MILWAUKEE COUNTY EXECUTIVE CHIS ABELE

Milwaukee County

DEPARTMENT OF ADMINISTRATIVE SERVICES

Date: April 22, 2014

To: Marina Dimitrijevic, Chair, County Board

From: Patrick M. Lee, DAS Procurement Director

Subject: Polices & Procedures Review by National Institute of Governmental Purchasing-Report for Information Only

BACKGROUND

In December 2013, a fund transfer request was made to Finance, Personnel and Audit Committee and subsequently approved for the purpose of an initial broad review of Milwaukee County's current policies, procedures and administrative manuals related to procurement.

National Institute of Governmental Purchasing (NIGP) - Consulting Services was engaged to independently perform this review. The NIGP Consulting program offers a high level of expertise in procurement through their retention of experienced professionals in the field of public procurement. NIGP focus on developing, supporting and promoting the public procurement profession through educational and research programs, professional support, technical services and advocacy initiatives that benefit members and constituents, with over 2,600 member agencies representing over 16,000 professionals across the United States, Canada and countries outside of North America. NIGP's has established a set of 'Values and Guiding Principles' for procurement encompassing, Accountability - Ethics – Impartiality – Professionalism – Service – Transparency.

Connie Hinton was selected as the NIGP Consultant to perform the review. Ms. Hinson has over 30 years of experience in local government that includes leadership roles in management and at the executive level of government. Ms. Hinson has performed procurement reviews for cities and counties in Kansas City, Missouri; the District of Columbia, Baltimore, Maryland; Minneapolis, Minnesota; DeKalb County, Georgia and Houston Community College in Houston, Texas. She has been a member of the consulting program since its inception in 1995 and served as the Consulting Program Manager for NIGP from 2008-2013.

Ms. Hinton reviewed current documents, ordinances, statues and perform interviews with various stakeholders. Additionally, she performed a comparative

review to industry best practices and provided defined recommendations for further action. Resulting in an April 14, 2014 report titled '*Polices & Procedures Review - National Institute of Governmental Purchasing. Inc.*' now is being submitted as an Informational Only Report to the Personnel and Audit Committee.

The Procurement Division of the Department of Administrative Services, after thorough review and consideration of report's recommendation, contemplates seeking additional assistance of adoption of some of the recommendations and the seeking board approval on policy changes as needed.

RECOMMENDATION

No action requested. Information item only.

cc: County Executive Chris Abele
Amber Moreen, Chief of Staff, County Executive's Office
Don Tyler Director of Administrative Services
Raisa Koltun, Legislative Liaison, County Executive's Office

Polices & Procedures Review

National Institute of Governmental Purchasing, Inc.

April 14, 2014

Connie Hinson, CPPO
Senior Consultant

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Executive Summary

Milwaukee County, Wisconsin (the County) engaged NIGP Consulting to conduct a review of the County's policies and procedures to include:

- Review of procurement related statutes and Milwaukee County's General Ordinance (MCGO) Chapters that govern procurement or impact the procurement process:
  - **MCGO32** Purchasing Division;
  - **MCGO42** Disadvantaged Business Enterprise and Airport Concession Disadvantaged Business Enterprise Participation in County Contracting;
  - **MCGO43** Bidders Qualification Statement on Public Works Contracts;
  - **MCGO44** Public Works Contracts;
  - **MCGO46** Department of Human Services;
  - **MCGO56.30** Professional Services; and
  - **MCGO110**, Municipal Administration and Election by Chapter 295, Laws of 1975, Pursuant to Section 68.16 Wisconsin Statutes).

- State of Wisconsin regulations that impact the County's procurement process.

- Regulatory constraints that may impede procurement efficiency.

- Other policies and procedures manuals related to purchasing practices ,such as P-card programs and vendor guides.

- Comparison of policies and procedures to the American Bar Association Model Procurement Code for State and Local Governments 2000 (ABA Code), appropriate State requirements and two (2) comparable entities to be determined by the Consultant and the County.

- Specific recommendations for each section of the County's existing policies and procedures documents.

- Submittal of a draft report for the County's review.

- Delivery of a final report within one (1) week of receiving the County's feedback on the draft report.

The Consultant based the review on the concept that solid policies and procedures form the backbone of a strong and successful procurement function. Currently, the County does not have a manual that contains policies and procedures governing the procurement process; rather it utilizes the Milwaukee General County Ordinance Chapters and a series of administrative procedures. While policies and procedures are sporadically contained in documents, the procurement function's critical steps are not always clearly delineated. This can cause confusion in understanding the role of procurement in the County, particularly as to who should have responsibility and what steps are integral to the process. The possibility for confusion among clients creates the opportunity to circumvent regulations and may even set the stage for fraud and abuse.

This is particularly important in today's governments to protect the organization. Clear policies and procedures, where all participants understand procurement's and the users' roles and responsibilities in the process are critical to ensure an ethical and transparent government. The County's Ordinances are the policies that are approved by the governing body. These policies should be separate from the procedures that are developed and implemented to carry out the policies. Both policies and procedures should be set forth in a manual or two separate manuals, if the County prefers. Another "best of breed" trend today is to also have a separate a procedure manual for users and a manual for suppliers and contractors for "How to Conduct Business with the County."

NIGP observations and findings include:

1. Several of the MCGO chapters are in need of revisions, specifically MCGO32, MCGO44, MCGO56.30 and MCGO110.

2. Administrative procedures are outdated and require revisions. These include all documents that were reviewed, as follows:
    1. Requisitioning Process revised 5/8/2002;
    2. Administrative Procedure Manual for Procurement, Purchase Order, Requisition, Section 1.02-1, originally issued 11/1/1967, revised 8/22/2002;
    3. Administrative Procedure Manual for Professional Service Contracts, Section 1.13-2, originally issued 5/7/1984, revised 2/1/2007; and
    4. Administrative Procedure Manual Report of Departmental Purchases, Section 1.14.3, originally issued 5/14/1984, revised 3/31/1989.

3. MCGO44 contradicts MCGO43 for the dollar threshold that requires competitive sealed bids. MCGO43 follows Wisconsin statute 59.52 where bids are required for contracts where the cost is $25,000.00. MCGO44 specifies competitive sealed bids for $20,000.00.

4. There are dual protest and appeal processes. There should be a single process for protests and appeals that originates with the Purchasing Director instead of various committees. Having more than one initial point of decision making provides an opportunity for confusion and different outcomes that may not follow public procurement standards and best practices. This process is clearly a responsibility that falls under the authority of the procurement function as set forth by the ABA Code. Assignment of this responsibility to procurement is also a safeguard to ensure objectivity in outcomes.

5. Both policies and procedures are contained in the chapters and administrative manuals. When policies and procedures are combined in the same documents, there is a greater tendency for misunderstanding, creating the chance for users to make mistakes and circumvent rules. Separating the two provides clarity, and establishes the appropriate hierarchy of the policies to the procedures.

6. There are areas in the procurement process that are not addressed. These areas include specifications, purpose, goals and objectives, organization and responsibility, contract administration, debarment of vendors, and client department information and responsibilities. These are specifically identified as procurement authority and

responsibilities in the ABA Code. The Code is a best practice for governmental procurement and a professional standard. Additionally, these areas should be addressed to achieve greater understanding, fairness, and transparency of the public procurement processes of the County.

7. Delegation of authority to the procurement director is weak and fragmented. The procurement director's procurement authority is delegated in several sections of Chapter 32. Delegation of procurement authority should be delegated one time to the procurement director to handle all the tasks associated with procurement. The way the delegation is currently stipulated and repeated gives the impression that the director does not have authority for all areas of procurement; rather, the director's authority is empowered on a piecemeal basis. A designated section in the ABA Code delegates authority and responsibility to the chief procurement officer one time and covers all responsibilities associated with procurement.

8. The Purchasing Standardization Committee has more authority than the procurement director for standards. The Committee can revise standards established by the director.

9. Dollar thresholds for purchases below those that require a formal process are inconsistent for commodities, equipment and non-professional services; public works contracts and professional services, creating a possibility for confusion and an opportunity for circumventing the process.

10. The primary regulatory constraint that is impeding efficiency in procurement is the protest and appeals process. Suppliers and contractors have the capability to delay bid and proposal awards through protest and appeal actions. This would require change by the Board of Supervisors.

NIGP Consulting recommends:

1. Strengthen the procurement function and the role of the procurement director. Once authority has been delegated to procurement by the director of administrative services, the roles and responsibilities of the division and its director should be clearly communicated. Functions and tasks in the process should fall explicitly under the procurement director's authority and responsibility. This follows the ABA Code.

2. Combine all MCGO ordinances/chapters that govern procurement into a policy manual. While there may be other policies the County wants to add, these have been approved by the governing authority and are the basis for procurement in the County.

3. Clearly distinguish between policies and procedures. It does not matter whether the two are combined in one manual, as long as they are distinct. Policies are governing principles or plans that establish the general parameters for the County to follow in carrying out its responsibilities. Procedures are the detailed series of related activities

that must be completed, and the order in which they must be done, to accomplish the policies.[1]

4. Publish the new policies and procedures manual on the County website. This will allow access to all participants in the procurement process and strengthen the role and understanding of the procurement division for client departments, suppliers and contractors.

5. Revise and standardize dollar thresholds for purchases where cost is less than those that require a formal process. Informal bidding and small purchase amounts range from $2,000 to $5,000 to $10,000. Although the authority for procurement is split for procurement of commodities and non-professional services, public works and professional services, consistent thresholds would reduce confusion.

6. Revise the dollar threshold for the formal process from $50,000 to $100,000. This is in line with counties the size of Milwaukee and Wisconsin Act 14. A public works contract is an exception as long as Wisconsin statute specifies $25,000.

7. Develop a separate manual for client departments and a "How to Conduct Business with Milwaukee County" manual for vendors. Conduct regularly scheduled training classes for both groups.

8. Use the same definitions in chapters for procurement, public works and professional services.

9. Implement one protest and appeal process that begins with the procurement division director that does not allow for an avenue to delay bid awards for critical purchases and projects.

10. Consider conducting a review of the procurement function to determine if greater efficiencies can be realized and if maximum value is being realized with the current organizational arrangement.

11. Conduct regularly scheduled audits for all categories (commodities, equipment and non-professional services; public works and professional services) of procurements, preferably annually but at least every three years.

Conclusion

The trend in today's governments has greater delegation of authority to its client departments. To have a strong and effective procurement function, responsibility should be delegated to a chief procurement officer who oversees the process and creates procedures based on policies. With clearly understood regulations, the government maximizes value and ensures fairness and transparency.

Having multiple departments manage the different types of procurements – commodities, equipment and nonprofessional services, public works and professional services has the

[1]National Institute of Governmental Purchasing, Inc. *NIGP Public Procurement Dictionary of Terms.* Revised 2007, pages 85 and 88.

capability to cause confusion among clients. In the worst case scenario, departments may seek avenues to circumvent procurement practices and the County's rules. This may not be discovered until there are significant problems, such as waste, unethical actions or even criminal activity.

Policies and procedures are only as effective as the willingness of the participants to follow them. Still, solid policies and procedures are the core of a strong procurement operation. Once clear policies are in place communication is key to ensure all participants understand their role and management can implement measures to ensure they are followed. Regulations should be clear and strongly written so that there are no gray areas that allow circumvention of the process.

The primary focus of this report is the recommended revisions of existing ordinances, chapters and administrative manuals; creation of manuals for policies and procedures; strengthening the role of the procurement director and improving the protest and appeal process.

The County already has several best practices in place. Additional best practices that the County may want to consider are discussed throughout the report, contained in the recommendations and summarized on pages 47-48.

The findings and recommendations in this report provide an opportunity to move the County procurement function to a higher level in its policies and procedures that will result in greater effectiveness for the procurement division and greater efficiency for the County. The recommendations are based upon best practices in public sector procurement and the profession. Recommendations also follow the American Bar Association 2000 Model Procurement Code for State and Local Governments. The manuals of Fairfax County, Virginia and Waukesha County, Wisconsin were compared to Milwaukee County and best practices contained in the manuals are included in the recommendations.

Scope and Methodology

Milwaukee County, Wisconsin (the County) engaged NIGP Consulting (NIGP) to conduct a review of the County's policies and procedures to include:

- Review of procurement related statutes that govern procurement:
    - Milwaukee County General Ordinance (MCGO) chapters that govern procurement or impact the procurement process:
        - (**MCGO32** Procurement Division;
        - **MCGO42** Disadvantaged Business Enterprise and Airport Concession Disadvantaged Business Enterprise Participation in County Contracting;
        - **MCGO43** Bidders Qualification Statement on Public Works Contracts;
        - **MCGO44** Public Works Contracts;
        - **MCGO46** Department of Human Services;
        - **MCGO56** Professional Services; and
        - **MCGO110**, Municipal Administration and Election by Chapter 295, Laws of 1975, Pursuant to Section 68.16 Wisconsin Statutes).

    - State of Wisconsin regulations that impact the County's procurement process.
        - Wisconsin statutes 59.52 and 66.0901. Chapters 43 and 44 follow these statutes for public works contracts.
        - Statute 46.23 that governs Human Services.
        - Statute 66.0131, Local Government Procurement.
        - Act 14,Chapter 16, 59.52(31) Public Contracts, Populous Counties

    - Regulatory constraints that may impede procurement efficiency.

    - Other policies and procedures manuals related to purchasing practices and procedures, such as P-card programs and vendor guides.

- Compare policies and procedures to the American Bar Association Model Procurement Code for State and Local Governments 2000 (ABA Code), appropriate State requirements and two (2) comparable entities to be determined by the Consultant and the County. The County selected Waukesha County, Wisconsin and Fairfax County, Virginia as comparative entities.

- Provide specific recommendations for each section of the County's existing policies and procedures documents.

- Submit a draft report for the County's review.

- Deliver a final report within one (1) week of receiving the County's feedback on the draft report.

In addition to the MCGO, State of Wisconsin regulations, the ABA Code and purchasing chapters and manuals of Fairfax County, Virginia and Waukesha County, Wisconsin, the following documents were reviewed:

- A-6 Procurement Memo, a diagram of the procurement process for items less than $2,000; services or supplies greater than $2,000, services or supplies greater than $2,000 that result in a PA where no purchase order exists;
- A6.313 Requisitioning Process, revised 5/8/2002;
- A6.315 Purchasing Authority "How to Buy Stuff";
- Administrative Procedural Manual for Procurement, Purchase Order Requisitioning, Section 1.02-1, original issued 11/1/1967, revised 8/22/2002;
- Administrative Procedural Manual, Procurement Professional Service Contracts, Section 1.13-2, original issued 5/7/1984, revised 2/1/2007;
- Administrative Manual Report of Department Purchases, Section 1.14-3, original issue 5/14/1984, revised 3-31-1989; and
- An Audit of the Milwaukee County Procurement Division May 2008.

Neither a vendor guide nor procedures for the P-card process were part of the review.

Ms. Connie Hinson, CPPO was assigned to this review. Her biographical sketch is included in Appendix D.

To augment the review of documents, telephone conferences were held with Mr. Patrick Lee and Ms. Stephanie Gulizia of the procurement division. Discussions were held with Mr. Jerome Heer, Director of the County's Audit Department, Mr. Mark Grady, Deputy, Office of Corporation Counsel and Greg High, Director of Architectural, Engineering and Environmental Services. Ms. Hinson thanks all who provided information for this review and appreciates their insight and invaluable assistance.

As requested by Mr. Lee in the Scope of Work, findings, observations and recommendations will be addressed for the governing documents. Specific sections in the documents will be addressed as needed. Best practices have been identified per his request.

This report addresses MCGO chapters, administrative procedures and internal documents provided to the Consultant by the County, State of Wisconsin regulatory statutes that impact local government procurement, the ABA Code and best practices and a discussion of procurement policies and procedures of Fairfax County, Virginia and Waukesha County, Wisconsin. The report contains a discussion of each document with recommendations, as well as a recommendation for policies and procedures. A discussion on authority and responsibilities of the procurement director is also included. There is an analysis of the protest and appeal process and, while a review of these processes was not part of the original scope, the Consultant feels it is critical to address this area to prevent unnecessary delay in award and project start-up.

The observations, findings and recommendations based upon review of documents, telephone discussions, comparisons with Waukesha County, Wisconsin and Fairfax, Virginia procurement functions and the ABA Code provide an analysis that will assist the County in its efforts to

move toward best practices in policies and procedures and greater effectiveness in its procurement function.

Milwaukee County General Ordinance Volume I
Chapters that Govern Procurement

General Assessment and Observations

Policies and procedures provide the backbone for a sound procurement function. Procurement authority and responsibility for local entities are established by ordinance or regulations that form the basis for policies. Policies at a minimum should clearly establish procurement's role, position, and responsibilities in the organization; the reporting structure; dollar limits, or thresholds that are required for formal bids and informal purchases; disposal of property, public advertising requirements; open records, legal and contractual remedies, specifications, ethics and the methods of procurement. Other areas may be included as well, depending upon the requirements and needs of the organization Policies are promulgated by the policy makers of organizations. The procedures then follow and are delineated to implement and execute the policies; they are the tasks that make the policies successful.

A procurement policy establishes and delegates authority and responsibility for the organization's acquisitions. Simply stated, the policy is the basis for procedures (developed by Procurement) that tell participants in the process, including procurement staff, management, elected officials, client departments and suppliers and contractors what they can and cannot do. Simply stated, policy is what should be done and procedures states how it should be done. For example, policy states procurement has responsibility and authority to purchase for the County. Procedures should state how a requisition should be submitted and what information should be included; how competitive sealed bids and proposals are publicly advertised, received and opened, evaluated and awarded and how informal purchases are determined and procured. Procedures for suppliers may be pamphlets of "How to do Business with the County" and should include submission of bids, becoming an eligible bidder and protesting an award. The procurement division should develop, define and have internal procedures detailing the processes.[2]

The County is utilizing several documents as the basis for procurement. The MCGO documents – Chapter 32, Purchasing Division; Chapter 42, Disadvantaged Business Enterprise and Airport Concession Disadvantaged Business Enterprise Participation in County Contracting; Chapter 43, Bidders Qualification Statement on Public Works Contracts; Chapter 44, Public Works Contracts; Chapter 56.30, Professional Services; and Chapter 110, Municipal Administration and Election by Chapter 295, Laws of 1975, Pursuant to Section 68.16 Wisconsin Statutes) are chapters created and approved by the Board of Supervisors. Chapter 46, Department of Human Services was included as a chapter to review but the contract process is completely outside of the realm of the procurement division.

[2] Hinson, Connie, *Purchasing for Local Governments.* Level I, Local Government Financial Management Program, Carl Vinson Institute of Government, University of Georgia, 1995, page 8.

Some of these chapters have undergone legislative actions several times since their creation. For example, MCGO42, Disadvantaged Business, has had 27 amendments, revisions, renumbering, and deletions since its creation in 1992. MCGO43, Bidders Qualification Statement on Public Works Contracts has had 12 changes since it was originally published in 1981. MCGO44, Public Works Contracts has undergone 30 modifications since its creation in 1981. MCGO 46, Department of Human Services has had 38 revisions since its creation in 1951 with the majority of the changes due to renumbering. CGO110, Municipal Administrative Procedure has undergone 6 modifications since its creation in 1997.

While it is not efficient to rewrite governing documents in entirety whenever changes need to be made, there is always a possibility that over time, the documents become piecemeal due to the addition and revisions of state or federal requirements, problems being resolved or a need being met. It is always a good idea to periodically assess governing documents after they have been in effect for some time and rewrite them if communications are not clear, material is redundant or repeats sections of other chapters, or if policies are misunderstood or do not adequately address what the entity actually needs or is doing. Professionally, the procurement role in the organization has transitioned over the years from a clerical function to a management and strategic function and governing documents need to be revised to reflect this transition and the new responsibilities.

The Purchasing Standardization Committee has more authority than the procurement director regarding standards. The procurement director establishes standards, yet the committee can revise the standards. In a worst case scenario, the committee could implement standards that hinder competition.

The County protest and appeals process is governed by two Milwaukee County General Ordinance Chapters: MCGO32 governs procurement and MCGO110 governs public works and professional services. Public works contracts and professional services are specifically excluded from the procurement division's responsibility and authority. The two protest and appeal processes should be under one for consistency. A discussion of each process is contained in the sections for MCGO32 and MCGO110.

Review of procurement processes is outside of the scope of work for this engagement. However it is apparent that the way the protests and appeals process is set up, there is a potential for abuse. Suppliers or contractors have the capability to file frivolous actions that can delay projects until the action is resolved. When this happens, it hurts the County and its citizens.

There is no avenue for the County to suspend or disbar a vendor or contractor, nor is there a written policy to document vendor and contractor performance. This is critical to a strong procurement operation and provides protection for the County.

The different dollar thresholds for the types of procurements could cause confusion among clients. For example, MCGO43, Bidders Qualification Statement for Public Works Contracts cites that the County follows Wisconsin statute 59.52 for public works contracts. The formal bid threshold is $25,000. MCGO44, Public Works Contracts cites the bid threshold as $20,000. A discussion with Gary High, Director of the Architectural, Engineering and Environmental Services Division revealed this could be an oversight in updating changes.

Even when responsibility for specialized acquisitions falls outside of procurement responsibility, i.e. public works and professional services, the dollar thresholds should generally be the same for informal and formal purchases. Since the County follows state statute for public works acquisition, the $25,000 formal threshold cannot be changed. Informal purchase thresholds can be changed so there is uniformity for all three and requirements for formal purchases can be the same for procurement of commodities, equipment, non-professional services and professional services.

The following tables show the current dollar thresholds for procurement of commodities, equipment and non-professional services; professional services and public works.

Procurement – commodities and non-professional services
Informal purchases
Discretionary – client department <$2,000
Discretionary – procurement <$10,000
Open market – procurement $10,000<$25,000 3 quotations
Informal bids – procurement $25,000<$50,000 Sealed bids from all known vendors and suppliers
Formal purchases
Board approval required $50,000
Competitive sealed bids/proposals

Public Works
Informal purchases
Discretionary - <$5,000
Informal bids - $5,000<$25,000 Minimum of three informal bids
Formal purchases
Board approval required $25,000 Competitive sealed bids/proposals

Professional Services
Informal purchases
Discretionary <$2,000
Informal/discretionary >$2,000<$50,000 RFP process not required (non-capital)
Formal purchases – capital
Board approval $25,000 RFP process required
Formal purchases non-capital
Board approval $100,000 $50,000-$100,000 RFP process required with minimum of 3 proposals unless determined to not be cost effective RFP process required $100,000

NOTE – ACT 14 a new change in State Statute only requires contracts over $100,000 to go for Board approval.

If the County chooses to rewrite and revise its chapters, it may wish to consider increasing the limits for small purchases, competitive sealed bids and sealed proposals and acquisitions that require Board approval. A comparison of entities was done for St. Louis County in 2012 and is included as Appendix C.

Some governments are including an innovative method in their policy language that automatically increases the threshold for competitive sealed bids and competitive sealed proposals. This method permits a legitimate and efficient way to conduct business without having to seek Board approval whenever an increase in threshold is appropriate. An example of such language is:

"Every five years the Purchasing Director will calculate the cumulative inflation factor for the previous five years and add that figure, rounded to the nearest thousandth, to the threshold at which sealed bids are required."[3]

The chapters MCGO44, Public Works Contracts and MCGO56 Professional Services should be included in the new policy document, even though responsibility and authority is outside of the procurement division. Both are acquisitions and should follow the same process for competitive sealed bids, competitive sealed proposals, small purchases, emergency and sole source as outlined in MCGO32.

Having one procurement policy document will provide greater clarity and understanding of the procurement process. Once the policy is written and adopted, the County should develop separate procedures based on the policies. The Division of Architectural, Engineering and Environmental Services that has responsibility for public work acquisitions and client departments that have responsibility for professional services should work together with the procurement director to develop a procedural manual for the processes that are standardized as much as possible.

Should the County decide to rewrite their chapters, NIGP recommends the following or similar topics. The articles and sections can be tailored to the County's specific needs The ABA Code and Fairfax County, Virginia Resolution and Procedures were used as guides. Fairfax County, Virginia has both a resolution that addresses policies and a separate procedures manual. Milwaukee County may be interested in utilizing its format and titles.

[3] National Institute of Governmental Purchasing, Inc.Terry McKee, CPPO, CPPB, C.P.M., CPCP, Senior Consultant. *Review of Purchasing Policies, Methodologies, Enabling Legislation, Statutes, Codes and Ethics Ordinances. 2012, page 15.*

Article I. Purpose, Goals and Objectives

The trend today is to have procurement's goals and objectives on their websites, separate from the goals and objectives of the entity. These goals and objectives should mirror and complement those goals and objectives of the entity. If procurement reports to a department, such as finance or administrative services, the procurement goals should mirror and complement the department's goals as well. Many websites also include values. The purpose of this is to let the public and customers know that procurement takes its role in the organization seriously and its function is to provide value to the entity.

The procurement division's website contains the following that states the purpose of the division.

"The Procurement Division is empowered by Chapter 32 of the Milwaukee County Ordinances to purchase or contract for supplies, materials, equipment and contractual services needed by County departments, agencies and institutions. This authority does not include public works programs, repairs or alterations to buildings, structures, or leases of County-owned real estate and appurtenances which are administered by the Department of Public Works.

The Procurement Department is also authorized to develop standards, prepare specifications, sign and issue contracts and purchase orders, process Requests for Proposals, and assist the Department of Public Works in the sale of surplus or obsolete supplies, materials or equipment. Additionally, the Procurement Division provides DBE an opportunity to participate in Milwaukee County's procurement process pursuant to ordinances and annual goals established by the Milwaukee County Board of Supervisors.

The Procurement Division, within the scope of Chapter 32, shall obtain goods and services for our customers which enhance the quality of life in Milwaukee County and fully utilize all business segments.

Article I should contain the goals and objectives of the division, as well as its purpose. These should follow and complement the goals and objectives of the Department of Administrative Services and the County.

Article II. Organization and Delegation of Authority

The Department of Administrative Services delegates authority and responsibility for purchasing to its procurement division. A clear delegation of authority and responsibilities strengthens the function and prevents misunderstanding about its role in the organization.

The article should include:

- Definitions
- Creation of a procurement division and delegation of authority to the director
- Responsibilities of procurement
- Exemptions
- Delegation of authority to client departments

Article III. Requisition and Source Selection

The article should contain the following:

- Definitions
- Requisition, availability of funds and encumbrance
- Dollar thresholds for acquisitions
- Methods of source selection
    - Competitive sealed bid
    - Competitive negotiations/competitive sealed proposal
    - Small purchase
    - Emergency purchase
    - Sole source purchase
- Cooperative and inter-governmental arrangements

The competitive sealed bid and competitive sealed proposal processes should contain subsections for conditions of use and steps in the processes, including vendor selection, advertising requirements, pre-bid and pre-proposal conferences, receipt and opening of bids and proposals, cancellation and rejection of solicitations and award. The proposal process should discuss the use of evaluation committees and criteria. For emergency and sole source purchases, conditions for use and approval requirements should be outlined.

Article IV. Public Works Contracts

Although public works is handled separately from the procurement division, the chapter should be included here as a policy because it is part of the procurement process. Much of the solicitation process for competitive sealed bids and competitive sealed proposals is the same as acquiring commodities and non-professional services, including receipt and opening of solicitations and pre-bid conferences. Differences should be noted.

Article V. Professional Services

Ordinance 56.30 should be included in the manual as policy for professional services acquisitions. The process for solicitation of competitive sealed proposals is the same as that for procurement of non-professional services. Differences in the process should be noted.

Article VI. Specifications and Standards

Neither Chapter 32 nor 44 contain information on specifications; i.e. who has responsibility; use of restrictive specifications; brand names, etc. This article should include:

- Definitions
- Responsibility for specifications
- Types of specifications
- Standards
- Purchasing Standardization Committee

Specifications are critical for a successful acquisition. They identify need and if they are well written, encourage competition and assure quality. Each participant in the procurement process has a responsibility for developing specifications that will produce value to the County.

Article VII. Contract Formation and Types of Contracts

Responsibility for contracts is not specifically addressed in any of the chapters. This article should contain:

- Contract types and use
- Retention of procurement records
- Anti-competitive practices
- Administration of contracts
- Vendor and contractor performance

Article VIII. Legal and Contractual Remedies

Chapter 32 does not contain a method to suspend or debar suppliers or contractors for poor performance. Additionally, it does not prescribe the require documentation for identification of poor performance. These are important areas of procurement.

This article should include:

- Definitions
- Protest: the right to protest, authority to resolve protests
- Appeal: the right to appeal, authority and resolution
- Suspension and Debarment
- Breach of Contract

Article IX. Disposal of Surplus Property

The procurement director has responsibility for storage of surplus and disposal of property through public auction. This article should also include other methods of disposal that may be more cost effective and take less administrative time than a public auction. These include:

- Definitions
- Public auction
- Reverse auction
- Sealed bids
- Spot bids

Article X. Assistance to Small, Disadvantaged Business Enterprise and Airport Concession Disadvantaged Business Enterprise

This article should address procurement's role in the DBE program and reference Chapter 42 as the governing policy. Definitions and sections of Chapter 42 that apply to procurement should be included.

Article XI. Ethics

The County's Ethics Ordinance may be used or one specifically for procurement may be developed. Many of NIGP's members utilize the NIGP Code of Ethics.

Chapter 32, Department of Administration, Subchapter II, Procurement Division

The following observations and recommendations are made for Chapter 32.

There are more sections and discussions for negotiation and request for proposals than there are for the competitive sealed bid. Both are methods of source selection but the competitive sealed bid is the preferred method of procurement in the public sector. The ability to negotiate and utilize an alternate method to competitive sealed bidding was added to the ABA Model Procurement Code in 2000. It is designed to be used when competitive sealed bidding is not practical or advantageous and award is based on criteria other than price.

The competitive sealed bid and competitive negotiations, small purchase, emergency purchase and sole source are recognized best practice procurements. To obtain greater clarity and understanding, the different procurement methods should be a section titled "Methods of Source Selection" and relevant areas should be combined into this section.

Several of the ordinance sections contain procedures that should be deleted and included in a separate procedures manual.

A section should contain "Exceptions" to the responsibilities and authority of the procurement division. This section would reference chapters that are outside of the realm of authority for the division.

The following addresses individual sections of Chapter 32 with observations and recommendations.

Section 32.20: Words and phrases defined.
Definitions should be expanded to include the following, as used throughout the document. Definitions are found in the NIGP Public Procurement Dictionary of Terms, which is utilized as "The Comprehensive Reference for Public Purchasing Terms and Concepts." The County many want to use other definitions; however, they should be procurement directed and consistent.

Delegation of authority: "The conferring of authority by someone who has it, to another person, in order to accomplish a task." In Chapter 32, delegation of authority is from the director of administrative services to the procurement director. The procurement director may delegate responsibilities to procurement staff or client departments when it is in the best interest of the County.

Cooperative procurement: 1) The action taken when two or more entities combine their requirements to obtain advantage of volume purchases, including administrative savings and other benefits. 2) A variety of arrangements whereby two or more public procurement units purchase from the same supplier or multiple suppliers using a single IFB or RFP. 3) Cooperative procurement efforts may result in contracts that other entities may "piggyback".

Section 32.21: General administration
The department of administrative services has responsibility and authority for the procurement function within County and has delegated the function to its procurement division. If the procurement division is to successfully perform the procurement function, the authority and responsibility should in turn be delegated to the procurement director to include the responsibilities listed in Section 32.22. This delegation should apply to all sections of County chapters that deal with procurement except those that are specifically noted as "Exceptions".

Section 32.22: Department of administrative services
Once authority and responsibility for procurement have been delegated by the director of administrative services, all references to procurement should be under the purview of the director of procurement.

Responsibilities in public sector procurement include maximizing competition to obtain the greatest value for the entity, enforcing transparency and openness to safeguard the integrity of

the procurement process and ensuring fair and equitable treatment of suppliers and contractors. These should be added to the responsibilities listed in this section.

A responsibility should be added to the procurement director's responsibilities to ensure compliance with Milwaukee County General Ordinance Chapters and Procurement Policies and Procedures by reviewing and monitoring procurements conducted by any designee, department, official or employee of Milwaukee County.[4]

Section 32.23: Purchasing standardization committee
In Section 32.22, 1 (e) department of administrative services, the procurement director "develops and recommends standards for purchasing standardization committee approval and enforces the use of standards and specifications established under the provisions of this chapter." In Section 32.23, the committee "adopts, revises and promulgates written standards which satisfy the requirements of the county."

One open question is whether the role of the committee includes revising what the purchasing director develops. If one of the responsibilities of the procurement director is to maximize competition and value for the County, there could be a conflict with the committee if there is a preference for a particular brand by client departments that serve on the committee. To ensure maximum competition, the director and committee should jointly revise standards.

32.25 Purchasing and contracting procedure
The statement "Purchases of supplies, materials, equipment and contractual services shall be based on competitive bids" conflicts with the actual process. Not all purchases are based on competitive bids; discretionary purchases less than $10,000 or less are made at the discretion of the buyer without competition Section (2). Client departments have delegated authority up to $2,000 that does not require competitive bids.

(7-a-2 and 7-a-5) Delete "or his or her designee". Based on delegation of authority in Section 32.20, the procurement director has the authority to delegate as needed.

Add exception "Purchases of supplies, equipment or services based upon cooperative arrangements with other governmental units".

(7d) Change purchasing administrator to procurement director.

(9c) It is unclear which administrator is being referenced. If it is the purchasing administrator, change to procurement director.

Delete "procedure" from the title. Chapters should be policies. Procedures should be contained in a separate procedures manual.

Section 32.26: Protest and appeal procedure
Delete "or his or her designee" as approval is contained in Section 32.20.

Combine this section with the section "Legal and Contractual Remedies" that includes a sub-section on "Protest and Appeal."

[4] Op. cit. American Bar Association, page 15.

(2b) Certified mail, return receipt requested is an expensive and cumbersome method. The County may want to consider eliminating this method of notifying bidders when award is to be made to other than the lowest responsive and responsible bidder. Instead, information could be included in solicitation documents that bid results will be posted online, on the E-Notify system. A "Notice of Intent to Award" could be included in the on-line information. For bids where bidders are not responsible or responsive, there is no need to notify.

It should be a rarity that an award is made to other than a responsible and responsive bidder, as they have met the requirements of a bid or request for proposal.

Delete "procedure" from the title of the section. The chapters are policies.

The Purchasing Standardization Committee has been established with administrative powers to handle protests and appeals. The committee is comprised of four County departments and three citizens appointed by the County Executive. Vendors can file appeals to this body for decisions made by the procurement director on their protests.

Chapter 32, 32.26 Protest and Appeal procedures provides the following time frame to file a protest and appeal:

3 days for a vendor to file a protest;
5 days for the procurement director to make a decision;
3 days for the vendor to file an appeal to the purchasing standardization committee.

There is no specified time frame once the appeal is filed. The chairman notifies the committee of a time and place to meet. Realistically, this could take several days. Already the award process has been delayed two weeks and scheduling participants for a meeting could take even longer.

The Committee hears appeals on the purchasing director's award decisions and can reverse such decisions. Because the procurement director has no avenue to move forward with awards if a protest or an appeal is filed; projects, equipment and services have the potential to be delayed for an indefinite period of time. Protests and appeals are the right of every supplier or contractor who feels aggrieved but when the County is not able to move forward with awards until a protest or appeal is resolved, the resulting delay has the capability to impede the County's ability to be effective and definitely hinders its efficiency.

It is apparent that the way the protests and appeals process is set up in the County, there is a potential for abuse. Suppliers or contractors have the capability to file frivolous actions that can delay projects until the action is resolved. When this happens, it hurts the County and its citizens.

A best procurement practice is where appeals can be made yet critical awards are not delayed. The ABA Code recommends the Chief Procurement Officer should have the authority to settle, prior to the commencement of an action in court a protest dispute. If the protest is not resolved by mutual agreement, the Chief Procurement Officer shall promptly issue a decision in writing that states the reasons for the action taken and informs the protestant of the right to judicial or

administrative review. The type of judicial or administrative review would be in accordance with the entity's stated ordinance/policy.[5]

The ABA Code also provides for an optional "Procurement Appeals Board" of individuals with procurement expertise, to hear appeals of those who do not believe the decision of the Chief Procurement Officer is fair, or has caused them damage. This must be done within a specified time frame. The Board looks at the action as to whether the solicitation award was made in accordance with the statutes, regulations and the terms and conditions of the solicitation.

The ABA Code suggests that no award should take place until the protest is resolved. However the Chief Procurement Officer can confer with the affected agency and make a decision to move forward with the award if the project, service or commodity is critical to the entity. In this case, award is made, the project moves forward and the supplier or contractor still has the right to legal action in a court of law.

Waukesha County, Wisconsin was contacted regarding its protest process. The County has vested appeal decision solely in the hands of the Purchasing/Risk Manager. Fairfax County, Virginia has also vested protest decision solely in the hands of the Purchasing Agent with the next step for the aggrieved supplier or contractor to institute legal action in a Virginia court.

Fairfax County's policy for protests, contained in the Fairfax County Purchasing Resolution, 2013, Bidder Contractor Remedies, Section 4, Protest of Award or Decision to Award states that "An award need not be delayed for the period allowed a bidder or offeror to protest, but in the event of a timely protest, no further action to award the contract will be taken unless there is a written determination that proceeding without delay is necessary to protect the public interest or unless the bid or offer would expire." This follows the ABA Code recommendations.

Gwinnett County, Georgia also has chosen not to have a body to hear appeals. When a protest is filed, the decision of the purchasing director is final. Award is made and if aggrieved suppliers or contractors feel they have been treated unfairly, they can file suit. The judicial body that hears the case is the Superior Court of the County and the suit is dealt with immediately. The review is based upon whether the purchasing director's actions correctly followed the County's purchasing procedures.

In a discussion with Van Stephens, Gwinnett County's Interim County Attorney, he said the process works very well. The protest and appeals procedure was implemented in the 1990's and to date, the County has only had two incidences where the decision of the purchasing director was challenged in court. Awards were made, the contractors challenged and the judge heard the case quickly. The challenge was based on whether the purchasing director followed the County's procedures for evaluation and award, which is the basis for all challenges. The judge's decision ruled in favor of the County. The County did not lose time on critical projects because there was no opportunity to delay based on a protest or appeal.

The process in place for the three counties – Waukesha, Fairfax and Gwinnett – prevents frivolous protests and appeals and does not delay important projects from moving forward.

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[5] American Bar Association, *The 2000 Model Procurement Code for State and Local Governments*. Article 9, Legal and Contractual Remedies pages 65-69.

Section 32.27: Delegation of authority
Since authority has already been delegated to the procurement director, add “to client departments” to the title of this section.

Delete “his or her designee.”

(4) The procurement director has been delegated authority and responsibility for the procurement function. Included in this responsibility is the design and use of forms for all types of purchases and solicitations. Departments should not be designing procurement forms as this invites confusion. Forms for the different types of procurements should be centralized and authorized solely by the procurement director.

Section 32.28: Emergency purchases
The procurement director has been delegated authority for procurement and emergency purchases are a recognized method of procurement. Instead of notification to the department of administrative services, the notification could be made to the procurement division. The procurement director could issue a monthly report to the director of administrative services.

This section should be combined with the proposed section on “Source Selection Methods” in the recommended article *Requisition and Source Selection.*

Section 32.285: Procurement of items of apparel
This section mirrors specifications and requirements that would be contained in a competitive procurement for apparel. It also contains procedures. Unless there is a definitive reason to include this in the chapter, delete this section. If the rational is to address the topic in other commodity areas, then replace this section with the general prohibitions. Or, if there is a broader reason that applies, include it as a policy without the procedures.

Section 32.31: Cooperative purchases
Delete “his or her designee”.
Combine with the proposed section on “Source Selection Methods” in recommended article *Requisition and Source Selection*.

Section 32.36: Negotiations and competitive proposals
Delete this section and combine with the proposed section on “Source Selection Methods” in recommended article *Requisition and Source Selection*.

Section 32.37: General
Competitive negotiation is an alternative to competitive sealed bids and is part of the competitive sealed proposal process. The conditions listed in this section are requirements for use in an RFP.

Combine with the proposed section on “Source Selection Methods” in the recommended article *Requisition and Source Selection.* This should be part of the competitive negotiations method of source selection.

Section 32.38: Converting from sealed bidding to negotiation procedures
Move to the section on “Source Selection Methods” in the recommended article *Requisition and Source Selection* under the competitive negotiations method of source selection.

Add that the negotiation will occur with the responsible and responsive offeror who submitted the lowest price.

Section 32.39: Solicitation and receipt of proposals
This section through section 32.49 contains more information on competitive sealed proposals (request for proposals, RFP's) than the competitive sealed bidding process. The competitive sealed bid is the preferred method of procurement in the public sector. The proposal process mirrors the competitive sealed bid process with the following exceptions:

- Award is not based on solely on price.
- Proposal contents are not public information when received and opened.
- Performance specifications are generally used.
- Evaluation is based upon scoring.
- Negotiations generally are part of the process.

Competitive sealed proposals should be treated as one of the methods for procurement. Move this to "Source Selection Methods" in the recommended article *Requisition and Source Selection* under the competitive negotiations method of source selection.

Section 32.40: General
Delete "or his or her designee".

Delete (5-a-h). These are procedures that should be included in a separate procedures manual and not with policies contained in the chapter.

Change purchasing administrator to procurement director.

(6) This has already been addressed under Delegation of Authority.

Section 32.41: Solicitation mailing list and advertising
This is part of the source selection process and should be moved to "Source Selection Methods" in the recommended article *Requisition and Source Selection* under competitive negotiations.

Section 32.42: Evaluation factors
This is part of the source selection process and should be moved to "Source Selection Methods" in the recommended article *Requisition and Source Selection* under competitive negotiations.

Delete "his or her designee."

Section 32.43: Right to award without negotiations
This is part of the source selection process and should be moved to "Source Selection Methods" in the recommended article *Requisition and Source Selection* under competitive negotiations.

Delete "his or her designee."

Section 32.44: Pre-proposal conferences

Delete “his or her designee.”

This section should be moved to the recommended “Source Selection Methods”, article *Requisition and Source Selection.*

(2a-c) and (3a-b) are procedures and should be moved to a separate procedures manual. Suggested wording for the Chapter is:

(2) The procurement director shall decide if a pre-proposal conference is required and make the necessary arrangements. It is understood that the director may delegate this task to a designee.

(3) The procurement director shall conduct the pre-proposal conference, furnish all prospective offerors identical information concerning the proposed acquisition, make a complete record of the conference, and promptly furnish a copy of that record to all prospective offerors.

Section 32.45: Receipt of proposals
Move this section to “Source Selection Methods” in the recommended article *Requisition and Source Selection*.

Sections 32.46-32.49
Delete “or his or her designee.”

Move this section to “Source Selection Methods” in the recommended article *Requisition and Source Selection.*

Section 32.47: Disclosure and use of information before award
The County is to be commended for the strength of the wording in this section. The proposal process differs from the bid process from receipt, or opening to award. A comparison chart shows the differences in the two processes.

Action	Competitive sealed bids	Competitive sealed proposals
Receipt and opening	Information publicly read – bidder price, delivery	Names of offerors may or may not be publicly read
Evaluation	Lowest price from responsive and responsible bidder	Criteria contained in the proposal is the basis for award
Disclosure	Documents are open	Documents are closed until award

While there may be slight variations among governments, the actions noted above are standard in public sector procurement.

The County has chosen not to disclose the names of offerors until the award process is complete. The award process is complete only after the Board has given its final approval. This includes not only the public, but anyone outside of the procurement division within the government. This ensures the integrity of the process without internal or external pressures.

Section 32.50: Protests to Awards

This should be included in the recommended article *Legal and Contractual Remedies.* The protest and appeal process should be revised so that it is universal for professional services, public work and procurements. Provisions for debarment and suspension for vendors and contractors who perform poorly should also be included.

Delete "or his or her designee."

Section 32.51: Appeals to purchasing standardization committee
Move this to a section "Purchasing Standardization Committee. Revise the role of the committee.

Delete "or his or her designee."

Section 32.52: Unsuccessful Offer Debriefing
The County is to be commended for including this section as a policy in the Ordinance. A debrief is very important to suppliers and contractors so they can understand the reasons they did not receive an award. It is a best practice that provides greater knowledge of public sector processes and requirements to participants.

Recommendations for Chapter 32:

1. Rewrite Chapter 32 based on the suggested policy with appropriate articles. Combine current sections as noted.

2. Delete "and his or her designee" as delegation has been assigned by the Department of Administrative Services in section 32.21.

3. Strengthen the role of procurement and the procurement director by adding responsibilities, including control of all procurement forms.

4. Create separate policies and procedures or differentiate between the two if one document is created that contains both the policies/ordinances and procedures.

5. Provide more detail for the competitive sealed bid method of procurement. Once the preferred method is addressed, other methods of procurement can be discussed.

6. Eliminate the use of certified mail, return receipt requested for notification of intent to award to other than low bidder. The majority of businesses have fax machines. The e-notify or some other link on the website can be used for notification.

7. Revise the role of the Purchasing Standardization Committee.

8. Revise the process for protests and appeals to increase the efficiency for bid, proposal and small purchase awards. This includes delegating greater authority and responsibility to the procurement director for initial review and decision-making for all protests (including public works and professional service contracts). If the County feels it is in its best interest to have an optional committee to hear and decide appeals,

include language where critical projects are not delayed. Or, the County may elect for the courts to decide in lieu of a committee.

The ABA Code, Fairfax County, VA and Waukesha County, WI are models to consider.

Chapter 42 Disadvantaged Business Enterprise and Airport Concession Disadvantaged Business Enterprise Participation in County Contracts

This chapter is very thorough and complies with federal requirements for disadvantaged business enterprise participation.

The procurement division and departments are all involved in meeting goals. The chapter's requirements set the stage for all parties to work together to accomplish the established goals.

The Community Business Development Partners Office has an informative website and follows best practices to reach DBE and ACDBE suppliers and contractors. The newsletter, the Expo, "Contracting with Milwaukee, First Steps", the DBE Goals Report and Compliance Services are all excellent.

Both Fairfax County and Waukesha County have responsibility for DBE programs separate from procurement. Procurement is heavily involved in encouraging DBE participation in Fairfax County. Information is contained on the website and workshops are held to assist potential vendors and contractors to understand the purchasing process.

The ABA Code places responsibility for disadvantaged business programs under the purview of the Chief Procurement Officer. However, it is not necessarily a best practice for the procurement function to have responsibility for the disadvantaged and small business programs. Many entities have very effective separate offices and procurement and client departments work well with them.

NIGP was asked whether the DBE requirement for participation in public works contracts contradicts the definition of public works as defined in Wisconsin Statute 66.0901(1)(M)(b) Method of Bidding which reads:

> *Except when necessary to secure federal aid, whenever a political subdivision lets a public contract by bidding, the political subdivision shall comply with all of the following:*

1. *The bidding shall be on the basis of sealed competitive bids.*

2. *The contract shall be awarded to the lowest responsible bidder.*

(b) *Except when necessary to secure federal aid, a political subdivision may not use a bidding method that gives preference based on the geographic location of the bidder or that uses criteria other than the lowest responsible bidder in awarding a contract.*

The Board of Supervisors has established a DBE program and can determine how the goals of the program are to be met. However, State law is very specific how public works contracts are to be procured and limits the acquisition method to competitive bidding, where award is to the lowest responsible bidder.

Awarding to other than the low responsible bidder to achieve DBE goals could be challenged by a bidder as conflicting with State law. The Counsel may want to research this further to see if there have been legal challenges and decisions.

Recommendation for Chapter 42

Counsel should research DBE and public works contract awards for assurance the County is in compliance with State law. If conflict is found, the County should revise its ordinance to comply with the State law for public works contracts.

NIGP commends the County for a very thorough DBE document and program.

Chapter 43 Bidders Qualification Statement on Public Works Contracts

Chapter 43 addresses qualification of bidders for public works contracts based on Wisconsin statute 59.52.

The County has a best practice in place for public works contracts. Requiring a qualification statement determines eligibility of bidders in advance so that responsibility does not have to be determined after a bid has been received and opened. This best practice eliminates reference checking and reduces evaluation time for award.

Section 43.02 states that contractor qualification statements turned in to the Clerk of Court prior to receipt of bids. While this practice is unusual, as most entities have statements turned in to the procurement office, if the process works for the County then it shouldn't be changed. The one caution is that architectural/engineering and environmental service should have sufficient time to evaluate and approve the contractors' qualifications.

To ensure consistency with the format of other MCGO chapters, the County should add definitions. The following definitions are found in the NIGP Public Procurement Dictionary of Terms. The County may prefer to utilize definitions in other chapters or those found in the ABA Code.

Contractor: Any individual or business having a contract with a governmental body to furnish goods, services, or construction for an agreed upon price.

Responsible bidder: A contractor, business entity or individual who is fully capable to meet all of the requirements of the solicitation and subsequent contract. Must possess the full capability, including financial and technical, to perform as contractually required. Must be able to fully document the ability to provide good faith performance.

Responsive bidder: A contractor, business entity or individual who has submitted a bid or request for proposal that fully conforms in all material aspects to the IFB/RFP and all of its requirements, including all form and substance.

Recommendation for Chapter 43*:*

> Add definitions so that this chapter will be consistent in form to others governing procurement.

Chapter 44 Public Works Contracts

The chapter does not contain definitions. These should be added for consistency with other chapters in the ordinance.

If the director of administrative services has delegated responsibilities in this chapter to the procurement director or the director of architectural, engineering and environmental services the delegation should be included.

44.01 Public Bid Required, Exceptions

It should be noted that for public works contracts, the County follows Wisconsin statutes 59.52 and 66.091.

The dollar threshold for public bid is $20,000. Chapter 43 states the bid requirement is $25,000. NIGP has been told that the $25,000 threshold is correct.

44.03 Solicitation of Bids

The trend today is to move away from advertising in a newspaper, primarily as a cost savings. Instead, governments are utilizing their websites as their primary advertising mechanism. Unless state statute requires advertising in legal notices of a newspaper of general circulation, the County should move toward web notification.

44.06 Bid Opening

Generally, bids should be opened by the procurement division. For solicitations that the division has responsibility, bids and proposals are received by the County Clerk then transferred to the division. As noted in the discussion of Chapter 32, while receipt of bids and proposals by someone other than procurement is not the norm in the public sector profession, if this has been successful for the County and there have been no problems, there is no reason to change.

Opening bids and proposals is another matter. This step in the bid and proposal process is a recognized procurement responsibility and task. The ABA Code clearly assigns this responsibility to procurement. A separation of these duties has the possibility to produce a disjointed process.

44.08 Bid Rejection and Forfeiture and 44.10 Appeal

Recommendation for revision to the protest and appeal process is contained elsewhere in this report. If the County elects to revise the process as proposed, the section should be referenced in this chapter.

44.14 Award of Public Works Contracts

(1) Amount for competitive sealed bids should be changed to $25,000.

(4) “Contracts greater than $20,000 shall be awarded to the lowest responsive and responsible bidder after solicitation of bids.” This should be changed to $25,000 and greater to include the dollar threshold and provide consistency with other dollar thresholds.

***Recommendations for Chapter 44*:**

1. The competitive sealed bid process for advertising, selection of contractors, receipt and opening of bids should be the same for procurement and public works. *Article IV Public*

Works Contracts in the recommended policy manual should reference the process, then describe the additional or different requirements for public works acquisitions.

2. Amend the chapter to specify the change in the dollar threshold, from $20,000 to $25,000.

3. Revise dollar thresholds for small and discretional purchases to match those of the procurement division.

4. Replace public notice advertising in a newspaper with on-line notification of bids.

5. Place responsibility for opening bids in the procurement division, rather than the County Clerk's office. The steps in the bid process are universal and accepted practices in public sector procurement. The ABA Code recommends the Chief Procurement Officer have responsibility for these duties.

6. Add definitions for consistency with other chapters.

7. If the procurement director is the person delegated by the director of administrative services to share in the responsibilities for public works contracts with the director of architectural, engineering and environmental services, include the delegation.

Chapter 46 Department of Human Services

According to its web page, "the Department of Health and Human Services provides a wide range of life-sustaining and life-saving services to children and adults through age 60. Programs focus on providing services for delinquent children, developmentally disabled persons, physically disabled persons, mentally ill persons and the homeless. Many of the services provided are mandated by state statute and/or provided through a state/county contract." The department is comprised of four divisions: Behavioral Health, including EMS; Disability Services; Delinquency and Court Services and Housing.

In addition, the department has a Management Services Division that has responsibility for budgeting, accounting, contracting, human resources and other business and operational support functions.

Wisconsin Statute 46.23 gives authority to the County Boards of supervisors to establish by resolution a county department of human services on a single-county or multicounty basis to provide services. The county department of human services consists of the county human services board, the county human services director and necessary personnel. The county board of supervisors in a county with a single-county department of human services may transfer the powers and duties to the department. The county board of supervisors in a county with a single-county department of human services and the county boards of supervisors in counties with a multicounty department of human services may transfer the powers and duties of the following to the county department of human services.

This provides the basis for the Department of Health and Human Services to have responsibility for procurement, in addition to other administrative activities.

It appears from Chapter 46 and the website description that the department's procurements are obtained from state or county contracts. Although there is no reference, these contracts, depending upon the dollar threshold are very likely being procured by competitive methods. If this is the case, then the department is "piggy backing" off of contracts that have been bid by the County or the State of Wisconsin. These cooperative arrangements are a legitimate method for procurement that generally results in cost savings for participants.

46.09 Purchase of care and services by the County
This section provides approval oversight for purchase of human services from non-governmental vendors by the Board of Supervisors. Contracts are submitted to the appropriate county board or committee for review and recommendation prior to approval by the County Board. This stipulation ensures checks and balances for contracts that may not be based upon a cooperative arrangement.

Health and Human Services is designated outside of County procurement, having been established by Statute and the Board of Supervisors.

NIGP has no recommendation regarding policy for this chapter.

Chapter 56.30 Professional Services

56.30 Professional Services
Chapter 56.30 addresses professional services. These are distinguished from nonprofessional services that fall under the responsibility of the procurement division.

Subsection 4(A) specifies $20,000 for capital projects requirement for proposal solicitation. The dollar threshold has been revised to $25,000 per Wisconsin statute 59.52.

Subsection 5(a) requires that a request for proposal be used where the cost is $50,000 with a minimum of three proposal solicitations. Subsection 5(a-1) states that "for a contract with an estimated value between $50,000 and $100,000 the request for proposal procedure need not be used if it is determined by an administrator to be cost effective to the county not to seek proposals."

This is a wide variance where competition is not required. It is understandable that the proposal process can sometimes be a cumbersome one; however, it is important to obtain maximum competition, whether it is price or other measures of value. The proposal process was created as an alternative to competitive sealed bidding when there is a need to base an award on criteria other than price. The County's policy should require adequate competition to ensure maximum value to the entity. Only in circumstances where there is a threat to the health, welfare or safety of employees or citizens should this requirement be waived and then the acquisition becomes an emergency procurement.

Having professional services fall outside of the procurement division could cause confusion, particularly when non-professional services are the responsibility of procurement. The ABA Code, Waukesha County, Wisconsin and Fairfax County, Virginia have assigned professional services as a procurement responsibility. Since this cannot be determine by a review of policies and procedures, the County may want an outside consultant to conduct a review of

procurement processes to determine if this arrangement provides the greatest value and efficiency.

Subsection 7(a) are procedures and should be removed from the policy and included in the Administrative Procedures Manual.

Recommendations for Chapter 56.30:

1. Revise dollar threshold from $20,000 to $25,000 for public works professional services per Wisconsin statute 59.52.

2. Delete subsection 5(1-1) and require request for proposals where cost is $100,000. Exceptions to this should either be emergency or sole source.

3. Remove procedures from 7(a) and include them in a separate administrative procedures manual.

Chapter 110 Municipal Administrative Procedure and Election Not To Be Governed by Chapter 295, Laws of 1975, Pursuant to Section 68.16, Wisconsin Statutes

Chapter 110 addresses appeals that are not subject to Chapter 32. This includes Professional Services (MCGO56) and Public Works Contracts (MCGO44). Both are exempt from Chapter 32, Procurement.

The following discussion includes observations regarding the protest and appeal process.

Section 110.02 Definition and reviewable/ non-reviewable determinations
This section specifies the reviewable and non-reviewable determinations for adverse actions taken by a county authority that includes boards, agencies, officers, employees or agents. Aggrieved contractors are utilizing (b-1) as the basis for filing a protest – "the grant or denial in whole or in part after application of a contract……" Section (c-1) specifically excludes procurement, under chapter 32 from utilizing this ordinance.

Because client departments are authorized to conduct procurements for professional services, this category of contracting is outside the purview of the procurement division. The aggrieved offeror submits a protest to the department – i.e. authority – that managed the solicitation and award. The request for a review must contain the reason(s) for reversing the award. This request must be submitted within five days. The reviewing authority has ten days to respond regarding the decision and this time may be extended. The aggrieved offeror then has an additional five days to submit an appeal to the appropriate standing committee. The committee has ten days to conduct a hearing. After the hearing, which is similar to a judicial or administrative hearing where witnesses may appear and evidence is submitted, the standing committee has twenty days to notify of the decision. It is NIGP's understanding that there are eight separate boards that hear appeals.

Similar to the process in Chapter 32, an award has now been delayed, only the delay is even greater – at a minimum thirty days and very likely longer. If a project includes a specialized service or equipment that may have a long lead time for delivery, then a critical project is delayed, affecting the efficiency of the County and the welfare of its citizens.

Recommendations for Chapter 110:

1. The protest and appeals process should be universal and apply to all acquisitions. This includes procurement (Chapter 32), Public Works (Chapter 44), and Professional Services (Chapter 56).

   Those who are responsible for public works and professional service acquisitions should follow the same policies and procedures as those for the procurement director and the Procurement Standardization Committee or a similar fashion within a consolidated ordinance. Since public works (architectural, engineering and environmental services) and procurement report to the director of administrative services, the transition to procurement division responsibility should not be difficult..

2. The procurement division logically should be the first step in the protest process.

   For public works contracts and professional services awards, this provides objectivity. The director evaluates the solicitation and award process and issues a decision. If the offeror still feels the treatment is unfair and the proper process is not followed, then an appeal can be made to the Procurement Standardization Committee or a similar methodology.

3. Revise the process as discussed in Chapter 32 for the protest to initially be reviewed by the procurement director, with appeal to a committee as stated in the ABA Code. The process should contain an avenue to proceed with an award while the protest moves forward.

   This will eliminate the opportunity for delay in start-up if a project is critical. Should the County elect to abolish an appeals committee, the aggrieved party files directly with an administrative court. This reduces the opportunity for frivolous actions.

If the County decides to revise its protest and appeal process, the deciding factors should be the length of time the process takes now and eliminating the ability to file frivolous actions that can delay awards. As long as suppliers and contractors have an avenue for grievances, the County is ensuring fair and equitable treatment.

Administrative Manuals

General Assessment and Observations

The NIGP Dictionary of Terms defines procedures as:

> *"The detailed series of related activities that must be completed, and the order in which they must be done, to accomplish a given task."*[6]

NIGP findings and observations include:

1. The procedures reviewed in Administrative Manuals 1.02, 1.13 and 1.14 are detailed and clearly communicate the steps to follow in the areas they cover. The forms and screen shots that are included are helpful. They do not; however, address all of the tasks that should be included and the steps to follow for procurement policies.

2. The primary focus in 1.02 is the requisition process for the Advantage Financial System and it should have a dedicated manual without general procurement procedures.

3. Other procedures focus on how client departments should complete various reports. These instructions are very clear and easy to understand.

4. The purpose of procedures for the County should be to delineate the tasks to enforce policies. Administrative Manual 1.13 Professional Services is the closest to accomplishing this, as it includes procedures for MCGO42 and MCGO 56.30.

5. The manuals were written in early years and require revisions for dollar thresholds. Public work capital projects require competitive sealed bids and Board approval at $20,000 when the threshold has been raised to $25,000. The requirement for competitive sealed proposals for professional services when the threshold reaches $100,000 is not adequately addressed.

6. <u>Procedures are not fully developed</u>. Administrative procedures should delineate step by step tasks in the procurement process that are stated in the policies.

7. There is no description of the procurement process that corresponds with Chapter 32 except what to do when using the Advantage Financial System.

<u>The current administrative procedures are detailed but do not address all areas of procurement.</u> At the very least, these should be updated to reflect the MCGO chapters.

Should the County decide to revise the policies with categories as recommended for Chapter 32, procedures should be written for each of the policies. For example, source selection methods should detail the steps for the five procurement methods. This should be a "how to" for procurement division, architectural, engineering and environmental division and client departments to follow for acquisitions of commodities, equipment and non-professional services; public works and professional services.

[6] NIGP Dictionary of Terms, op. cit. page 88.

Recommendations for Administrative Manuals:

1. Develop a procedures manual that is founded on the County's procurement policies as enumerated in the Milwaukee County Governing Ordinance Chapters. Procedures should accomplish adopted policies.

2. Include in the procedures manual a detailed diagram that flow charts steps in the procurement process.

3. Revise dollar thresholds to reflect the County's current practice and requirements.

4. Develop a separate procedures manual for the Advantage Financial System.

5. Create a client department manual that explains the steps in the procurement process and the role and responsibilities of clients.

6. Create a "How to Do Business" with Milwaukee County for suppliers and contractors.

Procedure, Administrative Manual 1.02 Procurement, Purchase Order Requisition (RX)

Parts of the administrative manual were written in 1967, 1974 and 1977 and revised in 2002. It provides procedures for the following:

- Requisition process for the Advantage Financial System (1.02);
- Authorized requisition signature record (1.03);
- Purchase procedures (1.04);
- Price agreement procedures (1.05);
- Partial receipts for materials and services (1.06);
- Stores requisition (1.07);
- Stores requisition batch header (1.08);
- Quality assurance inspection and testing (1.10);
- Decentralized purchase order (PD) (1.11); and
- Vendor and requisition inquiry.

Sections 1.02,1.05,1.11 and 1.12 are procedures for the Advantage Financial System. The remaining sections are primarily procedures for the client departments.

Purchase Procedures 1.04-3 Departmental Purchase Order

The dollar threshold for departmental spending is $1,000. According to Chapter 32, the discretionary threshold for departments is $2,000.

Recommendations for Administrative Procedure Manual 1.02, Procurement Purchase Procedures:

1. Develop separate manuals for using the Advantage Financial System for clients and procurement staff.

2. Develop procedures for the policies recommended in Chapter 32 that deal specifically with the procurement process.

3. Expand the sections that deal with procurement procedures for departments to include the methods of procurement: competitive sealed bids, negotiations, small purchase (discretionary and open market quotations), emergency and sole source.

4. Revise dollar threshold for departmental discretionary purchases to $2,000.

The manual is very clear and detailed and is an excellent "how to". The inclusion of forms and illustrations enhance the instructions.

Procedure, Administrative Manual 1.13 Procurement, Professional Services

This administrative manual is thorough and details the procedures for the procurement of professional services based on the policies contained in MCGO42 and MCGO56.30. It was issued in 1984 and revised in 2007. It does not contain the revised public work dollar threshold of $25,000. It includes some procedures for inputting requisitions into the Advantage Financial System. The following addresses the sections that require revision.

5A Procurement of Services, Professional Service Definition Requirement

This section states that "any remaining services, which remain undefined, should be forwarded to the Purchasing Standardization Committee for a formal ruling. See County Ordinance 32.23."

Chapter 32.23 does not list this as one of the responsibilities of the Purchasing Standardization Committee. The Corporation Counsel or the procurement director has the knowledge to determine if a procurement should be treated as a professional service.

5D(1) Request for Proposal (RFP), Requirements for Use

A) Contract Values up to $19,999

This does not follow the policy in MCGO56.30. Professional service acquisitions up to this amount do not address the use of a discretionary RFP. The dollar threshold in Chapter 56.30 is >$2,000 < $50,000 for a discretionary procurement.

B) Contract Values of $20,000 to $99,999

This section does not differentiate between a capital and non-capital professional service. If this refers to a capital professional service, then the threshold should be changed to $25,000 to conform to Wisconsin statute and MCGO43.

If this is a non-capital professional service, it does not conform to Chapter 56.30, which says that an RFP is required for procurements of $50,000 unless the administrator deems it is not cost effective.

5D(3) Solicitation of Proposals

Advertising in a public newspaper serving the Milwaukee area is an expensive method that entities are replacing with notification on website. The discussion in Chapter 32 applies here also. Unless Wisconsin statute requires advertising in legal notices of a newspaper of general circulation, the County can utilize a less expensive method.

5D(4) Proposal Evaluation and Vendor Notification Procedures
To ensure objectivity in the proposal evaluation process, a representative from the procurement division should be included on the committee. The evaluations should be fully documented with scores.

5E Documentation of the Selection Process
Whether proposals are scored independently or as a group is not addressed. It is an accepted procurement practice to score proposals individually, then bring the scores to the group for a cumulative scoring.

6 County Board Approval

6C Professional Services – Capital Projects Managed By the Department of Transportation and Public Works and Charged to the Capital Project Funds (1200-1899)
6C1) Contract values to $19,999 should be changed to $24,999 to conform with Wisconsin statute revision and MCGO Chapter 43.

6C2) Contract values $20,000 and greater should be changed to $25,000 to conform with Wisconsin statute revision and MCGO Chapter 43.

6C3) Extensions and amendment thresholds should be changed to $25,000.

6D Professional Services – Operations
Contracts where the value is $100,000 are not addressed. County Board approval is required.

7 Professional Services Contracts
7B Contracts of $2,000 or less
"CBPD" needs to be defined as Community Business Development Partners.

7D1) Contracts over $49,999 must contain the contract language on Non-discrimination, Equal Opportunity and Affirmative Action programs in accordance with MCGO56.17.

The exceptions in 56.17 to contracts containing the language on Non-discrimination, Equal Opportunity and Affirmative Action programs are:

- departmental purchase orders;
- emergency purchases;
- sole source purchases;
- purchases from foreign countries;
- purchases from governmental agencies; and
- purchases from petty cash (limit of $50,000)

There is no mention of contracts under $49,999 being an exception to this requirement.

Checklist for Professional Service Contracts: Capital Improvements Project Section
For Professional Service Contracts Related to Capital Improvements Projects
The $20,000 should be changed to $25,000 to comply with Wisconsin statute and MCGO43.

Checklist for Professional Service Contracts: Professional Service Contracts for General Operations
The $100,000 dollar threshold is not addressed.

Recommendations for Administrative Procedure Manual 1.13 Procurement Professional Services:

1. Rewrite procedures to match the recommendations for policies, including the same headings and sections recommended for Chapter 32.

2. Revise dollar thresholds for capital project requirements to match Wisconsin statute 59.52 as referenced in MCGO43.

3. Delete 5A referral for professional service definition to the Purchasing Standardization Committee. This is not one of the responsibilities of the committee as stated in Chapter 32.23.

4. Replace advertising in a newspaper of general circulation in Milwaukee with internet and web notification.

5. Clarify with Corporation Counsel whether contracts greater than $2,000 and less than $49,999 should contain language on Non-discrimination, Equal Opportunity and Affirmative Action as specified in MCGO56.17.

The County is to be commended for detailed procedures. The Appendices are beneficial and provide excellent communication and instructions. The Checklist is particularly helpful.

Procedure, Administrative Manual 1.14-3

This Administrative Manual addresses procedures for Report of Departmental Purchases (1.14). Request for Non-essential Purchase (1.15), Request for Exemption from Corrective Action Plan (1.20) and Request for Exemption from Corrective Action Plan – Position Actions (1.21)

1.14 Report of Departmental Purchases

The purpose of this report is to provide a method for accounting Minority Business Enterprise (MBE) and Women-owned Business Enterprise (WBE) participation in Departmental Purchase Orders and Professional Services, in accordance with Milwaukee County Board Resolution (File No.82-807). Reporting instructions and form were originated in 1984 and revised in 1989.

References in MCGO42 and MCGO56.30 refer to Disadvantaged Business Enterprise (DBE) instead of Minority Business Enterprise (MBE). It appears departments are tracking Women Owned Business Enterprise (WBE) even though they are listed as a DBE in MCGO56.30.

1.15 Request for Non-essential Purchase

This was issued in 1995 and revised in 1996 for a freeze on expenditures. NIGP has been advised it is no longer used. It should be deleted and the administrative manual revised.

1.20 Request for Exemption from Corrective Action Plan

This was issued in 2008 and revised in 2010 as a control of budgeted spend. NIGP has been advised it is no longer used. It should be deleted and the administrative manual revised.

Miscellaneous Administrative Documents

General Assessment and Observations
While these documents require revisions, they are excellent and well written documents. They can easily be revised to correspond to the recommended policy changes.

The 2008 Audit Report is a stand-alone analysis of the procurement division.

NIGP recommends:

1. Incorporate all documents into separate procedure manuals for procurement division staff and client departments.

2. Add public works and professional services to the revised manual to follow the recommended policy manual.

3. Replace references to purchasing administrator and assistant purchasing administrator to current titles.

4. Re-title A6 Procurement Memo and A6.3.13 Requisition Process and include both in the procedures manual with A6.A Milwaukee County Procurement Division Thresholds.

5. Implement the recommendations of the 2008 Audit Report to include best practices for policies and procedures and revision of current regulations.

6. Audit all categories of procurements on a scheduled basis.

A6 Procurement Memo

This is an excellent diagram for purchases less than $2,000, the client department dollar threshold, and over $2,000 when the request is forwarded to the procurement division. The diagram is not titled but it appears to be working instructions for departments. It is dated 2012 but has the notation there are no changes in 2013.

This type of diagram should be included in procedures. If the County decides to create a separate procedure manual for client departments, then this illustration helps to better understand the process.

Use of the purchasing card for departments is not addressed. It should be added as a method of procurement that has been delegated to departments.

It would be helpful to illustrate dollar thresholds that are discretionary, require informal written bids and dictate the use of the formal process – competitive sealed bids or competitive sealed proposals. Document A.6.313 is relevant and could be used for departments as well as the procurement division.

This type of diagram should be included in the procedures for professional services and public work procurements. The procurement division has an illustration in A6.313.

A6.A Milwaukee County Procurement Division Purchasing Thresholds

This is an excellent diagram that illustrates the dollar thresholds that require the different methods of procurement. It should be included in a procedures manual, along with public works and professional services dollar threshold requirements.

The document is current, noting no changes as of January 2013.

A6.3.13 Requisition Process

The procedures are based on the policies contained in MCGO32. They have a revision date of 2002 with a "no changes" in January 2013.

These are very detailed and easy to follow procedures. They correspond and represent the relevant sections in Chapter 32 but do require revisions in some of the sections. The citations to the specific sections in 32 are denoted which makes it easy to cross reference.

Because they address the procurement process and not just the requisition process, the title should be changed to "Procedures for Chapter 32 Policy."

The following addresses the particular sections:

Chapter 1, 1.3 Buyer Function, 1.31 General Awards
1.31-a Editing and Awarding from Requisitions, (4)
This section states that "no requisition is to be returned to the department without the approval of the purchasing coordinator." The fact that it is part of the procedures is commendable. If there is anything that upsets a requestor, it is having a requisition returned for a reason that could have been resolved with a phone call.

1.32-b Bid Processing for Blanket Contracts (4)
References to Assistant Purchasing Administrator and Purchasing Administrator should be changed to the current titles.

Chapter 2 Exceptions to Competitive Bidding and Awarding
Reference to the Purchasing Administrator should be changed to current title.

Section 2.4 Discretionary Purchases
Dollar threshold should be revised from $5,000 to $10,000.

Section 2.6 Public Works Project Special Provision
Reference to Purchasing Administrator should be changed to current title.

Chapter 4 Protest and Appeal Procedure
References to Purchasing Administrator should be changed to current title.

Should the County elect to revise its protest and appeal process, the procedure should reflect the new policy.

Chapter 8 Negotiations and Competitive Proposals
References to Purchasing Administrator should be changed to current title.

Section 8.12 Evaluation Committee
As noted in the discussion in Chapter 32, a representative from the procurement division, preferably the buyer who managed the proposal solicitation should sit on the evaluation committee. This ensures objectivity in the evaluation process. It also helps buyers better understand the services required and the departments' needs.

RFP Evaluation Rules
This clearly defines responsibilities for members of the evaluation committee. The procurement division director may want to submit this to the NIGP library to share with his peers, as not all entities have a document like this.

8.15 Protest to Award
From the correction made where certified mail/return receipt has been marked through and replaced by fax machine transmission, it appears the County is no longer utilizing the mailing. If this is correct, Chapter 32 should be revised to reflect the current practice.

Should the County decide to revise its protest and appeal procedure, the procedures should be revised also to reflect the change.

Attachments A, B, C, D and E
The Contract Negotiation Request Form (attachment A), the Scoring Method (attachment B) the Evaluation Categories (attachment C), General Instructions for the Evaluation of the RFP (attachment D) and Evaluation Form (attachment E) are useful documents that provide information to evaluators to assist in scoring. So many times client department participants who are part of the evaluation committee for the first time do not know what they need to do. Scoring as objectively as possible in a subjective process can be difficult. These are very good samples.

A6.3.15 Purchasing Authority
This Power Point "How to Buy Stuff" is a training tool that requires revision (reference to purchasing administrator). It is a thorough overview of the process that includes forms. The creation date was 2001.

An Audit of the Milwaukee County Procurement Division 2008
The findings included in the 2008 audit of the procurement division include the following findings that are included in the scope of work for this engagement:

- "significant deficiencies in Procurement's written policies and procedures"
- "a lack of strict observance of procedures"
- "written policies and procedures have not been updated since 2002, even though significant procedural changes have occurred."

A best practice in the procurement profession is to have an audit of the function once each year. This annual practice ensures compliance with procedures and verifies whether or not recommendations from the previous audit have been implemented. If they have not, auditors are able to identify obstacles that prevented implementation.

One of the primary goals for procurement should be transparency. In addition to being a best practice, transparency prevents abuse and fraud. Having an objective party conduct an

analysis ensures that the function is above reproach and that all participants in the process are following policies, procedures and regulations.

Recommendation #8 of the report states that the County should "initiate a review of Best Practices in government procurement policies and procedures and incorporate such in a complete revision of Milwaukee County Procurement Policies and Procedures." A summary of best practices for procurement policies and procedures is included in this report.

Recommendations for 2008 Audit:

1. Schedule an audit for commodities and non-professional services (the procurement division), public works (department of transportation and architectural, engineering and environment services division) and professional services acquisitions (client departments).

2. Conduct annual audits. If Internal Audit staff does not have sufficient staff for annual audits of the categories of procurements, stagger over a three year period.

3. Revise, strengthen and standardize policies and procedures.

4. Incorporate the best practices contained in this report into policies and procedures.

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Wisconsin Statutes

As part of the Scope of Work, NIGP reviewed State of Wisconsin legislation that impacts Milwaukee County's procurement.

Article 14, Public Contracts for Populous Counties over 750,000

Created 16.59.52

Created in 2013, the Article states:

(b) 1. Any contract with a value of at least $100,000, but not more than $300,000, to which a county is a party and which satisfies any other statutory requirements, may take effect only if the board's finance committee does not vote to approve or reject the contract within 14 days after the contract is signed or countersigned by the county executive, or as described in subd. 2.

2. If a board's finance committee votes to approve a contract described under subd. 1, the contract may take effect. If a board's finance committee votes to reject a contract described under subd. 1., the contract may take effect only if the contract is approved by a vote of the board within 30 days after the board's finance committee votes to reject the contract.

(c) Any single contract, or group of contracts between the same parties which generally relate to the same transaction, with a value or aggregate value of more than $300,000, to which a county is a party and which satisfies any other statutory requirements, may take effect only if it is approved by a vote of the board.

d) With regard to any contract to which a county is a party and which is subject to review by the board or by a committee of the board under this subsection, the board's finance committee is the only committee which has jurisdiction over the contract.

If the County considers raising the dollar threshold that requires Board approval, Act 14 provides the basis for such action. The threshold for formal bids and proposals could transition as well.

59.52(29) Public Works

This statute section sets the formal bid requirement at $25,000 that was previously $20,000. It specifies the award shall be to the lowest responsible bidder. The section reads as follows:

Public Work, how done, public emergencies (a)all public work including any contract for the construction, repair, remodeling or improvement of any public work, building or furnishing of supplies or materials of any kind where the estimated cost of such work shall exceed $25,000 shall be let by contract to the lowest responsible bidder. Any public work, the estimated cost of which does not exceed $25,000 shall be let as the Board may direct.

This subsection does not apply to highway contracts which the highway committee or the county highway commissioner is authorized by law to let or make.

66.0901 Public Works, Contracts Bids

This statute specifies that public works contracts be acquired by competitive sealed bids with award to the lowest responsible bidder. It establishes pre-qualifications of bidders and addresses rejection of bids and corrections of errors in bids. Other areas contained in the statute are classification of contracts and provides the ability to divide work and bid and award on that basis.

The statute requires a sworn certificate from the bidder that all documents have been examined prior to submission to the County and requires that a list of subcontractors who will perform any part of the work be provided.

MCGO43 and MCGO44 follow these chapters for public work acquisitions.

The Wisconsin statutes that govern County public works projects are consistent with those of other counties. Most entities follow their state statutes for public works contracts.

46.23 County Department of Human Services

Wisconsin Statute 46.23 establishes departments of human services for counties through the Board of Supervisors. The county board of supervisors in a county with a single-county department of human services may transfer the powers and duties to the department. This appears to be the basis for the Department of Human Services to have responsibility for procurement to carry out responsibilities for human services.

66.0131 Local Government Purchasing

The following subchapters impact the County's procurement:

- **Intergovernmental Purchases without Bids (66.0131.2)**
  Notwithstanding any statute requiring bids for public purchases, any local governmental unit may make purchases from another unit of government, including the state or federal government, without bids. (Note: Applies only to procurements under $100,000 threshold.)

  MCGO32.31 provides for cooperative or intergovernmental purchasing. The section does not reflect the limit of less than $100,000. If the County is following the statute, it should be noted.

- **Recycling (66.0131(3)(a)1**
  A local governmental unit to the extent practicable, must make purchasing selections using specifications developed by state agencies under § 16.72(2)(e) to maximize the purchase of products utilizing recycled or recovered materials.

- **Recycling (66.0131(3)(a)2**
  Local governments must purchase at least a minimum amount of paper made from recycled or recovered content. Local governments must ensure the average recycled or recovered content of all paper purchased, measured as a proportion, by weight, of the fiber content of all paper products purchased in a year, is not less than 40% of all purchased paper.

There is no discussion of purchase of recycled materials or reference to the Wisconsin statute in Chapter 32. Purchasing "green" is a recognized best practice and should be included in policies and procedures.

- **Life Cycle Cost Estimate (66.0131(5)**
  A local governmental unit shall award each order or contract for materials, supplies or equipment on the basis of life cycle cost estimates whenever that action is appropriate. The terms, conditions and evaluation criteria to be applied shall be incorporated into the solicitation of bids or proposals. The life cycle cost formula may include, but is not limited to, the applicable costs of energy efficiency, acquisition and conversion, money, transportation, warehousing and distribution, training, operation and maintenance, and disposition or resale.

  Life cycle costing/total cost bidding is a preferred method for procurement of equipment. It is applicable for both competitive sealed bids and proposals. The total cost of ownership applies to public work and non-public work capital assets.

The County should be utilizing these best practices and include it in its policies and procedures.

Recommendations for Wisconsin Statutes:

1. Note the less than $100,000 limit for cooperative/intergovernmental purchases if the County is following this statute.

2. Include a section on purchasing recycle materials in policies and procedures.

3. Include a section on life cycle costing in public works and procurement policies and procedures.

4. Consider raising the dollar threshold for formal bids and proposals and Board approval to $100,000, based upon Article 14.

The 2000 Model Procurement Code for State and Local Governments

The ABA represents the standard for procurement in the public sector. The Code provides:

1. The statutory principles and policy guidance for managing and controlling the procurement of supplies, services, and construction for public purposes;

2. Administrative and judicial remedies for the resolution of controversies relating to public contracts; and

3. A set of ethical standards governing public and private participants in the procurement process.[7]

There are not many local governments that have an independent procurement function that reports directly to the chief executive officer. Most report to the chief financial officer or the director of the department of administration based upon the government's organizational structure and its particular needs – i.e. what works best for efficiency and effectiveness. Still, the Code is very relevant and serves as a model for local government procurement.

The ABA Code is a best practice and modeling the procurement function, with necessary adaptations to meet the government's needs ensures transparency and ethical buying. While not all governments can afford to have a chief procurement officer, sufficient authority can be vested with the person in charge to assure a strong procurement operation.

Adopting the model of the Code increases communication and understanding. If there is one document that contains all policies, then ability to circumvent the process is reduced. The result is less confusion, reduced duplication, elimination of waste and protection against abuse by participants in the process – both procurement personnel and client departments.

The Code is referenced for relevant sections throughout the report. While localities may not need an exact duplication of the Code, they do need policies that promote open competition, transparency and equitable treatment of suppliers and contractors.

[7] Op.cit., *ABA Code*, page xi.

Policies and Procedures
Fairfax County, Virginia
Waukesha County, Wisconsin

The County selected two counties to compare policies and procedures. Fairfax County, Virginia has a population of 1,081,726 and Waukesha County has a population of 389,891[8] There are ten members elected to the Board of Supervisors for Fairfax County and twenty-five for Waukesha County.

Fairfax County is often used as a benchmark for entity comparisons. The Purchasing and Supply Department is the primary agency for the procurement of goods and services for the Fairfax County Government and Fairfax County Public Schools.[9] The department provides the county government with overall material management which includes purchasing, non-capital construction, warehousing, inventory management, and fixed asset accountability. Support is also provided for purchasing, and fixed asset accountability for the Fairfax County Public Schools.[10]

The Fairfax County Purchasing Resolution prescribes the basic policies for the conduct of all purchasing in the County. It was revised in July 2013. Purchasing is regulated by the *Code of Virginia, Virginia Public Procurement Act* which governs the purchase of supplies, materials, equipment and contractual services from nongovernmental sources and specifies the method of procurement.

Articles in the *Resolution include:*

I. General Provisions
II. Purchasing Policies
III. Construction Contracting
IV. Bidder/Contract Remedies
V. Ethics in County Contracting
VI. Supply Management

While the Articles are different from those in the ABA Code, the outline is basically the same.

Similar to Milwaukee County, construction and public works contracts are vested outside of the authority of Purchasing and Supply. Professional services are the responsibility of the Purchasing and Supply Department.

The policies are included in the *Resolution* and delineated in the procedures. The *Resolution* is available on the County's website and serves as a mechanism to enhance the government's transparency.

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[8] National Association of Counties, 2010 Population, Website http://www.naco.org/counties/pages/findacounty.aspx
[9] Fairfax County, Virginia Website http://www.fairfaxcounty.gov/dpsm/
[10] Ibid.

Fairfax County's resolution is an excellent document and should Milwaukee decide to rewrite their policies, a valuable resource and guide.

Similar to Milwaukee County, Waukesha County is governed by ordinances that are the basis for its policies. The purchasing manager is responsible for procurement for all county departments.

Chapter 8, Section 2.492(a) provides the ability to adjust the dollar threshold (currently at $25,000) on an annual basis by the purchasing manager based on inflation factors. The manager also has the ability to negotiate an adjustment of a bid price with the lowest responsive and responsible bidder, including changes in the bid requirements to bring the bid price to available funds. The lowest responsive and responsible bidder cannot exceed available funds by more than 5%.

This allows greater flexibility for the County to conduct business than Chapter 32.38 which requires contacting all responsive and responsible bidders to give them an opportunity to negotiate. Realistically, this has the opportunity to cause more problems than a statement in the bid terms and conditions that the County has the right to negotiate with the lowest responsive and responsible bidder if the bid price exceeds available funding. The County needs to explicitly state the conditions that allow negotiation.

The ability to negotiate an adjustment to a bid price that exceeds available funding eliminates having to rebid, saving time for the entity and the offeror. Negotiating with the lowest responsive and responsible bidder provides a safeguard and maintains fairness.

These two provisions result in efficiency and value to the entity. Being able to adjust the formal dollar threshold to inflation eliminates the governing body from having to change legislation and policy. Typically when an entity wants to raise the formal competitive requirement, either legal or procurement researches "what other entities are doing". While this benchmarking is a good practice to perform periodically, it is time consuming.

Waukesha has a set of guidelines for all of its procurement activities. These are detailed and easy to understand. The instructions for both purchasing and the client departments are explicit. One section includes a "Will Do" and a "Will Not Do" section. The "Will Do" list includes the County's Chart of Accounts (object codes) for commodities and services that the purchasing division adds value by handling. The "Will Not Do" list shows the object codes that client departments handling provides the greater value, as long as they follow procedures.

Similar to Milwaukee, Waukesha has forms and a check list for RFP's that are excellent.

Waukesha County transitioned to Oracle two years ago and has delayed updating its procurement procedures for the new system. The procedures currently being used are very specific. They combine relevant general procurement procedures as they relate to the process for the financial/procurement system. They include all areas of procurement so that a new employee would have no trouble understanding how to do a task.

There is an excellent section on setting up Bid and RFP files and a very good check list for RFP's.

The County selected two entities for comparison that have excellent policies and procedures in place. Should the County elect to revise its documents based on the recommendations contained in this report, both counties' policies and procedures provide solid examples.

Best Practices in Public Sector Procurement for Policies and Procedures

NIGP was asked by Patrick Lee, Procurement Division Director to identify best practices in the public procurement profession that relate to policies and procedures. The 2008 Audit Report also recommends that best practices be incorporated in Chapter 32, the procurement division's policies.

The NIGP Dictionary of Terms defines best practice as:

> *A business process, activity or operation that is considered outstanding, innovative or exceptionally creative by a recognized peer group. It may be considered as a leading edge activity that has been successfully adopted or implemented and has brought efficiency and effectiveness to an organization. It may result in approved productivity, quality, reduced costs and increased customer service.*

Identifying and incorporating best practices allows an entity to recognize problem areas and focus on improvement based on approaches that have already been successfully used.

Best practices are normally included in a process review as part of recommendations to improve the procurement function. While some of the best practices listed in this section typically apply to a review, they should be documented in policies and procedures, particularly if they are being utilized.

1. **Life cycle costing**
   This is addressed in Wisconsin Statute 66.0131(5) but is not included in Chapters 32 or 44.

2. **Transparency**
   Transparency in government is accomplished by clearly expressed, readily available regulations, policies and procedures. Technology is one way to promote transparency. Utilizing the web site to post policies, bid and proposal terms and conditions results in a clearer understanding of how the County operates and provides easy access for participants in the process.

3. **Standard documents**
   The ABA Code is a model for local governments. Standard documents – such as one document that includes all policies minimize confusion and strengthen the process.

4. **Clear instructions for evaluating proposals**
   The County already has these for procurement of professional and non-professional services. The samples and instructions are excellent documents and only need to be included in a procedural manual.

5. **Conduct briefings for non-successful bidders and proposers.**
   This practice helps suppliers and contractors understand why they were not successful in bid or proposal award. It is also an important step that fosters good relationships in that it increases communication, knowledge of the procurement

process and most important, transparency. The County is following this best practice.

Appendix A

References

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Appendix B

Summary of Recommendations

General Recommendations

1. Strengthen the procurement function and the role of the procurement director. Once authority has been delegated by the director of administrative services, the roles and responsibilities of the procurement division and its director should be clearly communicated.

2. Develop a policy manual that combines all MCGO chapters that govern procurement. The manual should contain the ordinances, as these are the County's policies. The County may want to add other policies as well.

3. Clearly distinguish between policies and procedures.. The two can be combined into the same document as long as a clear distinction is made between the two. The simplest action for the County would be to have two separate documents.

4. Publish the new policies and procedures manual on the County website. This will allow access to all participants in the procurement process and strengthen the role and understanding of the procurement division for both clients and vendors.

5. Revise dollar thresholds for purchases where cost is less than those that require a formal process. Informal bidding and small purchase amounts range from $2,000 to $5,000 to $10,000. Although the authority for procurement is split for procurement of commodities and non-professional services, public works and professional services, consistent thresholds would reduce confusion.

6. Consider raising the threshold for competitive sealed bids and proposals and Board approval to $100,000, to reflect Act 14. This is in line with several counties the size of Milwaukee. A public works contract is an exception as long as Wisconsin statute specifies $25,000.

7. Develop a separate manual for client departments and a "How to Conduct Business with Milwaukee County" manual for suppliers and contractors. Conduct regularly scheduled training classes for both groups.

8. Use the same definitions in all chapters for procurement, public works and professional services.

9. Implement one protest and appeal process that begins with the procurement division director that does not allow for an avenue to delay bid awards for critical purchases and projects.

10. Consider conducting a review of the procurement function to determine if greater efficiencies can be realized and if maximum value is being realized with the current arrangement.

11. Conduct regularly scheduled audits for all categories of procurements, preferably annually but at least every three years.

Recommendations for Chapter 32

1. Rewrite Chapter 32 based on the suggested policy with appropriate articles. Combine current sections as noted.

2. Delete "and his or her designee" as delegation has been assigned by the department of administrative services in section 32.21.

3. Strengthen the role of procurement and the procurement director by adding responsibilities, including control of all procurement forms.

4. Create separate manuals for policies and procedures, as noted and recommended throughout this report.

5. Provide more detail for the competitive sealed bid method of procurement. Once the preferred method is addressed, other methods of procurement can be discussed.

6. Eliminate the use of certified mail, return receipt requested for notification of intent to award to other than low bidder.

7. Revise the role of the Purchasing Standardization Committee.

Recommendation for Chapter 42

Counsel should research DBE and public work awards to other than low responsible bidder to see if any legal actions or decisions have been made. This will assure the County is in compliance with DBE and public works contracts acquisitions. If there is a conflict, the County should revise its ordinance and DBE program to conform with State law.

Recommendation for Chapter 43

Add definitions so that this chapter will be consistent in form to others governing procurement.

Recommendations for Chapter 44

1. The competitive sealed bid process for public advertising, selection of contractors, receipt and opening of bids are generally the same for procurement and public works. *Article IV Public Works Contracts* in the recommended policy manual should reference the process, then describe the additional or different requirements for public works acquisitions.

2. Amend the chapter to specify the change in the dollar threshold, from $20,000 to $25,000.

3. Revise dollar thresholds for small and discretional purchases to match those of the procurement division.

4. Replace public notice advertising in a newspaper with on-line notification of future bids (unless Wisconsin statute requires advertising in legal notices).

5. Place responsibility for opening bids in the procurement division, rather than the County Clerk's office. The steps in the bid process are universal and accepted practices in public sector procurement. The ABA Code recommends the Chief Procurement Officer have responsibility for these duties.

6. Add definitions for consistency with other chapters.

7. If the procurement director is the person delegated by the director of administrative services to share in the responsibilities for public works contracts with the director of architectural, engineering and environmental services, include this delegation.

Recommendations for Chapter 46

There are no recommendations for Chapter 46.

Recommendations for Chapter 56.30

1. Revise dollar threshold from $20,000 to $25,000 per Wisconsin statute 59.52.

2. Delete subsection 5(1-1) and require request for proposals where cost is $50,000.

3. Remove procedures from 7(a) and include them in a separate administrative procedures manual.

Recommendations for Chapter 110

1. The protest and appeals process should be universal and apply to all acquisitions. This includes procurement (Chapter 32), Public Works (Chapter 44), and Professional Services (Chapter 56).

2. Revise the process as discussed in Chapter 32 for the protest to initially be reviewed by the procurement director, with appeal to a committee as stated in the ABA Code. The procurement division logically should be the first step in the protest process.

Recommendations for Administrative Procedures

1. Incorporate all documents into separate procedure manuals for procurement division staff and client departments.

2. Include an organizational chart of the procurement division, contact information and a list that shows assignment of commodities and nonprofessional services.

3. The separate procedures manual should include the detailed steps in each process and a flow chart that diagrams the procurement cycle.

4. Add public works and professional services to the revised manual to follow the policy manual.

5. Replace references to purchasing administrator and assistant purchasing administrator to current titles.

6. Re-title A6 Procurement Memo and A6.3.13 Requisition Process with Procurement Process and include both in the procedures manual with A6.A Milwaukee County Procurement Division Thresholds.

7. Implement the recommendations of the 2008 Audit Report to include best practices for policies and procedures and revision of current regulations.

8. Audit all categories of procurements on a scheduled basis.

9. Include procedures for debriefings of suppliers and contractors.

Appendix C

Comparison of Dollar Thresholds for Formal Bids and Proposals

Entity	Population 2010) National Assoc. of Counties	Annual Budget – General Fund (Operating) 2012	Formal Bid Threshold
Milwaukee County, WI	947,735	$1.22 billion	$ 50,000
Allegheny County, PA	1,223,348	$730.5 million	$ 30,000
Mecklenburg County NC*	919,628	$1.38 billion	$ 100,000
City Portland, OR	593,820	$186 million	$ 150,000
City of St. Petersburg, FL	244,997	$461.9 million	$ 50,000
City of Tucson, AZ	858,464	$426 million	$ 50,000
Du Page County, IL	916,924	$598.08 million	$ 25,000
Fairfax County, VA	1,081,726	$3.38 billion	$ 50,000
Fulton County, GA	920,581	$520.4 million	$ 50,000
Harris County, TX	4,092,459	$1.562 billion	$ 50,000
Hennepin County, MN	1,152,425	$1.649 billion	$ 10,000
Hillsborough County, FL	1,229,226	$2.95 billion	$ 100,000
Dade County, FL*	2,496,435	$1.167 billion	$ 100,000
Davidson County, TN*	626,281	$1.58 billion	$ 10,000
Oakland County, MI	1,202,362	$412 million	$ 20,000
Pima County, AZ	980,263	$1.04 billion	$ 50,000
Pinellas County, FL	916,542	$1.63 billion	$ 100,000
Salt Lake County, UT	1,092,655	$1.04 billion	$ 100,000
Shelby County, TN	927,644	$359 million	$ 15,000
St. Louis County, MO	998,954	$546 million	$ 25,000
Travis County, TX	1,024.266	$757 million	$ 50,000

St. Louis, MO Benchmark Report, Comparison of Dollar Thresholds 2012, Adapted with population added.

Budgets include the following:

Mecklenburg County – City of Charlotte
Dade County – City of Miami
Davidson County – City of Nashville

Appendix D

Bio of NIGP Consultant

Connie Hinson, CPPO

Ms. Hinson has over 30 years of accomplishments and experience in local government that includes leadership roles in management and at the executive level of government. Her experience spans from Purchasing Division Director to Support Services Department Director, overseeing information technology, communications, public information and web development, construction management, facilities, fleet, elections and board of registration. She has extensive knowledge of the political process and organizational structure, behavior and dynamics.

She served on the NIGP Board of Directors, was an NIGP Master Instructor, authored *Welcome to Public Procurement* and co-authored *Planning and Scheduling Analysis.*

Ms. Hinson has performed procurement reviews for cities and counties in Kansas City, Missouri; the District of Columbia, Baltimore, Maryland; Minneapolis, Minnesota; DeKalb County, Georgia and Houston Community College in Houston, Texas. She has been a member of the consulting program since its inception in 1995 and served as the Consulting Program Manager for NIGP from 2008-2013.

EDUCATION

Master of Public Administration	University of South Carolina Columbia, South Carolina
Bachelor of Arts, Political Science	University of South Carolina Columbia, South Carolina

PROFESSIONAL CERTIFICATION

Certified Public Purchasing Officer, Universal Public Purchasing Certification Council

ADVANCED QUALIFICATIONS

Previous Master Instructor, National Institute of Governmental Purchasing, Inc.
Senior Consultant, National Institute of Governmental Purchasing, Inc.

AREAS OF EXPERTISE

General Areas
Organizational Dynamics & Relationships
Development and Improvement
Capital Projects Management
Performance Measurements
Goals Determination and Scorecard
Team Building and Motivation

Procurement & Materials Management
Procurement Process Planning,
Strategic Planning Improvement
Specification Development
Bid and Proposal Processes
Course Development
Surplus Property Disposal

Fleet Management
Elections and Board of Registration
Change Management
Capital and Operating Budget Management
Human Resource Management
P-Card Program and Implementation
Construction Service Delivery
Policy and Procedures Manuals
Contract Management and Administration

Information Technology
Enterprise Resource Planning Systems
Procurement E-Commerce

WORK EXPERIENCE

2008 – 2013	Consultant Program Manager National Institute of Governmental Purchasing, Inc.
2001-2007	Director of Support Services Gwinnett County, GA
1985-2001	Director of Purchasing Gwinnett County, GA
1983-1985	Government Services Specialist University of South Carolina
1974-1983	Director of Purchasing Richland County, SC

PUBLICATIONS

Purchasing in Local Government, Local Government Financial Program, Carl Vinson Institute of Government, University of Georgia, 1998.

Welcome to Public Procurement, National Institute of Governmental Purchasing, 1999.

Planning, Scheduling and Requirements Analysis, co-authored, National Institute of Governmental Purchasing, Inc. copyright 2004.

ACHIEVEMENTS

NIGP Board of Directors, 2000-2001
Leadership Gwinnett
Atlanta Regional Leadership

CONSULTING EXPERIENCE

Houston Community College, Procurement Review Conducted a review of the procurement process, analyzed organization and staffing and determined if recommendations from a previous report have been implemented.

DeKalb County, GA, Management Review (Consultant, Nashill, Inc.). Conducted a management review of the organizations purchasing practices, policies, procedures and workflow.

DeKalb County, GA, Procedures Manual (Consultant, Nashill, Inc.). Produced a procedures manual that incorporated the Oracle process into the manual.

City of Baltimore, MD, **Bureau of Purchasing, Procurement Management Review** (Lead Consultant). Conducted a review of the purchasing process and workflow, administrative support for purchasing and the purchasing/accounts payable functions. Identified best practices.

City of Kansas City, MO, **Comprehensive Business Review** (Senior Consultant). Conducted a review that assessed the procurement organization, methods of procurement, use of technology, customer satisfaction, supplier relations, benchmarks and best practices.

COUNTY OF MILWAUKEE

INTEROFFICE COMMUNICATION

Office of the Comptroller

DATE : March 28, 2014

TO : Supervisor Marina Dimitrijevic, Chairwoman, County Board of Supervisors

FROM : Scott B. Manske, Comptroller

SUBJECT: Request to Update Milwaukee County General Ordinances Chapters 32, 44, 56 and 110

Policy Issue

A recent review of the process for appealing a Request for Proposal (RFP) and County Ordinances on this subject including Chapters 56 – Professional Services, Chapter 32 on procurement, Chapter 44 on projects and 110 – Municipal Administrative results in this request to the County Board to modify the policy contained within the ordinances. The recommended change is to clarify and unify the appeal procedures for all county contracts and bids and to provide further direction to Department Heads in the preparation and execution of RFPs for professional services.

Current Ordinances

Chapter 56 establishes the procedure by which contracts for Professional Services are issued and the requirements of departments when executing those contracts. It does not currently specify any procedure to follow in the event of an appeal of a contract resulting from an RFP process. Chapters 32 and 44 contain different appeal procedures following the award of a project pursuant to bids and following the award of a contract for non-professional services or for commodities.

Chapter 110 of the Milwaukee County General Ordinances establishes that any person having a substantial interest which is adversely affected by an administrative determination by the County may have such determination reviewed under the specifics laid out in this Chapter.

Recommended Changes

The first major recommended change is to have all awards of contracts or bids by the county be governed by the same appeal process. Thus, any award of a contract for nonprofessional services or for commodities under chapter 32, any award of a project pursuant to a bid process under chapter 44 and any award of a contract for professional services under chapter 56 will be governed by one appeal process; that process is contained in a new section 110.20 of the ordinances. Amendments are made to chapters 32, 44, 56 and 110 to cross-reference the new contract award review process now contained in chapter 110.20.

The steps of the new process are as follows:

- a notice is given to the bidders or proposers of the intent to award,
- an aggrieved party may request a review by the authority by filing a request within 10 business days; the request for review must include the party's reasons for reconsideration,
- the authority must provide a response within 15 business days, but that deadline may be extended by the authority up to a total of 45 calendar days;
- the aggrieved party may request a review within 5 business days of the response and must pay a deposit of $1,000.00 towards the costs of the review;
- a Contract Award Reviewer is assigned to hear the review and may conduct any type of review proceeding the reviewer deems appropriate;
- The Reviewer is charged with determining if substantial procedural irregularities occurred in the RFP process and if the notice of intent to award should be rescinded;
- The reviewer issues a decision within 45 calendar days of the request.

A pool or panel of three reviewers is created to hear the reviews. The individuals are appointed by the County Executive with confirmation by the County Board. The reviewers must have experience with procurement or legal issues related to procurement. They serve 3 year terms and may be re-appointed. The reviews are assigned by alphabetical rotation among the reviewers. The reviewers are entitled to payment of an hourly rate set by the budget or, if not set in the budget, set by the Procurement Director. The County authority and the party that requested the review are each responsible for one-half of the cost of review. A requester must pay a $1,000 deposit towards those costs.

The test to be applied by the reviewer is whether substantial rights of a party were so materially affected by procedural irregularities during the RFP or bid solicitation process that the notice of intent to award should be rescinded.

The existing process contained in chapter 110 remains in place for all other reviews that are not contract award reviews.

Chapter 56

There are three major changes recommended for Chapter 56. First, the ordinance should be modified to direct all departments to include an appeal provision in their RFP that states that the County will follow the procedure established under Milwaukee County General Ordinances Chapter 110.20 for appeals of awards for RFPs. Second, Chapter 56 should also be modified to state that any appeal of intent to award in an RFP process will follow Chapter 110.20. This provides for instances where a department fails to include the necessary language in their RFP.

The third modification is the inclusion of the following listed requirements in the request to the Board for approval of any professional service contract:

- Department name and number.
- Dollar amount of contract.
- Name of professional services vendor under contract
- Length of time of contract
- Purpose of contract.
- Manner in which County policy on DBE goals was met, if applicable.
- Termination clauses
- Number of responses to RFP
- Whether any appeals were filed

Chapter 32 – Subchapter II - Procurement

Under County Ordinance Chapter 32, the office of procurement has an appeal process for both RFP and bids that is separate from Chapter 110 of the ordinances. The appeal process under Chapter 32 uses a Purchasing Standardization Committee, which generally would consist of other outside procurement directors. The changes proposed under Chapter 32 would be to eliminate the use of a Purchasing Standardization Committee from the appeal process for an RFP. Instead, the appeal would use the new section 110.20 of the County Ordinances, as proposed.

Chapter 44 – Public Works Contracts

Under this chapter a public works contract includes contracts for the purchase of services in connection with public works and facilities management work. This work shall be issued by competitive bid. The current appeal process under this chapter is Chapter 110, as currently written. The proposal would be to change the appeal process to Chapter 110.20, as proposed in the attached resolution.

Committee Action

Approval of the attached ordinance changes are requested by the Comptroller to clarify the County's appeal process in regards to the awarding of contracts under chapter 32,

44, and 56 and the appeal process of Chapter 110 of Milwaukee County Ordinances, as a result of an RFP process.

Scott B. Manske
Comptroller

cc: Chris Abele, County Executive
Supervisor Willie Johnson, Jr., Co-Chairman, Finance, Audit and Personnel Committee
Supervisor David Cullen, Co-Chairman, Finance, Audit and Personnel Committee
Don Tyler, Director, Department of Administrative Services
Stephen Cady, Fiscal and Budget Analyst, County Board

File No.

(ITEM) From the Comptroller, recommending adoption of a resolution/ordinance to amend Chapters 32, 44, 56 and 110 of the Milwaukee County Code of General Ordinances relating to an appeal process for review of contract or bid awards, by recommending adoption of the following:

A RESOLUTION

WHEREAS, a recent review of Chapters 56 – Professional Services and 110 – Municipal Administrative Procedure results in the need to modify the policy contained within the ordinances to clarify the review of contract awards following an RFP process and to provide further direction to Department Heads in the preparation and execution of RFPs; and

WHEREAS, Chapter 32 currently contains a separate review process for contracts covered by that chapter; and

WHEREAS, Chapter 44 currently contains a separate review process for bids covered by that chapter; and

WHEREAS, Chapter 56 establishes the procedure by which contracts for Professional Services are issued and the requirements of departments when executing those contracts and it does not currently specify any procedure to follow in the event of an appeal of a contract resulting from an RFP process; and

WHEREAS, it is advantageous to have one process for the review of all contract or bid awards; and

WHEREAS, Chapter 110 of the Milwaukee County General Ordinances establishes that any person having a substantial interest which is adversely affected by an administrative determination by the County may have such determination reviewed under the specifics laid out in this Chapter; and

WHEREAS, reviews of contract or bid awards should be addressed by a procedure separate from the procedure currently applicable to other matters addressed by Chapter 110; and

WHEREAS, all departments should include an appeal provision in their RFP that states that the County will follow the procedure established herein; and

WHEREAS, the following listed items should be required in a request to the Board for approval of any professional service contract:

- Department name and number.
- Dollar amount of contract.
- Name of professional services vendor under contract
- Length of time of contract
- Purpose of contract.
- Selection of qualified DBE firm, if applicable
- Termination clauses
- Number of responses to RFP
- Whether any appeals were filed; and

WHEREAS, as a part of the appeal process a panel of qualified reviewers should be created by Milwaukee County and be comprised of three individuals appointed by the County Executive and confirmed by the County Board; and

WHEREAS, requesters should be required to pay for one-half of the costs of such reviews;

now, therefore,

BE IT RESOLVED, that the Milwaukee County Board of Supervisors hereby amends Chapters 32, 44, 56 and 110 of the Milwaukee County Code of General Ordinances by adopting the following:

AN ORDINANCE

The County Board of Supervisors of the County of Milwaukee does ordain as follows:

SECTION 1. Chapter 110 of the General Ordinances of Milwaukee County is amended as follows:

<u>110.01. – County Procedure Act</u>

(a) The county elects not to be governed by the provisions of Ch. 68, Wis. Stats., except for s. 68.13, Wis. Stats., regarding judicial review, which shall apply to circuit court certiorari reviews of ~~committee~~ <u>final</u> decisions <u>under this chapter</u>. The common law rules applicable to certiorari review by a court shall govern such appeals.

(b) Any person having a substantial interest which is adversely affected by an administrative determination, as set forth in sections 110.02(b) and 110.20, of a county authority, as defined in section 110.02 (a), below, may have such determination reviewed as provided in this chapter.

(c) The remedies under this chapter shall be exclusive.

110.02. - Definition and reviewable/non-reviewable determinations.

(a) "County authority" includes every county body, board, commission, committee, agency, officer, employe, or agent thereof making a determination under subsection (b), except the county board of supervisors or a duly constituted committee or subcommittee thereof.

(b) The following determinations are reviewable under ~~this chapter~~subsections 110.03 – 110.10:

(1) Except as provided in section 110.02(c)(2) and 110.20, t~~T~~he grant or denial in whole or in part after application of a ~~contract,~~ permit, license, right, privilege, or authority.

(2) The suspension, revocation or nonrenewal of an existing ~~contract,~~ permit, license, right, privilege, or authority.

(3) The denial of a grant of money or other thing of substantial value under a statute or ordinance prescribing conditions of eligibility for such grant.

(4) The imposition of a penalty or sanction upon any person except a county employe or officer, other than by a court.

(c) The following determinations are not reviewable under ~~this chapter~~subsections 110.03 – 110.10:

(1) A legislative enactment. A legislative enactment is an ordinance, resolution or adopted motion of the county board or any of its duly constituted committees or subcommittees.

(2) Any action subject to administrative or judicial review procedures under other statutes or county ordinances, including, but not limited to, actions subject to review under section 110.20 of the ordinances.

(3) The denial of a tort or contract claim for money, required to be filed with the county pursuant to-statutory procedures for the filing of such claims.

(4) The suspension, removal or disciplining or nonrenewal of a contract of a county civil service employe, appointed employe, consultant, independent contractor, contract employe or officer.

(5) Determinations made under chapter 32 of this code of general ordinances.

(6) Judgments and orders of a court.

(7) Determinations made during county labor negotiations.

(8) Notwithstanding any other provisions of this chapter, any action or determination of the county which does not involve the constitutionally protected right of a specific person or persons to due process in connection with the action or determination.

(9)A decision of the department of health and human services to deny, suspend or revoke a child day care certification under s. 48.651, Wis. Stats. a decision of the director of that department under s. 48.685(5c) (b), Wis. Stats. to uphold a determination that a person desiring certification has failed to demonstrate that he/she has been rehabilitated, or a decision of the department of administrative services to certify a debt owed to Milwaukee County to the Department of Revenue under s. 71.935, Wis. Stats. the municipal tax refund intercept program ("TRIP"). The department of administrative services shall adopt and implement policies and procedures for the review of those decisions, which procedures shall include an evidentiary hearing which substantially meets the requirements of s. 68.11, Wis. Stats.

(d) All determinations by county agencies or administrators reviewable under this chapter are administrative decisions and shall be attended by the usual legal presumptions granted at common law to administrative determinations. The burden of proof shall be upon the appellant to establish that the determination is erroneous. The test before the standing committee shall be the same as a common law certiorari review.

110.03. - Persons aggrieved.

A person aggrieved includes any individual, partnership, limited liability company, corporation, association, public or private organization whose rights, duties or privileges are directly adversely affected by a determination of a county authority.

110.04. - Reducing determination to writing.

If a determination subject to this chapter is made orally or, if in writing, does not state the reasons therefor, the authority making such determination shall, upon written request of any person aggrieved by such determination, filed with the authority within ten (10) days of notice of such determination, reduce the determination and the reasons therefor to writing and mail or deliver such determination and reasons to the persons making the request. The determination shall be dated, and shall advise such person of the right to have such determination reviewed, the time within which such review may be obtained, and the office or person to whom a request for review shall be addressed. If no request for a written determination is received by the authority within the time provided, the oral determination shall be deemed the final determination for purposes of appeal.

110.05. - Notice of appeal.

Any person aggrieved may have a written or oral determination reviewed by filing a written notice of review with the authority which made such determination within five (5) working days of the date of the mailing of such notice to the aggrieved person of such determination. The request for review shall state the ground or grounds upon which the person aggrieved contends that the decision should be modified or reversed.

110.06 Initial review of determination by authority

A review under this section may be made by the authority which made the initial determination, or its designee. The reviewing authority shall issue a written decision within ten (10) working days of the filing of the request. The time for review may be extended at the discretion of the authority. The person aggrieved may file with the notice of review, or within the time agreed with the authority, written evidence and argument in support of the person's position with respect to the initial determination. The authority may affirm, reverse or modify the initial determination and shall mail or deliver to the person aggrieved a written decision on review, which shall state the reasons for such decision. The decision shall advise the person aggrieved of the right to appeal the decision, the time within which appeal shall be taken, the county board standing committee responsible for an appeal hearing under section 110.07, and the office or person with whom notice of appeal to the standing committee shall be filed.

110.07. – Appeal to county board standing committee.

(a) Appeal from the authority initial review shall be exclusively to the appropriate county board standing committee.
(b) Notice of appeal of the initial review shall be in writing and must be filed by the aggrieved party within five (5) working days of the mailing date of the decision.
(c) Notice of appeal shall be filed with the county authority which issued the initial review determination. The authority shall forthwith notify the clerk of the standing committee of the filing of the notice of appeal and proceed to prepare the record needed for the committee review.
(d) The standing committee or a review committee with members appointed by the committee chairperson and confirmed by the committee shall conduct a hearing on the appeal within ten (10) days of the filing of the notice of appeal. This period may be extended at the sole discretion of the committee chair.
(e) A review committee member, except for department of human services employes who are excluded from membership on the child care certification review panel, may be an employe of the county department rendering the administrative decision provided that such member is an impartial decision maker who did not participate in making or reviewing the initial determination. Further, any department employe appointed by the committee chair to serve on a review committee shall conduct their review and render their determination based upon the policies of the standing committee for which they are a representative.
(f) Committee actions and remedies. The standing committee has full discretion to affirm the administrative determination, reverse it, modify it in any way, conduct further evidentiary hearings or refer the matter back to the administrator or agency for further evidentiary hearing and findings.

110.08. Conduct of hearing before standing committee.

(a) If the standing committee decides to hold an evidentiary hearing, the appellant and the authority may be represented by an attorney and may present evidence and call and examine witnesses and cross-examine witnesses of the other party. The committee chair, or his or her designee, shall be responsible for the orderly conduct of the proceeding and for evidentiary rulings. The appellant has the burden of proceeding first and the burden of

persuasion. Witnesses shall be sworn by the person conducting the hearing. The rules of evidence shall generally apply to the hearing. The committee may permit hearsay evidence, but its decision may not be based solely upon hearsay. The committee may issue subpoenas. Any party or his or her attorney of record may issue subpoenas to compel the attendance of witnesses or the production of documents. A subpoena issued by a party or his or her attorney must be in substantially the same form as provided in s. 805.07(4), Wis. Stats., and must be served in the manner provided in s. 805.07(5), Wis. Stats. A copy of the subpoena shall be filed immediately with the committee clerk. Any hearings conducted under this chapter shall be recorded in any manner permitted by law and the record, including all exhibits admitted into evidence before the committee, preserved for one (1) year from the date the decision is issued.

(b) The committee may convene in closed session to deliberate at the close of the hearing, but shall reconvene in open session to vote upon the decision. The decision of a majority of the committee members who participated in the hearing shall constitute the decision of the committee. Within twenty (20) days of completion of the hearing the committee shall serve the appellant by certified mail or personal service with its written determination, which shall contain the reasons for its decision. A copy of the decision shall also be sent to the county authority in question and the corporation counsel. Such determination shall be the final county administrative review. The exhaustion of the administrative remedy created by this chapter is a condition precedent to a circuit court review of a decision of any county authority covered by this chapter.

110.09. Review committee.

A review committee, as provided for under sec. 110.07(d), shall consist of a minimum of three (3) but not to exceed five (5) members, who shall conduct a review of the administrative decisions by county departments. Review hearings by such committees shall be based upon records maintained by county or state departments and shall be reviewed and determinations made based upon the following test:

(1) Did the department keep within its jurisdiction?

(2) Did the department act according to law?

(3) Was the action of the department arbitrary, oppressive, or unreasonable, representing its will and not its judgment? and

(4) Was the evidence such that the department might reasonably make the determination in question?

The committee should conduct as extensive a hearing as it believes is required to apply the "test" outlined. Any decision rendered by the review committee shall have the same validity as a determination made by the standing committee.

110.10. Irregularities not fatal.

No defect of form, procedure or substance in any proceeding or hearing under this chapter shall affect the jurisdiction of a committee or invalidate its decision unless it is proven by clear and convincing evidence to have in fact prejudiced the substantial rights of a party.

110.20 . Contract award appeals.

(1) Appeals pursuant to sections 32.26(2), 32.50(1), 44.10 and 56.30(5)(c) of the ordinances shall follow the procedure set forth in this section.

(2) *Award and Appeal process*.

(a) A County authority may not accept a winning bid and may not submit a contract to the County Board, if County Board approval is required, or to the County Executive for execution until the expiration of the time allotted under sub. (b) to submit a request for review has expired. If a review is requested under this section, the County authority may not accept the winning bid or may not submit the contract at issue to the County Board, if County Board approval is required, or to the County Executive for execution until the conclusion of the appeal procedures set forth below.

(b) Any bidder or proposer not recommended to receive a contract or bid award may submit a request for review of the notice of intent to award a contract or bid to the County authority making such determination within ten (10) business days of the date of the notice of the determination. The bidder or proposer shall state reasons why the bidder or proposer believes the contract or bid should not be awarded as noticed. Upon receipt of a timely request, the County authority shall provide a written response to the requestor(s) setting forth the rationale justifying the selection of the recommended bidder or proposer. The response shall be provided within fifteen (15) business days of the receipt of a request. The time for response may be extended in the discretion of the County authority up to forty-five (45) calendar days from receipt of the request. If the notice of intent to award was based on an RFP process, the response issued pursuant to this paragraph shall include a summary of the process, material issues, the scoring of the technical and price portion,

and information on the type of individuals who served on the evaluation panel; however, the names of the panel members shall not be included. The response shall inform the requester of the right to review, the deadline for filing a request for review, the name and address of the Procurement Director and the requirement for a payment as set forth in paragraph (4).

(c) Any bidder or proposer who made a request under paragraph (b) may file a request for a review by a Contract Award Reviewer. The request for review must be filed with the Procurement Director within five (5) business days of the date of the response from the division or department head and must be accompanied by the payment set forth in paragraph (4).

(d) Within five business days of receipt of the request for review with payment, the Procurement Director shall inform the requestor, the division or department head and the Reviewer of the name of the assigned Reviewer. Reviewers shall be assigned in rotation (by alphabetical order based on last name) to conduct reviews in the order in which requests for review are filed.

(e) The Contract Award Reviewer shall use such review procedures as he or she deems appropriate, including by way of example but without limitation, a hearing, oral argument or written submissions.

(f) The sole question to be determined by a Contract Award Reviewer is whether substantial rights of a party were so materially affected by procedural irregularities during the RFP or bid solicitation process that the notice of intent to award should be rescinded. Procedural irregularities may include, but are not limited to, a failure by the County authority to follow the requirements of the RFP or bid solicitation as published. The Contract Award Reviewer may determine that the notice of intent to award should be affirmed or rescinded based only upon the preceding test. The Reviewer shall issue a written decision on the appeal. The decision shall be issued within forty-five (45) calendar days of the selection of the Reviewer.

(3) A panel of three (3) Contract Award Reviewers shall be established and maintained. The County Executive shall nominate individuals to serve as Contract Award Reviewers, subject to confirmation by the County Board. The Reviewers shall remain members of the panel for three (3) years from confirmation of appointment and may be re-appointed for additional three (3) year terms by the County Executive, subject to re-confirmation by the County Board. The persons nominated shall possess experience and qualifications in

procurement processes or legal matters related to procurement. County employees, officers or elected officials are not eligible for nomination.

(4) Contract Award Reviewers shall be entitled to payment of an hourly fee and reimbursement for costs. The hourly rate shall be established in the annual adopted budget or, if not so established, shall be determined by the Procurement Director. The requestor and the County shall each be responsible for one-half of the fees and costs of the Reviewer. The requestor shall submit an advance payment, as a deposit, in the amount of $1000.00, towards the final amount determined upon completion of the review. This payment shall be submitted together with the request for review set forth in paragraph (c) and the Procurement Director shall not process any request submitted without this accompanying payment. Failure of a requester to make payment of one-half of the total fees and costs of a review shall bar the requester from filing or having heard any other requests for review until such time as the requester makes such payment.

SECTION 2. Chapter 32.23 of the General Ordinances of Milwaukee County is amended as follows:

32.23 Purchasing standardization committee.

(1) There shall be a purchasing standardization committee composed of three (3) private citizens: a representative of: the department of human resources, department of parks, recreation and culture, department of public works and the sheriff's department. Each of the departmental representatives shall be selected by the department head. The private citizen members are to be appointed by the county executive for a term of four (4) years, subject to the confirmation of the county board, and shall be residents of the county who are knowledgeable in procurement. A representative of the corporation counsel's office and the procurement director or his or her designee shall be technical advisers to the committee.

(2) The committee is empowered to do the following:

(a) Adopt operating rules and procedures, and shall elect a vice-chairperson, for a one year term, and such other officers as may be required.

(b) Review supplies, materials and equipment commonly used for adoption of appropriate standards by all departments.

(c) Adopt, revise and promulgate written standards which satisfy the requirements of the county. After adoption, they shall apply to every future purchase and contract for the commodity described, unless exempted by the committee.

(3) Establish technical subcommittees.

~~(4) Hear appeals as defined in sections 32.26 and 32.51.~~

SECTION 3. Section 32.26 of the General Ordinances of Milwaukee County is amended as follows:

32.26 Protest and appeal procedure.

Protests to any sealed bid, procurement or award recommended by the procurement director or his or her designee may be made by any bidder and/or using department head as follows:

(1) *Prior to bid opening:*

(a) Protests to form and content of bid documents shall be received by the procurement director or his or her designee not less than five (5) days prior to the time scheduled for bid opening. A protest shall be in writing and state the reason for it.

(b) The procurement director or his or her designee shall review protests and, if modification is necessary, the bid opening date shall be extended and addenda containing the changes shall be sent to each bidder. If modification is rejected, the protestor shall be notified. The decision of the procurement director or his or her designee is final.

(2) *After bid opening:*

(a) Protests concerning irregularities on sealed bid opening procedures, or compliance by bidders with bid documents, shall be ~~received by the procurement director or his or her designee within seventy-two (72) hours after time of bid opening~~filed pursuant to section 110.20 of the ordinances.

~~(b) When a sealed bid is awarded to other than the low bidder, all bidders shall be notified in writing by certified mail, return receipt requested, or by fax machine transmission, of the proposed award. Protests to the award must be delivered to the procurement director or his or her designee within seventy-two (72) hours after receipt of notice. The procurement director's or his or her designee's~~

~~copy of the fax transmission cover sheet, or the department's fax log, shall be conclusive proof of the time and date of receipt by a bidder.~~

~~(c) A protest under either subsection (a) or (b) must be in writing and state the reason for it. The procurement director or his or her designee shall review the protest and notify the protestor of a decision in writing by fax, within five (5) days. No contract shall be awarded while a protest is pending. A protest which is untimely, fails to state the reason for it or shall have been made prior to bid opening is invalid. The decision of the procurement director or his or her designee disqualifying the protest for these reasons is final and cannot be appealed.~~

~~(3) *Appeals to purchasing standardization committee:*~~

~~(a) Protests from decisions of the procurement director or his or her designee shall be made to the purchasing standardization committee by delivering a written request for appeal hearing both to the procurement division and the committee within seventy-two (72) hours after receipt of the procurement director's or his or her designee's decision.~~

~~(b) The request shall state the grounds upon which the protest is based and shall request an appeal hearing. No contract shall be awarded until final disposition of the protest.~~

~~(c) The chairperson of the committee shall notify all interested persons of the time and place of the hearing.~~

~~(d) The committee shall affirm, reverse or modify the decision of the procurement director or his or her designee and its decision shall be final.~~

SECTION 4. Section 32.40 of the General Ordinances of Milwaukee County are amended as follows:

32.40 General.

(1) Requests for proposals (RFPs) are used in negotiated acquisitions to communicate county requirements to prospective vendors and to solicit proposals from them. Solicitations shall contain the information necessary to enable prospective vendors to prepare proposals properly. Solicitation provisions and contract clauses may be incorporated into the solicitations and contracts by reference.

(2) The procurement director or his or her designee shall furnish identical information concerning a proposed acquisition to all prospective vendors.

(3) The procurement director or his or her designee shall solicit proposals only when there is a definite intention to award a contract.

(4) A proposal received in response to an RFP is an offer that can be accepted by the county to create a binding contract.

(5) Letter RFPs should be as clear and concise as possible, exclude any unnecessary verbiage or notices; and, as a minimum, contain the following:

(a) RFP number and date.

(b) Name and address of contracting office.

(c) Type of contract contemplated.

(d) Quantity, description, and required delivery for the item.

(e) Applicable certifications and representations.

(f) Contract terms and conditions.

(g) Offer due date.

(h) Other relevant information; e.g., incentives, variations in delivery schedule, any peculiar or different requirements, cost proposal support and different data requirements.

(6) Solicitation for services as defined in section 32.20(2)and (17) with an aggregate value in excess of fifty thousand dollars ($50,000.00)shall be approved by the county board prior to award. Approval shall not be requested until after completion of the ~~protest and~~ appeal process outlined in ~~sections 32.50 and 32.51of this subchapter~~ section 110.20 of the ordinances.

(7) Notwithstanding any other provisions of this chapter to the contrary, where adequate competition exists, the purchasing administrator [procurement director or his or her designee] shall have the authority, in any situation where a contract is to be let through the negotiated acquisition process, to reserve such contract exclusively for vendors listed as small business enterprises as defined in section 42.02(k). In such event, the solicitation announcements shall indicate such reservation, citing this subsection as authority therefore. Reservations by the purchasing administrator [procurement director or his or her designee] may be on a commodity basis or on an individual contract basis.

SECTION 5. Chapter 32.49 of the General Ordinances of Milwaukee County is amended as follows:

32.49. Awards.

In awarding a contract, price is but one (1) factor to be considered, and the award is not required to be made to the lowest responsive, responsible bidder. Awards shall be made to the responsive, responsible firm whose proposal overall is the most advantageous to the county, as determined in the sole opinion of the procurement director or his or her designee. The county reserves the right to reject all proposals if the procurement director or his or her designee, in his or her sole discretion, determines such rejection to be in the public interest. Such rejection is not subject to appeal ~~to the purchasing standardization committee~~.

SECTION 6. Section 32.50 of the General Ordinances of Milwaukee County is amended as follows:

32.50 Protests to awards.

(1) All unsuccessful offerors shall be notified by fax machine transmission of the pending contract award. Protest to the award must filed pursuant to section 110.20 of the ordinances.~~be delivered to the procurement director or his or her designee within seventy-two (72) hours after receipt of notice. The procurement director's or his or her designee's copy of the fax transmission cover sheet, or the departments fax log, shall be conclusive proof of the time and date of receipt by the offeror.~~

~~(2) A protest must be in writing and clearly state the reason for it. The procurement director or his or her designee shall review the protest and notify the protestor of a decision by fax machine transmission within five (5) days. No contract shall be awarded while a protest is pending. A protest that is untimely or fails to clearly state the reason for the protest is invalid. The procurement director's or his or her designee's copy of the fax transmission cover sheet, or the departments fax log, shall be conclusive proof of the time and date of receipt by the offeror.~~

~~(3) The decision of the procurement director or his or her designee disqualifying the protest for these reasons is final and cannot be appealed.~~

SECTION 7. Chapter 32.51 of the General Ordinances of Milwaukee County is amended as follows:

32.51 Appeals to purchasing standardization committee.

(1) Except as provided in sections 32.26, 32.46(3), 32.49 and 32.50(1~~3~~), protests from decisions of the procurement director or his or her designee shall be made to the purchasing standardization committee by delivering a written request for appeal hearing both to the procurement division and the purchasing standardization committee within seventy-two (72) hours after receipt of the procurement director's or his or her designee's decision.

(2) The request shall state the grounds upon which the protest is based and shall request an appeal hearing. No contract shall be awarded until final disposition of the protest.

(3) The chairman of the purchasing standardization committee shall notify all interested persons of the time and place of the hearing.

(4) The purchasing standardization committee shall affirm, reverse or modify the decision of procurement director or his or her designee and its decision shall be final.

SECTION 8. Chapter 44.10 of the General Ordinances of Milwaukee County is amended as follows:

44.10 Appeal.

Bidders whose bids have been rejected may file appeals pursuant to chapter 110.20 of the Code.

SECTION 9. Section 56.30(5) of the General Ordinances of Milwaukee County is amended as follows:

56.30 – Professional Services

(5) *Request for proposal.*

(a) *When required.* When it is estimated that a contract for professional services has a value of fifty thousand dollars ($50,000.00) and over, it is required that a request for proposal (RFP) be used to attempt to solicit a minimum of three (3) proposals. Department administrators shall give appropriate notice to prospective vendors of services to be retained. At a minimum, such notice shall include publication of an ad in a newspaper serving the Milwaukee area. The use of an RFP is discretionary for any professional services contract with a value of less than fifty thousand dollars ($50,000.00). If an RFP is used or not, it still is required to document the process and the reasons shall be documented in writing by the administrator and retained in departmental files for a period of seven (7) years after contract completion. Documentation shall include the RFP, memos, proposals, score sheets, analyses, contracts and any other document used in determining the award of a contract.

(1)For a contract with an estimated value between fifty thousand dollars ($50,000.00) and one hundred thousand dollars ($100,000.00), the request for proposal procedure need not be used if it is determined by an administrator to be cost effective to the county not to seek proposals. Such action shall be reported, in writing, with an explanation as to the benefits derived from not seeking proposals, to the county board when the contract is submitted for approval.

(2) The request for proposal procedure need not be used for a contract with an estimated value of fifty thousand dollars ($50,000.00) or more, if immediate action is required to preserve property or protect life, health or welfare of persons. Such action shall be reported in writing within forty-eight (48) hours after the initial emergency action to the county board, county executive and department of administration. Payments shall not be restricted by normal budget limitations. Appropriation transfers, if required, shall be initiated in accordance with fiscal procedures.

(3) The request for proposal procedure must be used for all contracts with an estimated value of one hundred thousand dollars ($100,000.00) or more unless action is required to protect property or protect life, health or welfare of persons, or in circumstances where contractual services are approved by specific county board action.

(b) *Content*. The request for proposal shall contain the evaluation criteria which will be used to select the successful contractor. The relative importance of each of these items will depend to some degree on specific services being sought. It is essential that the RFP enumerate the evaluation criteria which will be used to select the successful contractor. The RFP shall also include the foundation and mechanism for billing for any professional service. <u>The RFP shall also include language stating that any appeal of the intent to award a contract shall follow the process set forth in section 110.20 of the ordinances.</u>

(c) *Evaluation procedure*. More than one (1) person shall evaluate all proposals. Oral presentations should be used to supplement the written proposal if it will assist in the evaluation procedure. The firms to be invited to make an oral presentation can be determined after the initial review and ranking of the proposals based on the criteria outlined in the RFP. <u>Upon completion of the evaluation procedure and a determination being made by the appropriate division or departmental authority, a notice of intent to award the contract to the successful proposer shall be communicated to all proposers.</u>

(d) *Disclosure*. Contract administrators, evaluation panel members, or potential members, department administrators and persons selecting evaluation panel members are required to fully disclose on forms approved by the Ethics Board

any experience, contact or relationship with bidders that would create a potential conflict of interest, or the appearance of a conflict of interest, as defined in chapter 9 of these ordinances, in awarding or managing a contract. Such disclosure shall be presented to the administrator of the department letting the contract who shall forward the disclosure to the Ethics Board with a written request for a determination as to whether the disclosing party should be disqualified from evaluating, selecting or administering the proposed contract. The determination of the Ethics Board must be documented and included in the department's files for the contract and shall be retained as required under subsection (a) of this section. The provisions of this section are to be included in the Milwaukee County Administrative Procedures Manual. All the provisions set forth in the Milwaukee County Code of Ethics are in full force and effect and are not abrogated in any way by these requirements.

(e) *Reporting requirement for contract approval.* When County Board approval of the contract is required, all department administrators shall submit a report with the request for approval to the County Board. Such reports shall include the following information:

(1) Department name and number.

(2) Dollar amount of contract.

(3) Name of professional services vendor under contract.

(4) Length of time of contract.

(5) Purpose of contract.

(6) Manner in which County policy on DBE goals was met, if applicable.

(7) Termination clauses.

(8) Number of responses to RFP

(9) Whether any appeals were filed

(f) *County Board approval and contact.* The County Board shall not take action to recommend approval or rejection of any contract and the County Executive shall not sign any contract while an appeal pursuant to section 110.20 is pending. No proposer or any person affiliated with a proposer shall have any contact or communication with County Board members or its staff concerning the subject of any contract being sought through an RFP process while the RFP process is open or while an appeal pursuant to section 110.20 is pending.

SECTION 10. The provisions of this ordinance shall be effective upon passage and publication.

MILWAUKEE COUNTY FISCAL NOTE FORM

DATE: March 28, 2014

Original Fiscal Note ☒

Substitute Fiscal Note ☐

SUBJECT: Request to Update Milwaukee County General Ordinances Chapters 32, 44, 56 and 110

FISCAL EFFECT:

☐ No Direct County Fiscal Impact

☐ Existing Staff Time Required

☒ Increase Operating Expenditures
(If checked, check one of two boxes below)

☐ Absorbed Within Agency's Budget

☒ Not Absorbed Within Agency's Budget

☐ Decrease Operating Expenditures

☐ Increase Operating Revenues

☐ Decrease Operating Revenues

☐ Increase Capital Expenditures

☐ Decrease Capital Expenditures

☐ Increase Capital Revenues

☐ Decrease Capital Revenues

☐ Use of contingent funds

Indicate below the dollar change from budget for any submission that is projected to result in increased/decreased expenditures or revenues in the current year.

	Expenditure or Revenue Category	Current Year	Subsequent Year
Operating Budget	Expenditure	$21,000	$21,000
	Revenue		
	Net Cost	$21,000	$21,000
Capital Improvement Budget	Expenditure		
	Revenue		
	Net Cost		

DESCRIPTION OF FISCAL EFFECT

In the space below, you must provide the following information. Attach additional pages if necessary.

A. Briefly describe the nature of the action that is being requested or proposed, and the new or changed conditions that would occur if the request or proposal were adopted.
B. State the direct costs, savings or anticipated revenues associated with the requested or proposed action in the current budget year and how those were calculated. [1] If annualized or subsequent year fiscal impacts are substantially different from current year impacts, then those shall be stated as well. In addition, cite any one-time costs associated with the action, the source of any new or additional revenues (e.g. State, Federal, user fee or private donation), the use of contingent funds, and/or the use of budgeted appropriations due to surpluses or change in purpose required to fund the requested action.
C. Discuss the budgetary impacts associated with the proposed action in the current year. A statement that sufficient funds are budgeted should be justified with information regarding the amount of budgeted appropriations in the relevant account and whether that amount is sufficient to offset the cost of the requested action. If relevant, discussion of budgetary impacts in subsequent years also shall be discussed. Subsequent year fiscal impacts shall be noted for the entire period in which the requested or proposed action would be implemented when it is reasonable to do so (i.e. a five-year lease agreement shall specify the costs/savings for each of the five years in question). Otherwise, impacts associated with the existing and subsequent budget years should be cited.
D. Describe any assumptions or interpretations that were utilized to provide the information on this form.

The Office of the Comptroller is requesting updates to Milwaukee County General Ordinances Chapters 32, 44, 56 and 100 to clarify and unify the appeal procedures for all county contracts and bids and to provide further direction to Department Heads in the preparation and execution of RFPs for professional services.

The recommended changes include a provision to create a pool or panel of reviewers which will hear reviews. The individuals are appointed by the County Executive with confirmation by the County Board. The reviewers must have experience with procurement or legal issues related to procurement. They serve 3 year terms and may be re-appointed. The reviews are assigned by alphabetical rotation among the reviewers. The reviewers are entitled to payment of an hourly rate set by the budget or, if not set in the budget, set by the Procurement Director. The County authority and the party that requested the review are each responsible for one-half of the cost of review. A requester must pay a $1,000 deposit towards those costs.

Assuming that three reviews will be heard annually by the panel for an average of 10 days at $175/hour, the resulting total cost is $42,000 which would be split by the County and the aggrieved party. The County's share would then be approximately $21,000.

There is no appropriation for the anticipated costs in 2014. Therefore, these costs would either have to be absorbed within a department's budget or paid for through contingency funds. Future funding would be determined in subsequent annual budgets.

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[1] If it is assumed that there is no fiscal impact associated with the requested action, then an explanatory statement that justifies that conclusion shall be provided. If precise impacts cannot be calculated, then an estimate or range should be provided.

[2] Community Business Development Partners' review is required on all professional service and public work construction contracts.

Department/Prepared By CJ Pahl

Authorized Signature

Did DAS-Fiscal Staff Review? ☐ Yes ☒ No

Did CBDP Review?[2] ☐ Yes ☐ No ☒ Not Required

County of Milwaukee
Office of the Sheriff

David A. Clarke Jr.
Sheriff

DATE: April 24, 2014

TO: Supervisor Marina Dimitrijevic, Chairwoman, Milwaukee County Board of Supervisors

FROM: Richard R. Schmidt, Inspector, Office of the Sheriff, Milwaukee County

SUBJECT: Request to extend and accept State of Wisconsin Department of Transportation grant funding for Freeway Service Team in the amount of $250,000 for the Office of the Sheriff.

REQUEST

The Sheriff of Milwaukee County requests authority to extend this grant from July 1, 2013 to June 30, 2014 and accept additional funding of $250,000 from the State of Wisconsin Department of Transportation for the Freeway Service Team.

BACKGROUND

Effective August 1, 2008 the Milwaukee County Sheriff entered into an agreement with the Wisconsin Department of Transportation to provide for the operating of and providing equipment for a Freeway Service Team (FST) on the Milwaukee County Freeway System until June 30, 2009 with initial funding of $371,000. Four subsequent amendments have cumulatively extended the contract through June 30, 2013 and increased the total funding to $1,253,332. The Freeway Service Team provides expedited clearance of disabled and crashed vehicles made possible by the presence of FST vehicles continuously patrolling designated segments of Interstate and U.S. highways during designated hours. The primary goal of the Freeway Service Team is quick clearance of traffic incidents thereby improving safety and minimizing traffic delays and congestion. The FST shall accomplish this goal by providing minor repairs for disabled vehicles; pushing disabled vehicles off the highway; providing fuel; clearing debris from disabled vehicles, small non-hazardous debris, and debris that is otherwise disruptive to traffic flow; directing traffic and assisting with traffic control; providing traffic and incident information to the WisDOT Statewide Traffic Operations Center (STOC); providing traffic and pavement condition reports; and providing informational literature to motorists. FST vehicles are typically equipped with push bumpers, traffic cones, electronic changeable message boards, radios, mobile phones, and other necessary equipment to provide quick clearance type services. Aid within the scope of operations of the FST is rendered free of charge to the motorist.

The Milwaukee County Sheriff shall operate and maintain the FST on the Milwaukee County Freeway System between the hours of 6:00 AM and 10:00 PM Monday through Friday except state holidays.

Weekend, holiday, or extended shift hours, if requested by the Department, shall be in addition to the regularly scheduled hours.

The Freeway Service Team area consists of I-94 from the Milwaukee/Racine County line to the Milwaukee/Waukesha County line, I-894 in its entirety, I-43 from downtown Milwaukee to the Milwaukee/Ozaukee County line, I-794 between Carferry Drive and the Marquette Interchange, and US 45 from I-94 to the Milwaukee/Waukesha County line.

The Freeway Service Team shall continuously drive the service area locating, responding, and clearing minor traffic incidents. The FST shall assist motorists whose vehicles have suffered mechanical failure or have been involved in minor traffic crashes. The FST shall be responsible for clearing the traffic lanes of the highway of automobiles, motorcycles, small trucks and small non-hazardous debris material. Vehicles shall be removed from the traveled way, exclusive of shoulders, by pushing. Abandoned or unattended vehicles shall be removed in accordance with Wis. Stats. 342.40. The FST shall not provide towing or wrecker services.

This contract period is from July 1, 2013 to June 30, 2014. This service shall be provided by the Milwaukee County Sheriff who shall be reimbursed for this service by the Wisconsin Department of Transportation at the rates of $59.74 per standard labor hour and $44.00 per overtime labor hour for each Deputy Sheriff assigned to the Freeway Service Team.

FISCAL NOTE

Grant funding awarded for the period of July 1, 2013 through June 30, 2014 is $250,000 increasing the total contract amount to $1,503,332. All funding for this period will be used for wages and fringe benefits. No matching funds are required.

Richard R. Schmidt, Inspector
Milwaukee County Office of the Sheriff

cc: Chris Abele, County Executive
Supervisor Theodore Lipscomb, Sr. Chair, Judiciary, Safety & General Services Committee
Kelly Bablitch, Chief of Staff
Alexis Gassenhuber, Committee Clerk
Erica Hayden, Research Analyst

File No.
(Journal, 2014)

(ITEM) From the Sheriff requesting the authority to extend and accept, if awarded, State of Wisconsin Department of Transportation funds in the amount of $250,000 to operate a Freeway Services Team on the Milwaukee County Freeway System from July 1, 2013 through June 30, 2014:

A RESOLUTION

WHEREAS, the State of Wisconsin Department of Transportation has authorized the Milwaukee County Sheriff to maintain a Freeway Services Team to operate on the Milwaukee County Freeway System and provide expedited clearance of disabled and crashed vehicles thereby improving safety and minimizing traffic delays and congestion; and

WHEREAS, the State of Wisconsin has identified the service area as I-94 from the Milwaukee/Racine County line to the Milwaukee/Waukesha County line, I-894 in its entirety, I-43 from downtown Milwaukee to the Milwaukee/Ozaukee County line, I-794 between Carferry Drive and the Marquette Interchange, and US 45 from I-94 to the Milwaukee/Waukesha County line; and

WHEREAS, the Milwaukee County's Sheriff Office will provide a Freeway Service Team to continuously drive the service area locating, responding to, and clearing minor traffic incidents. The FST shall assist motorists whose vehicles have suffered mechanical failure or have been involved in minor traffic crashes. The FST shall be responsible for clearing the traffic lanes of the highway of automobiles, motorcycles, small trucks and small non-hazardous debris material; and

WHEREAS, the original grant became effective August 1, 2008 and extended to June 30, 2009 and funded for $371,000. There have been four grant amendments through June 30, 2013 with total cumulative funding of $1,253,332; and

WHEREAS, this amendment to the grant period is for July 1, 2013 through June 30, 2014; and

WHEREAS, the Milwaukee County's Sheriff Office will bill the State of Wisconsin Department of Transportation on a monthly basis for Deputy Sheriff straight time with overhead included at $59.74 per hour and overtime hours excluding overhead at $44.00 per hour; and

BE IT RESOLVED, the Sheriff is hereby authorized to execute an amendment to the existing grant with the State of Wisconsin Department of Transportation for provision of a Freeway Service Team on the Milwaukee County Freeway System for a total of $250,000, bringing the total cumulative grant funding to $1,503,332.

FISCAL NOTE

The expenditures incurred for this grant extension will be absorbed in 2014 Adopted Budget for the Office of the Sheriff and offset by the increase in operating revenues. Funding does not require any matching funds and do not include equipment purchases.

MILWAUKEE COUNTY FISCAL NOTE FORM

DATE: 04/24/2014

Original Fiscal Note X

Substitute Fiscal Note ☐

SUBJECT: The Sheriff of Milwaukee County requests the authority to accept grant funding of $250,000 from the State of Wisconsin Department of Transportation for the services of a Freeway Services Team (FST) on the Milwaukee County Freeway System.

FISCAL EFFECT:

☐ No Direct County Fiscal Impact

☐ Existing Staff Time Required

X Increase Operating Expenditures
(If checked, check one of two boxes below)

X Absorbed Within Agency's Budget

☐ Not Absorbed Within Agency's Budget

☐ Decrease Operating Expenditures

X Increase Operating Revenues

☐ Decrease Operating Revenues

☐ Increase Capital Expenditures

☐ Decrease Capital Expenditures

☐ Increase Capital Revenues

☐ Decrease Capital Revenues

☐ Use of contingent funds

Indicate below the dollar change from budget for any submission that is projected to result in increased/decreased expenditures or revenues in the current year.

	Expenditure or Revenue Category	Current Year	Subsequent Year
Operating Budget	Expenditure	$250,0000	
	Revenue	$250,0000	
	Net Cost	0	
Capital Improvement Budget	Expenditure		
	Revenue		
	Net Cost		

DESCRIPTION OF FISCAL EFFECT

In the space below, you must provide the following information. Attach additional pages if necessary.

A. Briefly describe the nature of the action that is being requested or proposed, and the new or changed conditions that would occur if the request or proposal were adopted.
B. State the direct costs, savings or anticipated revenues associated with the requested or proposed action in the current budget year and how those were calculated.[1] If annualized or subsequent year fiscal impacts are substantially different from current year impacts, then those shall be stated as well. In addition, cite any one-time costs associated with the action, the source of any new or additional revenues (e.g. State, Federal, user fee or private donation), the use of contingent funds, and/or the use of budgeted appropriations due to surpluses or change in purpose required to fund the requested action.
C. Discuss the budgetary impacts associated with the proposed action in the current year. A statement that sufficient funds are budgeted should be justified with information regarding the amount of budgeted appropriations in the relevant account and whether that amount is sufficient to offset the cost of the requested action. If relevant, discussion of budgetary impacts in subsequent years also shall be discussed. Subsequent year fiscal impacts shall be noted for the entire period in which the requested or proposed action would be implemented when it is reasonable to do so (i.e. a five-year lease agreement shall specify the costs/savings for each of the five years in question). Otherwise, impacts associated with the existing and subsequent budget years should be cited.
D. Describe any assumptions or interpretations that were utilized to provide the information on this form.

The Sheriff of Milwaukee County is requesting authority to accept grant funding from the Wisconsin Department of Transportation for a Freeway Services Team (FST) to operate on the Milwaukee County Freeway System for the period of July 1, 2013 through June 30, 2014. Grant funds of $250,000 do not require any matching funds and do not include any equipment purchases.

This contract extension will not have any impact on the current year budget as expenditures will be absorbed within the operating budget and will be offset by operating revenues.

Department/Prepared By William R. Lethlean, Public Safety Fiscal Administrator

Authorized Signature William R. Lethlean

Did DAS-Fiscal Staff Review? ☐ Yes X No

Did CBDP Review?[2] ☐ Yes ☐ No X Not Required

[1] If it is assumed that there is no fiscal impact associated with the requested action, then an explanatory statement that justifies that conclusion shall be provided. If precise impacts cannot be calculated, then an estimate or range should be provided.

[2] Community Business Development Partners' review is required on all professional service and public work construction contracts.

CONTRACT

BETWEEN

WISCONSIN DEPARTMENT OF TRANSPORTATION

AND

MILWAUKEE COUNTY SHERIFF'S OFFICE

For

Freeway Service Team
Milwaukee County
Project ID 0072-40-40

This contract is made and entered into between the Wisconsin Department of Transportation (DEPARTMENT) and the Milwaukee County Sheriff's Office (COUNTY) and provides for operating and providing equipment for a Freeway Service Team (FST) on the Milwaukee County Freeway System, described in full detail in Attachment "A", Scope of Services.

The COUNTY will charge actual costs incurred for the work performed under this contract. Total reimbursement from the DEPARTMENT will not exceed $371,000 over the contract term.

APPROVED Inspector Kevin C. Carr 10/6/08
For the Milwaukee County Sheriff's Office Date

APPROVED 10/14/08
For the Wisconsin Department of Transportation Date

ATTACHMENT "A"

SCOPE OF SERVICES

1.0 INTRODUCTION

The purpose of this attachment is to define and describe a Scope of Services, including roles, responsibilities, authority, and liability, in providing a Freeway Service Team (FST) on I-94, I-43, I-894, I-794 and US 45 in Milwaukee County, Wisconsin. The FST shall be operated by the Milwaukee County Sheriff's Office (COUNTY) under contract to the Wisconsin Department of Transportation (DEPARTMENT) between August 1, 2008 and June 30, 2009. This is a continuation of a similar FST service currently operated by the COUNTY under contract to the DEPARTMENT.

Upon agreement between the DEPARTMENT and the COUNTY on the specifics contained herein; that the COUNTY shall operate the FST on the Milwaukee County Freeway System under contract to the DEPARTMENT. Specific materials and services to be provided by the COUNTY are documented in the sections below, which also identify the roles, responsibilities, authority, and liability of this service.

2.0 OVERVIEW AND DEFINITIONS

The FST provides expedited clearance of disabled and crashed vehicles made possible by the presence of FST vehicles continuously patrolling designated segments of Interstate and U.S. highways during designated hours. The primary goal of the FST service is quick clearance of traffic incidents thereby improving safety and minimizing traffic delays and congestion. The FST shall accomplish this goal by providing minor repairs for disabled vehicles; pushing disabled vehicles off the highway; providing fuel; clearing debris from disabled vehicles, small non-hazardous debris, and debris that is otherwise disruptive to traffic flow; directing traffic and assisting with traffic control; providing traffic and incident information to the WisDOT Statewide Traffic Operations Center (STOC); providing traffic and pavement condition reports; and providing informational literature to motorists. FST vehicles are typically equipped with push bumpers, traffic cones, electronic changeable message boards, radios, mobile phones, and other necessary equipment to provide quick clearance type services. Aid within the scope of operations of the FST is rendered free of charge to the motorist.

Following are definitions used throughout this agreement:

Administrator - Means an officially designated representative of the Milwaukee County Sheriff's Office. The Administrator shall be an officer of Sergeant ranking or higher for the Patrol Division of the Milwaukee County Sheriff's Office. The Administrator shall supervise the daily execution, use, and conduct of the FST. Additional functions of the Administrator are documented in the sections below.

Project Manager - Refers to the officially designated representative of the Wisconsin Department of Transportation. The Project Manager shall be the State Traffic Incident Management Engineer or their designated representative.

Operator - Means an officially designated employee of the COUNTY who operates/drives the FST vehicle.

Statewide Traffic Operations Center (STOC) - Refers to the WisDOT STOC located in downtown Milwaukee.

3.0 SCHEDULE

Under the terms of this agreement, the COUNTY shall operate and maintain the FST on the Milwaukee County Freeway System between August 1, 2008 and June 30, 2009. The patrol shall be operated between the hours of 6:00 AM and 10:00 PM Monday through Friday except state holidays. Weekend, holiday, or extended shift hours, if requested by the DEPARTMENT, shall be in addition to the regularly scheduled hours. The Project Manager, in coordination with the Administrator, reserves the right to modify or adjust hours of operation to accommodate special events, construction, major incidents, weather conditions, holidays, or other events. The Project Manager also reserves the right to add, subtract, or eliminate entirely, the hours of operation due to program needs.

If the FST Operator is on a call at the end of a shift, that Operator shall complete the stop and charge necessary time to the FST contract. This additional time charge is subject to verification by the DEPARTMENT using the submitted FST daily log record.

4.0 SERVICE AREA

The FST service area shall consist of I-94 from the Milwaukee/Racine County line to the Milwaukee/Waukesha County line, I-894 in its entirety, I-43 from downtown Milwaukee to the Milwaukee/Ozaukee County line, I-794 between Carferry Drive and the Marquette Interchange, and US 45 from I-94 to the Milwaukee/Waukesha County line. The Project Manager, in coordination with the Administrator, reserves the right to modify or adjust the service area of the FST service to accommodate special events, construction, major incidents, weather conditions, holidays or other events.

5.0 SERVICES TO BE PROVIDED

The FST Operator shall continuously drive the service area locating, responding, and clearing minor traffic incidents. The FST shall assist motorists whose vehicles have suffered mechanical failure or have been involved in minor traffic crashes. The FST shall be responsible for clearing the traffic lanes of the highway of automobiles, motorcycles, small trucks (vehicles with a gross vehicle weight of 8,000 pounds or less) and small non-hazardous debris material. Vehicles shall be removed from the traveled way by pushing. The "traveled way" is the portion of the roadway intended for the movement of vehicles, exclusive of shoulders. A shoulder is the portion of the

roadway contiguous to the traveled way. Vehicles shall be removed from the left shoulder by pushing as in accordance with Wis. Stats. 346.55. Abandoned or unattended vehicles shall be removed in accordance with Section 5.7 of this agreement and Wis. Stats. 342.40. The FST shall not provide towing or wrecker services. Furthermore, the DEPARTMENT will not be responsible for or reimburse any costs associated with tow services.

This service shall be provided by the COUNTY who shall be reimbursed for this service by the DEPARTMENT. Services rendered under this program shall be free of charge to the motorists receiving services.

When and where conditions permit, simple repairs may be performed on a motorist's vehicle while on the highway shoulder. Where conditions do not allow such repairs, the FST shall assist the motorist in obtaining tow services to remove the vehicle from the highway.

If a vehicle is carrying hazardous materials, the Administrator shall be notified immediately and before any services are rendered.

Detailed descriptions of services to be provided are described below.

5.1 Interaction with motorists:

The FST shall initially inform the driver of any assisted vehicle that:

- FST services are being provided free of charge as a courtesy by the Wisconsin Department of Transportation through a contract with Milwaukee County. (FST Operator shall provide service literature, traffic safety literature and comment card to motorist. These materials will be provided to the Administrator by the Project Manager.)

- The FST may attempt minor emergency repairs if time permits once the vehicle is cleared to the shoulder of the highway or freeway.

- Should minor emergency repairs not prove feasible or effective, the FST shall assist the motorist in making arrangements for further service, towing or transportation.

The FST shall maintain and make available to assisted motorists a cellular telephone to enable them to make at most two local telephone calls. The FST shall also maintain and make available to assisted motorists a complete and current copy of the local telephone company "Yellow Pages," which contains phone numbers of local tow operators and motor clubs.

5.2 Mechanically disabled vehicles - problem apparent:

If the problem with a disabled vehicle is readily apparent and can be remedied quickly, the FST Operator should perform the needed service while on the highway shoulder. For example, the FST may change flat tires, provide battery "jump" starts, provide up to 2

gallons fuel, or provide a maximum of ten (10) minutes of service attempting to repair a disabled vehicle.

5.3 Mechanically disabled vehicles - problem not readily apparent or repair time exceeds 10 minutes:

If a vehicle cannot be repaired within the 10 minute time limit or the FST Operator cannot immediately ascertain the source of the problem, the Operator shall assist the motorist in obtaining tow service to remove the vehicle from the highway shoulder.

5.4 Vehicles involved in traffic crashes:

Under no circumstances should the FST Operator attempt to repair a crashed vehicle in order to make it mobile. All crashed vehicles shall be removed as promptly as possible to the highway shoulder. Vehicles unable to move under their own power shall be pushed to the shoulder. Relocation of vehicles involved in crashes shall occur only after consideration of personal injuries and assessment of the situation by the Operator.

5.5 Debris removal:

The FST shall also be responsible for removing non-hazardous debris material from the highway. Small debris may be removed by hand while large debris may be removed by utilizing the FST vehicle.

5.6 Refusal of motorist to allow a disabled vehicle to be cleared from traffic lanes:

Should a motorist refuse to allow a disabled vehicle to be pushed from a highway or freeway, the FST Operator shall follow Milwaukee County Sheriff's Office operational procedures. The Operator shall inform the driver that:

- While emergency stopping is allowed, it is a violation of Wisconsin statutes to allow the vehicle to obstruct the regular flow of traffic, which includes vehicles occupying the shoulder of a highway.

5.7 Unattended and abandoned vehicles:

When an unattended vehicle is observed outside the traveled way and left shoulder, the FST Operator shall courtesy tag the vehicle. For the purpose of this agreement an unattended vehicle is defined as a vehicle on the traveled way or shoulder with no one occupying the vehicle or attending to the vehicle. The FST Operator shall identify the last known registrant of the vehicle and make telephone contact with the last known registrant. The FST Operator shall request the last known registrant remove their vehicle from the location as soon as possible. As per Wis. Stats 342.40, the FST Operator shall obtain a towing service to remove any vehicle that has been left unattended for more than 2 hours or the period set by the local governing body thereof, or if the FST Operator deems the vehicle a hazard.

When an unattended vehicle is observed on the traveled way or on the left shoulder, the FST Operator shall use his/her discretion to determine if the unattended vehicle is a traffic hazard and the need to remove the vehicle immediately by tow or by pushing.

5.8 Transportation of people:

The FST Operator shall be authorized to transport up to as many people per incident as there are available seat belts in the FST vehicle to the nearest safe location within 0.5 miles of the Freeway. If more people require transportation, the FST Operator shall contact the Administrator for assistance.

5.9 Animals:

The Milwaukee County Public Safety Communications Center or other designated authority shall be notified as to the location, type and condition of injured or dead animals.

5.10 Enforcement duties and assistance to other law enforcement officers:

During instances where a FST may be required to take enforcement actions or be requested to lend assistance to other law enforcement officers, the FST Operator shall follow the Milwaukee County Sheriff's Office operational procedures. During the specified hours of operation, the FST vehicles shall be exclusively dedicated to FST duties with the exception of special circumstances relating to public safety and/or security.

5.11 FST vehicle to be exclusively dedicated to patrol during specified hours of service:

During its specified hours of operation, the FST vehicle shall be exclusively dedicated to the highway service patrol and may not be removed from the patrol beat for any reason other than the following:

- to discontinue patrol at end of a shift;
- for mechanical failure of the vehicle or equipment contained therein;
- to replenish supplies that have been expended during the patrol beat such as fuel or fire extinguisher;
- to circumvent a queue to reach an incident or lane blockage;
- in response to a request for law enforcement assistance, fire department official, or at the direction of the Administrator;
- to change Operators; or
- to provide a FST Operator a rest period of no longer than 15 minutes. Such rest periods shall be outside the periods of 7:00 a.m. to 9:00 a.m. and 3:00 p.m. to 6:00 p.m., Monday through Friday, and shall be no more frequent than one such period per four-hour portion of a given shift. A 30 minute lunch period is allowed for shifts of 8

hours or greater, subject to the excluded time periods listed above. The FST Operator is subject to call back during any break period.

Temporary removal of the FST vehicle from the beat for any of these reasons shall not exceed 30 minutes.

5.12 Reporting traffic conditions:

The FST Operator shall report traffic conditions, specifically crashes or any other incident that involves a lane blockage that cannot be immediately cleared, to the STOC. The FST shall also promptly respond to contacts and requests from the Administrator, Project Manager and/or STOC.

5.13 Prohibited activities:

FST Operators shall not be allowed to accept gratuities, perform towing service from the highway shoulder with the FST vehicle, recommend tow providers, or recommend repair shops or body shops.

The motorist is responsible for arranging any required tow of their vehicle from the highway shoulder. The FST shall not solicit or provide this tow, or recommend any contractor to the assisted motorist. As per Section 5.1, the FST shall maintain at a minimum a current copy of the local telephone company "Yellow Pages" which contains phone numbers of tow operators and motor clubs, and will provide the motorist with a cellular phone to make local phone calls.

In addition the FST shall not be allowed to perform routine traffic enforcement activities such as speed enforcement unless actions of the violator are creating hazardous conditions for other motorist. At no time should the FST Operator be running radar.

5.14 Operation of Changeable Message Sign:

FST Operators shall display messages on the vehicle-mounted Changeable Message Sign (CMS) when providing services. The DEPARTMENT will assist the COUNTY in developing appropriate and pre-programmed messages, in accordance with the TGM, for various incident situations. The use of the vehicle-mounted CMS shall provide additional warning and traveler information to drivers passing the incident scene.

5.15 DEPARTMENT and Project Manager Input:

During major incidents, special circumstances, or other situations that otherwise require the DEPARTMENT to request services from the COUNTY consistent to those services specified herein, the Project Manager will contact the Administrator to provide direction. The Statewide Traffic Operations Center may dispatch the FST to respond to incidents or disabled/abandoned vehicles that are determined to impede travel or are a hazard to motorists. These requests may be for incidents that are outside the designated service area, but within Milwaukee County.

5.16 Private Sponsorships

The Department may seek private sponsorships to wholly or partially fund FST operations in any or all of the segments specified in section 5.3.1. If private sponsorships are identified during this contract, the DEPARTMENT reserves the right to execute a new contract with the COUNTY that defines and/or clarifies the responsibility of each party.

6.0 EQUIPMENT TO BE PROVIDED

The DEPARTMENT will reimburse the COUNTY for the procurement of two FST vehicles that adhere to the vehicle and equipment requirements described in the following sections. The DEPARTMENT will provide the COUNTY with the specifications for the vehicles and necessary equipment.

6.1 Required FST vehicle:

The patrol shall utilize diesel-powered, four-wheel-drive with auto locking hubs, extended cab (i.e., two full-size doors and two half-size doors) pick-up trucks with a minimum 8800 pound Gross Vehicle Weight Rating (GVWR) rating. The vehicles shall be equipped with the following features: air conditioning; power locks, windows, and mirrors (heated); dual battery system; and cruise control if available. In lieu of the standard pick-up rear box, the patrol vehicles shall be equipped with a 6-foot 6-inch service/utility box configured to adequately accommodate the equipment and accessories specified in this proposal. The vehicles shall be able to safely and legally transport five people, (the Operator and up to four passengers), in the cab.

6.2 Vehicle accessories/equipment:

Each FST vehicle should be equipped, at a minimum, with the following vehicle-mounted accessories:

- Power Inverter, minimum 1000 watt
- Tow chains - 5/16 inch alloy or OEM specs., J.T. hook assembly
- Rubber face push bumper
- Light bar
- Interior utility compartment lighting
- Trailer hitch capable of handling a 1-7/8 inch, 2-inch and 2-5/16 inch balls
- Spot light capable of directing a beam centered in any direction of a 360 degree horizontal arc around the truck
- Rear work lights
- Rear-mounted arrow stick and red/blue LED emergency lights
- Enlarged turn signals attached to the rear truck bed
- Warning lights attached to the side of the truck, near the rear of the truck
- Safety chain D-ring or eyelet mounted on rear of truck body
- Vehicle-mounted changeable message sign assembly, full matrix LED, approximately 6' wide X 3' high, folded during transport, environmentally sealed case, character

height of 11" high, capable of displaying 3 lines of 8 characters, powered by vehicle's alternator and battery system, and controlled by handheld controller provided with sign assembly

All existing equipment should be utilized prior to the procurement of new equipment. New equipment purchases must be approved by the Project Manager.

6.3 Communication equipment:

Two-way Radios - The COUNTY is responsible for the cost of procuring and installing all two-way radio communication equipment they deem necessary for the vehicles.

Scanners - programmable scanners capable of scanning police agency frequencies shall also be installed in the service vehicles.

Public address system - the FST vehicles shall be equipped with an external speaker and public address system to enable the driver of a disabled vehicle to hear instructions transmitted from the cab of the FST vehicle when it is adjacent to the rear of the disabled vehicle.

6.3.1 Mobile Telephones and Global Position System (GPS)/Automated Vehicle Location (AVL) Capabilities

Each FST vehicle shall be equipped with a State-furnished GPS device and/or phone, including all related charging equipment, which will provide cellular telephone, two-way radio communication, and Global Positioning System (GPS) with Automated Vehicle Location (AVL) capabilities. The Project Manager shall be responsible for the procurement and set up costs associated with State-furnished phones as well as costs associated with monthly service charges for cellular and GPS/AVL services. The DEPARTMENT is not responsible for any damage or other acts by the COUNTY that may render the GPS device and/or phone inoperable. The COUNTY will be required to return the State-furnished GPS device and/or phone at the end of the contract.

The FST Operator shall turn the GPS device and/or phone on five (5) minutes prior to the start of each patrol. It is the responsibility of the FST Operator to ensure that the phone and GPS/AVL capabilities are operational during the entire shift. The phone shall be turned off five (5) minutes after the end of each shift. The 5 minutes prior to and after the shift is not billable, but is incidental to the normal shift hours. If the GPS device and/or phone are damaged or inoperable, the COUNTY is responsible for replacing them with the identical model within 24 hours. A spare charging cord is required in the FST vehicle at all times. The COUNTY is responsible for any additional charging cords. The phone shall NOT be used by the COUNTY for personal use.

The cellular telephone/two-way radio is used by the STOC, Project Manager, and other Law Enforcement agencies for communicating with the FST Operator. In the event that motorists assisted by the FST require a telephone to arrange for towing, the COUNTY

allows limited use of the cellular phone by the motorist.

6.4 Toolbox:

Each FST vehicle shall be required to have a toolbox with the following minimum number of tools/supplies. This list may be supplemented at the COUNTY'S option and expense.

- Screwdrivers: Standard 1/8", 3/16", 1/4", 5/16" (1 each minimum) Phillips head #1 and #2 (1 each minimum)
- Needle nose pliers (1)
- Adjustable rib joint pliers, 2" minimum capacity (1)
- Crescent wrench 8" and 12" (1 each)
- Hammer, 5 pound (1)
- Mallet, rubber (1)
- Tape, electrical (1 roll)
- Tape, duct, 5 inch x 20 yd roll (1)
- Tire pressure gauge (1)
- Mechanic's wire (1 roll)
- Bolt cutters (1)
- Hacksaws (2 blades)

All existing equipment should be utilized prior to the procurement of new equipment. New equipment purchases must be approved by the Project Manager.

6.5 Service accessories and parts:

In addition to the above, each FST vehicle shall be required to carry the following parts and supplies to perform the repairs and services required:

- Mobile Data Computer
- Oxygen Unit
- EMS Kit
- Switch Box
- Radio Console
- Mag Light
- CB Radio
- AED External Defibrillator
- Diesel fuel (5 gallons)
- Gasoline, unleaded (5 gallons)
- Water (5 gallons)
- Vehicle fuses blade type and glass tube type 2 each 5,10,15,20,30 amp
- Safety chains (minimum 5 feet) (4)
- Fire extinguisher (10 lb. Chemical ABC)
- Fire extinguisher (10 lb. Chemical BC)
- Pry bar, 36" or longer (1)

- Wood chalks/blocks, 4" x 6" x 12" (3)
- Broom, street, 24" wide (1)
- Shovel, square point (1)
- Fuses (highway flares), 15 minute (12)
- Cones 28" (16)
- Advanced Warning roll up or collapsible type sign that is 48" wide with MUTCD compliant fluorescent pink background and black lettering and/or image (4)
    i. Be Prepared to Stop
    ii. Emergency Scene Ahead
    iii. Merge Left
    iv. Merge Right
- Lock out set
- Jack, hydraulic 2-ton, floor (1)
- Four-way lug wrench (1 std., 1 metric)
- Rechargeable air bottle, hoses and fittings to fit tire valve stems, 100 psi capacity
- Heavy-duty battery booster pack
- Funnel, multi-purpose, flexible spout (1)
- 5-gallon can filled with sand (1)
- Trash can, 5 gallon (1)
- Rope, nylon or poly, 100 feet
- Dog snare

All existing equipment should be utilized prior to the procurement of new equipment. New equipment purchases must be approved by the Project Manager.

Storage of diesel fuel and gasoline shall be outside the pick-up truck's passenger cab. All accessories, parts, and service equipment shall be securely fastened to the FST vehicle to prevent displacement during sudden stops. Watertight containers shall be used to store liquids.

6.6 Pre-operation inventory:

The DEPARTMENT will inventory each FST vehicle at least 5 days prior to the service start date. Documentation of the vehicle identification number and successful completion of the inventory shall be kept on file at the Project Manager's office. The Project Manager may conduct subsequent inventorying of either vehicle upon 24-hour notification to the Administrator for the duration of the contract.

The FST Operator shall be required to complete a pre-operation inspection of the vehicle as well as inventory the toolbox and other required supplies prior to the start of each shift. An inspection/inventory sheet shall need to be completed prior to the start of each shift. Any item missing must be replaced or replenished before the start of the shift. Vehicle maintenance shall be performed during non-service hours.

6.7 Vehicle identification:

Each FST vehicle shall be identified with both official FST logos and markings and with the Milwaukee County Sheriff's Office emblem. The Milwaukee County Sheriff's Office emblem shall be no more than 20 x 20 inches.

All vehicles utilized for the WisDOT FST Program shall be painted as specified by the Project Manager. In the event the DEPARTMENT obtains outside sponsorship for the FST program as described in section 5.16, the vehicle identification specifications may require modification including re-painting, and re-decaling. The COUNTY will not be responsible for costs associated with modifying vehicle identification. WisDOT FST emblems/markings as well as vehicle identification numbers will be required on both sides of all FST vehicles per details furnished by the DEPARTMENT. Each FST vehicle shall also display an identification number on both the left and right front fenders, and on the left and right side of the truck body. All FST vehicle markings are maintained in a clean and readable condition throughout the FST operation.

Additional vehicle identification shall be mirror imaged in letters not less than 4" high, centered above the grill. The placement of this identification shall be on the curved surface of the hood or can be placed on a flat plastic type bug screen.

6.8 Vehicle Title:

The title of the FST vehicle shall be in the COUNTY's name. If requested by the Project Manager, the COUNTY will transfer the title to the DEPARTMENT.

6.9 Vehicle Out of Service:

Should one of the FST vehicles be out of service or unavailable, the other FST vehicle should be used for both FST shifts. The Administrator shall notify the Project Manager any time one of the FST vehicles is not available for normal service hours. If the COUNTY's preferred vendor is not able to perform the needed service, or if requested by the DEPARTMENT, the COUNTY must obtain a minimum of two bids and obtain approval from the Project Manager prior to authorizing services.

6.10 Other FST Vehicle Uses:

The FST vehicles can be used for other activities upon approval of the Project Manager. The Project Manager may request the vehicle and Operator to be available for demonstrations, traffic safety trainings, or other promotional activities. Costs for these activities shall be fully reimbursed by the DEPARTMENT.

The COUNTY may have instances when the FST vehicle would be requested for activities outside of its normal hours of operation as described in Section 3.0. For these instances the Administrator must request approval from the Project Manager 72 hours prior to the event. If approved, the COUNTY agrees to pay for Operator time and to replenish any equipment used at the COUNTY'S expense and prep it for primary use for the next shift.

6.11 Vehicle Disposal:

At the end of the contract, the vehicles and all related equipment must be returned to the DEPARTMENT. Alternatively, the COUNTY may purchase the vehicle and equipment from the DEPARTMENT at fair market value.

7.0 EMPLOYEE/OPERATOR REQUIREMENTS

FST Operators shall meet the following minimum requirements.

7.1 Operator Qualification - General:

Potential Operators shall be sufficiently experienced in the tasks of roadside service operations to provide safe and proper service and must be capable of demonstrating their abilities prior to formal training. Additionally, the Operators shall be expected to exercise reasonable judgment in carrying out their duties.

7.2 Training:

All FST Operators, including back-up Operators shall be required to attend and complete a COUNTY departmental FST training session prior to operation of the FST vehicle. All training shall be conducted by the current FST staff and shall include program details, customer service and roadside service safety as well as geographical areas of responsibilities. All FST Operators shall also be required to successfully complete a standard first aid training course, including use of AED equipment.

Additionally, all FST Operators are required to attend up to eight (8) hours of additional training as deemed necessary by the DEPARTMENT. Said training will be provided by the Project Manager free of charge and FST Operator travel expenses to attend the training will reimbursed by the DEPARTMENT. The training session(s) will be conducted throughout the state and coordinated by the Project Manager.

The following elements are to be included in the training program:

a. Patrol Procedures
b. Patrol Driver Courtesy
c. Emergency Response/Incident Management/Traffic Control
d. Hazmat Response
e. Field Service Reports
f. Traffic Reporting
g. Towing/Pushing Procedures
h. Inter-Agency Communications
i. Safety
j. National Incident Management System (NIMS)/Incident Command System (ICS)

7.3 Uniforms:

The COUNTY shall provide all FST Operators with appropriate uniforms, shoes, and other safety equipment. Mandatory uniform items include a standard uniform for each

driver consisting of ANSI Class II or III (as appropriate) safety vests, protective shoes or boots, jackets and reflectorized rain gear. All vests, jackets and reflectorized rain gear will have the FST logo on them as to easily identify the program to motorists being assisted. The exact specifications of the standard uniform for FST Operators will be determined by the Project Manager and may be modified to meet the needs of the DEPARTMENT at anytime during the contract.

A photo identification badge is to be provided by the COUNTY as specified by the Project Manager.

8.0 RECORD KEEPING AND REPORTING

The COUNTY shall obtain and maintain records sufficient to document the costs incurred in procuring and equipping the FST vehicle and providing the specified services over the life of the contract.

8.1 Daily Logs:

The FST Operator shall complete a daily log, which will be provided by the Project Manager. These records shall be submitted to the Project Manager monthly. The COUNTY shall permit the Project Manager to inspect all records of the COUNTY relating to its performance as the FST provider for the duration of this contract and for three years after the contract has expired.

8.2 Review Meetings:

The COUNTY shall meet with the Project Manager up to 4 times per year to review the effectiveness of the FST. These meetings are intended to debrief both parties regarding the operation of the FST, its intended purpose, and its effectiveness in delivering the Scope of Services.

8.3 Wisconsin Department of Transportation Questionnaire/Response Form:

The COUNTY shall distribute a pre-addressed, postage-paid FST Questionnaire/Response Form, provided by the Project Manager, to every individual receiving assistance from the FST Operator.

The DEPARTMENT will design the form for the COUNTY and provide an initial supply. The COUNTY shall be responsible for keeping records of all costs associated with reproduction of additional survey forms, distribution, and postage for reimbursement. The DEPARTMENT shall create a monthly summary of motorist responses and provide this information to the COUNTY. The COUNTY shall also be responsible for ensuring an adequate supply of forms is present at all times in the FST vehicle.

9.0 BASIS OF PAYMENT

The DEPARTMENT shall reimburse the COUNTY for the reasonable expenses, up to $136,000, involved in procuring two suitable trucks and customizing and equipping them to meet the requirements specified in Section 6.0. The DEPARTMENT shall coordinate with the COUNTY to determine which vehicle bid shall be procured. Vehicle accessories (e.g., lights, signs, emergency equipment, etc.), consumable items used to aid motorists, cellular phone airtime, and other incidental expenses (as approved by the DEPARTMENT) excluding labor expenses will be reimbursed at their actual cost. The COUNTY shall include proper documentation (e.g., receipts, copies of official logs, etc.) of all charges to be reimbursed. Total reimbursements, not including the vehicle procurement, will not exceed $235,000 without written authorization from the DEPARTMENT.

Equipment charged as a direct cost to this contract shall be subject to the rules for equipment purchased under grants to local subrecipients as outlined in 49 CFR 18.32.

The DEPARTMENT shall reimburse the COUNTY for labor on an hourly basis for service rendered by the FST during the normal hour increments. Overtime, when requested by the DEPARTMENT, shall be paid in accordance with the collective bargaining agreement in effect between the Operator and the COUNTY.

The COUNTY reserves the right to increase its monthly charges to the DEPARTMENT, to reflect labor agreement settlements affecting the assigned deputy's salary, fringe benefits, and any other increased costs, which occur within the term of this Agreement. In addition, the COUNTY shall bill the DEPARTMENT retroactively for any increased costs attributable to such labor agreement settlements when the COUNTY'S costs of providing services under this Agreement are affected thereby.

The COUNTY and the DEPARTMENT shall retain title to the property each may acquire to fulfill its obligations under this agreement.

The COUNTY shall, within 10 business days after the end of the month and after submitting all daily logs for the month, submit an invoice for work performed in the period. Billings shall be directed to the Wisconsin Department of Transportation, Statewide Traffic Operations Center, 433 West St. Paul Ave., Milwaukee WI 53203. The invoice package shall include documentation of labor charges and copies of logs or receipts to substantiate reimbursement for consumable items. Payment of the invoice will be remitted to the COUNTY within 30 days of receipt of the invoice.

10.0 LAWS, REGULATIONS, PERMITS, INDEMNIFICATION AND INSURANCE

The COUNTY shall observe and comply with any and all requirements of the constituted public authorities and with all applicable Federal, State, or local statutes, ordinances, regulations, and standards including, but not limited to, rules and regulations promulgated from time to time by governmental agencies having jurisdiction over any phase of operation unless modified by these specifications.

The COUNTY shall furnish all licenses, permits, and authorizations required for the performance of this contract. The COUNTY shall have insurance that covers the full replacement cost of each FST vehicle, equipment and supplies contained within the vehicle. The COUNTY shall obtain a replacement cost estimate on an annual basis to ensure adequate insurance levels. If the vehicle sustains damage or is declared a total loss the COUNTY is responsible for repairing or replacing the vehicle and all equipment to return the vehicle to compliance with the requirements outlined in Section 6.0.

11.0 TERMINATION OF CONTRACT

The DEPARTMENT may terminate the Contract at any time at its sole discretion by delivering 30 days written notice to the COUNTY. In the event that the DEPARTMENT elects to terminate this contract because the COUNTY is in default here under, the COUNTY shall not be so terminated if it cures the breach within thirty (30) days, or commences and diligently pursues a cure to the satisfaction of the DEPARTMENT for those breaches not curable within thirty (30) calendar days. Upon termination the DEPARTMENT's sole liability will be to the pro-rata cost of the services performed as to the date of termination plus expenses incurred with the prior written approval of the DEPARTMENT. In the event that the COUNTY terminates the contract, for any reason whatsoever, it will refund the DEPARTMENT within 30 says of said termination, all payments made hereunder by the DEPARTMENT to the COUNTY for work not completed or not accepted by the DEPARTMENT. Such termination will require written notice to that effect to be delivered by the COUNTY to the DEPARTMENT not less than 60 days prior to said termination.

AMENDMENT #1 TO THE CONTRACT
BETWEEN
THE WISCONSIN DEPARTMENT OF TRANSPORTATION
AND
Milwaukee County Sheriff's Office

For Project ID # 0072-40-40
Milwaukee County Sheriff Freeway Service Team

The contract made and entered into by and between the Wisconsin Department of Transportation (DEPARTMENT) and the Milwaukee County Sheriff's Office (MUNICIPALITY) dated October 14, 2008 is hereby amended as set forth on the following page, which is annexed and made part of the original CONTRACT.

The MUNICIPALITY represents that they are in compliance with appropriate Statutes and regulations relating to their profession and signify their willingness to provide the desired services.

IN WITNESS WHEREOF, the parties hereto have caused the AMENDMENT to be executed and approved on the date written by their authorized officers or representatives.

Approved for the Milwaukee County Sheriff's Office

By: _____

Date: 1/26/10

Approved for the State of Wisconsin Department of Transportation

By: _____

Date: 7/22/09

REASONS FOR AMENDMENT

The reason for this AMENDMENT is to utilize extend the service for 1 year beginning 7/1/2009 and continuing until 6/30/2010. This amendment will increase the total cost of the contract from $371,000 to $591,583 (an increase of $220,583)

Services under this amendment will be complete by June 30, 2010.

ALL SERVICES

As a result of this AMENDMENT the MUNICAPALITY Services will be preformed for the DEPARTMENT'S Division of Transportation System Development, Bureau of Highway Operations, State Traffic Operations Center, located in Milwaukee, WI and will be extended until June 30, 2010. Compensation for all Services provided by the MUNICAPALITY under terms of the CONTRACT shall be actual costs to the MUNICAPALITY up to a maximum amount of $591,583 ($220,583 increase). Compensation for all services provided by the MUNICAPALITY under terms of this contract shall not exceed $591,583 ($220,583 increase). Compensation in excess of this maximum amount will not be allowed unless authorized by a written contract change order. Compensation for costs incurred as a result of improper performance by the MUNICAPALITY will not be allowed

AMENDMENT #2 TO THE CONTRACT
BETWEEN
THE WISCONSIN DEPARTMENT OF TRANSPORTATION
AND
Milwaukee County Sheriff's Office

For Project ID # 0072-40-40
Milwaukee County Sheriff Freeway Service Team

The contract made and entered into by and between the Wisconsin Department of Transportation (DEPARTMENT) and the Milwaukee County Sheriff's Office (MUNICIPALITY) dated October 14, 2008 is hereby amended as set forth on the following page, which is annexed and made part of the original CONTRACT.

The MUNICIPALITY represents that they are in compliance with appropriate Statutes and regulations relating to their profession and signify their willingness to provide the desired services.

IN WITNESS WHEREOF, the parties hereto have caused the AMENDMENT to be executed and approved on the date written by their authorized officers or representatives.

Approved for the Milwaukee County Sheriff's Office

By: Insp Kevin A Carr

Date: 06/22/10

Approved for the State of Wisconsin Department of Transportation

By: Dwight Witt

Date: 7-1-10

REASONS FOR AMENDMENT

The reason for this AMENDMENT is to utilize extend the service for 1 year beginning 7/1/2010 and continuing until 6/30/2011. This amendment will increase the total cost of the contract from $591,583 to $812,166 (an increase of $220,583)

Services under this amendment will be complete by June 30, 2011.

ALL SERVICES

As a result of this AMENDMENT the MUNICAPALITY Services will be performed for the DEPARTMENT'S Division of Transportation System Development, Bureau of Highway Operations, State Traffic Operations Center, located in Milwaukee, WI and will be extended until June 30, 2011. Compensation for all Services provided by the MUNICAPALITY under terms of the CONTRACT shall be actual costs to the MUNICAPALITY up to a maximum amount of $812,166 ($220,583 increase). Compensation for all services provided by the MUNICAPALITY under terms of this contract shall not exceed $812,166 ($220,583 increase). Compensation in excess of this maximum amount will not be allowed unless authorized by a written contract change order. Compensation for costs incurred as a result of improper performance by the MUNICAPALITY will not be allowed

AMENDMENT NO. 3 TO THE CONTRACT BETWEEN

THE WISCONSIN DEPARTMENT OF TRANSPORTATION (DEPARTMENT)

AND

MILWAUKEE COUNTY SHERIFF'S OFFICE (COUNTY)

FOR PROJECT I.D. 0072-40-40
MILWAUKEE COUNTY SHERIFF FREEWAY SERVICE TEAM

The contract made and entered into by and between the Wisconsin Department of Transportation (DEPARTMENT) and the Milwaukee County Sheriff's Office (COUNTY) dated October 14, 2008 is hereby amended as set forth on the following pages, which is annexed and made part of the original CONTRACT.

The COUNTY represents that they are in compliance with appropriate Statutes and regulations relating to their profession and signify their willingness to provide the desired services.

In witness whereof, the parties hereto have caused this AMENDMENT to be executed and approved on the date written by their authorized officers or representatives.

Approved for the Milwaukee County Sheriff's Office

By: David A Clarke Jr.

Date: RECEIVED FEB 03 2012

Approved for the State of Wisconsin Department of Transportation

By: _____

Date: 02-06-12

APPROVED AS TO FORM

CORPORATION COUNSEL.

AMENDMENT NO. 4 TO THE CONTRACT BETWEEN

THE WISCONSIN DEPARTMENT OF TRANSPORTATION (DEPARTMENT)

AND

MILWAUKEE COUNTY SHERIFF'S OFFICE (COUNTY)

FOR PROJECT I.D. 0072-40-40
MILWAUKEE COUNTY SHERIFF FREEWAY SERVICE TEAM

The contract made and entered into by and between the Wisconsin Department of Transportation (DEPARTMENT) and the Milwaukee County Sheriff's Office (COUNTY) dated October 14, 2008 is hereby amended as set forth on the following pages, which is annexed and made part of the original CONTRACT.

The COUNTY represents that they are in compliance with appropriate Statutes and regulations relating to their profession and signify their willingness to provide the desired services.

In witness whereof, the parties hereto have caused this AMENDMENT to be executed and approved on the date written by their authorized officers or representatives.

Approved for the Milwaukee County Sheriff's Office

By: Jerry A. Clarke Jr.

Date: 07-23-12

Approved for the State of Wisconsin Department of Transportation

By: _____

Date: 06/25/2012

AMENDMENT NO. 5 TO THE CONTRACT BETWEEN

THE WISCONSIN DEPARTMENT OF TRANSPORTATION (DEPARTMENT)

AND

MILWAUKEE COUNTY SHERIFF'S OFFICE (COUNTY)

FOR PROJECT I.D. 0072-40-40
MILWAUKEE COUNTY SHERIFF FREEWAY SERVICE TEAM

The contract made and entered into by and between the Wisconsin Department of Transportation (DEPARTMENT) and the Milwaukee County Sheriff's Office (COUNTY) dated October 14, 2008 is hereby amended as set forth on the following pages, which is annexed and made part of the original CONTRACT.

The COUNTY represents that they are in compliance with appropriate Statutes and regulations relating to their profession and signify their willingness to provide the desired services.

In witness whereof, the parties hereto have caused this AMENDMENT to be executed and approved on the date written by their authorized officers or representatives.

Approved for the Milwaukee County Sheriff's Office	Approved for the State of Wisconsin Department of Transportation
By: _____	By: _____
Date: _____	Date: 12/17/13

REASON FOR AMENDMENT:

For the purpose extending Freeway Service Team services, this Amendment:

1. Increases the maximum contract amount to $1,503,332.
2. Extends the contract completion date by 12 month to June 30, 2014.

For the purposes of modifying the contract, the Amendment:

1. Modify the following language of the original contract:

   5.16 Private Sponsorships

   The Department may seek private sponsorships to wholly or partially fund FST operations in any or all of the segments specified in section 5.3.1. If private sponsorships are identified during this contract, the DEPARTMENT reserves the right to require the COUNTY to adhere any and all new requirements as defined within a sponsorship contract.

ALL SERVICES:

The COUNTY services will be performed for the DEPARTMENT's Division of Transportation System Development, Bureau of Traffic Operations, Statewide Traffic Operations Center office located in Milwaukee, WI and will be completed by **June 30, 2014**. Compensation for all Services provided by the COUNTY under terms of the CONTRACT shall be:

(1) Actual costs to the COUNTY up to a maximum amount of **$1,503,332.00** ***(Increase of $250,000.00)***.

Compensation for all services provided by the COUNTY under the terms of this contract shall not exceed **$1,503,332.00** ***(Increase of $250,000.00)***.

Compensation in excess of this maximum amount will not be allowed unless authorized by a written contract change order. Compensation for costs incurred as a result of improper performance by the COUNTY will not be allowed.

MCSO Contract
Kozlik, Scott - DOT
to:
'dennis.brand@milwcnty.com'
12/18/2013 07:42 AM
Cc:
"Silverson, Scott - DOT (DTSD Consultant)"
Hide Details
From: "Kozlik, Scott - DOT" <Scott.Kozlik@dot.wi.gov>

To: "'dennis.brand@milwcnty.com'" <dennis.brand@milwcnty.com>

Cc: "Silverson, Scott - DOT (DTSD Consultant)" <Scott.Silverson@dot.wi.gov>

History: This message has been forwarded.

1 Attachment

MCSO FST Contract Amendment 2013.pdf

Good morning Dennis. Here is the signed signature page of the amended MCSO FST contract. Upon approval and signature, can you scan it and email it back to me? Once finalized on our end, we will send you a copy of the executed contract. Thanks Dennis.

Scott Kozlik
WisDOT - Bureau of Traffic Operations
Statewide Traffic Operations Center
414-227-2161
www.511wi.gov/Web

COUNTY OF MILWAUKEE
Inter-Office Communication

Date: April 10, 2014

To: Supervisor Marina Dimitrijevic, Chairwoman, Milwaukee County Board of Supervisors

From: Brian L. Peterson, M.D., Medical Examiner

Subject: Wisconsin Tissue Bank

The attached Agreement is submitted for possible consideration by the Judiciary, Safety and General Services Committee and the County Board. Under §157.06(24m)(4)(2b), if the County Board takes no action on the Agreement, the Agreement is deemed approved.

Brian L. Peterson, M.D.
Medical Examiner

attachment

Cc: Chris Abele, County Executive
Amber Moreen, Chief of Staff, County Executive's Office
Theodore Lipscomb, Sr., Chair, Judiciary, Safety and General Services
Alexis Gassenhuber, Committee Clerk, Judiciary, Safety and General Services

File No.
(Journal, 2014)

(ITEM) , from the Milwaukee County Medical Examiner's Office requesting approval of the Amended and Restated Tissue Recovery Program Agreement with the BloodCenter of Wisconsin d/b/a Wisconsin Tissue Bank to facilitate tissue recovery for an annual fee of $88,750 for an initial term of January 17, 2014 to August 31, 2014, and then for automatically renewing one year terms.

A RESOLUTION

WHEREAS, the Milwaukee County Medical Examiner's Office is required by Wisconsin State Statute to enter into a contract with a Tissue Bank to refer all applicable deaths under Milwaukee County jurisdiction, and

WHEREAS the BloodCenter of Wisconsin d/b/a Wisconsin Tissue Bank has worked with the Medical Examiner's Office since 1989 to facilitate tissue recovery services for families in Milwaukee County; and

WHEREAS, The Medical Examiner's Office has available space in the morgue to rent to the BloodCenter of Wisconsin d/b/a Wisconsin Tissue Bank for the purpose of tissue recovery for an annual fee of $88,750 now, therefore,

BE IT RESOLVED, The Milwaukee County Medical Examiner's Office is hereby authorized to have a continued contract in place for the amount of $88,750 with the BloodCenter of Wisconsin d/b/a Wisconsin Tissue Bank to facilitate tissue recovery.
.

FISCAL NOTE

The referenced dollar amount has been included in the Medical Examiner's Office 2014 adopted budget.

MILWAUKEE COUNTY FISCAL NOTE FORM

DATE: 05/01/2014

Original Fiscal Note ☒

Substitute Fiscal Note ☐

SUBJECT: **Amended and Restated Tissue Recovery Program Agreement with the BloodCenter of Wisconsin d/b/a Wisconsin Tissue Bank**

FISCAL EFFECT:

☒ No Direct County Fiscal Impact

☐ Existing Staff Time Required

☐ Increase Operating Expenditures
(If checked, check one of two boxes below)

☐ Absorbed Within Agency's Budget

☐ Not Absorbed Within Agency's Budget

☐ Decrease Operating Expenditures

☐ Increase Operating Revenues

☐ Decrease Operating Revenues

☐ Increase Capital Expenditures

☐ Decrease Capital Expenditures

☐ Increase Capital Revenues

☐ Decrease Capital Revenues

☐ Use of contingent funds

Indicate below the dollar change from budget for any submission that is projected to result in increased/decreased expenditures or revenues in the current year.

	Expenditure or Revenue Category	Current Year	Subsequent Year
Operating Budget	Expenditure	0	0
	Revenue	0	0
	Net Cost	0	0
Capital Improvement Budget	Expenditure	0	0
	Revenue	0	0
	Net Cost	0	0

DESCRIPTION OF FISCAL EFFECT

In the space below, you must provide the following information. Attach additional pages if necessary.

A. Briefly describe the nature of the action that is being requested or proposed, and the new or changed conditions that would occur if the request or proposal were adopted.
B. State the direct costs, savings or anticipated revenues associated with the requested or proposed action in the current budget year and how those were calculated. [1] If annualized or subsequent year fiscal impacts are substantially different from current year impacts, then those shall be stated as well. In addition, cite any one-time costs associated with the action, the source of any new or additional revenues (e.g. State, Federal, user fee or private donation), the use of contingent funds, and/or the use of budgeted appropriations due to surpluses or change in purpose required to fund the requested action.
C. Discuss the budgetary impacts associated with the proposed action in the current year. A statement that sufficient funds are budgeted should be justified with information regarding the amount of budgeted appropriations in the relevant account and whether that amount is sufficient to offset the cost of the requested action. If relevant, discussion of budgetary impacts in subsequent years also shall be discussed. Subsequent year fiscal impacts shall be noted for the entire period in which the requested or proposed action would be implemented when it is reasonable to do so (i.e. a five-year lease agreement shall specify the costs/savings for each of the five years in question). Otherwise, impacts associated with the existing and subsequent budget years should be cited.
D. Describe any assumptions or interpretations that were utilized to provide the information on this form.

   All revenue referenced in the attached contract has already been included in the Medical Examiner's 2014 Adopted Budget.

Department/Prepared By Karen Domagalski

Authorized Signature _____

Did DAS-Fiscal Staff Review? ☐ Yes ☒ No

Did CBDP Review?[2] ☐ Yes ☐ No ☒ Not Required

[1] If it is assumed that there is no fiscal impact associated with the requested action, then an explanatory statement that justifies that conclusion shall be provided. If precise impacts cannot be calculated, then an estimate or range should be provided.

[2] Community Business Development Partners' review is required on all professional service and public work construction contracts.

AMENDED AND RESTATED
TISSUE RECOVERY PROGRAM AGREEMENT

This **AMENDED AND RESTATED TISSUE RECOVERY PROGRAM AGREEMENT** ("Agreement") is effective as of the 17th day of January, 2014 (the "Effective Date"), by and between **BloodCenter of Wisconsin, Inc.** d/b/a the Wisconsin Tissue Bank (hereinafter "WTB") and the **Milwaukee County Medical Examiner** ("Medical Examiner").

RECITALS

WHEREAS, WTB is engaged in the business of facilitating the donation of anatomical gifts and procuring tissues from cadaveric donors for transplantation and research; and

WHEREAS, WTB and Medical Examiner, in recognition of the need for and the benefits of tissue transplantation, implantation and research, are desirous of working together on the terms of this Agreement to promote human tissue donation and streamline the donation process; and

WHEREAS, after considering WTB's history, services, traditional referral patterns, geographic service area, and tissue distribution record, Medical Examiner and WTB entered into that certain Tissue Recovery Program Agreement, effective July 6, 2010, as amended by the First Amendment, effective September 1, 2011 (the "2010 Agreement")

WHEREAS, the parties mutually desire to amend and restate in their entirety the terms and conditions set forth in the 2010 Agreement by executing this Agreement; and

NOW, THEREFORE, in consideration of the foregoing premises, the mutual covenants and agreements set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. RESPONSIBILITIES OF WTB.

1.1. Compliance with Laws. In the performance of its tasks under this Agreement, WTB will comply with applicable federal and state laws, Food and Drug Administration (FDA) regulations, and American Association of Tissue Bank (AATB) guidelines.

1.2. Accreditation. WTB will apply for and maintain its AATB accreditation status and will provide documentation of such accreditation as requested by Medical Examiner.

1.3. Compliance with Medical Examiner's Policies. WTB will adhere to Medical Examiner's administrative, medical and staff policies and work cooperatively with Medical Examiner's staff.

1.4. Coordination of Services. WTB will designate a coordinator to serve as a liaison to the Medical Examiner's Office and to be available to assist in tissue procurement policy and

procedure development, review, and implementation. The liaison will also provide on-going professional in-service education as it relates to aspects of tissue donation and transplantation and will coordinate the recovery of tissues with other procurement organizations including the Organ Procurement Organization and the Eye Bank.

1.5. Availability. WTB staff will be available for Medical Examiner's Office referrals and tissue recoveries 24 hours a day, 7 days a week. WTB staff will evaluate potential donors, offer to the decedent's legal next of kin the option of donation, obtain informed consent for donation, recover medically suitable tissues from donors, and answer questions raised by Medical Examiner's Office personnel.

1.6. Services. WTB will facilitate and coordinate the recovery of tissues by performing the following services:

1.6.1. Arrange for tissue donation in a manner which ensures that the needs of the family, Coroner, Medical Examiner, law enforcement and funeral home are met.

1.6.2. Schedule the tissue recovery if the recovery is to occur in the County morgue.

1.6.3. Provide staff, equipment and supplies needed for tissue recovery.

1.6.4. Provide documentation of the tissues recovered for filing in the donor's Medical Examiner record.

1.6.5. Reconstruct the donor to restore anatomical configuration.

1.6.6. Notify the designated County Medical Examiner staff of the completion of the tissue recovery.

1.6.7. Clean the recovery area.

1.6.8. Maintain the confidentiality of all information obtained during the evaluation and completion of the tissue donation.

1.6.9. Provide a comprehensive Donor Family/Bereavement follow-up program to Donor Families.

1.6.10. Provide follow-up with Medical Examiner's Office after each recovery.

1.6.11. Coordinate Donor Awareness/Recognition Programs in collaboration with Medical Examiner's Office.

2. RESPONSIBILITIES OF MEDICAL EXAMINER.

2.1. Notification of Deaths.

2.1.1. In-Hospital Deaths. In accordance with Wis. Stat. § 157.06(4r)(a)(l), if the death occurred in a hospital that has an agreement with WTB under 42 CPR 482.45(a)(2),

Medical Examiner will release the decedent for potential donation of tissue to the Wisconsin Tissue Bank. If the death occurred in a hospital that does not have an agreement with WTB, Medical Examiner will contact the hospital's contracted tissue bank.

2.1.2. Out-of-Hospital Deaths. Medical Examiner will establish a routine system for the reporting of deaths to WTB immediately following Medical Examiner's awareness of the death.

2.2. Access to Records. Medical Examiner will allow WTB access to investigator's reports, autopsy reports, medical records and all pertinent information necessary to ensure donor suitability.

2.3. Staff Education. Medical Examiner will cooperate with WTB to arrange and provide in-service education for Milwaukee County Medical Examiner's staff involved in tissue donor identification, routine death referral protocols, approaching families for consent and the recovery process.

2.4. Transportation. For purposes of tissue recovery, WTB and its agents may transport the donor to an appropriate tissue recovery facility. If such a transfer is indicated, the Medical Examiner agrees to cooperate with the transfer of the donor for tissue recovery.

2.5. Recordkeeping. Medical Examiner will maintain permanent records in accordance with Wis. Stat. § 157.06(4)(6).

2.6. Use of Tissue Recovery Space. In addition to tissue recovery cases referred by the Medical Examiner, WTB may from time-to-time transport tissue donors to the Medical Examiner's office for tissue recovery. Upon request, Medical Examiner agrees to provide WTB with a room suitable for tissue recovery at the Medical Examiner's office, 24 hours per day, 7 days per week.

3. REIMBURSEMENT.

Beginning September 1, 2014, and subject to the provisions below, WTB will pay Medical Examiner an annual fee of $88,750.00 in exchange for the reservation and use of a room at the Medical Examiner's office for tissue recovery purposes from time-to-time. The parties hereto understand and agree that such space will not be devoted to use by WTB and may be used for other purposes. The annual fee is based upon an estimate of seventy-one (71) tissue recovery referrals from the Medical Examiner. However, there is no limit to the number of tissue recovery cases that WTB may transport to the Medical Examiner's office from time-to-time. The annual fee will be paid by WTB in equal monthly installments; provided however, that the monthly installments in the last quarter of each Term may be prorated to reflect a reduction in the anticipated seventy-one (71) tissue recovery cases referred by Medical Examiner.

4. TERM AND TERMINATION.

4.1. Term. This Agreement shall commence as of the Effective Date and continue until August 31, 2014 (the "Initial Term").

NOTE: THIS AGREEMENT CONTAINS AN AUTOMATIC RENEWAL CLAUSE: After the conclusion of Initial Term, this Agreement shall automatically renew for successive one (1) year terms (each a "Renewal Term"), unless either party provides the other with written notice of non-renewal at least thirty (30) days prior to the expiration of the then-current Term. The automatic renewal of this Agreement does not automatically trigger an increase in charges or fees.

Initial here: TCB **WTB** ___ **Milwaukee County**

4.2. Termination. Either party, at its option, reserves the right to terminate this Agreement, in whole or in part, for any or no reason, by giving the other party thirty (30) days prior written notice of such termination.

5. INDEMNIFICATION AND INSURANCE.

5.1. By Medical Examiner. Medical Examiner agrees to and herby does indemnify, defend, and hold harmless WTB, its successors, subsidiaries, affiliated companies, and the directors, officers, servants, shareholders and employees of any of the foregoing, from and against any and all costs, expenses (by not any attorney fees), liabilities, claims, demands and causes of action which they, individually or collectively, may suffer as a result of the negligent acts or willful misconduct of Medical Examiner in the performance of its duties and obligations under this Agreement. Medical Examiner's liability shall be limited by Wis. Stat. § 345.03(3) for automobile and § 893.80(3) for general liability.

5.2. By WTB. WTB agrees to and herby does indemnify, defend and hold harmless Medical Examiner, the County of Milwaukee and their respective officers, agents, employees and assigns from, and against any and all costs, expenses (but not any attorney fees), liabilities, claims, demands and causes of action which Medical Examiner, the County of Milwaukee and their respective officers, agents, and employees may suffer as a result of the negligent acts or willful misconduct of WTB in the performance of its duties and obligations under this Agreement.

5.3. Insurance. During the term of the Agreement, WTB shall (i) have and maintain general liability, commercial and professional liability, auto liability and workers compensation coverage in amounts of not less than $1,000,000 (or as required by statute); and (ii) provide, or cause its insurance provider to provide a certificate of insurance naming (i) Milwaukee County as an additional insured under WTB's General Liability and Auto Liability policies, and

providing (ii) a waiver of subrogation is granted in favor of Milwaukee County with respect to WTB's Workers Compensation policy.

6. MISCELLANEOUS.

6.1. Amendment. This Agreement may not be modified, amended, or changed except in a writing signed by both parties.

6.2. Entire Agreement and Severability. This Agreement constitutes the entire agreement between WTB and Medical Examiner, and supercedes all prior and contemporaneous communications, including the 2010 Agreement, with respect to the Services and the other matters contemplated by this Agreement. If any provision of this Agreement is held to be void, invalid or otherwise unenforceable, in whole or part, the other provisions shall remain in full force and effect.

6.3. Counterparts. This Agreement may be executed in counterparts, any one of which need not contain the signature of more than one party, but all of which, together, shall comprise one and the same agreement.

6.4. Assignment. Neither this Agreement nor any right or obligation arising hereunder may be assigned by any party hereto, in whole or in part, without the prior written consent of the other party hereto, provided that WTB may assign this Agreement in connection with a sale of all or substantially all of its business or assets or to an entity controlled by Blood Center of Wisconsin, Inc.

6.5. Independent Contractor. Nothing contained in this Agreement shall constitute or be construed to create a partnership or joint venture between WTB and Medical Examiner. In entering into this Agreement, and in acting in compliance herewith, WTB is at all times acting and performing as an independent contractor, duly authorized to perform the acts required of it hereunder.

6.6. Governing Law. This Agreement shall be construed in accordance with and governed by the laws of the State of Wisconsin, without giving effect to the choice of law provisions thereof. The parties agree that jurisdiction and venue for any dispute shall be in the federal or state courts of Milwaukee County, Wisconsin and no party or person may object to personal jurisdiction in, or venue of such courts or assert that such courts are not a convenient forum.

6.7. Notices. Any notice required or permitted to be given under this Agreement shall be in writing and shall either be personally delivered, sent by recognized overnight delivery carrier, or sent postage prepaid, by certified mail, return receipt requested, to the address of the parties indicated below or to such other address as either party shall designate by notice to the

other party. Such notice shall be effective when actually received, the day after it is sent by overnight carrier, or two (2) days after deposit in the U.S. Postal Service, whichever occurs first. Notices to the parties shall be addressed as follows:

If to Medical Examiner:
Milwaukee County Medical Examiner
933 West Highland Blvd
Milwaukee, WI 53207
Attn: Operations Manager

If to WTB:
Blood Center of Wisconsin, Inc.
638 N. 18th Street
Milwaukee, Wisconsin 53214
Attn: Corporate Counsel

with a copy to:
Wisconsin Tissue Bank
9000 West Chester St. Suite 250
Milwaukee, Wisconsin 53214

IN WITNESS WHEREOF, this Agreement has been executed as of the day and year first above written.

BloodCenter of Wisconsin, Inc.

X _____

Tom Abshire, M.D.
Print Name

SVP-Medical Sciences Institute
Title

1-17-14
Date

APPROVED AS TO FORM
Office of Corporate Counsel
1-17-14 Date
Initials

Approved as to form and independent status:

By: _____ Date: 2/20/14
Corporation Counsel

Milwaukee County Medical Examiner

X _____

BRIAN L PETERSON M.D.
Print Name

CHIEF MEDICAL EXAMINER
Title

2-24-14
Date

X _____ 3/10/14
Chris Abele
County Executive

X _____ 3/21/14
Reviewed by: Scott Manske
Comptroller

By: _____ Date: 2/20/14
Risk Management

MILWAUKEE COUNTY
Inter-Office Communication

DATE: April 28th, 2014

TO: Supervisor Theodore Lipscomb, Chairman, Judiciary, Safety, and General Services Committee

FROM: Amy Pechacek, Director, Department of Risk Management

SUBJECT: Update on Risk Management's Workers' Compensation Third Party Administration RFP (INFORMATIONAL ONLY)

BACKGROUND

Following an external audit evidencing workers' compensation claims that were being adjusted below industry standards and concurrent with compliance issues and fines from the state, the decision was made during the 2014 budget deliberations to move workers' compensation claims handling to a third party administrator (TPA). The RFP was placed on hold until the vacant Director of Risk Management position was filled.

The new Director, Amy Pechacek, was introduced to the Judiciary Committee at the March 6th, 2014 meeting and advised the Committee that the RFP for workers' compensation claims handling had been drafted and was in the final stages of revisions. The Committee requested an update from Ms. Pechacek when a timeline and implementation plan was developed.

TIMELINE

The RFP was finalized with the associated timeline:

- Issue date: April 22, 2104
- Proposers' meeting: May 5, 2014
- Deadline for receipt of questions: May 9, 2014
- Proposal deadline: May 30, 2014
- Panel review and interviews: June – July, 2014
- Presentation of award recommendation to Board: September, 2014
- Implementation: October, 2014

IMPLEMENTATION AND INTERNAL STRUCTURE PLAN

- Implementation specifics will depend on the TPA's proposal.
- Vacant Safety Manager position in Risk Management was updated to Claims and Safety Manager and will oversee the TPA for handling practices, analytics, and results. This position began recruitment on April 14, 2014 and will close on May 1, 2014.
- Current internal administrative support position for workers' compensation claims will support the reporting of new claims and act as the liaison between employees and TPA.
- The two positions that currently adjust claims internally are held by retirement eligible employees who will assist in the transferring of data and transitioning of claims handling as needed per the specifications of the successful bidder.

INTEROFFICE COMMUNICATION
COUNTY OF MILWAUKEE

DATE: April 23, 2014

TO: Marina Dimitrijevic, Chairwoman, County Board of Supervisors

FROM: Molly J. Zillig, Principal Assistant Corporation Counsel

SUBJECT: Settlement of Potential Claims of Jean Orlow

I request that this matter be referred to the Committee on Judiciary, Safety and General Services for approval of a settlement regarding potential gender and/or race discrimination claims. I request authority to settle all potential claims of Jean Orlow ("Orlow") for the total sum of $7,500.00, which will be paid by the Department of Health and Human Services' 2014 Salary Budget.

Orlow is a current Milwaukee County employee working in the Housing Division of the Department of Health and Human Services. From December 20, 2010 to April 27, 2013, Orlow worked for the Department of Health and Human Services in the Housing Division as a Housing and Development Program Coordinator in pay grade 28M. Over the years, two of the individuals performing substantially similar duties as Orlow were males. These two males were in pay grade 31M and received a higher hourly wage than Orlow. In April 2013, the position itself underwent a compensation study that resulted in a position reclassification to Housing Program Manager in pay grade 33M. Although the reclassification process increased Orlow's hourly wage, she continues to receive less compensation than her two male predecessors received.

Settlement of this matter will result in a payment by Milwaukee County to Orlow for back wages for approximately 16 months in 2013 and 2014 in the amount of $7,500.00 minus appropriate payroll deductions. In addition, Milwaukee County will advance Orlow from Step 1 to Step 3 in her current pay grade 33M. This double-step advancement will bring Orlow to a compensation rate consistent with her male predecessors.

This proposed settlement resulted from three other Housing Division employees who filed lawsuits against Milwaukee County. Two of the three employees have settled their lawsuits. One employee continues to litigate her claims. Orlow is the

only remaining employee who held the position of Housing and Development Program Coordinator during the relevant time period.

Orlow will provide the County with a full and complete release from any liability for actions that occurred before April 2014. The payment will be deducted from the Department of Health and Human Services' 2014 Salary Budget.

Corporation Counsel recommends this settlement for approval.

Molly J. Zillig, Principal Assistant Corporation Counsel

cc: Amber Moreen
Kelly Bablitch
Alexis Gassenhuber
Raisa Koltun
Jessica Janz-McKnight
Erica Hayden

INTEROFFICE COMMUNICATION
COUNTY OF MILWAUKEE

DATE: April 21, 2014

TO: Marina Dimitrijevic, Chairwoman, County Board of Supervisors

FROM: Mark A. Grady, Deputy Corporation Counsel MAG

SUBJECT: *Freeman v. Milwaukee County et al.*
E.D. Wis. Case No. 13-CV-1030

I request that this matter be referred to the Committee on Judiciary, Safety and General Services for approval of a settlement. I request authority for Wisconsin County Mutual to make a payment on behalf of Milwaukee County to settle this case in the amount of $20,000.

This case involves a claim for an assault by former Juvenile Correction Officer George Mack on Kevin Freeman while he was a 15 year old in juvenile detention. It is alleged that Freeman complained about his lunch and that shortly thereafter Mack lunged across the table to grab a spoon out of Freeman's hand. Mack then allegedly walked around the table and grabbed Freeman by the neck and slammed him to the wall or to the ground, injuring his elbow, wrist and hand. A surveillance camera videotape appears to support the allegations, although there is no audio on the recording.

Mack was criminally charged with a felony. He entered a deferred prosecution agreement. A year later, the charges were dismissed on the prosecutor's motion. Charges for his discharge were filed, but he retired prior to the PRB hearing.

Freeman's alleges minor physical injuries, but also alleges continuing psychological injuries. Freeman also has a pending suit against the City of Milwaukee for an alleged sexual assault by a police officer during a search.

Because the claims are based on violations of civil rights, Freeman is entitled to recover attorneys' fees if he makes any recovery, no matter how minimal. Thus, the largest potential exposure in this case is probably for an award of attorneys' fees. Freeman is represented by Attorney Robin Shellow in Milwaukee and the Peoples' Law Office in Chicago. The attorneys have submitted documentation supporting attorneys' fees incurred in this case to date of approximately $19,000.

Wisconsin County Mutual has retained three different law firms to address the defense of this matter. One firm represents Mack, one firm represents Milwaukee County separately in order to address any issues regarding scope of employment and a third firm represents the Mutual to address any possible insurance policy coverage defenses.

In order to avoid the continuing expense for multiple defense counsel and to avoid the continuing increase in potential attorneys' fees for Freeman's attorneys, outside counsel negotiated with Freeman's counsel and recently reached an agreement to settle the case for the total sum of $20,000.00.

We believe this is a reasonable settlement of this case. The payment will be made by the Wisconsin County Mutual Insurance Corporation and applied to the County's deductible.

cc: Amber Moreen
Kelly Bablitch
Raisa Koltun
Alexis Gassenhuber
Erica Hayden

From Corporation Counsel requesting approval of a resolution authorizing a settlement of *Freeman v. Mack et al.,* E.D. Wis. Case No. 13-CV-1030.

File No. 14-

A RESOLUTION

WHEREAS, on June 8, 2011, Kevin Freeman was a minor in custody at the Juvenile Detention Center and alleges he was the subject of excessive force and an assault by George Mack, a Juvenile Corrections Officer; and

WHEREAS, the altercation was recorded by a surveillance camera and witnessed by other juveniles and County staff; and

WHEREAS, Mack was charged with a felony in connection with this incident, but the charges were dismissed following a deferred prosecution agreement; and

WHEREAS, charges for discharge were filed against Mack, but he subsequently retired; and

WHEREAS, Freeman alleges he incurred physical and emotional injuries due to the alleged assault; and

WHEREAS, Freeman is entitled to recover all of his attorneys' fees if he receives any verdict in his favor and currently claims attorneys' fees of approximately $19,000.00; and

WHEREAS, Milwaukee County's counsel negotiated a settlement with Freeman and his counsel for a payment totaling $20,000.00 for all claims;

NOW, THEREFORE, BE IT RESOLVED that Milwaukee County approves a settlement payment to Freeman and/or his attorneys, the Shellow Group and the People's Law Office, by the Wisconsin County Mutual Insurance Corporation in the total amount of $20,000 in return for a full release of all claims by Freeman and the dismissal of the pending action.

MILWAUKEE COUNTY FISCAL NOTE FORM

DATE: April 21, 2014

Original Fiscal Note X

Substitute Fiscal Note ☐

SUBJECT: A resolution approving a settlement in Freeman v. Milwaukee County, E.D. Wis. Case No. 13-CV-1030.

FISCAL EFFECT:

☐ No Direct County Fiscal Impact

☐ Existing Staff Time Required

X Increase Operating Expenditures
(If checked, check one of two boxes below)

X Absorbed Within Agency's Budget

☐ Not Absorbed Within Agency's Budget

☐ Decrease Operating Expenditures

☐ Increase Operating Revenues

☐ Decrease Operating Revenues

☐ Increase Capital Expenditures

☐ Decrease Capital Expenditures

☐ Increase Capital Revenues

☐ Decrease Capital Revenues

☐ Use of contingent funds

Indicate below the dollar change from budget for any submission that is projected to result in increased/decreased expenditures or revenues in the current year.

	Expenditure or Revenue Category	Current Year	Subsequent Year
Operating Budget	Expenditure	20,000	
	Revenue		
	Net Cost	20,000	
Capital Improvement Budget	Expenditure		
	Revenue		
	Net Cost		

DESCRIPTION OF FISCAL EFFECT

In the space below, you must provide the following information. Attach additional pages if necessary.

A. Briefly describe the nature of the action that is being requested or proposed, and the new or changed conditions that would occur if the request or proposal were adopted.
B. State the direct costs, savings or anticipated revenues associated with the requested or proposed action in the current budget year and how those were calculated.[1] If annualized or subsequent year fiscal impacts are substantially different from current year impacts, then those shall be stated as well. In addition, cite any one-time costs associated with the action, the source of any new or additional revenues (e.g. State, Federal, user fee or private donation), the use of contingent funds, and/or the use of budgeted appropriations due to surpluses or change in purpose required to fund the requested action.
C. Discuss the budgetary impacts associated with the proposed action in the current year. A statement that sufficient funds are budgeted should be justified with information regarding the amount of budgeted appropriations in the relevant account and whether that amount is sufficient to offset the cost of the requested action. If relevant, discussion of budgetary impacts in subsequent years also shall be discussed. Subsequent year fiscal impacts shall be noted for the entire period in which the requested or proposed action would be implemented when it is reasonable to do so (i.e. a five-year lease agreement shall specify the costs/savings for each of the five years in question). Otherwise, impacts associated with the existing and subsequent budget years should be cited.
D. Describe any assumptions or interpretations that were utilized to provide the information on this form.

Approval of this resolution authorizes the Wisconsin County Mutual Insurance Corporation to pay $20,000 to Kevin Freeman and his attorneys, the Shellow Group and the People's Law Office, in return for a release of all claims and a dismissal of the suit. The payment will be applied to the County's deductible.

Department/Prepared By Mark A. Grady, Deputy Corporation Counsel

Authorized Signature Mark A. Grady

Did DAS-Fiscal Staff Review? ☐ Yes X No

Did CBDP Review?[2] ☐ Yes ☐ No X Not Required

[1] If it is assumed that there is no fiscal impact associated with the requested action, then an explanatory statement that justifies that conclusion shall be provided. If precise impacts cannot be calculated, then an estimate or range should be provided.

[2] Community Business Development Partners' review is required on all professional service and public work construction contracts.

INTEROFFICE COMMUNICATION
COUNTY OF MILWAUKEE

DATE: April 23, 2014

TO: Marina Dimitrijevic, Chairwoman, County Board of Supervisors

FROM: Molly J. Zillig, Principal Assistant Corporation Counsel

SUBJECT: *Jean Wolfgang, et al. v. Milwaukee County*
U.S. District Court, E.D. Case No. 13CV00586

I request that this matter be referred to the Committee on Judiciary, Safety and General Services for approval of a settlement. I request authority to settle the claims of plaintiff Jean Wolfgang ("Wolfgang") for the total sum of $26,137.87, which will be paid from the Department of Health and Human Services' 2014 Salary Budget.

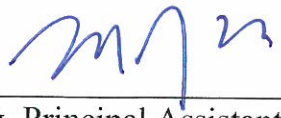
Wolfgang (female) has sued Milwaukee County alleging gender discrimination in violation of the Equal Pay Act and Title VII of the Civil Rights Act of 1964. From July 25, 2011 to April 27, 2013, Wolfgang worked for the Department of Health and Human Services in the Housing Division as a Housing and Development Program Coordinator in pay grade 28M. She alleges that there were two (2) male Program Coordinators in the Housing Division doing her same job, but being paid in pay grade 31M and receiving a higher hourly wage than Wolfgang. In April 2013, the position itself underwent a compensation study that resulted in a position reclassification to Housing Program Manager in pay grade 33M. Although the reclassification process increased Wolfgang's hourly wage, she continues to receive less compensation than her two (2) male predecessors received.

Settlement of this matter will result in a payment by Milwaukee County to Wolfgang for back wages for two (2) years and nine (9) months in 2011 through 2014 in the amount of $26,137.87 minus appropriate payroll deductions. In addition, Milwaukee County will advance Wolfgang from Step 1 to Step 3 in her current pay grade 33M. This double-step advancement will bring Wolfgang to a compensation rate consistent with her male predecessors.

This proposed settlement followed extensive discovery exchanged between the parties. Wolfgang will dismiss her federal lawsuit and provide the County with a

full and complete release from any liability. The payment will be deducted from the Department of Health and Human Services' 2014 Salary Budget.

Corporation Counsel and the Wisconsin County Mutual recommend this settlement for approval.



Molly J. Zillig, Principal Assistant Corporation Counsel

cc: Amber Moreen
Kelly Bablitch
Alexis Gassenhuber
Raisa Koltun
Jessica Janz-McKnight
Erica Hayden

From Corporation Counsel recommending the adoption of a resolution to settle the gender discrimination claims in Jean Wolfgang v. Milwaukee County, Case No. 13-CV-586

File No. 14-
(Journal,)

A RESOLUTION

WHEREAS, Jean Wolfgang ("Wolfgang") worked as a Housing and Development Program Coordinator in pay grade 28M from July 25, 2011 to April 27, 2013; and

WHEREAS, Wolfgang's position completed a compensation study that resulted in her position being reclassified to Housing Program Manager in pay grade 33M in April 2013; and

WHEREAS, Wolfgang alleges that she suffered discrimination based on her gender in that she performed the same job as male program coordinators in her division in a lower pay grade than the other male program coordinators; and

WHEREAS, a settlement has been negotiated calling for payment by Milwaukee County to Wolfgang for back wages for two (2) years and nine (9) months in 2011 through 2014 in the amount of $26,137.87 minus appropriate payroll deductions and the Department of Health and Human Services advancing Wolfgang from Step 1 to Step 3 of her current pay grade 33M; and

WHEREAS, extensive discovery was exchanged between the parties; and

WHEREAS, the tentative settlement agreement provides for a release of all Wolfgang's claims against Milwaukee County in return for a payment from the Department of Health and Human Services' 2014 Salary Budget in the amount of $26,137.87 to Wolfgang; and

WHEREAS, the Office of Corporation Counsel recommends this settlement; and

WHEREAS, the Committee on Judiciary, Safety and General Services approved this settlement at its meeting on May 8, 2014 by a vote of _____;

NOW, THEREFORE, BE IT RESOLVED, that the Milwaukee County Board of Supervisors approves the payment from the Department of Health and Human Services' 2014 Salary Budget in the amount of $26,137.87 to Wolfgang and

Wolfgang's advancement from Step 1 to Step 3 of pay grade 33M in exchange for dismissal of her lawsuit and a full and complete release of all claims against Milwaukee County.

MILWAUKEE COUNTY FISCAL NOTE FORM

DATE: April 23, 2014

Original Fiscal Note ☒

Substitute Fiscal Note ☐

SUBJECT: A resolution to approve the settlement of a discrimination lawsuit filed by Jean Wolfgang

FISCAL EFFECT:

☐ No Direct County Fiscal Impact

☐ Existing Staff Time Required

☒ Increase Operating Expenditures
(If checked, check one of two boxes below)

☒ Absorbed Within Agency's Budget

☐ Not Absorbed Within Agency's Budget

☐ Decrease Operating Expenditures

☐ Increase Operating Revenues

☐ Decrease Operating Revenues

☐ Increase Capital Expenditures

☐ Decrease Capital Expenditures

☐ Increase Capital Revenues

☐ Decrease Capital Revenues

☐ Use of contingent funds

Indicate below the dollar change from budget for any submission that is projected to result in increased/decreased expenditures or revenues in the current year.

	Expenditure or Revenue Category	Current Year	Subsequent Year
Operating Budget	Expenditure	26,137.87	
	Revenue		
	Net Cost	26,137.87	
Capital Improvement Budget	Expenditure		
	Revenue		
	Net Cost		

DESCRIPTION OF FISCAL EFFECT

In the space below, you must provide the following information. Attach additional pages if necessary.

A. Briefly describe the nature of the action that is being requested or proposed, and the new or changed conditions that would occur if the request or proposal were adopted.
B. State the direct costs, savings or anticipated revenues associated with the requested or proposed action in the current budget year and how those were calculated. [1] If annualized or subsequent year fiscal impacts are substantially different from current year impacts, then those shall be stated as well. In addition, cite any one-time costs associated with the action, the source of any new or additional revenues (e.g. State, Federal, user fee or private donation), the use of contingent funds, and/or the use of budgeted appropriations due to surpluses or change in purpose required to fund the requested action.
C. Discuss the budgetary impacts associated with the proposed action in the current year. A statement that sufficient funds are budgeted should be justified with information regarding the amount of budgeted appropriations in the relevant account and whether that amount is sufficient to offset the cost of the requested action. If relevant, discussion of budgetary impacts in subsequent years also shall be discussed. Subsequent year fiscal impacts shall be noted for the entire period in which the requested or proposed action would be implemented when it is reasonable to do so (i.e. a five-year lease agreement shall specify the costs/savings for each of the five years in question). Otherwise, impacts associated with the existing and subsequent budget years should be cited.
D. Describe any assumptions or interpretations that were utilized to provide the information on this form.

A. The County is proposing a settlement to Jean Wolfgang, who filed a lawsuit in federal court alleging gender discrimination. Adoption of this settlement will result in a payment to Jean Wolfgang in the amount of $26,137.87 in back wages less appropriate payroll deductions from the salary account budget of the Department of Health and Human Services.
B. Approval of this Resolution authorizes a payment of $26,137.87 to Jean Wolfgang from the salary account budget of the Department of Health and Human Services.

Department/Prepared By Corporation Counsel

Authorized Signature

Did DAS-Fiscal Staff Review? ☐ Yes ☒ No

Did CBDP Review?[2] ☐ Yes ☐ No ☒ Not Required

[1] If it is assumed that there is no fiscal impact associated with the requested action, then an explanatory statement that justifies that conclusion shall be provided. If precise impacts cannot be calculated, then an estimate or range should be provided.
[2] Community Business Development Partners' review is required on all professional service and public work construction contracts.

INTEROFFICE COMMUNICATION
COUNTY OF MILWAUKEE

DATE: May 1, 2014

TO: Theodore Lipscomb Sr., Chairman
Committee on Judiciary, Safety and General Services

Willie Johnson & David Cullen, Co-Chairmen
Committee on Finance, Personnel and Audit

FROM: Mark A. Grady, Deputy Corporation Counsel

SUBJECT: Status update on pending litigation

The following is a list of some of the significant pending cases that we believe may be of interest to the Committees. New information and additions to the list since the last committee meetings are noted in **bold.** However, our office is prepared to discuss any pending litigation or claim involving Milwaukee County, at your discretion.

1. *DC48 v. Milwaukee County* (Rule of 75)
   Case No. 11-CV-16826 (stay of case until March 14, 2014)

2. Retiree health plan (co-pays, deductibles, etc.) cases:

   Estate of Hussey v. Milwaukee County (Retiree health)
   Case No. 12-C-73 (U.S. Seventh Circuit Court of Appeals affirmed ruling in County's favor)

   MDSA prohibited practice complaint
   WERC Case No. 792 No. 71690 MP-4726

   Rieder & MDSA v. Milwaukee County
   Case No. 12-CV-12978 (circuit court ruled in County's favor; MDSA filed appeal to Court of Appeals)

3. Medicare Part B premium reimbursement cases:

FNHP and AMCA v. Milwaukee County
Case No. 12-CV-1528 (Court of Appeals ruled in favor of County; Wisconsin Supreme Court has accepted review)

DC48 et al.(Martel) v. Milwaukee County et al.
Case No. 12-CV-13612 (stayed pending outcome of case above)

4. 1.6% Pension Multiplier cases:

Stoker & FNHP v. Milwaukee County
Case No. 11-CV-16550 (Court of Appeals ruled against County, Petition for Review filed with Wisconsin Supreme Court)

AFSCME v. Milwaukee County
Case No. 12-CV-9911 (stayed pending *Stoker* appeal)

Brillowski & Trades v. Milwaukee County
Case No. 12-CV-13343 (stayed pending *Stoker* appeal)

5. Pension backdrop modification case:

FNHP, AMCA & AFSCME v. Milwaukee County and ERS
Case No. 13-CV-3134

6. *Wosinski et al. v. Advance Cast Stone et al.* (O'Donnell Park)
Case No. 11-CV-1003 (Jury Verdict)

7. *Christensen et al. v. Sullivan et al.* (jail population and health care)
Case No. 96-CV-1835

8. *Milwaukee Riverkeeper v. Milwaukee County* (Estabrook dam)
Case No. 11-CV-8784 (court found dam a nuisance and ordered repair or removal)

9. *Midwest Development Corporation v. Milwaukee County* (Crystal Ridge)
Case No. 12-CV-11071

10. Froedtert Hospital petition to disturb burial sites – petition granted by State.

11. *Roeschen's Healthcare LLC v. Milwaukee County* (public records)
Case No. 13-CV-3853 (court ordered records produced and attorneys' fee)

12. *Orlowski v. Milwaukee County* (2007 death of inmate in HOC)
    Case No. 13-C-994 (E.D. Wis. federal court)

13. *Madison Teachers Inc. v. Walker*
    Dane County Circuit Court Case No. 11-CV-3774 (Act 10)(pending in Wisconsin Supreme Court)

14. *Jane Doe v. Milwaukee County (sexual assault by CO in jail)*
    Case No. 14-CV-200 (E.D. Wis. federal court)

15. *AFSCME, DC48 v. Milwaukee County (laid off housekeepers)*
    Case No. 14-C-340 (E.D. Wis. federal court)

16. State ex rel Rice v. Dimitrijevic et al (open meetings)
    Case No. 13-CV4222

17. Physiogenix v. Milwaukee County, WE Energies et al (Research Park power)
    Case No. 14-CV-1780

18. *Milwaukee County v. Personnel Review Board (jurisdiction of PRB over discipline grievances)*
    Case No. 14-CV-2536

Supervisors Staskunas and Lipscomb, Sr. File No. 14-455

A RESOLUTION

Ordering a special election to fill the vacancy in the office of Treasurer of Milwaukee County created by the letter of resignation submitted on April 23, 2014, by the incumbent, Daniel J. Diliberti.

WHEREAS, a vacancy exists in the office of Treasurer of Milwaukee County, caused by the letter of resignation of Daniel J. Diliberti, submitted on the 23rd of April, 2014, effective May 12, 2014, whose term would have expired on the 2nd day of January, 2017; now, therefore,

BE IT RESOLVED, that by virtue of the authority vested in the Milwaukee County Board by Section 8.50(1)(a) of the Wisconsin Statutes and pursuant to the provisions of Sections 17.21(3) of the Wisconsin Statutes:

IT IS HEREBY ORDERED as follows:

(1) That a special election be held in Milwaukee County on the 4th day November, 2014, with a special primary election on August 12, 2014, if needed, to fill the residue of the unexpired term in the office of Treasurer of Milwaukee County caused by the resignation of Daniel J. Diliberti; and

(2) That said special election and special primary, if needed, be noticed, held, conducted, canvassed and returned in accordance with the provisions of the Wisconsin Statutes; and

(3) That the earliest day for circulating nomination papers shall be the day this Order is filed and recorded in the Office of the County Clerk, and the deadline for filing nomination papers shall be 5:00 p.m. on the 2nd day of June, 2014.

So ordered this 12th day of May, 2014.

FILED AND RECORDED THIS ____ DAY OF MAY, 2014, IN THE OFFICE OF THE COUNTY CLERK

_____

Joseph J. Czarnezki
Milwaukee County Clerk

MILWAUKEE COUNTY FISCAL NOTE FORM

DATE: May 7, 2014

Original Fiscal Note ☒

Substitute Fiscal Note ☐

SUBJECT: A resolution ordering a special election to fill the vacancy in the office of Treasurer of Milwaukee County created by the letter of resignation submitted on April 23, 2014, by the incumbent, Daniel J. Diliberti

FISCAL EFFECT:

☐ No Direct County Fiscal Impact

☐ Existing Staff Time Required

☒ Increase Operating Expenditures
(If checked, check one of two boxes below)

☐ Absorbed Within Agency's Budget

☒ Not Absorbed Within Agency's Budget

☐ Decrease Operating Expenditures

☐ Increase Operating Revenues

☐ Decrease Operating Revenues

☐ Increase Capital Expenditures

☐ Decrease Capital Expenditures

☐ Increase Capital Revenues

☐ Decrease Capital Revenues

☒ Use of contingent funds

Indicate below the dollar change from budget for any submission that is projected to result in increased/decreased expenditures or revenues in the current year.

	Expenditure or Revenue Category	Current Year	Subsequent Year
Operating Budget	Expenditure	$25,000 to $35,000	$0
	Revenue	$0	$0
	Net Cost	$25,000 to $35,000	$0
Capital Improvement Budget	Expenditure	$0	$0
	Revenue	$0	$0
	Net Cost	$0	$0

DESCRIPTION OF FISCAL EFFECT

In the space below, you must provide the following information. Attach additional pages if necessary.

A. Briefly describe the nature of the action that is being requested or proposed, and the new or changed conditions that would occur if the request or proposal were adopted.
B. State the direct costs, savings or anticipated revenues associated with the requested or proposed action in the current budget year and how those were calculated.[1] If annualized or subsequent year fiscal impacts are substantially different from current year impacts, then those shall be stated as well. In addition, cite any one-time costs associated with the action, the source of any new or additional revenues (e.g. State, Federal, user fee or private donation), the use of contingent funds, and/or the use of budgeted appropriations due to surpluses or change in purpose required to fund the requested action.
C. Discuss the budgetary impacts associated with the proposed action in the current year. A statement that sufficient funds are budgeted should be justified with information regarding the amount of budgeted appropriations in the relevant account and whether that amount is sufficient to offset the cost of the requested action. If relevant, discussion of budgetary impacts in subsequent years also shall be discussed. Subsequent year fiscal impacts shall be noted for the entire period in which the requested or proposed action would be implemented when it is reasonable to do so (i.e. a five-year lease agreement shall specify the costs/savings for each of the five years in question). Otherwise, impacts associated with the existing and subsequent budget years should be cited.
D. Describe any assumptions or interpretations that were utilized to provide the information on this form.

A. Approval of this resolution will order a special election to fill the remaining term of office for the Milwaukee County Treasurer. The incumbent, Daniel J. Diliberti, is retiring effective May 12, 2014.

B. Based on information provided and confirmed by Election Commission staff, this fiscal note provides an estimated range of $25,000 to $35,000 for the cost of adding an extra contest to the Fall primary and general election ballots. (A primary is necessary if more than two candidates are certified to be on the ballot.) This estimated cost range is based on the cost of printing ballots, programming election machines and the required newspaper advertising. Milwaukee County, according to Election Commission staff, is responsible for all costs related to federal, state and county contests. A precise cost calculation is not possible since many factors influence the actual cost of each contest (i.e. election or referendum question) including ballot printing (actual size of ballot, number of columns and whether it is one or two-sided), election machine programming and advertising expenses.

C. The budgetary impact is expected to increase the expenditures of the Election Commission by $25,000 to $35,000 due to the addition of the additional contest. Election Commission staff, historically, have sought fund transfers from the Appropriation for Contingencies for any costs that could not be absorbed within their Adopted Budget. These fund transfers are typically requested after the election is held and actual election costs can be determined. This fiscal note anticipates that an appropriation fund transfer from Org. Unit. 1940 – Countywide nondepartmentals, Account 1945 – Appropriation for Contingencies, would be necessary at a later date to cover the additional cost of the Treasurer's contest that was not contemplated when the 2014 Adopted Budget was approved.

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[1] If it is assumed that there is no fiscal impact associated with the requested action, then an explanatory statement that justifies that conclusion shall be provided. If precise impacts cannot be calculated, then an estimate or range should be provided.

[2] Community Business Development Partners' review is required on all professional service and public work construction contracts.

D. The assumptions and interpretations used for this fiscal note were historical costs and Election Commission professional staff assumptions of current costs for printing, programming and advertising.

Department/Prepared By Steve Cady, Policy and Research Director, Office of the Comptroller

Authorized Signature Stephen J. Cady

Did DAS-Fiscal Staff Review? ☐ Yes ☒ No

Did CBDP Review?[2] ☐ Yes ☐ No ☒ Not Required

RECEIVED
MILWAUKEE COUNTY CLERK
2014 APR 23 P 4:35
JOSEPH J. CZARNEZKI
MILWAUKEE COUNTY CLERK

Daniel J. Diliberti
Milwaukee County Treasurer

Milwaukee County Sheriff David Clarke, Jr.
Safety Building - Room 107
901 N. 9th St.
Milwaukee, WI 53233

April 23, 2014

Dear Sheriff Clarke:

State Statute 17.01 (7) stipulates the process for notice of resignation of county treasurer; such resignation shall be submitted to the Sheriff for transmittal to the chairperson of the county board and placed on file with the county clerk.

I am, therefore, submitting this notice to officially inform you that I will be resigning from my position as County Treasurer and retiring from County service effective May 12, 2014.

It has been an honor to serve these last ten years as treasurer and much has been accomplished in that time. In the process we (in this office) have received numerous national and local awards for advancements and innovations, accrued over $10 million in budget surpluses, and improved treasury services while reducing staffing costs. I emphasize the word "we" here because, as you know, this has been a team effort. And I'd like to thank all of our team members in the Treasurer's office and our partners both inside and outside of county government who helped us along the way."

In my tenure in this office, I have found Milwaukee County to be an exciting place to work. We are building on a foundation of great past accomplishments like the regional Airport, the Regional Medical Center, the 911 emergency number and Paramedics system, centralized booking, the Federated Library System, county-wide emergency planning, nationally recognized park and bus systems, and an outstanding Zoo, PAC and Museum. As recent awards from the Public Policy Forum demonstrate, today there are more exciting new initiatives underway in many areas of county government promulgated by a new generation of leadership with innovative ideas.

One frustrating aspect of my efforts here has been my unfinished goal to change the office of the Milwaukee County Treasurer from an elected office to an appointed one – as a better way to recruit and hire a qualified financial manager in this position. Legislation to do so recently hit a major roadblock that will prevent its passage this session but I am hopeful that efforts in that regard will continue.

Looking back to my work elsewhere in county government, I am also proud of my efforts to strengthen the Milwaukee County ethics code, televise county business meetings, register lobbyists, ban pay-to-play campaign donations, and establish the Milwaukee County fraud and abuse hotline.

I thank the people of Milwaukee for the honor to have served in County government.

Sincerely,

Daniel J. Diliberti
Milwaukee County Treasurer

Courthouse, Room 102 901 North 9th Street Milwaukee, Wisconsin 53233-1462
General Office: 414-278-4033 Fax: 414-223-1383

OFFICE OF CORPORATION COUNSEL

PAUL BARGREN
Corporation Counsel

MARK A. GRADY
COLLEEN A. FOLEY
Deputy Corporation Counsel

TIMOTHY R. KARASKIEWICZ
LEE R. JONES
MOLLY J. ZILLIG
ALAN M. POLAN
JENNIFER K. RHODES
DEWEY B. MARTIN
JAMES M. CARROLL
PAUL D. KUGLITSCH
Principal Assistant
Corporation Counsel

Date: April 29, 2014

To: Supervisors
County Executive
Interested Parties

From: Paul Bargren PB
Corporation Counsel

Re: Vacancy in County Treasurer's Office (Revised)

I have been asked for some background information on filling the vacancy in the office of Treasurer of Milwaukee County that will occur on May 12, 2014. This information clarifies some potentially confusing language in the memo I issued (in haste, in the few minutes before the April 24, 2014, meeting of the County Board). In summary:

- The Deputy Treasurer performs the duties of the office of treasurer immediately upon the vacancy. § 59.25(2)(a), Stats.
- The Deputy Treasurer continues to perform the duties of the office until one of the following:
  - the end of the term on January 2, 2017, § 59.25(2)(a), (b);
  - the County Board appoints an individual as Treasurer for the remainder of term (see below), § 59.25(2)(b), or
  - a new Treasurer is selected through a special election to fill the remainder of the term (see below), § 17.21(3), § 8.50(1)(a).

If the County Board chooses to appoint a Treasurer under § 59.25(2)(b), the action would be a direct Board action, not a confirmation of a nomination. The action can be taken upon the properly noticed motion of any Board member. A supervisor who wishes to be appointed Treasurer must resign from the Board <u>before</u> the Board votes. § 66.0501(2); § 59.25(1).

If the County Board calls a special election:

- The election must be held either on the fall general election date or the spring general election date. § 17.21(3).

- If the election is to be held in Fall 2014 (August 12 primary if needed, November 4 general election), the Board must order the election no later than May 12, 2014, which is the required minimum 92 days before the primary. § 8.50(2)(a). As a practical matter this would require a special Board meeting May 12. The election cannot be ordered until the vacancy actually occurs.

- If the election is to be held in Fall 2014, nomination papers must be filed by 5 p.m. June 2, 2014. § 8.50(3). Nomination papers may be circulated no sooner than the day the order for the special election is filed, *id.* so not before May 12, 2014, assuming the order is adopted and filed that day.

- A special election for the Spring 2015 cycle could be ordered later in 2014. *Id.*