

**OTTAWA COUNTY BOARD OF COMMISSIONERS**

**PURCHASING POLICY**

**I. POLICY**

The County of Ottawa will engage in purchasing activities that are fair and equitable, and which provide the maximum purchasing value for public funds. The County will implement procedures designed to maintain a procurement system of quality and integrity.

**II. STATUTORY REFERENCES**

The Board of Commissioners may establish such rules and regulations regarding the business concerns of the County as the Board considers necessary and proper. See: MCL 46.11(m); Act 156 of 1851, as amended.

**III. COUNTY LEGISLATIVE OR HISTORICAL REFERENCES**

The original Board Policy on this subject matter was adopted on 05/23/95.

Board of Commissioners Resolution Number and Policy Adoption Date:

\_\_\_\_\_

Board of Commissioners Review Date and Resolution Number:

\_\_\_\_\_

Name and Date of Last Committee Review: \_\_\_\_\_

Related Policies: \_\_\_\_\_

# PURCHASING POLICY

## 1. PROCEDURE

### Operational Guidelines

**1.1 Application.** This Policy applies to the procurement of supplies, goods, equipment, services, and construction entered into by Ottawa County and its constituent departments and agencies, after the effective date of this Policy. It shall apply to every expenditure of public funds by Ottawa County irrespective of the source of the funds. When the procurement involves the expenditure of federal or state assistance or contract funds, the procurement shall be conducted in accordance with any applicable federal or state laws and regulations. Nothing in this Policy shall prevent any public agency from complying with the terms and conditions of any grant, gift, or bequest that is otherwise consistent with law.

**1.2 Administration.** This Policy shall be administered by the Fiscal Services Director. All Requests for Proposals (RFP) and Requests for Qualifications (RFQ) are administered through the Fiscal Services Department.

**1.3 Sales Tax Exemption.** The County shall not be charged or pay sales tax. Ottawa County, as a Michigan Municipal Corporation, is exempt from sales tax as provided in Act 167 of Public Acts of 1933. MCL 205.54(7); MSA 7.525(4)(7), and the Michigan Sales and Use Tax Rule, 1979 MAC Rule 205.79, provide that sales to the United States government, the State of Michigan, and their political subdivisions, departments and institutions are not taxable when ordered on a Purchase Order and paid for by warrant on government funds. In the alternative, the government may claim exemption at the time of purchase by providing the seller with a signed statement to the effect that the purchaser is a governmental entity. This position was affirmed by the Michigan Department of Treasury through its Revenue Administrative Bulletin 1990-32, approved on October 11, 1990.

The issuance of an Ottawa County Purchase Order or a Michigan Sales Tax Exemption Certificate does not, by itself, mandate the seller to exempt the sale. Therefore, all departments, divisions, and Elected Officials shall utilize Ottawa County's Purchase Order and accounts payable system to the fullest extent possible when purchasing and paying for tangible personal property while still adhering to the other provisions within this Purchasing Policy.

**1.4 Emergency Purchases.** Whenever there is an imminent threat to the public health, safety or welfare of the County or its citizens, the Chairman of the Board of Commissioners or the County Administrator, in his/her absence, may authorize the award of a contract, utilizing competition as may be

practical and reasonable under the circumstances, for the emergency purchase of supplies, materials, equipment, services or construction. Such purchase must be reported to the County Commissioners as soon as possible, under the provisions of the Ottawa County Emergency Services Resolution.

**1.5 Cooperative Purchasing.** The County may join in cooperative purchasing arrangements with the State of Michigan, public school systems, and other government units.

**1.6 Governmental Pricing.** The County may accept extended governmental pricing, if it is determined by the Fiscal Services Director or the Board of Commissioners to be cost-effective and in the County's best interest.

**1.7 Gratuities, Personal Benefits, and Kickbacks.** It shall be a violation of this Policy for any person to offer, give or agree to give any County employee or former County employee, or for any County employee or former County employee to solicit, demand, accept or agree to accept from another person, a gratuity, personal benefit, or kickback in connection with any purchasing or contracting decision.

**1.8 Failure to Follow Policy.** The County shall not be responsible for the costs of goods and services ordered or purchased by any County official or employee that are not obtained in accordance with this policy. Contracts negotiated outside of this policy will be considered invalid and non-binding.

## **2. STANDARDS FOR PROCUREMENT**

### **2.1 Procurement Procedures:**

The procurement procedure to be used is determined by the dollar amount of the procurement. Contracts or purchases shall not be artificially divided to circumvent the purchasing procedures in this policy. An aggregate of regular, reoccurring purchases shall be determined on an annual basis; (for example: gasoline, paper products, cleaning supplies, ammunition, etc.).

- a. Purchases from \$0.01 to \$999.99:
  1. Purchases in this dollar amount are made by the department head and do not have to be by competition. Vendor selection and pricing should be reviewed annually for adequate and reasonable competition. A purchase order is not required.

b. Purchases from \$1,000.00 to \$19,999.99

1. Purchases in this dollar amount shall be by competition. A minimum of three (3) quotes are required to process a purchase requisition. The quotes should be obtained in writing, and must be typed on the purchase requisition form. Award shall be made to the qualified vendor offering the best value in the opinion of the Fiscal Services Director.
2. If a department wishes to use specific vendors without obtaining quotes, departments must provide justification for the single vendor (i.e. vendor already has plates for printing; vendor is familiar with equipment, etc.) by completion of a sole source form.

c. Purchases for \$20,000.00 and up:

Purchases shall be by formal "Competitive Sealed Bid," or "Request for Proposal" and may be subject to negotiation after bid award.

## 2.2. Competitive Sealed Bidding

**(1) Conditions for Use.** All procurement contracts of the County shall be awarded by competitive sealed bidding, except as otherwise provided in this Policy.

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

**(3) Public Notice.** Public notice of the invitation for bids shall be given a reasonable time prior to the bid submission date set forth therein. Such notice may include publication in a newspaper of general circulation and/or online media for a reasonable time as determined by the Fiscal Services Director prior to the bid opening. The public notice shall state the place, date and time of bid opening, and shall be in a format approved by the Fiscal Services Director.

**(4) Bid Opening.** Bids shall be opened publicly in the presence of one or more witnesses following the deadline set for the submission of bids at the time and place designated in the invitation for bids. The County shall hold a public bid opening when required by law, or when in the opinion of the Fiscal Services Director, a public bid opening is in the interest of the County. The amount of each bid, and such other relevant information as the Fiscal Services Director deems appropriate, together with the name of each bidder shall be recorded. The record and each bid shall be open to public inspection in accordance with Act 442 of the Public Acts of 1976, MCL 15.231 et seq.

**(5) Bid Acceptance and Bid Evaluation.** Bids shall be evaluated based on the requirements set forth in the invitation for bids, which may include criteria to determine acceptability such as inspection, testing, quality, workmanship, experience, delivery, warranty, and suitability for a particular purpose. Bids which do not comply with all criteria set forth in the invitation to bid may be subject to disqualification.

**(6) Correction or Withdrawal of Bids; Cancellation of Awards.** Correction or withdrawal of inadvertently erroneous bids before or after bid opening, or cancellation of awards or contracts based on such bid mistakes, may be permitted in the sole discretion of Ottawa County. Mistakes discovered before bid opening may be modified or withdrawn by written notice received in the office designated in the invitation for bids, prior to the time set for bid opening. After bid opening, corrections in bids shall be permitted only to the extent that the bidder can show by clear and convincing evidence, as determined by the Fiscal Services Director, that a mistake of a nonjudgmental character was made.

**(7) Award.** The contract shall be awarded by appropriate notice to the responsible and responsive bidder whose bid meets the requirements and response selection criteria set forth in the invitation for bids. Nothing in the award process shall prevent the Fiscal Services Director from acting in the County's best interest when making the bid award, including awarding the bid to other than the low bidder, using a quality based selection process. No contract or purchase order shall knowingly be entered into with any company or business which is in bankruptcy or receivership. In the event the bid for a project exceeds available funds, the Fiscal Services Director is authorized to negotiate an adjustment of the bid price when time or economic considerations preclude resolicitation of work of a reduced scope, in order to bring the bid within the amount of available funds.

### **2.3 Request for Proposal (RFP)**

**(1) Conditions for Use.** When the Fiscal Services Director determines that the use of competitive sealed bidding is either not practicable or not advantageous to the County, a contract may be entered into by use of competitive sealed requests for proposals (RFP).

**(2) Request for Proposal.** Proposals shall be solicited through a (RFP).

**(3) Public Notice.** Adequate public notice of the (RFP) shall be given in the same manner as provided in Section 2.2(3), (Competitive Sealed Bidding, Public Notice).

**(4) Receipt of Proposals.** No proposal shall be handled so as to permit disclosure of the identity of an offeror or the content of any proposal to competing offerors until the time for the public opening of bids or proposals or if a public opening is not to be conducted, until the deadline for submission of bids or proposals has

expired. 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.

**(5) Evaluation Factors.** The request for proposal may state the relative importance of price and other evaluation and selection criteria, and may include specific criteria detailing a quality-based method of determining and selecting the best bid.

**(6) Responsible Offerors and Revisions of Proposals.** As provided in the (RFP), discussions may be conducted with responsible offerors to assure understanding of, and conformance to, the solicitation requirements. Responsible offers shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals and such revisions may be permitted after submissions and prior to award for the purpose of obtaining best and final offers. In conducting discussions, there shall be no disclosure of the identity of competing offerors or of any information derived from proposals submitted by competing offerors.

**(7) Award.** Award shall be made to the responsible offeror whose proposal is determined to be the most advantageous to the County, as determined by the Fiscal Services Director, taking into consideration price and the evaluation criteria set forth in the request for proposals.

**PURCHASING SUMMARY**

AMOUNT OF PURCHASE	LINE ITEM BUDGETED FUNDS NECESSARY	CONTACT TO INITIATE PURCHASE	TYPE OF QUOTE NEEDED	AWARD AUTHORIZATION REQUIRED BY	PURCHASE ORDER REQUIREMENT
\$20 AND UNDER / PETTY CASH	YES	DEPARTMENT HEAD	N/A	DEPARTMENT HEAD	NO
LESS THAN \$1,000	YES	DEPARTMENT HEAD	N/A	DEPARTMENT HEAD	NO
\$1,000 – 19,999	YES	FISCAL SERVICES	3 VERBAL, DOCUMENTED OR WRITTEN	FISCAL SERVICES DIRECTOR	YES
\$20,000 <i>OR GREATER</i>	YES	FISCAL SERVICES	SEALED BIDS, RFP, RFQ	FISCAL SERVICES DIRECTOR	YES
<b>RECEIVING</b>	DEPARTMENT HEADS ARE RESPONSIBLE FOR DETERMINING THE PROPER QUANTITY AND QUALITY OF GOODS RECEIVED BEFORE FORWARDING THE INVOICE FOR PAYMENT BY THE COUNTY.				

**2.4 Request for Qualifications (RFQ)**

When it is considered impractical to initially prepare a purchase description to support an award based on price, and/or where the capability of the prospective proposers or bidders are uncertain, a request for qualifications (RFQ) may be issued. Once the prospective bidders/offerors have submitted their responses to the RFQ and have been determined to be technically acceptable and qualified to perform, then an invitation to bid or RFP may be issued to the qualified bidders/offerors.

**2.5 Sole Source Procurement**

A contract may be awarded, without competition, when the Fiscal Services Director determines, in writing, after conducting a good faith review of available sources, that there is only one appropriate source, and/or, when it is in the best interest of the County to choose the one appropriate source, for the required supply, equipment, service, or construction item. The Fiscal Services Director, or the soliciting agency/department, where delegated by the Fiscal Services Director, shall conduct negotiations, as appropriate, as to price, delivery, and terms.

## **2.6 Emergency Procurements**

Notwithstanding any other provisions of this Policy, as provided for under the Ottawa County Emergency Services Resolution the Fiscal Services Director may make, or authorize others to make emergency procurements of supplies, services, or construction items, as directed by the Chairman of the Board of Commissioners or the County Administrator, when there exists a threat to public health, safety, or welfare, or where it is in the County's best interest to do so, provided that such emergency procurements shall be made with such competition as is practicable under the circumstances, and shall be documented in writing.

## **2.7 Cancellation of Bids or Requests for Proposals**

A bid or a request for proposal, 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 it is in the best interest of the County, as determined by the Fiscal Services Director. Each solicitation issued by the County shall state that the solicitation may be cancelled and that any bid or proposal may be rejected in whole or in part when it is in the best interest of the County.

## **2.8 Rejection of all Bids or Offerors; Responsibility of Bidders or Offerors**

It shall be within the discretion of the Fiscal Services Director not to award a contract to a bidder or offeror for any reason, including a determination that the party is not a responsible bidder or offeror.

## **2.9 Bid, Payment, and Performance Bonds on Contracts**

To protect the County's interests, bid surety, payment bonds, or performance bonds or other security may be required for contracts in conformance with State law, as determined by the Fiscal Services Director. Any such requirements shall be set forth in the solicitation. Bid or performance bonds shall not be used as a substitute for a determination of a bidder or offeror's responsibility. Financial statements or performance bonds may be required from any company, if deemed appropriate by the Fiscal Services Director.

## **2.10 Types of Contracts**

**(1) General Authority.** Subject to the limitations of this Section, the "Ottawa County Contracting Policy," and/or subject to approval by the Ottawa County Board of Commissioners any type of contract which is appropriate to the procurement and which will promote the best interest of the County may be used. A cost reimbursement contract may be used only when a determination is made that such contract is likely to be less costly to the County than any other type, or it



is not practicable to obtain the supply, equipment, service, or construction item required except under such a contract.

**(2) Multi-Term Contracts:**

(a) Specified Period. Unless otherwise provided by law, a contract may be entered into for any period of time deemed to be in the best interests of the County. Payment and performance obligations shall be subject to the availability and appropriation of funds.

(b) Determination Prior to Use. Prior to the utilization of a multi-term contract, it shall be determined:

(i) that needs of the County and the contract price are reasonably firm and continuing; and,

(ii) that such a contract will serve the best interests of the County by encouraging effective competition or otherwise promoting economies in County procurement.

(c) Cancellation Due to Unavailability of Funds in Succeeding Fiscal Periods. When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the contract shall be subject to cancellation.

**2.11 Contract Clauses and Their Administration**

**(1) Contract Clauses.** All County contracts shall include provisions necessary to define the responsibilities and rights of the parties to the contract. The Fiscal Services Director, pursuant to the Ottawa County Contracting Policy, may issue clauses appropriate for particular contracts, addressing among others, the following subjects:

(a) the unilateral right of the County to order, in writing, changes in the work within the scope of the contract;

(b) the unilateral right of the County to order, in writing, the temporary stoppage of the work or delaying performance that does not alter the scope of the contract;

(c) variations occurring between estimated quantities of work in the contract and actual quantities;

(d) defective pricing;

(e) liquidated damages;

- (f) specified excuses for delay or nonperformance;
- (g) termination of the contract for default;
- (h) termination of the contract in whole or in part for the convenience of the County;
- (i) suspension of work on a project;
- (j) site conditions differing from those indicated in the contract, or ordinarily encountered, except that differing site conditions need not be included in a contract:
  - (i) when the contract is negotiated;
  - (ii) when the contractor provides the site or design; or
  - (iii) when the parties have otherwise agreed with respect to the risk of differing site conditions.
- (k) warranty clauses, including warranty of fitness for a particular purpose;
- (l) failure to meet contracted-for performance objectives.

**(2) Price Adjustments.** Adjustments in price resulting from the use of contract clauses required by Subsection (1) of this Section shall be computed by 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 cost 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 costs attributable to the events or situations under such clauses with adjustment of profit or fee as computed by the County, as accounted for in accordance with generally accepted accounting principles and subject to the provisions of Article VI (Appeals and Remedies).

**(3) Standard Clauses and Their Modification.** Pursuant to the Ottawa County contracting policy, the Fiscal Services Director may establish standard contract clauses for use in County contracts. If the Fiscal Services Director establishes any

standard clauses addressing the subjects set forth in Subsection (1) of this Section, such clauses may be varied provided that the circumstances justify such variations.

## **2.12 Contract Administration**

The assigned County oversight agency, shall provide assessments to the Fiscal Services Director and shall oversee contract administration to ensure that a contractor is performing in accordance with the solicitation and proposal under which the contract was awarded, and according to the terms and conditions of the contract.

## **2.13. Right to Inspect Place of Business, etc.**

The County may inspect the place of business or work site of a contractor or subcontractor at any time, if such inspection *is* pertinent to the performance of any contract awarded or to be awarded by the County.

## **2.14 Right to Audit Records**

**(1) Audit of Cost or Pricing Data.** The County may audit the books and records of any contractor that has submitted cost or pricing data as a part of its bid or proposal, for three (3) years from the date of final payment under the contract.

**(2) Contract Records to Be Maintained.** The County shall be entitled to audit the books and records of a contractor or a subcontractor at any time under any 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 (3) years from the date of final payment under the prime contract and by the subcontractor for a period of three (3) years, or longer if required, from the date of final payment under the subcontract.

## **2.15 Reporting of Anti-competitive Practices**

When for any reason collusion or other anti-competitive practices are suspected among any bidders or offerors, the Fiscal Services Director shall give notice of the relevant facts to the Ottawa County Corporation Counsel.

## **2.16 County Procurement Records**

**(1) Bid File.** All determinations and other written records pertaining to the solicitation and award of a contract shall be maintained by the Fiscal Services Director in a bid file.

**(2) Retention of Procurement Records.** All procurement records shall be retained and disposed of by the County in accordance with the appropriate Records Retention Schedules.

### **3. SPECIFICATIONS**

#### **3.1 Maximum Practicable Competition**

Specifications shall be written so as to promote overall economy for the purposes intended and to encourage competition in satisfying the County's needs, while still providing a fair opportunity to all qualified vendors. The policy enunciated in this Section applies to all specifications prepared by County staff or prepared by others on the County's behalf.

#### **3.2 "Brand Name or Equal" Specification**

(1) "Brand name or equal" specifications may be used when the Fiscal Services Director determines that use of a "brand name or equal" specifications is in the County's best interest.

(2) The Fiscal Services Director shall seek to identify sources from which the designated brand name item or items may be obtained and shall solicit such sources to achieve whatever degree of price competition is practicable. If only one source can supply the requirement, the procurement shall be made under Section 2.5 (Sole Source Procurement).

#### **3.3 Nondiscrimination**

Every contract or purchase order issued by the County shall be entered into under provisions which requires the contractor, subcontractor or vendor not to discriminate against any employee or applicant for employment because of his/her race, religion, sex, color, national origin, height, weight, handicap or marital status.

### **4. PROCUREMENT OF CONSTRUCTION SERVICES**

#### **4.1 Responsibility for Selection of Methods of Construction Contracting Management**

The Fiscal Services Director shall have discretion to select the method of construction contracting management for a particular project. In determining which method to use, the Fiscal Services Director shall consult with the appropriate County officials, consider the County's requirements, its resources, the project type and scope, and the potential contractor's capabilities.

## 4.2 Bid Security

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

**(2) Amount of Bid Security.** Bid security shall be in an amount equal to at least 5% of the amount of the bid.

**(3) Rejection of Bids for Noncompliance with Bid Security Requirements.** When the invitation for bids requires security, the bid may be rejected for non-compliance.

**(4) Withdrawal of Bids.** If the bidder is permitted to withdraw the bid before award as provided in Section 2.2(6) (Competitive Sealed Bidding; Correction or Withdrawal of Bids, Cancellation of Awards), no action shall be taken against the bidder or the bid security.

## 4.3 Contract Performance and Payment Bonds.

**(1) Bond Amounts: When Required.** When a construction contract is awarded the following bonds or security may be required and shall become binding on the parties upon the execution of the contract:

(a) A performance bond satisfactory to the County, executed by a surety company authorized to do business in the State of Michigan, or otherwise secured in a manner satisfactory to the County, in an amount equal to 100% of the price specified in the contract; and

(b) A payment bond satisfactory to the County, executed by a surety company authorized to do business in the State of Michigan, or otherwise secured in a manner satisfactory to the County, for the protection of all persons supplying labor and material to the contractor or its subcontractors for the performance of the work provided for in the contract. The bonds shall be an amount equal to 100% of the price specified in the contract.

**(2) Authority to Require Additional Bonds.** Nothing in this Section shall be construed to limit the authority of the County to require a performance bond or other security in addition to those bonds, or in circumstances other than specified in Subsection (1) of this Section.

**(3) Actions on Payment Bonds; Where and When Brought.** Unless otherwise required by law, every action instituted upon a payment bond shall be brought in a court of competent jurisdiction within Ottawa County.

#### **4.4 Fiscal Responsibility**

Every contract modification, change order, or contract price adjustment which exceeds the authorized contract amount, plus contingency of the total contract amount under a construction contract with the County, shall be subject to the applicable County policies.

### **5. SUSPENSIONS**

#### **5.1 Authority to Suspend**

The Fiscal Services Director, upon consultation with the Office of Corporation Counsel, is authorized to suspend a person from consideration for award of contracts. The suspension shall be for a period of not more than three years. The guidelines for making a suspension include, but are not limited to any one or more of the following:

- (1) conviction of a person 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, or pending, unresolved charges thereof;
- (2) conviction of a person under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which seriously and directly affects responsibility as a County contractor, or pending, unresolved charges thereof;
- (3) conviction of a person under state or federal statutes arising out of the submission of bids or proposals, or pending, unresolved charges thereof;
- (4) violation of contract provisions, as set forth below, of a character which is regarded by the Fiscal Services Director to be so serious as to justify suspension:
  - (a) deliberate failure without good cause to perform in accordance with the specification or within the time limit provided in the contract; or
  - (b) a record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts.
- (5) any other cause the Fiscal Services Director determines to be so serious and compelling as to affect responsibility as a County contractor, including suspension or termination by another governmental entity for any cause substantially similar to those listed in this Section; and

(6) violation of the standards set forth in Article VII (Ethics in Public Purchasing/Contracting).

## **5.2 Notice to Suspend**

The Fiscal Services Director shall issue a written notice to suspend.

## **5.3 Finality of Decision**

A notice under Section 5.2 (Notice to Suspend) shall be final and conclusive.

# **6. APPEALS AND REMEDIES**

## **6.1 Bid Protests**

Any actual or prospective bidder, offeror, or contractor who is aggrieved in connection with the solicitation or award of a contract may protest to the County Administrator. Aggrieved persons are urged to seek resolution of their complaints initially with the appropriate Department Head and/or the Fiscal Services Director. A protest with respect to an invitation for bids or request for proposals shall be submitted in writing within seven (7) calendar days of the date the contract is awarded. The County Administrator and the Chairperson of the Board shall make a determination on the merits of the protest, and, if appropriate, determine a remedy, and that determination shall be final and conclusive.

## **6.2 Contract Claims**

**(1) Claims By a Contractor.** All claims by a contractor against the County relating to a contract, except bid protests, shall be submitted in writing to the Fiscal Services Director. The contractor may request a conference with the Fiscal Services Director on the claim. Claims may include, without limitation, disputes arising under a contract, and those based upon breach of contract, mistake, misrepresentation, or other cause for contract modification or rescission.

**(2) Notice of Decision.** The decision of the Fiscal Services Director shall be issued in writing, and shall be mailed or otherwise furnished to the contractor.

**(3) Contractor's Right to Appeal.** The Fiscal Services Director's decision shall be final and conclusive unless, within seven (7) calendar days from the date of receipt of the decision, a written appeal *is received by* the County Administrator. The County Administrator and the Chairperson of the Board shall make a determination on the merits of the appeal, and, if appropriate, determine a remedy, and those determinations shall be final and conclusive.

**(4) Failure to Render Timely Decision.** If the Fiscal Services Director does not issue a written decision regarding any contract controversy within seven (7) calendar days after written request for a final decision or within such longer period as may be agreed upon between the parties, then the contractor shall file an appeal with the County Administrator.

### **6.3 Authority of the Fiscal Services Director to Settle Bid Protests and Contract Claims**

The Fiscal Services Director is authorized to settle any protest regarding the solicitation or award of a County contract, or any claim arising out of the performance of a County contract, prior to an appeal to the County Administrator.

### **6.4 Remedies for Solicitations or Awards in Violation of Law**

**(1) Prior to Bid Opening or Closing Date for Receipt of Proposals.** If prior to the bid opening or the closing date for receipt of proposals, the Fiscal Services Director, after consultation with the Office of Corporation Counsel, determines that an invitation to bid or RFP is in violation of applicable law, it shall be canceled or revised to comply with applicable law.

**(2) Prior to Award.** If, after bid opening or the closing date for receipt of proposals, the Fiscal Services Director, after consultation with the Office of Corporation Counsel, determines that an invitation to bid or RFP, or a proposed award of a contract is in violation of applicable law, then the invitation to bid, RFP, or proposed award shall be canceled.

**(3) After Award.** If, after an award, the Fiscal Services Director, after consultation with the Office of Corporation Counsel, determines that an invitation to bid, RFP, or award of a contract was in violation of applicable law, then the contract shall be modified to be consistent with the law, or shall be terminated.

**(4) Reservation of Right to Sue for Damages; Equitable Relief.** Nothing herein shall prohibit, impair or bar the County's right, to sue for damages or equitable relief, in addition to the remedies set forth herein.

**(5) Venue.** Any action filed by any party for relief on a determination under the terms of this Policy shall be filed in a court of competent jurisdiction within Ottawa County.

## **7. ETHICS IN PUBLIC PURCHASING/CONTRACTING**

### **7.1 Criminal Penalties**

To the extent that violations of the ethical standards of conduct set forth in this Policy constitute violations of federal statutes or Michigan law, they shall be punishable as those



statutes provide therein. Such penalties shall be in addition to the civil and administrative sanctions set forth in this Policy.

## **7.2 Employee's Duty to Abide by County Policies**

County employees shall abide by existing County policies including, but not limited to, policies regarding conflict of interest, gratuities or "kickbacks" and confidential information.

## **8. EQUIPMENT DISPOSITION/DISPOSAL**

### **8.1 Equipment Disposition**

Equipment, supplies or other County property which have been determined by the Department Head or the Fiscal Services Director to be obsolete, worn out or no longer needed, shall be disposed of in the following manner:

(1) For Items \$5,000 or greater (Original Cost).

(a) Disposal shall be by auction, sealed bid, public offering or any other method the Fiscal Services Director deems to be in the County's best interest.

(b) A file shall be maintained by the Fiscal Services Director containing the following information on each item disposed of:

- (i) Item Description
- (ii) Tag number
- (iii) Original Cost and Date of Purchase if available
- (iv) Date of Transfer or Sale
- (v) Dollar Amount Received at Sale
- (vi) Method of Transfer - Auction, Sealed Bid, Public Offering, Other.

(2) For Items Under \$5,000 (Original Cost) or Lost, Stolen, Unclaimed and Other Property.

(a) the Fiscal Services Director shall dispose of these items in a manner which encourages competition and/or as appropriate for the situation.

(b) a file shall be maintained by the Fiscal Services Director indicating the date, amount of sale, and a description of the item sold, according to an applicable records retention schedule.

## 9. DEFINITIONS

### 9.1 Whenever applicable, this Policy shall utilize the following definitions:

(1) **"Brand Name or Equal" Specification.** A specification limited to one or more items by manufacturers' names or catalogue numbers to describe the standard of quality, performance, and other salient characteristics needed to meet County requirements and which provides for the submission of equivalent products.

(2) **Brand Name Specification.** A specification limited to one or more items by manufacturers' names or catalogue numbers.

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

(4) **Competitive Sealed Bids.** As determined by the Fiscal Services Director, the process of receiving two or more sealed bids, responses, or proposals submitted by responsive vendors.

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

(6) **Construction.** The process of building, altering, repairing, improving, or demolishing any public structure or building, or other public improvements of any kind to any public real property. It does not include the routine operation, routine repair, or routine maintenance of existing structures, buildings, or real property.

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

(8) **Contractor.** Any person having a contract with the County or any agency thereof.

(9) **Cost-Reimbursement Contract.** A contract under which a contractor is reimbursed for costs which are allowable and allocable in accordance with the contract terms and the provisions of this Policy, and a fee or profit, if any.

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

**(11) Gratuity.** A payment, loan, subscription, advance, deposit of money, service, or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is received.

**(12) Invitation for Bids.** All documents, whether attached or incorporated by reference, utilized for soliciting sealed bids.

**(13) Person.** Any individual, business (including the partners, officers, directors, agents, employees and individual members of the business, or any combination thereof), union, committee, club, other organization, or group of individuals.

**(14) Procurement.** The buying, purchasing, renting, leasing, or otherwise acquiring of any supplies, equipment, services, or construction. It also includes all functions that pertain to the obtaining of any supply, service, or construction including description of requirements, selection, and solicitation of sources, preparation and award of contract, and all phases of contract administration.

**(15) Request for Proposals (RFP).** All documents and other materials, whether attached or incorporated by reference, intended by Ottawa County to be utilized for soliciting proposals.

**(16) Request for Qualifications (RFQ).** As determined by the Fiscal Services Director, the process of receiving proposals, documents, specifications, recommendations, samples, records, brochures, or personnel information, to establish that an offeror is fully qualified to provide a particular good or service in accordance with anticipated contract standards, requirements, and specifications.

**(17) 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.

**(18) Responsive Bidder.** A person who has submitted a bid which conforms in all material respects to the requirements set forth in the invitation for bids.

**(19) Services.** The furnishing of labor, time, or effort by a contractor, not involving the delivery of a specific end product other than reports which are merely incidental to the required performance. This term shall not include employment agreements or collective bargaining agreements.

**(20) Specification.** Any description of the physical or functional characteristics or of the nature of supplies, services, or construction items. It may include a description of any requirement for inspecting, testing, or preparing a supplies, equipment, services, or construction items for delivery.

**(21) Subcontractor.** A person providing supplies, services, or construction items to or for the benefit of the County, pursuant to a contract with a person who has a direct contract with the County.

**(22) Equipment.** All fungible, non-consumable personal property.

**(23) Supplies.** All consumable goods purchased by Ottawa County, materials, printing, insurance, and leases of personal property, excluding land or a permanent interest in land.

## **REVIEW PERIOD**

The County Administrator will review this Policy at least once every two years, and will make recommendations for changes to the Planning & Policy Committee.