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# **TITLE 2**

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# **PROCUREMENT**

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**ADOPTED AND APPROVED ON DECEMBER 4, 2018**

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**BY THE TETON COUNTY BOARD OF COUNTY  
COMMISSIONERS**

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**Amended- January 24, 2023**

# CHAPTER 1 – PURPOSES AND POLICIES

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## 2-1-1 PURPOSES AND POLICIES

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- a. The purpose of this Policy is to provide for the fair and equitable treatment of all persons involved in public procurement by Teton County, Wyoming; to maximize the purchasing value of public funds in procuring infrastructure construction and maintenance, goods, services and to provide safeguards for maintaining a procurement system of quality and integrity.

## 2-1-2 REQUIREMENT OF GOOD FAITH

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- a. This Policy requires all parties involved in the negotiation, performance, or administration of Teton County contracts to act in good faith.

## 2-1-3 APPLICATION

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- a. This policy applies only to contracts for goods and services and the design, construction, routine operation, routine repair, and routine maintenance of infrastructure and facilities solicited or entered into after the effective date of this Policy unless the parties agree to its application to a contract solicited or entered into prior to the effective date. It shall apply irrespective of the source of funds. Nothing in this Policy promulgated hereunder shall prevent Teton County from complying with the terms and conditions of any grant, gift, bequest, or cooperative agreement.

## 2-1-4 EFFECTIVE DATE

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- a. The Policy shall become effective on January 1, 2019.

## 2-1-5 DEFINITIONS

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- a. The words defined in Section 7 shall have the meanings set forth below whenever they appear in this Policy, unless;
  - i. the context in which they are used clearly requires a different meaning; or
  - ii. a different definition is prescribed for a particular section.

## 2-1-6 PUBLIC ACCESS TO PROCUREMENT INFORMATION

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- a. Procurement information shall be a public record to the extent provided in W.S. §16-4-202 and shall be available to the public as provided in such statute.

## **2-1-7 AUTHORIZATION FOR THE USE OF ELECTRONIC TRANSMISSIONS**

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- a. The use of electronic media, including acceptance of electronic signatures, is authorized consistent with Wyoming's applicable statutory, regulatory or other guidance for use of such media so long as such guidance provides for:
  - i. Appropriate security to prevent unauthorized access to the bidding, approval, and award processes; and
  - ii. Accurate retrieval or conversion of electronic forms of such information into a medium which permits inspection and copying.
- b. Selection and implementation of electronic media, such as an online bidding system, will be determined by the Director of General Services.

## **CHAPTER 2 – PROCUREMENT OF GOODS AND SERVICES- EXCLUDING ARCHITECTURAL, ENGINEERING AND CONSULTING SERVICES**

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### **2-2-1 PROCUREMENT UP TO \$ \$7500 (TOTAL TO PAY)**

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- a. Goods or services that are included in the annual budget and valued below \$7500 may be purchased or solicited without a bid process.
  
- b. **Procedure.**
  - i. An informal process may be used at the discretion of the Department Director or Elected Official by soliciting a minimum of three bids, and may be by written invitation, telephone, or email inquiry.
  - ii. Should the Department Director or Elected Official determine written specifications are needed, the Invitation to Bid Form – Goods, Services form shall be used.
  - iii. Purchases or services below \$ \$7500 which have approved funding in the current fiscal year's budget do not require Board of County Commissioners approval, unless a written contract is required as part of the transaction, and then approval and signature by the Board of County Commissioners shall be obtained.
  - iv. Purchases of any type of Information Technology related items (Hardware or Software) must adhere to section 2-2-7.
  - v. Bids sheets should be retained for one year.
  
- c. **Award.** Award shall be made to the responsible bidder whose response conforms to the solicitation and is determined to be the lowest and most responsible.

### **2-2-2 PROCUREMENT \$ \$7500 UP TO \$35,000 (TOTAL TO PAY)**

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- a. Goods or services that are included in the annual budget and valued between \$ \$7500 and \$35,000 shall be purchased or contracted through a competitive informal bid, competitive formal bid, or request for proposal.
  1. Purchases of any type of Information Technology related items (Hardware or Software must adhere to section 2-2-7.
  
- b. **Procedure.**

Staff shall determine which procurement method listed above is most beneficial.

1. Competitive Informal Bids- a complete scope of product or services must be provided to a minimum of three (3) vendors for pricing and must be for the exact items. All bids must be maintained in the project file after selection.
2. Competitive Formal Bids may be solicited using 2 weeks public notice (the advertisement shall be published on two (2) different occasions, at least seven (7) days apart, in a newspaper having general circulation in the County) and posting on the online bidding system if a minimum of 3 bids cannot be solicited using the informal process. Bids are used when there is no substantive difference among the products or services that meet specifications so that the only difference among responsive bids is price.
3. An RFP should be selected for soliciting proposals from vendors for products and services that cannot be evaluated by cost alone.
4. If selecting Competitive Bid or RFP, completed forms shall be uploaded to the online bidding system.
5. Purchases or services between \$ \$7500 and \$35,000 do not require Board of County Commissioners approval if the project has been funded in the current fiscal year budget and a contract or signature is not required.
6. All responses should be retained for one year.

c. **Award.**

1. Award for bids: Shall be made to the responsible bidder whose response conforms to the solicitation and is determined to be the lowest and most responsible.
2. Award for RFP: Consideration of price and the evaluation factors set forth in the request for proposals or qualifications shall be the determining factors. No other factors or criteria shall be used in the evaluation.
3. The contract file shall contain the basis on which the award is made. Written notice of the award of a contract to the successful bidder or offeror shall be promptly given to all respondents. Once executed, the original contract shall be provided to the Clerk's Office for official record.

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### **2-2-3 PROCUREMENT OVER \$35,000 (TOTAL TO PAY)**

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- a. Goods or services that are included in the annual budget and valued over \$35,000 shall be purchased or contracted through a competitive formal bid, or request for proposal process.

**b. Procedure.**

- i. Staff shall determine if a bid or request for proposal (RFP) is appropriate. (Exhibit A)
- ii. Purchases of any type of Information Technology related items (Hardware or Software must adhere to section 2-2-7).
- iii. Once determined, Staff shall complete the Invitation to Bid Form – Goods, Services, or RFP Form with necessary information.
  1. Each bid or request for proposal shall include contract or purchase terms, due date, and location.
  2. Request for proposals and qualifications shall include evaluation criteria.
- iv. Each bid or request for proposal shall provide adequate Public Notice to include two weeks advertisement in an official local publication.
- v. Completed forms shall be uploaded to the online bidding system.
  1. A minimum of three bids or proposals shall be solicited.
- vi. All responses shall be held confidential until the specified due date.
- vii. All bids or proposals shall be opened publicly in the presence of one or more witnesses at the time and place designated in the Invitation for Bids/Request for Proposals. The amount of each response, and such other relevant information as may be specified by regulation, together with the name of each bidder or offeror shall be recorded. The record of each response shall be open to public inspection.
- viii. All projects or purchases over \$35,000 require Board of County Commissioners approval.
- ix. All responses should be retained for one year.

**c. Award.**

- i. Award for bids: Shall be made to the responsible bidder whose response conforms to the solicitation and is determined to be the lowest and most responsible.
- ii. Award for RFP: Consideration of price and the evaluation factors set forth in the request for proposals or qualifications shall be the determining factors. No other factors or criteria shall be used in the evaluation.
- iii. The contract file shall contain the basis on which the award is made. Written notice of the award of a contract to the successful bidder or offeror shall be promptly given to all respondents. The original contract shall be provided to the Clerk's Office for official record.

## **2-2-4 EMERGENCY PURCHASES**

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- a. In the event of an unanticipated or emergency circumstance where repairs must be made immediately, and the expense exceeds \$5000, such purchase or contracts may be made based on availability of a responsible provider.
  
- b. **Procedure.**
  - i. Verbal approval must be received from Department Director or Elected Official prior to purchase or contract approval.
  - ii. Emergency Purchase Notification Form of such procurement shall be completed within 5 business days and retained in the contract file.

## **2-2-5 SOLE SOURCE PROCUREMENT**

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- a. A purchase or contract may be awarded for goods, services, or construction above \$7500 without competition when the Department Director or Elected Official determines in writing that there is only one source for the required goods, services, or construction items and approval is granted by the Board of County Commissioners. The Sole-Source Justification Form shall be completed and submitted to the Board of County Commissioners for final approval.
  
- b. **Procedure.**
  - i. Staff identifies purchase or contract for goods, services, or construction which should be sole sourced.
  - ii. Staff completes Sole-Source Justification Form outlining the following:
    1. Specific reasons why the competitive bid/RFP process is not feasible.
    2. Specific reasons why the vendor has been chosen for the procurement.
    3. Reason the request should be approved.
  - iii. The Sole-Source Justification Form is approved by Department Director or Elected Official.
  - iv. Staff report is prepared and accompanied by the Sole-Source Justification form for review and approval from the Board.
  - v. If the Board does not approve the Sole-Source contract, competitive procurement methods must be followed.

## **2-2-6 VEHICLE PURCHASES**

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The purchase or lease of a new automobile, truck, or SUV shall be accomplished through a competitive formal bid and advertised regardless of cost. If there is an automobile, truck, or SUV for trade-in, it shall be included as a part of the advertisement and bid. The Invitation to Bid Form – Vehicle shall be used.

Teton County is committed to operating a vehicle and equipment fleet program that is environmentally and economically sustainable, and is designed, constructed, and operated in a manner to use resources efficiently and minimize waste. The County will remain committed to managing and conserving natural resources in an equitable manner for present and future generations of residents receiving County services. The County will maintain a fleet management model to ensure that vehicle and equipment assets are purchased, maintained, fueled, operated and disposed of in the most efficient methods possible.

**a. Procedure.**

- i. Staff identifies the need for the purchase of a new vehicle and funds are approved in the budget.
- ii. Staff will work with General Services Department to analyze vehicle alternatives and identify the best available technology that fits the need. Vehicles and equipment shall be managed in a manner that provides the County with the best use of each unit.
- iii. Staff completes Invitation to Bid Form – Vehicle with necessary information, including service criteria. Upon request, General Services Department will provide vehicle specifications sheet based on type of vehicle to be purchased.
- iv. Adequate Public Notice to include two weeks advertisement in an official local publication is required.
- v. Completed bid form shall be uploaded to the online bidding system.
- vi. All Bids shall be held confidential until specified due date.
- vii. All Bids shall be opened publicly in the presence of one or more witnesses at the time and place designated in the Invitation for Bids. The amount of each bid, and such other relevant information as may be specified by regulation, together with the name of each bidder shall be recorded. The record of each bid shall be open to public inspection.
- viii. All vehicle purchases require Board of County Commissioners approval.
- ix. All responses shall be retained for one year.

**b. Award.**

- i. Award shall be made to the responsible bidder whose response conforms to the solicitation and is determined to be the lowest and most responsible.
- ii. The contract file shall contain the basis on which the award is made. Written notice of the award of a contract to the successful bidder shall be promptly given to all respondents. The original contract shall be provided to the Clerk's Office for official record.

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## **2-2-7 INFORMATION TECHNOLOGY PURCHASES**

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- a. The purchase of all Information Technology (IT) equipment to include but not limited to; computers, laptops, tablets, and cellular phones, shall be requested and managed through the Teton County Information Technology Division.
  
- b. **Procedure.**
  - i. Staff identifies the need for IT equipment.
  - ii. Staff completes IT Purchase Request Form and submits to Teton County Information Technology Division.
  - iii. Dependent upon estimated expense, IT Division shall follow procedure guidelines per Section 2-2-1 Procurement up to \$7,500, 2-2-2 Procurement \$7500 and up \$35,000, or 2-2-3 Procurement over \$35,000.
  - iv. The purchase of any software or application must comply with Teton County's Data Privacy Agreement and Teton County's security protocols

## **2-2-8 PUBLIC PRINTING CONTRACTS**

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- a. Whenever a contract is let by Teton County for printing, including reports of officers and boards, pamphlets, blanks, letterheads, envelopes and printed and lithographed matter of every kind and description whatsoever, the contract shall be let to the responsible resident making the lowest bid if the resident's bid is not more than ten percent (10%) higher than that of the lowest responsible nonresident bidder. Any successful resident bidder shall perform at least seventy-five percent (75%) of the contract within the state of Wyoming.
  
- b. **Procedure.**
  - i. Staff shall follow procedure guidelines per Section 2-2-1 Procurement up to \$7,500, 2-2-2 Procurement \$7500 and up \$35,000, or 2-2-3 Procurement over \$35,000.

## **2-2-9 PROCUREMENT USING FEDERAL FUNDS**

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- a. When the County is using Federal funds on a project, all applicable rules for the use of those funds will be followed.

## **CHAPTER 3 – PROCUREMENT OF PROFESSIONAL SERVICES**

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### **2-3-1 PROFESSIONAL SERVICES**

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- a. When the anticipated contract will exceed \$ \$7500, Teton County will publicly announce all requirements for Professional Services (examples include but not limited to: Architectural, Engineering, and Consulting Services) and negotiate contracts for services on the basis of demonstrated competence and qualification for the type of services required, and at fair and reasonable prices.
  
- b. **Procedure.**
  - i. Staff completes Request for Qualifications (RFQ) form with necessary information.
  - ii. Notice for newspaper advertising of required services shall be published for a minimum of two weeks if the anticipated contract will exceed \$35,000.00.
  - iii. The RFQ form shall be uploaded to the online bidding system for a minimum of two weeks.
  - iv. Each respondent shall submit a copy of the completed RFQ form and a fee proposal for this project.
  - v. All responses will be publicly opened at the time and location according to the information provided in the Request for Qualifications.
  
- c. **Award.**
  - i. Consultant selection will be by a selection committee of no less than three.
  - ii. A listing of evaluation factors and weighting factors for the ranking and selection of a qualified firm will be placed in the RFQ and used by the committee to rank. The selection factors should assess the consultant's qualifications and competency, tailored to the scope of work. Evaluation factors may include:
    - i. Established expertise
    - ii. Related work experience
    - iii. Qualifications of firm's personnel
    - iv. Previous performance on projects
    - v. Project approach
    - vi. Workload and capacity
    - vii. Ability to meet the project schedule
    - viii. Other evaluation factors relating to the specific project
  - iii. Consideration of evaluation criteria set forth in the Request for Qualifications shall be the determining factors.

- iv. Cost components may be evaluated on certain projects but must be requested in a separate file and not opened until all scoring has been completed. Cost components may not be used on federal-funded projects.
- v. In-State and local preference shall not be used on federal projects.
- vi. Award shall be made to the responsible respondent whose response conforms to the solicitation and is determined to be the most qualified.
- vii. The contract file shall contain the basis on which the award is made. Written notice of the award of a contract to the successful bidder shall be promptly given to all respondents. The original contract shall be provided to the Clerk's Office for official record.

## **CHAPTER 4 – PROCUREMENT OF CONSTRUCTION, MAJOR MAINTENANCE OR RENOVATION**

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### **2-4-1 CONSTRUCTION SERVICES**

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- a. When the anticipated contract is under \$ \$7500, a bid process is recommended but not required, when the anticipated contract is between \$ \$7500 and \$35,000, an informal bid process shall be followed, and when the anticipated contract will exceed \$35,000, Teton County will complete competitive formal bidding. This is applicable for all construction-related contracts to include but not limited to alteration, construction, demolition, enlargement, improvement, major maintenance, reconstruction, renovation, routine operation, routine repair, and routine maintenance of infrastructure facilities, public building, public structure, public facility, or public system for Teton County. Specifications for performance, design, a combination of performance and design, responsible products list, or brand name or equivalent must be included in the specifications. Additionally, the following requirements shall be met:
  - i. The contract shall be let to the responsible certified resident making the lowest bid if the certified resident's bid is not more than five percent (5%) higher than that of the lowest responsible nonresident bidder. Certification and requirements as to residency shall be directed in W.S. §16-6-102.
  - ii. A successful resident bidder shall not subcontract more than thirty percent (30%) of the work covered by his contract to nonresident contractors. W.S. §16-6-103. Resident bidder preference shall be subject to the effect, if any, of related laws of the United States and valid rules and regulations of federal agencies in charge, governing use and payment of federal funds. W.S. §16-6-108.
  - iii. Wyoming resident laborers shall be used on the public works project as delineated in W. S. §16-6-203.
  - iv. A contract that is let for bid shall be let to the lowest responsible bidder who shall be determined responsible at the sole discretion of the Board of County Commissioners. The Board of County Commissioners may use alternative design and construction delivery methods as defined by Wyoming Statutes if deemed appropriate. The Board of County Commissioners may reject all bids or responses submitted.
- b. The original contract shall be provided to the Clerk's Office for official record and state retention schedules shall be followed for Capital Construction projects.

## **2-4-2 APPROVED ALTERNATE PROJECT DELIVERY AND SELECTION METHODS**

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Alternate design and construction delivery method means the delivery method described by any qualifications-based procurement of design and construction services, including all procedures, actions, events, contractual relationships, obligations and forms of agreement for the successful completion of the design and construction, major maintenance or renovation of any public building, work, improvement, facility, structure or system other than by design, bid and build. Alternate design and construction delivery methods available to a public entity include construction manager agent, construction manager at risk or design-builder.

**a. Procedure.**

- i. Staff identifies the need for construction, routine operation, routine repair, and routine maintenance of infrastructure facilities and funds are approved in the budget.
- ii. Staff makes project delivery and method selection. See Definitions for further information.
- iii. Staff completes appropriate form with necessary information.
- iv. Adequate Public Notice to include two weeks advertisement in an official local publication is required.
- v. Completed form shall be uploaded to the online bidding system.
- vi. All responses shall be held confidential until specified due date.
- vii. All responses shall be opened publicly in the presence of one or more witnesses at the time and place designated in the solicitation. The amount of each bid, and such other relevant information as may be specified by regulation, together with the name of each bidder shall be recorded. The record of each bid shall be open to public inspection.
- viii. All construction contracts require Board of County Commissioners approval.
- ix. All responses shall be retained for one year.
- x. All contracts shall require the construction manager at risk or design builder to conduct an open bid process.

## **2-4-3 CONSTRUCTION MANAGER-AT-RISK (CMAR)**

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- a. Services for Construction Manager at Risk are recommended when estimated construction costs exceed \$1,000,000. After a request for proposals or qualifications process, Teton County shall enter into a contractual agreement with selected construction manager at risk for the construction work required but will retain the option to select a different construction manager at risk after the completion of the preconstruction services or utilize a different selection and/or bidding process for construction services if deemed

to be in the County's best interest. Staff may request approval from the Board of County Commissioners to perform in-house design and engineering when expertise is present.

**b. Procedure.**

- i. Staff complete Request for Proposals (RFP) or Qualifications (RFQ) form with necessary information.
- ii. Notice for newspaper advertising of required services shall be published for a minimum of two weeks.
- iii. The RFP or RFQ form shall be uploaded to the online bidding system.
- iv. Each respondent shall submit a copy of the completed RFP or RFQ form.
- v. All responses will be publicly opened at the time and location provided in the Request for Proposals or Qualifications.
- vi. All responses shall be retained for one year.

**c. Award.**

- d. Award shall be made to the responsible bidder whose proposal conforms to the solicitation and is determined to be the lowest and most responsible.
- e. Upon selection of a successful bidder, Teton County will enter two separate contractual agreements during each phase:
  - i. Preconstruction Phase – During this phase, the CMAR shall work with the Architect on design, constructability, costs, and schedule. Once the design phase has reached 90%, the CMAR will develop a Guaranteed Maximum Price.
  - ii. If agreement on the GMP is not reached, Teton County reserves the right to select a different CMAR.
  - iii. Upon agreement on the GMP, a contract for the Construction Phase is executed.
- f. The original contract shall be provided to the Clerk's Office for official record.

## **2-4-4- BID BONDS**

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- a. Bid bond shall be required for all construction, major maintenance, or renovation of any public building or other public work or improvement when the anticipated contract price exceeds \$150,000. Bid bond shall be a bond provided by a surety company, the equivalent in cash, or another form of financial guarantee satisfactory to Teton County. Bid bond shall be in an amount equal to 5% of the amount of the bid.

## **2-4-5 PERFORMANCE AND PAYMENT BONDS**

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- a. Performance and Payment Bonds shall be required for all construction, major maintenance, or renovation of any public building or other public work or improvement. When the anticipated contract price exceeds \$150,000, the financial guarantee shall not be less than 100% of the contract price. When the anticipated contract price is less than \$150,000, any form of financial guarantee can be accepted, and the Department Director or Elected Official shall determine a reasonable amount for the financial guarantee that may be less than 100% of the contract price. Wyo. Stat. §16-6-112

## **2-4-6 POSTING AND PUBLICATION NOTICE OF ACCEPTANCE**

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- a. The County shall issue a certificate of substantial completion after determination that the public work, or designated portion thereof, is substantially complete.
- b. Upon issuance of the certificate of substantial completion, the County shall cause notice to be published in the weekly edition of the Jackson Hole News and Guide, once a week for two (2) consecutive weeks, and post on the Teton County website for at least two weeks; website notices should be sent to General Services for posting. The notice shall set forth in substance that the county has accepted the work, or designated portion thereof, as substantially complete according to the contract and associated documents and that the general contractor is entitled to payment upon the 41<sup>st</sup> day (and the notice shall specify the exact date) after the notice was first published and posted. If the contract provides for multiple substantial completions, this provision shall apply to each substantial completion designated in the contract.
- c. Payment shall be made to the general contractor for any amount retained by the county under Wyoming Statute §16-6-702(b) together with any other amount due under the contract, less any amount withheld for the portion of the public work that is incomplete or not completed in accordance with the contract and associated documents.
- d. The County shall issue a certificate of final completion after determination that the contract is fully performed, and all portions of the public work are acceptable under the contract and associated documents. Any amounts withheld under subsection (c) for any work that was determined to be incomplete or not in accordance with the contract or associated documents and due under the contract shall be paid to the general contractor. The County shall post the date of final completion on the Teton County website for two weeks. Notices to be posted on the website should be sent to General Services.
- e. This section does not relieve the general contractor and the sureties on his bond from any claims for work or labor done or materials or supplies furnished in the execution of the contract.
- f. The County shall provide written notice of the requirements of this section in the project specifications.

## **2-4-7 FINAL SETTLEMENT WITH AND PAYMENT TO CONTRACTOR**

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- a. In all contracts entered into by the County in regard to public works, no payments under 2-4-6 shall be made until the person files with the County a sworn statement setting forth that all claims for material, supplies, and labor performed under the contract have been and are paid for the entire period of time for which the payment is to be made.
- b. If any claim for material, supplies or labor is disputed, then the sworn statement shall so state, and the amount claimed to be due the subcontractor or materialman may be filed by the claimant as a claim against the general contractor's surety bond. Payment to the general contractor under 2-4-6 shall be paid without regard to the pending claims against the surety bond unless the County has actual knowledge that the surety bond is deficient to settle known present claims, in which case the amount equal to the disputed claims may be withheld.

## **2-4-8 VALUE ENGINEERING**

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- a. Once a construction contract has been awarded, Teton County shall not Value Engineer the design plans so much as to reduce the contract bid amount more than 5% without invalidating the contract.

## **2-4-9 MATERIAL PURCHASE BY OWNER**

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- a. Teton County may elect to directly purchase materials for a construction contract. Intention of purchase by Owner must be stated in the bid documents. Teton County shall bid materials purchase per this policy.

# CHAPTER 5 – ADMINISTRATIVE

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## 2-5-1 CONTRACTS

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- a. All contracts must be approved by the Board. Contracts with an estimated cost of more than \$7500 shall be contracted through competitive bidding or RFP process, unless otherwise specifically approved by the Board. Bids for nonbudgeted contracts above \$7500 may be solicited prior to approval, with the express understanding that award of the contract will depend upon approval by the Board. Unless otherwise provided by law, a contract for goods, supplies or services may be entered into for any period deemed to be in the best interests of Teton County, provided the term of the contract and conditions of renewal or extension, if any, are included in the solicitation and funds are available for the first fiscal period at the time of contracting. Payment and performance obligations for succeeding fiscal periods shall be subject to the availability and appropriation of funds therefor. All contracts must be competitively bid or extended upon the original contract expiration date. Contracts may be extended or amended by written mutual agreement of the parties provided the original terms and conditions remain unchanged. The standard extension period for contracts is one (1) additional year. All extensions and amendments must be approved by the Board.

## 2-5-2 CONTRACT CLAUSES

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- a. Contracts issued by Teton County shall contain clauses providing for adjustments in prices, time of performance, or other contract provisions, as appropriate, and covering the following subjects:
  - i. Right of Teton County to order in writing:
    1. Changes in the work within the scope of the contract; and
    2. Changes in the time of performance of the contract that do not alter the scope of the contract work.
  - ii. Variations occurring between estimated quantities of work in a contract and actual quantities; and
  - iii. Suspension of work ordered by Teton County; and
  - iv. Site conditions differing from those indicated in the contract, or ordinarily encountered, except that differing site conditions clauses need not be included in a contract:
    1. When the contract is negotiated;
    2. When the contractor provides the site or the design; or
    3. When the parties have otherwise agreed with respect to the risk of differing site conditions.

- v. Price Adjustments.
- vi. Preference for Wyoming Materials
  - 1. Wyoming made materials and products, and Wyoming supplies of products and materials of equal quality and desirability shall have preference over materials or products produced or supplied outside the state and any contract let shall so provide. W.S. §16-6-104 and 16-6-105.

## **2-5-4 ENVIRONMENTALLY PREFERABLE PURCHASING**

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- a. Teton County promotes and encourages the selection of products and services that have a lesser or reduced negative effect on health and the environment. Criteria for evaluation factors included in the Invitations to Bid or RFP should determine if the requested products or services are certified by Green Seal, Energy Star, Eco Logo,

## **2-5-5 CONTRACT APPROVAL**

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- a. All contracts, agreements, leases, or other documents that legally bind Teton County must be approved as to form and content by the County's Attorney's office prior to the Board's regular meeting and the Board must review and approve such documents at a regular scheduled meeting.

## **2-5-6 CHANGE ORDERS**

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- a. Change Orders that exceed the original contract amount must be approved, in writing, by The Board. Teton County may order in writing changes and/or extra work without invalidating the Contract. At the time of ordering such changes and/or extra work, the amount or method of compensation and any adjustment in the time of completion shall be determined and stipulated on a standard form provided by the General Services Department. Staff may request approval for contingency funding up to 10% of total contract price in addition to the contract amount or for additional powers to execute change orders that do not exceed 2.5% of total contract sum, to be granted to staff by resolution
- b. **Procedure.**
  - i. At contract award Staff may request approval from the Board for a contingency amount, not to exceed 10% of total contract sum.
  - ii. If approved, additional powers to the Elected Official or Department Director may be granted through a resolution.

## **2-5-7 CANCELLATION OF INVITATIONS FOR BIDS OR REQUESTS FOR PROPOSALS**

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- a. An Invitation for Bids, a Request for Proposals, or other solicitation may be canceled, or any or all bids or proposals may be rejected in whole or in part as may be specified in the solicitation, when it is in the best interests of Teton County. The reasons therefore shall be made part of the contract file.

## **2-5-8 PRE-QUALIFICATIONS OF BIDDERS**

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- a. Prospective bidders may be prequalified for types of goods, services, and construction. Teton County staff shall request all potential bidders to complete a Request for Qualifications (RFQ) form. The form shall be obtained through the online bidding system and resubmitted via the same system for review by requesting Teton County Staff. Staff will evaluate all bidders per predetermined criteria. Bidders who meet required qualifications will be able to provide a bid. Remaining bidders shall be notified if they do not meet qualifying criteria.

## **2-5-9 INSURANCE**

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- a. The Contractor shall secure and maintain insurance coverage in such amounts as shall be required by Teton County, protecting the Contractor and indemnifying the County from claims pertaining to unemployment insurance, old age benefits, worker's compensation, industrial accident, labor, or taxes of any kind. Certificates of such insurance shall be filed with the County before commencing any of the work. All insurance coverage requirements shall be outlined in each contract for goods, services, and construction.

## **2-5-10 VENDOR OR SUPPLIER SUSPENSION**

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Due to certain circumstances, the Board of County Commissioners may suspend the use of certain vendors or suppliers. The causes for suspension include the following:

- i. Conviction for commission of criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract;
- ii. Conviction under State or Federal statutes of embezzlement, theft, forgery, bribery, falsification, or destruction of records, receiving stolen property, or any other offence indicating a lack of business integrity or business honesty which currently, seriously, and directly affects responsibility as a Teton County contractor;

- iii. Conviction under State or federal antitrust statutes arising out of the submission of bids or proposals,
- iv. Violation of contract provisions, as set forth below, of a character which is regard to be so serious as to justify debarment action:
  - 1. Deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or
  - 2. A recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts; provided that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be a basis for debarment;
- v. Any other cause of the Board of County Commissioners determines to be so serious and compelling as to affect responsibility as a Teton County contractor, including debarment by another governmental entity; and
- vi. For violations of the ethical standards set forth in Section 6.
- vii. The Board of County Commissioners shall issue a written decision to suspend which includes the reasons for action taken. Notification shall be provided immediately to the suspended person and any other party intervening.
- viii. Suspension term shall be determined by the Board of County Commissioners.

# CHAPTER 6 – ETHICS

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## 2-6-1 POLICY

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- a. Public employment is a public trust. It is the policy of Teton County to promote and balance the objective of protecting government integrity and the objective of facilitating the recruitment and retention of personnel needed by Teton County. Such policy is implemented by prescribing general standards of ethics conduct without creating unnecessary obstacles to entering public service. Public employees must discharge their duties impartially so as to assure fair competitive access to governmental procurement by responsible contractors. Moreover, they should conduct themselves in such a manner as to foster public confidence in the integrity of the procurement procedure used by Teton County. To achieve the purpose of this Policy, it is essential that those doing business with the Teton County also observe the ethical standards prescribed herein.

## 2-6-2 GENERAL STANDARDS

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- a. General Ethical Standards for Employees:
  - i. Any attempt to realize personal gain through public employment by conduct inconsistent with the proper discharge of the employee's duties is a breach of a public trust.
- b. General Ethical Standards for Non-Employees:
  - i. Any effort to influence any public employees to breach the standards of ethical conduct set forth in this Section is also a breach of ethical standards.

## 2-6-3 CONFLICTS OF INTEREST

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- a. It shall be a breach of ethical standards for any employee to participate directly or indirectly in a procurement when the employee knows that:
  - i. The employee or any member of the employee's Immediate Family has a Financial Interest pertaining to the procurement;
  - ii. A business or organization in which the employee, or any member of the employee's Immediate Family, has a Financial Interest pertaining to the procurement;
  - iii. 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.
- b. Discovery of Actual or Potential Conflict of Interest, Disqualification, and Waiver. Upon discovery of an actual or potential conflict of interest, an employee shall promptly file a written statement of disqualification and shall withdraw from further participation in the

transaction involved. The employee may, at the same time, apply to the County Attorney for an advisory opinion as to what further participation, if any, the employee may have in the transaction.

## **2-6-4 GRATUITIES AND KICKBACKS**

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- a. **Gratuities.** It shall be a breach of ethical standards for any person to offer, give or agree to give any employee or former employee, or for any employee or former employee to solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in 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 or a contract or subcontract, or to any solicitation or proposal therefor.
- b. **Kickbacks.** It shall be a breach of ethical standards for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract or order.

## CHAPTER 7 – DEFINITIONS

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**Agency** means any department, agency or other instrumentality of Teton County or of a political subdivision of Teton County to which funds are appropriated or authorized for expenditure for capital construction projects and includes any entity that Teton County contracts with to administer or award any bid.

**Architectural and Engineering Services** means:

1. Professional services of an architectural or engineering nature, as defined by State law, if applicable, which are required to be performed or approved by a person licensed, registered, or certified to provide such services as described in this Subsection;
2. Professional services of an architectural or engineering nature performed by contract that are associated with research, planning, development, design, construction, alteration, or repair of real property, and
3. Such other professional services of an architectural or engineering nature, or incidental services, which members of the architectural and engineering professions (and individual in their employ) may logically or justifiably perform, including; studies, investigations, surveying, mapping, tests, evaluations, consultations, comprehensive planning, program management, conceptual designs, and plans and specifications, value engineering, construction phase services, soils engineering, drawing reviews, preparation of operating and maintenance manuals, and other related services.

**Bidder** means one who submits a response to an invitation for bid.

**Business** means corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or any other private legal entity.

**Change Order** means a written order signed by the Department Director or Elected Official, directing the contractor to make changes which the Changes clause of the contract authorized the Department Director or Elected Official to order without the consent of the contractor.

**Competitive Informal Bid or Request for Proposal** means at least three requests for bid or RFP must be completed prior to award. Request may be made over phone, email, or facsimile. All bids must be returned in writing to be considered.

**Competitive Formal Bid or Request for Proposal** means at least three requests for bid or RFP must be completed prior to award. Each bid or RFP shall provide adequate public notice to include two weeks advertisement in an official local publication. A formal opening and reading of the bid, with witness, must take place at a designated time and place indicated in the advertisement and instructions to bidders.

**Confidential Information** means any information which is available to an employee only because of the employee's status as an employee of Teton County and is not a matter of public knowledge or available to the public on request.

**Conspicuously** means written in such special or distinctive format, print, or manner that a reasonable person against whom it is to operate ought to have noticed it.

**Construction** means the process of building, altering, repairing, improving, or demolishing any public infrastructure facility, including any structure, building, or other improvements of any kind of real property. It does not include the routing operation, routing repair, or routine maintenance of any existing public infrastructure facility, including structures, building or real property.

**Contract** means all types of Teton County agreements, regardless of what they may be called, for the procurement or disposal of supplies, services, or construction.

**Contractor** means any person having a contract with a governmental body.

**Design-Bid-Build** means a project delivery method typically involving three sequential project phases; The design phase when a designer is selected, the bid phase, when a contractor is selected, and a build or construction phase, when the project is built by the selected contractor.

**Design – Build** means a project delivery method which typically includes one entity (design-builder) and a single contract with the owner to provide both architectural/engineering design services and construction. Design Build is governed by Wyoming Statute §16-6-701(a)(ix)

**Construction manager agent** means a type of construction management delivery where the professional service is procured under existing statutes for professional services. The construction manager agent is a construction consultant providing administrative and management services to the public entity throughout the design and construction phases of a project. Under this delivery method, the construction manager agent is not the contracting agent and is not responsible for purchase orders

**Construction Manager at Risk (CMAR)** means a type of construction management delivery in which the construction manager at risk is an advocate for the public entity as determined by the contracts, throughout the pre-construction phase of a project. In the construction phase of a project, the construction manager at risk is responsible for all project subcontracts and purchase orders and may conduct all or a portion of the construction project work. Under this delivery method, the construction manager at risk is responsible for providing a guaranteed maximum price for the project to the public entity prior to commencing the construction project.

**Department Director** means the Director of Planning and Building, Director of Health, Director of General Services, Fire/EMS Chief, Director of Public Works, Director of Parks & Recreation, Library Director, Director of Housing, Director of Human Resources, and County Commissioners' Administrator.

**Employee** means an individual drawing a salary from a governmental body, whether elected or not, and any non-compensated individual performing personal services for any governmental body.

**Financial Interest** means:

1. Ownership of any interest or involvement in any relationship from which, or as a result of which, a person within the past year has received, or is presently, or in the future entitles to receive funds, or
2. Holding a position in a business such as an officer, director, trustee, partner, employee, or the like.

**Elected Official** means the County Commissioners, County Sheriff, County Coroner, County Clerk, County Treasurer, Clerk of District Court, County Assessor, and County Attorney.

**Goods** means all property, including but not limited to equipment, materials, printing, insurance, and leases of real property, excluding land or a permanent interest in land.

**Gratuity** means a payment, loan, subscription, advance, deposit of money, services, or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is received.

**Immediate Family** means a spouse, children, parents, brothers, and sisters.

**Infrastructure Facility** means a building, structure, or networks of buildings, structures, pipes, controls, and equipment that provide governmental services, transportation, utilities, public education, or public safety services.

**Invitation for Bids** means all documents, whether attached or incorporated by reference, utilized for soliciting bids.

**May** denotes the permissive.

**Person** means any business, individual, union, committee, club, other organization, or group of individuals.

**Procurement** means buying, purchasing, renting, leasing, or otherwise acquiring any supplies, services, or construction. It also includes all functions that pertain to the obtaining of any supply, service, or construction, including description of requirements, selection and solicitation of sources, preparation and ward of contract, and all phases of contract administration.

**Public Notice** means the distribution or dissemination of information to interested parties using methods that are reasonably available. Such methods will often include publication in newspapers of general circulation, electronic or paper mailing lists, and website(s) designated by Teton County and maintained for that purpose.

**Public Work** includes alteration, construction, demolition, enlargement, improvement, major maintenance, reconstruction, renovation and repair of any highway, public building, public facility, public monument, public structure or public system.

**Purchase Request** means that document whereby a Using Agency request that a contract be entered into for a specified need, and may include, but is not limited to, the technical description of the requested item, delivery schedule, transportation, criteria for evaluation, suggested sources of supply, and information supplied for the making of any written determination required by this Policy.

**Offeror** means the person or entity who submits a proposal in response to a Request for Proposals (RFP).

**Resident** is as defined by Wyoming Statute §16-6-101(a)(i).

**Responsible Bidder**- means a Bidder that has the capability in all respects to perform the requirements of the Contract. In determining whether a Bidder is a **Responsible Bidder**, the County may consider various factors including, but not limited to, the Bidder's competence and qualifications to provide the goods or services requested, the Bidder's integrity and reliability, the past performance of the Bidder relative to the quality of the goods or services offered by the Bidder and the best interest of the County.

**Responsive Bidder** means a person who has submitted a bid which conforms in all material respects to the Invitation for Bids.

**Services** means the furnishing of labor, time, or effort by a contractor, not involving the delivery of specific end product other than reports which are merely incidental to the required performance. This term shall not include employment agreements or collective bargaining agreements.

**Shall** denotes the imperative.

**Specification** means any description of the physical or functional characteristics or of the nature of a supply, service, or construction item for an Infrastructure Facility. It may include a description or any requirement for inspecting, testing, or preparing a supply, service, or construction item for delivery.

**Substantial Completion** means the County has determined that the construction of the public work or designated portion thereof is sufficiently complete in accordance with the contract and associated documents so that the work may be occupied or utilized for its intended purpose.

**Value Engineering** means an organized effort directed at analyzing designed building features, systems, equipment, or material selection for the purpose of achieving essential functions at the lowest life cycle costs consistent with requirements for performance, quality, reliability, and safety.

**Written or In Writing** means the product of any method of forming characters on paper, other materials, or viewable screens, which can be read, retrieved, and reproduced, including information that is electronically transmitted and stored.