



# *Policy/Procedure Statement*

- POLICY NO.:
- ISSUE DATE:           October 1, 2013
- REVISED ON:
- ORIGINATOR:        PURCHASING  
                                  DIRECTOR

**SUBJECT:  PROCUREMENT POLICY**

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## **ARTICLE 1 - GENERAL PROVISIONS**

### **Sec. 1.1 Purposes**

The Detroit Wayne Mental Health Authority (Authority) has adopted this procurement policy:

- (1) To create a procurement system for the Authority and its staff which is prompt, dependable, and responsive to both staff routine and more urgent needs;
- (2) to establish policies and self-policing procedures which promote and safeguard the quality and integrity of the procurement system; and
- (3) to enable any interested person to review the public record and satisfy themselves that the Authority's purchasing agents have complied with the requirements of this policy to the extent not exempted from disclosure by applicable law.

### **Sec. 1.2 Application**

This policy applies to all contracts for the procurement of supplies, and services entered into by the Authority, whatever the source of the funds. However, this policy shall not prevent the Authority from complying with terms and conditions of any grant, gift, or bequest made to the Authority, in such a case, the terms and conditions of the grant, gift, or bequest control.

### **Sec. 1.3 Record Access to Procurement Information**

Procurement records shall be promptly provided when requested as provided in the Freedom of Information Act, being Michigan Compiled Laws beginning at section 15.231 to the extent not exempted from disclosure by applicable law.

### **Sec. 1.4 Authority Procurement Records**

(1) **Contract File.** Authority staff shall assure that all written determinations and other written records pertaining to the solicitation, award, or performance of every contract are maintained for the Authority in a contract file which is accessible for public inspection to the extent not exempted from disclosure by applicable law.

(2) **Retention of Procurement Records.** Authority staff shall assure that all procurement records are retained and disposed of by the Authority in accordance with record retention guidelines and schedules approved by the Detroit Wayne Mental Health Authority Board of Directors (Board).

### **Sec. 1.5 Contract Approval Authority Retained by the Board**

Except for that approval authority which is delegated to the Purchasing Director for small purchases, emergency contracts and cooperative purchases, all contracts for the procurement of supplies and services exceeding \$50,000 shall be submitted to the Board for approval. Prior to the issuance of purchase orders or execution of a contract, the Chief Financial Officer or designee shall review and approve the proposed purchase.

### **Sec. 1.6 Contracts Meriting Exigent Approval**

(1) The chairperson of the Board, or in his or her absence, the vice-chairperson, may grant to the Executive Director the authority to execute exigent contracts.

(2) Exigencies for purposes of this section shall include:

- a. Death, disability, or resignation of key personnel.
- b. Bankruptcy, fire, or any other incapacitation of a current service provider.
- c. Reasonably unforeseeable changes in service demand for essential services.
- d. Delays in processing which are beyond the reasonable foresight or control of office or departmental administrators and which may jeopardize the receipt of grant or other funds. This subsection shall not, however, be used to avert the lapse of unexpended Authority funds at the end of a fiscal year.
- e. Availability of grant or other funding with less than 30 days notice of an application deadline.
- f. An unforeseeable and fleeting opportunity arises to purchase greatly needed supplies, services, or construction at a price or on terms which are exceptionally favorable to the Authority.
- g. A reasonably unforeseeable need arises to initiate a prompt legal action or to make a timely response to a significant legal challenge to a Authority initiative or enterprise or to protect or preserve a significant Authority right, interest, or asset.
- h. A prompt change in contract specifications is needed to maintain timely and cost-efficient construction or performance schedules because of

reasonably unforeseeable or uncontrollable changes or variations in site conditions, or labor or materials availability.

(3) All Authority procurements, including grant contracts, agreements with other units of government, and real estate contracts shall be eligible for exigent approval.

(4) All exigent approvals shall be submitted to the Board within 30 days of approval.

### **Sec. 1.7 Special Waivers**

A special waiver of this policy can be extended by the Authority by action of the Board, for cause.

### **Sec. 1.8 Ethics in Contracting**

The Purchasing Director shall establish a system to preclude the opportunity for a conflict of interest to arise between businesses and those employees, including Board members, who regularly exercise significant discretion over the award and management of Authority procurements. The Purchasing Director shall ensure that such system substantially conforms to standards and requirements set forth by the State of Michigan or the Authority.

## **ARTICLE 2 - SOURCE SELECTION AND CONTRACT FORMATION**

### **PART A - METHOD OF SOURCE SELECTION GENERALLY REQUIRED**

#### **Sec. 2.1 Competitive Sealed Bidding Generally Required**

(1) All procurements of the Authority shall be awarded by competitive sealed bidding, as set forth in this section, except as is otherwise provided in Article 2, Part B of this policy.

(2) **General Requirement and Exceptions.** In the reasonable discretion of the Purchasing Director, where there are no significant measurable qualitative factors other than price, procurements of the Authority may be awarded by competitive sealed bidding, as set forth in this section.

(3) **Invitation for Bids.** An invitation for bids shall be issued which shall include specifications, and all contractual terms and conditions applicable to the procurement.

(4) **Public Notice.** Enough public notice of the invitation for bids shall be given to reasonably assure an optimal level of competition. Notice shall be given within a reasonable time, preferably fourteen (14) days but not less than seven (7) calendar days, before the date set forth therein for the opening of bids. This notice may include publication in a newspaper of general circulation, or on the Internet, or in professional and trade bulletins, if those kinds of notice are in fact likely to

produce more effective competition in the opinion of the Purchasing Director. The public notice shall state the place, date, and time of bid opening.

(5) **Register of Interested Businesses.** The Purchasing Director may maintain a register of businesses that have asked to be notified of specified kinds of invitation for bids, and may make good faith, but not guaranteed, efforts to honor those requests. Such list, if maintained, shall be updated semiannually. The Authority makes no warranties, and failure to provide such a notice or the opportunity to make a bid shall not provide the basis to either invalidate an award to another business, nor for a claim for a loss of profits or any other remedy.

(6) **Bid Opening.** Bids shall be opened publicly by the Purchasing Director or by his or her designee in the presence of one or more witnesses at the time and place set forth in the invitation for bids. The amount of each bid, and such other relevant information as the opening person deems appropriate, together with the name of each bidder shall be read clearly aloud and recorded.

(7) **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 only upon those requirements set forth in the invitation for bids, which may include criteria to determine acceptability such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose. Those criteria which will affect the bid price and which will be considered in evaluation for award shall be objectively measurable, such as discounts, transportation costs or savings, and total or life cycle costs.

(8) **Correction or Withdrawal of Bids; Cancellation of Awards.**

(a) When appropriate, a bidder may be permitted to correct or withdraw a bid, which contains inadvertent errors, both before and after bid opening. An award or contract may also be canceled based upon such bid mistakes. A notice of this correction policy and procedures shall be included in all invitations for bids.

(b) Mistakes discovered before bid opening may be corrected or withdrawn by written, faxed or other telegraphic notice received in the office designated in the invitation for bids at any time before the time set for bid opening.

(c) After bid opening, no changes shall be permitted in bid prices or in other provisions of bids, which are prejudicial to the interest of the Authority or to fair competition. After bid opening, a bid may be corrected only if and to the extent that the bidder can show by clear and convincing evidence:

(i) the nature of the mistake,

(ii) that the mistake was not one of business judgment, and

(iii) what bid price had actually been intended.

(d) Instead of bid correction, a low bidder who alleges a material mistake of fact may be permitted to withdraw its bid if:

(i) the mistake is clearly evident on the face of the bid document, but the intended correct bid is not similarly evident; or

(ii) the bidder submits evidence which clearly and convincingly demonstrates that a mistake was made.

(e) 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 file determination made by the Purchasing Director.

(9) **Award.** The contract shall be awarded with reasonable promptness by appropriate written notice to the lowest responsive and responsible bidder whose bid meets the requirements and criteria set forth in the invitation for bids. Notwithstanding anything foregoing, the Authority, in its sole discretion, shall have the right to reject any and all bids that do not meet the best interest of the Authority and/or its consumers, and the Authority hereby reserves the right to accept or reject any or all offers.

(10) **Tie Bids.** If two or more bidders are tied in price, while otherwise meeting all of the required terms and conditions of the bid, awards may, in the Authority's sole discretion, be determined by flipping of a coin in presence of both bidders.

(11) **Multi-Step Sealed Bidding.** If it is not practical at the onset to prepare a specification which is good enough to obtain a bid based on price, an invitation for bids may be issued requesting that unpriced offers be submitted, to be followed by an invitation for bids which will be limited to those first-round respondents whose offers are found to be technically acceptable under the criteria set forth in the first solicitation.

(12) **Cancellation of Solicitations.** 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. Each solicitation issued by the Authority shall so state. Notice of cancellation or rejection of all bids shall be sent to all businesses solicited.

(13) **Minor Informalities and Irregularities in Bids.** The Purchasing Director shall either give the bidder the opportunity to cure any deficiency resulting from a minor informality or irregularity in a bid or waive any such deficiency when it is to the advantage of Authority. Such communication or determination shall be in writing.

(14) When bids received pursuant to an Invitation for Bids are unreasonable, or are not independently reached in open competition, or the low bid exceeds available funds as certified by the Chief Financial Officer of the Authority, and it

is determined in writing by the Purchasing Director that time or other circumstances will not permit the delay required to resolicit competitive sealed bids, a contract may be negotiated pursuant to this section, provided that each responsive/responsible bidder, who submitted a bid under the original solicitation, is notified of the determination and is given reasonable opportunity to negotiate;

1. the negotiated price is lower than the lowest rejected bid by any responsive/responsible bidder under the original solicitation;
2. the negotiated price is the lowest negotiated price offered by any responsive/responsible bidder.

## **PART B - EXCEPTIONS TO COMPETITIVE PROPOSAL REQUIREMENTS FOR SOURCE SELECTION**

### **Sec. 2.2 Small Purchases**

(1) **General.** A procurement of not more than Fifty Thousand Dollars (\$50,000.00) is not subject to the several requirements of Section 2.1. The Purchasing Director shall develop a system for making small purchases which is quick, simple, flexible, and sensible. Competition shall be sought to the extent that it promises to generate greater buying savings than the cost of the search.

Insofar as it is practicable for purchases in excess of Fifteen Thousand Dollars (\$15,000.00), but not more than Fifty Thousand Dollars (\$50,000.00), actual quotations which meet the need shall be solicited from a responsible salesperson, at least by telephone, at each of at least three businesses, which are likely to be competitive for the kind of supplies, service or construction desired. Award shall be made to the business offering the lowest acceptable quotation in the opinion of the Purchasing Director.

The name, address, phone number and contact person of each business submitting quotations, and the date and amount of each quotation for each item, shall be recorded and maintained.

(2) **Board Approval.** Board approval shall not be required for purchases made under this section but quarterly reports of procurements pursuant this section shall be submitted to the Board for informational purposes only.

### **Sec. 2.3 Emergency Procurements**

(1) **General.** Notwithstanding any other provisions of this policy, the Purchasing Director may make or authorize others to make emergency procurements of supplies, services, or construction when an emergency exists.

Such emergency procurements shall be made with as much competition as is practicable under the circumstances. A written determination of the basis for the emergency and for the selection of the particular contractor shall be included in the contract file.

(2) **Emergency Defined.** Emergencies for purposes of this section shall include, but not be limited to:

(a) Transport or industrial disasters, or damage to any Authority property which may endanger the life, safety, or health of any person, resulting from any causal factor, including natural disaster.

(b) Failure or incapacitation of electrical, power, structural, heating, communications, or mechanical systems which either threatens to shut-down a facility or operation or which presents a serious safety threat to employees, students, or citizens, or which will result in a serious violation of local, state or federal laws, rules, or regulations.

(c) Bankruptcy, fire, or any other incapacitation of a current Authority critical service provider.

(3) **Board Approval.** Board approval shall not be required for purchases made under this section, but the purchases shall be submitted to the Authority Board as information.

#### **Sec. 2.4 Sole Source and Single Response Procurements**

(1) **General.** Any time that a procurement is restricted to one potential source it shall be accompanied by a letter from the Purchasing Director stating why no other source will be suitable or acceptable to meet the Authority's needs. A contract may be awarded for a real property, supply, or service without competition when the Purchasing Director or his or his designee determines in writing that there is only one source for the required property, supply, or service item or that the proposed award to a single source is a permitted non-competitive procurement as established herein. After verification of a sole source vendor, or the justification of a sole source purchase is warranted, the Purchasing Director, or his designee, has the authority to negotiate the price, terms, and conditions of the procurement.

(a) Certain Professional services, such as legal, medical, financial, consultants, lobbyist and brokerage may qualify as a sole source procurement if in the best interest of the Authority.

(2) **Comparable Source.** The Purchasing Director may treat a procurement as a Sole Source Procurement under some documented circumstances where there are extremely limited suppliers of a given commodity upon documented evidence from the requesting department that the comparable sources for the desired product are not in the Authority's best interest. Examples of this comparable source situation could include, but are not limited to, software applications, certain employee benefits, or designated professional services. The requestor shall, at a minimum, explain:

(a) detailed description of supplies or services provided by vendor.

(b) Why the recommended vendor is the only one capable of providing the required services or goods and include back-up information to support the justification, if available.

(c) Identify if other vendors have been contacted and explain in detail why they cannot fulfill the Authority's requirements.

(d) How the recommended vendor's prices or fees compare to the general market and attach quotes for comparable services and supplies, if available.

## **Sec. 2.5 Competitive Sealed Proposals**

(1) **General Requirement and Exceptions.** If in the reasonable discretion of the Purchasing Director, with consultation of the requesting department of the Authority, determines that the use of competitive sealed bidding, is either not practicable or not advantageous to the Authority, a contract may be awarded by use of the competitive sealed proposals, which includes request for qualifications, as set forth in this section. .

(2) **Public Notice.** Enough public notice of the request for proposals shall be given to reasonably assure an optimal level of competition. Notice shall be given within a reasonable time, preferably fourteen (14) days but not less than seven (7) calendar days, before the date set forth therein for the opening of bids. This notice may include publication in a newspaper of general circulation, or on the Internet, or in professional and trade bulletins, if those kinds of notice are in fact likely to produce more effective competition in the opinion of the Purchasing Director. The public notice shall state the place, date, and time of bid opening.

(3) **Receipt of Proposals.** 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. After the due date of all proposals, the proposals shall be open for public inspection as required by the Freedom Of Information Act, but members of the interview advisory panel will be provided a full disclosure of all persons who have availed themselves of the proposal files and shall take this factor into consideration in evaluating the originality and quality of a modified proposal to the extent not exempted from disclosure by applicable law.

(4) **Request for Qualifications.** Prior to soliciting proposals, the Purchasing Director may issue a Request for Qualifications from prospective offerors. Such request shall contain, at a minimum, a description of goods or services to be solicited by the Request for Proposals and the general scope of the work, and shall state the deadline for submission of information and how prospective offerors may apply for consideration. The request shall require information only on an offeror's qualifications, experience, and ability to perform the requirements of the contract. After receipt of the responses to the Request for Qualifications from prospective offerors, the prospective offerors shall be ranked from most qualified

to least qualified on the basis of the information provided. Proposals shall then be solicited from at least the top two prospective offerors by means of a Request for Proposals or competitive sealed bidding. The failure of a prospective offeror to be selected to receive the Request for Proposals shall not be grounds for protest under Section 3.1.

(5) **Evaluation Factors.** The request for proposals shall state the relative importance of price and other evaluation factors to the full extent that those relationships can be reasonably quantified. Cost or pricing data shall also be provided when required under Section 2.11.

(6) **Discussion with Responsible Offerors and Revisions to Proposals.** If so provided in the Request for Proposals, discussions may be conducted with responsible offerors, in order to clarify and assure full understanding of, and conformance to, the solicitation requirements. The Purchasing Director shall assure that the interview advisory panel includes persons who are experienced and well qualified to judge issues of technical quality, competitive purchasing procedure, and legal implications.

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. Discussions shall be scheduled and conducted in a manner which avoids disclosure of the identity of competing offerors, and of any specific ideas, information, or solutions which are derived from proposals submitted by competing offerors. A written cost or pricing analysis shall be prepared when required by Section 2.11.

(7) **Award.** Award shall be made to the responsible offeror whose proposal is determined in writing to be the most advantageous to the Authority, 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. Notwithstanding anything foregoing, the Authority, in its sole discretion, shall have the right to reject any and all proposals that do not meet the best interest of the Authority and/or its consumers, and the Authority hereby reserves the right to accept or reject any or all offers.

A copy of the written evaluation which states the basis of award, including the rating and evaluation sheets and notes of any review and interview advisory panel, shall be filed with the award. If there are significant differences between the rating and evaluation sheets, the written evaluation shall also explain why some were weighed more highly in reaching the final rankings.

(8) **Cancellation of Solicitations.** 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. Each solicitation issued by the Authority shall so state. Notice of cancellation or rejection of all proposals shall be sent to all businesses solicited.

## Sec. 2.6 Contracting for Designated Professional Services

(1) **Conditions for Use.** Except as provided under Section 2.2 (Small Purchases), Section 2.3 (Emergency Procurements) or Section 2.4 (Sole Source and Single Response Procurement), the professional services shall be procured in accord with this Section.

(2) **Definition.** Designated professional services shall be defined as those services which involve extended analysis, the exercise of discretion and independent judgment in their performance, and an advanced, specialized type of knowledge, expertise, or training customarily acquired either by a prolonged course of study or equivalent experience in the field

(3) **Statement of Qualifications.** A person who provides a designated type of professional service may at any time submit a statement or an amended statement of qualifications.

(4) **Request for Qualifications.** The Purchasing Director may utilize request for qualifications to select a vendor to provide a designated professional service.

(5) **Public Announcement and Form of Request for Qualifications.** A request for qualifications shall describe the services required, list the types of information and data required of each offeror, and state the relative importance of particular qualifications. Notice is deemed adequate if publicly announced or advertised in an appropriate and widely circulated local trade or professional magazine, newspaper, or newsletter, or if posted on the Internet as set forth in section 2.1.

(6) **Discussions.** The Purchasing Director may conduct discussions with any offeror who responds to a request for qualifications or submits a statement of qualifications, to determine that offeror's qualifications for further consideration, but need not speak with more potential providers than those needed to secure a reasonable level of competition. Information derived from proposals shall not be disclosed to other offerors.

(7) **Award.** Award shall be made to the offeror determined by the Purchasing Director to be the best qualified offeror of those actually considered, based upon the evaluation factors set forth in the request qualifications and based upon negotiation of compensation determined to be fair and reasonable. If compensation cannot be agreed upon with the best qualified offeror being considered, then negotiations will be formally terminated with the selected offeror. If proposals were submitted by one or more 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 compensation is determined to be fair and reasonable. Notwithstanding anything foregoing, the Authority, in its sole discretion, shall have the right to reject any and all offerors that do not meet the best interest of the Authority and/or its consumers, and the Authority hereby reserves the right to accept or reject any or all offeror proposals.

## **Sec. 2.7 Unsolicited Proposal that Serves the Authority's Best Interests**

If a business presents the Authority with an unsolicited cost-savings proposal, the Purchasing Director may, in his or her discretion, accept such a proposal after engaging in reasonable due diligence to determine, in writing, the validity of the proposal and examining the likelihood of the Authority receiving a significantly superior offer through competitive solicitation. If the Purchasing Director determines that there is a substantial likelihood that competitive solicitation could produce a significantly better opportunity for the Authority, he or she may develop specifications to move forward with competitive solicitation.

## **Sec. 2.8 Cooperative Purchasing**

(1) **Authority to Participate in Cooperative Purchasing Programs.** The Purchasing Director may either participate in, sponsor, conduct, or administer a cooperative purchasing agreement for the procurement of supplies or services with one or more public procurement units in accordance with an agreement entered into between the participants. Such cooperative purchasing may include, but is not limited to, joint or multi-party contracts between public procurement units. Examples of such cooperative purchasing are State of Michigan contracts, General Services Administration (GSA) contracts, supplies and/or services procured from another governmental agency, and U.S. Communities.

(2) **Sale, Acquisition or Use of Supplies.** The Purchasing Director may sell to, acquire from, or use any supplies belonging to another public procurement unit independent of the requirements of Section 2.1 of this policy.

(3) **Cooperative Use of Supplies or Services.** The Purchasing Director may enter into an agreement, independent of the requirements of Section 2.1 of this policy, with any public procurement unit for the cooperative use of supplies or services under the terms agreed upon between the parties.

(4) **Joint Use of Facilities/Equipment.** The Purchasing Director 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.

(5) **Procurements by Other Governmental Entities.** The Purchasing Director may enter into contracts with vendors for goods and services that were competitively selected by other public procurement units, independent of the requirements of Section 2.1 of this policy.

(6) For purposes of this Section "public procurement unit" means a federal, state or local governmental entity or a non-profit entity that comprises of more than one (1) or more representative from federal, state and local governmental entity.

(7) **Board Approval.** Board approval shall not be required, even if the purchase is in excess of \$50,000 under this Section. However, the Purchasing Director shall

notify the Board of all cooperative procurements exceeding \$50,000 for informational purposes only.

## **PART C - QUALIFICATIONS AND DUTIES OF BIDDERS AND OFFERORS**

### **Sec. 2.9 Responsibility of Bidders and Offerors**

(1) **Responsibility of bidders and offerors.** Responsibility of the bidder or offeror shall be ascertained for each contract entered into by the Authority based upon full disclosure to the Purchasing Director concerning capacity to meet the terms of the contracts and based upon past record of performance for similar contracts.

(2) **Determination of Nonresponsibility.** If a bidder or offeror who otherwise would have been awarded a contract is found nonresponsible, the Purchasing Director shall prepare a written determination of nonresponsibility. The writing shall set forth the basis of the finding, and a copy shall be promptly sent to the nonresponsible party.

The unreasonable failure of a bidder or offeror to promptly supply information in connection with an inquiry with respect to responsibility shall be sufficient grounds for a determination of nonresponsibility. A bidder or offeror shall be deemed nonresponsible if they cannot perform the requirements of the awarded contract or the bidder or offeror is in arrears to the Authority upon debt or contract, in arrears with any municipalities within Wayne County's borders for taxes, or has defaulted on security or otherwise on an obligation to the Authority, or any municipalities within Wayne County's borders. The written determination shall be made part of the contract file.

### **Sec. 2.10 Cost or Pricing Data**

(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 Fifty Thousand Dollars (\$50,000) and is to be awarded by sole source or single response procurement authority Section 2.4 or by competitive sealed proposals Section 2.1.

(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) the Purchasing Director determines that the requirements of Section 2.10(1) (Cost or Pricing Data; Required Submissions Relating to the

Award of Contracts) may be waived and states the reasons in writing. The Purchasing Director shall provide a copy of each such written waiver to the Board.

**(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 pricing data was required in connection with the initial pricing of the contract, when the change or modification involves aggregate increases or aggregate decreases in costs plus applicable profits that are expected to exceed Fifty Thousand Dollars (\$50,000).

**(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;

(b) appropriate unit prices have been established in the initial contract ; or

(c) the Purchasing Director determines that the requirements of Section 2.10(3) (Cost or Pricing Data; Required Submissions Relating to Change Orders or Contract Modifications) may be waived, and states the reasons in writing. The Purchasing Director shall provide a copy of each such written waiver to the Board.

**(5) Certification Required.** If a contractor, actual or prospective, is required to submit cost or pricing data in accordance with this section, the contractor 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, which is prior to the award of the contract or prior to 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 Authority, including profit or fee, shall be adjusted to exclude any significant sums by which the Authority finds that such price was increased because the contractor furnished cost or pricing data which was inaccurate, incomplete, or not current as of the date agreed upon between the Authority and the contractor.

## **Sec. 2.11 Cost or Price Analysis**

If cost data or pricing data is required to be submitted, a cost analysis or a price analysis, as appropriate, shall be conducted prior to award of the contract other

than one awarded under Section 2.5 (Competitive Sealed Bidding). The written analysis shall be kept in the contract file.

### **Sec. 2.12 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 Director deems prudent to protect the Authority's interests, or as required by state law. 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.

## **PART D - TYPES OF CONTRACTS AND CONTRACT ADMINISTRATION and BID SPECIFICATIONS**

### **Sec. 2.13 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 Authority may be used, provided that the use of a cost-plus-a-percentage-of-cost contract is prohibited.

(2) **Cost-Reimbursement Contracts.** A cost-reimbursement contract may be used only when a detailed proposed operating budget, including the management fee, has been submitted and evaluated and a determination is made in writing that such contract is likely to be less costly to the Authority than any other type. The Authority will not enter into any cost-reimbursement contract unless a maximum contract price is identified and agreed upon by both parties.

(3) **Multi-Term Contracts.**

Unless otherwise provided by law, the Authority may entered into a multi-year contract when it is deemed by the Purchasing Director to be in the best interests of the Authority, provided:

- (a) the term of the contract and conditions of renewal or extension, if any, are included in the solicitation; and
- (b) notice is provided in the solicitation that a contract for more than one year, or an option to renew beyond a total of one year, is subject to prior Board approval; and
- (c) funds are available for the first fiscal period at the time of contracting; and
- (d) payment and performance obligations for succeeding fiscal periods shall be subject to the availability and appropriation of funds therefor.

(4) **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. The contract shall include an appropriate termination-for-convenience clause to implement this limitation.

#### **Sec. 2.14**

##### **Standard Contract Clauses and Their Modification**

The Purchasing Director, after consultation with the Authority's General Counsel shall establish standard contract clauses for use in Authority contracts for supplies and services.

#### **Sec. 2.15 Performance Certification, Past Due Payment, and Premature Performance or Payment**

(1) The Chief Financial Officer shall establish a system to assure that the satisfactory performance of each procurement contract is promptly determined and certified, and that payment is promptly ordered, and also to assure that performance does not begin and payment is not made before it is authorized.

(2) Unless alternate terms which have a similar purpose and effect are otherwise agreed in writing, the Chief Financial Officer shall take all steps necessary to assure that payment for services, supplies and construction is mailed to the business within 45 days after delivery and satisfaction of a contract, or receipt of a complete invoice for the same, whichever is later.

(3) If an invoice received by the Authority is filled out incorrectly, or contains a defect or impropriety, the Authority shall notify the business within ten days after the invoice is received. The 45-day period described above shall be extended by each day over five days which the business takes to make a correction.

#### **2.16 Right to Audit Records**

(1) **Audit of Cost or Pricing Data.** The Authority may, at reasonable times and places, audit the books and records of any person who has submitted cost or pricing data pursuant to Section 2.10 (Cost or Pricing Data) to the extent that such books and records relate to such cost or pricing data. Any person who receives a contract, change order, or contract modification for which cost or pricing data is required, shall maintain such books and records that relate to such cost or pricing data for seven (7) years from the date of final payment under the contract, unless a shorter period is otherwise authorized in writing.

(2) **Contract Audit.** The Authority shall be entitled to audit the books and records of a contractor or subcontractor under any negotiated contract or subcontract other than firm fixed-price contract to the extent that such books and records relate to

the performance of such contract or subcontract. Such books and records shall be maintained by the contractor for a period of seven (7) years from the date of final payment under the subcontract, unless a shorter period is otherwise authorized in writing.

### **Sec. 2.17 Reporting of Anti-competitive Practices**

When, for any reason, a person suspects collusion or other anti-competitive practices among any bidders or offerors, that person shall transmit the relevant facts first to the Board prior to reporting the matter to the Michigan Attorney General and to the Wayne County Prosecuting Attorney.

### **Sec. 2.18 Maximum Practicable Competition**

The Purchasing Director may prepare or review, issue, revise and maintain the specifications for supplies, services, and construction required by the Authority. The Purchasing Director may obtain expert advice and assistance from personnel of the using agencies or other advisory sources in the development of specifications and may delegate to a using agency the authority to prepare its own specifications. Specifications for property, supplies, services, or construction items exempted, may be prepared by the using agency in accordance with the provisions of this Article.

### **Sec. 2.19 Brand Name or Equivalent Specification.**

(1) **Use.** Brand name or equivalent specifications may be used when the purchasing director determines in writing and in coordination with end users:

- (a) That a brand name or equivalent specification is the most cost-effective specification available;
- (b) Time does not permit the preparation of a better form of purchase description;
- (c) The nature of the product or the nature of the Authority's requirements makes use of a brand name or equal specifications suitable for the procurement; or
- (d) Use of a brand name or equal specification is in the Authority's best interests.

(2) **Required characteristics.** Unless the Purchasing Director 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 equivalent specifications shall also include a description of the particular design, functional, or performance characteristics which are required.

(3) **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) Since use of a brand name specification is restrictive of product competition, it may be used only when the Purchasing Director makes a written determination, in coordination with end users, that only the identified brand name item or items will satisfy the Authority's needs. The Purchasing Director shall seek to identify sources from which the designated brand name item or items can be obtained and shall solicit those 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 2.4 (Sole Source and Single Response Procurement)

### **ARTICLE 3 - APPEALS AND REMEDIES**

#### **Sec. 3.1 Bid Protests**

(1) **Right to Protest.** Any actual bidder, offeror, or contractor who is aggrieved in connection with the solicitation or award of a contract may protest to the Purchasing Director, except as otherwise stated in this Article. The protest shall be submitted in writing within seven (7) business days after such aggrieved person knows or should have known of the facts giving rise thereto.

(2) **Authority to Resolve Protests.** The Purchasing Director shall have authority to settle and resolve a protest by an aggrieved actual bidder, offeror, or a contractor, concerning the solicitation or award of a contract.

(3) **Decision.** If the protest is not resolved by mutual agreement, the Purchasing Director shall issue a decision in writing within ten (10) calendar days. The decision shall state the reasons for the action taken.

(4) **Notice of decision.** A copy of the decision under subsection (3) of this Section shall be mailed or otherwise furnished immediately to the protestor.

(5) **Finality of decision.** A decision under subsection (3) of this Section shall be final and conclusive.

#### **Sec. 3.2 Remedies for Solicitations or Awards in Violation of Law**

(1) **Prior to Bid Opening or Closing Date for Receipt of Proposals.** If prior to the bid opening or the closing date for receipt of proposals, the Purchasing Director, after consultation with the Authority's General Counsel, determines that a solicitation is in violation of any law, then the solicitation shall be canceled or revised to comply with applicable law.

(2) **After Bid Opening but Prior to Award.** If after bid opening or the closing date for receipt of proposals, but before an award, the Purchasing Director, after consultation with the Authority's General Counsel, determines that a solicitation or a proposed award of a contract is in violation of any law, then the solicitation or proposed award shall be canceled.

(3) **After Award.** If, after an award, the Purchasing Director, after consultation with the Authority's General Counsel, 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 ratified and affirmed, provided it is determined that doing so is in the best interests of the Authority; or

(ii) 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 Authority.

### **Sec . 3.3 Limitation of Remedies.**

The Authority shall use good faith efforts to conduct all procurement activities in a fashion which is reasonable and fair to bidders or prospective bidders. However, a disappointed bidder or prospective bidder shall have no right to seek legal redress, such as a court claim seeking money damages or injunctive relief, for the Authority's failure to select the disappointed bidder or prospective bidder.

## **ARTICLE 4 – ANTI-DISCRIMINATION POLICIES**

### **Sec. 4.1 Anti-discrimination policies**

(1) **Prohibited Employment Hiring Practices.** Each business which contracts or desires to contract with the Authority, as well as all subcontractors of each such business performing all or a portion of a contract, shall have agreed, in writing, not to engage in prohibited employment practices as set-forth in all applicable federal and state laws and regulations.

(2) **Prohibited Employment Promotional Practices.** All contracts shall include a covenant obligating the business and its subcontractors performing all or a portion of a contract not to discriminate against any employee or applicant for employment, training, education or apprenticeship connected directly or indirectly with the performance of the contract, with respect to his/her hire, promotion, job assignment, tenure, terms, conditions or privileges of employment because of religion, race, color, national origin, age, sex, height, weight, familial status, marital status, creed, handicap or sexual orientation. Breach of this covenant shall be regarded as a material breach of the contract. The burden of proof that the occupational qualifications are *bona fide* is upon the business.

(3) **Affirmative Action Commitment.** If a contract is to be paid in whole or in part from federal funds, and if the Authority has been authorized by the funding source to require an affirmative action commitment from contractors who are to be paid from those funds, the contract shall include a covenant obligating the business to establish and implement a good faith plan and goal to eliminate the continuing effects of past discrimination.

## **ARTICLE 5 - TECHNICAL PROVISIONS**

### **Sec. 5.1 Repeal and Amendment of Inconsistent Resolutions**

Other resolutions or parts of resolutions which are inconsistent with the provisions of this policy are hereby superseded and amended.

### **Sec. 5.2 Validity of Whole If Part is Held Invalid**

If any provision of this policy or any article, section, sentence, clause, phrase or word or application thereof, is in any circumstances held by a court of law to be invalid, the remainder of this policy and the application of any article, section, sentence, clause, phrase or word, shall not be affected.

### **Sec. 5.3 Effective Date**

This Resolution is effective as of the date of approval by the Board or October 1, 2013 whichever is latest.