

ORDINANCE 16
WAUPACA COUNTY PURCHASING

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Section 16.01 Purpose

The purpose of this Ordinance is to provide for a fair, accountable, and transparent public procurement system in Waupaca County implemented in compliance with Federal Law, State Statute, Wisconsin Administrative Code, and County Board policy, maximizing efficiency with the use of public funds and establishing a consistent public purchasing process that meets high standards of integrity.

Section 16.02 Application

This Ordinance applies to contracts for the procurement of supplies, equipment, materials, labor, vehicles, machinery, services, and construction entered into by the County after the effective date. It shall apply to every expenditure of public funds by a public agency for public purchasing regardless of its source. When the procurement involves purchases from another governmental entity or the expenditure of Federal or State assistance or contract funds, the procurement shall be conducted in accordance with any applicable Federal or State laws or regulations not reflected in this Ordinance. Nothing in this Ordinance shall prevent any public agency from complying with the terms and conditions of any grant, gift or bequest, which are otherwise consistent with law.

Section 16.03 Administration

The provisions of this Ordinance duly adopted shall be administered and supervised by the Finance Director with guidance from the Finance Committee.

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Section 16.04 Purchasing Agent

- (1) Appointment. Per Wis. Stats. § 59.52(9), the Purchasing Agent(s) shall be:
 - a. Highway Commissioner or his/her designee for Highway Operations
 - b. Finance Director or his/her designee for all other County Operations
- (2) Authority and duties. The Purchasing Agent shall serve as the principal public purchasing official for the County and shall be responsible for the procurement, as well as the management and disposal of supplies, equipment, materials, labor, vehicles, machinery, services, and construction in accordance with this Ordinance. The Purchasing Agent shall purchase or supervise the purchase and shall sell, trade or otherwise dispose of all supplies, equipment, materials, labor, vehicles, machinery, materials, and construction needed by the County. The Purchasing Agent may establish operational procedures relating to the execution of the Purchasing Agent's duties.

Section 16.05 Public Works Projects

In accordance with Wisconsin Statutes §§ 66.0901 and 59.52(29), all public work, including any contract for the construction, repair, remodeling or improvement of any public work, building, or furnishing of supplies or material of any kind where the estimated cost of such work will exceed \$25,000 must be competitively bid and must be awarded to the lowest responsible, responsive vendor without regard to the vendor's location.

The Board shall file a Class 1 notice before contracting with a person qualified as a bidder for public works contracts estimated to have a total cost between \$5,000 and \$25,000.

Department Heads and standing committees may at her/his/its discretion request the use of sealed bid process as noted in Section 16.06(1) if it is determined to be advantageous for the County to do so for Public Works Projects below the \$25,000 threshold.

Public Emergencies: The above requirements for public works are not mandatory for the repair or reconstruction of public facilities when damage or threatened damage creates an emergency, as determined by resolution of the County Board, in which the public health or welfare of the County is endangered. A notice pursuant to Wisconsin Statutes § 59.52(29) must be prepared as required and, in an emergency, the procedures followed as provided in this same section as in effect at any given time.

Section 16.06 Source Selection

- (1) **Competitive Sealed Bidding**
 - (a) Conditions for use. All contracts of the County shall be awarded by competitive sealed bidding, except as otherwise provided in subsections (2), (3), (4), (5), and (6) of this Section.

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- (b) Invitation for bids. An invitation for bids shall include specifications and all contractual terms applicable to the procurement.
- (c) Award. The contract shall be awarded with reasonable promptness by written notice to the lowest responsible, responsive bidder whose bid conforms to all the material terms and conditions of the invitation for bids. Contracts at or above \$25,000 shall be approved by the County Board of Supervisors. For contracts below the \$25,000 threshold, the County Board of Supervisors delegates this approval authority to the committee of jurisdiction.

(2) Competitive Sealed Proposals

- (a) Conditions for use. When the Purchasing Agent, in consultation with the Department Head, determines that the use of competitive sealed bidding is either not practicable or not advantageous to the County, a contract may be entered into by use of the competitive sealed proposal method described in this subsection.
- (b) Request for proposals. Proposals shall be solicited through a request for proposal.
- (c) Award. Award shall be made to the responsible offeror whose proposal is determined to be the most advantageous to the County taking into consideration past performance, price, and evaluation factors set forth in the Request for Proposals. Contracts at or above \$25,000 shall be approved by the County Board of Supervisors. For contracts below the \$25,000 threshold, the County Board of Supervisors delegates this approval authority to the committee of jurisdiction.

(3) Small Purchases

- (a) Any purchase not exceeding \$50,000 may be made in accordance with small purchase procedures; however, purchases shall not be artificially divided as to constitute a small purchase under this section.
- (b) Purchases less than \$5,000 do not require a quote, bid, requisition or purchase order. Purchases under this section may be initiated and completed by Department Heads and every effort shall be made to evenly distribute these purchases to qualified suppliers. Departments are strongly encouraged to utilize the Central Services Division in the County Clerk's office for use of county-wide purchasing contracts. These items may include, but are not limited to, office supplies, office equipment, office furniture, and janitorial supplies.
- (c) Purchases between \$5,000 and \$50,000 except as otherwise provided for by subsections (4), (5), and (6) (a) of this Section, require written quotations from at least three vendors, if available, for all purchases. The name of the vendor and date and amount of quotation shall be recorded and maintained as a public record. The County's designated Purchasing Agent(s) will assist departments in this process.

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State of Wisconsin Vendor Net System or any other group purchasing network contract may be obtained as one of the required quotes for types of purchases in this category.

- (d) Nothing in the Small Purchases subsection prohibits Department Heads and standing committees to request the use of the sealed bid process as noted in Section 16.06(1), if it is determined to be advantageous for the County to do so.

(4) Sole Source Procurement

A contract may be awarded without competition when the Purchasing Agent determines in writing, after conducting a good faith review of the available sources, that there is only one source for the required supply, equipment, materials, labor, vehicles, machinery, service, or construction item and when allowed by law.

(5) Emergency Procurements

Upon declaration of an emergency in accordance with [Chapter 323 of the Wisconsin Statutes](#) and Chapter 5 of Waupaca County Code of Ordinances, the Emergency Management Director and Finance Director may make or authorize others to make emergency procurements of supplies, services, or construction items when there exists a threat to public health, welfare, or safety, if allowed by law, provided that such emergency procurements shall be made with such competition as is practicable under the circumstances. A written determination of the basis for the emergency and for the selection of the vendor contractor shall be included in the contract file and forwarded to the Purchasing Agent.

(6) Purchases of Professional Services

- (a) Professional services purchased from independent contractors such as attorneys, auditors, consultants, counselors, medical professionals, other treatment services and foster care shall be specifically exempted from other sections of the purchasing ordinance. In no event shall a Department or the County Board be required to accept the lowest cost proposal; however, contract shall be entered with the vendor that is most advantageous to the County.
- (b) Professional services purchased from independent contractors for architectural and engineering related to public works projects shall be purchased using the competitive sealed proposal and award process set forth in 16.06(2) above.

(7) Grant Funded Purchases

Unless specifically prohibited by the granting authority, grant funded purchases must be administered through a contractual agreement between the County and the party providing the service. The Department Head is responsible to comply with the grant regulations when grant funds are used for purchases.

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(8) Information Technology Systems Equipment and Software Purchases

All purchases for information technology equipment or software must have prior approval from the Information Technology Director, regardless of purchase price. This is to ensure the compatibility of the requested equipment with the Local Area Networks (LANs) installed within county facilities.

Section 16.07 Contract Management

- (1) Purchasing Contracts** – Except for contracts in subsections (3), (4), and (5) of this Section, all purchases greater than \$50,000 obtain signatures of the County Board Chairperson. An agreement with Waupaca County is not valid and binding upon Waupaca County unless signed by the County Board Chairperson and/or Vice Chair or County Clerk. Purchases under \$50,000 are left to the Department Head responsible for the project to determine whether the County Board Chairperson needs to sign the contract. All purchasing contracts shall be reviewed and approved by the County’s Corporation Counsel prior to execution of the contract.
- (2) Lease or Rental Agreements or Contracts** - A lease or rental agreement may be entered into provided it is determined to be in the best interest of the County, and all conditions for renewal and costs of termination are set forth in the lease. Where the County has an option to lease, rent, or purchase an item, a written analysis will be prepared by the Finance Director supporting the County’s decision to lease, rent, or purchase. Lease or rental agreements shall follow the procurement requirements of this Ordinance. All lease or rental agreements must be submitted to the Finance Director upon execution.
- (3) Service Contracts, Health & Human Services Department** - The Health & Human Services Department shall purchase services in accordance with procedures set forth in Wisconsin Statute § 46.036. The Health & Human Services Department shall circulate rules and procedures governing purchases of services for the Health & Human Services Department and shall submit such procedures to the Health & Human Services Board for approval. The Health & Human Services Department shall submit all contracts to Corporation Counsel for review and approval prior to entering into contracts.
- (4) Construction and Maintenance of Streets and Highways** - Pursuant to Wisconsin Statute §83.035, Waupaca County through the Highway Commissioner, through the Highway Committee is authorized to enter into time and material or fixed price contracts with cities, villages and towns within the County borders. Projects involving County Highway contracts entered into by the County Highway Committee under this section or Wis. Stat. §83.04 (1) are exempt from competitive bidding requirements.
- (5) Intergovernmental Contract Agreements** – Contract Agreements by and between the State of Wisconsin and Waupaca County in which the County provides a service and the

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State of Wisconsin reimburses the County up to the amount of the contract for expenditures to provide the service are not subject to the provisions of this Ordinance.

- (6) **Employee Related Benefits and Insurance Coverage Contracts** - Contracts for employee benefits and insurance coverages shall not be subject to the provisions of this Ordinance; however, these contracts shall be reviewed with appropriate standing committees on an annual basis. The Human Resources Director, with approval from the standing committees, shall be authorized to renew contracts for employee benefits and insurance coverages without a procurement process if it is determined to be in the best interest of the County.
- (7) **Contract Changes** - If during the term of a contract, any party wishes to change the contract terms, the changes must be agreed to in writing and signed by all interested parties. The Purchasing Agent shall approve all contract changes on behalf of the County. Changes to contract that affect the County budget shall cause adjustments to the County budget in accordance with the County's Budget Adjustment Request Policy.
- (8) **Contracts with No Funds Involved** - Any contract which does not require the expenditure of County funds, but which legally bind obligations for one year or less on the part of the County, shall not be executed until approved by Committees of Jurisdiction. Such contracts exceeding one year, but not more than three years, shall be approved by majority vote of the County Board of Supervisors.
- (9) **Contract Length and Renewals** - Contracts for procurement may be bid for a duration not in excess of three (3) years where costs for years after the first year are specified or are established on a percentage basis over the first year.

Section 16.08 Debarment or Suspension

The County will not select any contractor that is suspended or debarred from doing business with any Federal agency. The Purchasing Agent will search the System of Award website (SAM), or any other federally endorsed website to determine eligibility for contract award prior to recommending the award.

The County may also maintain a list of contractors that it chooses to suspend or debar. After reasonable notice to the person involved and reasonable opportunity for that person to provide rebuttal or any other documentation, the Finance Director and Corporation Counsel are authorized to debar a person for cause from consideration for award contracts. The debarment shall not be for a period of more than three years. The Finance Director is authorized to debar a person for award of contract if there is probable cause to believe that the person engaged in any activity that might lead to debarment. The cause for debarment include any one of the following:

- (1) Conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in performance of each contract or subcontract;

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- (2) Conviction under State and Federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property or other offense indicating lack of business honesty which currently, seriously and directly affects responsibility as a County contractor;
- (3) Conviction under State or Federal antitrust statutes arising out of the submission of bids or proposals;
- (4) Violation of contract provisions, as set forth below, of a character which is regarded by the Purchasing Agent to be so serious as to justify debarment action;
- (5) Deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract;
- (6) A recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts, provided that the failure to perform or unsatisfactory performance caused by acts beyond the control of contractor shall not be considered basis for debarment;
- (7) Any other causes the Purchasing Agent determines to be as serious and compelling as to affect responsibility as a County contractor; or
- (8) For violation of Waupaca County Ethics Code Chapter 2.

Section 16.09 Ethics in Public Contracting

(1) Criminal Penalties

To the extent that violations of the ethical standards of conduct set forth in this section constitute violations of state criminal law, they shall be punishable as provided. Such penalties shall be in addition to the civil sanctions set forth in this section. Criminal, civil, and administrative sanctions against employees or nonemployees, which are in existence on the effective date of this Ordinance, shall not be impaired.

(2) Elected Official And Employee Conflict Of Interest

Any elected official or employee of the County shall not participate directly or indirectly in a procurement when:

- (a) the elected official, employee, or any member of the employee's immediate family has a financial interest pertaining to the procurement; or
- (b) any other person, business or organization with whom the employee or any member of the employee's immediate family is negotiating or has an arrangement concerning prospective employment is involved in the procurement.

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(3) Gratuities and Kickbacks

- (a) Gratuities. An elected official or employee may not solicit, demand, or agree to accept from another person a gratuity of any value or an offer of employment in connection with any decision, disapproval, recommendation, preparation or any part of a program requirement or purchase request influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing or any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter, pertaining to any program requirement in a contract or subcontract, or to any solicitation or proposal therefor.
- (b) Kickbacks. It shall be unethical for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor under a contractor to the prime contractor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract or order.

(4) Contingent Fees

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

(5) Contemporaneous Employment

It shall be unethical for any employee who is participating directly or indirectly in the procurement process to become or to be, while such an employee, the employee of any person contracting with the county.

(6) Use or Disclosure of Privileged Information

It shall be unethical for any employee or elected official to use or disclose privileged information regarding the County procurement process for actual or anticipated gain of the employee or any member of the employee's immediate family.

(7) Personal Purchases

Elected official and employees are prohibited from purchasing items for personal use, even if reimbursement is made to the County for the cost of the purchase.

(8) Sanctions

- (a) Employees. The County Board may impose sanctions on employees for violation of the ethical standards in this section up to and including termination, and further may seek additional damages or criminal prosecution if warranted.

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- (b) Nonemployees. The County Board may impose sanctions on any nonemployee for violations of the ethical standards in this section, up to and including termination of contract and/or debarment or suspension as provided in Section 16.08 above and further may seek additional damages or criminal prosecution if warranted.

Section 16.10 Records Retention

The County will maintain records sufficient to document the history of each procurement. Retention of any bid documents, proposals, specifications, responses to requests for bids or proposals, contracts, requisitions, purchase orders, quotations written or verbal, invoices for payment, any documentation supporting these documents and written approval of any of these items shall be retained in accordance with the County's records retention schedule.

Section 16.11 Sale of Surplus Property

When personal property owned by the County of Waupaca no longer serves any useful purpose in the department in which it is located, the Purchasing Agent shall first determine whether any other County department or agency needs such property. In the event any department or agency of the County can no longer use such property, the Purchasing Agent shall determine if such property should be offered for public sale and sell such property if sale is determined to be appropriate. If the Purchasing Agent determines that the property has no resale value or that the resale value may be less than the costs associated with selling the property, the Purchasing Agent may authorize that the property be properly disposed of as trash, refuse or recycled material. The Purchasing Agent shall determine a method of public sale or disposition of each item. Sale proceeds, net of related sales costs, shall be deposited by the authorized selling employee with the County Treasurer. In regards to surplus property originally acquired through state and federal grants, due diligence shall be required to determine whether those net sale proceeds must be returned to the state or federal government.

Section 16.12 Repeal of Prior Ordinance

Any Ordinance in conflict herewith shall be repealed upon the effective date of this Ordinance.

Section 16.13 Effective Date

This Ordinance shall be effective upon passage and publication.