded and maintained as a public record. The purchasing agent shall maintain a list of all businesses from which quotations were sought.
- (4) *Sole source procurement.* A contract may be awarded without competition when the purchasing agent determines in writing, after conducting a good faith review of available sources, that there is only one source for the required supply, service or construction item and when allowed by law. The purchasing agent shall conduct negotiations, as appropriate, as to price, delivery and terms. A record of sole source procurements shall be maintained that lists each contractor's name, the amount and type of each contract and listing the items procured under each contract.
- (5)



*Emergency procurements.* The purchasing agent 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, if allowed by the State Statutes, provided that such emergency procurements shall be made with such competition as is practicable under the circumstances. A written determination of the basis for the emergency and for the selection of the particular contractor shall be included in the contract file and forwarded to the County Administrator. As soon as practicable, a record of each emergency procurement shall be made and shall set forth the contractor's name, the amount and type of the contract and listing of the items procured under the contract.

(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) *Responsibility of bidders and offerors.*

(a) *Determination of nonresponsibility.* If a bidder or offeror who otherwise would have been awarded a contract is found nonresponsible, a written determination of nonresponsibility 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 nonresponsibility with respect to such bidder or offeror. A copy of the determination shall be sent promptly to the nonresponsible bidder or offeror. The final determination shall be made part of the contract file and be made a public record.

(b) *Right of nondisclosure.* Information furnished by a bidder or offeror pursuant to this section shall not be disclosed by the County outside of the office of the purchasing agent without prior written consent by the bidder or offeror provided, however, that the bidder or offeror as part of and with his bid sets forth in writing the data or information not to be disclosed and the reasons therefor, and the nondisclosure complies with State public records laws.

(8) *Cost or pricing data.*

- (a) *Required submissions relating to the award of contracts.* A prospective contractor shall submit cost or pricing data when the contract is expected to exceed \$25,000.00 and is to be awarded by competitive sealed proposals [sub. (2)], by sole source procurement authority [sub. (4)] or by architect-engineer and land surveyor selection procedures [§ 3.10(1)].
- (b) *Exceptions.* The submission of cost or pricing data relating to the award of a contract is not required where:
1. The contract price is based on adequate price competition;
  2. The contract price is set by law or regulation; or
  3. It is determined in writing by the purchasing agent that the requirements of par. (a) may be waived and the determination states the reasons for such waiver.
- (c) *Required submissions relating to change orders or contract modifications.* A contractor shall submit cost or pricing data prior to the pricing of any change order or contract modification, including adjustments to contracts awarded by competitive sealed bidding, whether or not cost or pricing data were required in connection with the initial pricing of the contract, when the modification involves aggregate increases or aggregate decreases in costs plus applicable profits that are expected to exceed ten percent of the amount bid.
- (d) *Exceptions.* The submission of cost or pricing data relating to the pricing of a change order or contract modification is not required where:
1. Unrelated and separately priced adjustments for which cost or pricing data would not be required are consolidated for administrative convenience; or
  2. It is determined in writing by the purchasing agent that the requirements of par. (c) may be waived and the determination states the reasons for such waiver.
- (e) *Certification required.* A contractor, actual or prospective, required to submit cost or pricing data in accordance with this section, shall certify that, to the best of its knowledge and belief, the cost or pricing data submitted was accurate, complete and current as of a mutually specified date prior to the award of the contract or the pricing of the change order or contract modification.
- (f)

*Price adjustment provision required.* Any contract award, change order or contract modification under which the submission and certification of cost or pricing data are required shall contain a provision stating that the price to the County, including profit or fee, shall be adjusted to exclude any significant sums by which the County finds that such price was increased because the contractor furnished cost or pricing data was inaccurate, incomplete or not current as of the date agreed upon between the County and the contractor.

- (9) *Cost or price analysis.* If a contract is being funded in whole or in part by assistance from a federal or State agency, a cost analysis or a price analysis, as appropriate, shall be conducted prior to award of the contract.
- (10) *Types of contracts.* Subject to the limitations of this section, any type of contract which is appropriate to the procurement and which will promote the best interests of the County may be used, provided that the use of a cost-plus-a-percentage-of-cost contract or a cost-plus-a-percentage-of-construction-cost contract are prohibited. A cost reimbursement contract may be used if it 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.
- (11) *Cost reimbursement provisions.* Cost reimbursement provisions shall only obligate the County to reimburse reasonable costs, allocable to the contractor, either directly or indirectly, that are accounted for in accordance with generally accepted accounting principles. If a contract is being funded in whole or in part by assistance from a federal or State agency, then reimbursement to contractors for incurred costs or cost estimates included in negotiated prices shall be subject to appropriate federal cost principles which are codified in subpar. 1-15 of Title 41, Code of Federal Regulations.
- (12) *Lease contracts.* A lease may be entered into provided:
  - (a) It is determined to be in the best interests of the County; and
  - (b) All conditions for renewal and costs of termination are set forth in the lease.
- (13) *Lease with option contracts.* Where a lease with a renewal and/or a purchase option contract is contemplated, whereby title to leased facilities, equipment, or supplies may pass to the County, such lease with renewal and/or purchase option contract may be entered into by the County, provided the purchasing agent prepares a good faith written determination that:
  - (a) All terms are in the best interests of the County;

- (b) All conditions for renewal, costs of termination and costs of exercise of the purchase option(s) are set forth in the lease;
  - (c) All written documents including, but not limited to, leases, contracts, invitations for bids, requests for proposal, and other communications which solicit bids, proposals, or quotes contain a statement reserving the County's unilateral right to terminate the procurement relationship, without any penalty, in the event the County Board fails to appropriate sufficient funds in future budgets with which the procurement relationship could be maintained;
  - (d) Notice of any option provision is included in the original solicitation;
  - (e) Procurement of alternative comparable supplies, equipment, or facilities has been considered and determined to be at greater cost or less benefit to the best interests of the County; and
  - (f) The lease contains the provision that the County Administrator must agree in writing in advance of any exercise of an option to purchase.
- (14) *Approval of accounting system.* Except with respect for firm fixed price contracts, no contract type shall be used unless it has been determined in writing by the purchasing agent that:
- (a) 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.
  - (b) The proposed contractor's accounting system is adequate to allocate costs in accordance with generally accepted accounting principles.
- (15) *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 level which is pertinent to the performance of any contract awarded by the County.
- (16) *Right to audit records.*
- (a) *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 pursuant to sub. (8) (Cost or Pricing Data) to the extent that such books, documents, papers and records are pertinent to such cost or pricing data. Any person who receives a contract, change order or contract modification for which

cost or pricing data is required shall maintain such books, documents, papers and records that are pertinent to such cost or pricing data for six years from the date of final payment under the contract.

- (b) *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.
- (17) *Reporting of anticompetitive 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 District Attorney or the State Attorney General by the Corporation Counsel.
- (18) *(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 and disposed of by the County in accordance with records retention guidelines and schedules approved by the County Board and as may be required by the State Statutes. 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 three years from the closeout date of the assistance agreement or the final disposition of any controversy arising out of the assistance agreement.
- (19) *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 3.05(1) through (5) is complied with. The advertisement or solicitation shall set forth, as far as practicable, the minimum standards for the item to be purchased. For purchases estimated to exceed \$20,000.00,

the prior approval of the Finance and Property Committee shall first be obtained. The County Administrator and the Finance and Property Committee shall advise the County Board of all purchases made pursuant to this section.

(R-61-88; O-23-95; 0-6-98; O-15-06)

Sec. 3.06. - 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 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.
- (2) *Qualified products list.* A qualified products list may be maintained by the purchasing agent.
- (3) *Brand name or equal specification.*
  - (a) *Use.* Brand name or equal specifications may be used when the purchasing agent determines that:
    1. No other design or equal specification or qualified products list is available;
    2. Time does not permit the preparation of another form of purchase description, not including a brand name specification;
    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
    4. Use of a brand name or equal specification is in the County's best interest.
  - (b) *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.
  - (c) *Required characteristics.* Unless the purchasing agent determines in writing that the essential characteristics of the brand names included in the specifications are commonly known in the industry, he shall provide a description of the required design, function or performance characteristics.
  - (d)

*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.

(4) *Brand name specification.*

(a) *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. The purchasing agent must be prepared to substantiate the basis for the selection of the chosen material, if only a single material is specified.

(b) *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 § 3.05(4) (Sole Source Procurement).

(5) *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.

(6) *Energy conservation.* If a contract is being funded by a federal or State agency, then the County's solicitation shall seek to promote energy conservation and shall comply with any mandatory standards and policies which are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Public Law 94-163).

Sec. 3.07. - Construction contract management and contract administration.

(1) *Responsibility for selection of methods of construction contracting management.* The purchasing agent shall have discretion to select the appropriate method of construction contracting management for a particular project. In determining which method to use, the purchasing agent shall consider the County's requirements, its resources and the potential contractors' capabilities. The purchasing agent shall

execute and include in the contract file a written statement setting forth the facts which led to the selection of a particular method of construction contracting management for each project.

- (2) *Contract administration.* The purchasing agent shall maintain a contract administration system designed to insure that a contractor is performing in accordance with the solicitation under which the contract was awarded and the terms and conditions of the contract.

Sec. 3.08. - Bonds and bid security.

(1) *Bid security.*

- (a) *Requirement for bid security.* Bid security shall be required for all competitive sealed bidding for construction contracts. 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 unless it is determined that the bid fails to comply in a nonsubstantial manner with the security requirements.
- (d) *Withdrawal of bids.* If a bidder is permitted to withdraw its bid before award as provided in § 3.05(1)(f), no action shall be had against the bidder or the bid security.

(2) *Contract performance and payment bonds.*

- (a) *When required—Amounts.* When a construction contract 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.
  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.

- (b) *Reduction of bond amounts.* After written notice to and approval by the County Administrator, the purchasing agent is authorized to reduce the amount of the performance and payment bonds.
- (c) *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 par. (a) above.
- (d) *Suits on payment bonds—Right to institute.* 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, 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.
- (e) *Suits on payment bonds—Where and when brought.* 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, but no such suit shall be commenced after the expiration of one year after the day on which the last of the labor was performed or material was supplied by the person bringing suit. The obligee named in the bond need not be joined as a party in any such suit.

(3)

*Copies of bond forms.* Any person may request and obtain from the County a certified copy of a bond upon payment of the cost of reproduction of the bond and postage, if any. A certified copy of a bond shall be prima facie evidence of the contents, execution and delivery of the original.

Sec. 3.09. - Contract clauses and their administration.

(1) *Contract clauses and their administration.*

(a) *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 must inform the County Administrator and Corporation Counsel of issue clauses appropriate for supply, service or construction contracts, addressing at least the following subject:

1. The unilateral right of the County to order in writing changes in the work within the scope of the contract.
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.
3. Variations occurring between estimated quantities of work in a contract and actual quantities.
4. Defective pricing.
5. Liquidated damages.
6. Specified excuses for delay or nonperformance.
7. Termination of the contract for default.
8. Termination of the contract in whole or in part for the convenience of the County.
9. Suspension of work on a construction project ordered by the County.
10. Site conditions differing from those indicated in the contract or ordinarily encountered, except that differing site conditions clause need not be included in a contract:
  - a. When the contract is negotiated.
  - b. When the contractor provides the site or design; or
  - c. When the parties have otherwise agreed with respect to the risk of differing site conditions.

(b) *Price adjustments.*

1. Adjustments in price resulting from the use of contract clauses required by par.

(a) above shall be computed in one or more of the following ways:

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

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

c. 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;

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

e. In the absence of agreement by the parties, by a unilateral determination by the County of the reasonable costs allocable, either directly or indirectly, to the events or situations under such clauses as accounted for in accordance with generally accepted accounting principles, and with adjustment of profit or fee, as appropriate, and subject to the provisions of § 3.12 (Appeals and Remedies).

2. A contractor shall be required to submit cost or pricing data if any adjustment in contract price is subject to the provisions of § 3.05(8) (Cost or Pricing Data).

(c) *Standard clauses and their modification.* The purchasing agent, after informing the County Administrator and Corporation Counsel, may establish standard contract clauses for use in County contracts. If the purchasing agent establishes any standard clauses addressing the subjects set forth in par. (a) above, such clauses may be varied, provided that any variations are supported by a written determination that states the circumstances justifying such variations and provided that notice of any such material variation be stated in the invitation for bids or request for proposals.

(2) *Contractor records.* If a contract is being funded in whole or in part by assistance from a federal agency, then the contract shall include provisions:

(a) Requiring the contractor and subcontractors at any tier to maintain for six years from the date of final payment under the contract all books, documents, papers and records pertinent to the contract.

(b)

Requiring the contractor and subcontractor at any tier to provide to the County, the federal grantor agency, the Comptroller General of the United States or any of their authorized representatives access to such books, documents, papers and records for the purposes of examining, auditing and copying them.

- (3) *Patents.* If a contract involving research and development, experimental or demonstration work is being funded in whole or in part by assistance from a federal agency, then the contract shall include provisions:
  - (a) Giving notice to the contractor of the applicable grantor agency requirements and regulations concerning reporting of and rights to any discovery or invention arising out of the contract.
  - (b) Requiring a contractor to include a similar provision in all subcontracts involving research and development, experimental or demonstration work.
- (4) *Copyrights and rights in data.* If a contract is being funded in whole or in part by assistance from a federal agency, then the contract shall include a provision giving the contractor notice of the applicable regulations concerning the rights of the United States to any plans, drawings, specifications, computer programs, technical reports, operating manuals and similar work products developed and paid for under the contract.
- (5) *Notice of federal public policy requirements.* If the contract is being funded in whole or in part by assistance from a federal agency and the contract is subject to one or more federal public policy requirements, such as:
  - (a) Equal employment opportunity;
  - (b) Fair labor standards;
  - (c) Energy conservation;
  - (d) Environmental protection; or
  - (e) Other similar socio-economic programs, then the purchasing agent shall include contract provisions giving the contractor notice of these requirements and, where appropriate, including in those contract provisions the requirement that the contractor give a similar notice to all of its subcontractors.
- (6) *Fiscal responsibility.* Every contract modification, change order or contract price adjustment under a construction contract with the County in excess of five percent of project construction cost shall be subject to prior approval by the boards, committees

or commissions of authority after receiving a report from the purchasing agent as to the effect of the contract modification, change order or contract price adjustment on the total project budget or the total contract budget.

Sec. 3.10. - Architect-engineer and land surveying services.

- (1) *Applicability.* Architect-engineer and land surveying services shall be procured as provided in this section except as authorized by Sections 3.05(3) (Small Purchases), 3.05(4) (Sole Source) and 3.05(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 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.

(O-23-95)

Sec. 3.105. - Attorney professional services.

- (a) *Retention of legal services.* Except as provided below, the Corporation Counsel shall hire and manage all outside legal counsel engaged to represent and/or advise the county regarding all matters of any character, in which the county is interested.
1. All departments or standing committees wishing to engage outside legal counsel shall contact Marathon County Office of Corporation Counsel.
  2. The County may enter into negotiated contracts without a competitive selection process for the procurement of professional services in individual cases or matters, if the services are to be provided by attorneys who charge on an hourly basis.
  3. When retention of legal services to perform ongoing services in a type of matter, such as bond counsel or prosecution services, is required, the procurement policy for professional services shall be followed.
  4. The Corporation Counsel may act in concert with any Department Head or chairperson whose department, committee or other governance subgroup is affected by said legal matters and shall have authority to sign engagement letters on behalf of the County.
- (b) *Limitation of fees.* Counsel who are designated or engaged by the county's insurance carriers shall be monitored by Corporation Counsel, but shall be paid by said insurance carriers. In all other matters, where the aggregate legal fees exceed the initial fee agreement or \$25,000.00, whichever is less, the Corporation Counsel shall notify the Human Resource/Finance Committee of the status of the matter and seek approval for additional expenditures. Any contract for services or letter of engagement shall reference this limitation on fees.
- (c) *Billing frequency and format.*
1. Time charges. Actual time should be billed in one-tenth (.10) hour increments.
  2. Billing frequency. Invoices for legal services or expense shall be invoiced every 30

days from the date of initial suit assignment and monthly thereafter.

3. Invoices submitted more than 60 days after the last date of legal services will require explanation of the billing delay to the Corporation Counsel.
  4. Invoices submitted more than one year after the last date of legal services or expense may be rejected.
- (d) *Filing of agreements.* Attorney professional services contracts or agreements should be placed on file with the County Clerk.
- (e) *Conflict of interest.* In cases where the Corporation Counsel has a conflict, the County Administrator shall act pursuant to the procedure set forth above. In cases where both the Corporation Counsel and the Administrator have a conflict, the County Board Chair shall act pursuant to the procedure set forth above.

(O-26-16)

#### Sec. 3.11. - Debarment or suspension.

After reasonable notice to the person involved and reasonable opportunity for that person to be heard, the purchasing agent, after consulting with the County boards, committees and commissions and the County Administrator and/or Corporation Counsel is authorized to debar 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 County Administrator and Corporation Counsel, the purchasing agent, with the approval of the County Administrator, is authorized to suspend a person from consideration for award of contracts 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 ethical standards set forth in § 3.14 (Ethics in Public Contracting).

Sec. 3.12. - Appeals and remedies.

(1) *Bid protests.*

- (a) *Right to protest.* If unsuccessful bidder, offerer or contractor can show good cause why an award of contract was not in the best interest of the County, a formal protest must be filed with the purchasing agent, in writing, within five business days of the date of notice of award. If the bidder, offerer or contractor is not satisfied with the results of his appeal to the purchasing agent, who shall respond in writing to the protest within five business days of the date of receipt of the protest, the bidder, offerer or contractor may appeal the decision to the County Administrator, in writing, within five business days of the decision. The County Administrator shall respond in writing within five business days of the date of receipt thereof. A failure to respond to a protest within such time shall be deemed a denial of same. The decision of the County Administrator shall be final, but shall not preclude appeal by the bidder, offerer or contractor to the County Administrative Review Board, provided timely notice of such appeal is made consistent with Ch. 68, Wis. Stats.
- (b) *Stay of procurements during protests.* In the event of a timely protest under par. (a) above, the purchasing agent shall not proceed further with the award of the contract until all administrative and judicial remedies have been exhausted or until the County Administrator makes a determination on the record that the award of a contract without delay is necessary to protect substantial interests of the County.



(c) *Entitlement to costs.* In addition to any other relief, when a protest is sustained and the protesting bidder or offerer should have been awarded the contract under the solicitation but is not, then the protesting bidder or offerer shall be entitled to the reasonable costs incurred in connection with the solicitation, including bid preparation costs other than attorney's fees.

(2) *Contract claims.*

- (a) *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. Claims include, without limitation, controversies arising under a contract, and those based upon breach of contract, mistake, misrepresentation or other cause for contract modification or revision.
- (b) *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 par. (c) below.
- (c) *Finality of purchasing agent's decision; contractor's right to appeal.* The purchasing agent's decision shall be final and conclusive unless, within five business days from the date of receipt of the decision, the contractor mails or otherwise delivers a written appeal to the County Administrator and submits a copy thereof to the County Clerk.
1. The County Administrator shall issue a written decision within ten business days and shall immediately mail or otherwise furnish a copy of same to the contractor. The decision shall state the reasons therefor and will be final and conclusive unless appealed as outlined below.
  2. If the contractor wishes further review of the County Administrator's decision, he must mail or otherwise deliver a written appeal to the County Clerk within five business days from the date of receipt of the Administrator's decision.
  3. If the contractor wishes further review of the Administrator's decision, he must mail or otherwise deliver a written appeal to the County Clerk for review by the County Administrative Review Board. To qualify for review of the appeal by such Board, the contractor must make timely notice of his appeal consistent with administrative review procedures and as further consistent with Ch. 68,

Wis. Stats. All appeals heard by this Board will be conducted consistent with the above referenced ordinance and statutes. The Board's decision shall be written, final and rendered within the time period specified by such procedure.

- (d) *Failure to render timely decision, exhaustion of administrative remedies required before court action.* Failure by the purchasing agent, County Administrator, boards, committees or Administrative Review Appeals Board to render a decision in the time period specified, unless a longer time period is mutually agreed in writing, shall be deemed an automatic denial entitling the contractor to proceed to his remaining remedy, if any. All administrative remedies must be exhausted under this subchapter before the matter will be deemed ripe for court review.
- (3) *Authority of the purchasing agent to settle bid protests and contract claims.* The purchasing agent, with the approval of the County Administrator, is authorized to settle any protest regarding the solicitation of award of a County contract, or any claims arising out of the performance of a County contract, prior to an administrative appeal or commencement of an action in a court of competent jurisdiction.
- (4) *Remedies for solicitation or awards in violation of law.*
  - (a) *Prior to bid opening or closing date for receipt of proposals.* If, prior to bid opening or the closing date for receipt of proposals, the purchasing agent or the County Administrator, after consultation with the Corporation Counsel, determines that a solicitation is in violation of federal, State or municipal law, then the solicitation shall be cancelled or revised to comply with applicable law.
  - (b) *Prior to award.* If, after bid opening or closing date for receipt of proposals, the purchasing agent or the County Administrator, after consultation with the Corporation Counsel, 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 cancelled.
  - (c) *After award.* If, after an award, the purchasing agent or the County Administrator, after consultation with the Corporation Counsel, determines that a solicitation or award of a contract was in violation of applicable law, then:
    - 1. If the person awarded the contract has not acted fraudulently or in bad faith:
      - a. The contract may be ratified and affirmed, provided it is determined that so doing is in the best interests of the County; or
      - b.

The contract may be terminated and the person awarded the contract shall be compensated for the actual expenses reasonably incurred under the contract, plus a reasonable profit, prior to the termination.

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.

Sec. 3.13. - 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 on each procurement for which such businesses may be suited.

(2) *Small, women-owned and minority business enterprises.*

(a) *Expand participation.* If a contract is being funded in whole or in part by assistance from a federal agency, the purchasing agents shall take affirmative steps to assure that small, women-owned and minority businesses are utilized when possible as sources of supplies, services and construction items.

(b) *Examples of affirmative steps.* Affirmative steps to be taken may include:

1. Including qualified small, women-owned and minority businesses on solicitation lists.
2. Assuring that small, women-owned and minority businesses are solicited whenever they are potential sources.
3. When economically feasible, dividing total requirements into smaller tasks or quantities so as to permit maximum small, women-owned and minority business participation.
4. Where the requirement permits, establishing delivery schedules which will encourage participation by small, women-owned and minority business.
5. Using the services and assistance of the Small Business Administration, the Office of the Minority Business Enterprise of the Department of Commerce and the Community Services Administration as may be practicable.

(c) *Pass-through to subcontracts.* A contractor awarded a federally funded contract shall also take affirmative steps as listed in par. (b) above in the award of its subcontracts.

(3)

*Labor surplus area businesses.* If a contract is being funded in whole or in part by assistance from a federal agency, the purchasing agent is encouraged to procure supplies, services and construction items from businesses located in labor surplus areas.

Sec. 3.14. - Ethics in public contracting.

- (1) *Criminal penalties.* To the extent that violations of the ethical standards of conduct set forth in this section constitute violations of the State Criminal Code, they shall be punishable as provided therein. Such penalties shall be in addition to the civil sanctions set forth in this section. Criminal, civil and administrative sanctions against employees or nonemployees which are in existence on the effective date of this subchapter shall not be impaired.
- (2) *Elected official and employee conflict of interest.*
  - (a) It shall be unethical for any elected or appointed official or employee to participate directly or indirectly in a procurement when the elected official or employee knows that:
    1. The elected official, employee or any member of the employee's immediate family has a financial interest pertaining to the procurement; or
    2. Any other person, business or organization with whom the employee or any member of an employee's immediate family is negotiating or has an arrangement concerning prospective employment is involved in the procurement.
  - (b) An elected official, employee or any member of an employee's immediate family who holds a financial interest in a disclosed blind trust shall not be deemed to have a conflict of interest with regard to matters pertaining to that financial interest.
- (3) *Gratuities and kickbacks.*
  - (a) *Gratuities.* It shall be unethical for any person to offer, give or agree to give any elected official, employee or former employee or for any elected official, employee or former 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, preparation or any part of a program requirement or 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.

- (b) *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.
  - (c) *Contract clause.* The prohibition against gratuities and kickbacks prescribed in this section shall be conspicuously set forth in every contract and referred to in every solicitation therefor.
- (4) *Prohibition against contingent fees.* It shall be unethical for a person, 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.
- (5) *Contemporaneous employment prohibited.* It shall be unethical for any employee who is participating directly or indirectly in the procurement process to become or to be, while such an employee, the employee of any person contracting with the governmental body by whom the employee is employed.
- (6) *Waivers from contemporaneous employment prohibition and other conflicts of interest.* The County Board in the case of the County Administrator, and the County Administrator in the case of all other County employees may grant a waiver from the employee conflict of interest provision [sub. (2)] or the contemporaneous employment provision [sub. (5)] upon making a written determination that:
  - (a) The contemporaneous employment or financial interest of the County employee has been publicly disclosed.
  - (b) The County employee will be able to perform his procurement functions without actual or apparent bias or favoritism.
  - (c) The award will be in the best interests of the County.
- (7) *Use of confidential information.* It shall be unethical for any elected official, employee or former employee knowingly to use confidential information for actual or anticipated personal gain.
- (8) *Sanctions.*

- (a) *Employees.* The County Board in the case of the County Administrator with respect to subpars. 1. and 2. and/or subpar. 3. below, and the County Administrator in the case of all other County employees may impose any one or more of the following sanctions on an employee for violations of the ethical standards in this section:
1. Oral or written warnings or reprimands;
  2. Suspension with or without pay for specified periods of time; or
  3. Termination of employment.
- (b) *Nonemployees.* The County Board may impose any one or more of the following sanctions on a nonemployee for violations of the ethical standards:
1. Written warnings or reprimands;
  2. Termination of contracts; or
  3. Debarment or suspension as provided in § 3.11.
- (9) *Recovery of value transferred or received in breach of ethical standards.*
- (a) *General provisions.* The value of anything transferred or received in breach of the ethical standards of this subchapter by an employee or a nonemployee may be recovered from both employee and nonemployee.
- (b) *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.

(O-39-91)

Sec. 3.15. - Administrative rules and regulations; promulgation.

The County Administrator is hereby authorized to promulgate administrative rules and regulations to effect efficient, effective and timely implementation of this subchapter. Such authorization shall include, but not be limited to, procedures, methods, personnel, work assignments and work stations.

Sec. 3.16. - Application.

- (1) This subchapter applies to all departments, officers, committees, agencies, boards and commissions of the County, as well as all entities directly or indirectly using County provided or County channeled funds, as well as any of the above hereinafter created, organized or reorganized.
- (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. 3.17. - Participation in the Central Wisconsin Public Purchasing Association.

- (1) *Intent.* The Office of County Administrator has determined some procurements of supplies might be most economically obtained through County affiliation with a group known as Central Wisconsin Public Purchasing Association (CWPPA), which is largely comprised of various elected and appointed officials and employees from various area units and departments of local and state government.
- (2) *Participation.* The County Board of Supervisors ordains as follows:
  - (a) Authorizing, affirming and ratifying the participation of a Marathon County representative/member in the Central Wisconsin Public Purchasing Association (CWPPA).
  - (b) Directing that any County purchases contemplated or made through CWPPA be consummated only after a specific determination by the County Administrator or his designee to CWPPA that the requirements of General Code § 3.01 et seq., County Procurement Procedure, have been fully complied with in all respects, regardless of which association member's governmental unit or department acts as designated lead agency for handling a given procurement.
  - (c)

Directing further that the County Administrator make specific determinations, in consultation with the Corporation Counsel, of any legal requirements that require said association to comply with State open meetings and public records laws, and further insure these are duly adhered to by said CWPPA and Marathon County's representative/member of same where required.

- (d) Directing further that the County Administrator work with the Corporation Counsel in assuring the reduction to writing by Marathon County and other CWPPA governmental members of any generally understood agreements between them under §§ 59.07(7) and (11), and 66.30, Wis. Stats., and any other similar and applicable laws.

(R-14-95)

Secs. 3.18, 3.19. - Reserved.



## Standard Terms And Conditions

- 1.0 SPECIFICATIONS:** The specifications in any request for bids or proposal which forms the subject of this contract are the minimum acceptable. When specific manufacturer and model numbers are used, they are to establish a design, type of construction, quality, functional capability and/or performance level desired. When alternates are bid/proposed/provided, they must be identified by manufacturer, stock number, and such other information necessary to establish equivalency. Marathon County shall be the sole judge of equivalency. \_\_\_\_\_ are cautioned to avoid bidding/proposing alternates to the specifications which may result in rejection of their bid/proposal.
- 2.0 DEVIATIONS AND EXCEPTIONS:** Deviations and exceptions from original text, terms, conditions, or specifications shall be described fully, on the \_\_\_\_\_'s letterhead, signed, and attached to the response to request. In the absence of such statement, the bid/proposal shall be accepted as in strict compliance with all terms, conditions, and specifications and the \_\_\_\_\_s shall be held liable.
- 3.0 ACCEPTANCE-REJECTION OF BIDS OR PROPOSALS:** Marathon County reserves the right to accept or reject any or all bids/proposals, to waive any technicality in any bid/proposal submitted, and to accept any part of a bid/proposal as deemed to be in the best interests of Marathon County.
- Bids/proposals MUST be date and time stamped by the office of the soliciting purchasing agent on or before the date and time that the bid/proposal is due. Bids/proposals date and time stamped in another office will be rejected. Receipt of a bid/proposal by the mail system does not constitute receipt of a bid/proposal by the purchasing agent's office
- 4.0 METHOD OF AWARD:** Award of bids shall be made to the lowest responsible, responsive bidder unless otherwise specified. Award of proposals shall be subject to criteria set for in the request for proposal.
- 5.0 QUALITY:** Unless otherwise indicated in the request, all material shall be first quality. Items which are used, demonstrators, obsolete, seconds, or which have been discontinued are unacceptable without specific prior written approval by the Marathon County.
- 6.0 WARRANTY:** Unless otherwise specifically stated by the bidder/proposer, equipment purchased as a result of this request shall be warranted against defects by the bidder/proposer for one (1) year from date of receipt. The equipment manufacturer's standard warranty shall apply as a minimum and must be honored by the contractor.
- 7.0 DELIVERY:** Deliveries shall be F.O.B. destination freight prepaid and included unless otherwise specified.
- Failure of the \_\_\_\_\_ to adhere to delivery schedules as specified or to promptly replace rejected materials shall render the \_\_\_\_\_ liable for all costs in excess of the contract price when alternate procurement is necessary. Excess costs shall include the administrative costs.
- 8.0 ORDERING:** Purchase orders shall be placed directly to \_\_\_\_\_ by authorized departments or purchasing agents who have issued the request for bids or proposal. No other purchase orders are authorized.
- 9.0 PAYMENT TERMS AND INVOICING:** Marathon County normally will pay properly submitted \_\_\_\_\_ invoices within thirty (30) days of receipt providing goods and/or services have been delivered, installed (if required), and accepted as specified.
- 9.1 Invoices presented for payment must be submitted in accordance with instructions contained on the purchase order including reference to purchase order number and submittal to the correct address for processing.
- 9.2 A good faith dispute creates an exception to prompt payment.
- 10.0 TAXES:** Marathon County and its departments are exempt from payment of all federal tax and Wisconsin state and local taxes on its purchases except Wisconsin excise taxes as described below.
- Marathon County, including all its departments, is required to pay the Wisconsin excise or occupation tax on its purchase of beer, liquor, wine, cigarettes, tobacco products, motor vehicle fuel and general aviation fuel. However, it is exempt from payment of Wisconsin sales or use tax on its purchases. Marathon County may be subject to other states' taxes on its purchases in that state depending on the laws of that state. Contractors performing construction activities are required to pay state use tax on the cost of materials.
- 11.0 CONTRACT INTEGRATION:** These Standard Terms and Conditions shall apply to any contract or order awarded as a result of a request except where special requirements are stated elsewhere in the request; in such cases, the special requirements shall apply
- The documents constituting the contract between the Marathon County and \_\_\_\_\_ are intended to be complementary so that what is required by any one of them shall be as binding as if called for by all of them. In the event of any conflicting provisions or requirements within the several parts of the Contract Documents, they shall take precedence in the following order: Change Orders (with the most recent taking precedence); Contract Document Amendments; the Contract Document as described in this signed Agreement; Request for Proposal Addenda; Request for Proposal; and Firm's Proposal. Any terms of any other documents concerning this agreement are superseded by the terms set forth herein.
- 12.0 APPLICABLE LAW AND COMPLIANCE:** This contract shall be governed under the laws of the State of Wisconsin. \_\_\_\_\_ shall at all times comply with and observe all federal and state laws, local laws, ordinances, and regulations which are in effect during the period of this contract and which in any manner affect the work or its conduct. Marathon County reserves the right to cancel this contract if \_\_\_\_\_ fails to follow the requirements of s. 77.66, Wis. Stats., and related statutes regarding certification for collection of sales and use tax.

**13.0 SAFETY REQUIREMENTS:** All materials, equipment, and supplies provided to Marathon County must comply fully with all safety requirements as set forth by the Wisconsin Administrative Code and all applicable OSHA Standards.

**13.1** \_\_\_\_\_ shall execute and maintain its work so as to avoid injury or damage to any persons or property. \_\_\_\_\_ shall comply with the requirements and specifications relating to safety measures applicable in particular operations or kinds of work. In carrying out its work, \_\_\_\_\_ shall, at all times, exercise all necessary precautions for the safety of employees appropriate to the nature of the work and the conditions under which the work is to be performed and be in compliance with all applicable federal, state and local statutory and regulatory requirements including Wisconsin Labor Code and the U.S. Department of Transportation Omnibus Transportation Employee Testing Act, including the obligation to conduct safety inspections to verify said compliance by its employees, agents, and/or subcontractors.

**13.2** \_\_\_\_\_ is specifically notified that it is subject to federal requirements listed under Title 29, Chapter 15 of the United States Code (Occupational Health and Safety Act) by virtue of its contract with Marathon County, a public entity. \_\_\_\_\_ shall provide a similar notice to all its subcontractors.

**13.3 SAFETY DATA SHEET:** If any item(s) on an order(s) resulting from this award(s) is a hazardous chemical, as defined under 29CFR 1910.1200, provide one (1) copy of a Material Safety Data Sheet for each item with the shipped container(s) and one (1) copy with the invoice(s).

**14.0 INSURANCE REQUIREMENTS:** \_\_\_\_\_ shall not commence work under this contract until all insurance required under this paragraph is obtained, and such insurance has been approved by Marathon County, nor shall \_\_\_\_\_ allow any subcontractor to commence work on their subcontract until all similar insurance requirements have been obtained and approved.

**14.1** Maintain worker's compensation insurance as required by Wisconsin Statutes, for all employees engaged in the work. In case any work is sublet, \_\_\_\_\_ shall require the subcontractor similarly to provide statutory Workers' Compensation Insurance for all of the latter's employees, unless such employees are covered by the protection afforded by \_\_\_\_\_.

**14.2 General Liability, Professional Liability and Property Damage Insurance.** \_\_\_\_\_ shall secure and maintain in force throughout the duration of this contract such General Liability, Professional Liability (if necessary) and Property Damage Insurance as shall protect itself and any subcontractor performing work covered by this contract from claims for damages for personal injuries including accidental death, as well as from claims for property damage, which may arise from operations under this contract, whether such operations be by \_\_\_\_\_, or by any subcontractor or by anyone directly or indirectly employed by either of them; and the amount of such insurance shall be as follows:

- Comprehensive General Liability \$1,000,000 per occurrence and \$2,000,000 in aggregate for bodily injury and Property Damage.
- Professional Liability Coverage, \$1,000,000 per occurrence and \$2,000,000 in aggregate.
- Automobile Liability \$1,000,000 per occurrence and \$2,000,000 in aggregate for bodily injury and property damage.
- Excess Liability Coverage, \$1,000,000 over the General Liability and Automobile Liability Coverage.
- If aircraft are used in conjunction with this project, \$2,000,000 per occurrence and in aggregate for bodily injury and property damage.

**14.3** Marathon County reserves the right to require higher or lower limits where warranted.

**14.4** Marathon County reserves the right to require additional security, including, but not limited to, bid bonds or performance bonds as specifically set forth in its request for bids or proposals.

**14.5 PROOF OF INSURANCE:** \_\_\_\_\_ shall furnish the County with a Certificate of Insurance countersigned by a Wisconsin Resident Agent or Authorized Representative of the insurer indicating that \_\_\_\_\_ meets the insurance requirements identified above. The Certificates of Insurance shall include a provision prohibiting cancellation of said policies except upon 30 days prior written notice to the County and specify the name of the contract or project covered. The Certificate of Insurance shall be delivered to the Authorized Purchasing Agent, with a copy of the Certificate of Insurance to be delivered to the Marathon County Risk Manager for approval prior to the execution of this contract. Upon renewal of the required insurance, and annually thereafter, the County shall receive a new Certificate of Insurance for three years after completion of the project. The Certificates shall name Marathon County as an additional insured and describe the contract by name and or identification number in the "Description of Operations" section of the form.

**15.0 CANCELLATION / TERMINATION:** Marathon County reserves the right to:

**15.1 NONAPPROPRIATION OF FUNDS.** Cancel any contract in whole or in part without penalty due to nonappropriation of funds or for failure of the contractor to comply with terms, conditions, and specifications of this contract.

**15.2** Terminate this contract, for the County's convenience, at any time by a notice in writing from the County to \_\_\_\_\_ by certified mail. If the Contract is terminated by the County as provided herein, \_\_\_\_\_ shall be paid an amount which bears the same ratio to the total compensation as the services actually performed bear to the total services of \_\_\_\_\_ covered

by this Contract, unless payments of compensation have previously been made.

**16.0 CONTRACT MODIFICATIONS:** The scope of the services to be performed under this Contract may be amended or supplemented by mutual written agreement between the parties to the Contract. This amendatory provision shall not operate to prevent Marathon County from exercising its reserved right to establish reasonable time schedules for any of the work or services to be performed by or deliveries to be received from \_\_\_\_\_ hereunder. Furthermore, this amendatory provision shall not operate to prevent the County from canceling any of the services not yet performed or any deliveries not yet made at the time notice is given to \_\_\_\_\_ of the cancellation of such services or portion of the work to be performed hereunder.

**17.0 ASSIGNMENT:** No right or duty in whole or in part of the \_\_\_\_\_ under this contract may be assigned or delegated without the prior written consent of Marathon County.

**18.0 PATENT INFRINGEMENT:** The \_\_\_\_\_ selling articles to Marathon County as described herein guarantees the articles were manufactured or produced in accordance with applicable federal labor laws. Further, that the sale or use of the articles described herein will not infringe any United States patent. The contractor covenants that it will at its own expense defend every suit which shall be brought against Marathon County (provided that such contractor is promptly notified of such suit, and all papers therein are delivered to it) for any alleged infringement of any patent by reason of the sale or use of such articles, and agrees that it will pay all costs, damages, and profits recoverable in any such suit.

**19.0 PUBLIC RECORDS ACCESS:** Marathon County is a political subdivision of the State of Wisconsin and as such is subject to the Wisconsin Public Records Law. It is the policy of Marathon County to maintain an open and public process in the solicitation, submission, review, and approval of procurement activities.

Bid openings are public unless otherwise specified. Evaluations of responses to requests for proposals are subject to further discussion, clarification and negotiation. Records of bids and responses to requests for proposal will not be available for public inspection prior to issuance of the award of the contract.

**20.0 PROPRIETARY INFORMATION:** Any restrictions on the use of data contained within a response to request, must be clearly stated in the bid/proposal itself. Proprietary information submitted in response to a request will be handled in accordance with the Wisconsin Public Records Law. Proprietary restrictions normally are not accepted. However, when accepted, it is \_\_\_\_\_'s responsibility to defend the determination in the event of an appeal or litigation.

**20.1** Data contained in a bid/proposal, all documentation provided therein, and innovations developed as a result of the contracted commodities or services cannot be copyrighted or patented. All data, documentation, and innovations become the property of Marathon County.

**20.2** Any material submitted by \_\_\_\_\_ in response to Marathon County's request that the

vendor considers confidential and proprietary information and which qualifies as a trade secret, as provided in s. 19.36(5), Wis. Stats., or material which can be kept confidential under the Wisconsin Public Records Law, must be identified and include citation to the specific provisions of law that preclude disclosure and any factual or background information necessary to establish that the identified provisions of the law apply to that particular information. Bid/proposal prices cannot, under any circumstances, be held confidential.

**20.3** In the event Marathon County becomes involved in litigation due to \_\_\_\_\_'s refusal of permission to release information identified as confidential or proprietary, \_\_\_\_\_ agrees to indemnify, defend and hold harmless Marathon County for any costs associated with said litigation.

**21.0 CONFIDENTIALITY OF MARATHON COUNTY'S DATA:** In the event work conducted under this contract requires \_\_\_\_\_ to have access to Marathon County's database via Internet, direct contact or other connection to allow the provision of installation, support and maintenance services, \_\_\_\_\_ agrees to keep all such data confidential and to execute any reasonable agreement to assure Marathon County that \_\_\_\_\_ will comply with all state and federal confidentiality laws and/or regulations. These restrictions herein shall survive the termination of this contract, regardless of the reason for termination, and shall continue in full force and effect and shall be binding upon \_\_\_\_\_ or its agents, employees, successors, assigns or subcontractors. \_\_\_\_\_ shall defend and incur all costs, if any, for actions that arise as a result of noncompliance by \_\_\_\_\_, its agents, employees, successors, assigns and subcontractors regarding the confidentiality restrictions herein.

**22.0 PROMOTIONAL ADVERTISING / NEWS RELEASES:** Reference to or use of Marathon County, any of its departments, agencies or other subunits, or any county official or employee for commercial promotion is prohibited. News releases pertaining to this procurement shall not be made without prior approval of Marathon County. Release of broadcast e-mails pertaining to this procurement shall not be made without prior written authorization of Marathon County's purchasing agent.

**23.0 MUTUAL HOLD HARMLESS/INDEMNIFICATION** \_\_\_\_\_ hereby agrees to release, indemnify, defend, and hold harmless Marathon County, its officials, officers, employees and agents from and against all judgments, damages, penalties, losses, costs, claims, expenses, suits, demands, debts, actions and/or causes of action of any type or nature whatsoever, including actual and reasonable attorney's fees, which may be sustained or to which they may be exposed, directly or indirectly, by reason of personal injury, death, property damage, or other liability, alleged or proven, which is determined to be caused by the negligent or intentional acts or omissions of \_\_\_\_\_'s officers, officials, employees, agents or assigns.

Marathon County hereby agrees to release, indemnify, defend, and hold harmless \_\_\_\_\_, its officials, officers, employees and agents from and against all judgments, damages, penalties, losses, costs, claims, expenses, suits, demands, debts, actions and/or causes of

action of any type or nature whatsoever, including actual and reasonable attorney's fees, which may be sustained or to which they may be exposed, directly or indirectly, by reason of personal injury, death, property damage, or other liability, alleged or proven, which is determined to be caused by the negligent or intentional acts or omissions of Marathon County's officers, officials, employees, agents or assigns.

Marathon County does not waive, and specifically reserves, its rights to assert any and all affirmative defenses and limitations of liability as specifically set forth in Wisconsin Statutes, Chapter 893 and related statutes.

**24.0 FORCE MAJEURE:** Neither party shall be in default by reason of any failure in performance of this Agreement in accordance with reasonable control and without fault or negligence on their part. Such causes may include, but are not restricted to, acts of nature or the public enemy, acts of the government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes and unusually severe weather, but in every case the failure to perform such must be beyond the reasonable control and without the fault or negligence of the party.

**25.0 GRATUITIES AND KICKBACKS**

It shall be unethical for any person to offer, give, or agree to give any elected official, employee or former employee, or for any elected official, employee or former employee to solicit, demand, accept, or agree to accept from another person, a gratuity or an offer for employment in connection with any decision, approval, disapproval, recommendation, preparation or any part of a program requirement or a purchase request, influencing the contents of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceedings 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 therefore.

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 a higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract, or order.

**26.0 DISPUTE RESOLUTION:** This Contract and the performance of the parties' obligations hereunder will be governed by and construed and enforced in accordance with the laws of the State of Wisconsin, including conflict of laws provisions. \_\_\_\_\_ consents to personal jurisdiction in the State of Wisconsin. The venue of any action hereunder shall be in Marathon County, Wisconsin.

If a dispute related to this agreement arises, all parties shall attempt to resolve the dispute through direct discussions and negotiations. If the dispute cannot be resolved by the parties, and if all parties agree, it may be submitted to either mediation or arbitration. If the matter is arbitrated, the procedures of Chapter 788 of the Wisconsin Statutes or any successor statute shall be followed. If the parties cannot agree to either mediation or arbitration, any party may commence an action in court as set forth above. If a lawsuit is commenced, the parties agree that the dispute shall be submitted to alternate dispute resolution pursuant to §802.12, Wis. Stats., or any successor statute.

Unless otherwise provided in this contract, the parties shall continue to perform according to the terms and conditions of the contract during the pendency of any litigation or other dispute resolution proceeding.

**27.0 INDEPENDENT CONTRACTOR STATUS:** The parties hereto agree that Contractor, its officers, agents and employees, in the performance of this Contract, shall act in the capacity of an independent contractor and not as an officer, employee or agent of Marathon County. The Contractor shall not be entitled to any of the rights, benefits, salaries, wages or fringe benefits which employees of Marathon County are eligible to receive. No federal, state, or local taxes or social security deductions or contributions shall be made by Marathon County on behalf of the Contractor. Neither Marathon County nor Contractor will represent itself as the agent or legal representative of the other or as partner or joint venturers for any purpose whatsoever, and neither shall have any right to create or assume any obligation of any kind, express or implied, for or on behalf of the other in any way whatsoever. Furthermore, Contractor agrees to take such steps as are necessary to ensure that each of its subcontractors, if any, will not be considered to be an agent, servant, joint venturer with, or partner of, Marathon County.

**28.0 NON-DEBARMENT CLAUSE:** \_\_\_\_\_ hereby certifies that neither it nor any of its principal officers or officials has ever been suspended or debarred, for any reason whatsoever, from doing business or entering into contractual relationships with any governmental entity. \_\_\_\_\_ further agrees and certifies that this clause shall be included in any subcontract of this contract. . Marathon County also reserves the right to cancel this contract with any federally debarred contractor or a contractor that is presently identified on the list of parties excluded from federal or State of Wisconsin procurement and non-procurement contracts.

**29.0 STATEMENT OF COMPLIANCE:** \_\_\_\_\_ has carefully reviewed Marathon County's required contract language, as set forth in the Request for Proposal/Bid pertaining to termination of contract, change orders, gratuities and kickbacks, non-appropriation of funds, hold harmless/indemnification, insurance requirements/proof of insurance, dispute resolutions, and non-debarment, and is in full compliance with all statements and requirements.

**30.0 WAIVER/SEVERABILITY:** No waiver of any default hereunder shall be deemed as a waiver of any prior or subsequent default of the same or other provisions of this contract. If any provision of this contract is held invalid by a court of competent jurisdiction, such invalidity shall not affect the validity or operation of any other provision and said provision shall continue to apply to the extent allowed by said court or, if not so allowed, be deemed severed from this contract entirely.