

**A SUBSTITUTE RESOLUTION/ORDINANCE**

(ITEM ) From the Comptroller, recommending adoption of a resolution/ordinance to amend Chapters 32, 44, 46, 56 and 110 of the Milwaukee County Code of General Ordinances relating to an appeal process for review of contract or bid awards, by recommending adoption of the following:

**A RESOLUTION**

WHEREAS, a recent review of Chapters 56 – Professional Services and 110 – Municipal Administrative Procedure results in the need to modify the policy contained within the ordinances to clarify the review of contract awards following an RFP process and to provide further direction to Department Heads in the preparation and execution of RFPs; and

WHEREAS, Chapter 32 currently contains a separate review process for contracts covered by that chapter; and

WHEREAS, Chapter 44 currently contains a separate review process for bids covered by that chapter; and

WHEREAS, Chapter 56 establishes the procedure by which contracts for Professional Services are issued and the requirements of departments when executing those contracts and it does not currently specify any procedure to follow in the event of an appeal of a contract resulting from an RFP process; and

WHEREAS, Chapter 46 establishes the procedure by which purchase of service contracts are issued but does not currently specify any procedure to follow in the event of an appeal of a contract after award; and

WHEREAS, it is advantageous to have one process for the review of all contract or bid awards; and

38 WHEREAS, Chapter 110 of the Milwaukee County General Ordinances  
39 establishes that any person having a substantial interest which is adversely  
40 affected by an administrative determination by the County may have such  
41 determination reviewed under the specifics laid out in this Chapter; and  
42

43 WHEREAS, reviews of contract or bid awards should be addressed by a  
44 procedure separate from the procedure currently applicable to other matters  
45 addressed by Chapter 110; and  
46

47 WHEREAS, all departments should include an appeal provision in their RFP  
48 that states that the County will follow the procedure established herein; and  
49

50 WHEREAS, the following listed items should be required in a request to the  
51 Board for approval of any professional service contract:  
52

- 53 • Department name and number.
- 54 • Dollar amount of contract.
- 55 • Name of professional services vendor under contract
- 56 • Length of time of contract
- 57 • Purpose of contract.
- 58 • Selection of qualified DBE firm, if applicable
- 59 • Termination clauses
- 60 • Number of responses to RFP
- 61 • Whether any appeals were filed; and  
62

63 WHEREAS, as a part of the appeal process a panel of qualified reviewers  
64 should be created by Milwaukee County and be comprised of three individuals  
65 appointed by the County Executive and confirmed by the County Board; and  
66

67 WHEREAS, requesters should be required to pay for one-half of the costs of  
68 such reviews; now, therefore,  
69

70 BE IT RESOLVED, that the Milwaukee County Board of Supervisors hereby  
71 amends Chapters 32, 44, 46, 56 and 110 of the Milwaukee County Code of  
72 General Ordinances by adopting the following:  
73

74 **AN ORDINANCE**

75 The County Board of Supervisors of the County of Milwaukee does  
76 ordain as follows:  
77

78 **SECTION 1.** Chapter 110 of the General Ordinances of Milwaukee County is  
79 amended as follows:  
80

81 **110.01. ~~County election under s. 68.16, Wis. Stats.~~ County Procedure Act**

82 (a) The county elects not to be governed by the provisions of Ch. 68, Wis. Stats.,  
83 except for s. 68.13, Wis. Stats., regarding judicial review, which shall apply to  
84 circuit court certiorari reviews of ~~committee~~ final decisions under this chapter.  
85 The common law rules applicable to certiorari review by a court shall govern  
86 such appeals.

87 (b) Any person having a substantial interest which is adversely affected by an  
88 administrative determination, as set forth in sections 110.02(b) and 110.20, of a  
89 county authority, as defined in section 110.02 (a), below, may have such  
90 determination reviewed as provided in this chapter.

91 (c) The remedies under this chapter shall be exclusive.

92 **110.02. - Definition and reviewable/non-reviewable determinations.**

93  
94 (a) "County authority" includes every county body, board, commission,  
95 committee, agency, officer, employe, or agent thereof making a determination  
96 under subsection (b), except the county board of supervisors or a duly  
97 constituted committee or subcommittee thereof.  
98  
99

100  
101 (b) The following determinations are reviewable under ~~this chapter~~ subsections  
102 110.03 – 110.10:

103  
104 (1) Except as provided in section 110.02(c)(2) and 110.20, ~~the~~ grant or  
105 denial in whole or in part after application of a ~~contract~~, permit, license,  
106 right, privilege, or authority.

107  
108 (2) The suspension, revocation or nonrenewal of an existing ~~contract~~, permit,  
109 license, right, privilege, or authority.

110  
111 (3) The denial of a grant of money or other thing of substantial value under  
112 a statute or ordinance prescribing conditions of eligibility for such grant.

113  
114 (4) The imposition of a penalty or sanction upon any person except a  
115 county employe or officer, other than by a court.

116  
117 (c) The following determinations are not reviewable under ~~this~~  
118 chapter subsections 110.03 – 110.10:  
119

120 (1) A legislative enactment. A legislative enactment is an ordinance,  
121 resolution or adopted motion of the county board or any of its duly  
122 constituted committees or subcommittees.

123  
124 (2) Any action subject to administrative or judicial review procedures under  
125 other statutes or county ordinances, including, but not limited to, actions  
126 subject to review under section 110.20 of the ordinances.

127  
128 (3) The denial of a tort or contract claim for money, required to be filed with  
129 the county pursuant to-statutory procedures for the filing of such claims.

130 (4) The suspension, removal or disciplining or nonrenewal of a contract of a  
131 county civil service employe, appointed employe, consultant, independent  
132 contractor, contract employe or officer.

133  
134 (5) Determinations made under chapter 32 of this code of general  
135 ordinances.

136  
137 (6) Judgments and orders of a court.

138  
139 (7) Determinations made during county labor negotiations.

140  
141 (8) Notwithstanding any other provisions of this chapter, any action or  
142 determination of the county which does not involve the constitutionally  
143 protected right of a specific person or persons to due process in connection  
144 with the action or determination.

145  
146 (9) A decision of the department of health and human services to deny,  
147 suspend or revoke a child day care certification under s. 48.651, Wis. Stats. a  
148 decision of the director of that department under s. 48.685(5c) (b), Wis. Stats.  
149 to uphold a determination that a person desiring certification has failed to  
150 demonstrate that he/she has been rehabilitated, or a decision of the  
151 department of administrative services to certify a debt owed to Milwaukee  
152 County to the Department of Revenue under s. 71.935, Wis. Stats. the  
153 municipal tax refund intercept program ("TRIP"). The department of  
154 administrative services shall adopt and implement policies and procedures  
155 for the review of those decisions, which procedures shall include an  
156 evidentiary hearing which substantially meets the requirements of s. 68.11,  
157 Wis. Stats.

158  
159 (d) All determinations by county agencies or administrators reviewable under  
160 this chapter are administrative decisions and shall be attended by the usual  
161 legal presumptions granted at common law to administrative determinations.  
162 The burden of proof shall be upon the appellant to establish that the

163 determination is erroneous. The test before the standing committee shall be the  
164 same as a common law certiorari review.

165  
166 **110.03. - Persons aggrieved.**

167  
168 A person aggrieved includes any individual, partnership, limited liability  
169 company, corporation, association, public or private organization whose rights,  
170 duties or privileges are directly adversely affected by a determination of a  
171 county authority.

172  
173 **110.04. - Reducing determination to writing.**

174  
175 If a determination subject to this chapter is made orally or, if in writing, does not  
176 state the reasons therefor, the authority making such determination shall, upon  
177 written request of any person aggrieved by such determination, filed with the  
178 authority within ten (10) days of notice of such determination, reduce the  
179 determination and the reasons therefor to writing and mail or deliver such  
180 determination and reasons to the persons making the request. The  
181 determination shall be dated, and shall advise such person of the right to have  
182 such determination reviewed, the time within which such review may be  
183 obtained, and the office or person to whom a request for review shall be  
184 addressed. If no request for a written determination is received by the authority  
185 within the time provided, the oral determination shall be deemed the final  
186 determination for purposes of appeal.

187  
188 **110.05. - Notice of appeal.**

189  
190 Any person aggrieved may have a written or oral determination reviewed by  
191 filing a written notice of review with the authority which made such  
192 determination within five (5) working days of the date of the mailing of such  
193 notice to the aggrieved person of such determination. The request for review  
194 shall state the ground or grounds upon which the person aggrieved contends  
195 that the decision should be modified or reversed.

196  
197 **110.06 Initial review of determination by authority**

198  
199 A review under this section may be made by the authority which made the  
200 initial determination, or its designee. The reviewing authority shall issue a written  
201 decision within ten (10) working days of the filing of the request. The time for  
202 review may be extended at the discretion of the authority. The person  
203 aggrieved may file with the notice of review, or within the time agreed with the  
204 authority, written evidence and argument in support of the person's position with  
205 respect to the initial determination. The authority may affirm, reverse or modify  
206 the initial determination and shall mail or deliver to the person aggrieved a

207 written decision on review, which shall state the reasons for such decision. The  
208 decision shall advise the person aggrieved of the right to appeal the decision,  
209 the time within which appeal shall be taken, the county board standing  
210 committee responsible for an appeal hearing under section 110.07, and the  
211 office or person with whom notice of appeal to the standing committee shall be  
212 filed.

213  
214 **110.07. – Appeal to county board standing committee.**

215  
216 (a) Appeal from the authority initial review shall be exclusively to the  
217 appropriate county board standing committee.

218 (b) Notice of appeal of the initial review shall be in writing and must be filed  
219 by the aggrieved party within five (5) working days of the mailing date of the  
220 decision.

221  
222 (c) Notice of appeal shall be filed with the county authority which issued the  
223 initial review determination. The authority shall forthwith notify the clerk of the  
224 standing committee of the filing of the notice of appeal and proceed to  
225 prepare the record needed for the committee review.

226  
227 (d) The standing committee or a review committee with members appointed  
228 by the committee chairperson and confirmed by the committee shall conduct  
229 a hearing on the appeal within ten (10) days of the filing of the notice of  
230 appeal. This period may be extended at the sole discretion of the committee  
231 chair.

232  
233 (e) A review committee member, except for department of human services  
234 employes who are excluded from membership on the child care certification  
235 review panel, may be an employe of the county department rendering the  
236 administrative decision provided that such member is an impartial decision  
237 maker who did not participate in making or reviewing the initial determination.  
238 Further, any department employe appointed by the committee chair to serve  
239 on a review committee shall conduct their review and render their  
240 determination based upon the policies of the standing committee for which  
241 they are a representative.

242  
243 (f) Committee actions and remedies. The standing committee has full  
244 discretion to affirm the administrative determination, reverse it, modify it in any  
245 way, conduct further evidentiary hearings or refer the matter back to the  
246 administrator or agency for further evidentiary hearing and findings.

248 **110.08. Conduct of hearing before standing committee.**

249  
250 (a) If the standing committee decides to hold an evidentiary hearing, the  
251 appellant and the authority may be represented by an attorney and may  
252 present evidence and call and examine witnesses and cross-examine witnesses  
253 of the other party. The committee chair, or his or her designee, shall be  
254 responsible for the orderly conduct of the proceeding and for evidentiary  
255 rulings. The appellant has the burden of proceeding first and the burden of  
256 persuasion. Witnesses shall be sworn by the person conducting the hearing. The  
257 rules of evidence shall generally apply to the hearing. The committee may  
258 permit hearsay evidence, but its decision may not be based solely upon  
259 hearsay. The committee may issue subpoenas. Any party or his or her attorney of  
260 record may issue subpoenas to compel the attendance of witnesses or the  
261 production of documents. A subpoena issued by a party or his or her attorney  
262 must be in substantially the same form as provided in s. 805.07(4), Wis. Stats., and  
263 must be served in the manner provided in s. 805.07(5), Wis. Stats. A copy of the  
264 subpoena shall be filed immediately with the committee clerk. Any hearings  
265 conducted under this chapter shall be recorded in any manner permitted by  
266 law and the record, including all exhibits admitted into evidence before the  
267 committee, preserved for one (1) year from the date the decision is issued.

268  
269 (b) The committee may convene in closed session to deliberate at the close  
270 of the hearing, but shall reconvene in open session to vote upon the decision.  
271 The decision of a majority of the committee members who participated in the  
272 hearing shall constitute the decision of the committee. Within twenty (20) days  
273 of completion of the hearing the committee shall serve the appellant by  
274 certified mail or personal service with its written determination, which shall  
275 contain the reasons for its decision. A copy of the decision shall also be sent to  
276 the county authority in question and the corporation counsel. Such  
277 determination shall be the final county administrative review. The exhaustion of  
278 the administrative remedy created by this chapter is a condition precedent to a  
279 circuit court review of a decision of any county authority covered by this  
280 chapter.

281  
282 **110.09. Review committee.**

283  
284 A review committee, as provided for under sec. 110.07(d), shall consist of a  
285 minimum of three (3) but not to exceed five (5) members, who shall conduct a  
286 review of the administrative decisions by county departments. Review hearings  
287 by such committees shall be based upon records maintained by county or state  
288 departments and shall be reviewed and determinations made based upon the  
289 following test:

290  
291 (1) Did the department keep within its jurisdiction?

- 292 (2) Did the department act according to law?
- 293 (3) Was the action of the department arbitrary, oppressive, or unreasonable,
- 294 representing its will and not its judgment? and
- 295 (4) Was the evidence such that the department might reasonably make the
- 296 determination in question?

297  
298 The committee should conduct as extensive a hearing as it believes is required  
299 to apply the "test" outlined. Any decision rendered by the review committee  
300 shall have the same validity as a determination made by the standing  
301 committee.

302 **110.10. Irregularities not fatal.**

303  
304 No defect of form, procedure or substance in any proceeding or hearing under  
305 this chapter shall affect the jurisdiction of a committee or invalidate its decision  
306 unless it is proven by clear and convincing evidence to have in fact prejudiced  
307 the substantial rights of a party.

308  
309 **110.20. Contract award appeals.**

310  
311 (1) Appeals pursuant to sections 32.26(2), 32.50(1), 44.10, 46.09 (9) and  
312 56.30(5)(c) of the ordinances shall follow the procedure set forth in this section.

313  
314 (2) Award and Appeal process.

315  
316 (a) A County authority may not accept a winning bid and may not  
317 submit a contract to the County Board, if County Board approval is  
318 required, or to the County Executive for execution until the expiration of  
319 the time allotted under sub. (b) to submit a request for review has expired.  
320 If a review is requested under this section, the County authority may not  
321 accept the winning bid or may not submit the contract at issue to the  
322 County Board, if County Board approval is required, or to the County  
323 Executive for execution until the conclusion of the appeal procedures set  
324 forth below.

325  
326 (b) Any bidder or proposer not recommended to receive a contract or  
327 bid award may submit a request for review of the notice of intent to  
328 award a contract or bid to the County authority making such  
329 determination within ten (10) business days of the date of the notice of  
330 the determination. The bidder or proposer shall state reasons why the  
331 bidder or proposer believes the contract or bid should not be awarded as  
332 noticed. Upon receipt of a timely request, the County authority shall  
333 provide a written response to the requestor(s) setting forth the rationale



334 justifying the selection of the recommended bidder or proposer. The  
335 response shall be provided within fifteen (15) business days of the receipt  
336 of a request. The time for response may be extended in the discretion of  
337 the County authority up to forty-five (45) calendar days from receipt of  
338 the request. If the notice of intent to award was based on an RFP process,  
339 the response issued pursuant to this paragraph shall include a summary of  
340 the process, material issues, the scoring of the technical and price portion,  
341 and information on the type of individuals who served on the evaluation  
342 panel; however, the names of the panel members shall not be included.  
343 The response shall inform the requester of the right to review, the deadline  
344 for filing a request for review, the name and address of the Procurement  
345 Director and the requirement for a payment as set forth in paragraph (4).

347 (c) Any bidder or proposer who made a request under paragraph (b)  
348 may file a request for a review by a Contract Award Reviewer. The  
349 request for review must be filed with the Procurement Director within five  
350 (5) business days of the date of the response from the division or  
351 department head and must be accompanied by the payment set forth in  
352 paragraph (4).

354 (d) Within five business days of receipt of the request for review with  
355 payment, the Procurement Director shall inform the requestor, the division  
356 or department head and the Reviewer of the name of the assigned  
357 Reviewer. Reviewers shall be assigned in rotation (by alphabetical order  
358 based on last name) to conduct reviews in the order in which requests for  
359 review are filed.

361 (e) The Contract Award Reviewer shall use such review procedures as he  
362 or she deems appropriate, including by way of example but without  
363 limitation, a hearing, oral argument or written submissions.

365 (f) The sole question to be determined by a Contract Award Reviewer is  
366 whether substantial rights of a party were so materially affected by  
367 procedural irregularities during the RFP or bid solicitation process that the  
368 notice of intent to award should be rescinded. Procedural irregularities  
369 may include, but are not limited to, a failure by the County authority to  
370 follow the requirements of the RFP or bid solicitation as published. The  
371 Contract Award Reviewer may determine that the notice of intent to  
372 award should be affirmed or rescinded based only upon the preceding  
373 test. The Reviewer shall issue a written decision on the appeal. The  
374 decision shall be issued within forty-five (45) calendar days of the selection  
375 of the Reviewer.

377 (3) A panel of three (3) Contract Award Reviewers shall be established and  
378 maintained. The County Executive shall nominate individuals to serve as  
379 Contract Award Reviewers, subject to confirmation by the County Board. The  
380 Reviewers shall remain members of the panel for three (3) years from  
381 confirmation of appointment and may be re-appointed for additional three (3)  
382 year terms by the County Executive, subject to re-confirmation by the County  
383 Board. The persons nominated shall possess experience and qualifications in  
384 procurement processes or legal matters related to procurement. County  
385 employees, officers or elected officials are not eligible for nomination.

386 (4) Contract Award Reviewers shall be entitled to payment of an hourly fee and  
387 reimbursement for costs. The hourly rate shall be established in the annual  
388 adopted budget or, if not so established, shall be determined by the  
389 Procurement Director. The requestor and the County shall each be responsible  
390 for one-half of the fees and costs of the Reviewer. The requestor shall submit an  
391 advance payment, as a deposit, in the amount of \$1000.00, towards the final  
392 amount determined upon completion of the review. This payment shall be  
393 submitted together with the request for review set forth in paragraph (c) and the  
394 Procurement Director shall not process any request submitted without this  
395 accompanying payment. Failure of a requester to make payment of one-half  
396 of the total fees and costs of a review shall bar the requester from filing or  
397 having heard any other requests for review until such time as the requester  
398 makes such payment.

400 **SECTION 2.** Chapter 32.23 of the General Ordinances of Milwaukee County is  
401 amended as follows:

402  
403 **32.23 Purchasing standardization committee.**  
404

405 (1) There shall be a purchasing standardization committee composed of three  
406 (3) private citizens: a representative of: the department of human resources,  
407 department of parks, recreation and culture, department of public works and  
408 the sheriff's department. Each of the departmental representatives shall be  
409 selected by the department head. The private citizen members are to be  
410 appointed by the county executive for a term of four (4) years, subject to the  
411 confirmation of the county board, and shall be residents of the county who are  
412 knowledgeable in procurement. A representative of the corporation counsel's  
413 office and the procurement director or his or her designee shall be technical  
414 advisers to the committee.

415  
416 (2) The committee is empowered to do the following:  
417

- 418 (a) Adopt operating rules and procedures, and shall elect a vice-  
419 chairperson, for a one year term, and such other officers as may be  
420 required.  
421  
422 (b) Review supplies, materials and equipment commonly used for  
423 adoption of appropriate standards by all departments.  
424  
425 (c) Adopt, revise and promulgate written standards which satisfy the  
426 requirements of the county. After adoption, they shall apply to  
427 every future purchase and contract for the commodity described,  
428 unless exempted by the committee.

429  
430 (3) Establish technical subcommittees.

431  
432 ~~(4) Hear appeals as defined in sections 32.26 and 32.51.~~  
433

434 **SECTION 3.** Section 32.26 of the General Ordinances of Milwaukee County is  
435 amended as follows:  
436

437 **32.26 Protest and appeal procedure.**

438 Protests to any sealed bid, procurement or award recommended by the  
439 procurement director or his or her designee may be made by any bidder and/or  
440 using department head as follows:  
441

442 (1) *Prior to bid opening:*  
443

444 (a) Protests to form and content of bid documents shall be received by  
445 the procurement director or his or her designee not less than five (5)  
446 days prior to the time scheduled for bid opening. A protest shall be  
447 in writing and state the reason for it.  
448

449 (b) The procurement director or his or her designee shall review protests  
450 and, if modification is necessary, the bid opening date shall be  
451 extended and addenda containing the changes shall be sent to  
452 each bidder. If modification is rejected, the protestor shall be  
453 notified. The decision of the procurement director or his or her  
454 designee is final.  
455

456 (2) *After bid opening:*  
457

458 (a) Protests concerning irregularities on sealed bid opening procedures,  
459 or compliance by bidders with bid documents, shall be received by  
460 the procurement director or his or her designee within seventy-two  
461 (72) hours after time of bid opening filed pursuant to section 110.20  
462 of the ordinances.

463  
464 ~~(b) When a sealed bid is awarded to other than the low bidder, all~~  
465 ~~bidders shall be notified in writing by certified mail, return receipt~~  
466 ~~requested, or by fax machine transmission, of the proposed award.~~  
467 ~~Protests to the award must be delivered to the procurement~~  
468 ~~director or his or her designee within seventy-two (72) hours after~~  
469 ~~receipt of notice. The procurement director's or his or her designee's~~  
470 ~~copy of the fax transmission cover sheet, or the department's fax~~  
471 ~~log, shall be conclusive proof of the time and date of receipt by a~~  
472 ~~bidder.~~

473  
474 ~~(c) A protest under either subsection (a) or (b) must be in writing and~~  
475 ~~state the reason for it. The procurement director or his or her~~  
476 ~~designee shall review the protest and notify the protestor of a~~  
477 ~~decision in writing by fax, within five (5) days. No contract shall be~~  
478 ~~awarded while a protest is pending. A protest which is untimely, fails~~  
479 ~~to state the reason for it or shall have been made prior to bid~~  
480 ~~opening is invalid. The decision of the procurement director or his or~~  
481 ~~her designee disqualifying the protest for these reasons is final and~~  
482 ~~cannot be appealed.~~

483  
484 ~~(3) Appeals to purchasing standardization committee:~~

485 ~~(a) Protests from decisions of the procurement director or his or her~~  
486 ~~designee shall be made to the purchasing standardization~~  
487 ~~committee by delivering a written request for appeal hearing both~~  
488 ~~to the procurement division and the committee within seventy-two~~  
489 ~~(72) hours after receipt of the procurement director's or his or her~~  
490 ~~designee's decision.~~

491  
492 ~~(b) The request shall state the grounds upon which the protest is based~~  
493 ~~and shall request an appeal hearing. No contract shall be awarded~~  
494 ~~until final disposition of the protest.~~

495  
496 ~~(c) The chairperson of the committee shall notify all interested persons~~  
497 ~~of the time and place of the hearing.~~

499 ~~(d) The committee shall affirm, reverse or modify the decision of the~~  
500 ~~procurement director or his or her designee and its decision shall be~~  
501 ~~final.~~  
502

503 **SECTION 4.** Section 32.40 of the General Ordinances of Milwaukee County  
504 are amended as follows:  
505

506 **32.40 General.**

507 (1) Requests for proposals (RFPs) are used in negotiated acquisitions to  
508 communicate county requirements to prospective vendors and to solicit  
509 proposals from them. Solicitations shall contain the information necessary to  
510 enable prospective vendors to prepare proposals properly. Solicitation  
511 provisions and contract clauses may be incorporated into the solicitations and  
512 contracts by reference.  
513

514 (2) The procurement director or his or her designee shall furnish identical  
515 information concerning a proposed acquisition to all prospective vendors.  
516

517 (3) The procurement director or his or her designee shall solicit proposals only  
518 when there is a definite intention to award a contract.  
519

520 (4) A proposal received in response to an RFP is an offer that can be  
521 accepted by the county to create a binding contract.  
522

523 (5) Letter RFPs should be as clear and concise as possible, exclude any  
524 unnecessary verbiage or notices; and, as a minimum, contain the following:  
525

526 (a) RFP number and date.

527 (b) Name and address of contracting office.

528 (c) Type of contract contemplated.

529 (d) Quantity, description, and required delivery for the item.

530 (e) Applicable certifications and representations.

531 (f) Contract terms and conditions.

532 (g) Offer due date.  
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(h) Other relevant information; e.g., incentives, variations in delivery schedule, any peculiar or different requirements, cost proposal support and different data requirements.

(6) Solicitation for services as defined in section 32.20(2) and (17) with an aggregate value in excess of fifty thousand dollars (\$50,000.00) shall be approved by the county board prior to award. Approval shall not be requested until after completion of the ~~protest and appeal~~ process outlined in ~~sections 32.50 and 32.51 of this subchapter~~ section 110.20 of the ordinances.

(7) Notwithstanding any other provisions of this chapter to the contrary, where adequate competition exists, the purchasing administrator [procurement director or his or her designee] shall have the authority, in any situation where a contract is to be let through the negotiated acquisition process, to reserve such contract exclusively for vendors listed as small business enterprises as defined in section 42.02(k). In such event, the solicitation announcements shall indicate such reservation, citing this subsection as authority therefore. Reservations by the purchasing administrator [procurement director or his or her designee] may be on a commodity basis or on an individual contract basis.

**SECTION 5.** Chapter 32.49 of the General Ordinances of Milwaukee County is amended as follows:

**32.49. Awards.**

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

**SECTION 6.** Section 32.50 of the General Ordinances of Milwaukee County is amended as follows:

**32.50 Protests to awards.**

579 (1) All unsuccessful offerors shall be notified by fax machine transmission of  
580 the pending contract award. Protest to the award must filed pursuant to section  
581 110.20 of the ordinances,~~be delivered to the procurement director or his or her~~  
582 ~~designee within seventy-two (72) hours after receipt of notice. The procurement~~  
583 ~~director's or his or her designee's copy of the fax transmission cover sheet, or the~~  
584 ~~departments fax log, shall be conclusive proof of the time and date of receipt~~  
585 ~~by the offeror.~~

586 ~~(2) A protest must be in writing and clearly state the reason for it. The~~  
587 ~~procurement director or his or her designee shall review the protest and notify~~  
588 ~~the protestor of a decision by fax machine transmission within five (5) days. No~~  
589 ~~contract shall be awarded while a protest is pending. A protest that is untimely~~  
590 ~~or fails to clearly state the reason for the protest is invalid. The procurement~~  
591 ~~director's or his or her designee's copy of the fax transmission cover sheet, or the~~  
592 ~~departments fax log, shall be conclusive proof of the time and date of receipt~~  
593 ~~by the offeror.~~

594  
595 ~~(3) The decision of the procurement director or his or her designee~~  
596 ~~disqualifying the protest for these reasons is final and cannot be appealed.~~

597  
598 **SECTION 7.** Chapter 32.51 of the General Ordinances of Milwaukee County is  
599 amended as follows:

600  
601 **32.51 Appeals to purchasing standardization committee.**

602  
603 (1) Except as provided in sections 32.26, 32.46(3), 32.49 and 32.50(13), protests  
604 from decisions of the procurement director or his or her designee shall be made  
605 to the purchasing standardization committee by delivering a written request for  
606 appeal hearing both to the procurement division and the purchasing  
607 standardization committee within seventy-two (72) hours after receipt of the  
608 procurement director's or his or her designee's decision.

609  
610 (2) The request shall state the grounds upon which the protest is based and  
611 shall request an appeal hearing. No contract shall be awarded until final  
612 disposition of the protest.

613  
614 (3) The chairman of the purchasing standardization committee shall notify all  
615 interested persons of the time and place of the hearing.

616

617 (4) The purchasing standardization committee shall affirm, reverse or modify  
618 the decision of procurement director or his or her designee and its decision shall  
619 be final.

620  
621 **SECTION 8.** Chapter 44.10 of the General Ordinances of Milwaukee County is  
622 amended as follows:

623  
624 **44.10 Appeal.**

625 Bidders whose bids have been rejected may file appeals pursuant to chapter  
626 110.20 of the Code.

627  
628 **SECTION 9.** Chapter 46.09 of the General Ordinances of Milwaukee County is  
629 amended as follows:

630  
631 **46.09. Purchase of care and services by the county.** 

632 (1) Policy. It is deemed to be in the interests of the county that in the  
633 purchase of human services, as herein defined, from nongovernmental  
634 vendors, that the following policy be observed. It is the policy of the county  
635 board that contract amounts proposed for award to any provider  
636 recommended to provide human services, except as defined in subsection  
637 (3), shall be submitted to the appropriate county board committee for review  
638 and recommendation. No contract or contract adjustment, except for  
639 services as defined in subsection (3), shall take effect until approved by  
640 resolution of the county board.

641  
642 (2) Definitions. For the purposes of this section, the following terms, words  
643 and phrases shall have the meanings given herein:

644  
645 (a) "Department" means the department of human services.

646  
647 (b) "Provider" means a nongovernmental public or private agency or  
648 proprietary organization furnishing the human services being  
649 contractually purchased.

650  
651 (c) "Human services" means:



652 (1)The care or treatment services the department of human  
653 services is authorized by statute to provide or purchase; and  
654 (2)The services the commission on aging is authorized by law to  
655 provide or purchase.

656  
657 (d)"Qualified recipient" means an individual who is being furnished the  
658 purchased care or treatment service by a provider pursuant to request  
659 of the department or under chapter 46, 53 or 93 of the Code.

660  
661 (3) Pursuant to s. 46.215(2), Wis. Stats., the county board may not exercise  
662 approval or disapproval power over contracts and purchases of the director  
663 of the department relating to community living arrangements, as defined in s.  
664 46.03(22)(a), Wis. Stats., or foster homes, and entered into pursuant to a  
665 coordinated plan and budget, regardless of whether the coordinated plan  
666 and budget mentions the provider.

667  
668 (4) Written contract: minimum provisions.  
669 (a)Except as hereinafter noted, each provider that sells or furnishes care  
670 or services to the department shall enter into a written contract with the  
671 department setting forth the minimum terms of the agreement, as  
672 specified in s. 46.036, Wis. Stats., and all appropriate state and federal  
673 rules and regulations.

674  
675 (b)Prior to entering into contract, corporation counsel shall approve  
676 said contract as to format and compliance with all statutes, rules,  
677 ordinances, and the county's ethics policy. No contract is valid until so  
678 approved by corporation counsel.

679  
680 (c)The comptroller shall countersign each contract if he or she  
681 determines that the county has, or will have, the necessary funds to pay  
682 the liability that the county may incur under the contract. No contract is  
683 valid until so countersigned by the comptroller.

684  
685 (d)The contract terms shall also include:  
686 (1)Clear and concise statement that the final authority for the  
687 determination of eligibility for the purchased care or service is the  
688 department.

689

690 (2)Description of the method and procedure to be used by the  
691 department in referring eligible recipients to the provider for  
692 service.

693  
694 (3)Clear and concise statement that department representatives,  
695 as well as representatives of other appropriate county, state and  
696 federal agencies shall have right of visual inspection of a  
697 provider's facility at any time during which the care or service is  
698 being furnished.

699 (4)Clear and concise statement that the department reserves the  
700 right to withdraw any qualified recipient from the program,  
701 service, institution or facility of the provider at any time when in  
702 the judgment of the department it is in the best interests of the  
703 department or of the qualified recipient so to do.

704  
705 (5)Provision that no qualified recipient is to be denied service or  
706 to be subjected to unlawful discrimination because of race,  
707 color, creed, national origin, age, religion, sex, handicap or other  
708 developmental disability as defined in s. 55.01 (2), Wis. Stats.

709  
710 (6)Appropriate indemnification and insurance provisions.

711  
712 (7)Provision that the department reserves the right to terminate  
713 the contract in the event that reimbursement to the county from  
714 any applicable state or federal source is not obtained or  
715 continued at a level sufficient to allow the department to  
716 purchase the care or service from provider.

717  
718 (8)All contracts entered into by or on behalf of the county for the  
719 purchase of care or treatment services shall, unless waived by the  
720 county board, provide for the payment of interest on amounts  
721 determined to have been overpaid by the county or to be  
722 repaid to the county by provider as a result of post contract  
723 reconciliations or audits. The rate of interest shall be the statutory  
724 rate in effect for delinquent county property taxes (presently one  
725 (1) percent per month or fraction of a month, s. 74.47(1), Wis.  
726 Stats.) and the obligation for payment and calculation thereof  
727 shall commence upon demand for repayment by the county.

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(5) Provider file. The department shall create and keep in its offices a provider file for each provider. Said file shall contain, but not be limited to the following information:

(a)Original or true copy thereof of the written contract required under this section.

(b)Original or true copy thereof of all information requested by the department or furnished by provider for contract negotiation, rate setting and audit purposes.

(c)Reports of director of audits as to the results of periodic test audits of financial records of provider (or other audit findings).

(6) Furnishing of information for contract rate setting. Every provider that furnishes or desires to furnish care or services shall provide the department with all requested provider financial information for rate setting pursuant to s. 46.03(18), Wis. Stats. The county may audit the financial records of provider, summarizing the results with appropriate commentary. Provider shall make available to the county director of audits all necessary records.

(7) Quality control. The department shall annually review the adequacy of purchased care or service furnished pursuant to the provider's contract.

(8) Comptroller responsibility.  
(1)The comptroller shall, on a monthly basis, summarize the reports received from the division concerning purchase of service contracts and provide one (1) copy to the committee on finance and audit and one (1) copy to the county executive.  
(2)The comptroller shall deny payment for any payment request submitted by a contractor to an administrator if all conditions of this chapter have not been met. The comptroller shall report such denials and the reason for denial to the committee on finance and audit along with the monthly report. In such cases, the administrator may appeal the decision to the committee on finance and audit.

(9) Appeal.

766 Providers whose proposals have been rejected may file appeals pursuant to  
767 chapter 110.20 of the Code.

768  
769 **SECTION 10.** Section 56.30(5) of the General Ordinances of Milwaukee  
770 County is amended as follows:

771  
772 **56.30 – Professional Services**

773  
774 (5) *Request for proposal.*

775  
776 (a) *When required.* When it is estimated that a contract for professional services  
777 has a value of fifty thousand dollars (\$50,000.00) and over, it is required that a  
778 request for proposal (RFP) be used to attempt to solicit a minimum of three (3)  
779 proposals. Department administrators shall give appropriate notice to  
780 prospective vendors of services to be retained. At a minimum, such notice shall  
781 include publication of an ad in a newspaper serving the Milwaukee area. The  
782 use of an RFP is discretionary for any professional services contract with a value  
783 of less than fifty thousand dollars (\$50,000.00). If an RFP is used or not, it still is  
784 required to document the process and the reasons shall be documented in  
785 writing by the administrator and retained in departmental files for a period of  
786 seven (7) years after contract completion. Documentation shall include the RFP,  
787 memos, proposals, score sheets, analyses, contracts and any other document  
788 used in determining the award of a contract.

789  
790 (1) For a contract with an estimated value between fifty thousand dollars  
791 (\$50,000.00) and one hundred thousand dollars (\$100,000.00), the request  
792 for proposal procedure need not be used if it is determined by an  
793 administrator to be cost effective to the county not to seek proposals.  
794 Such action shall be reported, in writing, with an explanation as to the  
795 benefits derived from not seeking proposals, to the county board when  
796 the contract is submitted for approval.

797  
798 (2) The request for proposal procedure need not be used for a contract  
799 with an estimated value of fifty thousand dollars (\$50,000.00) or more, if  
800 immediate action is required to preserve property or protect life, health or  
801 welfare of persons. Such action shall be reported in writing within forty-  
802 eight (48) hours after the initial emergency action to the county board,  
803 county executive and department of administration. Payments shall not  
804 be restricted by normal budget limitations. Appropriation transfers, if  
805 required, shall be initiated in accordance with fiscal procedures.

807 (3) The request for proposal procedure must be used for all contracts with  
808 an estimated value of one hundred thousand dollars (\$100,000.00) or  
809 more unless action is required to protect property or protect life, health or  
810 welfare of persons, or in circumstances where contractual services are  
811 approved by specific county board action.

812  
813 (b) *Content.* The request for proposal shall contain the evaluation criteria which  
814 will be used to select the successful contractor. The relative importance of each  
815 of these items will depend to some degree on specific services being sought. It is  
816 essential that the RFP enumerate the evaluation criteria which will be used to  
817 select the successful contractor. The RFP shall also include the foundation and  
818 mechanism for billing for any professional service. The RFP shall also include  
819 language stating that any appeal of the intent to award a contract shall follow  
820 the process set forth in section 110.20 of the ordinances.

821  
822 (c) *Evaluation procedure.* More than one (1) person shall evaluate all proposals.  
823 Oral presentations should be used to supplement the written proposal if it will  
824 assist in the evaluation procedure. The firms to be invited to make an oral  
825 presentation can be determined after the initial review and ranking of the  
826 proposals based on the criteria outlined in the RFP. Upon completion of the  
827 evaluation procedure and a determination being made by the appropriate  
828 division or departmental authority, a notice of intent to award the contract to  
829 the successful proposer shall be communicated to all proposers.

830  
831 (d) *Disclosure.* Contract administrators, evaluation panel members, or potential  
832 members, department administrators and persons selecting evaluation panel  
833 members are required to fully disclose on forms approved by the Ethics Board  
834 any experience, contact or relationship with bidders that would create a  
835 potential conflict of interest, or the appearance of a conflict of interest, as  
836 defined in chapter 9 of these ordinances, in awarding or managing a contract.  
837 Such disclosure shall be presented to the administrator of the department letting  
838 the contract who shall forward the disclosure to the Ethics Board with a written  
839 request for a determination as to whether the disclosing party should be  
840 disqualified from evaluating, selecting or administering the proposed contract.  
841 The determination of the Ethics Board must be documented and included in the  
842 department's files for the contract and shall be retained as required under  
843 subsection (a) of this section. The provisions of this section are to be included in  
844 the Milwaukee County Administrative Procedures Manual. All the provisions set  
845 forth in the Milwaukee County Code of Ethics are in full force and effect and are  
846 not abrogated in any way by these requirements.

847  
848 (e) Reporting requirement for contract approval. When County Board  
849 approval of the contract is required, all department administrators shall submit a

850 report with the request for approval to the County Board. Such reports shall  
851 include the following information:

852 (1) Department name and number.

853 (2) Dollar amount of contract.

854 (3) Name of professional services vendor under contract.

855 (3) Name of professional services vendor under contract.

856

857 (4) Length of time of contract.

858

859 (5) Purpose of contract.

860

861 (6) Manner in which County policy on DBE goals was met, if applicable.

862

863 (7) Termination clauses.

864

865 (8) Number of responses to RFP

866

867 (9) Whether any appeals were filed

868

869 (f) County Board approval and contact. The County Board shall not take  
870 action to recommend approval or rejection of any contract and the County  
871 Executive shall not sign any contract while an appeal pursuant to section 110.20  
872 is pending. No proposer or any person affiliated with a proposer shall have any  
873 contact or communication with County Board members or its staff concerning  
874 the subject of any contract being sought through an RFP process while the RFP  
875 process is open or while an appeal pursuant to section 110.20 is pending.

876

877 **SECTION 11.** The provisions of this ordinance shall be effective upon passage  
878 and publication.