

A RESOLUTION APPROVING A RESPONSIBLE CONTRACTOR POLICY FOR WASHTENAW COUNTY

WASHTENAW COUNTY BOARD OF COMMISSIONERS

July 1, 2020

*Prepared by Diane Heidt, Deputy County Administrator*

WHEREAS, Washtenaw County established a Procurement Policy in 1986 that has been updated five (5) times throughout the years to meet the changing needs of the organization. This policy governs all purchases/leases of goods and services, payment process, credit cards, contracts and leases, and environmentally preferable purchasing (EPP). The most recent update to the Procurement Policy occurred in 2014; and

WHEREAS, the County's Purchasing Division of the Finance Department is responsible for bidding out the purchase of goods and services to qualified vendors in a competitive bid process. Effective internal controls safeguard against impropriety, favoritism, or conflict of interest on the part of any County official or employee; and

WHEREAS, as designated by the County Administrator, the Finance Director or his/her designee shall bid and purchase all goods or services and new construction or renovation work for capital facilities or improvement projects needed by all County departments and agencies, with the exception of items defined in the procurement procedures. The procurement process is a collaborative effort between Purchasing and County departments; and

WHEREAS, for each type of procurement, Purchasing shall be responsible for ensuring compliance with the procurement policy and procedures on the part of County departments and Purchasing personnel. Purchasing shall be responsible for all the administrative aspects of each procurement; and

WHEREAS, a Responsible Contractor Policy is a method for awarding contracts based on the best value. Under responsible contractor policies, bidders submit information on various "responsibility criteria." The proposed Responsible Contractor Policy only applies to construction projects, however other types of purchases could be included in the future; and

WHEREAS, the intent of this policy is to make information available to those responsible for purchasing decisions about the relative responsibility of those looking to do business with the County. This information is intended to ensure that all work is performed by firms who are able to successfully complete County projects in a safe, timely, reliable, high quality, and cost-effective manner; and

WHEREAS, this policy also defines the process for collecting this information, asking bidders to respond to a series of questions about their work practices, workforce, training and certification, relevant experience, and organization. Answers to these questions would not exclude any respondent from the bid process and ultimate award. Responses would be available and reviewed by Purchasing and the RFP review group. The Responsible Contractor Policy is not meant to be burdensome to the process, but rather provide additional information for consideration. The Policy is not meant to exclude smaller businesses from applying and will not alter nor replace the scoring and review process currently in place for RFPs; and

WHEREAS, a construction project means a project consisting of the construction of new buildings, additions to existing buildings, and/or rehabilitation of existing buildings (other than normal

refurbishing and tenant fit-up work when one retail tenant leases space previously occupied by another retail tenant); and

WHEREAS, this policy would cover work carried out in connection with the construction, alteration, conversion, fitting-out, commissioning, renovation, repair, maintenance, refurbishment, demolition, decommissioning or dismantling of a structure. This also includes any or all necessary materials, labor, and equipment, needed to complete the project if such are contracted for separately. All such construction projects would be subject to the established County RFP process; and

WHEREAS, Responsible Contractor Policies are not necessarily the same as “lowest responsible bidder” policies. Responsible contracting policies, or “best value” policies, seek the lowest and **most responsible** bid, while lowest responsible contractor policies seek the lowest bidder who is **minimally** qualified; and

WHEREAS, this matter has been reviewed by Corporation Counsel, the Finance Department, Human Resources, the County Administrator's Office, and the Ways & Means Committee.

NOW THEREFORE BE IT RESOLVED that the Washtenaw County Board of Commissioners approves the Responsible Contractor Policy for Washtenaw County, which is attached to this Resolution.

COMMISSIONER	Y	N	A	COMMISSIONER	Y	N	A	COMMISSIONER	Y	N	A
Beeman	X			LaBarre	X			Shink	X		
Brabec	X			Maciejewski	X						
Jannick	X			Morgan	X						
Jefferson	X			Scott	X						

CLERK/REGISTER'S CERTIFICATE - CERTIFIED COPY ROLL CALL VOTE: 9 0 0

STATE OF MICHIGAN )

I, Lawrence Kestenbaum, Clerk/Register of said County of Washtenaw and Clerk of Circuit Court for said County, do hereby certify that the foregoing is a true and accurate copy of a resolution adopted by the Washtenaw County Board of Commissioners at a session held at the County Administration Building in the City of Ann Arbor, Michigan, on July 1, 2020, as it appears of record in my office.

COUNTY OF WASHTENAW)<sup>SS</sup>.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court at Ann Arbor, this 2<sup>nd</sup> day of July, 2020.

LAWRENCE KESTENBAUM, Clerk/Register

BY: \_\_\_\_\_  
Deputy Clerk



Res. No. 20-106



## WASHTENAW COUNTY POLICY

TITLE: <b>RESPONSIBLE CONTRACTOR POLICY</b>	RESOLUTION NUMBER: <b>20-106</b>	SUPERCEDE: <b>N/A</b>	EFFECTIVE DATE: <b>7/2/2020</b>	PAGE 1 OF 5
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### I. APPLICATION:

This Policy must govern the provision of a Responsible Contractor Policy as part of the Purchasing and Procurement of Construction Contractors as awarded through the Request for Proposal process for bids \$50,000 and over.

### II. INTENT:

Washtenaw County is committed to having responsible and ethical contractors and subcontractors on its construction projects, so that all work is performed by responsible, qualified firms that maintain the capacity, expertise, highly trained personnel, and other qualifications and resources necessary to successfully perform County projects in a safe, timely, reliable, high quality and cost-effective manner. To achieve that goal, the County will require contractors submitting bids on its construction projects to provide information relating to each of the Responsibility Criteria listed below. The purpose of this Policy is to assist the County in awarding contracts on every construction project to the most responsible bidder who provides the best value to the County.

### III. DEFINITIONS:

- A. Construction Project: Any contract awarded for the construction, alteration, or repair of any public building or public work of the County of Washtenaw. The labor and material necessary, for the construction, renovation, repair or improvements to real property, except repair in emergency situations, which requires solicited bids so that the work, when complete, must be ready for service for its intended purpose and must require no other work to be a completed system or component.
- B. Responsible Bidder: A bidder for a construction project that has demonstrated an ability to complete the prospective contract in a way that is timely, safe, and benefits the community. The criteria in this Policy are used to determine the relative responsibility of the contractor in relation to other bidders.
- C. Contractor: any person, firm, corporation, partnership, association or any combination thereof, which enters into a Contract with any awarding authority of the County of Washtenaw and includes a recipient of County financial assistance and a public lessee or licensee.
- D. Subcontractor: any person not an employee who enters into a contract with a contractor to assist the contractor in performing a contract, including a contractor or subcontractor of a public lessee or licensee or sublessee or sublicensee, to perform or assist in performing services on the leased or licensed premises. The term subcontractor does not include vendors or suppliers to County purchasing contractors.
- E. Bidder: means any person or entity that applies for any contract whether or not the application process is through an Invitation for Bid, Request for Proposal, Request for Qualifications, or other procurement process.
- F. Bid: means any application submitted by a bidder in response to an Invitation for Bid, Request for Proposal or Request for Qualifications, or other procurement process.

### IV. GENERAL POLICIES:

- A. The County must consider, at minimum, each of the Responsibility Criteria listed below in determining and weighing contractor responsibility. The County may require contractors or subcontractors to provide additional information by including it in the bid documents.



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- B. The bid documents must require any contractor or subcontractor bidding on the project to submit written responses and other information and documentation regarding the listed Responsibility Criteria and any other criteria specified by the County through the bid documents. The County may request additional information or explanation from any contractor or subcontractor regarding any particular Responsibility Criteria. The bid documents must provide that the County retains the right in its discretion to reject any and all bids. All required contractor financial and privileged information must be kept from public disclosure unless otherwise required by law.
- C. Submitted bids must break out labor costs from material and equipment costs.
- D. For each separate bid package, the County in its discretion will weigh the information provided by the contractor or subcontractor regarding the responsibility criteria, as a whole to determine whether the contractor or subcontractor is a responsible bidder and the relative responsibility of the contractor in relation to other bidders. Except as otherwise required by law, no single criterion will necessarily be determinative in assessing responsibility or relative responsibility.
- E. The Responsibility Criteria to be considered by the County include:
1. General information about the bidder's company, its principals, and its history, including all former business names, and an explanation of any business name changes.
  2. Qualifications of management and supervisory personnel to be assigned by the bidder.
  3. Information regarding the state and local licenses and license numbers held by the bidder.
  4. A confirmation that all subcontractors, employees and other individuals working on the construction project will maintain current applicable licenses required by law for all licensed occupations and professions.
  5. The ratio of masters or journeypersons to apprentices proposed to be used on the construction project job site, if apprentices are to be used on the project.
  6. Documentation that the bidder participates in a Registered Apprenticeship Program (RAP) that is registered with the United States Department of Labor Office of Apprenticeship or by a State Apprenticeship Agency recognized by the Office of Apprenticeship.
  7. Documentation of master or journeyperson certification or status for masters and journeypersons to be used on the project, and the source of such certification or status.
  8. Documentation of how the bidder assesses the skills and qualifications of any employees who do not have master or journeyperson certification or status or are not participants in a Registered Apprenticeship Program identified in No. 6 above.



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9. Verification that the bidder is in compliance with all applicable state and federal laws and visa requirements regarding the hiring of non-US citizens, and disclosure of any work visas sought or obtained by the bidder, any of the bidder's subcontractors, or any of the bidder's employees or independent contractors, in order to perform any portion of the project.
  
10. A statement from the bidder as to what percentage of its work force can be drawn significantly from area residents because a goal of the County is to utilize, in its construction activities, local residents as much as is economically feasible while retaining the high quality of construction required for its construction activities, consistent with applicable law. The County will consider in evaluating which bids best serve its interests, the extent to which responsible and qualified bidders are able to achieve this goal.
  
11. A statement regarding the bidder's staffing capabilities and labor sources including subcontractors and a verification from the bidder that construction workers will not be misclassified as independent contractors in violation of state or federal law.
  
12. Documentation of an on-going MIOSHA-approved safety-training program for employees to be used on the proposed job site.
  
13. Evidence of the bidder's worker's compensation Experience Modification Rating ("EMR"). Preference will be given to contractors and subcontractors who exhibit an EMR of 1.0 or less based on a three-year average.
  
14. A list of projects completed within the past five (5) years of comparable size/complexity, including dates, clients, approximate dollar value, and size.  
 Documentation from these previous projects including but not limited to all extra costs relating to the bidder's timeliness, performance, quality of work, extension requests, contractual fines and penalties imposed, liens filed, history of claims for extra work and any contract defaults with an explanation of the reason for the default and how the default was resolved.
  
15. Evidence of experience with construction techniques, trade standards, quality workmanship, project scheduling, cost control, management of projects of comparable size/complexity, and building codes by documenting the bidder's ability and capacity to perform the project. The bidder must identify those portions of the project it reasonably believes will be subcontracted and the names of the subcontractors.
  
16. Audited financial information current within the past twelve (12) months, such as a balance sheet, statement of operations, and bonding capacity. Evidence that the applicant has financial resources to start up and follow through on the project(s) and to respond to damages in case of default as shown by written verification of bonding capacity equal to or exceeding the amount of the bidder's scope of work on the project. The written verification must be submitted by a licensed surety company rated "B+" (or better) in the current A.M. Best Guide and qualified to do business within the State of Michigan.
  
17. A list of all litigation and arbitrations currently pending and within the past five (5) years, including an explanation of each (parties, court/forum, legal claims, damages sought, and resolution).
  
18. Disclosure of any violations of state, federal or local laws or regulations, including OSHA or MIOSHA violations, state or federal prevailing wage laws, wage and hour laws, worker's compensation or



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unemployment compensation laws, rules or regulations, issued to or against the bidder within the past five years.

19. Disclosure of any debarment by any federal, state or local governmental unit and/or findings of non-responsibility or non-compliance with respect to any public or private construction project performed by the bidder.
20. Proof of insurance, including certificates of insurance, confirming existence and amount of coverage for liability, property damage, workers compensation, and any other insurances required by the proposed contract documents.
21. References from individuals or entities the bidder has worked for within the last five (5) years including information regarding records of performance and job site cooperation.
22. Verification of an existing Fitness for Duty Program (drugs and alcohol) of each employee working on the proposed jobsite.
23. Documentation as to pay rates of employees and whether the bidder provides health insurance, pension or other retirement benefits, paid leave, or other benefits to its employees.
24. Verification that a criminal record check will be conducted for each employee the bidder proposes to use on the construction site.
25. A warranty statement regarding labor, equipment and materials.
26. Evidence of any quality assurance program used by the bidder and the results of any such program on the bidder's previous projects.
27. Evidence of Equal Employment Opportunity Programs for minorities, women, veterans, returning citizens, and small businesses.
28. Assurance that all construction work for this project must proceed economically, efficiently, continuously and without interruption.
29. Assurance that the bidder is an equal opportunity employer and does not discriminate on the basis of race, sex, pregnancy, age, religion, national origin, marital status, sexual orientation or gender identity, height, weight, or disability.
30. If the craft labor that will be employed by the firm for the project has completed the OSHA 10-hour training course for safety or higher safety qualification courses, established by the U.S. Department of Labor Occupational Safety & Health Administration.

### V. SUBSTANTIALLY LOW BID REVIEW:

In the event the amount of a bid appears disproportionately low when compared with estimates undertaken by or on behalf of the County and/or compared to other bids submitted, the County reserves the right to inquire further of the bidder to determine whether the bid contains mathematical errors, omissions, and/or erroneous assumptions, and whether the bidder has the capability to perform and complete the contract for the bid amount.



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### VI. ENFORCEMENT:

Violations of this Policy may be reported to the Purchasing Department which must investigate such complaint. Whether based upon such complaint or otherwise, if the Purchasing Department has determined that the contractor has violated any provision of this Policy or provided false information to the County, the Purchasing Department must issue a written notice to the contractor that the violation is to be corrected within ten calendar days from receipt of notice. Such notice shall be sent certified mail. In the event the contractor has not corrected the violation, or taken reasonable steps to correct the violation within ten calendar days, then the Purchasing Department may request the awarding authority to declare a material breach of the contract and exercise its contractual remedies thereunder, which are to include, but not be limited to, termination of the contract as outlined in the termination clause of the contract.

### VII. PUBLIC INPUT:

The County will provide an avenue that will allow members of the public to report suspected violations of this Policy to the Purchasing Department. Members of the public may at any time submit a report of suspected violations of this Policy. A reporting mechanism will be accessible to the public on the County's website. If the County receives a complaint through this process, the Purchasing Department will investigate the claim and respond to the complainant within twenty-one calendar days.

### VII. SEVERABILITY:

The terms, conditions, and provisions of this Policy are hereby declared to be severable, and, should any portion, part or provision of this Policy be found by a court of competent jurisdiction to be invalid, enforceable or unconstitutional, the County Board of Commissioners hereby declares its intent that the Policy shall have been enacted without regard to the invalid, enforceable or unconstitutional portion, part or provision of this Policy.