

**BOARD OF COMMISSIONERS
MACOMB COUNTY, MICHIGAN**

Commissioner Drolet, supported by Commissioner Klinefelt, moved enactment of the following preamble and ordinance.

ENROLLED ORDINANCE NO. 2017-03

AN ORDINANCE TO ESTABLISH COMPREHENSIVE CONTRACTING AND PURCHASING POLICIES AND PROCEDURES; TO REPEAL RESOLUTION 12-01, ENTITLED, "A RESOLUTION TO AMEND RESOLUTION 11-23 TO ESTABLISH A COMPREHENSIVE COUNTY CONTRACTING POLICY," AS AMENDED; TO REPEAL ORDINANCE NO. 2012-1, AS AMENDED, ENTITLED "AN ORDINANCE TO ESTABLISH COMPREHENSIVE POLICIES AND PROCEDURES GOVERNING THE AWARDING OF MACOMB COUNTY CONTRACTS FOR THE PROCUREMENT OF SERVICES, SUPPLIES, MATERIALS, AND EQUIPMENT;" AND TO PROVIDE PENALTIES AND CONSEQUENCES FOR VIOLATIONS.

PREAMBLE

Whereas, section 8.10 of the Home Rule Charter of Macomb County Michigan provides:

The Commission shall adopt comprehensive policies and procedures governing the awarding of contracts, including the procurement and handling of services, supplies, materials, and equipment. These policies shall be consistent with federal and state law, the Charter, and ordinances, resolutions, and policies of the Commission. The Executive shall implement the policies adopted by the Commission, including requirements for competitive bidding and the use of sealed bids for purchases and contracts specified by ordinance.

Whereas, subsection 4.4(e), subsection 4.4(j), and section 4.5 of the Home Rule Charter of Macomb County, Michigan empower the Commission to approve contracts of the County; and

Whereas, the Court of Appeals in *Hackel v Macomb County Commission*, 298 Mich App 311 (2012), concluded, "The Macomb County Charter unambiguously grants to the Commission the discretionary authority to approve contracts" (*id* at 318), "there is no language . . . limiting the Commission's approval authority . . ." (*id* at 319) and "the fact that the Commission has *permission* to approve or reject contracts does not mean it *must* exercise that authority" *id* at 321 (emphasis in original); and

Whereas, the Commission previously enacted Ordinance No. 2012-1 entitled "An Ordinance to Establish Comprehensive Policies and Procedures Governing the Awarding of Macomb County Contracts for the Procurement of Services, Supplies, Materials, and Equipment" which was amended in 2013 and 2014; and

Whereas, the Commission previously adopted Resolution 2012-01, entitled "A Resolution to Amend Resolution No. 11-23 to Establish a Comprehensive County Contracting Policy," which was amended in 2013 and 2014; and

Whereas, the policies, procedures, and practices incorporated in the ordinance and policy are intended to ensure public accountability and transparency in the expenditures of County funds; and

Whereas, as the Court of Appeals noted, in that ordinance and policy the "the Commission exercised this discretion to confine its exercise of contract-approval authority" (*id* at 322); and

Whereas, it appears that the Commission's self-constraint may be hampering the clear understanding and implementation of the policy and ordinance; and

Whereas, consolidating the policy and ordinance in a single, simplified document may improve understanding and implementation; and

Whereas, the Commission regularly seeks to improve its policies, procedures and practices to enhance public accountability and transparency.

THE PEOPLE OF THE CHARTER COUNTY OF MACOMB ORDAIN:

**ARTICLE 1
PURPOSE, POLICY, APPLICABILITY, AND DEFINITIONS**

Sec. 1.1. Purpose.

This ordinance establishes comprehensive policies and procedures governing all County contracts and County purchasing. It fulfills the Commission's duties pursuant to section 8.10 of the Charter and establishes the how the Commission exercises its powers to approve contracts of the County under subsection 4.4(d) and other provisions of the Charter.

Sec. 1.2. Applicability.

A. Except as otherwise specifically provided in this ordinance, the requirements, policies, procedures and practices provided in this ordinance apply to all contracts of the County and all purchases of property, goods, and services made by or on behalf of the County. No contract shall bind the County unless it is made in compliance with this Ordinance.

B. When state or federal laws, rules, regulations, grant agreements, permit or license conditions, or other binding state or federal requirements or policies require contracting or purchasing 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.

C. Accordingly, this policy does not apply to the Martha T. Berry Medical Care Facility or the Macomb County Human Services Board, the Macomb County Community Mental Health Board and program, the Veterans Affairs Commission, the Community Corrections Advisory Board, and the Macomb County Community Action Advisory Board.

D. 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.

E. 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. For example and not for limitation, all contracting and purchasing, and all Public Servants involved in contracting and purchasing shall comply with the Ethics Ordinance.

Sec. 1.3. Definitions.

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

A. *Change order* means a signed written order directing the Contractor to make changes according to the "changes" clause of the contract.

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

C. *Close relative* means a person's (i) spouse, (ii) fiancé, (iii) biological, adoptive or foster parent, child, step-parent or step-child, (iv) biological, adoptive or foster brother or sister, step-brother or step-sister, or half-brother or half-sister (v) anyone who resides with the person, and (vi) anyone the person declares as a dependent on the person's federal income tax return.

D. *Commission* means the County Board of Commissioners created by the Charter.

E. *Commissioner* means a duly serving member of the Commission.

F. *Construction* means 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.

G. *Contract* means an agreement or understanding supported by present or future consideration, whether written or oral, express or implied.

H. *Contract modification* means any 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, whether or not it is in writing.

I. *Contractor* means any person and/or agent having a Contract with the County.

J. *Cooperative procurement* means procurement conducted by or on behalf of more than one public procurement unit.

K. *County agency* means a department, office, board, commission, or other unit of County government, whether created by Charter, ordinance or law.

L. *County-based enterprise (CBE)* means a business is that 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 paid 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 1 year on a regular commercial basis in the kind of goods or Services which are the subject of the bid or proposal.

M. *County contract or contract of the County* means any contract in which the County, a County agency, or a Public Servant is a party.

N. *Department head* means the person who, as a Countywide elected official, by appointment, or as a designee of the County Executive, is the head of a County department or other County agency, or that person's designee.

O. *Emergency* means when immediate action is necessary:

1. For protection of or to mitigate an imminent threat to public health, welfare or safety, including widespread or severe damage, injury, or loss of life or property.

2. To avert a catastrophe from a natural or human-made cause, including fire, flood, snowstorm, ice storm, tornado, windstorm, wave action, oil spill, water contamination, utility failure, hazardous peacetime radiological incident, major transportation accident, hazardous materials incident, epidemic, air contamination, blight, drought, infestation, explosion or hostile military or paramilitary action, or similar occurrences arising from terrorist activities, riots, or civil disorders.

3. For emergency repair or construction caused by unforeseen circumstances when the repair or construction is necessary to protect life or property.

4. In response to a declared state of emergency or state of disaster under Michigan or federal law.

P. *Ethics Ordinance* means the County's Ethics Ordinance, Ordinance No. 10, as it may from time-to-time be amended or replaced.

Q. *Executive or County Executive* means the person holding the office of County Executive as provided in the Charter or that person's designee(s).

R. *Intergovernmental contract* means a contract in which the County or any Public Servant is a party and the federal government, state government, another county, a city, a township, a village, an Indian tribe, a public school district, a community college, a public university, an intermediate school district, any authority, any other public body corporate, or any agency, board, body or officer of any of the foregoing is also a party, regardless of its subject matter, amounts of payments, or any other terms and conditions. Without limiting the generality of the preceding sentence, intergovernmental contacts include, by way of

example and not for limitation, services agreements, investment pooling agreements, grant agreements, intergovernmental loan documentation, pooled debt agreements, contracts establishing or detailing terms and conditions of cooperative procurement arrangements, mutual aid agreements, revenue sharing agreements, road patrol or other policing agreements, jail use agreements, and arrangements with state or federal transportation departments for joint projects.

S. *Invitation for bids* means all documents (whether attached or incorporated by reference) utilized for soliciting Sealed Bids.

T. *Locally-sourced foods* means:

1. Foods that are not processed (such as raw vegetables and fruits, eggs, meats and dairy products), that are grown, harvested or raised entirely within the County.
2. Foods that are processed (such as canned or packaged foods that have undergone preparation of some kind after having been grown, harvested or raised), for which the processor is located within the County, or which primarily consisting of foods grown, harvested or raised within the County.

U. *Procurement or purchasing* means the buying, acquiring, renting, leasing, or acquiring of any property, services, goods, 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.

V. *Professional services* means 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.

W. *Public Servant* means a County employee, Countywide elected official, Commissioner, or appointee of the County.

X. *Purchasing Manager* means the person(s) designated by the County Executive to be the County's principal procurement official(s) 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.

Y. *Relative* means (i) a person's Close Relative, (ii) a person's biological, adoptive or foster grandparent, (iii) a Close Relative of a person's spouse or fiancé, or anyone over the age of 18 residing with a person, or (iv) a biological, adoptive or foster grandparent of a person's spouse or fiancé.

Z. *Request for proposals (RFP)* means all documents (whether attached or incorporated by reference) utilized for soliciting proposals.

AA. *Responsible bidder* means person or entity with the capability in all respects to perform fully the requirements set forth in an Invitation for Bids.

BB. *Responsive bid* means a 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.

CC. *Sealed bid* means a response to an advertised, open, competitive Invitation for Bids that is opened publicly at a date, time and place stated for bid opening.

DD. *Services* means the furnishing of time, labor, or effort by an entity or person 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.

EE. *Sustainable and environmentally-sound farming practices* means farms that have Michigan Agriculture Environmental Assurance Program (MAEAP) verification from the Michigan Department of

Agriculture and Rural Development or Good Agricultural Practices (GAP) certification from the USDA, Agricultural Marketing Service, Fruit and Vegetable Program, Specialty Crops Inspection (SCI) Division.

ARTICLE 2 COMMISSION APPROVAL

Sec. 2.1. Commission Approval Required.

Except as otherwise specifically provided in this ordinance, all County contracts, all County purchases, all County contract amendments, and all change orders require the Commission's prior approval to have any validity, force or effect.

Sec. 2.2. Executive's Signature Required.

Except as otherwise specifically provided in this ordinance, all County contracts require the Executive's signature to have any validity, force or effect.

Sec. 2.3. Exceptions to Commission Approval.

A. The following contracts and purchases do not require Commission approval to be effective:

1. Construction contracts for less than \$35,000. Contract amendments and change orders that will not result in the contract exceeding this amount also do not require Commission approval.
2. Contracts or purchases of require payments totaling less than \$35,000 in all fiscal years the contract is in effect. Contract amendments and change orders that will not result in the contract exceeding this amount also do not require Commission approval.
3. Contracts for the sale or disposal of any County-owned personal property that do not include any item of \$35,000 or more in value.
4. Contracts for or purchases of goods or professional services required by the Executive to operate the Office of County Executive provided they fall within the appropriated amounts. However, any contract for representation of any Public Servant or agency by outside counsel in any criminal investigation or proceeding shall require Commission approval.
5. Contracts for or purchases of goods or professional services required by the Commission to operate its office provided they fall within the amounts budgeted therefore. Any contract for representation of any Public Servant or agency by outside counsel in any criminal investigation or proceeding shall require Commission approval.
6. Contracts or purchases that for reasons of effective law enforcement must remain confidential because their disclosure could adversely affect the investigation or the apprehension or prosecution of particular crimes or suspects, or could endanger the safety of law enforcement or prosecution personnel, witnesses or informants. For example, and not for limitation, contracts included within this exception are contract with jury consultants or expert witnesses retained with respect to specific investigations or prosecutions, or travel expenses related to a specific investigation or prosecution.
7. Emergency contracts and purchases complying with provisions of this ordinance applicable to such contracts and purchases.
8. Routine employment contracts made pursuant to approved County personnel policies and any applicable collective bargaining agreements that are within budgeted amounts under the annual appropriations ordinance as amended. However, employment contracts with any Public Servant whose position is an elective office or an appointive officer whose is appointed by or whose appointment requires the approval of the Commission shall require Commission approval.
9. A waiver, release or other contract resolving a lawsuit, other legal action, or claim if the Commission has approved the terms of the resolution of the lawsuit, other legal action or claim, or if the resolution of the lawsuit, other legal action or claim is made by a Public Servant in accordance with a policy approved by the Commission.
10. A subcontract for the use of the Freedom Hill facility or other county park for a single event that is made in accordance with a policy approved by the Commission or a longer term contract for the

oversight, management, operation or lease of the Freedom Hill park or facility that was approved by the Commission.

11. When execution of a contract without full Commission approval is: a) necessary to prevent or minimize serious disruption of government services; b) may result in additional cost to the County if not acted upon promptly; or c) may permit savings by the County if acted upon promptly, the Executive may execute such contract without prior approval of the full Commission upon the prior written approval of the Commission Chair, the chair of the Commission committee with jurisdiction over the subject matter of the contract according to the rules of the Commission, and the Chair of the Finance Committee (or, if unavailable, their respective vice-chairs). Written documentation of the basis of the Executive's request to enter into the contract without Commission approval must be included in the contract file, and submitted to the respective chairs along with the request for their approval. When contracts are made under this paragraph, the Executive shall promptly forward the executed contract to the full Commission. Ratification of the contract by the full Commission is recommended, but a contract executed under this paragraph shall continue to be valid and enforceable.

12. A contract with a Public Servant or former Public Servant whose employment is ending or has ended due to retirement, termination, elimination of a position, or other reasons provided the provisions of that contract do not require payments of any amounts in excess of what is required under approved personnel policies and collective bargaining agreements.

B. The exceptions in subsection 2.3.A.1, subsection 2.3.A.2 and subsection 2.3.A.3 do not apply to:

1. Contracts involving the acquisition, leasing, or licensing of any real property, buildings, or other improvements to real property for use by any Public Servant or County agency.
2. Contracts involving the sale, conveyance, leasing, licensing, management, or operation of any County-owned, County-leased, or County-managed real property, buildings, or improvements to real property to or with any other person or entity.
3. Contracts permitting use of the County's name, logo or pictures of County-owned property.
4. Contracts for group employee fringe benefits.
5. Contracts with a Public Servant or a person who was a Public Servant within 1 year prior to the date the contract is negotiated, drafted, approved, signed or becomes effective, whichever is earlier.
6. Contracts with a business or other entity in which Public Servant or a person who was a Public Servant within 1 year prior to the date the contract is negotiated, drafted, approved, signed or becomes effective, whichever is earlier, is an officer, director, member, partner or an owner of 10% or more of the stock or other equity of the entity.
7. Contracts with a Relative of a Public Servant.
8. Contracts with a business or other entity in which a Close Relative of a Public Servant is an officer, director, member, partner or an owner of 10% or more of the stock or other equity of the entity.
9. A contract for advertising or promoting any business, goods or services on or within any County property or facility.
10. Any contract for which Commission approval is required by law.

Sec. 2.4. Exceptions to Executive's Signature Requirement.

The following contracts and purchases do not require the Executive's signature:

A. Contracts for goods or professional services required by the Commission to operate its office provided they fall within the amounts budgeted therefore. The Commission Chairperson shall be the Executive's designee for such contracts. Any contract for representation of any Public Servant or agency by outside counsel in any criminal investigation or proceeding shall require the Executive's signature.

B. A contract for which another Public Servant is required by federal or state law, rule or regulation to be the signatory.

Sec. 2.5. Procedure for Commission Consideration.

A. The following documentation shall be submitted on the Board Sync System for all purchases requiring the payment of \$10,000 or more in any fiscal year or lasting more than 3 fiscal years and for all written contracts:

1. A copy of the requisition showing what County agency(ies) originated it and what item(s) or service(s) were requisitioned.
2. A copy of any tabulation of bids or quotes that includes the total amount(s), pertinent unit prices, names of the bidder, business address of the bidders and why the recommended bid or quote was selected.
3. A copy of the bid documents or other purchasing criteria.
4. A copy of the contract.
5. An explanation as to why the contract or purchase should be approved.
6. Information reasonably needed to determine whether the purchase or contract is within approved budget appropriations and whether it complies with all applicable requirements of this ordinance.
7. Other information the Executive believes may be helpful to the Commission in considering the proposed contract or purchase.
8. Information the Commission requests to accompany certain purchases or contracts.

B. The Commission Chair and Commission staff will determine whether the purchase or contract requires Commission approval.

C. Unless the submission deadline is waived by the Commission Chair and the Chair of the Commission committee that needs to first take action of the purchase or contract, any purchase or contract requiring Commission approval must be submitted at least 8 days prior to a scheduled full board Commission meeting.

D. When a purchase or contract requires Commission approval under the Charter, this ordinance or other applicable law, the Commission shall do one of the following:

1. Adopt a motion or resolution approving the purchase or contract. A Commission motion or resolution to approve a proposed contract that is not adopted due to a lack of sufficient votes in its favor shall be deemed to be a rejection of the proposed contract.
2. Adopt a motion or resolution rejecting the proposed purchase or contract. If the Commission adopts a motion or resolution rejecting a proposed contract, that motion or resolution may also be accompanied by reasons for rejection of the contract which, if addressed in a revised version of the contract, could result in its approval by the Commission. If the Commission adopts a resolution to reject a proposed contract, that proposed contract shall not be effective.
3. Adopt a motion or resolution seeking more information before considering whether to approve or reject the proposed purchase or contract.

Sec. 2.6. Change Orders, Amendments, and Modifications.

A. When the total of change orders, contract modifications, or price adjustments on any contract approved by resolution of the Commission exceeds 5% of the original contract amount, the change order, contract modification, or price adjustment shall require Commission approval.

B. Any change order for, contract modification of, contract amendment to or other change in the terms of any contract or purchase that required Commission approval shall be submitted to the Commission for its approval.

C. All change orders for, contract modifications of, contract amendments to or other changes in the terms of any contract or purchase shall be signed by the Executive.

**ARTICLE 3
PURCHASING, GENERALLY**

Sec. 3.1. Purchasing Manager

- 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 goods, services, supplies, materials, and equipment, in cooperation with the user County agencies;
 3. Exercise general supervision over inventories of goods, supplies, materials and equipment 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.

Sec. 3.2. Requisition Required.

All County procurement shall be initiated by the requesting County agency by submitting to the Purchasing Manager a requisition including such data as specifications, recommended vendor, and other details including budget and account information. All requisitions must be approved by the Department Head or authorized County agency representative.

Sec. 3.3. Purchasing Methods.

- A. Procurement shall be by one of the following methods:
1. Informal Bids
 2. Sealed Bids
 3. Multi-Step Sealed Bids
 4. Small Purchases
 5. Request for Proposal
 6. Request for Qualifications
 7. Sole Source Procurement
 8. Cooperative Procurement
 9. Emergency Procurement

The conditions for the use of each method will be determined by the Purchasing Manager pursuant to the expenditure limits in this ordinance.

- B. Except where otherwise provided:
1. Informal bids may be used for procurements of \$5,000 to \$35,000. The Purchasing Manager shall obtain at least 3 competitive quotes through bids using standard terminology and specified date for their return.
 2. Sealed bids shall be obtained for purchases of \$35,000 or more. Publicly solicited requests for or invitations for sealed bids shall contain standard terminology and performance specifications as well

as the date, time and place they are due and the date, time, and place they will be publicly opened. Sealed Bids may not be submitted by facsimile or electronic mail.

3. When purchases require sealed bids, multi-step sealed bids may be used when it is impractical to initially prepare a purchase description to support an award based on price. The invitation for bids shall request submission of un-priced offers to be followed by an invitation for bids from bidders whose offers were determined to be technically acceptable under criteria provided 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 method may be used when it is desirable to obtain a custom proposal employing ingenuity or creative solutions to solve a problem in a more cost-effective manner.

5. When purchasing profession or other highly specialized services requiring particular experience or expertise, that may include by way of example and not for limitation, knowledge of or experience working with Public Servants or particular County operations, a request for qualifications may be used to determine who has the needed or best qualification to perform the needed services. Once qualifications are determined, agreements may be made for a give project or assignment, or, if appropriate, by an open-ended contract based on agreed upon rates and other terms.

6. Sole source procurement may be used when recommended by the Purchasing Manager and approved by the 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.

7. 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 \$235,000 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.

8. The Purchasing Manager with the approval of the Executive may make or authorize others to make emergency Procurements of supplies or services pursuant to this ordinance.

9. Small purchases may be made as provided in this ordinance.

Sec. 3.4. General Purchasing Requirements.

All County purchasing shall comply with the following:

A. All contracts for and purchases of services shall require documentation that the service provider maintains workers' disability compensation insurance as required by law and maintains liability insurance in an amount, with coverage, and with terms the County's Risk Manager concludes are sufficient to adequately protect the interests of the County and those persons and property that may be affected by such services.

B. In purchases that involve tangible property, 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.

C. 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.

D. To the extent not prohibited by law, all contract bid specifications involving the construction, alteration, repair, and improvement of County-owned buildings and facilities in which the cost is anticipated to exceed \$50,000, not including work done pursuant to any Collective Bargaining Agreement between the County and its employees, shall include such terms as will promote harmonious relations among all skilled tradespersons and laborers employed on the project. These terms shall include, when appropriate, a requirement that the successful bidder shall certify that he or she is able to furnish skilled tradespersons and laborers who are able to work in harmony with all other contractors who are employed upon the project and that the successful bidder shall enter into a project labor agreement with respect to prevailing wage rates and certified skills, with the Greater Detroit Building and Construction Trades Council, AFL-CIO, and its affiliated unions for the development and construction of the project.

Sec 3.5. Food Procurement.

A. For the reasons stated in Commission Resolution 13-274, adopted October 28, 2013, it is the County’s policy to encourage the purchase by County agencies of locally-sourced foods, and food produced by sustainable and environmentally-sound farming practices. Toward that end, the County, in cooperation with the Macomb Food Collaborative, will endeavor to create and maintain a list of producers and vendors of locally-sourced foods and of farmers with sustainable and environmentally sound farming practices, and to make such list available to all County agencies.

B. A preference percentage credit from the following allowance table will be applied to bids by producers and vendors of locally-sourced foods and of farmers with sustainable and environmentally sound farming practices. This credit will be subtracted from the bid of a producer or vendor of locally-sourced foods, or of a farmer with sustainable and environmentally sound farming practices. In comparing bids, the bid of a producer or vendor of locally-sourced foods, or of a farmer with sustainable and environmentally sound farming practices after subtraction of the credit shall be considered the official bid. However, if a producer or vendor of locally-sourced foods, or a farmer with sustainable and environmentally sound farming practices is awarded the Contract, the bid without the equalization percentage credit shall be the Contract price.

| Contract Amount | Preference Percentage |
|-----------------------------|------------------------------|
| Up to \$50,000.00 | 5 |
| \$50,000.01 to \$200,000.00 | 3 |
| More than \$200,000 | 1 |

1. No bidder shall receive these credits unless it has been certified by the Purchasing Manager.
2. Any bidder that claims entitlement to this preference credit shall disclose the records necessary to establish eligibility to the County.
3. After applying any preference credits as provided above, the contract or purchase shall be awarded to the lowest responsible bidder thus evaluated.
4. A bidder may not claim this credit in addition to the local preference credit described in subsection 4.3.M of this ordinance, but, if applicable, may claim one or the other credit.
5. All invitations for bids for food procurement contracts shall provide a list of suppliers and sub-vendors and identify, with documentation, whether each is a producer or vendor of locally-sourced foods, or a farmer with sustainable and environmentally sound farming practices.

**ARTICLE 4
COMPETITIVE BIDDING AND PROPOSALS**

Sec. 4.1. Competitive Bidding Generally Required.

A. Openly publicized competitive bids shall be utilized whenever possible for procuring services, goods, supplies, materials, and equipment.

B. Unless otherwise provided in this ordinance, procurements (i) in excess of \$35,000, (ii) that multiple purchases within a fiscal year that are likely to exceed \$35,000, and (iii) that involve purchases over 3 or more fiscal years that will exceed a total of \$105,000 shall be subject to competitive sealed bidding.

C. Procurement shall not be divided, separated, sequenced, phased, or otherwise broken-up in a manner to avoid the requirement for competitive bidding.

D. If the Purchasing Manager and the Executive concur that competitive bidding of a purchase or contract would not be in the County's best interest and there is not an applicable exception to the bidding requirement in this ordinance, the Executive may request that the Commission waive the bidding requirement with respect to that purchase or contract. Any such request shall be accompanied by a written detailed explanation as to why waive of the bidding requirement is in the County's best interest. If the Commission finds it is in the County's best interest to waive the bidding requirement, it may do so by a resolution stating the reasons for that finding.

Sec. 4.2. Exceptions to Competitive Bidding.

When the Purchasing Manager determines and the Executive concurs, the following purchases and contracts are exempt from competitive bidding but shall comply with other provisions of this ordinance governing them.

A. Contracts for and purchases of professional services.

B. When there is only one source for the required services, goods, supplies, materials, or equipment.

C. When there exists a long standing, successful relationship for professional services or other specialized services and the knowledge gained through this relationship adds value integral to the services provided.

D. A sole supplier's item is needed for trial use or testing.

E. Purchases of used equipment.

F. Purchases at auctions.

G. Small purchases.

H. Emergency purchases.

I. Cooperative procurement.

Sec. 4.3. Sealed Bidding Procedures.

A. Individuals and entities interested in providing goods or services to the County must do so on the County's purchasing system website via the County's website at <http://purchasing.macombgov.org/Purchasing-VendorRegistration>. All current County bidding documents shall be posted at the purchasing system website. Vendors shall also comply with the personal disclosure requirements set forth in the Ethics Ordinance.

B. An invitation for bids shall be issued and will include specifications and all contractual terms and conditions applicable to the procurement.

C. Public notice of the invitation for bids shall be provided not less than 15 business days prior to the date for submitting bids. At a minimum, such notice shall be posted to the purchasing system website. The public notice shall state the place, date, and time for submitting bids and for bid opening.

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

E. Bid, payment, and performance bonds or other security shall be (i) required in accordance with this ordinance and other applicable law and may be requested as the Purchasing Manager deems necessary to protect the County's interests and (ii) detailed in the invitation for bids. Bid bonds or performance bonds shall not be used as a substitute for a determination of a bidder's responsibility.

1. The limits for bonds shall be a minimum of 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 bidder fails to submit a bid bond or bank certified check with its bid, the bid shall 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 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 100% of the price specified in the contract.

F. The Purchasing Manager shall determine, in consultation with Corporation Counsel, the types and amounts of coverage that shall be required. The Contractor shall have the County named as an insured or additional insured and furnish the County with satisfactory evidence of the insurance including any needed endorsements to make it binding.

G. The Purchasing Manager, after consulting with the County Executive and Corporation Counsel, may cancel an invitation for bids, a request for proposals, request for qualifications, or other solicitation, or reject bids or proposals, in whole or in part, as may be specified in the solicitation, when the Purchasing Manager determines it is in the best interests of the County to do so. Each solicitation issued by the County shall so state.

H. Sealed bids shall be opened publicly by the Purchasing Manager in the presence of at least one witness at the date, time and place designated in the bid invitation. The Purchasing Director shall read aloud information the Purchasing Manager deems appropriate which will include each bidder's name, the amount of each bid, and relevant information pertinent to the award. Bids shall be accepted without alteration or correction and without conditions.

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 bidder that made a mistake in a bid may, if the Purchasing Manager agrees a mistake was made, correct or withdraw a submitted bid prior to bid deadline. A correction shall be in writing and delivered to the Purchasing Department prior to the bid deadline. After the bid deadline no changes in the bid prices or provisions shall be permitted. In lieu of correcting a bid, a bidder alleging a material mistake may withdraw its bid. All decisions to permit correction or withdrawal of bids must be supported by the Purchasing Manager's written determination, after consultation with the Executive and Corporation Counsel, that the correction or withdrawal complies with this provision.

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 state the evaluation criteria to be used which may include such factors as discounts, transportation costs, total life cycle costs, value analyses, or other factors deemed in the County's best interest. Criteria not requested in the bid or intentionally left out of a bid may not be used in the award evaluation. The responsibility of the bidder and responsiveness of the bid will also be factors.

L. Failure to perform or unsatisfactory performance on any 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 CBE. This credit will be subtracted from the bid of the CBE. In comparing bids, the bid of the CBE after subtraction of the credit shall be considered the official bid. However, if the CBE is awarded the contract, the bid without the equalization percentage credit shall be the contract price.

| Contract Amount | Local Preference Percentage |
|-----------------------------|------------------------------------|
| Up to \$50,000.00 | 5 |
| \$50,000.01 to \$200,000.00 | 3 |
| Over \$200,000.00 | 1 |

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. All sealed bids for construction contracts shall provide a list of preferred subcontractors and identify, with documentation, whether each subcontractor is a CBE.

O. After approval by the County Executive and any required Commission approval, the contract shall be awarded by appropriate written notice to the responsible bidder with the lowest responsive bid 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 AND CONTRACTS NOT COMPETITELY BID**

Sec. 5.1. Emergency Procurement.

In an emergency, the Purchasing Manager, with concurrence of the Executive, may make purchases to address the emergency that would otherwise require competitive sealed bids without undergoing such bidding. 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, the reason why the purchase was needed to address the emergency, the amount of the purchase, what competitive pricing efforts were made, and a copy of any resulting contract or purchase order shall be submitted to the Commission as provided by this ordinance for contracts requiring Commission approval.

Sec. 5.2. Small Purchases.

A. A Department Head or the Purchasing Manager may solicit competitive quotations for small purchase procurements of up to \$5,000 to determine the source that is in the County's best interests.

B. Whenever possible, at least 3 quotations shall be received prior to a small purchase procurement. The Purchasing Manager may determine when it is not feasible to secure 3 quotations. The Purchasing Manager may also determine when it is in the County's best interests to consider only one supplier that 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 3 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.

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

Sec. 5.3. Professional Services.

A. A County agency seeking Professional Services may procure them through the Purchasing Manager in accordance with this section.

B. The Purchasing Manager shall issue a request for qualifications detailing the services needed. Individuals and entities that provide such professional services shall submit a statement of qualifications and expressions of interest in providing such Professional Services. The request for qualifications may specify a uniform format for the statement of qualifications.

C. Requests for proposals shall be issued to qualified Individuals and entities 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 in the request for qualifications or request for proposals. 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.

Sec. 5.4. Cooperative Procurement.

A. Subject to applicable state law, the County may participate in, sponsor, conduct, or administer a cooperative procurement agreement with one or more public procurement units. 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. All cooperative procurement contracts, memberships and arrangements require Commission approval.

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

C. 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. Any such agreement is an intergovernmental agreement requiring Commission approval.

D. 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. Any such agreement is an intergovernmental agreement requiring Commission approval.

Sec. 5.5. Auction Purchases.

Any purchase to be made at an auction shall have prior approval of the Commission if (i) any item to be purchased at the auction might result in payment of \$35,000.00 or more, or (ii) if the aggregate total of the payment to be made for all items purchased at the auction might be \$35,000.00 or more.

Sec. 5.6. Used Goods Purchases.

Any purchase of used goods, materials, supplies or equipment that totals \$35,000.00 or more shall require Commission approval.

**ARTICLE 6
PENALTIES AND CONSEQUENCES**

Sec. 6.1. Contracts Void.

A. Any purchase or contract that is not submitted to the Commission as provided in this ordinance and any contract that requires Commission approval under this ordinance but is not approved by the Commission as provide in this ordinance shall be null and void.

B. Any payments made on such purchases or contracts will be unauthorized. Accordingly, any such payments made shall be recoverable by the County. The County may seek recovery for its costs incurred to provide or the value of any goods or services provided by a Public Servant in violation of this ordinance or pursuant to any contract that was not approved and signed as required by this ordinance.

C. Any performance of such contracts by any County Public Servants will be *ultra vires* acts outside the scope of their officer or employment.

Sec. 6.2. Personnel Actions.

Any Public Servant who pays any amount or takes any action in violation of this ordinance or performs any action pursuant to any contract that was not approved and signed as required by this ordinance may be subject to personnel action in accordance with County policies and collective bargaining agreements.

Sec. 6.3. Misfeasance.

It is misfeasance in office for any Public Servant to pay any amount or to take any action in violation of this ordinance or to perform any action pursuant to any contract that was not approved and signed as required by this ordinance.

Sec. 6.4. Misdemeanor.

A violation of this ordinance shall be a misdemeanor punishable by a fine of up to \$500.00 and imprisonment in the County jail for up to 90 days or by both such fine and imprisonment.

**ARTICLE 7
ENACTING AND REPEALING PROVISIONS**

Sec. 7.1. Effective Date.

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

Sec. 7.2. Ordinance Repeal.

Ordinance No. 2012-1 entitled "An Ordinance to Establish Comprehensive Policies and Procedures Governing the Awarding of Macomb County Contracts for the Procurement of Services, Supplies, Materials, and Equipment," as subsequently amended, is repealed in its entirety.

Sec. 7.3. Resolution and Policy Repeal.

Resolution 2012-01 entitled, "A Resolution to Amend Resolution to Establish a Comprehensive County Contracting Policy," as subsequently amended, is repealed in its entirety.



BOB SMITH
Chair, Macomb County Commission

KAREN A. SPRANGER
Macomb County Clerk/Register of Deeds

Adopted: November 9, 2017