

1 FROM THE OFFICE OF JOSPEH J. CZARNEZKI

2
3 MILWAUKEE COUNTY CLERK

4
5 County Ordinance No. 12-9

6
7 File No. 12-246

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11 AN ORDINANCE

12
13 The County Board of Supervisors of the County of Milwaukee does ordain as
14 follows:

15
16 **SECTION 1.** Section 32.21, 32.23, 32.24, 32.25, 32.26, 32.27, 32.285, 32.31,
17 32.38, 32.40, 32.42, 32.43, 32.44, 32.46, 32.47, 32.48, 32.49, 32.50, 32.51 of the
18 General Ordinances of Milwaukee County is hereby amended as follows:

19 32.21. - General administration.

20 The procurement division shall be directly supervised by the procurement director, and
21 its general policies shall be subject to the review of the director of the department of
22 administrative services, except for those matters under the jurisdiction of the purchasing
23 standardization committee.

24 32.23. - Purchasing standardization committee.

25 (1) There shall be a purchasing standardization committee composed of three (3)
26 private citizens: a representative of: the department of human resources, department of
27 parks, recreation and culture, department of public works and the sheriff's department.
28 Each of the departmental representatives shall be selected by the department head.
29 The private citizen members are to be appointed by the county executive for a term of
30 four (4) years, subject to the confirmation of the county board, and shall be residents of
31 the county who are knowledgeable in procurement. A representative of the corporation
32 counsel's office and the procurement director or his or her designee shall be technical
33 advisers to the committee.

34 32.24. - Technical subcommittees.

35 The procurement director or his or her designee shall coordinate the organization and
36 work of technical subcommittees, and act as liaison between them and the purchasing
37 standardization committee. Technical subcommittees shall be composed of the
38 procurement division buyer responsible for those commodities, and other
39 representatives having expertise therein.

40 32.25. - Purchasing and contracting procedure.

41 (1) Purchases of supplies, materials, equipment and contractual services shall be

42 based on competitive bids. Bids may be rejected when it is determined by the
43 procurement director or his or her designee that to award a contract would not be in the
44 best interest of the county. The method of evaluating bids and awarding contracts shall
45 be stated in each bid document. Contracts shall be awarded to the lowest, qualified,
46 responsive, responsible bidder. If equal low and responsive bids are received, the
47 procurement director or his or her designee shall break the tie by a lot drawing in the
48 presence of a buyer and another member of the procurement division at a specific time
49 and date. The tied bidders shall receive written advance notice.

50 (2) *Discretionary purchases.* Any procurement having an estimated aggregate value of
51 ten thousand dollars (\$10,000.00) or less shall be made at the discretion of the buyer.

52 (3) *Open market purchase.* Any procurement having an estimated aggregate value in
53 excess of ten thousand dollars (\$10,000.00) and less than twenty-five thousand dollars
54 (\$25,000.00) shall be made by solicitation of three (3) quotations documented by the
55 buyer.

56 (4) *Informal purchases.* Any procurement having an estimated aggregate value of
57 twenty-five thousand dollars (\$25,000.00) and less than fifty thousand dollars
58 (\$50,000.00) shall be solicited from all vendors of the item on the vendor's list
59 maintained by the procurement division and the contract awarded by sealed bidding.

60 (5) *Formal purchases.* Any procurement having an estimated aggregate value of fifty
61 thousand dollars (\$50,000.00) or more shall have sealed bids solicited by public notice
62 inserted at least once on the official county web-site at least two (2) weeks before the
63 bid opening date, and by posting official notice on the procurement board in the
64 procurement division office for the same period. The procurement division shall solicit
65 sealed bids by mail from all vendors of the item on the vendor list maintained by the
66 procurement division.

67 (6) *Sealed bids.*

68 (a) All sealed bids shall be received in the office of the county clerk and
69 transferred to the procurement division at the time of bid opening, which shall be
70 conducted in public at a specified date, time and place.

71 (b) A summary of each bid, with the name of all bidders, shall be posted for public
72 inspection in the office of the procurement division during regular county business
73 hours for a period of not less than ten (10) days after award.

74 (c) A noncollusive statement requiring the signature of an authorized officer of the
75 bidder shall be included in each sealed bid. The procurement director or his or her
76 designee shall report suspected collusive bids to the district attorney.

77 (7) *Exceptions.*

78 (a) Competitive bidding requirements of this chapter shall apply, except as
79 follows:

- 80 (1) When, after soliciting sealed bids, it is determined by the procurement
81 director or his or her designee, and verified by the purchasing standardization
82 committee, that no valid bids have been received, the purchasing
83 standardization committee may authorize procurement without competition.
- 84 (2) Purchases from a single source which, by their nature, are not adapted to
85 award by competitive bidding as determined by the procurement director or his
86 or her designee and approved by the purchasing standardization committee.
- 87 (3) Purchases from any federal, state or local governmental unit or agency of
88 surplus materials, supplies, commodities or equipment, as approved by the
89 committee on financial and audit of the county board, and otherwise when
90 expressly authorized by the county board.
- 91 (4) Discretionary purchase of ten thousand dollars (\$10,000.00) or less as
92 authorized in subsection 32.25(2) of this section.
- 93 (5) Any contract for a public works construction project where the director of
94 public works or his/her designee has recommended, and the procurement
95 director or his or her designee has agreed in writing, that the procurement
96 director or his or her designee shall negotiate for the purpose of services,
97 supplies, materials or equipment needed for such project.
- 98 (b) Purchase of name brand items for resale may be awarded to other than the
99 low bidder.
- 100 (c) Purchases required for immediate budgeted repairs, exclusive of inventory
101 items.
- 102 (d) Notwithstanding any other provisions of this chapter to the contrary, the
103 procurement director or his or her designee shall have the authority, in any
104 situation where a contract is to be let through the bidding process, to reserve such
105 contract exclusively for vendors listed on the minority business enterprise and
106 women business enterprise list. In such event, the bid announcements shall
107 indicate such reservation, citing this subsection as authority therefor. Reservations
108 by the procurement director or his or her designee may be on a commodity basis
109 or on an individual contract basis.
- 110 (e) Annually the county board shall adopt by resolution a recommended minimum
111 percentage goal for the participation of disadvantaged business enterprise vendors
112 in contracts awarded pursuant to chapter 32. Such goals are not mandatory;
113 however, the procurement director or his or her designee shall make diligent
114 efforts to achieve or exceed such annual participation goals.
- 115 32.26. - Protest and appeal procedure.
- 116 Protests to any sealed bid, procurement or award recommended by the procurement
117 director or his or her designee may be made by any bidder and/or using department
118 head as follows:

- 119 (1) *Prior to bid opening:*
- 120 (a) Protests to form and content of bid documents shall be received by the
121 procurement director or his or her designee not less than five (5) days prior to
122 the time scheduled for bid opening. A protest shall be in writing and state the
123 reason for it.
- 124 (b) The procurement director or his or her designee shall review protests
125 and, if modification is necessary, the bid opening date shall be extended and
126 addenda containing the changes shall be sent to each bidder. If modification is
127 rejected, the protestor shall be notified. The decision of the procurement
128 director or his or her designee is final.
- 129 (2) *After bid opening:*
- 130 (a) Protests concerning irregularities on sealed bid opening procedures, or
131 compliance by bidders with bid documents, shall be received by the
132 procurement director or his or her designee within seventy-two (72) hours after
133 time of bid opening.
- 134 (b) When a sealed bid is awarded to other than the low bidder, all bidders
135 shall be notified in writing by certified mail, return receipt requested, or by fax
136 machine transmission, of the proposed award. Protests to the award must be
137 delivered to the procurement director or his or her designee within seventy-
138 two (72) hours after receipt of notice. The procurement director's or his or her
139 designee's copy of the fax transmission cover sheet, or the department's fax
140 log, shall be conclusive proof of the time and date of receipt by a bidder.
- 141 (c) A protest under either subsection (a) or (b) must be in writing and state
142 the reason for it. The procurement director or his or her designee shall review
143 the protest and notify the protestor of a decision in writing by fax, within five (5)
144 days. No contract shall be awarded while a protest is pending. A protest which
145 is untimely, fails to state the reason for it or shall have been made prior to bid
146 opening is invalid. The decision of the procurement director or his or her
147 designee disqualifying the protest for these reasons is final and cannot be
148 appealed.
- 149 (3) *Appeals to purchasing standardization committee:*
- 150 (a) Protests from decisions of the procurement director or his or her
151 designee shall be made to the purchasing standardization committee by
152 delivering a written request for appeal hearing both to the procurement division
153 and the committee within seventy-two (72) hours after receipt of the
154 procurement director's or his or her designee's decision.
- 155 (b) The request shall state the grounds upon which the protest is based and
156 shall request an appeal hearing. No contract shall be awarded until final
157 disposition of the protest.

158 (c) The chairperson of the committee shall notify all interested persons of the
159 time and place of the hearing.

160 (d) The committee shall affirm, reverse or modify the decision of the
161 procurement director or his or her designee and its decision shall be final.

162 32.27. - Delegation of purchasing authority.

163 Any department may be delegated by the procurement director or his or her designee,
164 in writing, to purchase supplies, materials or services. Such delegation shall remain in
165 effect until rescinded, in writing, by the procurement director or his or her designee and
166 shall comply with the following regulations:

167 (1) No procurement shall exceed two thousand dollars (\$2,000.00), including any
168 freight and any handling charges.

169 (2) Purchasers shall use county-wide blanket contracts.

170 (3) This authority shall not be used to circumvent bulk purchases of any item by
171 repeated purchases in the amounts of two thousand dollars (\$2,000.00) or less.

172 (4) All procurement forms and procedures shall be approved by the procurement
173 director or his or her designee prior to use. The purchasing card is an acceptable
174 alternative to written forms if approved by the procurement director or his or her
175 designee.

176 32.285. - Procurement of items of apparel.

177 (1) *Policy.* The county chooses to allocate its purchasing dollars related to wearing
178 apparel to enhance the economic and social well-being of people, while acquiring the
179 best possible quality goods at the lowest cost.

180 (2) *Definitions.* As used in this section:

181 (a) "Apparel" means all items of clothing and cloth produced by weaving, knitting
182 and felting, and shall include uniforms, coveralls, footwear, linens and entrance
183 mats.

184 (b) "Manufacture" means to process, fabricate, assemble, treat or package.

185 (c) "Non-poverty wage" means the following for:

186 1. Domestic manufacturers. A base hourly wage adjusted annually to the
187 amount required to produce, for two thousand eighty (2,080) hours worked, an
188 annual income equal to or greater than the U.S. Department of Health and
189 Human Services' most recent poverty guideline for a family of three (3) plus an
190 additional twenty (20) percent of the wage level paid either as hourly wages or
191 health benefits.

192 2. Outside the United States. A nationwide wage and benefit level which is
193 comparable to the non-poverty wage for domestic manufacturers as defined in

194 subdivision 1 after being adjusted to reflect the country's level of economic
195 development by using a factor such as the relative national standard of living
196 index in order to raise a family of three (3) out of poverty. In addition, workers
197 shall not be subject to disciplinary wage deductions.

198 (d) "Responsible manufacturer" means an establishment engaged in
199 manufacturing, distributing, laundering or dry cleaning that can demonstrate all of
200 the following:

201 1. Compliance with all applicable local and international labor laws and
202 workplace regulations regarding wages and benefits, workplace health and
203 safety, as well as the fundamental conventions of the international labor
204 organization, including those regarding forced and child labor and freedom of
205 association.

206 2. Payment to its employees of non-poverty wages as defined in subsection
207 (c)1. for domestic manufacturers and subsection (c)2. for manufacturers
208 located outside of the United States.

209 3. Termination of its employees only with just cause.

210 4. Establishment of a mechanism for the resolution of workplace disputes.

211 (3) *Requirements.*

212 (a) *Application.* Contracting departments shall award contracts in excess of five
213 thousand dollars (\$5,000.00) relating to the purchasing, renting, laundering and dry
214 cleaning of items of apparel to responsible manufacturers.

215 (b) *Affidavits.*

216 1. No contracts for the purchasing, renting, laundering and dry cleaning of
217 items of apparel shall be entered into by contracting departments unless the
218 lowest responsible bidders first submit to the procurement director or his or
219 her designee sworn reports or affidavits which include the following
220 information for the specified time periods of the contracts:

221 a. The names and addresses of the companies and facilities in which
222 the items of apparel have been or will be manufactured, distributed,
223 laundered or dry cleaned.

224 b. The names and addresses of all owners of the facilities in which the
225 items of apparel have been or will be manufactured, distributed,
226 laundered or dry cleaned.

227 c. The base hourly wage and the percent of wage level paid as health
228 benefits for persons working at the facilities in which the items of apparel
229 have been or will be manufactured or distributed, laundered or dry
230 cleaned.

231 d. Sworn statements by the contractors that facilities identified pursuant
232 to this paragraph are responsible manufacturers as defined in subsection
233 (2)(d).

234 e. Any other information deemed necessary by the procurement
235 director or his or her designee for the enforcement of this section.

236 2. Contractors shall procure and submit sworn reports or affidavits from
237 every subcontractor employed by the contractor during the specified time
238 period of the contract for the fulfillment of contracts covered under this section.

239 3. In the event that any information provided by the contractor or
240 subcontractor pursuant to this paragraph changes during the specified time
241 period of the contract, the contractor shall submit or cause to be submitted to
242 the procurement director or his or her designee sworn reports or affidavits
243 relating to the updated information.

244 4. The procurement director or his or her designee shall maintain and make
245 available for public inspection any sworn report or affidavit submitted pursuant
246 to this paragraph.

247 (4) *Contract bid specifications.* Contracting departments shall add a digest of the
248 provisions of this section to all specifications for apparel purchasing, renting, laundering
249 and dry cleaning upon which they issue invitations to bid.

250 (5) *Specification for apparel contracts.* No contract for the purchasing, renting,
251 laundering and dry cleaning of items of apparel covered under this section shall be
252 entered into by the county unless the contract contains a stipulation stating that the
253 contractor agrees to provide in fulfillment of the contract items of apparel which have
254 been manufactured, laundered and dry cleaned by responsible manufacturers, and that
255 the contractor agrees to include an equivalent stipulation in all subcontracts.

256 (6) *Monitoring and enforcement.*

257 (a) Responsibility. The business operations division—procurement services
258 section—department of administration shall be responsible for monitoring contracts
259 for compliance with this section. The department shall review and monitoring
260 contracts for compliance with this section. The department shall review and monitor
261 the sworn reports or affidavits submitted by apparel contractors, receive and
262 investigate complaints relating to compliance with this section, and impose
263 appropriate sanctions upon any contractor who provides false information to the
264 department or fails to comply with the provisions of this section.

265 (b) Notice. The department shall provide in a timely manner notice and related
266 documentation regarding the following:

267 1. The issuance of invitations to bid and the awarding of contracts relating to
268 the purchasing, renting, laundering and dry cleaning of times of apparel
269 covered by this section.

270 2. The receipt of sworn reports or affidavits submitted pursuant to section
271 3(b).

272 (c) Sanctions. Any contractor or subcontractor engaged in an apparel contract
273 who has been found by the business operations division-procurement services
274 section-department of administration to have submitted any false, misleading or
275 fraudulent information, or to have failed to comply with the provisions of this
276 section, may be subject to any of the following sanctions imposed by the business
277 operations division:

278 1. Withholding of payments.

279 2. Termination, suspension or cancellation of the contract in whole or in part.

280 3. After a due process hearing, denial of the right of the contractor or
281 subcontractor to bid on future county contracts, by himself or herself, partner
282 or agent, or by any corporation of which he or she is a member, for a period of
283 one (1) year after the first violation is found and for a period of three (3) years
284 after a second violation is found.

285 (7) *Waiver*. The requirements of this section may be waived in writing by the
286 procurement director or his or her designee if any of the following are true:

287 (a) All bidders to a contract are deemed ineligible under this section.

288 (b) The contract is necessary in order to respond to an emergency endangers the
289 public health and safety, and no contractor who complies with the requirements of
290 this section is immediately capable of responding to the emergency.

291 32.31. - Cooperative purchasing.

292 The procurement division is authorized to join with other units of government, and with
293 quasigovernmental agencies funded in whole or in part by the county, in cooperative
294 purchasing plans when in the best interests of the county as determined by the
295 procurement director or his or her designee. Each of the participating units or agencies
296 shall issue its own purchase order and be separately invoiced by the vendors for
297 purchases made under such plans. The county shall not be obligated for purchases
298 other than those required for its own use.

299 32.38. - Converting from sealed bidding to negotiation procedures.

300 When the procurement director or his or her designee has determined that a sealed bid
301 is to be canceled and that use of negotiations is appropriate to complete the acquisition,
302 the procurement director or his or her designee may negotiate and make award without
303 issuing a new solicitation subject to the following conditions:

304 (1) Prior notice of intention to negotiate and a reasonable opportunity to negotiate
305 have been given by the procurement director or his or her designee to each
306 responsive, responsible bidder that submitted a bid in response to the
307 invitation for bids;

308 (2) The negotiated price is the lowest negotiated price offered by any responsible
309 bidder; and

310 (3) The negotiated price is lower than the lowest rejected bid price of a
311 responsive, responsible bidder that submitted a bid. However, this paragraph
312 (3) does not apply if the invitation was canceled and all bids were rejected.

313 32.40. - General.

314 (1) Requests for proposals (RFPs) are used in negotiated acquisitions to communicate
315 county requirements to prospective vendors and to solicit proposals from them.
316 Solicitations shall contain the information necessary to enable prospective vendors to
317 prepare proposals properly. Solicitation provisions and contract clauses may be
318 incorporated into the solicitations and contracts by reference.

319 (2) The procurement director or his or her designee shall furnish identical information
320 concerning a proposed acquisition to all prospective vendors.

321 (3) The procurement director or his or her designee shall solicit proposals only when
322 there is a definite intention to award a contract.

323 32.42. - Evaluation factors.

324 RFPs shall identify all evaluation factors and their relative importance. Numerical
325 weights, which may be employed in the evaluation of proposals, need not be disclosed
326 in solicitation. Proposals shall be evaluated solely on the factors specified in the
327 solicitation. The factors that will be considered in evaluating proposals shall be tailored
328 to each procurement and include only those factors that will have an impact on the
329 source selection decision. The evaluation factors that apply to an acquisition and the
330 relative importance of those factors are within the broad discretion of the procurement
331 director or his or her designee. However, price or cost to the county shall be included as
332 an evaluation factor in every source selection. Quality also shall be addressed in every
333 source selection. In evaluation factors, quality may be expressed in terms of technical
334 excellence, management capability, personnel qualifications, prior experience, past
335 performance and schedule compliance. Other relevant factors may also be included.

336 32.43. - Right to award without negotiations.

337 If so stated in the RFP, the procurement director or his or her designee may make an
338 award on the basis of the original proposals, without negotiation with any offeror. If the
339 procurement director or his or her designee conducts negotiations at all, however, then
340 negotiations must be conducted with all offerors in the competitive range.

341 32.44. Pre-proposal conferences.

342 (1) A pre-proposal conference may be held to brief prospective offerors after a
343 solicitation has been issued but before offers are submitted. Generally these
344 conferences should be used in complex negotiated procurements to explain or clarify
345 complicated specifications and requirements.

346 (2) The procurement director or his or her designee shall decide if a pre-proposal
347 conference is required and make the necessary arrangements, including the following:

348 (a) If notice was not in the solicitation, give all prospective offerors who received
349 the solicitation adequate notice of the time, place, nature, and scope of the
350 conference.

351 (b) If time allows, request prospective offerors to submit written questions in
352 advance. Prepared answers can then be delivered during the conference.

353 (c) Arrange for technical and legal personnel to attend the conference, if
354 appropriate.

355 (3) The procurement director or his or her designee or a designated representative
356 shall conduct the pre-proposal conference, furnish all prospective offerors identical
357 information concerning the proposed acquisition, make a complete record of the
358 conference, and promptly furnish a copy of that record to all prospective offerors.
359 Conferees shall be advised that:

360 (a) Remarks and explanations at the conference shall not qualify the terms of the
361 solicitation; and

362 (b) Terms of the solicitation and specifications remain unchanged unless the
363 solicitation is amended in writing.

364 32.46. - Late proposals and modifications.

365 (1) When a proposal or modification is received and it is clear from available
366 information that it cannot be considered for award, the procurement director or his or
367 her designee shall promptly notify the offeror that it was received late and will not be
368 considered.

369 (2) Late proposals and modifications that are not considered shall be held unopened,
370 unless opened for identification, until after award and then retained with other
371 unsuccessful proposals.

372 (3) The procurement director or his or her designee shall retain complete and sole
373 discretion to waive the requirements of subparagraphs (1) and (2), above, if such waiver
374 is deemed to be in the best interests of the county. Such decision of the procurement
375 director or his or her designee is not subject to appeal to the purchasing standardization
376 committee.

377 32.47. - Disclosure and use of information before award.

378 (1) After receipt of proposals, none of the information contained in them or concerning
379 the number or identity of offerors shall be made available to the public or to anyone in
380 county government.

381 (2) During the pre-award or pre-acceptance period of a negotiated procurement, only
382 the procurement director or his or her designee of designee, and other specifically

383 authorized shall transmit technical or other information and conduct discussions with
384 prospective vendors. Information shall not be furnished to a prospective vendor if, alone
385 or together with other information, it may afford the prospective vendor an advantage
386 over others. However, general information that is not prejudicial to others may be
387 furnished upon request.

388 (3) Prospective vendors may place restrictions on the disclosure and use of data in
389 proposals. The procurement director or his or her designee shall not exclude proposals
390 from consideration merely because they restrict disclosure and use of data, nor shall
391 they be prejudiced by that restriction. The portions of the proposal that are so restricted
392 (except for information that is also obtained from another source without restriction, or
393 information required to be disclosed to county auditors) shall be used only for evaluation
394 and shall not be disclosed outside the county without the permission of the prospective
395 vendor.

396 32.48. - Best and final offer.

397 After negotiations are concluded each offeror in the competitive range shall be required
398 to submit a best and final offer at a uniform cutoff date and time. Best and final offers
399 received after the uniform cutoff date and time may be rejected without right of appeal.
400 The procurement director or his or her designee may, in his or her sole discretion,
401 waive this provision if waiver is deemed to be in the best interests of the county, and
402 such decision is not subject to appeal to the purchasing standardization committee.

403 32.49. - Awards.

404 In awarding a contract, price is but one (1) factor to be considered, and the award is not
405 required to be made to the lowest responsive, responsible bidder. Awards shall be
406 made to the responsive, responsible firm whose proposal overall is the most
407 advantageous to the county, as determined in the sole opinion of the procurement
408 director or his or her designee. The county reserves the right to reject all proposals if the
409 procurement director or his or her designee, in his or her sole discretion, determines
410 such rejection to be in the public interest. Such rejection is not subject to appeal to the
411 purchasing standardization committee.

412 32.50. - Protests to awards.

413 (1) All unsuccessful offerors shall be notified by fax machine transmission of the
414 pending contract award. Protest to the award must be delivered to the procurement
415 director or his or her designee within seventy-two (72) hours after receipt of notice. The
416 procurement director's or his or her designee's copy of the fax transmission cover
417 sheet, or the departments fax log, shall be conclusive proof of the time and date of
418 receipt by the offeror.

419 (2) A protest must be in writing and clearly state the reason for it. The procurement
420 director or his or her designee shall review the protest and notify the protestor of a
421 decision by fax machine transmission within five (5) days. No contract shall be awarded
422 while a protest is pending. A protest that is untimely or fails to clearly state the reason
423 for the protest is invalid. The procurement director's or his or her designee's copy of the

- 424 fax transmission cover sheet, or the departments fax log, shall be conclusive proof of
425 the time and date of receipt by the offeror.
- 426 (3) The decision of the procurement director or his or her designee disqualifying the
427 protest for these reasons is final and cannot be appealed.
- 428 32.51. - Appeals to purchasing standardization committee.
- 429 (1) Except as provided in sections 32.46(3), 32.49 and 32.50(3), protests from
430 decisions of the procurement director or his or her designee shall be made to the
431 purchasing standardization committee by delivering a written request for appeal hearing
432 both to the procurement division and the purchasing standardization committee within
433 seventy-two (72) hours after receipt of the procurement director's or his or her
434 designee's decision.
- 435 (2) The request shall state the grounds upon which the protest is based and shall
436 request an appeal hearing. No contract shall be awarded until final disposition of the
437 protest.
- 438 (3) The chairman of the purchasing standardization committee shall notify all
439 interested persons of the time and place of the hearing.
- 440 (4) The purchasing standardization committee shall affirm, reverse or modify the
441 decision of procurement director or his or her designee and its decision shall be final.
442

443 **SECTION 2.** This ordinance shall become effective upon publication.

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Adopted by the Milwaukee County Board of Supervisors

March 15, 2012