

# McDonald County Purchasing Policy Manual

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Keith Lindquist, Presiding Commissioner  
John Bunch, Eastern Commissioner  
David Holloway, Western Commissioner

*Keith Lindquist*  
*John Bunch*  
*David Holloway*



# ARTICLE 1-GENERAL PROVISIONS

## Part A--Purpose and Application

### §1-101 Purpose.

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

### §1-102 Application.

This Policy applies to contracts for the procurement of supplies, and services, entered into by the County after the effective date of this Policy, unless the parties agree to its application to contracts entered into prior to the effective date. It shall apply to every expenditure of public funds by all Administrative Authorities irrespective of the source of the funds. When the procurement involves the expenditure of federal assistance or contract funds, the procurement shall be conducted in accordance with any mandatory applicable federal law and regulations. Nothing in this Policy shall prevent any public agency from complying with the terms and conditions of any grant, gift, or bequest that is otherwise consistent with law.

## Part B—Definitions

### §1-201 Definitions.

- (1) *Addendum.* – An addition or supplement to a document, for example, items or information added to a procurement document (i.e. bid).
- (2) *Administrative Authority.* Any Elected County Official or Department Head or a person designated by them to authorize procurement and the expenditure of County funds pursuant to this Policy.
- (3) *Amendment.* A revision or change to a document, generally the contract; often used to correct a solicitation.
- (4) *Architect-Engineer and Land Surveying Services.* Those professional services within the scope of the practice of architecture, professional engineering, or land surveying as defined by the laws of the State of Missouri Section 8.285 RSMo.
- (5) *Blind Trust.* An independently managed trust in which the employee-beneficiary has no management rights and in which the employee-beneficiary is not given notice of alterations in, or other dispositions of, the property subject to the trust.
- (6) *Or Equal Specification.* A specification limited to one or more items by manufacturers' names or catalogue numbers to describe the standard of quality, performance, and other salient characteristics needed to meet McDonald County requirements, and which provides for the submission of equivalent products.
- (7) *Brand Name Specification.* A specification limited to one or more items by manufacturers' names or catalogue numbers.
- (8) *Business.* Any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or any other private legal entity.
- (9) *Change Order.* A written alteration to a contract, initiated by the purchasing agent and signed by the McDonald County Commission, in accordance with the terms of the contract, unilaterally directing the contractor to make changes.
- (10) *Contract Modification (bilateral change).* Any written alteration to any provision of the contract (i.e. specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of any contract) accomplished by mutual action of the parties to the contract.
- (11) *Confidential Information.* Any information which is available to an employee only because of the employee's status as an employee of the County and is not a matter of public knowledge or available to the public on request.
- (12) *Construction.* The process of building, altering, repairing, improving, or demolishing any public structure or building, or other public improvements of any kind to any public real property. It does not

- include the routine operation, routine repair, or routine maintenance of existing structures, buildings, or real property.
- (13) *Contract*. All types of McDonald County agreements, regardless of what they may be called, for the procurement or disposal of supplies, services or construction.
- (14) *Contractor*. Any person having a contract with the County or an Administrative Authority thereof.
- (15) *Cost Analysis*. The evaluation of cost data for the purpose of arriving at costs actually incurred or estimates of costs to be incurred, prices to be paid, and costs to be reimbursed.
- (16) *Cost Data*. Factual information concerning the cost of labor, material, overhead, and other cost elements which are expected to be incurred or which have been actually incurred by the contractor in performing the contract.
- (17) *Cost-Reimbursement Contract*. A contract under which a contractor is reimbursed for costs which are allowable and allocable in accordance with the contract terms and the provisions of this Policy, and a fee or profit, if any.
- (18) *Disadvantaged Business*. A small business which is owned or controlled by a majority of persons, not limited to members of minority groups, who have been deprived of the opportunity to develop and maintain a competitive position in the economy because of social disadvantages.
- (19) *Employee*. An individual drawing a salary or wages from the County, whether elected or not; any non-compensated individual performing personal services for the County or any department, agency, commission, council, board, or any other entity established by the executive or legislative branch of the County; and any non-compensated individual serving as an elected official of the County.
- (20) *Financial Interest*.
- (a) Ownership of any interest for involvement in any relationship from which, or as a result of which, a person within the past fiscal year has received , or is presently or in the future entitled to receive, more than \$1,000 per year, or its equivalent;
  - (b) Ownership of 10% of any property or business; or
  - (c) Holding a position in a business such as officer, director, trustee, partner, employee, or the like, or holding any position of management.
- (21) *Gratuities* – Gratuities include any material goods or services offered with the intent of, or providing the potential for, influencing the buying decision. As such, gratuities may be offered to the purchaser, or to other persons involved in purchasing decisions (or members of their immediate family).
- (22) *Immediate Family*. A spouse, children, parents, brothers, and sisters.
- (23) *Invitation for Bid*. A formal request to prospective vendors soliciting bids; contains, or incorporates by reference, the specifications or scope of work and all contractual terms and conditions. McDonald County Purchasing Initiates Invitation for Bids for disposal of surplus property.
- (24) *Person*. Any business, individual, union, committee, club, other organization, or group of individuals.
- (25) *Price Analysis*. The evaluation of price data, without analysis of the separate cost components and profit as in cost analysis, which may assist in arriving at prices to be paid and costs to be reimbursed.
- (26) *Pricing Data*. Factual information concerning prices for items substantially similar to those being procured. Prices in this definition refer to offered or proposed selling prices, historical selling prices and current selling prices. The definition refers to data relevant to both prime and subcontract prices.
- (27) *Procurement*. The buying, purchasing, renting, leasing, or otherwise acquiring of any supplies or services. It also includes all functions that pertain to the obtaining of any supply, or service, including description of requirements, selection, and solicitation of sources, preparation and award of contract, and all phases of contract administration.
- (28) *Public Agency*. A public entity subject to or created by the County.
- (29) *Purchase*. The term "purchase" as used in this policy refers to the procurement of any and all supplies, materials, equipment, contractual services or articles and shall include the rental or leasing of any equipment or articles as described and required in this policy. A purchase is defined as the value of one transaction, regardless of the number or type of items acquired or ordered in that transaction.
- (30) *Qualified Products List*. An approved list of supplies, services, or items described by model or catalogue numbers, which, prior to competitive solicitation, the County has determined will meet the applicable specification requirements.
- (31) *Request for Quotation (RFQ)*. An informal solicitation or request for information, where oral or written quotes are obtained from vendors, without formal advertising or receipt of sealed bids. Used only where statutes do not require formal sealed bids, such as small or emergency purchases, but price competition is desired.

- (32) *Request for Bid*. A formal request to prospective vendors soliciting bids; contains, or incorporates by reference, the specifications or scope of work and all contractual terms and conditions.
- (33) *Request for Proposal*. All documents, whether attached or incorporated by reference, utilized for soliciting proposals. A bid solicitation method used for requirements exceeding authorized limits when it is expected that negotiations with one or more bidders may be required with respect to any aspect of the requirements, or other factors will be considered in the selection of the contractor in addition to price, or only one source is being solicited.
- (34) *Responsible Bidder or Offeror*. A person who has the capability in all respects to perform fully the contract requirements, and the tenacity, perseverance, experience, integrity, reliability, capacity, facilities, equipment, and credit which will assure good faith performance.
- (35) *Responsive Bidder*. A person who has submitted a bid which conforms in all material respects to the requirements set forth in the invitation for bids.
- (36) *Services*. The furnishing of labor, time, or effort by a contractor, not involving the delivery of a specific end product other than reports which are merely incidental to the required performance. This term shall not include employment agreements or collective bargaining agreements.
- (37) *Small Business*. A United States business which is independently owned and which is not dominant in its field of operation or an affiliate or subsidiary of a business dominant in its field of operation.
- (38) *Specification*. Any description of the physical or functional characteristics or of the nature of a supply or service. It may include a description of any requirement for inspecting, testing, or preparing a supply, or service for delivery.
- (39) *Supplies*. All property, including but not limited to equipment, materials, printing, insurance, and leases of real property, excluding land or a permanent interest in land.

## **Part C--Public Access to Procurement Information**

### **§1-301 Public Access to Procurement Information.**

Procurement information shall be a public record to the extent provided in Section 610.010 and 109.180 RSMo and shall be available to the public as provided in such statute.

## **ARTICLE 2--OFFICE OF THE PURCHASING AGENT**

### **§2-101 Establishment, Appointment, and Tenure.**

- (1) *Establishment of the Position of Purchasing Agent* (50.753 RSMo) There is hereby created the position of purchasing agent, who shall be the County's principal public purchasing official and serve at the pleasure of the McDonald County Commission.
- (2) *Tenure*. The purchasing agent shall be appointed to serve an indefinite term and may be removed from office by the McDonald County Commission.

### **§2-102 Authority and Duties.**

- (1) *Principal Public Purchasing Official*. Except as otherwise provided herein, the purchasing agent shall serve as the principal public purchasing official for the County, and shall be responsible for the procurement of supplies and services in accordance with this Policy, as well as the management and disposal of supplies and fixed assets.
- (2) *Duties*. In accordance with this Policy, and subject to the supervision of the McDonald County Commission, the purchasing agent shall:
- (a) Procure or supervise the procurement of all supplies and services needed by the County; (50.755 RSMo)
  - (b) Sell, trade, or otherwise dispose of surplus supplies and fixed assets belonging to the County and
  - (c) Establish and maintain programs for specifications development, contract administration and inspection and acceptance, in cooperation with the public agencies using the supplies and services.
- (3) *Operational Procedures*. Consistent with this Policy, and with the approval of the

McDonald County Commission, the purchasing agent may adopt operational procedures relating to the execution of its duties.

### **§2-103 Delegations to Other County Officials.**

With the approval of the McDonald County Commission, the purchasing agent may delegate authority to purchase certain supplies, services, or construction items to other Administrative Authorities if such delegation is deemed necessary for the effective procurement of those items. Notwithstanding the provisions of Section 2-102 (Authority and Duties), procurement authority with respect to certain supplies, services, or construction may be delegated to Administrative Authorities by the McDonald County Commission, when such delegation is evidenced by a formal commission order for the effective procurement of these supplies, services, or construction.

## **ARTICLE 3--SOURCE SELECTION AND CONTRACT FORMATION**

### **Part A--Methods of Source Selection**

#### **§3-101 Competitive Sealed Bidding.**

- (1) *Conditions for Use.* All contracts of the County shall be awarded by competitive sealed bidding except as otherwise provided in Sections 3-102 (Competitive Sealed Proposals), 3-103 (Contracting for Designated Professional Service), 3-104 (Small Purchases), 3-105 (Sole Source Procurement), 3-106 (Emergency Procurements), or 5-401 (Public Announcement and Selection Process) of this Policy.
- (2) *Invitation for Bids and Request for Bids.* An Invitation for Bids and Request for Bids shall be issued and shall include specifications, and all contractual terms and conditions applicable to the procurement.
- (3) *Public Notice.* All public notices of the Invitation for Bids and Request for Bids shall be given a reasonable time, not less than fifteen (15) calendar days prior to the date set forth therein for the opening of bids. When time is of the essence, the Purchasing Director has the discretion to shorten the minimum time the bid is left open, with an opening date of 3 days from time of issue to allow for an emergency faxed bid. Such notice may include publication in a newspaper of general circulation of at least five hundred copies per issue a reasonable time prior to bid opening. (50.660 RSMo). The public notice shall state the place, date, and time of bid opening.
- (4) *Bid Opening.* Bids shall be opened publicly in the presence of one or more witnesses at the time and place designated in the Invitation for Bids or Request for Bids. The amount of each bid, and such other relevant information as the purchasing agent deems appropriate, together with the name of each bidder shall be recorded; the record and each bid shall be open to public inspection in accordance with Section 1-301 (Public Access to Procurement Information).
- (5) *Bid Award Recommendations.* The Purchasing Department shall present bid award recommendations in two scheduled commission meetings for all contract awards except for bid award recommendations for bids opened in scheduled Commission meetings which may be approved by County Commission during the first reading following the public bid opening.
- (6) *Bid Acceptance and Bid Evaluation.* Bids shall be unconditionally accepted without alteration or correction, except as authorized in this Policy. Bids shall be evaluated based on the requirements set forth in the Invitation for Bids or Request for Bids, which may include criteria to determine acceptability such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose. Those criteria that will affect the bid price and be considered in evaluation for award shall be objectively measurable, such as discounts, transportation costs, and total or life cycle costs. The Invitation for Bids or Request for Bids will set forth the evaluation criteria to be used.
- (7) *Correction or Withdrawal of Bids; Cancellation of Awards.* Correction or withdrawal of inadvertently erroneous bids before or after bid opening, or cancellation of awards or in such circumstances, may be permitted where appropriate. Mistakes discovered before bid opening may be modified or withdrawn by written notice received in the office designated in the Invitation for Bids or Request for Bids prior to the time set for bid opening. After bid opening, no changes in bid prices or other provisions of bids prejudicial to the interest of the County or fair competition shall be permitted. In lieu of bid correction, a low bidder alleging a material mistake of fact may be permitted to withdraw its bid if: (a) the mistake is clearly evident

on the face of the bid document but the intended correct bid is not similarly evident; or (b) the bidder submits evidence which clearly and convincingly demonstrates that a mistake was made. All decisions to permit the correction or withdrawal of bids, or to cancel awards or contracts based on bid mistakes, shall be supported by a written determination made by the purchasing agent. (8) *Award*. The contract shall be awarded with reasonable promptness by appropriate written notice to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the Invitation for Bids or Request for Bids. In the event the low responsive and responsible bid for a construction project exceeds available funds as certified by the McDonald County Treasurer, and such bid does not exceed such funds by more than [five] percent, the purchasing agent is authorized, when time or economic considerations preclude resolicitation of work of a reduced scope, to negotiate an adjustment of the bid price with the low responsive and responsible bidder, in order to bring the bid within the amount of available funds. Any such negotiated adjustment shall be based only upon eliminating independent deductive items specified in the Invitation for Bids or Request for Bids.

(9) *Multi-Step Sealed Bidding*. When it is considered impractical to prepare initially a purchase description to support an award based on price, an Invitation for Bids or Request for Bids may be issued requesting the submission of un-priced offers to be followed by an Invitation for Bids or Request for Bids limited to those bidders whose offers have been determined to be technically acceptable under the criteria set forth in the first solicitation.

### **§3-102 Competitive Sealed Proposals.**

(1) *Conditions for Use*. When the purchasing agent determines in writing that the use of competitive sealed bidding is either not practicable or not advantageous to the County, a contract may be entered into by use of the competitive sealed proposals method.

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

(3) *Public Notice*. Adequate public notice of the Request for Proposals shall be given in the same manner as provided in Section 3-101(3) (Competitive Sealed Bidding, Public Notice); provided, the minimum time shall be thirty (30) calendar days. When time is of the essence, the Purchasing Director has the discretion to shorten the minimum time the proposal is left open, with an opening date of 21 days from time of issue.

(4) *Receipt of Proposals*. No proposals shall be handled so as to permit disclosure of the contents of any proposal to competing offeror's during the process of negotiation. A register of proposals shall be prepared containing the name of each offeror, the number of modifications received, if any, and a description sufficient to identify the item offered. The register of proposals shall be open for public inspection only after contract award (610.021 RSMo).

(5) *Evaluation Factors*. The Request for Proposals shall state the relative importance of price and other evaluation factors.

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

(7) *Award*. Award shall be made to the responsible offeror whose proposal is determined in writing to be the most advantageous to the County, taking into consideration price and the evaluation factors set forth in the request for proposals. No other factors or criteria shall be used in the evaluation. The contract file shall contain the basis on which the award is made.

### **§3-103 Contracting for Designated Professional Services.**

(1) *Authority*. For the purpose of procuring professional services as defined by the laws of the State of Missouri, any Administrative Authority requiring such services may procure them on its own behalf. The McDonald County Purchasing department recommends that the following selection procedures be followed in these instances.

(2) *Selection Procedure*.

(a) *Obtain Statement of Qualifications*. Persons engaged in providing the designated types of professional services may submit statements of qualification and expressions of interest in providing such professional

services. An Administrative Authority using such professional services may specify a uniform format for statements of qualifications. Persons may amend these statements at any time by filing a new statement.

(b) Provide adequate *Public Announcement and Form of Request for Proposals*. Adequate public notice of the Request for Proposals shall be given in the same manner as provided in Section 3-102(3) (Competitive Sealed Proposals, Public Notice); provided the minimum time shall be thirty (30) calendar days. The Request for Proposals shall describe the services required, list the types of information and data required of each offeror, and state the relative importance of particular qualifications. Refer to paragraph 3-102 for competitive sealed proposals' procedures.

(c) Conduct *Discussions*. The Administrative Authority procuring the required professional services may conduct discussions with any offeror who has submitted a proposal to determine such offeror's qualifications for further consideration. Discussions shall not disclose any information derived from proposals submitted by other offerors.

(d) *Award*. A written award shall be made to the offeror selected by the Administrative Authority procuring the required professional services. The award will be based on the evaluation factors set forth in the request for proposals. If compensations cannot be agreed upon with the best qualified offeror, then negotiations will be formally terminated with the selected offeror. If proposals were submitted by one or more other offerors determined to be qualified, negotiations may be conducted with such other offeror or offerors, in the order of their respective qualification ranking, and the contract may be awarded to the offeror then ranked best qualified if the amount of compensations is determined to be fair and reasonable.

### **§3-104 Small Purchases.**

(1) *General*. Any contract not exceeding \$4,500.00 in a ninety day period may be made in accordance with the small purchase procedures authorized in 50.660 RSMo Contract requirements shall not be artificially divided (i.e. stringing purchases) so as to constitute a small purchase under this Section.

(2) *Small Purchases Over \$2,500*: The Purchasing department recommends that insofar as it is practical for small purchases in excess of \$2,500, no less than three businesses shall be solicited to submit written quotations. Award shall be made to the business offering the lowest acceptable quotation. Quotations should be on company letterhead and may be transmitted by facsimile machine or e-mail. A "no bid" response submitted by a vendor is acceptable as a quote. The names of the businesses submitting quotations, and the date and amount of each quotation, shall be recorded and maintained as a public record.

### **§3-105 Sole Source Procurement.**

A contract of a value in excess of \$5000 may be awarded without competition when the Commission finds that there is only one feasible source for the required supply, or service item. A contract of a value under \$5000 may be awarded without competition when a Commissioner approves of the contract based upon a finding that there is only one feasible source for the required supply, or service item. The requesting department must complete a Sole Source Request Form and submit it to the Purchasing department. The Purchasing department shall keep and maintain, and provide upon request of the Commission documentation, after conducting a good faith review of available sources, that there is only one feasible source for the required supply or service. The purchasing agent shall conduct negotiations as to price, delivery, and terms as appropriate under the circumstances. The Purchasing department shall post notices of proposed sole source purchases of a value in excess of \$3000 at its offices or on its website. The Purchasing department shall also advertise the requesting department's intent to make a sole source purchase of a value in excess of \$5000 in at least one daily and one weekly newspaper of general circulation in such places as are most likely to reach prospective bidders or offerors. Except for regulated utility services, a record of sole source procurements shall be maintained as a public record in the Purchasing department and shall list each contractor's name, the amount and type of each contract, a listing of the item(s) procured under each contract, and the identification number of each contract file. The Purchasing Agent will review the record of sole source providers yearly in December, and submit the list of renewals for approval for the next fiscal year to the commissioners in regular session.

### **§3-106 Emergency Procurements.**

Notwithstanding any other provisions of this Policy, and by direction of the liaison Commissioner to any Department, and in the absence of an assigned liaison Commissioner, it shall be the Presiding Commissioner, the purchasing agent may make or authorize others to make emergency procurements of

supplies, services, or construction items when there exists a threat to public health, welfare, or safety; provided that such emergency procurements shall be made with such competition as is practicable under the circumstances. In the case of a major disaster affecting County operations caused by weather, terrorism, war, accidents, explosions, Acts of God, etc. the Presiding Commissioner or liaison Commissioner could enact the emergency purchasing policy to cover whatever goods or services may be necessary to stabilize the County's operations. A written determination of the basis for the emergency and for the selection of the particular contractor shall be documented on the *Emergency Procurement Form* and submitted to the Purchasing Department by the requesting department. (See attached Exhibit D) As soon as practicable, a record of each emergency procurement shall be made and maintained in the Purchasing department contract file and shall set forth the contractor's name, the amount and type of the contract, a listing of the item(s) procured under the contract, and the identification number of the contract file.

### **§3-107 Cancellation of Request for Bid or Request for Proposal.**

A request for bid, a request for proposal, or other solicitation may be canceled, or any or all bids or proposals may be rejected in whole or in part as may be specified in the solicitation, when it is for good cause and in the best interests of the County. The reasons therefor shall be made part of the bid file. Each solicitation issued by the County shall state that the solicitation may be canceled and that any bid or proposal may be rejected in whole or in part for good cause when in the best interests of the County. Notice of cancellation shall be sent to all businesses solicited. The notice shall identify the solicitation, explain the reason for cancellation and, where appropriate, explain that an opportunity will be given to compete on any re-solicitation or any future procurement of similar items. Reasons for rejection shall be provided upon request by unsuccessful bidders or offerors.

### **§3-108 Non-Competitive Negotiations.**

A contract may be awarded without competition when the liaison Commissioner to any Department, and in the absence of an assigned liaison Commissioner, it shall be the Presiding Commissioner, agree that the required supply, or service item falls under a non-competitive negotiation. Used in those specific instances where competition is nonexistent; or to satisfy certain proprietary conditions caused by the existence of patents, copyrights, secret processes; or the purchase of captive replacement parts, OEM parts or components for equipment, as well as the technical services related to such equipment; as long as governmental policy, rules and regulations do not prohibit them.

## **Part B--Qualifications and Duties of Bidders and Offerors**

### **§3-201 Responsibility of Bidders and Offerors.**

(1) *Determination of Non-responsibility.* Following the bid award, if a bidder or offeror who otherwise would be awarded a contract is found non-responsible, a written determination of non-responsibility, setting forth the basis of the finding, shall be prepared by the purchasing agent and retained in the bid file. The unreasonable failure of a bidder or offeror to promptly supply information in connection with an inquiry with respect to responsibility may be grounds for a determination of non-responsibility with respect to such bidder or Offeror. The final determination shall be made part of the bid file and be made a public record.

(2) *Right of Non-disclosure.* Information furnished by a bidder or offeror pursuant to this Section shall not be disclosed by the County outside of the office of the purchasing agent, or Administrative Authority, without prior written consent by the bidder or offeror.

### **§3-202 Cost or Pricing Data in Capital Projects.**

(1) *Required Submissions Relating to the Award of Contracts.* A prospective contractor shall submit cost or pricing data when the contract is expected to exceed \$100,000 and is to be awarded by competitive sealed proposals (Section 3-102; Competitive Sealed Proposals), or by sole source procurement authority (Section 3-105; Sole Source Procurement).

(2) *Exceptions.* The submission of cost or pricing data relating to the award of a contract is not required when:

- (a) the contract price is based on adequate price competition;
- (b) the contract price is based on established catalogue prices or market prices;



(c) the contract price is set by law or regulation; or

(d) it is determined in writing by the purchasing agent, and at the direction of the McDonald County Commission, that the requirements of Section 3-202(1) (Cost or Pricing Data; Required Submissions Relating to the Award of Contracts) may be waived, and the determination states the reasons for such waiver (i.e. Emergency 3-106).

(3) *Required Submissions Relating to Change Orders or Contract Modifications.* A contractor shall submit cost or pricing data prior to the pricing of any change order or contract modification, including adjustments to contracts awarded by competitive sealed bidding, whether or not cost or modification involves aggregate increases or aggregate decreases in costs plus applicable profits that are expected to exceed \$100,000.

(4) *Exceptions.* The submission of cost or pricing data relating to the pricing of a change order or contract modification is not required when:

(a) unrelated and separately priced adjustments for which cost or pricing data would not be required are consolidated for administrative convenience; or

(b) it is determined in writing by the purchasing agent, and as approved by the McDonald County Commission, that the requirements of Section 3-202(3) (Cost or Pricing Data; Required Submissions Relating to Change Orders or Contract Modifications) may be waived, and the determination states the reasons for such waiver.

(5) *Certification Required.* A contractor, actual or prospective, required to submit cost or pricing data in accordance with this Section, shall certify that, to the best of its knowledge and belief, the cost or pricing data submitted was accurate, complete, and current as of a mutually specified date prior to the award of the contract or the pricing of the change order or contract modification.

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

### **§3-203 Cost or Price Analysis.**

A cost analysis or price analysis, as appropriate, shall be conducted prior to award of the contract other than one awarded under Section 3-101 (Competitive Sealed Bidding). A written record of such cost analysis or price analysis shall be made a part of the contract file.

### **§3-204 Bid and Performance Bonds on Supply or Service Contracts.**

Bid and performance bonds or other security may be requested for supply contracts or service contracts as the Purchasing Agent or Administrative Authority deems advisable to protect the County's interests. The Purchasing department generally requests bonds and securities for contracts greater than \$25,000, however the Purchasing Agent or Administrative Authority has the discretion to request bonds or other security for contracts less than \$25,000. Any such bonding requirements shall be set forth in the solicitation. Bid or performance bonds shall not be used as a substitute for a determination of a bidder or offeror's responsibility. (Bidders submit Bid Bond – in the amount of 5% of bid. Then Contractor submits a Performance Bond and a Labor & Material Bond for full amount of contract amount)).

## **Part C--Types of Contracts and Contract Administration**

### **§3-301 Types of Contracts.**

(1) *General Authority.* Subject to the limitations of this Section, any type of contract which is appropriate to the procurement and which will promote the best interests of the County may be used. A cost-plus-a-percentage-of-cost contract is prohibited. A cost reimbursement contract may be used only when a determination is made in writing that such contract is likely to be less costly to the County than any other type of contract, or that it is impracticable to obtain the supply, service, or construction item required except under such a contract.

(2) *Multi-Term Contracts.*

(a) Specified Period. Unless otherwise provided by law, a contract for supplies or services may be entered into for any period of time deemed to be in the best interests of the County, provided the term of the contract and conditions of renewal or extension, if any, are included in the solicitation and funds are available for the first fiscal period at the time of contracting. Payment and performance obligations for succeeding fiscal periods shall be subject to the availability and appropriation of funds.

(b) *Determination Prior to Use.* Prior to the utilization of a multi-term contract, it shall be determined in writing by the requesting administrative authority: (i.) that estimated requirements cover the period of the contract and are reasonably firm and continuing; and (ii) that such a contract will serve the best interests of the County by encouraging effective competition or otherwise promoting economies in McDonald County procurement.

(c) *Cancellation Due to Unavailability of Funds in Succeeding Fiscal Periods.* When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the contract shall be canceled and the contractor shall be reimbursed for the reasonable value of any non-recurring costs incurred but not amortized in the price of the supplies or services delivered under the contract. The cost of cancellation may be paid from any appropriations available for such purposes.

(3) *Multiple Source Contracting.*

(a) *General.* A multiple source award is an award of an indefinite quantity contract for one or more similar supplies or services to more than one bidder or offeror. The obligation to order the County's actual requirements is limited by the provisions of Uniform Commercial Code Section 2-306(1).

(b) *Limitations on Use.* A multiple source award may be made when award to two or more bidders or offerors for similar products is necessary for adequate delivery, service, or product compatibility. Any multiple source award shall be made in accordance with the provisions of Section 3-101 (Competitive Sealed Bidding), Section 3-201 (Competitive Sealed Proposals), Section 3-104 (Small Purchases), and Section 3-106 (Emergency Procurements), as applicable. Multiple source awards shall not be made when a single award will meet the County's needs without sacrifice of economy or service. Awards shall not be made for the purpose of dividing the business, making available product or supplier selection to allow for user preference unrelated to utility or economy, or avoiding the resolution of tie bids. Any such awards shall be limited to the least number of suppliers necessary to meet the valid requirements.

(c) *Contract and Solicitation Provisions.* All eligible users of the contract shall be named in the solicitation, and it shall be mandatory that the actual requirements of such users that can be met under the contract be obtained in accordance with the contract, provided that: (i) the County shall reserve the right to take bids separately if a particular quantity requirement arises which exceeds its normal requirement or an amount specified in the contract; and (ii) the County shall reserve the right to take bids separately if the purchasing agent approves a finding that the supply or service available under the contract will not meet a non-recurring special need of the County.

(d) *Intent to Use.* If a multiple source award is anticipated prior to issuing a solicitation, the County shall reserve the right to make such an award and the criteria for award shall be stated in the solicitation.

(e) *Determination Required.* The purchasing agent shall make a written determination setting forth the reasons for a multiple source award, which shall be made a part of the official record.

### **§3-302 Contract Clauses and Their Administration.**

(1) *Contract Clauses.* All County contracts for supplies, services, and construction shall include provisions necessary to define the responsibilities and rights of the parties to the contract. The purchasing agent, after consultation with the McDonald County Prosecuting Attorney, may issue clauses appropriate for supply, service, or construction contracts, addressing among others the following subjects:

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

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

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

(d) defective pricing;

(e) liquidated damages;

(f) specified excuses for delay of nonperformance;

(g) termination of the contract for default;

(h) termination of the contract in whole or in part for the convenience of the County of McDonald;

(i) suspension of work on a construction project ordered by the County; and

(j) site conditions differing from those indicated in the contract, or ordinarily encountered, except that a differing site conditions clause need not be included in a contract: (i) when the contract is negotiated (ii) when the contractor provides the site or design; or (iii) when the parties have otherwise agreed with respect to the risk of differing site conditions.

**(2) Price Adjustments.**

(a) Adjustments in price resulting from the use of contract clauses required by Subsection (1) of this Section shall be computed in one or more of the following ways: (i) by agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable; (ii) by unit prices specified in the contract or subsequently agreed upon; (iii) by the costs attributable to the events or situations under such clauses with adjustment of profit or fee, all as specified in the contract or subsequently agreed upon; (iv) in such other manner as the contracting parties may mutually agree; or (v) in the absence of agreement by the parties, by a unilateral determination by the County of the costs attributable to the events or situations under such clauses with adjustment of profit or fee as computed by the County, as accounted for in accordance with generally accepted accounting practices and subject to the provisions of Article 9 (Appeals and Remedies).

(b) A contractor shall be required to submit cost or pricing data if any adjustment in contracting price is subject to the provisions of Section 3-202 (Cost or Pricing Data).

(3) **Standard Clauses and Their Modification.** The purchasing agent, after consultation with the McDonald County Prosecuting Attorney, may establish standard contract clauses for use in McDonald County contracts. If the purchasing agent establishes any standard clauses addressing the subjects set forth in Subsection (1) of this Section, such clauses may be varied provided that any variations are supported by a written determination that states the circumstances justifying such variations, and provided that notice of any such material variation be stated in the invitation for bids or request for proposals.

**§3-303 Contract Administration.**

A contract administration system designed to insure that a contractor is performing in accordance with the solicitation under which the contract was awarded, and the terms and conditions of the contract, shall be maintained by the administrative authority.

**§3-304 Right to Inspect Plant.**

The County may, at reasonable times, inspect the part of the plant, place of business, or work site of a contractor or subcontractor at any tier which is pertinent to the performance of any contract awarded or to be awarded by the County.

**§3-305 Right to Audit Records.**

(1) **Audit of Cost or Pricing Data.** The County may at reasonable times and places audit the books and records of any contractor who has submitted cost or pricing data pursuant to Section 3-202 (Cost or Pricing Data) to the extent that such books, documents, papers, and records are pertinent to such cost or pricing data. Such books and records shall be maintained by the contractor for a period of five (5) years from the date of final payment under the subcontract or as otherwise provided by laws of the State of Missouri.

(2) **Contract Audit.** The County shall be entitled to audit the books and records of a contractor or a subcontractor at any tier under any negotiated contract or subcontract other than a firm fixed-price contract to the extent that such books, documents, papers, and records are pertinent to the performance of such contract or subcontract. Such books and records shall be maintained by the contractor for a period of five (5) years from the date of final payment under the subcontract or as otherwise provided by laws of the State of Missouri.

**§3-306 Reporting of Anti-competitive Practices.**

When for any reason collusion or other anti-competitive practices are suspected among any bidders or offerors, a notice of the relevant facts shall be transmitted to the state Attorney General and McDonald County Prosecuting Attorney.

**§3-307 County Procurement Records.**

(1) *Retention of Procurement Records.* All procurement records shall be retained and disposed of by the McDonald County Clerk for the County in accordance with records retention guidelines and schedules approved by the Missouri Secretary of State.

## ARTICLE 4—SPECIFICATIONS

**§4-101 Maximum Practicable Competition.**

All specifications shall be drafted so as to promote overall economy for the purposes intended and encourage competition in satisfying the County's needs, and shall not be unduly restrictive. The policy enunciated in this Section applies to all specifications including but not limited to, those prepared for the County by architects, engineers, designers, and draftsmen.

**§4-102 Brand Name or Equal Specification.**

(1) *Use.* Brand name or equal specifications may be used when the purchasing agent determines in writing that:

- (a) no other design or performance specification or qualified products list is available;
- (b) time does not permit the preparation of another form of purchase description, not including a brand name specification;
- (c) the nature of the product or the nature of the County's requirements makes use of a brand name or equal specification suitable for the procurement; or
- (d) use of a brand name or equal specification is in the County's best interests.

(2) *Designation of Several Brand Names.* Brand name or equal specifications shall seek to designate three, or as many different brands as are practicable, as "or equal" references and shall further state that substantially equivalent products to those designated will be considered for award.

(3) *Required Characteristics.* Unless the purchasing agent determines in writing that the essential characteristics of the brand names included in the specifications are commonly known in the industry or trade, brand name or equal specifications shall include a description of the particular design, functional, or performance characteristics which are required.

(4) *Nonrestrictive Use of Brand Name or Equal Specifications.* Where a brand name or equal specification is used in a solicitation, the solicitation shall contain explanatory language that the use of a brand name is for the purpose of describing the standard of quality, performance, and characteristics desired and is not intended to limit or restrict competition.

**§4-103 Brand Name Specification**

(1) *Use.* Since use of a brand name specification is restrictive of product competition, it may be used only when the purchasing agent makes a written determination that only the identified brand name item or items satisfy the County's needs.

(2) *Competition.* The purchasing agent shall seek to identify sources from which the designated brand name item or items can be obtained and shall solicit such sources to achieve whatever degree of price competition is practicable. If only one source can supply the requirement, the procurement shall be made under Section 3-105 (Sole Source Procurement).

## ARTICLE 5

**§5-101 Reserved**

## ARTICLE 6--DEBARMENT OR SUSPENSION

**§6-101 Authority to Debar or Suspend.** After reasonable notice to the person involved and reasonable opportunity for that person to be heard, the purchasing agent, after consulting with the McDonald Prosecuting Attorney, is authorized to debar a person for cause from consideration for award of contracts. The debarment shall be for a period of not more than three years. After consultation with the McDonald Prosecuting Attorney, the purchasing agent is authorized to suspend a person from consideration for award of contracts if there is

probable cause to believe that the person has engaged in any activity which might lead to debarment. The suspension shall be for a period not to exceed three months. The causes for debarment include:

- (a) conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract;
- (b) conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating lack of business integrity or business honesty which currently, seriously, and directly affects responsibility as a County contractor;
- (c) conviction under state or federal antitrust statutes arising out of the submission of bids or proposals;
- (d) violation of contract provisions, as set forth below, of a character which is regarded by the purchasing agent to be so serious as to justify debarment action: (i.) deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or (ii) a recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts, provided that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be a basis for debarment;
- (e) any other cause the purchasing agent determines to be so serious and compelling as to affect responsibility as a McDonald County contractor, including debarment by another governmental entity for any cause listed in this Policy; and
- (f) for violation of the ethical standards set forth in Article 12 (Ethics in Public Contracting).

#### **§6-102 Decision to Debar or Suspend.**

The purchasing agent shall issue a written decision to debar or suspend. The decision shall state the reasons for the action taken and inform the debarred or suspended person involved of its rights concerning judicial or administrative review.

#### **§6-103 Notice of Decision.**

A copy of the decision required by Section 6-102 (Decision of Debar or Suspend) shall be mailed or otherwise furnished immediately to the debarred or suspended person.

#### **§6-104 Finality of Decision.**

A decision under Section 6-102 (Decision to Debar or Suspend) shall be final and conclusive, unless fraudulent, or the debarred or suspended person within 10 days after receipt of the decision takes an appeal to the McDonald County Commission or commences a timely action in court in accordance with applicable law.

## **ARTICLE 7--APPEALS AND REMEDIES**

#### **§7-101 Bid Protests.**

(1) *Right to Protest.* Any actual or prospective bidder, offeror, or contractor who is aggrieved in connection with the solicitation or award of a contract may protest to the McDonald County Commission. Protesters are urged to seek resolution of their complaints initially with the purchasing agent. A protest with respect to an invitation for bids or request for proposals shall be submitted in writing prior to the opening of bids or the closing date of proposals, unless the aggrieved person did not know and could not have known of the facts giving rise to such protest prior to bid opening or the closing date for proposals. The protest shall be submitted within ten (10) calendar days after such aggrieved person knows or should have known of the facts giving rise thereto.

(2) *Stay of Procurements During Protests.* In the event of a timely protest under Subsection (1) of this Section, the purchasing agent will not proceed further with the solicitation or award of the contract until all administrative and judicial remedies have been exhausted or until the McDonald County Commission makes a determination on the record that the award of a contract without delay is necessary to protect substantial interests of the County.

(3) *Entitlement to Costs.* In addition to any other relief, when a protest is sustained, the protesting bidder or offeror shall be entitled to the reasonable costs incurred in connection with the solicitation, including bid preparation costs other than attorney's fees.

### **§7-102 Contract Claims.**

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

(2) *Notice to the Contractor of the Purchasing Agent's Decision.* The decision of the purchasing agent will be promptly issued in writing and mailed or otherwise furnished to the contractor. The decision will state the basis for the decision, and will inform the contractor of its appeal rights under Subsection (3) of this Section.

(3) *Finality of Purchasing Agent's Decision; Contractor's Right to Appeal.* The purchasing agent's decision will be final and conclusive unless, within ten (10) calendar days from the date of receipt of the decision, the contractor mails or otherwise delivers a written appeal to the McDonald County Commission or commences an action in a court of competent jurisdiction.

### **§7-103 Authority of the Purchasing Agent to Set the Bid Protests and Contract Claims.**

The purchasing agent is authorized to settle any protest regarding the solicitation or award of a County of McDonald contract, or any claim arising out of the performance of a County contract, prior to an appeal to the McDonald County Commission or the commencement of an action in a court of competent jurisdiction.

### **§7-104 Remedies for Solicitations or Awards in Violation of Law.**

(1) *Prior to Bid Opening or the Closing Date for Receipt of Proposals.* If prior to the bid opening or the closing date for receipt of proposals, the purchasing agent, after consultation with the McDonald Prosecuting Attorney, determines that a solicitation shall be canceled or revised to comply with applicable law.

(2) *Prior to Award.* If after bid opening or the closing date for receipt of proposals, the purchasing agent, after consultation with the McDonald Prosecuting Attorney, determines that a solicitation or a proposed award of a contract is in violation of federal, state, or municipal law, then the solicitation or proposed award will be canceled.

(3) *After Award.* If, after an award, the purchasing agent, after consultation with the McDonald Prosecuting Attorney, determines that a solicitation or award of a contract was in violation of applicable law, then:

(a) if the person awarded the contract has not acted fraudulently or in bad faith: (i) the contract may be terminated and the person awarded the contract shall be compensated for the actual costs reasonably incurred under the contract, plus a reasonable profit, prior to the termination; or

(b) if the person awarded the contract has acted fraudulently or in bad faith the contract may be declared null and void or voidable, if such action is in the best interests of the County.

## **ARTICLE 8--COOPERATIVE PURCHASING**

**§8-101.** An active list of cooperative agencies will be kept in the Purchasing Department. Examples may include State of Missouri Cooperative Purchasing, Mid-Missouri Public Purchasing Cooperative, National Association of Counties, and Western States Contracting Alliance.

## **ARTICLE--9 ETHICS IN PUBLIC CONTRACTING**

### **§9-101 Criminal Penalties.**

To the extent that violations of the ethical standards of conduct set forth in this Article constitute violations of the criminal laws of the State of Missouri, they shall be punishable as provided therein. Such penalties shall be in addition to the civil sanctions set forth in this Part. Criminal, civil, and administrative sanctions against employees or non-employees which are in existence on the effective date of this Policy shall not be impaired.

#### **§9-102 Employee Conflict of Interest.**

It shall be unethical for any McDonald County employee to participate directly or indirectly in a procurement contract when the McDonald County employee knows that:

- (a) the McDonald County employee or any member of the McDonald County employee's immediate family has a financial interest pertaining to the procurement contract; or
- (b) any other person, business, or organization with whom the McDonald County employee or any member of a McDonald County employee's immediate family is negotiating or has an arrangement concerning prospective employment is involved in the procurement contract. A McDonald County employee or any member of a McDonald County employee's immediate family who holds a financial interest in a disclosed blind trust shall not be deemed to have a conflict of interest with regard to matters pertaining to that financial interest.

#### **§9-103 Gratuities and Kickbacks.**

(1) *Gratuities.* It shall be unethical for any person to offer, give, or agree to give any McDonald County employee or former McDonald County employee, or for any McDonald County employee or former McDonald County employee to solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, or preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter, pertaining to any program requirement or a contract or subcontract, or to any solicitation or proposal therefor.

(2) *Kickbacks.* It shall be unethical for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract or order.

(3) *Contract Clause.* The prohibition against gratuities and kickbacks prescribed in the Section shall be conspicuously set forth in every contract and solicitation therefor.

#### **§9-104 Prohibition Against Contingent Fees.**

It shall be unethical for a person to be retained, or to retain a person, to solicit or secure a County contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies for the purpose of securing business.

#### **§9-105 Contemporaneous Employment Prohibited.**

It shall be unethical for any McDonald County employee who is participating directly or indirectly in the procurement process to become or to be, while such a McDonald County employee, the employee of any person contracting with the governmental body by whom the employee is employed.

#### **§9-106 Waivers from Contemporaneous Employment Prohibition and Other Conflicts of Interest.**

The McDonald County Commission may grant a waiver upon making a written determination that:

- (a) the contemporaneous employment or financial interest of the McDonald County employee has been publicly disclosed;
- (b) the McDonald County employee will be able to perform its procurement functions without actual or apparent bias or favoritism; and
- (c) the award will be in the best interest of the County.

#### **§9-107 Use of Confidential Information.**

It shall be unethical for any employee or former employee knowingly to use confidential information for actual or anticipated personal gain, or for the actual or anticipated personal gain of any other person.

#### **§9-108 Sanctions.**

(1) *Employees.* The McDonald County Commission may recommend to the employees' Administrative Authority any one or more of the following sanctions on a McDonald County employee for violations of the ethical standards in this Article:

- (a) oral or written warnings or reprimands;

- (b) suspension with or without pay for specified periods of time; or
- (c) termination of employment.
- (2) *Non-employees.* The McDonald County Commission may impose any one or more of the following sanctions on a non-employee for violations of the ethical standards:
  - (a) written warnings or reprimands;
  - (b) termination of contracts; or
  - (c) debarment or suspension as provided in Section 6-101 (Authority to Debar or Suspend).

**§9-109 Recovery of Value Transferred or Received in Breach of Ethical Standards.**

(1) *General Provisions.* The value of anything transferred or received in breach of the ethical standards of this Policy by a McDonald County employee or a non-employee may be recovered from both McDonald County employee and non-employee.

(2) *Recovery of Kickbacks by the County.* Upon a showing that a subcontractor made a kickback to a prime contractor or a higher tier subcontractor in connection with the award of a subcontract or order thereunder, it shall be conclusively presumed that the amount thereof was included in the price of the subcontract or order and ultimately borne by the County and will be recoverable hereunder from the recipient. In addition, that amount may also be recovered from the subcontractor making such kickbacks. Recovery from one offending party shall not preclude recovery from other offending parties.

## **ARTICLE--10 FIXED ASSETS**

**§10-101 Fixed Asset Inventory.**

(1) Any items over \$1,000 are considered fixed assets and become a part of McDonald County inventory. The McDonald County Treasurer manages the fixed asset inventory for McDonald County. Departments should attach a

*Fixed Asset Addition Form* to Payment Requisitions to identify fixed assets.

## **ARTICLE—11 DISPOSAL OF SURPLUS**

**§11-101 Disposal of Surplus**

(1) Disposal of surplus is managed by the Purchasing Department under the direction of the County Commission.

(2) Exhibit E includes procedures for County Departments for request for Transfer/Disposal of County Property.