ENROLLED ORDINANCE
NO. 2012-1

INTRODUCED BY COMMISSIONER(S) BROWN, SUPPORTED BY COMMISSIONER MILLER.

AN ORDINANCE TO ESTABLISH COMPREHENSIVE POLICIES AND PROCEDURES GOVERNING THE
AWARDING OF MACOMB COUNTY CONTRACTS FOR THE PROCUREMENT OF SERVICES,
SUPPLIES, MATERIALS, AND EQUIPMENT.

IT IS HEREBY ORDAINED BY THE CHARTER COUNTY OF MACOMB:
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ARTICLE 1. PURPOSE, POLICY, APPLICABILITY, AND DEFINITIONS

Sec. 1.1. Purpose

A. Section 8.10 of the Charter requires the Commission to adopt comprehensive policies and procedures governing the awarding of contracts, including the procurement and handling of services, supplies, materials, and equipment that are consistent with federal and state law, the Charter, and ordinances, resolutions, and policies of the Commission. The County Executive is responsible for implementing the policies adopted by the Commission, including requirements for competitive bidding and the use of sealed bids for procurements and contracts specified by ordinance.

B. This ordinance is intended to establish some of the required policies and procedures governing the awarding of Contracts for Procurement and handling of services, supplies, materials, and equipment.

C. It is the County’s policy to enter into Contracts for services, supplies, materials, and equipment for fair and reasonable consideration, pursuant to a process that is managed in accordance with the law and designed to ensure that County funds are spent wisely and fairly; County policies and practices protect against fraud and favoritism; participation by Macomb County businesses is encouraged; equality of opportunity for all businesses is promoted; and the needs of the County are fulfilled.

Sec. 1.2. Applicability

A. When state or federal laws, rules, regulations, grant agreements, permit or license conditions, or other binding state or federal requirements or policies require contracting procedures different than those provided in this Ordinance, those state or federally required procedures shall be followed. If such state or federal requirements also allow compliance with the procedures in this Ordinance, then both shall be followed.

B. Nothing in this ordinance shall prevent any County officer, employee, or Department from complying with the terms and conditions of any grant, gift, bequest, or approved Cooperative Procurement agreement that is otherwise consistent with law.

C. Compliance with this Ordinance does not affect other applicable requirements. Commission approvals and other requirements may exist under applicable separate County, Executive office, or departmental policies or procedures, under applicable state or federal laws, rules, regulations, permit or license requirements, or grant agreements, or pursuant to other contracts. Without limiting the generality of the foregoing, this ordinance does not in any way supersede, amend or modify the Commission's Contracting Policy and does not relieve or modify the need for County officers, employees, Departments and agencies to comply with that policy.
Sec. 1.3. Definitions

The following definitions shall apply to the terms used in this ordinance.

A. Change order – A signed written order directing the Contractor to make changes according to the “changes” clause of the contract.

B. Charter - The Home Rule Charter of Macomb County that took effect on January 1, 2011, as it may from time-to-time be amended.

C. Commission - The County Board of Commissioners created by the Charter.

D. Construction – The Services involved in building, altering, installing, renovating, or demolishing any public structure, building or other improvement to real property or any utility, not including the routine operation, routine repair, or routine maintenance of existing structures, buildings, or real property.

E. Contract – An agreement or understanding supported by present or future consideration.

F. Contracting Policy – The Contracting Policy adopted by resolution of the Commission as it may from time to time be amended.

G. Contract modification – Any written alteration in 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.

H. Contractor – Any person and/or agent having a Contract with the County.

I. Cooperative Procurement – Procurement conducted by or on behalf of more than one public procurement unit.

J. County-based Enterprise – A business is deemed to be a county-based enterprise (CBE) if it satisfies all of the following criteria:

1. Its headquarters is physically located within Macomb County, or it has been conducting business at a location with a permanent street address in the County on an ongoing basis for not less than one taxable year prior to its bid or response to a Request for Proposals.

2. It has made payment of property taxes on real or personal property within the past year on property which is ordinarily needed to perform the proposed contract.

3. At least 50 percent of its regular full-time employees are based at the County location to perform the proposed contract.
4. It has been dealing for at least one year on a regular commercial basis in the kind of goods or Services which are the subject of the bid or proposal.

K. Department – Any County department, office, board, commission, or other unit of County government.

L. Department Head – The person who, as a Countywide elected official or as a designee of the County Executive, is the head of a County Department, or that person's designee.

M. Ethics Ordinance – The County’s Ethics Ordinance, Ordinance No. 10, as it may from time-to-time be amended or replaced.

N. Executive or County Executive - The person holding the office of County Executive as provided in the Charter or that person’s designee(s).

O. Invitation for Bids – All documents (whether attached or incorporated by reference) utilized for soliciting Sealed Bids.

P. Procurement – The buying, purchasing, renting, leasing, or acquiring of any Services, supplies materials, or equipment. It also includes all functions that pertain to the acquiring of any service, supply, material, or equipment, including description of requirements, selection, and solicitation of sources, preparation and award of Contract, and all phases of Contract administration.

Q. Professional Services – Services which require a high degree of intellectual skill, advanced degrees, and/or professional licensing or certification and those providing such Services are distinguished from one another based on their specialized knowledge, experience and expertise, including by way of example and not limitation, accounting, actuarial, appraising, architectural, assessing, auditing, dental, engineering, environmental, investment adviser, legal, lobbying, medical, psychological or psychiatric, real estate brokerage, and title examination and abstracting services.

R. Public Servant - A County employee, Countywide elected official, Commissioner, or appointee of the County.

S. Purchasing Manager – The person designated by the County Executive to be the County’s principal procurement official who shall be under the control, supervision, direction, and authority of the County Executive and shall have such authority to delegate to others as provided by the County Executive.

T. Request For Proposals (RFP) – All documents (whether attached or incorporated by reference) utilized for soliciting proposals.

U. Responsible Bidder – A person or entity with the capability in all respects to perform fully the requirements set forth in an Invitation for Bids.
V. Responsive Bidder – A person or entity that has submitted a Sealed Bid which conforms in all material respects to the requirements set forth in the Invitation for Bids, unless irregularities or non-conformities are waived as provided in the Invitation for Bids.

W. Sealed bid – An advertised, open, competitive solicitation for prices that are opened publicly.

W. Services – The furnishing of time, labor, or effort by a Contractor not involving the delivery of a specific end product other than written documents such as reports, correspondence, drawings, plans, specifications, etc., which are incidental to the required performance.

Sec. 1.4. General Contracting Policy.

A. Procurement of services, supplies, materials, and equipment shall comply with the provisions of articles 2 through 9 of this ordinance.

B. All activities by Public Servants and other covered persons related to Procurement shall comply with the Ethics Ordinance and the Commission’s Contracting Policy.

C. As required by Charter, the County Organization Plan will provide for public access to the expenditure records of the County, including all Procurement Contracts.

ARTICLE 2. PURCHASING MANAGER

Sec. 2.1. Authority and Duties

A. The Purchasing Manager shall serve as the principal procurement official for the County and shall be responsible for Procurement in accordance with this ordinance, as well as the management and disposal of surplus personal property.

B. In accordance with this ordinance, the Purchasing Manager shall:

1. Supervise County Procurement;

2. Establish and maintain programs for specifications development, Contract administration, and inspection and acceptance of all Services, supplies, materials, and equipment, in cooperation with the user agencies;

3. Exercise general supervision over inventories of goods belonging to the County;

4. Establish procedures for Contract management, including the monitoring of compliance and payments.

C. Consistent with this ordinance and with the County Executive’s approval, the Purchasing Manager may adopt operational procedures relating to the execution of his/her duties.
D. The Purchasing Manager shall work cooperatively with Departments and Public Servants in making determinations relative to Procurements.

ARTICLE 3 - REQUISITION PROCESS

Sec. 3.1. Requisition Required.

The procurement process is initiated in all cases by the requesting Department. Each Department shall supply the Purchasing Manager with a requisition which will include such data as specifications, recommended vendor, and other details including budget and account information, and must be approved by the Department Head or authorized departmental representative.

ARTICLE 4 – COMPETITIVE BIDDING AND PROPOSALS

Sec. 4.1. General

An openly publicized competitive process for the Procurement of services, supplies, materials, and equipment is the most effective means of determining the lowest cost from a responsible source and shall be utilized whenever possible. Procurements in excess of $35,000, involving multiple purchases within a fiscal year that are likely to exceed $35,000, that involve purchases over 3 or more fiscal years that will exceed $105,000, and Procurements for Construction in excess of $100,000, shall be subject to competitive sealed bidding. Professional Services Contracts shall not be governed by this article but shall instead be subject to the requirements set forth in Article 7.

A. Procurements shall be effected through one of the following methods:

1. Informal Bids
2. Sealed Bids
3. Multi-Step Sealed Bids
4. Small Purchases
5. Request for Proposal
6. Sole Source Procurement
7. Cooperative Procurement
8. Emergency Procurement

The conditions for the use of each method will be determined by the Purchasing Manager pursuant to the dollar expenditure limits adopted in this ordinance.
B. Except where otherwise provided:

1. Informal bids may be used for Procurements of $5,000 to $35,000. Competitive quotes are secured through bids generated by the Purchasing Manager. At least 3 bids shall be requested. These requests for bids shall contain standard terminology and specify a date by which they must be returned.

2. Sealed Bids shall be used for Procurements of $35,000 and above. Requests or invitations for Sealed Bids shall contain standard terminology and performance specifications as well as the date and time due. Sealed Bids are solicited by public invitations for bids. All Sealed Bids must be received by the due date and time specified. Sealed Bids may not be received by facsimile or electronic mail.

3. Multi-step Sealed Bids may be used when it is impractical to initially prepare a purchase description to support an award based on price. An invitation for Bids may be issued requesting the submission of un-priced offers to be followed by an Invitation for Bids limited to those bidders whose offers have been determined to be technically acceptable under the criteria set forth in the first solicitation.

4. Requests for proposals may be used to procure outside services or a combination of services and/or products based on a description of a problem or specific need. This Procurement method is more flexible and accommodates situations where it is desirable to obtain a custom proposal where ingenuity or creative solutions can be submitted to solve a problem in a more cost-effective manner.

5. A sole source procurement process may be used upon the written recommendation of the Purchasing Manager and the approval of the County Executive if, after conducting a good faith review of available sources, it is determined that there is only one source for the required supply or service item. Under this method, pricing must be established under government contract or negotiated. With this type of purchase more documentation is required and must be filed with each purchase order including the specific reasons for the designation as a sole source item and how the pricing was determined.

6. Cooperative Procurement allows the County to take advantage of bidding undertaken by other governmental units and may be used when state or federal governments enable local governments to take advantage of their bidding or when a joint effort with other local governments provides such procurement opportunities. Utilization of such programs requires verification that the programs used a procurement process that would meet the County's requirements under this ordinance given the types of goods being acquired and the amount of the proposed contract. Purchases over $35,000 shall not utilize this process unless there is a cost per unit being acquired that is clearly more advantageous than is likely to result from the County's own solicitation of bids.
7. The Purchasing Manager may make or authorize others to make emergency Procurements of supplies or services pursuant to section 5.2.

8. Small purchases shall comply with Article 6.

C. When the County makes a Procurement, preference shall be given to products manufactured or services based first in Macomb County, then in Michigan, and then in the United States, when they are available at comparable prices and are of equal, superior, or similar quality.

D. To the extent not prohibited by law, all contracts for construction, repair, alteration, or rebuilding of a County building or other property shall include a provision requiring the contractor and any subcontractor providing services under the contract to conduct pre-hire screening for illegal drug use by their employees who provide services under the contract.

Sec. 4.2. Procedures for Sealed Bidding

A. All vendors interested in providing goods or services to the County must register their business on the Purchasing System Website currently in use by the County. Vendors may access the Purchasing System Website through the County’s website. All current bidding documents shall be posted at the Purchasing System Website. Vendors shall comply with the personal disclosure requirements set forth in the Ethics Ordinance.

B. An Invitation for Bids shall be issued and shall include specifications and all contractual terms and conditions applicable to the Procurement.

C. Adequate public notice of the Invitation for Bids shall be provided not less than 15 business days prior to the date of the opening of bids. At a minimum, such notice shall be posted to the Purchasing System website. The public notice shall state the place, date, and time of bid opening.

D. The Purchasing Manager, after consultation with Corporation Counsel, may establish standard contract provisions for use in County Procurement Contracts. To the extent not prohibited by law, these clauses may include equal protection and non-discrimination compliance, labor harmony, and living wage provisions.

E. Bid, payment, and performance bonds or other security may be requested for Contracts as the Purchasing Manager deems necessary to protect the County’s interests. 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’s responsibility.

1. The limits for bonds are 5% of the total bid quote covered either by a 5% bid bond or bank certified check for 5%, and 100% for a performance bond. Bid bonds or bank certified checks will be held by the Purchasing Manager until an award decision is made. Upon final award, all other bid deposits shall be returned. If a vendor fails to submit a bid bond or bank certified check with its bid, the bid will be rejected.
2. When a Construction Contract is awarded in excess of $20,000, the following bonds or security shall be delivered to the County and shall become binding on the parties upon the execution of the Contract:

a. A performance bond executed by a surety company authorized to do business in the State, or other security in a form satisfactory to the Purchasing Manager, in an amount equal to one-hundred percent (100%) of the price specified in the Contract; and

b. A payment bond executed by a surety company authorized to do business in the State, or other security in a form satisfactory to the Purchasing Manager, for the protection of all persons supplying labor or material to the Contractor or its subcontractors for the performance of the work provided for in the Contract. The bond shall be in an amount equal to one hundred percent (100%) of the price specified in the Contract.

F. The Purchasing Manager shall have the discretion to determine, in consultation with Corporation Counsel, whether insurance coverage by the Contractor shall be required, and, if so, the types and amounts of coverage that shall be required. The Contractor shall have the County named as an additional insured as its interest may appear and furnish the Purchasing Manager with satisfactory evidence of the insurance.

G. An Invitation for Bids, a Request for Proposals, 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 done for good cause and in the best interests of the County in the discretion of the Purchasing Manager in consultation with the County Executive and Corporation Counsel. Each solicitation issued by the County shall state that the solicitation may be canceled by the Purchasing Manager 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. The reasons shall be made part of the Contract file and shall be provided upon request to unsuccessful bidders.

H. All Sealed Bids shall be opened publicly by the Purchasing Manager or authorized representative in the presence of one or more witnesses at the time and place designated in the bid invitation. Information as deemed appropriate will be read by the Purchasing Manager including the name of each bidder, the amount of each bid, and relevant information pertinent to the award. Bids shall be unconditionally accepted without alteration or correction.

I. After solicitation has been made to vendors it may become necessary in certain instances to issue addendums amending the specifications, or extending the bid due date. If the Purchasing Manager or requisitioning Department deems it necessary to make changes to the specifications, such changes will be posted to the Purchasing System website. Clarifications, modifications, or amendments may be made to any bidding document and will appear on the Purchasing System website. It shall be the responsibility of the bidder to check the website for additional postings. This procedure ensures that the process stays intact and is completed by the deadline or opening of the Sealed Bid. Sealed Bids received by the County
prior to the issuance of an extension or addendum shall be returned to the vendor along with the amended bid specification and due date.

J. A vendor may correct or withdraw a bid prior to the bid opening. The correction or withdrawal because of a mistake may be either in written form, delivered via the U.S. Postal Service or other carrier, or can be faxed or emailed to the Purchasing Department prior to the bid deadline. After the bid opening no changes in the bid prices or provisions shall be permitted. In lieu of correcting the bid, a bidder alleging a material mistake may withdraw its bid if the mistake is clearly evident or the bidder submits evidence that clearly demonstrates that a mistake was made. All decisions to permit the correction or withdrawal of bids are to be supported by a written determination to be made by the Purchasing Manager in consultation with the County Executive and Corporation Counsel.

K. Bids shall be evaluated based on the requirements in the Invitation for Bid, which may include criteria to determine acceptability such as inspection, testing of quality, workmanship, delivery, and suitability for a particular purpose. The “Invitation for Bids” shall establish the evaluation criteria to be used which may include such factors as discounts, transportation costs, total life cycle costs, and/or value analysis. Criteria not requested in the bid or intentionally left out may not be used in the award evaluation. The responsibility and responsiveness of the bidder will also be a factor. A Responsible Bidder is a bidder whose reputation, past performance, and financial capabilities are such that the bidder would be judged by the appropriate authority to be capable of satisfying the County’s needs for a specific contract. A responsive bid is a bid that does not vary from the specifications and the terms set in the RFP.

L. Failure to perform or unsatisfactory performance on one or more County Contracts within a 2-year period shall be cause for the Purchasing Manager to determine non-responsibility. The unreasonable failure of a bidder to promptly supply information or samples in connection with an inquiry with respect to responsibility, or unacceptable performance on prior Contracts, may also be grounds for a determination of non-responsibility with respect to such bidder. If a bidder who otherwise would have been awarded a contract is found non RESPONSIBLE, the Purchasing Manager shall consult with the County Executive and Corporation Counsel and prepare a written determination of non-responsibility setting forth the basis of the finding. A copy of the determination shall be sent promptly to the non-responsible bidder.

M. A local preference percentage credit from the following allowance table will be applied to the bid of any County-based Enterprise. This credit will be subtracted from the bid of the County-based Enterprise. In comparing bids, the bid of the County-based Enterprise after subtraction of the credit shall be considered the official bid. However, if the County-based Enterprise is awarded the Contract, the bid without the equalization percentage credit shall be the Contract price.
<table>
<thead>
<tr>
<th>Contract Amount</th>
<th>Local Preference Percentage</th>
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<tbody>
<tr>
<td>Up to $50,000.00</td>
<td>5</td>
</tr>
<tr>
<td>$50,001.00 to $200,000.00</td>
<td>3</td>
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<tr>
<td>$200,001.00 and over</td>
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1. No business shall receive these credits unless it has been certified by the Purchasing Manager.

2. Any business who claims entitlement to any local preference credit shall disclose the records necessary to establish eligibility to the County.

3. After applying any local preference credits as provided above, the Contract shall be awarded to the lowest Responsible Bidder thus evaluated.

N. After approval by the County Executive and any requisite Commission approval, the Contract shall be awarded by appropriate written notice to the lowest Responsive and Responsible Bidder whose bid best meets the requirements and criteria set forth in the Invitation for Bids, if the bid is within the amount of funds appropriated.

ARTICLE 5 – PURCHASES EXEMPT FROM COMPETITIVE SEALED PROPOSALS; EMERGENCY PURCHASES

Sec. 5.1. Purchases Exempt from Competitive Sealed Proposals

When a Department Head conducts a good-faith review of available sources and determines that the requisite contract by its very nature is not suitable to competitive bids or proposals, the Department Head shall forward to the Purchasing Manager a request for an “exempt purchase.” The Purchasing Manager will review and approve or disapprove such requests and notify the County Executive. If the Purchasing Manager reviews and approves the Department Head’s recommendation that the Procurement is exempt from competitive bids or proposals, the Department is not required to employ the competitive proposal or bidding process to enter into a Contract. Examples of Contracts which may not be suitable for competitive bids or proposals are:

A. There is only one source for the required services, supplies, materials, or equipment.

B. There exists a long standing, successful relationship for Professional Services and the knowledge gained through this relationship adds value integral to the services provided.

C. A sole supplier’s item is needed for trial use or testing.

D. Purchases of used equipment.

E. Purchases at auctions.
Sec. 5.2. Emergency Procurement

The Purchasing Manager may make or authorize others to make emergency Procurements when there exists an imminent threat to public health, welfare, or safety, or to prevent or minimize serious disruption of government services. In each instance as much competition as is practical under the circumstances shall be obtained before making any award. Written documentation specifying the nature of the emergency must be included in the Contract file and approved by the County Executive.

ARTICLE 6. SMALL PURCHASES

Sec. 6.1. Small Purchase Procurement

Competitive quotations solicited by a Department Head or the Purchasing Manager shall be obtained for Procurements up to $5,000 ("Small Purchase") to determine the source that is in the County’s best interests.

Sec. 6.2. Small Purchase Procedures

A. Three quotations shall be received whenever possible prior to a Small Purchase Procurement. Circumstances may exist where the Purchasing Manager determines that it is not feasible to secure three quotations. In other situations, the Purchasing Manager may determine that it is in the best interests of the County to consider only one supplier who has previous expertise relative to a Procurement. Whenever the Purchasing Manager determines that it is not feasible, or is not in the County’s best interests to obtain at least three quotations, the reason for this determination shall be indicated in writing and retained in the Procurement file. The Purchasing Manager shall conduct negotiations, as appropriate, as to price, delivery, and terms.

B. Evaluation factors which may justify an award to a vendor who has not provided the lowest quotation include, but are not limited to, delivery requirements, quantity requirements, quality, and past vendor performance. Whenever the Purchasing Agent or designee determines that it is in the County’s best interests to make a Small Purchase Procurement from a vendor who did not submit the lowest quote, the reason for this determination shall be indicated in writing and retained in the Procurement file.

ARTICLE 7– PROFESSIONAL SERVICES

Sec. 7.1. General

When procuring Professional Services, the user Department requiring such services may procure them through the Purchasing Department in accordance with the selection procedure specified in this article.
Sec. 7.2. Statement of Qualifications

The Purchasing Manager may prepare a request for qualifications detailing the services needed. Persons engaged in providing Professional Services shall submit a statement of qualifications and expressions of interest in providing such Professional Services. The Public Servant or Department procuring such Professional Services may specify a uniform format for the statement of qualifications.

Sec. 7.3. Request for Proposals

Requests for proposals shall be sent to qualified people showing an interest in providing the services required and they shall describe the services requested, list the types of information and data required of each bidder, and state the relative importance of particular qualifications. The award criteria should be documented by the Public Servant or head of the Department procuring the required Professional Services, or by the Purchasing Manager. The evaluation and selections process shall be conducted by a committee composed of the using Department director, the County Executive, and Corporation Counsel, or their designees. If the Commission is seeking its own Professional Services, the Commission shall select its own reviewing committee.

ARTICLE 8 - COOPERATIVE PROCUREMENT

Sec. 8.1. Cooperative Procurement Authorized

Subject to applicable state law, the County may participate in, sponsor, conduct, or administer a Cooperative Procurement agreement for Procurement with one or more public procurement units in accordance with an agreement entered into between the participants. Such Cooperative Procurement may include, but is not limited to, joint or multi-party contracts between public procurement units and open-ended state public procurement unit contracts which are made available to other public procurement units.

Sec. 8.2. Sale, Acquisition, or Use of Goods

The County may sell to, acquire from, or use any goods belonging to another public procurement unit independent of the requirements stated herein.

Sec. 8.3. Cooperative Use of Goods and Services

The County may enter into an agreement independent of the requirements stated in this ordinance with any other public procurement unit for the cooperative use of goods or services under the terms agreed upon between the parties.
Sec. 8.4. Joint Use of Facilities

The County may enter into agreements for the common use or lease of warehousing facilities, capital equipment, and other facilities with another public procurement unit under the terms agreed upon between the parties.

ARTICLE 9 - CONTRACT CHANGES

Sec. 9.1. Change Orders and Contract Modifications

A. When the total of Change Orders, Contract Modifications, or price adjustments on any Contract approved by resolution of the Commission exceeds 10% of the original Contract amount, the Change Order, Contract Modification, or price adjustment will be presented to the Commission. The Commission shall approve or reject the proposed Change Order, Contract Modification, or price adjustment at its next meeting if the Change Order, Contract Modification, or price adjustment is provided to the Commission prior to the deadline for submission of agenda items for that meeting. If the Commission fails to approve or reject the Change Order, Contract Modification, or price adjustment at that meeting, the County Executive may approve or reject the Change Order, Contract Modification, or price adjustment without Commission action.

B. The County Executive shall sign all Change Orders, Contract Modifications, and price adjustments.

ARTICLE 10. EFFECTIVE DATE.

This ordinance shall take effect upon the expiration of 10 business days after its adoption.

Date: January 26, 2012

Kathy D. Vosburg, Board Chair

Carmella Sabaugh, County Clerk

Adopted: January 26, 2012

Notice Published: January 31, 2012