



MARATHON COUNTY HUMAN RESOURCES, FINANCE & PROPERTY COMMITTEE MEETING AGENDA

Date & Time of Meeting: **Tuesday, June 8, 2021 3:30 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, Vacant

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 phone conference, **PUT YOUR PHONE ON MUTE!**

1. **Call Meeting to Order**
2. **Public Comment Period**
3. **Approval of the Minutes of the April 27, 2021 Human Resources, Finance and Property Committee Meeting**
4. **Educational Presentations/Outcome Monitoring Reports**
 - A. American Rescue Plan Update
 - a. Develop a Schedule of Activities for Public Engagement
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
 - a) Sale 2021-5 1427 Lake Street Wausau WI (\$5,000 appraised value)
<https://www.co.marathon.wi.us/Portals/0/Departments/CLK/Documents/Web%20Packet%20-%20Lake.pdf>
 - b) Sale 2019-4 312 Chicago Ave Wausau, WI (\$10,400 set value)
<https://www.co.marathon.wi.us/Portals/0/Departments/CLK/Documents/Web%20Packet%20-%20Brady.pdf>
 2. Approval of May Claims and Questioned Costs
 - B. **Discussion and Possible Action by Committee to Forward to the County Board for its consideration**
 1. Intergovernmental Budget Transfers
 2. Resolution Amendment or Repeal and Creation of New Code of Marathon County Procurement Code
 3. 2022 Rolling Stock Timeline for Purchase of Equipment
 4. Capital Improvement Project Approval Process-Role of Capital Improvement Committee
 - C. **Motion to Go into Closed Session** (Roll Call Vote Suggested), pursuant to s. 19.85(1)(g), Wis. Stats., for the Purpose of conferring with legal counsel for the governmental body who is rendering oral or written advice concerning strategy to be adopted by the body with respect to litigation in which it is or is likely to become involved
 - D. **Motion to Return to Open Session** (No Roll Call Vote Required)
 1. Announcements and/or possible action on matters discussed in closed session.
6. **Policy Issues Discussion and Committee Determination**
7. **Announcements:**

Next Meeting Date- **June 22, 2021 at 4:00 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 one business day before the meeting.

| | |
|---|--|
| _____ | J Robinson/s/K Palmer |
| _____ | Presiding Officer or Designee |
| FAXED TO: <u>Wausau Daily Herald, City Pages, and _____</u> | NOTICE POSTED AT COURTHOUSE _____ |
| FAXED TO: <u>Other Media Groups, Record Review _____</u> | _____ |
| FAXED BY: <u>K. Palmer _____</u> | BY: <u>K. Palmer _____</u> |
| FAXED DATE: <u>6/4/2021 at 3:20 pm _____</u> | DATE: <u>6/4/2021 at 3:20 pm _____</u> |
| FAXED TIME: _____ | TIME: _____ |

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



MARATHON COUNTY HUMAN RESOURCES, FINANCE & PROPERTY COMMITTEE MEETING MINUTES

Date & Time of Meeting: **Tuesday, May 25, 2021 4:00 p.m.** Via WebEx **Marathon County Courthouse, County Board Assembly Room 500 Forest Street, Wausau WI**

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

Also Present: Kristi Palmer, Molly Adzic, Scott Corbett, Mike Puerner

VIA Web or Phone: Jean Maszk, Dejan Adzic, David Baker, Lance Leonhard, Kim Trueblood, Gerry Klein, Terry Kaiser, Jim Griesbach, Brian Grefe, Connie Beyersdorff, Jessica Blahnik

1. Chair Robinson called the meeting to order at 4:00 pm

2. **Public Comment Period -None**

3. **Approval of the Minutes of the May 11, 2021 Human Resources, Finance and Property Committee Meeting**

MOTION BY GIBBS; SECOND BY LEAHY TO APPROVE THE MAY 11, 2021 HUMAN RESOURCES, FINANCE AND PROPERTY COMMITTEE MEETING MINUTES; MOTION CARRIED

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

A. American Rescue Plan-Update

a. Public Engagement Process

Discussion: The ARPA State of Local Coronavirus aid funds have 4 elements 1. Response to Public Health Emergency, 2. Respond to essential workers in regards to pay and work during the emergency, 3. Reduction of revenues at the County and 4. Infrastructure for Water, Sewer and Broadband. There is an interim rule that has specific information in regards eligible program costs. There is a methodology that determines if there is a reduction of revenues below the average estimated revenue increases that are expected on an annual basis. Gibbs-It is critical to see what the revenue loss impact would be. McEwen-Would this be something that should be on the agenda of the Eastern and Western Towns Association? Robinson-Would the committee be open to having one meeting and what would the timing of the meetings look like? Gibbs-I think there are two paths-one with the public (and business community) and another one with the municipalities. I would be supportive the public engagement model. What are we asking them?

Follow up: For the next meeting, develop a schedule of activities for the public engagement. We can work through McDevco and the Chamber of Commerce and possibly United Way. I would like to see us start this work in the June to July time table.

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

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

1. None

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

1. Interdepartmental Budget Transfers

a) Finance Department-American Rescue Plan Act Coronavirus-State and Local Recovery Funds Act

b) Medical Examiner-Morgue Space Needs Study

MOTION BY GIBBS; SECOND BY FISHER TO APPROVE THE INTERDEPARTMENTAL TRANSFERS; MOTION CARRIED

2. Review of Marathon County Procurement Code; Discussion Regarding Possible Amendment or Repeal and Creation of New Code

Discussion: From April 27 meeting discussion, Corbett provided an updated version of the procurement code of the County and went through the updated Code. One of the major items that we have updated is the range of activities that this Code covers. Permits purchasing agents to purchase through purchasing consortium. How do we get rid of Marathon County property? There needs to be an activity to dispose of property and we do use surplus auction for this purposes. In the updated version there is written language that states that no employee or family member can bid on purchase surplus property so that we have a transparent transaction when disposing of property. Budget limitations –purchasing agents can enter into purchasing limits or their department budget or the Capital Improvement Project (CIP) budget limits. Small purchase definitions for the Federal government include Micro-purchases are under \$10,000 and small purchase is \$10,000 -\$250,000 for the Federal government. This committee should consider \$80,000 as a small purchase definition would be appropriate

instead of an escalator clause. If other governmental entities purchases good or services for the County under this Code, we want them to comply with our process but provide them some flexibility. Robinson-I think there should be a cap on that amount such as the Federal small purchase limit of \$250,000. Corporation Counsel will amend this portion for the next version of the Code.

Follow up: Robinson-Everyone is comfortable with the \$80,000 small purchase definition/limit? Are you comfortable with the \$250,000 dollar maximum be added to the wording on the other governmental entities purchasing? The Federal small purchase limit was increased in August 2020. Gibbs-I suggest that we use the Federal limit with wording to provide the dollar amount of that limit (currently \$250,000). The committee will look for a semi-final/final version of the Procurement Code at the June 8 meeting. Klein-The vendor consortium can get good prices and we would want to continue to use the consortium pricing or beat it in our purchasing strategy.

3. Approve City County Information Technology Commission Updated Intergovernmental and New Operating Agreement-Klein

Klein-Discussed that the CCTIC has been around for 42 years and highlighted in the language changes and created an operating agreement that is new.

MOTION BY XIONG; SECOND BY FISHER TO APPROVE THE CCITC UPDATED INTERGOVERNMENTAL AND NEW OPERATING AGREEMENT; MOTION CARRIED

6. Policy Issues Discussion and Committee Determination

A. None

7. Announcements:

Next Meeting Date-June 8, 2021 at 3:30 p.m.

8. Adjourn at 5:15 pm

MOTION BY GIBBS; SECOND BY MCEWEN TO ADJOURN THE MAY 25, 2021 HUMAN RESOURCES, FINANCE AND PROPERTY COMMITTEE MEETING AT 5:15 PM; MOTION CARRIED

MARATHON COUNTY

Budget Transfer Authorization Request Form

This form must be completed electronically and emailed to **Season Welle, Kristi Palmer**, and to your Department Head. This email will confirm that your Department Head acknowledges and approves this transfer. Forms that are incomplete, incorrect, out-of-balance, or that have not been sent to your Department Head will be returned. The Finance Department will forward completed forms to the Marathon County Human Resources, Finance & Property Committee.

DEPARTMENT: Conservation, Planning & Zoning

BUDGET YEAR: 2021

TRANSFER FROM:

| Action | Account Number | Account Description | Amount |
|------------------|----------------|------------------------|--------|
| Revenue Increase | XXX-XXX-8-2474 | DATCP/DNR – NMFE Grant | 48550 |

TRANSFER TO:

| Action | Account Number | Account Description | Amount |
|----------------------|----------------|-----------------------------|--------|
| Expenditure Increase | XXX-XXX-9-7170 | Direct Payments | 39695 |
| Expenditure Increase | XXX-XXX-9-2190 | Other Professional Services | 8855 |

I, the undersigned, respectfully request that the Human Resources, Finance & Property Committee approve the following change in budget / transfer of funds as discussed in the attached supplemental information.

Requested By: Diane Hanson

Date Completed: 6/1/2021

COMPLETED BY FINANCE DEPARTMENT:

Approved by Human Resources, Finance & Property Committee: _____

Date Transferred: _____

MARATHON COUNTY

Budget Transfer Authorization Request – Supplemental Information

Attach this supplemental information to the original Budget Transfer Authorization Request Form. All questions must be completed by the requesting department or the Budget Transfer Authorization Request Form will be returned.

- 1) What is the name of this Program/Grant? (DO NOT use abbreviations or acronyms)

Nutrient Management Farmer Education Program Grant

- 2) Provide a brief (2-3 sentence) description of what this program does.

In cooperation with surrounding Counties, Marathon County assists farmers with the development and implementation of nutrient management plans (as required by state administrative code). This grant provides incentives to landowners for completing plans as well as provides funds for some administrative costs that the Counties incur in providing this program. The Counties take turns serving as fiscal manager and Marathon County is serving as fiscal manager of this grant for the 2021 and 2022 calendar years.

- 3) This program is: (Check one)

An Existing Program.

A New Program.

- 4) What is the reason for this budget transfer?

Carry-over of Fund Balance.

Increase/Decrease in Grant Funding for Existing Program.

Increase/Decrease in Non-Grant Funding (such as tax levy, donations, or fees) for Existing Program.

Set up Initial Budget for New Grant Program.

Set up Initial Budget for New Non-Grant Program

Other. Please explain: [Click here to enter description](#)

- 5) If this Program is a Grant, is there a "Local Match" Requirement?

This Program is not a Grant.

This Program is a Grant, but there is no Local Match requirement.

This Program is a Grant, and there is a Local Match requirement of: (Check one)

Cash (such as tax levy, user fees, donations, etc.)

Non-cash/In-Kind Services: (Describe) [Click here to enter description](#)

- 6) Does this Transfer Request increase any General Ledger 8000 Account Codes? (Capital Outlay Accounts)

No.

Yes, the Amount is Less than \$30,000.

Yes, the Amount is \$30,000 or more AND: (Check one)

The capital request HAS been approved by the CIP Committee.

The capital request HAS NOT been approved by the CIP Committee.

Is 10% of this program appropriation unit or fund? No

Is a Budget Transfer Resolution Required? Yes

ORDINANCE #O-__-21

AMENDING SECTIONS 3.01 THROUGH 3.19 OF THE MARATHON COUNTY GENERAL CODE OF ORDINANCES TO UPDATE THE MARATHON COUNTY PROCUREMENT CODE

WHEREAS, Sections 3.01 through 3.19 of the General Code of Ordinances for Marathon County establishes a Procurement Code for Marathon County; and

WHEREAS, much of the Marathon County Procurement Code was created in 1988, and the most recent revision to this Code occurred in 2006; and

WHEREAS, Marathon County Departments have identified certain portions of the Procurement Code that require updates.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of the County of Marathon does hereby ordain as follows:

1. To amend sections 3.01 through 3.19 of the Marathon County General Code of Ordinances, pursuant to the attached document.

BE IT FURTHER RESOLVED that the ordinance shall take effect upon passage and publication as required by law.

Dated the ____ day of _____, 2021.

HUMAN RESOURCES, FINANCE AND PROPERTY COMMITTEE

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|-------|-------|
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |
| _____ | |

Fiscal Impact: None. The proposed changes do not have a direct budgetary impact.

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.

- (1) Subject matter. This Policy applies to contracts for the procurement of materials, supplies equipment, permanent personal property, miscellaneous capital and contractual services 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.
- (2) Entities. This Policy applies to all departments, officers, committees, agencies, boards and commissions of the County, including any such entities hereinafter created, organized or reorganized, as well as all entities directly or indirectly using funds provided or channeled by the County.
- (3) Federal or State Funds. When the procurement involves 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. This Policy shall apply to said contracts to the extent that it does not conflict with Federal or State law or regulation.
- (4) Public Works. When contracts involve projects which meet the statutory definition of "Public Works," said contracts shall comply with all applicable State law and regulations, including, but not limited to, Wis. Stats., §§59.52(29) and 66.0901, et seq. This Policy shall apply to Public Works contracts to the extent that it does not conflict with State law or regulation.
- (5) Other terms and conditions. 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.
- (6) Local and State Government purchasing. Notwithstanding this code and other statutes requiring bids for public purchases, purchasing agents of this county may make purchases from another unit of government, whether located in this state or any other state, and including, but not limited to, municipalities, state governments, the federal government, or any federally recognized American Indian tribe, without the intervention of bids. Source: Wis. Stats., §§66.0131, 66.0301, and 66.0303 and their successor statutes
- (7) Cooperative Purchasing. Purchasing agents of this county may conduct purchasing transactions in agreement with a municipality or municipalities that have agreed to create a consortium to administer, sponsor or conduct purchasing transactions under a joint contract. Prices available through membership to such a consortium may be considered purchasing agents to be a base bid from which to conduct additional procurement in accordance with this code. Source: Wis. Stats., §16.73 and its successor statutes.
- (8) Reverse Procurement. Purchasing agents of this county shall abide by the spirit and principles of this code when disposing of used or surplus property. No Marathon County officer or employee, or immediate member of their family, may purchase or bid on property being disposed of by the County.

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.

Attorney-legal services. Professional legal services, including, but not limited to, litigation support, legal research, investigative services, and legal advice on behalf of Marathon County, its departments, agencies, officers, commissions, boards, or committees,

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. See Public Works, below.

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.

Contractual Services. The rendering by a contractor of the contractor's time and effort rather than the furnishing of specific commodities. Contractual services include all services and materials to be furnished by a service provider in connection with services, and any limited trades work.

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.

Equipment. The set of articles, tools, or physical resources required for a particular purpose.

Employee. An individual drawing a salary from the County, whether elected or not, and any non-compensated individual performing personal services for the County or any department, agency, commission, council, board or any other entity established by the executive or legislative branch of 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)

Materials. Any goods, supplies, equipment or any other tangible products.

Miscellaneous Capital. An item that confers value or benefit that is not otherwise defined.

Permanent Personal Property. Any and all personal property with a life of more than two (2) years.

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 ordinance, or subject to or created under the laws of this state, another state, the United States, or any foreign nation or subdivision of any foreign nation.

Public Works. The process of constructing, 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.

Purchasing Agent. A purchasing agent is the County's principal public purchasing official responsible for the procurement of supplies, services, and construction in accordance with this subchapter.

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.

Services. See Contractual Services, above.

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 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.

Supplies. A stock of a resource from which a person, place, or organization can be provided with the necessary amount of that resource.

(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) *Budget Limitations.* Purchasing agents for this county shall have the authority to enter into purchasing transactions within the limits of their respective departmental budgets and in conjunction with authorized capital improvement program expenditures. Any purchasing transaction or other acquisition of property, not specifically budgeted, is subject to county budget amendment procedures.
- (c) *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.
- (d) *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.
- (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 \$80,000.00 [Board decides \$ amount] 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. Independent boards created by intergovernmental agreement with other municipalities, pursuant to Wis. Stats., §66.0301, that are responsible for managing Marathon County property, may pass measures increasing the upper limit for small purchases up to the maximum amount allowed under federal small purchase guidelines. The federal small purchase limit is currently set at \$250,000.00.
- (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. Note: A single response to an invitation for bid or request for proposal, notice of which is otherwise published according to law and this code, does not constitute a sole source.

- (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 non-responsibility.* If a bidder or offeror who otherwise would have been awarded a contract is found non-responsible, a written determination of non-responsibility setting forth the basis of the finding shall be prepared by the purchasing agent. The unreasonable failure of a bidder or offeror to promptly supply information in connection with an inquiry with respect to responsibility may be grounds for a determination of non-responsibility with respect to such bidder or offeror. A copy of the determination shall be sent promptly to the non-responsible bidder or offeror. The final determination shall be made part of the 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.
- (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, cost-plus-a-percentage-of-construction-cost contract or design-build 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
- (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.

(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).

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.
- (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.* Marathon County shall from time to time publish Standard Contract Language which shall be used by purchasing agents.
- (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 the total project budget or the total contract budget 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.

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), 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. 3.14. - 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, and the County Administrator in the case of all other County employees may impose any one or more of the following sanctions for any violation 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. – Severance/Interpretation.

- (1) 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.
- (2) 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.

Secs. 3.18, 3.19. - Reserved.

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.

- (1) Subject matter. This Policy applies to contracts for the procurement of materials, supplies equipment, permanent personal property, miscellaneous capital and, contractual 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.
- (2) Entities. This Policy applies to all departments, officers, committees, agencies, boards and commissions of the County, including any such entities hereinafter created, organized or reorganized, as well as all entities directly or indirectly using funds provided or channeled by the County.
- (1)(3) Federal or State Funds. 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. This Policy shall apply to said contracts to the extent that it does not conflict with Federal or State law or regulation.
- (2)(4) Public Works. When contracts involve projects which meet the statutory definition of "Public Works," said contracts shall comply with all applicable State law and regulations, including, but not limited to, Wis. Stats., §§59.52(29) and 66.0901, et seq. This Policy shall apply to Public Works contracts to the extent that it does not conflict with State law or regulation.
- (3)(5) Other terms and conditions. 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.
- (4)(6) Local and State Government purchasing. Notwithstanding this code and other statutes requiring bids for public purchases, purchasing agents of this county may make purchases from another unit of government, whether located in this state or any other state, and including, but not limited to, municipalities, state governments, the federal government, or any federally recognized American Indian tribe, without the intervention of bids. Source: Wis. Stats., §§66.0131, 66.0301, and 66.0303 and their successor statutes
- (5)(7) Cooperative Purchasing. Purchasing agents of this county may conduct purchasing transactions in agreement with a municipality or municipalities that have agreed to create a consortium to administer, sponsor or conduct purchasing transactions under a joint contract. Prices available through membership to such a consortium shall may be considered purchasing agents to be a base bid from which to conduct additional procurement in accordance with this code. Source: Wis. Stats., §16.73 and its successor statutes.
- (6)(8) Reverse Procurement. Purchasing agents of this county shall abide by the spirit and principles of this code when disposing of used or surplus property. No Marathon County officer or employee, or immediate member of their family, may purchase or bid on property being disposed of by the County.

(O-6-98)

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Commented [SC1]: There is no definition of "public funds." The definition of "public agency" includes the term "local ordinance," which makes this appear to be patterned after a model ordinance.

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Commented [SC2]: I moved this paragraph from sec. 3.19, below. We have historically had significant issues trying to enforce our procurement methods on entities that we fund. We have insisted on some occasions (i.e. therapy pool).

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.

Attorney-legal services. Professional legal services, including, but not limited to, litigation support, legal research, investigative services, and legal advice on behalf of Marathon County, its departments, agencies, officers, commissions, boards, or committees.

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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. See Public Works, below.

~~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.

Contractual Services. The rendering by a contractor of the contractor's time and effort rather than the furnishing of specific commodities. Contractual services include all services and materials to be furnished by a service provider in connection with services, and any limited trades work.

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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.

Equipment. The set of articles, tools, or physical resources required for a particular purpose.

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Employee. An individual drawing a salary from the County, whether elected or not, and any non-compensated individual performing personal services for the County or any department, agency, commission, council, board or any other entity established by the executive or legislative branch of 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)

Materials. Any goods, supplies, equipment or any other tangible products.

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Miscellaneous Capital. An item that confers value or benefit that is not otherwise defined.

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Permanent Personal Property. Any and all personal property with a life of more than two (2) years.

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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, or subject to or created under the laws of this state, another state, the United States, or any foreign nation or subdivision of any foreign nation.~~ A public entity subject to or created by local ordinance, or subject to or created under the laws of this state, another state, the United States, or any foreign nation or subdivision of any foreign nation.

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Public Works. The process of constructing, 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.

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Purchasing Agent. A purchasing agent is the County's principal public purchasing official responsible for the procurement of supplies, services, and construction in accordance with this subchapter. See sec. 3.04, below.

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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.

Services. See Contractual Services, above.

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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.

Supplies. A stock of a resource from which a person, place, or organization can be provided with the necessary amount of that resource.

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(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) *Budget Limitations.* Purchasing agents for this county shall have the authority to enter into purchasing transactions within the limits of their respective departmental budgets and in conjunction with authorized capital improvement program expenditures. Any purchasing transaction or other acquisition of property, not specifically budgeted, is subject to county budget amendment procedures.

~~(c)~~ *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.

(de) *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 ~~\$8030,000.00~~ [Board decides \$ amount] 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. Independent boards created by intergovernmental agreement with other municipalities, pursuant to Wis. Stats., §66.0301, that are responsible for managing Marathon County property, may pass measures increasing the amount of money the upper \$80,000.00 limit for small purchases up to the maximum amount allowed under federal small purchase guidelines. The federal small purchase limit is currently set at \$250,000.00.

- (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. Note: A single response to an invitation for bid or request for proposal, notice of which is otherwise published according to law and this code, does not constitute a sole source.
- (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 non-responsibility.* If a bidder or offeror who otherwise would have been awarded a contract is found non-responsible, a written determination of non-responsibility setting forth the basis of the finding shall be prepared by the purchasing agent. The unreasonable failure of a bidder or offeror to promptly supply information in connection with an inquiry with respect to responsibility may be grounds for a determination of non-responsibility with respect to such bidder or offeror. A copy of the determination shall be sent promptly to the non-responsible bidder or offeror. The final determination shall be made part of the 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 ~~or design-build 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.* Marathon County shall from time to time publish Standard Contract Language which shall be used by purchasing agents.
- (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.*~~

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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 ~~the total project budget or the total contract budget~~ 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 any 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.*

Commented [SC4]: The Board can only act by resolution

- (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. ~~Severance/Interpretation 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.~~

(21) 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.

(32) 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.

CAPITAL IMPROVEMENT PROGRAM ROLLING STOCK POLICY

March 2018

ROLLING STOCK POLICY

In an effort to make the rolling stock process more manageable - Highway, Sheriff, and Parks, Recreation, and Forestry Departments rolling stock funding will be considered a recurring fund. The amount will be based on an average of the last five years of requests (see below) allowing for more flexibility. These departments will be able to address actual need, rather than what is projected to be a need, nine months prior to funding. All other departments will continue to use the existing process.

Rolling Stock will be defined as: Any vehicle licensed for road use or any contractor equipment (all vehicles or equipment not licensed for road use) with a value of no less than \$5,000.00.

Rolling Stock will be required to adhere to the following guidelines:

- An itemized list of all rolling stock (including make, model, year and mileage/hours) will be required to establish a baseline for eligibility in future years.
- Fleet size will not increase unless approved by the County Administrator. If a department gets a new vehicle, they will dispose of an old vehicle.
- With improvements in automotive reliability, many vehicles are still in good working condition after 120,000 miles. The replacement schedule is 120,000 miles or 12 years. However, an exception will be made for the Sheriff's Department on "Police Vehicles" due to reliability, safety issues, and driving conditions. The Sheriff's Department replacement schedule for "Police Vehicles" will be 100,000 miles or 10 years. A "Police Vehicle" will be defined as a vehicle equipped with a siren in addition to red and blue emergency lights. All guidelines are minimums. It is the expectation of the CIP Committee that rolling stock will be utilized beyond the minimum guidelines (unless mechanically or structurally unsound).
- Departments with recurring rolling stock will provide an annual report showing the previous year's acquisitions, along with a description (make, model, year, and expenditure) of each vehicle to be replaced and a description (make, model, and year) of the vehicle replacement.
- When it has been determined that a vehicle is to be replaced, the department will give due consideration to need and cost effectiveness in terms of both initial cost and fuel economy.
- If a vehicle accumulates less than 10,000 miles per year, alternatives to owning that vehicle will be reviewed to determine the most cost effective solution for the County.
- Contractor's equipment will be on a replacement schedule (where equipment can be eligible for replacement) only after it exceeds 10,000 hours of operation.
- If a piece of contractor's equipment accumulates less than 250 hours of use per year, alternatives to owning that equipment will be reviewed to determine the most cost effective solution for the County.
- Large dollar purchases should be planned for using the annual recurring amount or can be brought as a CIP project but will be ranked against all other projects requested that year.
- Revenue earned from the sale or trade of a piece of rolling stock can be used to purchase a replacement piece of rolling stock. If the rolling stock is not replaced than any revenue from the sale will be returned to the CIP fund. If CIP funds are used to fund the entire cost of a vehicle, when the replacement vehicle is sold all funds from the sale will be returned to the CIP fund.

Excerpt from the Risk Management Procedures – Automobile Losses

THIRD PARTY RECOVERIES

Risk Management will pursue subrogation from a responsible third party. Recover will include: Expense for incurred damages, external or internal repair labor, towing, disassembly and assembly of customized equipment, and other associated expenses.

Departments will be reimbursed for direct expenses incurred by that department. Expenses paid for by the Risk Management budget shall be reimbursed to the Risk Management budget.

In the event of losses where automobiles are determined to be total losses, meaning the repair costs exceed the actual cash value of the automobile, the salvage value of the vehicle will be reimbursed in accordance to the following guidelines:

Vehicles purchased through Capital Improvement Program Funds:

- Departments will report the acquisition date, year, make, model, and purchase value of vehicle including customization expense to the Facilities and Capital Management department and the Risk Management department within 30 days of purchase.
- Risk Management will reimburse the Capital Improvement Program fund the actual cash value of the vehicle and/or customization equipment expenses if settlement is received from a third party.
- Any vehicle purchased with CIP funds is required to be equipped with a back-up sensor and/or a back-up camera.
- Any dollars left in the rolling stock fund at the end of the fund year will be returned to the CIP fund to be reused.
- The County's contingency fund (for catastrophic, major or emergency repairs) will be subject to the recommendation of the CIP Committee.

This policy will serve as a guide to the CIP Committee to address rolling stock recurring requests.

The five year averages are as follows:

| | |
|---------------------------|--------------|
| Highway Department..... | \$957,600.00 |
| Sheriff's Department..... | \$333,696.00 |
| Parks Department..... | \$173,460.00 |

The five year average was established using rolling stock requests from each department from 2009-2013. The established amounts will not be a rolling average, the amount will remain constant and can only be changed with approval from the CIP Committee and the Human Resources, Finance, and Property Committee.

Sec. 2.05. - County statutory, program, joint committees and task forces (governance).

[SHARE LINK TO SECTION](#)
[PRINT SECTION](#)
[DOWNLOAD \(DOCX\) OF SECTION](#)
[EMAIL SECTION](#)

As a general rule, Marathon County Program, Statutory, Joint Committees and Task Forces will have no more than three County Board Supervisors appointed to their membership. Exceptions exist in this document, where it isn't yet clear that adjustment of membership down to a maximum of three County Board Supervisors would be in the best interest of the residents of Marathon County.

(2) **Capital** Improvement Program (CIP) Committee.

- (a) *Committee type and reporting relationship:* The CIP is a Marathon County subcommittee which reports to the Human Resources, Finance and Property Standing Committee.
- (b) *Purpose:* The committee is to review and prioritize **capital** project requests submitted by committees of the County Board. The CIP committee will assemble these requests into short- and long-term **capital** asset project plans for the review and consideration by the Human Resources, Finance and Property Committee. These plans, as prepared or as modified by the County Administrator, will be included as part of the County Administrator's initial budget submission to the Human Resources, Finance and Property Committee. (Adopted 2008 by County Board.)
- (c) *Statutory responsibility:* None.
- (d) *Membership:* Total of seven members consisting of four County Board Supervisors, three citizen members. The committee will be chaired by a County Board Supervisor who serves on the Human Resources, Finance and Property Committee. Technical support staff will consist of the County Administrator and administrative staff they assign.
- (e) *Member term:* All members are appointed for a two-year term to coincide with biennial organization of the County Board, appointed by the County Board Chair and confirmed by the County Board. Committee vacancies will be filled according to County Board Rule 13.

(f) *Duties and responsibilities:*

1. Develop and Recommend allocation/prioritization guidelines to the Human Resources, Finance and Property Committee for incorporation into the budgetary guidelines to be approved by the Marathon County Board.
2. Review and rank **capital** project requests submitted by Marathon County Standing Committees consistent with approved guidelines. (All non-county committee/board/commission requests will be submitted through the appropriate standing committee.)
3. Develop and provide the County Human Resources, Finance and Property Committee with a **Capital** Plan that includes the annual priorities and a rolling five-year projection, (updated annually) for considered inclusion in the annual budget.
4. Monitor the progress of and provide regular status updates, for all major **capital** projects under construction or installation, to the Human Resources, Finance and Property Committee of the Marathon County Board.

CAPITAL IMPROVEMENT PROGRAM



POLICY & PROCEDURE

June 2020

CIP REVIEW COMMITTEE MEMBERS:

County Board Supervisors:

EJ Stark (Chair), Sandi Cihlar, Kelley Gabor, David Overbeck

Citizen Members:

Chuck Kornack, Barkley Anderson, Eric Budleski

Technical Staff:

Terry Kaiser (Director – Facilities & Capital Management Department),

Lance Leonhard (County Administrator),

Troy Torgerson and Craig Christians (Facility Planners),

Barbara Parker (Accounting Specialist), Cindy DeBroux (Secretary)

POLICY FOR FUNDING

MARATHON COUNTY'S CAPITAL IMPROVEMENT PROGRAM

INTRODUCTION

Marathon County recognizes the need to create and maintain the County's capital assets and infrastructure and fund both the operating and capital sides of the budget. Through Resolution R#124-89 the County set up the five years Capital Improvement Program with the following goals:

- Protect the County's investment in its buildings, equipment, improvements, and infrastructure.
- Recognize the need to preserve and maintain existing assets over acquiring new assets.
- Develop the most cost effective way to manage the County's assets through a comprehensive process that cuts across departments, boards, and committees.
- Acknowledge that certain services cannot be compromised. The services provided and capital investments made must undergo a rigorous scrutiny to ensure that investments in these areas meet the needs of the County in the most cost effective manner possible.
- Provide equipment that is essential to do the work of the County.
- Where possible, the County needs to examine the long term operating and capital costs prior to instituting any new program.

In order to accomplish these goals, the CIP must have the funding to complete projects as ranked by the CIP Committee. This policy will establish the funding mechanism that is associated with the CIP budget.

CIP Funding Sources

The following funding sources are available for CIP projects:

Undesignated Fund Balance

Undesignated fund balance of several County funds is transferred to the Capital Improvement Fund to fund CIP projects that are approved and ranked by the CIP Committee. The procedure for determining the timing and amount of those funds is as follows:

At the end of the year, the Finance Department closes out all of the funds of the County in accordance with generally accepted accounting principles. Those funds that use tax levy to support programs are part of a calculation to establish a Working Capital Reserve as per Resolution R#104-89. What is "left over" is considered undesignated fund balance. This amount is recorded, audited and reported in Marathon County's Comprehensive Annual Financial Report (CAFR). The amount is then available and used to fund the next year's CIP (i.e., the 2002 books are closed, 2002 working capital is calculated, the 2002 undesignated fund balance is recorded, audited and reported and is available to fund 2004 CIP projects).

Repayment of Debt from Agencies Outside of the Primary Government

In certain cases, Marathon County may receive annual debt service payments. These are repayments of Marathon County debt that was issued for joint or for Discretely Presented Component Unit projects and may be used to fund the County's CIP projects. This is particularly true in the case where Marathon County has

deceased a portion of the outstanding debt. Historically, the County has transferred debt services payments from Central Wisconsin Regional Airport and North Central Health Care to the CIP budget to fund projects.

Use of Sales Tax Revenues to Fund CIP

The County may apply a portion of the budgeted sales tax revenue directly to the CIP fund to assist in funding County projects.

Tax Levy

Property Tax levy is used to fund specific parts of the CIP. The following projects are tax levy funded on an annual basis and recorded in the department budget: rolling stock for the Highway and Sheriff's Department, County highway, bridge, and bituminous projects.

Debt Proceeds to Capital Projects

The County's debt policy states that the County may use long term financing for the acquisition, replacement or expansion of capital assets or infrastructure.

Grant Funding

Marathon County receives public and private grants to assist us in the acquisition, replacement or expansion of capital assets or infrastructure. The grants are used to finance the designated project(s) and are reported as required by the grantor agency.

Operating Revenues

The proprietary funds of Marathon County, and its Discretely Presented Component Units, charge a fee that is set to cover the costs of operations and even the cost to acquire, replace or expand current capital needs. In these cases, revenues will be available to pay for the cost of the CIP projects.

Other Revenue Sources

In some cases, the County will receive funding for capital projects from outside parties. These funds are to be used in accordance with the guidelines as stated by the funding agency.

2008 CIP Team Restructure Guidelines (Adopted by Marathon County Board)

Added from: Chapter 2: The Governing Body Sec. 2.05 (2)

2. Capital Improvement Program (CIP) Committee.

I. Committee Name

Capital Improvement Program Committee (CIP)

II. Committee Type and Reporting Relationship

The CIP is a Marathon County subcommittee which reports to the Human Resources, Finance, and Property Standing Committee.

III. Purpose

The Committee is to review and prioritize capital project requests submitted by committees of the County Board. The CIP Committee will assemble these requests into short and long term capital asset project plans for the review and consideration

by the Human Resources, Finance, and Property Committee. These plans, as prepared or as modified by the County Administrator, will be included as part of the County Administrator's initial budget submission to the Human Resources, Finance and Property Committee (Adopted 2008 by County Board).

IV. Statutory Responsibility

None

V. Membership

Total of seven members consisting of, four County Board Supervisors and three citizen members. The Committee will be chaired by a County Board Supervisor who serves on the Human Resources, Finance, and Property Committee. Technical support staff will consist of the County Administrator and administrative staff they assign.

VI. Member Term.

All members are appointed for a two-year term to coincide with biennial organization of the County Board, appointed by the County Board Chair and confirmed by the County Board. Committee vacancies will be filled according to County Board Rule 13.

VII. Duties/Responsibilities

1. Develop and Recommend allocation/prioritization guidelines to the Human Resources, Finance, and Property Committee for incorporation into the budgetary guidelines to be approved by the Marathon County Board.
2. Review and rank capital project requests submitted by Marathon County Standing Committees consistent with approved guidelines. (All non-county committee/board/commission requests will be submitted through the appropriate standing committee.)
3. Develop and provide the County Human Resources, Finance, and Property Committee with a capital plan that includes the annual priorities and a rolling five year projection, (updated annually) for considered inclusion in the annual budget.
4. Monitor the progress of and provide regular status updates, for all major capital projects under construction or installation, to the Human Resources, Finance, and Property Committee of the Marathon County Board.

VIII. Other Organization Relationships

None

POLICIES

Policy on Reporting all Capital Projects

The intent of the CIP is to identify in one document all capital projects that the County and its many related agencies are undertaking in the next several years **regardless of funding mechanism**. Capital projects included in the CIP are defined as:

A capital project will be defined as a project which:

- (1) Require a minimum expenditure by the County of \$30,000,
- (2) Has a useful life span of seven years or more, and
- (3) Meets at least one of the following criteria:
 - Generally non-recurring.
 - Provides for the acquisition or construction of any physical facility for the County, to include consultant or professional services related to acquisition or construction, or the study of options for acquisition or construction of physical facilities.
 - Provides for the acquisition of equipment for any physical facility when first constructed or acquired.
 - Provides for the ongoing acquisition of major capital equipment or systems, i.e., computer technology, radio systems.
 - Provides for the acquisition of land or an interest in land.
 - Fund expenditures, including additions to existing facilities, which increase the square footage, value, or extends the life of a facility.
 - Fund expenditures for major maintenance or replacement projects on existing facilities or equipment.
 - Rolling stock and equipment replacement that is of critical importance to the functioning of the department involved.

A capital maintenance or replacement project will be defined as a project to:

Repair, maintain or replace existing capital facilities for the purpose of protecting the County's investment and minimizing future maintenance and replacement costs. To be classified as a non-recurring maintenance project, a project must have an interval between expenditures of at least five years. If a project is deemed recurring the CIP Committee will establish an annual allocation for that account. Each year thereafter the CIP Committee may replenish the account to the established threshold only replacing funds spent the previous year. Departments will provide an itemized report documenting transactions within that account. Departments will have the opportunity to request a change to the allocation during the annual CIP ranking process. Changes to the allocation can only be made by the CIP Committee.

Funding allocated for a project in the CIP budget is specific for that project. After the completion of the project any remaining project funds cannot be used to fund other projects unless approved by the CIP Committee and the Human Resources, Finance, and Property Committee in accordance with the interdepartmental transfer procedures established for Marathon County.

- Examples of recurring projects include:
 - Technology Replacement
 - Parking Lot Maintenance

All projects that meet this definition must be reviewed by the CIP Committee regardless of funding source. For example, 100% grant funded projects will still need to be reviewed by the CIP Committee. The CIP Committee shall establish factors for review such as long term operational costs, project history, past spending practices of department or agency, exploring alternatives that provide the most cost effective use of resources and consistency with the County's mission statement. The CIP Committee may direct the County Administrator to assign appropriate staff to explore additional cost effective alternatives.

After conducting its evaluation of factors, the CIP Committee shall forward a recommendation to the Human Resources, Finance, and Property Committee for further action. **Failure to comply with this policy by a requesting department may result in a negative recommendation to the Human Resources, Finance, and Property Committee and potential loss or reduction in capital funding or support of operations.**

CIP Committee reserves the right to:

- Enforce the time schedule set forth herein, which may result in project delay;
- Reject any project proposal that does not contain enough information to enable the Committee to effectively rank it pursuant to the scale established by Committee;
- Exempt certain projects from ranking if the committee determines that the project does not meet any of the definitions set forth above, or in the best interests of Marathon County;
- Consider past non-compliance with CIP Policies as a factor when evaluating project requests;

Prior Standing Committee Approval Minutes Must be Submitted with CIP Request(s).

Requests should indicate entire anticipated project cost (including consulting & design fees and project contingency) even if the project is expected to extend into following year(s).

EXPEDITED / OTHER THAN CIP FUNDED CAPITAL PROJECT REQUEST

An expedited capital project request will be defined as any project request made outside of the normal ranking process that requires an amendment to the CIP budget or a possible change to the proposed budget. Although this is highly irregular and is not the preferred method (see the procedure is outlined below).

Any Capital project that is 100% self-funded may be brought to the CIP Committee at any time during the year for approval (see the procedure outlined below). The CIP Committee will have the discretion to determine how to proceed with the project. If it is believed the project has merit, the Committee may choose to by-pass ranking the project and pass it on to the Human Resources, Finance, & Property Committee for their consideration.

Procedure:

- Acquire Standing Committee or Board approval and documentation.
- Complete and submit to Facilities and Capital Management a Capital Project Request Form.
- Request to be included on the agenda of the next CIP Committee meeting.

RECURRING PROJECT

The Marathon County CIP Committee wishes to propose the annual dollar amount designated to Capital Projects be divided with an amount determined annually by the Human Resources, Finance, & Property Committee going to City County Information Technology (CCIT) to be used for technology projects. CCIT would no longer need to submit their requests for ranking, but would prioritize their projects and create a list that would be included in the annual CIP book for approval by the County Board. CCIT would be required to continue to follow all CIP/procurement rules and would return all unused capital dollars annually. Any projects larger than the annual allotment would either need to be borrowed for or find alternate funding sources. CCIT would have the ability to ask departments to fund, or help fund program related or recurring projects. All recurring CCIT accounts currently funded by CIP will be funded from the annually determined share.

Procedure for Failure to Begin Project in Fund Year

The intent of the CIP is to identify in one document all capital projects that the County and its many related agencies are undertaking in the next several years. Each year CIP Committee ranks projects on the basis that all projects will be commenced in the following year. In keeping with that idea, projects approved for a specific calendar year shall be initiated in that year. If there has been no definitive action to begin a project by December 31st of the year following availability of funding for approved project, that project will be removed from the CIP budget and will need to be re-submitted to be ranked against the projects of the new submission year. For the purposes this section, "definitive action to begin a project" means any of the following:

- Request for Bid or Proposal has been published;
- Purchase Order has been sent to vendor;

- Contract has been signed or;
- Money has been disbursed from the funded account specific to that project.

Projects will need to be updated to include any cost escalation due to inflation, material expense, or operating expense.

1. The Facilities and Capital Management Department will run a report November 1st to determine if funds have been obligated for all CIP projects. The Facilities and Capital Management Department will contact any departments who have not obligated funds for their CIP projects and determine if the department has started or will be able to start their project in that calendar year.

2. If by June 1st, a department realizes they will not be able to start a project within the calendar year it was funded they can request that the project be defunded for that year and re-ranked for funding the following year. Projects will need to be updated to include any cost escalation due to inflation, material expense, operating expense or department priority.

Approval of the Capital Improvement Plan

CIP projects are submitted annually by the Departments. The Department must state the total cost per year, the proposed method of financing and estimated future recurring costs. If the original application is not complete and submitted on time (along with Standing Committee approval); the application may not be considered by the CIP Committee. The CIP Committee then ranks each project. After the CIP Committee has ranked all of the projects for the upcoming year, the five year capital improvement program is referred to the Human Resources, Finance, and Property Committee for incorporation into the proposed annual budget to be reviewed by the Marathon County Board at their September meeting. This approval is to accept the projects and ranking of the CIP not for the funding of the individual projects.

After the County Boards review in September the Finance Director, based on Resolution #R-18-04, develops a funding plan consistent with the proposed CIP recommendation to be incorporated in the County's annual budget at the November County Board meeting.

Funding goes through this sequential process for approved projects:

1. All designated revenue, other revenue or grant based funding is added to the CIP budget.
2. Tax levy funding is applied as stated above. The County Administrator's recommended budget, through the departmental budget process, dictates the level of tax levy dollars allocated to each CIP project.
3. Based on the dollars available from fund balance, the Finance Director then applies the fund balance dollars to projects based on ranking in the CIP.
4. Lastly, those projects that qualify for borrowing are then funded by borrowing.

The funding sources, by type, are then incorporated into the annual CIP budget. The County Board votes on the CIP as part of the November budget resolution. Any County Board member may offer a budget amendment to change the funding for any project.

Closure of Projects

Funding allocated for a project in the CIP budget is specific for that project. After the completion of the project any remaining project funds cannot be used to fund other projects unless approved by the CIP Committee and Human Resources, Finance, and Property Committee in accordance with the interdepartmental transfer procedures established for Marathon County or as otherwise provided by law.

Amendments to the CIP

During the year, changes may occur and amendments to the CIP will need to be made. The CIP Committee will review new projects that come up during the year (please see Expedited / Other Than CIP Funded Capital Project Request above). If a project is approved by the CIP Committee, a resolution will go to the Human Resources, Finance, and Property and the Executive Committees to approve amending the annual CIP budget. If approved by the Human Resources, Finance, and Property Committee the resolution would go to the full County Board for adoption.

Conclusion

Marathon County has maintained its commitment to protect the County's investment in its capital assets and infrastructure. The process started in 1989, has allowed the County the needed flexibility to maintain its capital assets while allowing County services to continue to serve the needs of the citizens.



Monthly Sales Tax Distributions

| Year | January | February | March | April | May | June | July | August | September | October | November | December |
|------|-----------|-----------|-----------|-----------|-----------|---------|-----------|-----------|-----------|-----------|-----------|-----------|
| 2019 | 1,142,431 | 1,256,386 | 908,399 | 749,484 | 1,142,063 | 967,132 | 1,222,717 | 1,338,919 | 922,822 | 1,303,819 | 1,267,223 | 943,537 |
| 2020 | 1,457,354 | 1,130,210 | 943,901 | 1,043,521 | 939,203 | 934,176 | 1,288,655 | 1,225,026 | 1,183,964 | 1,527,953 | 971,350 | 1,238,154 |
| 2021 | 1,170,110 | 1,233,609 | 1,021,873 | 1,147,619 | 1,272,204 | -- | -- | -- | -- | -- | -- | -- |

Year-to-Date Sales Tax Distributions

| Year | January | February | March | April | May | June | July | August | September | October | November | December |
|------|-----------|-----------|-----------|-----------|-----------|------|------|--------|-----------|---------|----------|----------|
| 2019 | 1,142,431 | 2,398,818 | 3,307,216 | 4,056,700 | 5,198,763 | | | | | | | |
| 2020 | 1,457,354 | 2,587,564 | 3,531,465 | 4,574,987 | 5,514,190 | | | | | | | |
| 2021 | 1,170,110 | 2,403,720 | 3,425,592 | 4,573,211 | 5,845,415 | | | | | | | |

| | | | | | | | | | | | | |
|-----------------|-----------|-----------|-----------|---------|---------|--|--|--|--|--|--|--|
| '21 vs '20 (%) | -19.7% | -7.1% | -3.0% | 0.0% | 6.0% | | | | | | | |
| '21 vs '20 (\$) | (287,244) | (183,844) | (105,873) | (1,776) | 331,225 | | | | | | | |

Monthly Sales Tax Distributions (2019-2021)

