

SUBSTITUTE BILL NO. 1 BILL NO. 182, 2025

ORDINANCE NO. _____, 2025

Introduced by Councilmember Webb

AN ORDINANCE

AMENDING TITLE I, CHAPTER 107 SLCRO 1974, AS AMENDED, "PURCHASING," BY REPEALING CHAPTER 107 IN ITS ENTIRETY AND RE-ENACTING A NEW CHAPTER 107, SECTIONS 107.010 THROUGH 107.600 RELATED TO COUNTY PURCHASING.

BE IT ORDAINED BY THE COUNTY COUNCIL OF ST LOUIS COUNTY, MISSOURI, AS FOLLOWS:

CHAPTER 107 PROCUREMENT

§ 100 PROCUREMENT TITLE AND DEFINITIONS

107.010 Title of Chapter.

-This chapter shall be known and may be cited as the "Procurement Code of St. Louis County, Missouri."

107.020 Definitions.

-For the purpose of this chapter, the following terms, phrases, words and their derivations shall have the meanings given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory:

- (1) **Abated Project** shall mean a development or redevelopment project other than those for 15 residential single or multi-family dwellings with twenty (20) or less units for which the St. Louis County has tax granted abatements, frozen the tax rate, or provided any other benefit or incentive to encourage a development project.
- (2) **Affiliate** shall mean a contractor effectively controlled by another individual or entity under common ownership or control. A franchise company shall not be deemed to be an affiliate of the franchisor if the owner(s) of the franchise company has the

right to profit from the franchise, the company has the right to profit from its effort proportionate to ownership and bears the risk of loss.

- (3) **Amendment** shall mean a change to a contract that does not revoke the entire original agreement.
- (4) **Apprentice or Apprenticeship** shall mean real person(s) actively enrolled in a Registered Apprentice training program registered with the United States Department of Labor, pursuant to and in compliance with 29 USC § 50, et seq., and 29 C.F.R. 29, et seq., of the United States Code of Federal Regulations as it exists and may be amended from time to time.
- (5) **Apprenticeship Program** shall have the same meaning as in 29 CFR 29.2 as it exists and may be amended from time to time.
- (6) **Award** shall mean the selection of a Contractor to provide service to the County or Public Project.
- (7) **Best Value Procurement** shall mean a procurement method in which a contract is awarded based on price and other relevant factors, which taken together are deemed to provide the best overall value to the County, rather than the lowest price.
- (8) **Bid** shall mean a Bidder's response to a solicitation for bids, proposals, or statements of qualifications for a Public Project but does not include state or federally funded projects which have requirements that preempt the St. Louis County Minority and Women-Owned Business Enterprise (M/WBE) Program. In these sections the term "bid" has the same meaning as a quotation or an offer to supply goods or services for a specific price.
- (9) **Bid Bond** shall mean a surety instrument that is intended to guarantee that the bidder will execute the contract if awarded through the procurement process.
- (10) **Bidder** shall mean any individual, company, or association responding through a Bid on or for a Public Project. For these sections Bidder refers to anyone submitting a bid in response to a County procurement solicitation. Also used interchangeably with "offeror".
- (11) **BPO (Blanket Purchase Order)** shall mean a Purchase Order with line-item prices for various goods or services that may be ordered as needed.
- (12) **Brand Name or Equal** shall mean identification of a product by brand name or a substantial equivalent to such product as approved by the Chief Procurement Officer.

- (13) **Change Order** shall mean a post-award modification to a contract that may alter the scope of work and may also affect the cost or time for completion of the work.
- (14) **Chief Procurement Officer** is the Purchasing Agent of St. Louis County, Missouri.
- (15) **Commercially useful function** shall mean a subcontract fulfilled by a bidder responsible for the materials, supplies, and services used in the performance of the contract. To determine whether a subcontractor is performing a commercially useful function, the amount of work subcontracted shall be evaluated with respect to normal industry practices, including whether the amount the subcontractor is to be paid under the contract is commensurate with the work it is to perform. The subcontractor does not perform a commercially useful function if its role is limited to an extra participant in a contract through which funds are passed in order to convey only the appearance of meaningful and useful subcontractor participation.
- (16) **Competitive Range** shall mean in a Best Value evaluation, those offerors whose offers have a reasonable chance of being selected for award.
- (17) **Construction** shall mean, unless otherwise described in this Ordinance, demolition, preconstruction, Construction, reconstruction, improvement, enlargement, alteration, painting and decorating, and/or major repair as defined by 290.210, RSMO.
- (18) **Contract** shall mean a mutually-binding legal relationship or any modification thereof obligating the Contractor to furnish construction, professional services, and/or goods and other services for a Public Project and for which the County or any of its agencies, departments, instrumentalities, corporate, and quasi-public entities pays or provides financial incentive, including but not limited to bonds, tax rebates, tax abatements, and/or tax increment financing, for others to pay for them.
- (19) **Contract participation goals** shall mean the goals established for a particular contract.
- (20) **Contractual services** shall mean and include all telephone, gas, water, electric, light and power service; towel and cleaning service; janitorial and cleaning services for County facilities; any and all printing, binding and publication of stationery, forms, laws, journals, and reports; the rental, repair, or maintenance of equipment, machinery, and other County-owned property.
- (21) **Contractor** shall mean, and be, a catch-all term for a Project Manager, Prime Contractor, General Contractor, or

Subcontractor, jointly and severally. A person or business entity who provides or arranges for services under an agreement with the County.

- (22) **Cooperative Procurement** shall mean a Procurement in which two or more independent public entities use a single procurement vehicle to purchase some goods or services, either by doing the procurement together or by using a contract that anticipated use by multiple entities.
- (23) **County** is St. Louis County, Missouri. For Public Works and Public Projects, the term County additionally includes and shall mean, to the furthest extent allowed by law, each of St. Louis County, Missouri's agencies, departments, instrumentalities, corporate, and quasi-public entities.
- (24) **County Bonded Projects** shall mean those projects which are supported for the development or redevelopment of local infrastructure with bonds issued by the County or any of its agencies, departments, instrumentalities, corporate, and quasi-public entities or based on or through County bonding and the County or any of its agencies, departments, instrumentalities, corporate, and quasi-public entities has or retains a property or investment interest in the project or bond.
- (25) **County Funded Project** shall mean a project to develop or redevelop local infrastructure supported with bond proceeds, grants, loans, or other capital contributions issued by the County or any of its agencies, departments, instrumentalities, corporate, and quasi-public entities.
- (26) **County Staff** shall mean County employees and officials, including elected and appointed officials and merit and non-merit employees.
- (27) **Designated Point of Contact** shall mean the individual designated by the Chief Procurement Officer as the person responsible for all communications regarding a given solicitation.
- (28) **Developer** shall mean the individual or business that agrees to develop or redevelop real property as part of a Public Project.
- (29) **Directly engaged in construction and/or maintenance** shall mean all fixed works Construction performed, whether it be in the actual erection of the structure, or necessary for completion of the Construction or improvement constituting the Public Project, as well as employees working at nearby facilities used by any Contractor for Construction of or on a Public Project. Persons engaged solely in the transportation of materials, fuel or equipment to the site, and Contractors who

perform landscaping work (which shall be defined as seeding, sodding, and planting of trees and shrubs, and installing reinforced and gravity walls of concrete blocks no greater than 2500 pounds), and installation of irrigation systems, including all of its components, shall not be deemed to be Directly engaged in construction and/or maintenance for the purposes of this Chapter only, but still require payment of Prevailing Wages for these Persons if otherwise required.

- (30) **Disqualification/Suspension/Debarment** shall mean disqualification as relates to the initial qualification process or solicitation for a specific contract or project. Suspension and debarment are both actions that exclude a vendor from participating in County solicitations and resulting contracts, but they differ in their duration and basis. Suspension is a temporary measure, usually pending investigation or legal proceedings, while debarment is a longer-term exclusion for a defined period, often years.
- (31) **Evaluation Committee** shall mean a group of persons designated to evaluate, rank, select, or make a recommendation regarding offers the County receives in response to a solicitation.
- (32) **Fair and Reasonable Pricing** shall mean a fair and reasonable price is one that a prudent person would pay in a competitive market, reflecting the quality, delivery, and other factors of the item or service. The price must be what a prudent business person would consider fair given the circumstances, ensuring responsible use of taxpayer funds.
- (33) **Formal procurement** shall mean a competitive solicitation method by which Bidders are invited by the Chief Procurement Officer to bid through a published advertisement stating the scope, specifications, and terms of the proposed contract.
- (34) **Good Faith Effort** shall mean that a party is making an honest, sincere, and reasonable effort to fulfill their obligations, even if they encounter unexpected challenges or setbacks. It implies an absence of bad faith, malice, or deliberate attempts to avoid contractual obligations and includes all actions taken by a Bidder, Developer, Redeveloper, or Contractor consistent with the requirements, rules and procedures established by these provisions and St. Louis County Minority and Women-Owned Business Enterprise Program to achieve the workforce participation goals outlined in this Chapter. A Good Faith Effort defense shall only be available when a Bidder, Developer, Redeveloper, or Contractor demonstrates to the Director of Minority Business Development and Compliance that it acted in conformity with and in reliance on a regulation, order, ruling, approval, interpretation, or administrative practice or

enforcement policy of the State of Missouri, which is in writing and public, and such conformance and reliance and such act or omission must be in good faith.

- (35) **Hairstyle** shall include hair textures and styles of any hair length, such as protective hair and cultural hair textures and styles, and other forms of hair presentation.
- (36) **Indefinite Delivery/Indefinite Quantity (ID/IQ) Contract** shall mean contract under which the County agrees to buy at least a minimum amount of goods and services and in addition, an indefinite quantity, generally within stated limits, during a fixed period.
- (37) **Informal procurement** shall mean a solicitation method in which formal advertising is not required due to the anticipated value of the goods or services solicited and offers are solicited directly from potential providers of the requested goods or services not requiring formal procurement procedures, including emergency work. All efforts to include M/WBEs in such informal procurements and ensure that M/WBEs are given fair and ample opportunity to participate on Public Projects shall be made and all contract involving construction with an estimated base value of the project of Seventy-Five Thousand Dollars (\$75,000.00) or more, including any extension, renewal, modification, or change thereof, that constitutes a Public Works Contract, County Funded Project, County Bonded Project, Tax Increment Financed (TIF) Project, and/or Abated Project as well as to the further extent allowable by law each of the each of the agencies, departments, instrumentalities, corporate, and quasi-public entities, including emergency work shall be subject to the requirements of the Prevailing Wage Compliance Program. No contract shall be sub-divided in order to make it, or any portion thereof, eligible for informal procurement.
- (38) **Information Technology Contract** shall mean contract for the acquisition of goods or services related to information technology such as computer hardware, software licenses, software or system development, and maintenance of hardware and software.
- (39) **Intergovernmental Purchase** shall mean acquisition of goods or services from or through any Federal, State, or other public agency.
- (40) **Invitation for Bid (IFB)** shall mean the method of procuring goods or services where if award is made, it is to the responsive and responsible bidder offering the lowest price. It is primarily used for procurements where requirements are clearly

defined, and the lowest price is the main factor for awarding the contract.

- (41) **Joint venture** shall mean an association of firms in which the parties combine their property, capital, skills and knowledge to carry out an objective or compete for award of a contract.
- (42) **Labor Hours** shall mean the total number of hours On-Site Employees in Construction of Public Projects receive as hourly-wages. Labor Hours shall include hours performed by workers employed by the Contractor and all Subcontractors working on the Public Project. Labor Hours shall not include hours worked by non-working foremen, superintendents, Supervisors, owners and employees when not engaged in Construction.
- (43) **Liquidated Damages** shall mean a pre-determined amount of money contracting parties agree is the best estimate of actual damages that will be suffered if one party fails to perform, and applied when actual damages are difficult or impossible to establish.
- (44) **M/WBE** shall mean minority and women-owned business enterprise that is certified under a business certification program approved by the Director of Minority Business Development and Compliance. A minority-owned business enterprise (MBE) is a for-profit enterprise that is at least fifty-one (51) percent owned, operated and controlled on a daily basis by a minority group member who is either Asian, Black, Hispanic or Native American. A woman-owned business enterprise (WBE) is a for-profit enterprise that is at least fifty-one (51) percent owned, operated and controlled on a daily basis by a female.
- (45) **M/WBE utilization plan** shall mean the list of M/WBE subcontractors that a bidder commits to use on a construction project, that describes the work to be performed by each subcontractor specifically the MBEs and WBEs that a bidder commits will be utilized, designated by the applicable NAICS codes, including its own participation as an MBE or WBE. The M/WBE utilization plan, which includes the names of all M/WBEs to be utilized in the contract, certification information, the dollar value and scope of work to be performed, tier level of participation and their percentage of participation based on the bid amount, must be provided at time of bid.
- (46) **Manufacturer** shall mean a firm that operates or maintains an establishment that produces, on the firm's premises, the materials, supplies, articles, or equipment required under the contract.
- (47) **Micro-Purchase Threshold** shall mean the purchase threshold below which the County can make purchases using simplified

acquisition procedures without application of competitive bidding processes. The micro-purchase threshold is as defined by the Chief Procurement Officer.

- (48) **Minority and women-owned business enterprise availability** shall mean the number of businesses located in the St. Louis Metropolitan Area that are ready, willing and able to provide the supplies and contractual services being procured by St. Louis County.
- (49) **Minority and Women-owned Business Enterprise (M/WBE)** shall mean a for-profit enterprise that is at least 51 percent owned, operated, and controlled on a daily basis by a minority or woman and is certified by an entity approved by the Director of Minority Business Development and Compliance.
- (50) **Minority-owned Business Enterprise (MBE)** shall mean a for-profit enterprise that is at least 51 percent owned, operated, and controlled on a daily basis by a minority group member who is Asian, Black, Hispanic or Native American and is certified by an entity approved by the Director of Minority Business Development and Compliance.
- (51) **Mobilization Payment** shall mean payment made by the County to a contractor for actual payments made by the contractor for preparatory work prior to commencing actual work on a construction project, which may include expenses necessary for the movement of personnel, equipment, supplies and incidentals to the project site, establishment of offices, buildings and other facilities necessary for work on the project, and other work and operations for which costs are incurred prior to beginning work on the project.
- (52) **NAICS (North American Industry Classification System)** shall mean a coding system adopted by the U.S. Office of Management and Budget that classifies businesses by their primary business activities.
- (53) **Negotiated Acquisition** shall mean a method of procurement used when only a few vendors are available to provide the goods or services needed, or when there is limited time available to procure necessary goods or services, or when competitive procurement is otherwise not feasible.
- (54) **Notice of Intent to Perform** shall mean a document the Director of Minority Business Development and Compliance may request that bidders submit with a bid, signed by an authorized representative of an M/WBE, indicating the M/WBE's commitment to work on the project and the dollar value of its participation.
- (55) **Notice of intent to perform a subcontract** shall mean the forms the bidders are required to submit to St. Louis County at time

of bid, signed by each subcontractor listed in the M/WBE utilization plan. Failure to include a completed notice of intent form signed by each subcontractor shall be sufficient cause to reject a bid as non-responsive.

- (56) **Offer** shall mean a response to a solicitation that, if accepted, would bind the offeror to perform the resulting contract.
- (57) **Offeror** shall mean anyone submitting a proposal in response to a procurement solicitation. The term is often used interchangeably with "bidder".
- (58) **On-Site Employee** shall mean any laborer, workers, drivers, equipment operators, and crafts persons employed by a Contractor directly engaged in construction on Public Project.
- (59) **Open Source Software** shall mean Software where the source code is made publicly available for other developers to adopt or modify.
- (60) **Open Source Software Solution** shall mean adapting Open Source Software for County use.
- (61) **Out of Ratio** shall mean that the number of Apprentices exceeds the number of journeypersons of the same craft classification, using a one-to-one ratio of Apprentices to journeypersons, unless Missouri's Prevailing Wage Law is amended to set a different ratio in which case the different ratio shall apply.
- (62) **Payment bonds** shall mean a surety instrument equal in value to the contract price which is intended to account for full payment of subcontractors and suppliers.
- (63) **Performance bonds** shall mean a surety instrument equal in value to the contract price which is intended to ensure that the Contractor will fulfill all contractual obligations.
- (64) **Person** shall mean any real individual or a partnership, association, corporation, business, business trust, or organized group of persons.
- (65) **Piggyback** shall mean a form of intergovernmental cooperative purchasing in which one governmental entity uses, or "piggybacks" another organization's contract that provides the new user the same pricing and terms as those offered to the original entity.
- (66) **Pre-qualification** shall mean a process which evaluates a contractor's qualifications and ability to successfully complete a project before that contractor is allowed to bid on it.

- (67) **Prevailing Market Price** shall mean the current average rate for goods or services in a relevant market, determined under similar competitive conditions for items of similar quality and quantity.
- (68) **Prevailing Wage(s)** shall mean the minimum combined hourly wage and fringe benefit amount for a Labor Hour that is no less than that of the area's standard Prevailing Wages as provided and determined under the mechanism described in Sections 290.210 - 290.340, RSMo., as such statutes now exist as of the effective date of this section's adoption. The appropriate rate to be used is the Prevailing Wage rate determined at the time the physical work begins on the Public Project, and not when it is Awarded.
- (69) **Prevailing Wage Enforcement Coordinator** is the County employee responsible for coordinating compliance with the Prevailing Wage, Apprenticeship, and Labor Standards sections of the Procurement Code of St. Louis County, Missouri.
- (70) **Price Analysis** shall mean examining and evaluating a proposed price to determine whether it may be considered fair and reasonable, often by comparison with the prices of competitors or providers of similar goods and services.
- (71) **Prime contractor** shall mean the person responsible for the work on the Public Project for the entire Public Project, directly or indirectly, through its own actions and employees or, in whole or in part, through Contractors, and that has the full responsibility for completing the terms of the agreement.
- (72) **Professional Services** shall mean services requiring specialized knowledge, skill, or technical expertise. Solicitation of architectural, engineering, and surveying services shall conform to the requirements of sections 8.285 to 8.291 RSMo. Missouri law requires the use of the qualifications based selection process for architectural, engineering and land surveying services to ensure that the most competent professional services available, based on demonstrated qualifications for type of service required at fair and reasonable prices.
- (73) **Protective hair, natural and cultural hair textures and styles** shall include hairstyles and hair textures most commonly associated with race, including, without limitation, braids, cornrows, locs, Bantu knots, Afros, and twists, whether or not hair extensions or treatments are used to create or maintain any such hairstyle, and whether or not the hairstyle is adorned by hair ornaments, beads or headwraps.
- (74) **Public notice** shall mean the advertisement of procurement solicitations to ensure open and fair competition information

available to the public and interested parties, using methods that are reasonably deemed most likely to reach a sufficient number of people including the distribution or dissemination of information to interested parties using methods that are reasonably available and deemed most likely to obtain the greatest number of responses from qualified providers of the required services. Such methods may include publication in newspapers of general circulation, electronic or paper mailing lists and websites designated by the County or State and maintained for that purpose, including but not limited to Missouri Buys.

- (75) **Public Project** shall mean, and be, a catch-all term for any contract involving construction with an estimated base value of the project of Seventy-Five Thousand Dollars (\$75,000.00) or more, including any extension, renewal, modification, or change thereof, that constitutes a Public Works Contract, County Funded Project, County Bonded Project, Tax Increment Financed (TIF) Project, and/or Abated Project as well as to the further extent allowable by law each of the each of the agencies, departments, instrumentalities, corporate, and quasi-public entities owned by the County; and/or which the County (either by County Executive appointment, appointment through the County Council; or both) appoints members, officers, directors, or trustees; and/or which the County (either through the County Council or executive office approval, or a combination thereof) has approval or disapproval authority, including but not limited to: tax increment financing under Sections 99.800 through 99.866, RSMO.; tax abatements under Sections 447.700 through 447.718 RSMO.; tax abatement under Sections 353.010 through 353.190, RSMO.; tax abatement under Sections 100.010 through 100.200, RSMO.; low or frozen loan programs, or County bonding requiring the County or any of its public or publicly owned or affiliated entities to expend or refrain from collecting monies or property otherwise due but for the Incentive; a transportation development district under Sections 238.200 through 238.280, RSMO.; or community improvement district under Sections 67.1401 through 67.1574; or a port authority under Sections 68.010, RSMO., et. seq; or any incentivizing vehicle or entity that incentivizes development and construction including but not limited to Tax Increment Financing ("TIF"), Community Improvement Districts ("CID"); Sales Tax Rebate and Development Agreements per RSMo. Ch. 70; Transportation Development Districts ("TDD"); Special Business Districts ("SBD"); Neighborhood Improvement Districts ("NID"), Property Tax Abatement per RSMo. Ch. 353; Property Tax Abatement per RSMo. Ch. 100; Land Clearance Redevelopment Authorities ("LCRA"); Local Options Economic Development Sales Tax

("LOEDST"); and Brownfields found inside and outside of the County Charter; as well as all County procurement on any public works project, and other bonding, taxing, financing, granting, and or their functional equivalents.

- (76) **Public Works Contract** shall mean, for the purposes of this Chapter, a contract for construction work for a Public Project entered into by the County or any of its agencies, departments, instrumentalities, corporate, and quasi-public entities in the name of the County or any of its agencies, departments, instrumentalities, corporate, and quasi-public entities or a contract for construction on land owned or controlled by the County or any of its agencies, departments, instrumentalities, corporate, and quasi-public entities or any agency or instrumentality of the County or any of its agencies, departments, instrumentalities, corporate, and quasi-public entities which is leased to another party, with an estimated base contract value of Seventy-Five Thousand Dollars (\$75,000.00) or more.
- (77) **Purchase** shall mean buying, purchasing, renting, leasing or otherwise acquiring any supplies, professional, consulting or contractual services or construction. It includes all functions that pertain to the obtaining of any supply, service or construction, including description of the requirements, selection and solicitation of sources, preparation and award of contract and all phases of administration. The provisions of this Code shall not apply to the acquisition of personal or real property by donation or gift.
- (78) **Purchase Order** shall mean an official document from the County that states the items or services the County wishes to buy and directs the vendor to provide them.
- (79) **Qualifications-Based Selection (QBS)** shall mean the method used to evaluate prospective providers of services including but not limited to architectural, engineering, and land surveying (A/E) services, through a process that emphasizes qualifications, experience, and technical competence over price. This approach ensures the selection of firms best suited to deliver safe and high-quality design and engineering solutions for public projects.
- (80) **Request for Information (RFI)** shall mean a research and information gathering exercise or document used to learn about options available for addressing a particular issue, or to obtain information that will aid in creating requirements for a potential solicitation. Often used to determine what is available in the marketplace, whether requirements can be met by the business community, whether funding levels are

appropriate, and to gauge levels of interest in a possible procurement. When used in construction, it may refer to requests from a contractor to the County for clarification of plans or specifications.

- (81) **Request for Proposal (RFP)** shall mean a document announcing the County's interest in obtaining goods or services and inviting interested parties to propose methods of providing those goods or services, where the final selection of a provider will be based on the best overall value to the County.
- (82) **Request for Qualifications (RFQ)** shall mean the method for selecting architecture, design, engineering, and similar services involved in County projects, in which the County requests interested parties to submit their qualifications to undertake one or more projects, selects the firm or firms deemed most highly qualified, and only then negotiates prices.
- (83) **Request for Quotation** shall mean a document used to solicit pricing and other detailed information, like delivery timelines, from vendors. Primarily used when the County's project or needs are not yet fully defined, or when the aggregate amount involved in a transaction is below the simplified acquisition threshold.
- (84) **Requirements Contract** shall mean an indefinite quantity type of contract for goods or services in which the County agrees to obtain all of its needs from a single vendor and in return the vendor agrees to provide all of the County's needed goods or services.
- (85) **Responsible bidder** shall mean a bidder or proposer able to meet all requirements of a solicitation and subsequent contract, possessing or able to obtain the financial and technical capability to perform and to comply with all legal and regulatory requirements, having a history of satisfactory performance, is not on a Federal or State debar list, and in the opinion of the Chief Procurement Officer, generally demonstrating the quality, fitness, capacity, and experience to satisfactorily perform the proposed work or supply the proposed goods. For Public Project construction Responsible bidder shall be those bidders who certify by notarized statement that: they maintain or participate in an apprenticeship program, have not been barred from bidding on any federal or State projects within the three years; that they have not had any State or County-issued business, trade or contracting license suspended or revoked within the three years; that they have and enforce a drug-testing policy for all on-site employees; that all employees will be licensed with the appropriate licensing authority; that prevailing wages will be paid to all on-site employees; that prior to working on the public project all on-

site employees will be ten-hour OSHA-certified and all on-site employee supervisors will be thirty-hour OSHA-certified; and that they will comply with all applicable laws, ordinances, rules and regulations governing the conduct of business in St. Louis County and the State of Missouri.

- (86) **Responsive Bid/Proposal** shall mean a bid or proposal that conforms in all material respects to the requirements of the solicitation.
- (87) **Service Level Agreement (SLA)** shall mean an agreement between a contractor and the County that defines the level of service the County expects and lays out the metrics by which service is measured, as well as remedies or penalties if the service levels are not met.
- (88) **Simplified Acquisition Procedure (SAP)** shall mean streamlined rules and methods used by the County to expedite the procurement of goods and services, particularly for smaller dollar value purchases. SAPs aim to reduce administrative costs and burdens for both County agencies and contractors, making it easier and faster to acquire necessary supplies and services.
- (89) **Simplified Acquisition Threshold (SAT)** shall mean the maximum established procurement cost estimate for when Simplified Acquisition Procedures (informal procedures) can be used. The SAT is established at \$100,000.
- (90) **Single Source** shall mean a situation where more than one source exists that can meet the specific needs of the procurement action, but the procuring agency selects one supplier on a noncompetitive basis.
- (91) **Sole Source** shall mean a situation where only one responsible source exists that can meet the specific needs of the procurement action.
- (92) **Solicitation** shall mean any request to submit offers, bids, or quotations to the County for the acquisition of supplies or services. The term encompasses requests for quotations, invitations for bid, requests for qualification, and requests for proposals, depending on the acquisition method.
- (93) **Subject matter expert** shall mean a County employee with specialized skills or knowledge on a particular topic or discipline relevant to the services solicited or requested who provides knowledge and expertise to the County on a specific topic or discipline during a procurement process but has no decision-making authority in selecting a vendor for award of a contract.

- (94) **Subcontractor** shall mean a party that has an agreement with a Prime Contractor to undertake part of the Prime Contractor's required work for the County, but that does not itself have an agreement with the County. For purposes of a contract on a Public Project, a subcontractor also provides On-Site Employees and performs a service or provide materials, equipment, or supplies as a part of the scope of work set forth in a prime contract with a Prime Contractor, but that is not a Prime Contractor or a General Contractor. A Subcontractor need not have a direct contract with a Prime Contractor to be a Subcontractor or Contractor under this Chapter.
- (95) **Supervisor** shall mean in the context of construction, individuals such as superintendent, non-working-foreman, project manager, safety director, or non-working lead tradesman on a Public Project who has the authority, in the interest of a Contractor, to hire, transfer, suspend, lay off, recall, promote, discharge, assign reward, or discipline other employees, or responsible to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.
- (96) **Supplies** shall mean and include all materials, supplies and equipment.
- (97) **Tax Increment Financed Project** shall mean those projects outlined in Missouri's Real Property Tax Increment Allocation Redevelopment Act, Section 99.800–99.865, RSMo.
- (98) **Technical Proposal** shall mean the portion of a proposal in response to an RFP or RFQ that does not include price but that specifies how the proposer plans to provide the required goods and services.
- (99) **User Department** shall mean the department that develops the requisitions for the County or any of its agencies, departments, instrumentalities, corporate, and quasi-public entities.
- (100) **Using agency** is any department, agency, commission, board, bureau, instrumentalities, corporate, quasi-public entities, or other unit in the County government, using supplies or procuring contractual services as provided for in this chapter.

107.030 Division of Procurement–Establishment.

–There is hereby established in the Department of Administration a Division of Procurement, and in said Division the Chief Procurement Officer who shall act as the Purchasing Agent, as

provided for in Article V, Section 38 of the St. Louis County Charter.

107.040 Chief Procurement Officer-Powers and Duties.

–The Chief Procurement Officer shall be the head, and have general supervision, of the Division of Procurement. They shall perform all duties required of a division head by the St. Louis County Charter and by law, and shall have the powers and duties prescribed by this chapter.

107.050 Chief Procurement Officer–Qualifications, Bond.

– The Director of Administration shall appoint, under the merit system, a Chief Procurement Officer who shall have charge of and be responsible for the procurement of all supplies, personal property, and services for the County as may be directed by ordinance or applicable law. The Chief Procurement Officer shall be at least twenty-five (25) years of age and shall possess either a Master's degree from an accredited institution of higher education or a minimum of ten (10) years of experience in public or private sector procurement, supply chain management, or public administration, along with demonstrated knowledge of procurement laws, regulations, competitive bidding processes, contract administration, and public procurement ethics. The Chief Procurement Officer shall provide a surety bond to be approved by the County Counselor in the sum of fifty thousand dollars (\$50,000.00), conditioned upon the faithful performance of duties, and shall complete a minimum of twenty (20) hours of continuing education annually in procurement-related topics to maintain current knowledge of best practices, legal requirements, and industry developments.

107.060 Scope of Procurement Authority.

–The Chief Procurement Officer shall have the power and it shall be their duty, except as may be otherwise provided by law or ordinance: To purchase or contract for all supplies, professional services and contractual services needed by the County, in accordance with purchasing procedures as prescribed by this chapter, such rules and regulations as the Chief Procurement Officer shall adopt for the internal management and operation of the Division of Procurement, and such other rules and regulations as may be prescribed by the County Executive and County Council. The Chief Procurement Officer shall have exclusive authority to negotiate all purchases for the County. Except as herein provided, it shall be unlawful for any County officer to order the purchase of any supplies or make any contract within the purview of this

chapter other than through the Division of Procurement, and any purchases ordered, or contract made contrary to the provisions of this chapter shall not be approved and shall not be binding on the County.

107.070 Other Powers and Duties.

1. In addition to the purchasing authority conferred in section 107.060 and in addition to any other powers and duties conferred by this chapter, the Chief Procurement Officer shall:

- (a) Act to procure for the County a suitable quality in supplies, professional services and contractual services at the least expense to the County. The Chief Procurement Officer shall determine which method of purchase shall be used for the acquisition of supplies, professional services or contractual services;
- (b) Act so as to procure for the County all federal tax exemptions to which it is entitled. Make determinations of responsibility, responsiveness, and whether the price is fair and reasonable;
- (c) Adopt such rules and regulations as appropriate for the requirement of corporate surety bonds for contracts, as required by 107.170 RSMo;
- (d) Authorize Using Agencies having the staff and facilities for adequate inspection to inspect all deliveries under rules and regulations the Chief Procurement Officer prescribes;
- (e) Cooperate with the Chief Accounting Officer and the Performance Management and Budget Director so as to secure for the County the maximum efficiency in budgeting and accounting;
- (f) Develop and implement policies and processes regarding pre-qualification of construction, engineering service providers, design consultants, surveyors, or providers of other types of professional services in specific areas of expertise;
- (g) Discourage collusive or restrictive bidding and endeavor to obtain as full and open competition as possible on all procurements to the extent appropriate based on the needs of the County;
- (h) Establish, and amend when necessary, all rules and regulations authorized by this chapter and any others necessary to its operation;
- (i) Explore the possibilities of buying in bulk so as to take full advantage of discounts and procure high quality

supplies, equipment, vehicles, and services at the best value to the County;

- (j) Have the authority to declare as irresponsible bidders those vendors who default on their quotations, and to disqualify them from receiving any business from the County for a stated period of time;
- (k) Have the authority to disqualify, suspend, or debar contractors and subcontractors from any contracts with the County for a stated period of time in accordance with the provisions of section 107.510;
- (l) If chemical and physical tests of samples are to be submitted with bids, or Chief Procurement Officer determines that prototypes or samples of deliveries are necessary to determine their quality and conformance with specifications, Chief Procurement Officer may make use of County laboratory facilities or of an outside laboratory;
- (m) Keep informed of current developments in the field of procurement, prices, market conditions and new products, and secure for the County the benefits of research done in the field of procurement by other governmental jurisdictions, national technical associations, trade associations having national recognition and by private businesses and organizations;
- (n) Monitor compliance with this Code and implementing regulations by reviewing and monitoring procurements conducted by any Using Agency operating with delegated authority;
- (o) Prepare and adopt a standard procurement nomenclature for using agencies and suppliers;
- (p) Prescribe and maintain such forms and templates as reasonably necessary to the operation of this chapter, and;
- (q) Work with the using agency to determine the required need of the department and term of the contract based on that need and the need to procure the supplies or services at the most competitive rate for the County. Unless otherwise provided by law, a contract for supplies, professional services or contractual services may be entered into for any period of time deemed to be in the best interests of the County as reasonably determined by the Chief Procurement Officer and the using agency.

2. Except as otherwise provided in the Procurement Code, all rights, duties and authority relating to the purchase and

procurement of supplies, professional services and contractual services shall be vested in the Chief Procurement Officer.

3. Using agencies shall submit requests for invitations for bids (IFB) and requests for proposals (RFP) to the Chief Procurement Officer. Upon receipt of the using agency's request, the Chief Procurement Officer shall determine the method of purchase that will be used and work with the using agency to prepare the appropriate solicitation. The Chief Procurement Officer shall monitor the process with the using agency to ensure timely completion and the integrity of the method of purchase. The Chief Procurement Officer shall certify to the County Council that the method of purchase was properly followed at the time a request to award a contract or for legislation authorizing execution of a contract is submitted to the County Council.
4. Annual Report to County Council. The Chief Procurement Officer shall submit to the County Executive and County Council, no later than March 31 of each year, a comprehensive annual report detailing the County's procurement activities and progress in implementing policy objectives and intent of the Minority/Women Business Enterprise (M/WBE) Program and the Prevailing Wage Compliance Program, and the report shall be made publicly available through the County's website within 30 days of submission to the County Council.

§200 PROCUREMENT AND CONTRACT REQUIREMENTS AND POLICIES

107.201 - General Applicability of Chapter

The requirements of this Procurement Code apply to all procurements made by the County or any of its agencies, departments, instrumentalities, corporate, and quasi-public entities, except the purchasing requirements will not apply to the extent that a source of funds outside the County, a Federal or State statute or rule, the terms of a court order, settlement agreement, or consent decree, or other applicable law expressly authorizes or requires otherwise. In the event Federal or State laws change and are binding on the County and in conflict with any provision of this chapter, the County will follow the applicable Federal or State requirements to the minimum extent necessary so as to not create a conflict therewith, but in no way shall this subsection be enforced in such a manner as to directly conflict with any federal statutes or rules and regulations including, but not limited to,

23 U.S. Code § 113, 29 CFR Part 5, 2 CFR § 200.319, and 23 CFR § 635.110.

107.202 - Procurement Policies and Standards

1. Competitive procurement is the County's preferred method of procurement unless competition is not feasible due to an emergency, restricted availability of goods or services, or other circumstances the Chief Procurement Officer determines would justify waivers of competitive requirements. Pursuant to a competitive solicitation, compliant bids may be chosen based on price alone or may be best value procurements, in which price is one of several factors considered.

2. All Using Agencies will commence procurement, either by or with the authorization of the head of the department or office under which the Using Agency operates, by filing with the Chief Procurement Officer a detailed requisition, in such form as the Chief Procurement Officer may prescribe.

a. Using agencies shall collaborate with the Chief Procurement Officer to determine the optimal methods to describe their needs for the purchase of goods and services. Using agencies shall provide one of the following:

(i) specifications (functional specifications, performance specifications, technical specifications, or design specifications);

(ii) Statements of work/performance-based work statements; or

(iii) A request for "Brand Name or Equal".

3. All solicitations of any dollar value must contain:

a. Clear descriptions of the County's requirements, with complete information regarding materials, products, or services to be provided or problems to be solved;

b. Instructions and requirements for submission of offers;

c. Due dates and times for submission;

d. Communication protocols between offerors or potential offerors and County staff during the solicitation;

e. The basis for contract award; and

f. The basis on which payment will be made. Mobilization Payments are allowed only for construction contracts.

4. All advertisements for solicitations must contain the name and a summary of the solicitation, the due date for submissions of offers, and information on how to obtain the complete solicitation.

5. Contracts may only be awarded to individuals or organizations that the Chief Procurement Officer determines are responsible, responsive, and fairly and reasonably priced. In determining responsibility, the Chief Procurement Officer may consider factors that include the individual's or organization's experience; integrity and reputation; compliance with public policy and laws; past performance; available resources to satisfactorily perform; ability to provide future maintenance and service if applicable; Federal or State debarment status; licensing status; competing commitments; pending litigation; and any other matter that might affect their ability to carry out the subject matter of the contract.

6. Mistakes and Irregularities in Bids

a. After the opening of bids, the Chief Procurement Officer shall examine all bids for mistakes. In cases of apparent mistakes and in cases where the Chief Procurement Officer has reason to believe that a mistake may have been made, the Chief Procurement Officer shall request from the bidder a verification of the bid, calling attention to the suspected mistake. If the bidder alleges a mistake, the matter shall be processed in accordance with this section 107.202. Such actions shall be taken before award.

b. Any clerical error, apparent on its face, may be corrected by the Chief Procurement Officer before contract award. Upon discovery of an apparent clerical error, the Chief Procurement Officer will contact the bidder/offeror to request clarification of the intended bid/proposal and the correction will be incorporated in the notice of award, if applicable.

c. Minor irregularities in bid/proposals can be waived by the Chief Procurement Officer if the waiver does not create a competitive advantage for any bidder/offeror. Such waiver is appropriate for a condition that does not conform with a mandatory requirement of the solicitation document, and therefore could otherwise be considered nonresponsive, but is so minor in nature, or cannot otherwise be met by all bidders/offerors, that to determine non-responsiveness could be considered unreasonable and would not be to the County's advantage.

d. The Chief Procurement Officer has the right to request clarification of any portion of the bidder/offeror's response in order to verify the intent of the bidder/offeror. When

evaluating a bid/proposal, the Chief Procurement Officer has the right to consider relevant information and fact, whether gained from a bid/proposal response, from a bidder/offeror, from a bidder/offeror's references, or from any other source. Any information submitted with a bid/proposal response, regardless of the format or placement of such information, may be considered in making decisions related to the responsiveness and merit of a bid/proposal and the award of a contract.

7. For all solicitations, the Chief Procurement Officer will specify an individual to be the Designated Point of Contact.

107.203 - Local Vendor Preference

1. The County may give preference to products manufactured, mined, produced, or grown within St. Louis County, and to products and services provided by firms, corporations, or individuals doing business in St. Louis County over those outside St. Louis County. Preference is permitted where quality and other considerations are equal or better to those specified and the difference in the price is less than one percent higher than the lowest responsive and responsible bid. For the purpose of this section, "local source or business" shall mean a source or business with a physical business address located within St. Louis County from which the vendor is operating and has operated for the last six months. Post office boxes will not establish the required physical business address.

2. If the procurement has not been conducted by the Chief Procurement Officer, preference for a local source must be provided to and approved by the Chief Procurement Officer.

3. Products manufactured in the United States may be given preference over products manufactured outside the United States if the quality and other considerations are equal to those specified and the price offered is less than one percent over the lowest responsible bid. This provision does not apply if Federal or State requirements supersede.

107.204 - Electronic Documents

The County may release any solicitation, form, notice, or other document in hard copy or electronic format, or both, and may require documents to be submitted in hard copy or electronic

format, or both, and may establish standards and accept or require signatures in electronic form. Electronic format will be acceptable for any document required to be in writing, unless otherwise expressly prohibited by law.

107.205 - Procurement Ethics

1. Conflicts of Interest

a. Personal Conflict of Interest

No County employee may use information regarding a provider of goods or services for the actual or anticipated personal gain of the employee or another person if the information was obtained from the employee's participation in a County procurement and could impair the employee's ability to act impartially and in the best interest of the County. This section is intended to supplement, not supplant, Chapter 203 SLCRO 1974 as amended.

b. Organizational Conflicts of Interest

Organizational conflicts of interest are circumstances that arise out of a party's business or financial interests, familial relationships, contractual relationships, organizational structure, or existing or past activities, including any prior interactions or work with the County, that result or can result in:

- (i) A competitive advantage with respect to a County procurement;
- (ii) Impairment or potential impairment of the party's ability to perform impartially or to render objective and impartial assistance or advice to the County under existing or other potential contracts;
- (iii) Unequal access to information or influence on requirements, such as unreleased budgets, scopes of work, selection criteria;
or
- (iv) The appearance or reality of impropriety or unfair competitive advantage with respect to any of the County's procurements or contracts.

c. A party with an organizational conflict of interest, or with employees or team members who have a conflict of interest, may not be awarded a contract resulting from the procurement in which the organizational conflict of interest existed.

d. No person or entity may submit an offer in response to a County solicitation if the person or entity has:

(i) Directly assisted the County in drafting or in preparing the specifications, requirements, or cost estimates for that procurement; or

(ii) Had access and exposure to information pertinent to that procurement that was unavailable to other offerors and would provide a competitive advantage to its possessor.

(iii) The Chief Procurement Officer may consider an exception:

(1) If it provides a significant cost benefit or an essential degree of expertise to the project that would otherwise be unavailable;

(2) If the involvement was "De Minimis". In some cases, a negligible or "de minimis" level of involvement in drafting specifications might not constitute a conflict of interest that bars an offer. The specific criteria for determining what constitutes "de minimis" involvement depends on the relevant regulations and the facts of the specific situation;

(3) Contractors are furnishing information upon County request;

(4) Contractors who, at the County's request, provide specifications or data regarding a product they already provide would not automatically be excluded from bidding, even if the County paid for that data;

(5) When contractors act as industry representatives to assist County departments in preparing, refining, or coordinating specifications, they may still be allowed to submit offers, provided their assistance is supervised and controlled by County representatives;

(6) Work statements involving multiple contractors, if more than one contractor is involved in preparing the work statement, the potential for a single contractor to unfairly influence the specifications is reduced;

(7) Sole source procurements. If the Chief Procurement Officer determines that a particular contractor is the sole source for a required system, component, or service, then the conflict of

interest rules related to drafting specifications may not apply because in situations where there is no competition, the concern about unfair advantage stemming from specification drafting becomes less relevant; and

(8) General advice or information offered as part of the County's general information-gathering and market research involving multiple entities at the beginning stages of developing a solicitation and prior to its release, and comments made subsequent to the release of the solicitation, will not create a conflict of interest, nor would contracts that are part of a single competitive procurement conducted in more than one stage.

107.210 - Whistleblower Protection

1. County Procurement Process Hotline

a. The Director of Administration will initiate the procurement and manage the resulting contract for an outside party to operate a hotline by which County employees, offerors and potential offerors on County contracts, and employees of County contractors may confidentially, to the extent permitted by law, report violations of County, State or Federal law pertaining to County procurement processes, including conflict of interest laws. The contract must require that the hotline will be available from at least 9:00 am to 5:00 pm, Monday through Friday, and will be able to receive reports by telephone or email. The operator of the hotline must be able to keep the identity of persons reporting violations confidential and send received reports to the Director of Administration within two business days of receiving a report.

b. The Director of Administration, or County personnel delegated by the Director of Administration, shall investigate the reports and recommend actions to other County personnel as applicable.

c. All County officers and employees who receive personally identifiable information concerning a hotline reporter will maintain confidentiality of the information to the greatest extent feasible and to the extent permitted by law, considering the need to conduct a thorough investigation.

2. No Retaliation

a. No County employee nor any employee of a contractor or subcontractor providing goods or services under a County

contract, who refuses to violate or who has reasonable cause to believe there is a violation of a local, State, or Federal rule or regulation, or who believes there is an imminent danger to public safety, and who files a complaint or provides information or otherwise assists in investigating a violation or potential violation, may be disciplined, discharged, or otherwise retaliated against for providing the assistance or information.

b. No County employee, officer, or elected official may retaliate in any manner against a person who in good faith reports a violation to the hotline. Any person convicted of violating this section may be sentenced to a fine of up to \$1,000.00 or imprisonment of up to one week in the County Jail, or both. This penalty is in addition to any other remedy available at law, including employee disciplinary action.

107.220 - Non-Discrimination

1. Non-Discrimination by Contractors

To the extent permitted by law, County contracts for the acquisition of goods or services must contain a nondiscrimination clause prohibiting the contractor from discrimination against any employee or applicant regarding employment, promotion, demotion, transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, because of actual or perceived race, creed, color, sex, sexual orientation, gender identity, gender expression, political affiliation, disability, age, religion, or nation, ethnic or cultural origin unless based upon a bona fide occupational qualification. Additionally, to the extent permitted by law, such contract must contain a provision that the contractor may not discriminate against any employee or applicant employment because of hairstyle, pertaining to hairstyle, protective hair, or natural or cultural hair texture or style, unless based upon demonstrable workplace safety concerns directly related to duties and responsibilities of the employment position.

107.225 - Cone of Silence

1. Purpose

The purpose of this Cone of Silence policy is to safeguard the integrity of the procurement process by preventing unauthorized communications regarding competitive solicitations between potential vendors, their representatives, and Using Agency personnel. This policy aims to foster accountability and fair

competition in the procurement process. The requirements of this section shall be allowed to change to the extent necessary so as to apply to solicitations on projects where the County's normal procedures conflict with its ability to receives federal, state or other funding and the funding source prohibits application of this section.

2. Prohibited Communication

a. Prior to releasing a solicitation, County employees may engage in information gathering and constructive exchanges with vendors as part of market research, provided that those exchanges are consistent with existing laws and regulations and promote a fair competitive environment. However, no County employee may provide a party with information regarding a planned procurement if that information could provide a competitive advantage to the party receiving the information and is not made available to all potential offerors.

b. Subsequent to the posting of a solicitation, all communication regarding the status of the solicitation may be provided only through the Designated Point(s) of Contact. This restriction on communication will terminate at the time bids are publicly opened, or for Best Value solicitations, when contract negotiations are complete, or if applicable, a request for legislation to authorize execution of a contract resulting from the solicitation is placed on the County Council agenda, or when all offers are rejected by the County. If the Best Value solicitation does not require additional legislative action to authorize execution of a contract, the cone of silence will conclude upon the notification of unsuccessful offerors by the Chief Procurement Officer.

c. No County employee and no Subject Matter Expert assisting County employees in evaluating offers, while offers are being received or evaluated, may

(i) Communicate, discuss, or disclose any information regarding offers, the identity of offerors, deliberations, or negotiations to any other person, including other County employees and supervisors not directly involved in the solicitation, other than the communication defined in the solicitation and the exceptions specified in this chapter;
or

(ii) Communicate with offerors regarding their offers or other offers outside of evaluation committee meetings, unless the information has been made public or relates only

to general administrative requirements, such as due dates, access to the County website, or similar subjects.

3. Permitted Communication

The prohibition on communication does not include:

a. Oral or written communication between an offeror or potential offeror and County staff regarding other existing contracts the offeror has with the County;

b. Oral or written communication between an offeror or an offeror's representative and the Designated Point of Contact;

c. Oral or written communications in response to communication from the Director of Minority Business Development and Compliance, the Contract Compliance Manager, or Contract and Workforce Compliance Specialists;

d. Oral or written communications with the Prevailing Wage Enforcement Coordinator regarding compliance with prevailing wage and apprenticeship requirements;

e. Communication of any type between offerors and County staff negotiating terms of a contract resulting from the solicitation;

f. Oral or written communications from an offeror or offeror's representative regarding a Council agenda item to County Staff; however, anyone receiving or making any such communication also must file it with the County Clerk, who will include all written communication as part of the Council agenda item when publishing information related to the agenda;

g. Public statements made at a public forum at any County Council meeting, subject to the discretion and limitation by the Council;

h. Purchases exempt from the competitive process; and

g. Solicitations for projects where the County receives Federal, State or other funding and the funding source prohibits application of this section.

4. Notification of the Cone of Silence

a. The Chief Procurement Officer will provide written notice of the commencement of the Cone of Silence to County departments, the County Executive, each County Council member, and the County Clerk for procurement actions for which the Cone of Silence applies.

b. All solicitations subject to the Cone of Silence must include provisions describing the requirements and prohibitions of the Cone of Silence.

5. Violation of the Cone of Silence

a. Violation of the Cone of Silence by an offeror or offeror's representative may result in the Chief Procurement Officer 's designation of the bid, proposal, statement of qualifications, or any other offer as non-responsive and the offeror as non-responsible and ineligible for any contract with the County for a period of such time as the Chief Procurement Officer may determine.

b. Violation of the Cone of Silence by a St. Louis County employee may subject the employee to disciplinary action up to and including dismissal from County service.

107.230 - False Representation Prohibited

1. Any offeror who, in the course of a procurement, knowingly and willfully falsifies, conceals or covers up by any trick, scheme or device, a material fact, or makes any false, fictitious or fraudulent statement or representation, or makes or uses any false writing or document, knowing the same to contain any false, fictitious or fraudulent statement or representation, may be fined upon conviction, an amount up to \$1,000.00, or imprisoned in the County Jail not more than one year, or both.

2. If the false representation was made to obtain an order or contract, or to prohibit another party from obtaining an order or contract, the Chief Procurement Officer may bar the offending party from contracting with the County for such time as the Chief Procurement Officer may determine and may require the party to reimburse the County for any costs incurred in correcting the matter for which the falsehood was given.

107.235 - Grants

1. The County encourages using agencies to seek grants to accomplish the work of the County that would otherwise be funded entirely by the County. The County Council may approve acceptance of the grant funds as well as appropriation and spending of the grant funds upon the Using Agency's submission of the following information:

a. Any other participants specified in the grant application submitted to the funding source; and b. A description of the services to be provided and whether the services are an expansion of a current program, project, or service.

2. The County may issue a Notice of Funds Availability and solicit offers from for-profit or not-for-profit organizations to

offer services. The selection of offerors and award of funds will follow the County procurement rules unless otherwise mandated by the source of the funds.

107.240 - Environmental Safety and Sustainability

The County will consider environmental safety and sustainability for all purchases, and whenever practical, will give preference to items that have been or that can be recycled and disposed of in an environmentally sound manner, to environmentally preferable products and services where criteria have been established by governmental or other widely recognized authorities, to products that have been produced with less harmful and non-toxic materials and processes than competing products, and to energy-efficient products. However, nothing in this policy is to be construed as requiring products that do not perform adequately for their intended uses, that exclude adequate competition, or that are not available at a reasonable price in a reasonable time.

107.245 - Contract Duration

Unless otherwise provided by law, a contract for goods or services may be entered into for any period deemed to be in the best interests of the County as reasonably determined by the Chief Procurement Officer and the Using Agency, with due regard for the County's desire to encourage competition and provide contracting opportunities to all qualified vendors. The contract will define the authorized contract term.

107.250 - Contract Award Procedures

1. Signatories

a. The County Executive is authorized to execute contracts that result from invitations for bid (IFB), or non-competitive procurements, intergovernmental purchases, or auctions.

b. The County Executive is authorized to execute contracts that result from requests for proposal (RFP)s, requests for quotations, requests for qualifications (the type of "RFQ" used for Qualifications-Based Solicitations), cooperative procurements, informal solicitations used for small and non-complex requirements, and micropurchases.

c. The County Executive is authorized to execute contracts for renewals of contracts and purchase orders consistent with the terms and conditions of the original solicitation, contract or purchase orders.

d. The Chief Procurement Officer is authorized to execute contracts and purchase orders at or below the simplified acquisition threshold that result from invitations for bid (IFB), noncompetitive procurements, intergovernmental purchases, auctions, requests for proposal (RFP)s, requests for quotation, requests for qualifications (the type of "RFQ" used for Qualifications-Based Solicitations), cooperative procurements, informal solicitations used for small and non-complex requirements, micropurchases, renewals of contracts and purchase orders consistent with the terms and conditions of the original solicitation, contract or purchase orders, with any allowable price increases. Nothing in this section shall be construed to limit the authorities of Section 107.040 - Chief Procurement Officer - Qualifications, Powers, Duties.

2. Tax Certification

A contract above the micro-purchase threshold shall not be awarded unless the County Department of Revenue has certified that the proposed awardee does not owe St. Louis County any current or past real estate, personal property or merchants or manufacturer taxes.

107.260 - Consolidated Purchasing

1. Consolidation of Requirements

Chief Procurement Officer will identify opportunities to consolidate requirements of Using Agencies to obtain goods and services in the most efficient manner at the best value to the County. If practical, this will be done on a timetable that allows firm cost figures to be incorporated into the budget for the ensuing fiscal year.

2. Consolidated Purchases

Insofar as practical, the following goods and services should be consolidated purchases:

- a. Janitorial supplies and/or services;
- b. Vehicles, machinery, and road repair equipment;
- c. Vehicle and equipment repair services; and
- d. Clothing and other merchandise carrying the County logo.

107.265 - Types of Contracts

- Chief Procurement Officer shall determine the appropriate contract type as necessary to provide flexibility, add value, and optimize purchasing outcomes for the County. Authorized contract

types include but are not limited to: fixed price, fixed price with economic price adjustment, time and materials (T&M), cost reimbursable, indefinite-quantity, indefinite-delivery (ID/IQ), and requirements contracts. ID/IQ contracts may be used when the County cannot predetermine the precise quantities of goods or services that it will require during the contract period and it is inadvisable to commit itself for more than a minimum quantity or no quantity. In such cases, the Chief Procurement Officer may execute contracts and Blanket Purchase Orders under which one or more Using Agencies requisition and accept delivery of goods or services as needed. The Chief Procurement Officer may prescribe the procedures under which requisitions may be made by the Using Agencies. The cost of the requested goods or services under any such contract may be charged against the appropriations of the requesting Using Agencies or other appropriate fund.

§300 METHODS OF PROCUREMENT

107.301 - Informal Procurement Procedure - Micro-Purchases

1. Purchases of supplies and services for which the estimated value is at or less than the micro-purchase threshold, may be made in the open market without requirement for competitive processes, without publication and/or newspaper advertisement, and without observing the procedures prescribed for award of formal contracts, provided the Chief Procurement Officer determines the price to be fair and reasonable.

107.302 - Informal Procurement Procedure - Simplified Acquisition Procedures

1. Purchases of supplies and services for which the estimated value is less than the simplified acquisition threshold (SAT) (also known as informal purchases), may be made in the open market without newspaper advertisement and without observing the procedures prescribed for award of formal contracts.

2. The goal is that informal purchases above the micro-purchase threshold are based on at least three competitive quotes so purchases may not be subdivided in such a manner as to avoid formal procurement procedures. Detailed requirements for the goods or services must be provided in the solicitation and selection based on the lowest responsive quote from a responsible quote provider, unless prior to release of the solicitation, the Chief Procurement

Officer has authorized award based on other criteria, in which case the Chief Procurement Officer will prescribe the manner in which selection is to be made. Specifications, prices quoted, vendors solicited, and vendors awarded must be recorded and submitted to the Chief Procurement Officer.

3. Using Agencies may not split or divide their requirements for the purposes of avoiding/ circumventing higher level procurement procedures. Purchases of the same goods or services may not be made by the same Using Agency using this informal procedure more than once within a six-month period. If the same supplies or services are needed within six months of the initial purchase, the Chief Procurement Officer may require a formal procurement regardless of the estimated cost.

a. Basis for award: Before making award, the Chief Procurement Officer must determine that the proposed price is fair and reasonable.

(i) Whenever possible, the Chief Procurement Officer shall evaluate price reasonableness based on competitive quotations or offers.

(ii) If fewer than three quotes are received in response to attempted competition, the Chief Procurement Officer can still make an award but must investigate the reason for the low number of responses. The Chief Procurement Officer should also consider corrective action to increase competition in future solicitations for similar items. The Chief Procurement Officer shall evaluate whether the price is fair and reasonable and shall document the determination made. The Chief Procurement Officer may base the determination on:

(1) Market research;

(2) Comparison of the proposed price with prices found reasonable on previous purchases;

(3) Current price lists, catalogs, or advertisements. However, inclusion of a price in a price list, catalog, or advertisement does not, in and of itself, establish fairness and reasonableness of the price;

(4) A comparison with similar items in a related industry;

(5) The Chief Procurement Officer's personal knowledge of the item being purchased; (6) Comparison to an independent County estimate; or

(7) Any other reasonable basis.

4. Purchase of an Open-Source Software Solution should be based on at least three competitive offers and may be awarded to the offeror responsible providing the best value to the County. Prices of offers must be for the total cost of ownership, including exit costs. The Chief Procurement Officer will maintain a file of all open-source software purchases and the bids submitted and the record will be open to public inspection.

107.305 - Formal Procurement Procedure - Competitive Bidding

1. Competitive sealed bidding is the County's standard method of procurement for supplies and services estimated to cost over \$75,000.00. Under this procurement method, all responsible and interested parties are invited to submit bids and a contract is awarded to the lowest responsive and responsible bidder whose bid conforms to all the material terms and conditions of the solicitation.

a. The Chief Procurement Officer shall determine that a prospective contractor is responsible and that the prices offered are fair and reasonable before awarding the contract. Determinations of whether the price is fair and reasonable may be made on the basis of price and/or cost analysis techniques, and shall be made in the light of all prevailing circumstances. The price analysis shall consider whether bids are materially unbalanced.

b. Documentation of the basis on which fair and reasonable pricing was determined is required by the Chief Procurement Officer. If fewer than three bids are received in response to a formal procurement procedure using competitive bidding, Chief Procurement Officer may make an award but must analyze the reason for the low number of responses. The Chief Procurement Officer may also consider how to increase competition in future solicitations for similar items.

2. Invitations for Bids may only be advertised by Chief Procurement Officer, or with the permission of the Chief Procurement Officer they may be advertised by another Using Agency. For competitive bidding, the following conditions must be present:

a. Complete specifications and clear requirements of items or tasks are available;

b. Award can be made principally on the basis of prices of technically acceptable offer/bids; and

c. Negotiations are not needed before selecting the low-price responsive and responsible vendor for award.

3. Invitations for Bids must include the complete assembly of related documents for bidding and an example of the contract or the terms and conditions of the contract that the bidder will sign. For tangible items, factors such as discounts, transportation costs, and life cycle costs should be included in the total bid price when determining which bid is lowest and responsible.

4. Invitations for Bids must be publicized for a minimum of 15 calendar days before bids are due, and for construction projects over \$1,000,000.00, for a minimum of 30 calendar days before bids are due. Chief Procurement Officer may shorten the notice/advertising period.

5. In addition to appearing on the County's website, publication must include notice inviting bids at least once in at least one official newspaper in the County with a circulation of at least 500 copies per issue, unless this requirement is modified or eliminated by the state. The Chief Procurement Officer shall also have authority to post such notice on any platform or in any other form that the Chief Procurement Officer believes will assist in reaching potential Offerors.

6. Unless otherwise prohibited by applicable law, when the Chief Procurement Officer deems it necessary, bid deposits may be required. The deposits will be returned to unsuccessful bidders as soon as practicable after contract award or rejection of all bids. An otherwise successful bidder's deposit will be forfeited if the successful bidder fails to return a signed contract within fourteen calendar days after the County forwards the contract for signature, or such time as may otherwise be specified by the County.

7. All bids must be submitted in a format prescribed by the Chief Procurement Officer that ensures they are not revealed until the time scheduled for their opening. Bids will be publicly opened by the Chief Procurement Officer or the Chief Procurement Officer's designated representative in the presence of the County Clerk or the Clerk's authorized representative, at the date, time and location specified in

the advertisement for bids. The Chief Procurement Officer will tabulate all bids received and will post the tabulation on a site for public inspection for at least five days.

8. The Chief Procurement Officer may reject all bids, parts of all bids, or some bids for any supplies or services included in the proposed contract, if in the Chief Procurement Officer's opinion, doing so will serve the public interest.

9. The Chief Procurement Officer has the authority to award contracts to the lowest responsible bidder. When the award is not given to the lowest bidder, a full and complete statement of the reasons for awarding to another bidder must be prepared by the Chief Procurement Officer and filed with the other papers relating to the transaction.

10. In the case of ties for the lowest bid, the Chief Procurement Officer may re-advertise for bids or award the contract to one of the tie bidders by drawing lots in the presence of the County Clerk or the Clerk's duly authorized representative in the presence of at least three witnesses, or by purchasing the goods or services in the open market, provided the price paid does not exceed the lowest contract bid price submitted for the same goods or services. In determining whether a tie exists, the actual bid and not an adjusted or incentivized bid price will be used.

11. If all bids exceed available funds but the lowest responsive and responsible bid does not exceed the funds by more than 10%, and if time or other considerations preclude resolicitation of the work with a reduced scope, the Chief Procurement Officer may negotiate an adjustment of the bid price with the low bidder to bring the bid within the amount of available funds.

12. Special provisions for construction projects:

a. To be eligible for award of a contract, bidders on construction projects must specifically certify that at the time certifying and for the term of the contract in question:

(i) They have not been barred from bidding on any Federal or State projects within the last year; (ii) They have not had any State or County-issued business, trade or contracting license suspended or revoked within the last year;

(iii) participate in or maintain its own apprenticeship program that at the compliant with 29 CFR 29.2;

(iv) They have and will enforce a drug-testing policy for all On-Site Employees; and

(v) Their employees will be licensed with the appropriate licensing authority.

b. Mobilization Payments

(i) Mobilization Payments may be made for construction contracts over \$1,000,000, if included as a pay item in the contract.

(ii) Mobilization Payments may not be made prior to issuance of a Notice to Proceed.

(iii) Mobilization Payments may not exceed 10% of the initial value of the contract, calculated on the base bid only. No mobilization may be paid separately on any additive alternate items added to the contract.

(iv) Invoices for mobilization must include:

(1) Supporting evidence of the Contractor's actual expenditures, such as paid invoices for required bonds and insurance, or documented expenditures for plant and facility setup; and

(2) Documentation showing that construction plant, equipment, and material has been acquired free from all encumbrances and that it will not be removed from the site prior to completion and acceptance of the entire work, without the written permission of the Chief Procurement Officer.

(v) Mobilization Payments may be liquidated with monthly invoices for actual construction work as follows:

(1) Fifty percent of total mobilization expenditures with the first monthly invoice for actual construction;

(2) Seventy five percent of total mobilization expenditures with the second monthly invoice for actual construction;

(3) Ninety percent of total mobilization expenditures with the third monthly invoice for actual construction;

(4) Ninety five percent of total mobilization expenditures on final acceptance;

(5) The remainder of mobilization with final payment on the project; and

(6) No more than one mobilization payment may be made in a single month other than final acceptance and final payment.

c. Chief Procurement Officer may establish pre-qualification criteria for specific areas of expertise such as architects, engineers, surveyors, professional services consultants to help expedite the selection process, ensure overall quality of contractors bidding on County projects, and result in more consistent, reliable, timely, and high-quality construction outcomes.

d. County solicitations and contracts for construction projects must require contractors and subcontractors to comply with all applicable OSHA requirements.

e. Financial guarantees

(i) In accordance with Section 107.170 RSMo, Contractors on construction projects shall be required to provide bid bonds, performance bonds, and payment bonds.

(ii) These bonds are required on projects exceeding \$25,000.

f. Disclosure of the magnitude of construction projects:

(i) Advance notices and solicitations for construction shall state the magnitude of the requirement in terms of estimated price range. In no event shall the statement of magnitude disclose the County's estimate. Therefore, the estimated price should be described in terms of one of the following price ranges:

(1) Less than \$25,000.

(2) Between \$25,000 and \$100,000.

(3) Between \$100,000 and \$250,000.

(4) Between \$250,000 and \$500,000.

(5) Between \$500,000 and \$1,000,000.

(6) Between \$1,000,000 and \$5,000,000.

(7) Between \$5,000,000 and \$10,000,000.

(8) More than \$10,000,000.

107.306 - Two-Step Sealed Bidding

1. When, in the opinion of the Chief Procurement Officer, adequate specifications for a procurement are not available to conduct competitive bidding and it is desirable to permit the development of a sufficiently descriptive and not unduly restrictive statement of the County's requirements, including an adequate technical data package, a two-step sealed bidding process may be employed.

- a. Step one consists of the request for, receipt of, evaluation of, and if necessary, discussion of, technical proposals. Price is not requested. The request and evaluation of proposals will follow the procedures of an RFP, except that no final determination will be made.

- b. In step two, those offerors whose technical proposals were found acceptable in step one will be invited to submit sealed bids. The bids will be reviewed and award made in accordance with the requirements for competitive sealed bids.
- c. Prior to bid opening or rejection of all bids, no bid or proposal in either step may be discussed with any offeror other than its submitter.

2. The two-step bidding process may be used when, in the Chief Procurement Officer's opinion, all of the following conditions are present:

- a. Available specifications or descriptions may be too restrictive without technical evaluation and further discussion of the technical aspects of the requirement to ensure mutual understanding between potential offerors and the County;
- b. Definite criteria exist for evaluating technical proposals submitted in step one;
- c. More than one technically qualified source is expected to be available;
- d. Sufficient time will be available for use of the two-step method; and
- e. A fixed-price contract that may include economic price adjustment will be awarded.

3. The dollar threshold amounts for informal and formal procurement apply to two step procurements.

4. At a minimum, requests for technical proposals in Two-Step Sealed Bidding must include the following:

- a. A description of the supplies or services required;
- b. A statement of intent to use the two-step method;
- c. The requirements of the technical proposal;
- d. The evaluation criteria, including all factors and significant subfactors;
- e. A statement that the technical proposals are not to include prices or pricing information;
- f. The date and hour by which proposals must be received;
- g. A statement that, in the second step, only bids based on technical proposals determined to be acceptable, either initially or as the result of discussion, will be considered for awards, and that each bid in the second step must be based on the bidder's own technical proposals;
- h. A statement that the County may make a final determination regarding a proposal's acceptability solely on the basis of the initial proposal submitted, but the County may

request additional information and may discuss proposals with their offerors; and

- i. A statement that a notice of unacceptability will be forwarded to the offeror upon completion of the proposal evaluation and final determination of unacceptability.

5. On receipt of proposals, the Chief Procurement Officer will safeguard the proposals against disclosure to unauthorized persons and may remove any reference to price. The Chief Procurement Officer will instruct evaluators to categorize each proposal as technically acceptable, reasonably susceptible of being made technically acceptable, or technically unacceptable. Proposals that modify or fail to conform to the requirements or specifications of the request for technical proposals will be considered nonresponsive and categorized as unacceptable.

- a. The Chief Procurement Officer may proceed directly with solicitation of bids if there are sufficient acceptable proposals to ensure adequate price competition without further time, effort, and delay to make additional proposals acceptable. If there are not sufficient acceptable proposals, the Chief Procurement Officer may request additional clarifying or supplemental information from offerors whose proposals may be made acceptable. The request must identify the nature of the proposal deficiencies and the additional information required. The Chief Procurement Officer may also arrange discussions for this purpose.
- b. When requesting additional information, the Chief Procurement Officer will fix an appropriate time for bidders to conclude any discussions; submit all additional information; and incorporate such additional information as part of the proposals submitted. If the additional information incorporated as part of a proposal establishes the proposal as acceptable, the Chief Procurement Officer will categorize it as such. Otherwise, it will be categorized as unacceptable.
- c. When a technical proposal is found unacceptable (either initially or after clarification), the Chief Procurement Officer will notify the offeror of the basis of the determination and that a revision of the proposal will not be considered. If no acceptable proposal or only one proposal is received, the Chief Procurement Officer will notify all offerors and the acquisition may be made under the Non-Competitive Procurement procedures if appropriate.
- d. Bid invitations may be issued only to those offerors whose proposals have been deemed acceptable by the Chief Procurement Officer and will be handled in accordance with the rules regarding Invitations for Bids.

107.310 - Requests for Proposals

1. The RFP procedure is a competitive Best-Value Procurement. Except for the changes necessary as to not directly conflict with federal or State law, an RFP may be used for procurements over \$25,000.00 excluding services such as architectural, engineering, and land surveying that must be acquired by use of Qualification-Based Solicitations (QBS). An RFP may be used when, in the written opinion of the Chief Procurement Officer:
 - a. Independent judgment in the design or performance of the services or goods requested is necessary, as well as specialized knowledge, expertise, or training customarily acquired either by a prolonged course of study or equivalent experience in the field; and
 - b. The County is interested in varying approaches to providing the requested goods or services and is seeking creative or innovative approaches in which professional expertise and methods may differ greatly; and
 - c. A project has unique objectives or challenges that may be difficult to meet using traditional low-bid procurement; and
 - d. The County is seeking the best overall value rather than the lowest price.
2. RFP Contents and Publication - RFPs must include all of the following information:
 - a. A description of the goods or services sought, including the scope of the project and the objectives of the procurement;
 - b. The specific factors and the relative importance of each factor or category that will be used to evaluate the proposals, including the relative significance of price, which must be a factor in all RFPs;
 - c. The date by which proposals are due, providing sufficient time for offerors to prepare proposals, which will be a minimum of 30 calendar days after the RFP is release unless a shorter time is specifically authorized by the Chief Procurement Officer in writing;
 - d. The number of awards that may be made, and if more than one, the basis for allocation of award;
 - e. The basis on which payment will be made, setting out expected service levels, milestones, performance measures, deliverables or other factors that will be used; and
 - f. Anticipated contract terms and conditions.
3. Pre-Release Activities
 - a. Prior to publication of an RFP, if the estimated cost of the procurement exceeds \$250,000.00 the head of the Using Agency must obtain approval of the County Council by order.

- b. For each RFP, the Chief Procurement Officer will approve a scoring system for evaluating proposals.
- c. The Using Agency and the Chief Procurement Officer will establish an evaluation committee of at least three County employees to evaluate and score the proposals. The evaluation committee shall be tailored to the specific needs of the acquisition and ensures a comprehensive technical evaluation of offers is performed. Unless approved by the Chief Procurement Officer, supervisors and subordinates should not serve on the same evaluation committee. Elected officials and members of County advisory Boards and Commissions may not serve on evaluation committees. The assigned procurement representative serves in a non-voting, advisory, and facilitating role. Procurement team members may be voting members in instances where the Procurement division is an end-user of the goods or services being purchased.

4. Proposal Evaluations

- a. The Chief Procurement Officer will receive proposals and review them for responsiveness. Proposals found non-responsive that cannot be made responsive without providing an advantage to the proposer will be rejected.
- b. The Chief Procurement Officer or designee(s) shall be the Designated Point of Contact for communication with proposers and may communicate with offerors at any time throughout the solicitation, evaluation, and award process. The Designated Point of Contact will schedule committee meetings, record deliberations and specific reasons for ranking proposals, manage requests for and receipt of Best And Final Offers (BAFOs) and the scoring process, and be the sole source of communication between the evaluation committee members and all other parties regarding the status of the evaluations, proposals, or proposers.
- c. Individuals with specific expertise or knowledge may be engaged as non-voting Subject Matter Experts (SMEs) to explain complex proposal terms to the committee. They will be bound by the same rules as other evaluation committee members.
- d. On receiving the names of the proposers, each member of the evaluation committee and each SME who believes that they, or family members, or individuals with whom they have a close relationship, may have a financial interest in the outcome of the procurement process, must inform the Chief Procurement Officer and recuse themselves from further participation in the procurement process. Prior to receiving proposals from the Chief Procurement Officer, all persons who will be given access to proposals, including each member of the evaluation

committee and each subject matter expert, must sign a confidentiality and conflict of interest statement.

- e. Proposals may not be evaluated on any factor that was not included in the solicitation. After initial evaluations, one or more proposers may be selected for contract award or discussions may be held with all offerors in the Competitive Range, after which one or more proposers may be selected for contract award.
- f. Information regarding proposers acquired by participants in the evaluation process may not be shared with anyone outside of the committee, including supervisors of committee members, until the committee has recommended a proposer for award or has rejected all proposals, other than as required by law, nor may it be used for any personal gain at any time.
- g. If the RFP is done in conjunction with another government entity, the County must have at least as many evaluators on the evaluation committee as the other entity.

5. Contract Recommendation and Award

- a. Upon receipt of the evaluation committee's recommendation, the Using Agency head may decide whether to abandon the procurement or proceed with contract award.
 - (i) If the head of a Using Agency disagrees with the evaluation committee's recommendation, they may, in limited circumstances, reject all proposals, but must document the reasons for such decision. An agency head cannot arbitrarily reject a committee's findings or seek new proposals just because they prefer a different vendor. Any decision must be made in the best interest of the public and uphold the principles of fair and open competition. Reasons for disagreement must be legitimate and objective, such as concerns that the recommended proposal is overpriced or that the evaluation did not properly account for critical factors outlined in the solicitation.
 - (ii) If the Using Agency recommends proceeding, the Using Agency head will notify the Chief Procurement Officer.
 - (iii) The Chief Procurement Officer will review the Using Agency head's recommendation and all matters relating to the solicitation and determine if the RFP process was followed. If affirmative, the Using Agency will:
 - (1) Provide the following information for submission to the County Executive for contract actions above the simplified acquisition threshold:
 - A. The total amount requested and budgeted for the contract;

- B. The source of funds to be used for the contract and any renewals, including any grant funding;
 - C. The services to be provided and whether the services are an expansion of a current program, project, or service; and
 - D. Any contingency funds requested.
- (iv) Chief Procurement Officer reviews the evaluation committee's findings and has the final authority to make the award decision. Chief Procurement Officer may approve the recommendation, reject it for specified reasons, or return it to the committee for reconsideration.
 - (v) The Using Agency's and evaluation committee's role is to assess proposals based on predefined criteria and make a recommendation. Chief Procurement Officer may conduct additional discussions and/or negotiations at any time before, during and after the evaluation process.

107. 312 - Requests for Qualifications (Qualifications-Based Selection)

1. The use of a Qualifications Based Selection (QBS) process is required for acquisition of architectural, engineering, and land surveying services, in which consultants submit their qualifications for the required tasks and the County determines which is the most highly qualified consultant. The request for qualifications (RFQ) solicitation type will be used to solicit qualifications from prospective service providers.
2. The Chief Procurement Officer shall negotiate contracts for architectural, engineering and land surveying services on the basis of demonstrated competence and qualifications for the type of services required, and at fair and reasonable prices in accordance with. Sections 8.285 through 8.291 RSMo. (Missouri's "Mini-Brooks Act").
3. When the estimated cost is over \$25,000, QBS must conform to the requirements established for RFPs, except that price will not be an evaluation factor. After the highest scoring proposer has been identified by the evaluation committee, price will be negotiated with that proposer. If a reasonable price cannot be reached, negotiations may commence with the next most highly ranked proposer, with this process continuing to each proposer in order of the ranking until agreement is reached or all proposals are rejected. The award steps shall be the same Contract Recommendation and Award steps as for RFPs, outlined above.
4. When the estimated cost range is \$5,000 to \$25,000:

- a. Less formal selection procedures may be used. However, the underlying principle of QBS based on qualifications and competence, rather than solely on the lowest bid must be applied, and procedures must still comply to the overarching principles and requirements of Missouri's Mini-Brooks Act.
- b. The Using Agency shall document the procedures used and bases relied upon for selection.

5. When the estimated cost is less than \$5,000:

- a. Less formal selection procedures may be used. However, the underlying principle of QBS based on qualifications and competence, rather than solely on the lowest bid must be adhered to, and procedures must still adhere to the overarching principles and requirements of the State's Mini-Brooks Act.
- b. Formation of a form evaluation committee is not required for purchases at this level. The Using Agency shall document the procedures used and bases relied upon for selection.

107.315 - Non-Competitive Procurement - Non-Emergency

1. Grants Competitive procurement need not be used when the County accepts a grant in which a provider or other cooperating entity has been specified.
2. Sole-Source A contract may be awarded for goods or services without competitive bidding when the Chief Procurement Officer determines in writing, that the supplies or services:
 - a. Are proprietary or only available from a single source, or are an addition to a critical system already procured from that supplier or that must conform to or become part of existing products or equipment, such as replacement parts, or
 - b. Have unique performance factors.
3. Single Source A contract may be awarded for goods or services without competitive bidding when the Chief Procurement Officer determines in writing, that:
 - a. There is an unusual and compelling need that prevents a competitive process.
 - b. The supplies or services are for an existing system when there is continued development/production or for standardization and where competition would lead to duplication of cost or unacceptable delays.

4. The following non-emergency exceptions to competitive bidding do not require prior approval of the Chief Procurement Officer:
 - a. Utility services from a utility or direct access provider;
 - b. Maintenance or service of equipment from the original manufacturer or seller during the warranty period;
 - c. Development, administration, or use of licensing or proficiency testing examinations;
 - d. Conference or meeting facilities, including room accommodations for conference attendees;
 - e. Subscriptions to professional and scholarly journals;
 - f. Memberships or licensure in professional organizations;
 - g. Training using pre-existing training courses that do not require developing new coursework or additional consulting services;
 - h. Training offered by professional groups to which the County belongs;
 - i. Training programs offered through the St. Louis County and Municipal Police Academy;
 - j. Educational services from schools or not-for-profit organizations; and
 - k. Special counsel or experts engaged by the County Counselor under Chapter 110 SLCRO 1974 as amended.
5. The following non-emergency exceptions to competitive bidding require approval of the Chief Procurement Officer:
 - a. Service or public work by a government-regulated monopoly;
 - b. Items for evaluation use or testing;
 - c. Agreements with other governments and governmental entities and authorities;
 - d. Physician and medical services, In-patient hospital and correctional psychiatric services, and veterinary services if competitive methods are unable to secure the services;
 - e. Public entertainment estimated to cost less than \$10,000 for County-sponsored events and programs; and
 - f. Completion of construction, renovation, and demolition contracts upon default of a contractor.
6. Role of the Chief Procurement Officer
 - a. Other than the exceptions to competitive bidding stated above, requests by a Using Agency that a purchase be restricted to one potential offeror must be provided to the Chief Procurement Officer with a written explanation signed by the head of the Using Agency as to why no

alternative would be acceptable to meet the need. The determination as to whether a purchase is made non-competitively will be made by the Chief Procurement Officer, who will specify the basis for the determination in writing, as well as the duration of its effectiveness. In cases of reasonable doubt, competition should be solicited.

- b. The Chief Procurement Officer will conduct negotiations, as appropriate, as to price, delivery, and terms for a non-competitive procurement.
- c. The Chief Procurement Officer will maintain a record of non-competitive purchases that exceed the amount requiring formal contract procedures that lists:
 - i. Each contractor's name;
 - ii. The amount and type of each contract;
 - iii. The supplies or services purchased under each contract;
 - iv. The identification number of each contract file; and
 - v. Using Agency requesting the purchase.

107.316 - Non-Competitive Procurement - Emergency

1. Emergency Procurement is used to mitigate or remedy the effects of an unexpected situation that may vitally affect the life, health, welfare, or convenience of people, and requires immediate purchase of supplies or services. The Chief Procurement Officer may rely on the assessment of an individual qualified by education, training, experience, or responsibility to provide a professional opinion as to the severity of the emergency. Failure to plan for termination of a contract will not constitute an emergency in the absence of the conditions described above.
2. In emergency cases, the Chief Procurement Officer may secure, at the lowest possible price, any supplies or services regardless of the amount of the expenditure.
3. The Chief Procurement Officer will send a report of the circumstances of each emergency purchase to the County Executive and the County Council on a quarterly basis. The report will be received and filed by the Council.
4. In cases of emergency, the Chief Procurement Officer may authorize the head of the Using Agency to purchase goods or services directly. The head of the Using Agency will then send to the Chief Procurement Officer a requisition and a copy of the delivery record, together with a written report of the circumstances of the emergency and the report will be sent by

the Chief Procurement Officer to the Council and County Executive as set forth above.

5. The Chief Procurement Officer may prescribe rules and regulations governing emergency purchases.
6. If the County is expected to seek Federal or State reimbursement for emergency expenditures, Federal or State procurement rules may supersede County rules and the procurement must be conducted in accordance with the applicable Federal or State requirements.

107.325 - Cooperative Purchasing

1. The County may purchase goods and services pursuant to a cooperative procurement agreement provided that the procuring entity's procurement process is consistent with the County's competitive purchasing requirements in this chapter. All State of Missouri cooperative procurement agreements are deemed consistent with County requirements; any other cooperative procurement agreement must be approved in writing by the Chief Procurement Officer prior to any purchase being made through the agreement. The Chief Procurement Officer may limit the types of goods and services that are authorized to be purchased without additional competition through any particular cooperative program.
2. The Chief Procurement Officer may periodically check goods and services available through approved cooperative agreements against the market and other cooperative agreements and may recommend Using Agencies use a different competitive purchasing mechanism when a lower price or better good or service appears to be available.
3. The Chief Procurement Officer may issue a joint solicitation with any governmental or public body or agency or educational institution in the procurement of any goods or services, including construction-related services, for the County.
4. The Chief Procurement Officer is authorized to Piggyback on contracts let by other State of Missouri agencies, the U.S. government, or any other state, including any agencies of a state, and execute resulting contracts under the following circumstances:
 - a. The vendor consents to the Piggyback;
 - b. The contract's products or services are the what the County is seeking;

- c. The price the County will pay is fair and reasonable;
- d. The volume of the goods or services to be acquired does not unbalance the original contract;
- e. The original contract was solicited under terms substantially similar to the County's solicitation methods;
- f. The Chief Procurement Officer has determined that there are few feasible procurement alternatives; and
- g. The County will have its own contract with the vendor and will have no relationship with the original contracting entity.

107.335 - Negotiated Acquisitions

Negotiated Acquisition may be used in limited circumstances, when in the opinion of the Chief Procurement Officer, few vendors are able to provide the goods or services needed, when there is limited time available for the procurement, when a contractor or supplier refuses or unexpectedly is unable to continue providing goods or services, or when a competitive procurement is otherwise not feasible. The procurement is negotiated by the Chief Procurement Officer, the Director of the Using Agency, and the provider, and a record of the circumstances and the negotiation process must be kept in the contract file by the Chief Procurement Officer.

1. Single source acquisitions When only a single provider has been found to be available, a process may be used that removes unnecessary information and solicitation requirements such as bid/proposal preparation instructions, evaluation criteria, minimum qualifications, and other administrative requirements.
2.

<u>Negotiated</u>	<u>Acquisition</u>	<u>Extension</u>
<u>A Negotiated Acquisition Extension may be used when a contract's extension or renewal terms have been exhausted or are unavailable and services must continue uninterrupted while a new award is made after a competitive solicitation. The process may be used to ensure completion of ongoing projects that are not finished by the contract's expiration date or must be completed by a contractor other than the original contractor.</u>		
3. Demonstration Project Negotiated Acquisition may be used for a short-term pilot exercise to test and evaluate the feasibility and application of an innovative product, approach, or technology not currently used by the County. At the conclusion of the contract term, based upon the documented results of the project, the County may determine whether to competitively

acquire or to discontinue the use of the product, approach, or technology.

107.340 - Intergovernmental Procurement

The County may obtain goods or services directly from another governmental entity without going through a competitive procurement process. The Chief Procurement Officer is authorized to execute contracts resulting from intergovernmental procurement.

107.345 - Auctions

The Chief Procurement Officer may procure through auction, whether conducted online or in person, any item the Chief Procurement Officer determines should be purchased using this method. An estimate of the cost of items to be purchased must be prepared in advance and the price to be paid must be fair and reasonable.

107.350 - Project Delivery Methods

The Chief Procurement Officer, in collaboration with using agencies, shall determine the most appropriate project delivery methodology on a project-by-project basis considering all the unique aspects of each project.

Construction project (capital project) delivery methods include but are not limited to: design-bid build (D-B-B), design-build (D-B), Progressive Design-Build (P-D-B), construction manager (CM), and construction manager-at-risk (CMAR). D-B-B is traditionally a price based competitive sealed bid process for well-defined scopes of work, whereas the others are proposals to be evaluated on price and non-price evaluation factors.

Other contracting methods for special project types may include, but are not limited to, energy savings performance contracts, performance contracting, design sequencing, public-private partnerships (PPP), and job order contracts. All methods will follow the general requirements of this chapter. Recognizing that each such project is unique, to the extent that requirements for a specific procurement are not addressed, the Chief Procurement Officer will develop appropriate procedures, policies, and templates.

\$400 SPECIAL CONTRACT PROVISIONS

107.401 - OSHA Provisions for Construction Contracts

OSHA construction safety program

1. Before beginning on-site work, all on-site employees of any Prime or Subcontractors working on the construction of public works or public project must complete a ten-hour Occupational Safety and Health Administration ("OSHA") construction safety program that includes a course in construction safety and health approved by OSHA or a similar program approved by the Missouri Department of Labor and Industrial Relations that is at least as stringent as an approved OSHA program.
2. Any employee found on a work site subject to this section without documentation of successful completion of the course will be afforded twenty days to produce such documentation before being subject to removal from the project.
3. The contractor will forfeit \$2,500.00 plus \$100.00 for each on-site employee of the contractor or subcontractor, for each full or partial calendar day an employee is working on-site without the required training. The penalty will begin to accrue when the time periods above have elapsed. The County may withhold and retain any sums due and owing as a result of any violation of this section when making payments to the contractor under the contract. The contractor may withhold from any subcontractor sufficient sums to cover any penalties the County has withheld from the contractor resulting from the subcontractor's failure to comply with the terms of this section.
4. The above OSHA safety program requirements and penalties must be specified in solicitations for construction of public works and included in resulting contracts.
5. Exceptions
 - a. The OSHA requirements do not apply to work performed by public utilities under the jurisdiction of the public service commission or their contractors, or to work performed at or on facilities owned or operated by public utilities.
 - b. The OSHA requirements do not apply to rail grade crossing improvement projects where there exists a signed agreement between the railroad and the Missouri Department of Transportation, or an order issued by the Department of Transportation ordering such construction.

107.405 - Subcontractors

1. Responsibility

a. The Prime Contractor is responsible for determining whether a subcontractor has the resources, experience, and expertise to perform, and for managing subcontractor performance.

2. The Chief Procurement Officer may review a prospective subcontractor's responsibility. The same standards will be used that are used to determine a Prime Contractor's responsibility.

a. Payment

1. To facilitate the payment of subcontractors by prime contractors, the Chief Procurement Officer should:

- i. ensure County contracts for construction or public works include a provision that the Prime Contractor will comply and will require all subcontractors to comply with the payment requirements under Missouri's Prompt Payment Act (Section 8.960 RSMo);
- ii. establish dispute resolution standards to allow businesses to resolve issues relating to contract performance and avoid direct involvement in prime-sub disputes;
- iii. ensure proper bonding is in place, as it offers a remedy for unpaid subcontractors without direct agency intervention in the dispute;
- iv. and ensure County contracts align with applicable laws; and
- v. provide a clear and accessible process for subcontractors to report concerns about non-payment, even if the primary resolution process involves the prime contractor or legal action.

b. The County shall consider a Prime Contractor's failure to make timely payment to a subcontractor, supplier, or any other contracted entity, a material breach of contract.

3. Subcontractors who fail to pay their subcontractors and suppliers timely may be disqualified, suspended, or debarred from work on County projects for such period as the Chief Procurement Officer may determine.

4. Mobilization

a. If mobilization payments are approved for a Prime Contractor who requires a subcontractor to mobilize, the Prime Contractor must pay the subcontractor a mobilization fee, which may be no more than five percent of the total value of the subcontract. No mobilization fee will be due

- a subcontractor if the subcontractor has not been required to mobilize.
- b. Mobilization payments will not be made directly to a subcontractor by the County.
 - c. Mobilization payments to a Prime Contractor may be no more than 10% of the contract value and may only be provided for actual costs that will be incurred prior to commencement of construction work under the contract.
 - d. Mobilization payments may be made only for construction contracts.
5. Non-Exclusivity Any agreement in which a potential Prime Contractor attempts to or prevents a subcontractor from providing quotes to other potential prime contractors is prohibited and may result in debarment of the Prime Contractor as well as other penalties.

107.420 Minority and Women-Owned Business Enterprise Program

-1. (a) Minority and Women-Owned Business Enterprise Program Established. A St. Louis County Minority and Women-Owned Business Enterprise (M/WBE) Program is established by adoption of this section.

- (b) Management, Monitoring and Annual Report. The St. Louis County Minority and Women-Owned Business Enterprise (M/WBE) Program shall manage and monitor the utilization of M/WBEs by St. Louis County and its prime contractors. The M/WBE Program shall have operational autonomy, under the direction of the Director of Minority Business Development and Compliance to:
- (1) adopt rules and procedures to implement and manage the M/WBE Program; (2) create, maintain, and distribute the directory of certified M/WBEs doing business with St. Louis County; (3) provide information and assistance to M/WBEs to increase their ability to effectively compete for St. Louis County contracts; maintain a centralized website that lists all procurement opportunities; (4) provide a semi-annually review the progress of each agency, department, and the corporation's achievement of the M/WBE goals; to require each using agency have a designee who shall be the point of contact for monitoring and reporting M/WBE compliance for the using agency; (5) ensure that solicitations issued by St. Louis County adhere to the M/WBE procurement procedures contained herein; (6) monitor M/WBE goals throughout the duration of the contract; (7) ensure that the MBE contract goals should be based upon the combined availability of all ethnic groups

no later than March 31 of each year detailing the participation of M/WBEs on St. Louis County contracts and all economic development partnerships.

2. M/WBE program funding.

- (a) Commitment. St. Louis County is committed to promoting fair and open competition for M/WBEs seeking to do business with the County. The County shall ensure that vendors at all tier levels do not discriminate in their solicitation, selection, or treatment of sub vendors. Therefore, the M/WBE program shall have the resources necessary for the effective implementation of the M/WBE policy and the components contained within the M/WBE program. The M/WBE program funding shall maintain an annual appropriation recommended by Director of Minority Business Development and Compliance that is approved by the County Council. The M/WBE program and related responsibilities shall be communicated to the County's internal and external stakeholders.
- (b) Policy implementation. The findings and recommendations of most recently conducted St. Louis County Contract Disparity Study and St. Louis County Workforce Disparity Study shall be adopted to develop and implement a County M/WBE policy. The County shall take all necessary, reasonable, and legal action to alleviate documented disparity and ensure that all businesses are afforded the maximum opportunity for participation in the County's contracting. The M/WBE program shall ensure that the County contracts are awarded in a manner that promotes economic inclusion of all segments of the business population, regardless of race, sex, or gender, to maximize the economic vitality and development of the County. A St. Louis County Minority and Women-Owned Business Enterprise Program shall be established as a Program within the Division of Procurement. The Director of the M/WBE Program will develop strategies to advance opportunities for M/WBEs, shall have operational autonomy to direct M/WBE program staff, establish M/WBE participation goals for construction contracts above \$75,000, provide training to County staff and the public, and ensure compliance with M/WBE program objectives and responsibilities. The Program staff shall monitor compliance in the field and assist in training, outreach, and general administration of the program.
- (c) The Director of Minority Business Development and Compliance shall have operational autonomy to manage and monitor the use of M/WBEs by St. Louis County and its

construction contractors. The Director of Minority Business Development and Compliance will:

- (i) Adopt rules and procedures to implement the M/WBE Program;
 - (ii) Provide information and assistance to M/WBEs to increase their ability to effectively compete for St. Louis County contracts;
 - (iii) Ensure that solicitations include relevant M/WBE Program requirements;
- (1) Contract participation goals shall be applied to solicitations for construction bids. The contract participation goal is the goal that shall be met by utilization of minority and women-owned contractors. When goals are established for a contract, the goals shall be stated in any invitation for bids. No invitation for bids shall be released until goals have been requested and set in accordance this section. A prime contractor or subcontractor may only count toward the contract participation goal as an MBE or a WBE, but not both, even if the entity is certified as both an MBE and WBE. An M/WBE prime contractor may only receive credit toward the contract participation goal for work actually performed under the contract. If an M/WBE, either as a prime or as a subcontractor, subcontracts part of its work to another entity, the value of the subcontract may be credited toward the M/WBE goal only if the subcontractor is an M/WBE and performs the work with its own forces. Work that an M/WBE prime contractor subcontracts to a non-M/WBE firm will not be credited toward the contract participation goal.
- (2) Contract participation goals shall be established for individual contracts by the Director of Minority Business Development and Compliance. The construction goals shall be twenty-four (24) percent for minority-owned business enterprises and nine and one-half (9.5) percent for women-owned business enterprises unless the Director of Minority Business Development and Compliance determines that, based on M/WBE availability, there is cause to adjust the goals to apply to a particular contract, in which case the goals shall be set by the Director of Minority Business Development and Compliance. In setting the goals for a particular contract, the following shall be considered:
- (a) The scope of work; and
 - (b) The number and types of qualified MBEs and WBEs available to perform such work, or portions of it; and

- (c) Whether the contract can be structured to create potential opportunities for qualified MBEs and WBEs to participate as subcontractors, service providers and/or suppliers; and
- (d) The level of participation of certified MBEs and WBEs in similar contracts awarded by other County departments and incentive agencies, and on local projects awarded by the state and federal governments in the previous and current fiscal years; and
- (e) The potential dollar amount of the contract.
- (4) Proof of contract participation goal attainment shall be provided by bidders and documented on the M/WBE utilization plan. If a bidder fails to meet the solicitation's contract participation goals, the bidder shall provide evidence of a good faith effort to meet the goal. The M/WBE utilization plan shall demonstrate goal compliance, verification of subcontractor certification, and evidence that the prime contractor or subcontractor shall perform a commercially useful function.
- (5) Good faith effort elements are evaluated to determine whether a bidder has provided evidence of good faith efforts to meet the goals. To be considered a responsive bid, the bidder must demonstrate sufficient good faith efforts. Examples of what Constitutes a Good Faith Effort include:
 - (i) Conducting market research to find potential subcontractors;
 - (ii) Contacting small businesses early in the acquisition process;
 - (iii) Adhering to the specific methods and objectives outlined in the subcontracting plan;
 - (iv) Exceeding goals in other categories. If a goal in one socioeconomic category is not met, a good faith effort may be shown by achieving an equal or greater goal in another category;
 - (v) Discerning between non-responsiveness and "good faith effort" of M/WBE subcontracting shall consider not only of what companies exist in the region, and considered "eligible" based on being certified, but also based on their individual capacity to perform the work; and
 - (vi) If, due to change orders associated with non-M/WBE portion(s) of subcontracted work causes the contract amount to increase thereby causing the existing value of M/WBE participation to be lower by percentage.

(6) Bidders will provide proof of meeting contract participation goals on the M/WBE Utilization Plan or as otherwise directed. Bidders unable to meet participation goals shall not be deemed non-responsive by the Director of Minority Business Development and Compliance if they provide evidence of having made good faith efforts to meet the goals. Bids that do not indicate that goals will be met and do not include evidence of good faith efforts shall be rejected as nonresponsive by the Director of Minority Business Development and Compliance.

(7) A M/WBE prime contract bid discount shall be applied to construction and supplies and contractual services contracts of three hundred thousand dollars (\$300,000.00) or less. A five (5) percent bid discount on construction prime contracts shall be applied to minority and women-owned business enterprise bidders. A five (5) percent bid discount on supplies and contractual services prime contracts shall be applied to minority and women-owned business enterprise bidders. The bid discount shall be applied during the evaluation process. It shall lower the eligible M/WBE's bid but shall not reduce the contract award amount. The solicitation shall describe the bid discount as applied to eligible M/WBE prime contractors in the two (2) industries. In order to qualify for the bid discount, the eligible M/WBE bidder shall include in its bid a copy of the current M/WBE certification approval letter issued by the M/WBE program.

(8) M/WBE incentive credits shall be applied to the evaluation of professional service prime contracts. A fifteen (15) percent incentive credit as part of the total points evaluated on professional service prime contracts shall be applied to minority and women-owned business enterprises.

The incentive credit shall be applied during the evaluation process. In order to qualify for the incentive credit, the M/WBE prime contractor must include a copy of the current M/WBE certification approval letter. The solicitation shall describe the incentive credit as applied to eligible M/WBE prime contractors.

(iv) Monitor M/WBE participation of any contract with M/WBE Program goals; and

(v) Coordinate with the Chief Procurement Officer to prepare an annual report no later than March 31 of each year to the County Executive and the County Council, summarizing the participation of M/WBEs on County contracts and through economic development projects.

(vi) The requirements of this section shall not apply if prohibited by law or where the County receives Federal, State or other funding and the funding source prohibits application of this section.

3. Rules and regulations.

(a) Management. The Director of Minority Business Development and Compliance shall have operational autonomy to manage the M/WBE program and Minority Business Development and Compliance Office. The Minority Business Development and Compliance Office shall be responsible for annually identifying small contracts for the program.

(b) Advertisements. The County shall advertise solicitations within a sufficient period of time to allow bidders to solicit bids from M/WBE subcontractors. The County shall publish notices of contract opportunities in The County Journal and on the County's website at least thirty (30) days before the bid opening date. Bid notices shall additionally be disseminated through the certified M/WBE electronic mailing list at least thirty (30) days before the responses are due.

(c) Templates. All user departments shall adopt a standard template for advertisements with input from the Minority Business Development and Compliance Office. The Minority Business Development and Compliance Office will review all advertisement templates and provide the user departments with comments.

(d) Rejection. If advertisements do not meet the M/WBE requirements, as determined by the Minority Business Development and Compliance Office, the Chief Procurement Officer shall reject the advertisement and send it back to the user department and recommend the next available publication date that complies with the thirty-day publication requirement.

(e) Notice. The notice shall include the name of the contract and bid opening date; project manager's name and contact information; pre-bid conference date, time, and location; deadline for submission of written questions; summary of the scope of work; contact information to secure the complete solicitation; and M/WBE subcontracting goals and bid discounts.

(f) Electronic directory. An electronic directory listing certified M/WBEs shall be provided by the Minority Business Development and Compliance Office. The directory shall be

updated to reflect any new certifications or changes to existing certifications.

(g) Mobilization payments. When mobilization payments are approved for the prime contractor, the subcontractor shall be paid a reasonable amount not to exceed ten (10) percent of the amount of their contract no later than five (5) business days before they are required to mobilize to start their contracted work. If a subcontractor makes a request to the prime contractor for mobilization payments, the prime contractor shall submit a request to Chief Procurement Officer for mobilization payments.

(h) Payment verification program. The County shall establish a payment verification program. Payments made to subcontractors shall be verified in order to monitor and enforce compliance with the Prompt Payment Act, Section 34.057.1 RSMo. The payment verification system shall allow subcontractors to electronically notify the County of late payments or non-payments in real time. Each subcontractor listed as paid for the previous billing cycle shall be electronically contacted to verify that payment was received. The Minority Business Development and Compliance Office shall manage the program.

(i) Resolving disputes. Dispute resolution standards shall be established to allow businesses to resolve issues relating to contract work performance. Invoice disputes between the prime contractor and the subcontractor shall be presented to the County project manager. The Director of Minority Business Development and Compliance shall ensure that the dispute resolution process is handled in a timely manner and in accordance with dispute resolution standards. The decision can be appealed to a mediator, and the County, through the Chief Procurement Officer, shall participate in mediation. The mediation process shall exhaust the administrative remedy available to the contractor and/or subcontractor.

4. Minority and women-owned business enterprise program staff and staff training. There shall be adequate staff to support the responsibilities of the Minority Business Development and Compliance Office. The Minority Business Development and Compliance Office shall minimally have the following positions, as their budget provides:

(a) Executive staff.

(1) Director. The Director of Minority Business Development and Compliance shall develop programs and services that

advance opportunities for growth of M/WBEs, act as M/WBE Program Manager with authority to direct office staff and ensure compliance with M/WBE program objectives and responsibilities.

(2) Executive Assistant. The Executive Assistant to the Director shall provide confidential assistance to the Director with responsibility for performing secretarial and administrative support duties. The Executive Assistant to the Director shall demonstrate the capabilities to handle sensitive information with discretion and the ability to work with businesses with diverse interests and backgrounds.

(b) Technical staff.

(1) Contract Compliance Manager. The Contract Compliance Manager shall assist the Director in managing the Minority Business Development and Compliance Office, oversee pre-award compliance with the M/WBE program requirements, and monitor post-contract compliance to ensure that the M/WBE contract provisions are adhered to during the term of the contract. The Contract Compliance Manager shall demonstrate audit skills, knowledge of the procurement processes, and the ability to work with businesses with diverse interests and backgrounds.

(2) Contract & Workforce Compliance Specialists. The Contract & Workforce Compliance Specialists shall monitor M/WBE contract & workforce compliance and M/WBE contractor and subcontractor on site participation, investigate complaints and good faith efforts, ensure contracts are properly and legally executed, and create a profile of each contractor by preparing site visit reports, conduct labor standards interviews of On-Site Employees to verify a contractor's compliance with labor laws, and track and report workforce participation. The Contract Compliance Specialists shall demonstrate knowledge of procurement processes, the ability to work with public officials and the general public, and the ability to work with businesses with diverse interests and backgrounds.

(c) Training. The County M/WBE Program shall provide training to County departments and offices, including annual training on M/WBE Program requirements and procedures. The County M/WBE Program shall also provide training and guidance

regarding implementation of the M/WBE Program, including application of the ordinance and M/WBE rules and regulations.

5. Compliance tracking, monitoring and reporting.

- (a) To be counted towards meeting contract goals and to receive credit for participation, an M/WBE must perform a Commercially Useful Function. The Director of Minority Business Development and Compliance will determine whether an M/WBE is performing a Commercially Useful Function and will maintain a system to track compliance with contract commitments, payments, subcontractor substitutions, and the actual work performed.

Centralized tracking and monitoring system. The Minority Business Development and Compliance Office shall maintain a centralized tracking and monitoring system designated by the Director of Minority Business Development and Compliance to ensure compliance with the M/WBE commitments listed in bid documents. The system shall track subcontractor goals, commitments, and payments. The system shall also monitor unauthorized subcontract substitutions, and late payments. A record of any discrepancies or proof of failure to comply with the contract goals and regulations shall be recorded by the Minority Business Development and Compliance Office, and appropriate contract compliance shall be determined by the Director of Minority Business Development and Compliance. Compliance reports shall be submitted annually to the County Executive and the County Council no later than March 31 of each year.

- (b) Tracking compliance. The system shall track a prime contractor's compliance with the contract goal to ensure that the M/WBEs listed as subcontractors are utilized. In the absence of a finding of a good faith effort, a prime contractor's failure to meet an M/WBE subcontract goal during the contract term shall constitute a material breach of contract. The prime contractor shall be subject to liquidated damages for such a breach. Damages shall be assessed based upon the M/WBE goal shortfall and may not exceed the difference between the monetary amount of the participation goals set by the contract and the amount actually paid to M/WBEs damages shall be assessed during the project close-out by the using agency or department, and withheld from a retention amount established to cover liquidated damages in addition to any other retention held under the contract. Liquidated damages assessed shall be transferred to the

Minority Business Development and Compliance Office. The County shall set aside funds from assessed damages. These funds shall be used solely to provide business development and enhancement services for M/WBEs. All contracts that contain participation goals for African American, Asian American, and women-owned businesses shall contain a provision that provides for the imposition of liquidated damages in the absence of a finding of good faith efforts in the event the prime contractor fails to achieve the participation goals specified by the Procurement Code.

6. Annual funding for M/WBE program. Funding from the County's general fund will be appropriated annually to support the M/WBE program.

8. Workforce.

(a) Workforce goals. To develop and maintain a highly skilled, employment ready workforce that supports and enhances the economic health of St. Louis County and local business communities, workforce participation goals are established and expressed in percentages of total hours of employment and training of women and minorities used on public projects. The County shall complete a formal workforce disparity study as recommended by the Director of Minority Business Development and Compliance.

(b) Participation goals for minorities and women. On each public works contract executed by County for construction and construction related contracts to implement redevelopment projects approved for tax increment financing (TIF), and projects receiving tax incentives from the County executed after TIF or other tax incentives have been approved by the County Council, including projects approved pursuant to Chapter 100 or Chapter 353 RSMo, for which the design team's estimated base value of the respective contract is \$1,000,000 or more, the contract goals for workforce participation shall be twenty-five (25) percent of all labor hours are to be performed by minorities and seven (7) percent of all contract labor hours are to be performed by women. The individuals credited for workforce participation may be counted toward attainment of other participation goals.

(c) County resident participation. On each public works contract executed by County for construction and construction related contracts to implement redevelopment projects approved for tax increment financing (TIF), and projects receiving tax incentives from the County executed after TIF

or other tax incentives have been approved by the County Council, including projects approved pursuant to Chapter 100 or Chapter 353 RSMo, for which the design team's estimated base value of the respective contract is \$1,000,000 or more, the contract goals for workforce participation shall be twenty-three (23) percent of all labor hours are to be performed by persons who reside in the County. Such County residents, if they are minorities and/or women, may also be counted towards the goals set by the Director of Minority Business Development and Compliance.

9. M/WBE Subcontractor Substitution on Construction Contracts

(a) A prime contractor may replace an M/WBE subcontractor if the prime contractor can demonstrate good cause as determined by the Director of Minority Business Development and Compliance. Examples of good cause include, but are not limited to when subcontractor:

a. Fails or refuses to execute a written contract for the scope of work at the price it had bid on after having had reasonable opportunity to do so;

b. Fails or refuses or cannot perform its work in a way consistent with normal industry standards or performs its work unsatisfactorily and not in substantial accordance with the plans and specifications;

c. Delays or disrupts the progress of the work or project schedule, or is unable to complete its work in the time required by the project schedule;

d. Becomes bankrupt or insolvent or exhibits credit unworthiness;

e. Fails or refuses to meet applicable reasonable bond requirements;

f. Was listed on the Prime Contractor's bid as the result of an inadvertent clerical error;

g. Loses a required license or certification, including M/WBE certification in the NAICS code for which it was selected;

h. Is determined by the Director of Minority Business Development and Compliance not to be responsible; or

i. Voluntarily withdraws and provides written notice of its withdrawal.

9. Non-compliance.

(a) *Material breach.* The failure to meet the requirements of the St. Louis County Minority and Women-Owned Business Enterprise (M/WBE) Program, including but not limited to failure to submit required documentation and reporting,

failure to meet to resolve issues and failure to use good faith efforts to comply, deliberate submission of false and/or fraudulent documentation/information, constitutes a violation and shall be a material breach of the contract.

(1) If there is a violation of the St. Louis County Minority and Women-Owned Business Enterprise (M/WBE) Program, the Director of Minority Business Development and Compliance, will first cite the violator in writing giving the violator notice of the violation and a thirty-day notice to cure;

(2) If after the thirty (30) days there is no cure, the Chief Procurement Officer shall exercise the remedies for breach provided herein and any other remedies available by law.

(b) Remedies for breach. In the event of a violation of the St. Louis County Minority and Women-Owned Business Enterprise (M/WBE) Program, the Director of Minority Business Development and Compliance may place the project owner, developer, and the general contractor on a list maintained by the Minority Business Development and Compliance Office and be barred from participating in public works contracts or tax increment financed (TIF) projects for a period of one (1) year following the notice of violation, in addition to any other sanctions available to the Chief Procurement Officer for public works contracts.

(c) Liquidated damages. All contracts that contain participation goals for minorities, women, or County residents shall contain a provision that provides for liquidated damages in the event the project owner, developer, general contractor, or both fails or fail to achieve the participation goals specified by the Minority and Women-Owned Business Enterprise Program.

The liquidated damages may not exceed the difference between the monetary amount of the participation goals set by the Director of Minority Business Development and Compliance and the amount actually paid to minorities, women, and County residents. An agency or organizations identified by the Director of Minority Business Development and Compliance shall set aside funds from assessed damages. These funds shall be used solely to provide workforce training and development services for minorities and females. In determining the amount actually paid to minorities, women, and County residents, no credit shall be given for that portion of the minority, women, and County resident participation not approved by the Director of Minority

Business Development and Compliance, provided however that the Director of Minority Business Development and Compliance may allow credit if they determine, in their sole discretion, that the project owners, developers and general contractors acted in good faith.

107.430 Prevailing Wage Compliance Program Established

1. A St. Louis County Prevailing Wage Compliance Program is established and may be cited as the "Prevailing Wage Compliance Program of St. Louis County, Missouri" or "PWCP." For the purposes of the PWCP, all applicable terms defined in the Missouri Prevailing Wage Law, Prevailing Wage Regulations, and applicable County ordinances are adopted unless specifically otherwise supplemented or designated.

2. St. Louis County, Missouri, reaffirms its long-standing policy that no less than the hourly prevailing wage shall be paid to workers performing construction and maintenance of public works on behalf of St. Louis County and public projects within St. Louis County.

3. The prevailing wage compliance program in these sections shall change or, to only the extent necessary, be read to not conflict to those contracts or projects involving the expenditure of federal aid funds and shall not be enforced only to the smallest extent necessary so as not to conflict with any federal statutes or rules and regulations including, but not limited to, 23 U.S. Code § 113, 29 CFR Part 5, 2 CFR § 200.319, and 23 CFR § 635.110.

4. No requirement of the County's Prevailing Wage Program is to be construed to require a contractor or subcontractor to hire unqualified or incompetent personnel or to discharge qualified or competent personnel.

5. Employees covered

a. All on-site employees in construction of County public works and public projects, meaning construction activity (distinguished from manufacturing); furnishing of materials, supplies, and equipment; or servicing and maintenance work, regardless of whether the individuals are employed full or part-time, permanently or temporarily; and

6. Employees not covered

a. Employees who are not on-site employees or not performing as on-site employees in public works or public project construction.

7. Prevailing Wage Enforcement Coordinator (PWEC) Powers and Duties

The Prevailing Wage Enforcement Coordinator shall have the following powers and duties:

- a. Provide Notice of Ineligibility to Other County Employees.
The PWEC shall keep track of those bidders who have been deemed ineligible for contract because of noncompliance with these sections and shall notify the Chief Procurement Officer and/or Director of Transportation and Public Works or their designee, relevant authorities on Public Projects, and Public Works.
- b. Provide Notice to Bidder of Ineligibility. After a determination of ineligibility of a bidder by the PWEC, the PWEC with review by the Chief Procurement Officer shall notify the bidder of their determined noncompliance and the reasons for such determination.
- c. Review Prevailing Wage Compliance. The PWEC shall collect and review payroll records and documents, interview workers and contractors, and investigate any complaints of violations of the Missouri Prevailing Wage Law, these sections, or contract language, including compliance with Chapter 107 SLCRO. Collection of investigation-related information, collection and payment of any restitution and penalties determined by the PWEC, shall be enforced by the Chief Procurement Officer and the County Counselor.
- d. Notice of Noncompliance with These Sections to Other County Employees. The PWEC shall notify the Chief Procurement Officer and/or Director of Transportation and Public Works and/or the relevant authority of the Public Project in question of those contractors which are determined to not be in compliance with any provision of these sections and the reasons for the determination of noncompliance.
- e. Assist in Resolution of Violations. The PWEC shall assist contractors, workers, and public entities and agencies working for, or within, the County in resolving questions, requests for assistance, complaints, and violations.

- f. Assess and Collect Penalties. The PWEC shall determine wages owed workers, assess penalties due, and collect such wages and penalties.
- g. Recommend for Disqualification/Suspension/Debarment. The PWEC shall provide the Chief Procurement Officer with recommendations for disqualification, suspension, and/or debarment and provide any documentation or assistance necessary during the process.
- h. Provide Notice to Bidder of Reinstatement. The PWEC, after determination by the Chief Procurement Officer and/or the Director of Transportation and Public Works and/or the relevant authority of the Public Project in question, shall notify in writing within ten (10) business days every contractor whose eligibility has been reinstated for contract bidding under these sections.
- i. Keep List of Offenses. The PWEC shall keep a list of offenses of violation of these sections and the associated contractors. The PWEC shall maintain this list and provide updates to the Chief Procurement Officer.
- j. Violation Complaints to State. The PWEC shall be the decision-making public servant for the County under Missouri Prevailing Wage Law, Section 290.240 RSMo, subparagraph (1) and upon investigating a violation may file a corresponding complaint with the Missouri Department of Labor and Industrial Relations.
- k. Ensure Compliance. The PWEC shall take all action authorized by law to ensure compliance by bidders, contractors, subcontractors, developers and redevelopers with all requirements of these sections and, in particular, with the requirement of compliance with all prevailing wage provisions.
- l. Assist Bidders, Contractors, and Subcontractors. The PWEC shall selectively assist bidders, contractors, developers, redevelopers, and subcontractors to achieve or maintain compliance with these sections.
- m. Recommend Revisions. The PWEC shall recommend to the County Executive and County Council any revisions to these sections deemed prudent.
- n. Design Documents and Forms. The PWEC shall design documents, report forms, manuals, and other papers needed to perform the functions of the PWEC and to disseminate and accumulate information relevant to the enforcement of these sections.
- o. Verify Information. The PWEC shall verify information from bidders, contractors, developers, redevelopers, and

subcontractors with onsite visits conducted by contract compliance specialists and request the submission of relevant employment and other related data from such.

p. *Make an Annual Report to County Executive and County Council.*

The PWEC shall coordinate with the Chief Procurement Officer to submit to the County Executive and County Council no later than March 31 of each year an annual report of the progress of the County in implementing the policy and intent of these sections.

q. *Monitoring.* The PWEC shall monitor construction companies awarded County contracts to ensure compliance with the State of Missouri's Prevailing Wage Law and any other state or federal laws which may impact a company's ability to competitively bid.

8. Compliance by Contractor and Evidence Required

Compliance by Contractor. The PWEC shall review all evidence submitted under these sections, and all other evidence available to the PWEC, and shall determine whether or not a contractor has complied with prevailing wage and apprentice program requirements, or is otherwise in violation of these sections. Notice of an adverse determination shall be promptly communicated to such contractor in writing by registered or certified mail to the address listed on the bid of the contractor, which notice shall include notice of the right of appeal. The PWEC shall specify to the offending contractor the corrective action required and shall request from the contractor a commitment in writing to accomplish the corrective action so specified. The PWEC shall also take reasonable steps to notify the offending contractor and subcontractor's employees of the offense and seek their input prior to accepting any corrective action.

Evidence Required. Every individual or entity claiming to be a contractor shall submit documentary evidence for review to the PWEC verifying the number of its employees and the employees of its affiliates, and the work being completed by those individuals or entities, and any other evidence deemed necessary to the PWEC.

9. Review of Bidders

1. The Chief Procurement Officer and the Director of Transportation and Public Works shall provide the PWEC with a list of the three (3) lowest responsive bidders submitting bids in response to each solicitation. For each of the three (3) lowest responsive bidders, the PWEC shall make the following findings:

- (a) Contractor or Subcontractor: Determination of whether the individual or entity is a contractor or subcontractor; and,
 - (b) Eligibility: Whether the bidder of contractor is eligible under these sections to receive award of the proposed contract.
- 2. The PWEC shall within three (3) business days of the bid opening or sooner, communicate their review under this section to the Chief Procurement Officer. The Chief Procurement Officer, through the PWEC, shall promptly notify the three (3) lowest responsive bidders after bid opening and provide them until 5:00 p.m. on the next business day to submit additional prevailing wage information.
- 3. The Chief Procurement Officer, through consultation with the PWEC, shall promptly notify the three (3) lowest responsive bidders of all decisions, findings, or other actions by the Chief Procurement Officer and of its appeal rights.

10. Contractor Compliance

- 1. All contractors and subcontractors contracting for public works and public project construction within the County shall be a responsible bidder and comply with the State of Missouri Prevailing Wage Law, sections 290.210 through 290.340 and 290.550 through 290.580, RSMo. ("the Law"), and 8 CSR 30-3.010 through 8 CSR 30-3.060 and 8 CSR 30-5.010 through 8 CSR 30-5.030 ("the regulations" or "the wage order"), including any annual incremental wage increase ("wage increase"), and these sections. Each contractor shall be ultimately responsible for the compliance of all its subcontractors.
- 2. All contractors and subcontractors contracting for public works and public project construction within the County shall be a responsible bidder and agree to a be held to a goal that a minimum percentage of twenty percent (20%) of each contractor and subcontractor's labor hours will be by persons enrolled in an Apprenticeship Program for each scope of work in which the contractor or subcontractor is contracted to perform. For this section, a Good Faith Effort requires the contractor or subcontractor to prove it maintains its own, or participates in another's, an apprenticeship program.
- 3. Each contractor shall pay, and require its subcontractors to pay, workers performing work on contracts for public works to which St. Louis County is a party, and public projects, not less than the prevailing hourly rate of wages for the type of

work performed in accordance with this section, subject to the following exceptions:

- (a) *Exception for Contracts or Projects Less Than \$75,000.00.* This subsection shall not apply to those contracts or projects for which the engineer's estimate of the awarded contract cost is \$75,000.00 or less, which are excepted from the provisions of the Missouri Prevailing Wage Law by virtue of Section 290.230.5, RSMo.
- (b) *Exception for Registered Apprentices.* As authorized by Section 290.235, RSMo., for every journeyperson then engaged as an on-site employee on a public project, the contractor may have as an on-site employee a workers who is individually registered in a bona fide registered apprenticeship program approved by the U.S. Department of Labor, Office of Apprenticeship, who may be paid 50% less than the journeyperson rate of pay specified in the applicable wage order. Entry level workers, as that term is used in Section 290.235, RSMo., must be registered apprentices. The authorized apprenticeship utilization ratio shall be no greater than one-to-one, apprentice to journeyperson of the same classification and at the same time. Any worker on a public project who is not registered as an apprentice in accordance with this subsection or is a registered apprentice but working out of ratio, shall be paid as a journeyperson, unless the applicable County Contract or Project is within the exceptions described in Subsections 3(a) or 3(c).
- (c) *Exception for Federally Financed and Assisted Construction Projects.* This subsection shall apply to those contracts or projects involving the expenditure of federal aid funds to the maximum extent to not create a conflict therewith, but in no way shall this subsection be enforced in such a manner as to directly conflict with any federal statutes or rules and regulations including, but not limited to, 23 U.S. Code § 113, 29 CFR Part 5, 2 CFR § 200.319, and 23 CFR § 635.110.

11. Prevailing Wages and Apprenticeship Requirements to be Incorporated

The law, regulations, wage order and/or determination, and wage increases, and apprenticeship program provisions are to be incorporated into all public works construction contracts executed by the County and all Public Projects.

12. Prevailing Wage and Apprenticeship Standards Required for County Incentivized Economic Development Projects

1. In the case of any economic development project which is incentivized by the guarantee of tax or other benefits conferred by the County particular to the public project, including but not limited to tax increment financing (TIF) projects and Chapter 100 RSMo. tax abatement projects, the developer shall ensure that the contractors or subcontractors performing labor for the project shall pay not less than prevailing wages.

2. In the case of any economic development project which is incentivized by the guarantee of tax or other benefits conferred by the County particular to the public project, including but not limited to tax increment financing (TIF) projects and Chapter 100 RSMo. tax abatement projects, the developer shall ensure that the contractors or subcontractors performing labor for the project shall have and maintain the same apprenticeship program provisions as the County has for the County's Public Works.

3. In the case of any economic development project which is incentivized by the guarantee of tax or other benefits conferred by the County particular to the public project, including but not limited to tax increment financing (TIF) projects and Chapter 100 RSMo. tax abatement projects, the developer shall ensure that the contractors or subcontractors performing labor for the project shall permit the County's Prevailing Wage Enforcement Coordinator, or its designee, onto such project to ensure compliance with these requirements.

4. All agreements between the County and the developer of a County-incentivized economic development project, or any other public project, to the extent it does not disqualify County from receiving monies from external sources for the project in question, shall specify the requirement of paying prevailing wages as set out in this section, the amount to be determined as the rate in effect at the time the physical work begins on the incentivized project; shall specify that the County's Prevailing Wage Enforcement Coordinator, or its designee shall be permitted to audit or inspect such books or records of the developer and the developer's contractors and subcontractors for the purpose of determining compliance with this section; and shall specify that County may, upon written notice to the developer, suspend any incentives pertinent to such economic development project in the event of failure of the developer's contractor or subcontractor to pay prevailing wages; and shall specify that the developer shall

have five (5) business days to cure the defect noted in the written notice. To the extent this requirement does disqualify County from receiving monies from external sources for the project in question, this section must be modified to the smallest extent possible to fulfill its purposes and qualify for receiving the monies in question.

13. Signage Required

Each contractor and subcontractor engaged in construction on a public project that exceeds two hundred fifty thousand dollars (\$250,000.00) shall have its name, and acceptable abbreviation or recognizable logo, and the name of the city and state of the contractor's or subcontractor's principal mailing address on each motor vehicle and motorized self-propelled piece of equipment which is used in connection with such contract during the time the contractor or subcontractor is engaged on such contract. The signs shall be legible from a distance of twenty (20) feet, but the size of the lettering need not be larger than two (2) inches. In cases where the equipment is leased or where affixing a legible sign to the equipment is impractical, the contractor may place a temporary stationary sign, with the information required pursuant to this subsection, at the main entrance of the location of the work on the contract in place of affixing the required information on the equipment, so long as such sign is not in violation of any state or federal statute, rule, or regulation. Motor vehicles which are required to have information affixed on them pursuant to requirements of a regulatory agency of the state or federal government are exempt from the provisions of this subsection.

14. Requirement of Record Correction

Each contractor must correct any errors in the contractor's or any subcontractor's records, or any violations of the law, rules, annual wage order, incremental wage increases, or these sections, within fifteen (15) business days after receipt of notice from the County.

15. Contractor Cooperation

Each contractor shall require its subcontractors to cooperate with any authorized representative of the County, the Missouri Department of Labor and Industrial Relations, or any other state or federal agency, in the enforcement of this chapter, the law, rules, annual wage order, and incremental wage increases, and shall allow said representatives to interview any and all workers during

working hours on any project, at contractor's or subcontractor's sole cost and expense.

16. Penalty

Each contractor shall forfeit as a statutory penalty to the county one hundred dollars (\$100.00) for each worker employed, for each calendar day or portion thereof, such worker is paid less than the prevailing hourly rate of wages for any work done under a County contract or public project, by the contractor or any of its subcontractors, and additional penalties as provided in any other provision of these sections. If the contractor or any of its subcontractors has violated the law or these sections in the course of the performance of a county contract or on any public project, the county shall, when making payments to the contractor coming due under such contract, withhold and retain all sums and amounts deemed due and owing as a result of any violations. The County shall adequately inform the relevant authorities, entities, contractor and its subcontractors of the same.

17. Restitution to Workers

In the event a violation is found, the PWEC has the authority to determine the amount of wages owed to workers as a result of that violation, including to workers who would be apprentices had they not been working out of ratio, to coordinate with the County Counselor to collect those wages on behalf of the workers, and to distribute those wages to the affected workers.

18. Whistleblower Protection

Any worker who provides information, complaints, or interviews, or who otherwise assists in an investigation of any violation of these sections shall not be disciplined, discharged, or otherwise harmed for providing such assistance or information.

19. Records—Certified Payroll Forms

Each contractor on public works and public projects shall keep, and require each of its subcontractors engaged in a contract with St. Louis County or on a public project to keep and make available to the contractor, a certified payroll report form, the format which at a minimum has all the same requirements as the federal form WH-347 , adopted January 2025, indicating each worker's name, address, social security number, occupational title, hours worked, and wages paid of every worker employed in connection with such contract. Each certified payroll shall be electronically validated using an electronic wage validation program determined by the PWEC,

and must be accompanied by a certification form indicating the accuracy and authenticity of such records, and signed by the contractor's or subcontractor's representative under penalty of perjury, and must also be in an electronic format as determined by PWEC.

- (a) *Payroll Records Maintained.* The contractor and subcontractors will maintain payroll forms and any other payroll related records within the State of Missouri for a period of one (1) year following completion of the contract. Such payrolls, records, and certifications shall be considered public records, and shall be open to inspection by any authorized representative of the County, the Missouri Department of Labor and Industrial Relations, or other state or federal agency at any reasonable time. The certified payroll records shall be made available to and for inspection and copying by the PWEC upon request within three (3) business days of the request. In the event such payrolls or other records are requested under chapter 610, RSMo., the Missouri Sunshine Law, or other open records laws, all Social Security numbers for any and all workers listed on such payroll or records shall be removed or redacted.
- (b) *Records to be Made Available.* To assure full compliance, documents and records must be available on public projects, including private projects performed by a contractor under investigation if the private work in question is involved in an investigation of potential violation of a County contract. The PWEC shall have access to the public and private work construction sites, and relevant offsite private offices and locations to ensure such compliance.
- (c) *Wages to be Posted.* Each contractor shall post and keep posted, in a prominent and easily accessible place, a clearly legible statement of all prevailing hourly wage rates to be paid to workers employed by contractor and each of its subcontractors and how to report alleged violations of the same.
- (d) *Affidavit of Compliance.* Upon completion of the contract and prior to final payment, the contractor shall file with the County and PWEC, an affidavit of compliance from the contractor and each of its subcontractors stating that each has fully complied with the provisions and requirements of the Missouri Prevailing Wage Law and these sections,

including apprentice program provisions. The County shall not make final payment until the affidavits, in proper form and order, are filed by the contractor.

20. Penalty for Violation of Prevailing Wage and Apprenticeship Requirements

1. Any contractor found to be in violation of any provision of these sections, or the Missouri statutes and regulations providing for payment of the prevailing wage on construction of public works contracts, Sections 290.210–290.340 and 290.550–290.580, RSMo., and 8 CSR 30–3.010 through 8 CSR 303.060 and 8 CSR 30–5.010 through 8 CSR 30–5.030, shall pay a penalty to the County over and above that which is provided for in State law, as follows:

- (a) *First Offense:* One hundred dollars (\$100.00) per day per worker paid less than the prevailing hourly rate of wages or for each violation of any other section of sections 290.210–290.340 or 290.550–290.580 RSMo., referral for disqualification, suspension, or debarment,
- (b) *Second offense:* One hundred fifty dollars (\$150.00) per day per worker paid less than the prevailing hourly rate of wages or for each violation of any other section of sections 290.210–290.340 or 290.550–290.580 RSMo., referral for disqualification, suspension, or debarment, and referral to the County Prosecuting Attorney for possible filing of criminal charges.
- (c) *Third and Subsequent Offenses:* Two hundred dollars (\$200.00) per day per worker paid less the prevailing hourly rate of wages or for each violation of any other section of Sections 290.210–290.340 or 290.550–290.580, RSMo., referral for disqualification, suspension, or debarment, and referral to the County Prosecuting Attorney for possible filing of criminal charges.

2. *Notice of Violation for Penalties Owed Pursuant to Section 290.250 RSMo.* The Chief Procurement Officer, with the assistance of the PWEC, shall give written notice to the contractor setting forth the workers who have been underpaid by contractor or its subcontractors, the amount of wages deemed owed, the statutory penalty and the amount of the penalty. The contractor shall have 30 business days to dispute the notice in writing to the Chief Procurement Officer, which time may be extended by the Chief Procurement Officer upon written request. If contractor fails to respond within the specified time, the

County's original notice shall be deemed final. If the contractor responds to the Chief Procurement Officer's notice, the Chief Procurement Officer will furnish the contractor a final decision in writing within five (5) business days of the PWEC completing any investigation.

21. Willful Violation

Any officer, official, member, agent or representative of any public body, contractor, or subcontractor who willfully violates or willfully fails to comply with any of the provisions and requirements of sections 290.210 to 290.340 and 290.550–290.580, RSMo., or 8 CSR 30-3.010 through 8 CSR 30-3.060 and 8 CSR 30-5.010 through 8 CSR 30-5.030, shall be guilty of an offense, and shall be punished for each willful violation thereof by a fine not exceeding five hundred dollars (\$500.00). Each day such violation or omission continues shall constitute a separate offense as contemplated by this section.

22. Contracts Let Under Sections 107.305 or 1105.050 SLCRO

1. No payment shall be made by the County to any contractor pursuant to any contract let under the Formal Procurement Procedure described in Section 107.305 SLCRO or Section 1105.050 SLCRO as the construction of public works under these sections if the PWEC has determined in writing that contractor or its subcontractors have failed to comply with the requirements of these sections.

2. The County shall not release final payment until the PWEC receives from the contractor and each of its subcontractors, affidavits of compliance stating that each has fully complied with the provisions and requirements of the PWCP.

23. Construction Workforce Development and Contract Compliance Fee

1. Establishment of Fee Schedule.
The Prevailing Wage Enforcement Coordinator ("PWEC") shall determine the incremental costs associated with the administration, monitoring, and enforcement of compliance requirements on Public Projects. The PWEC shall establish and maintain a fee schedule sufficient to recover such costs. All fees collected under this subsection shall be dedicated to supporting pre-apprenticeship programs and prevailing wage compliance efforts.

2. Intergovernmental Agreements.
Any political subdivision, as that term is defined in § 70.120, RSMo., including any agency or unit of the State of Missouri that is now, or hereafter shall be, authorized to levy taxes or to cause taxes to be levied, and which is located within St. Louis County, may, by intergovernmental agreement or contract, authorize the St. Louis County Prevailing Wage Compliance Program to monitor and enforce prevailing wage compliance on Public Projects in the manner

provided under Chapter 107, St. Louis County Revised Ordinances ("SLCRO").

107.440 - Sweatshop Prohibitions

1. Definitions for purposes of this section regarding sweatshops:

a. Apparel: clothes, shoes and garments and accessories.

b. Production facility: the facility that manufactures the finished apparel or textiles provided by a vendor with which the County has or intends to contract for the provision of apparel or textiles. When the context so requires, "production facility" also means the owners and managers.

c. Textiles: all items of cloth that are produced by weaving, knitting, felting, sewing or similar production processes.

d. Sweatshop practices:

(i) Failure to comply with domestic labor laws in the country where the items provided to the County were manufactured, failure to comply with Federal, State or local laws and workplace regulations, including those pertaining to wages and benefits, workplace health and environmental safety, freedom of association, and the fundamental conventions of the International Labor Organization, including those pertaining to child labor and freedom of association;

(ii) Engaging in behavior or committing acts that harass or abuse a worker in a sexual, psychological or verbal manner or subject a worker to corporal punishment;

(iii) Failing to take appropriate measures to safeguard workers when any aspect of work requires exposure to toxic chemicals;

(iv) Failing to pay wages in compliance with Federal or State regulations; and failure to maintain verifiable wage and hour records for each production worker, employee or independent contractor;

(v) Requiring hourly and quota-based workers to work more than either of 48 hours per week or the limits on regular hours allowed by the country of manufacture, whichever is lower, or failing to provide workers with days off as provided by applicable labor law;

(vi) Requiring non-exempt workers to work overtime hours unless the workers are paid at the rate of at least one and a half their regular hourly compensation rate as provided by the Fair Labor Standards Act;

(vii) Failing to provide for mediation or a grievance process to resolve workplace disputes if required by Federal law; or

(viii) Closing or reducing orders for a production facility as a punitive measure against workers for exercising their right to freedom of association or to avoid responsibility to take corrective action after there has been a determination that a violation of applicable workplace condition laws have occurred.

2. Apparel and textiles not to be provided from Sweatshop production facilities.

a. No vendor who bids or proposes to provide apparel or textiles to the County in a total amount greater than \$5,000.00 per fiscal year may supply apparel or textiles if their manufacture originates from a production facility that engages in sweatshop practices. However, a vendor awarded a contract after having submitted a plan pursuant to the provisions of this section will be considered to have complied with the provisions of this section, during the term of such contract.

b. Bid specifications for all purchases of apparel or textiles must prohibit vendors from providing apparel or textiles that originate from a manufacturer engaging in sweatshop practices.

c. Prior to executing a contract that exceeds the simplified acquisition threshold for supplying apparel or textiles, the vendor must certify to the County that the apparel or textiles were not, to the best of its knowledge, obtained from or manufactured at a facility engaging in sweatshop practices. Sufficient certification may include identifying the original manufacturer of the apparel or textiles and specifying its location.

d. In lieu of providing such certification, the vendor may submit to the Chief Procurement Officer a report of a nonprofit independent agency with expertise in monitoring sweatshop practices in production facilities, as approved by the Chief Procurement Officer. If a bidder believes itself unable to comply with this requirement, it may propose a plan to achieve compliance which must include:

(i) ensuring communication of applicable labor standards to employees by the source manufacturer;

(ii) ensuring the source manufacturer will maintain records regarding inspections, violations and corrective

action pertaining to labor laws applicable to the source manufacturer;

(iii) monitoring compliance of the source manufacturer with applicable labor laws;

(iv) ensuring the source manufacturer will keep confidential communication of worker complaints to the extent permitted by law; and

(v) providing apparel and textiles sourced from factories, subcontractors and commodity suppliers that have been certified by an independent third party to be in compliance with applicable labor standards.

e. A bidder submitting such a plan will be considered to have met the specification required in this section.

3. Enforcement

The Chief Procurement Officer may audit vendor compliance regarding sweatshops and may debar vendors determined to have violated the provisions from future contracts with the County for a period of up to one year from the determination. The Chief Procurement Officer may terminate any contract with a vendor that violated this section, unless the Chief Procurement Officer determines that termination would be economically impractical. The Chief Procurement Officer will report to the County Council the facts underlying each such determination. Notwithstanding any other provision in this section, requirements regarding sweatshops may be waived by the Chief Procurement Officer in emergencies.

§500 POST AWARD PROVISIONS

107.501 - Contract Modifications

1. General requirements A contract modification requires an Amendment to the original contract. If the Amendment will result in an increase in the aggregate contract value, a requisition or a P.O. change order must be approved prior to execution of the Amendment. Mere administrative actions, such as opening a closed contract to pay for past due invoices, do not require Amendments.

2. Non-Construction Contracts

a. Amendments to a contract procured through simplified acquisition procedures may not increase the value of the contract

to an amount greater than the simplified acquisition threshold, or by more than 20%, whichever is greater.

b. Aggregate contract Amendments that increase the value of a contract, if due to documented and extraordinary price increases in supplies, materials, and labor, or for which provisions were made in the original contract, may be approved by the Chief Procurement Officer but may not be made prior to certification of funding availability.

c. Amendments that increase the value of a contract by over 30% but that are not due to price increases in supplies, materials, or labor must be justified by the Using Agency head. The Chief Procurement Officer may approve the justification or require a new solicitation. If the contract increase is to obtain the same goods and services for another Using Agency, the Chief Procurement Officer may approve a greater increase.

d. Contract modifications that materially alter the scope of work or services originally contemplated, and that could not have reasonably been foreseen when the solicitation was released, require a new procurement. If modifications are due to emergency conditions, modifications may be made under the emergency provisions of this Chapter 107.

3. Construction Contracts

a. Modifications that alter the responsibilities of the parties as described in the contract require contract Amendments.

b. Modifications to a contract's value due to design errors or omissions, or for additional work, require appropriate price analysis to determine reasonableness and may not be made if the additional value is not determined fair and reasonable. The determination and methodology must be recorded and provided with any request for a change order.

c. Modifications to renovation or construction contracts that do not increase the contract's value are permitted and may be approved by the project manager if:

(i) a substantially equal product can be furnished with a cost savings to the project; or

(ii) a superior product can be furnished at the original contract price.

d. Modifications to renovation or construction contracts that increase the contract value may be permitted if:

(i) the modification fits within the scope of the contract and is required to complete the work contemplated as part of the original scope of the contract; or

(ii) the reason for the change is something that was unanticipated and could not have been foreseen at the time the original contract was awarded and is necessary to complete the project.

e. Modifications to renovation or construction contracts may not, individually or in the aggregate, represent significant material deviations from the quality, amount, type, or cost of work originally contemplated by the contract, or require the contractor to perform duties substantially different from those originally bargained for. Modifications that alter the original scope of work such that they result in a fundamental redesign of a project are Cardinal Changes that require a new procurement and may require termination of the original contract.

f. Amendments to a contract procured through simplified acquisition procedures may not increase the value of the contract to an amount greater than the simplified acquisition threshold, or by more than 20%, whichever is greater.

g. Construction Contract Modifications

(i) If a modification results in additional work of a type performed by an existing subcontractor, the subcontractor may be given the additional work without modifying existing subcontracts or requiring additional subcontracts. If the existing subcontractor is an M/WBE, work awarded to other M/WBEs may not be reduced solely for that reason.

(ii) If the revision results in a reduction of work to an awarded M/WBE, damages or penalties for insufficient M/WBE participation based on the original scope of work will not be imposed and work delegated to other subcontractors need not be altered.

107.510 Vendor Disqualification, Suspension, and Debarment.

1. Disqualification, Suspension, and Debarment of Vendors

No contract or subcontract may be awarded to an individual or entity that has been disqualified, suspended, or debarred or to an entity that is managed, controlled or is more than fifty percent owned by a person or entity that is debarred by the County or is prohibited from contracting with the individual or entity pursuant to other binding debarment on any such Public Project.

2. Grounds for Disqualification, Suspension, or Debarment

a. The Chief Procurement Officer may review the suitability of a contractor for award of new contracts or continued performance under an existing contract using this *Standard for Debarment*. In the event that any contractor or subcontractor on a County contract is determined, as hereinafter set out, to be willfully and without good cause violating the requirements of the contract in any of the ways set out below, then such contractor and its chief operating officer and any owner or part owner who participated in the management of the contractor's business at the time of the violation shall be debarred and disqualified from participating, either as a contractor or subcontractor, in other County contracts for a period of up to three (3) years. In determining the period of debarment, the purchasing director shall take into account a review of past performance with these sections of a contractor or subcontractor, the seriousness of the violation, whether the violation was intentional, whether the contractor or subcontractor had been previously disqualified, and any extenuating circumstances. Factors the Chief Procurement Officer may consider may include whether as a contractor or a subcontractor, in the performance of a similar type of services to those proposed under a contract with the County, the contractor:

i. Failed to comply with Federal, State, or local laws and regulations;

ii. Criminal offenses or fraud;

iii. Intentional misrepresentation; lack of business integrity or honesty;

iv. Without good cause, failed to execute or enter into a contract after having been awarded;

v. Without good cause, failed to complete required contract work or failed to complete the work in a timely manner;

vi. Failed to perform work in accordance with the contract, incorporated defective or non-conforming materials not in accordance with contract specifications, or concealed substandard work from county inspectors;

vii. Failed to maintain required insurance, bonds, or other financial guarantees during performance of a contract, or performed any work without the insurance required by the contract;

viii. Failed to obtain all permits or licenses required by law or contract, or performed work without such permits or licenses;

ix. Failed to observe required safety precautions, including handling, storage, or disposal of hazardous materials, explosives, or waste, or disposed of hazardous or regulated waste in locations or in a manner not approved as provided by law and contract;

x. Falsified, concealed, or destroyed records, test results, or certified payrolls; submitted false reports or work-related records; or knowingly provided misleading information to the County, or performed substandard work;

xi. Failed to make timely payment to subcontractors, material suppliers, or other vendors as required by Section 38.960 RSMo. or under the terms of the contract;

xii. At termination of a prior contract, failed to cooperate with the County and any replacement contractor;

xiii. Withheld County property or codes, manuals, passwords or other information without which the County would be unable to use property or equipment;

xiv. Permitted a subcontractor or employee to violate any of the requirements listed herein or other requirements of the County;

xv. Failed to repair all property damaged in the course of doing the work;

xvi. Failed to comply with law relating to equal opportunity in employment;

xvii. Failed to show good faith in attempting to meet County's MBE/WBE requirements;

xviii. Failed to pay the wage rates prescribed in the contract, or comply with prevailing wage requirements, Sections 290.210–290.340 and 290.550–290.580, RSMo., Missouri Regulations 8 CSR 303.010 through 8 CSR 30–3.060 and 8 CSR 30–5.010 through 8 CSR 30–5.030, the annual wage order, or all annual incremental wage increases as issued by the Missouri Department of Labor and Industrial Relations;

xix. Misrepresented employees as independent contractors;

xx. Failed to include provisions in subcontracts which are required to be included under the contract terms;

xxi. Is in arrears in any tax due to St. Louis County; or

xxii. Behaved in any other manner the Chief Procurement Officer deems to be serious and compelling enough to justify debarment.

b. During an investigation, the Chief Procurement Officer may determine whether the contractor should be disqualified for award of a contract or suspended for a longer period of time. If violations are found, the Chief Procurement Officer may establish a new disqualification, suspension, or debarment or further extend an existing disqualification, suspension, or debarment of the contractor. The contractor and its chief operating officer and any owner or part owner who participated in the management of the contractor's business at the time of the violation may be barred from participating, either as a contractor or subcontractor, in other County contracts.

c. Failure of the Chief Procurement Officer to disqualify a contractor under the provisions of this section will not prevent the Chief Procurement Officer from determining that a bidder is not the lowest responsible bidder.

3. Procedure for Contractor Disqualification, Suspension, or Debarment

a. If the Chief Procurement Officer determines a contractor should be suspended, disqualified, or debarred, the Chief Procurement Officer shall issue a notice of proposed disqualification, suspension, or debarment detailing the reasons, after which the contractor has 15 days to respond with arguments or evidence.

b. If the Chief Procurement Officer takes reasonable steps to notify the contractor of proposed debarment and is unable to do so, then the debarment will be final 20 business days after the notice would have been given, commencing from the first attempt to deliver it.

c. Fact-Finding: A fact-finding proceeding may be held if the contractor's response raises a genuine dispute over material facts. d. The Chief Procurement Officer reviews the response and any other information, making a final decision whether or not to debar for a fixed period.

d. The Chief Procurement Officer will notify the contractor of the decision and issue findings of fact and conclusions of law. The County Counselor shall provide procedural guidance and legal counsel to the Chief Procurement Officer regarding the process for disqualification, suspension, or debarment under this chapter.

e. Any contractor, individual, or entity who is aggrieved by a final written decision of debarment shall have the right to appeal to the Circuit Court of St. Louis County in accordance with the provisions of Section 536.100 et seq. RSMo.

107.540 - Disposal of Personal Property and Surplus Stock

1. The Chief Procurement Officer may require Using Agencies to submit reports of supplies and personal property that are no longer used or that have become obsolete, worn out or scrapped. The Chief Procurement Officer may transfer the surplus items to other agencies, sell supplies and property unsuitable for public use, including sale at public auction, or trade for new supplies. With the exception of those sales made at auction, sales under this section, whenever possible, are to be based on competitive bids to the highest responsible bidder.

2. With the exception of those items sold at public auction, personal property having an estimated value in excess of twenty-five thousand dollars (\$25,000.00) shall be disposed of in accordance with the formal contract procedure; and disposal of personal property having a value of less than twenty-five thousand dollars (\$25,000.00) shall be made in accordance with the open market procedure

3. The Chief Procurement Officer may dispose of personal property that has become obsolete and unusable upon terms advantageous to St. Louis County; provided that prior to such disposal the Chief Procurement Officer submits a list of items to be disposed of to the County Council for its approval by order, together with factual information in clear and specific terms to support the finding that the items to be disposed of are obsolete and unusable.

4. The Chief Procurement Officer may conduct or have conducted a public auction at which those items found by the Chief Procurement Officer to be obsolete and unusable and approved by order of the County Council will be sold in a manner consistent with commonly accepted procedures for public auctions.

5. Notwithstanding any other requirements, the Chief Procurement Officer may dispose of unusable or surplus computers and related information technology equipment by donation to a non-profit

organization, provided however, that the Director of the Department of Information Technology certifies that all data has been or will be permanently removed from the donated equipment prior to receipt by the intended recipient. The Chief Procurement Officer will advise the County Council semi-annually of all donations made pursuant to this subsection.

6. The Chief Procurement Officer may allow any person from the Office of the Prosecuting Attorney, the Department of Justice Services, the Department of Parks and Recreation, or the Department of Police, who resigns or retires after seven years of continuous service, or the designated beneficiary if the person has died in the line of duty, to purchase, within 120 days of the resignation, retirement, or death, the person's used County-assigned duty weapon at a price equal to the lesser of \$350.00 or fair market value as determined by the Chief Procurement Officer. If any such duty weapon is seized as evidence pursuant to a law enforcement investigation prior to the sale, the Chief Procurement Officer may allow such purchase within 120 days of the release of the duty weapon by the investigating agency. The Chief Procurement Officer's authority is contingent upon written concurrence of the head of the office or department to which the resignee or retiree was assigned.

7. Nothing in this section is to be construed as authorizing the Chief Procurement Officer or any other County employee to sell, transfer or otherwise provide any County-issued duty weapon to any individual who is prohibited by law from purchasing, owning or possessing such weapon.

8. The Chief Procurement Officer will keep the Chief Accounting Officer informed of all transfers, sales, exchanges, and trade-ins so that the County's inventory record may be kept current.

107.600 - Construction and Severability.

1. Severability is intended throughout and within the provisions of the article. If any section, sentence, clause, or phrase of this article is held invalid or unconstitutional by a court of competent jurisdiction, then such judgment shall in no way affect or impair the validity of the remaining portions of this article.

2. This article is not intended to create a result through enforcement that is absurd, impossible or unreasonable. The article should be held inapplicable in any such cases where its application would be unconstitutional under the Constitution of the State of Missouri or the Constitution of the United States of America.

- **[107.010 - Title of Chapter.**

This chapter shall be known and may be cited as the "Purchasing Code of St. Louis County, Missouri."

- **107.020 - Definitions.**

For the purpose of this chapter, the following terms, phrases, words and their derivations shall have the meanings given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the

singular number include the plural number. The word "shall" is always mandatory and not merely directory:

(1) *County* is St. Louis County, Missouri.

(2) *Purchasing Agent* or *Agent* is the Purchasing Agent of St. Louis County, Missouri.

(3) *Committee* is the St. Louis County Purchasing Policy Committee.

(4) *Contractual services* shall mean and include all telephone, gas, water, electric, light and power service; towel and cleaning service; janitorial and cleaning services for County facilities; any and all printing, binding and publication of stationery, forms, laws, journals, and reports; the rental, repair, or maintenance of equipment, machinery, and other County-owned property.

(5) *Supplies* shall mean and include all materials, supplies and equipment.

(6) *Using agency* is any department, agency, commission, board, bureau or other unit in the County government using supplies or procuring contractual services as provided for in this chapter.

(7) *Public notice* shall mean the distribution or dissemination of information to interested parties using methods that are reasonably available and deemed most likely to obtain the greatest number of responses from qualified providers of the required services. Such methods may include publication in newspapers of general circulation, electronic or paper mailing lists and websites designated by the County or State and maintained for that purpose, including but not limited to Missouri Buys.

(8) *Professional services* shall mean services requiring specialized knowledge, skill, or technical expertise. Solicitation of architectural, engineering, and surveying services shall conform to the requirements of sections 8.285 to 8.291 RSMo. Missouri law requires the use of the qualifications based selection process for architectural, engineering and land surveying services to ensure that the most competent professional services available, based on

demonstrated qualifications for type of service required at fair and reasonable prices.

(9) *Subject matter expert* shall mean a County employee with specialized skills or knowledge on a particular topic or discipline relevant to the services solicited or requested.

(10) *Purchase* means buying, purchasing, renting, leasing or otherwise acquiring any supplies, professional, consulting or contractual services or construction. It includes all functions that pertain to the obtaining of any supply, service or construction, including description of the requirements, selection and solicitation of sources, preparation and award of contract and all phases of administration. The provisions of this Code shall not apply to the acquisition of personal or real property by donation or gift.

11. *Hairstyle* shall include hair textures and styles of any hair length, such as protective hair and cultural hair textures and styles, and other forms of hair presentation.

12. *Protective hair, natural and cultural hair textures and styles* shall include hairstyles and hair textures most commonly associated with race, including, without limitation, braids, cornrows, locs, Bantu knots, Afros, and twists, whether or not hair extensions or treatments are used to create or maintain any such hairstyle, and whether or not the hairstyle is adorned by hair ornaments, beads or headwraps.

- **107.030 - Division of Purchasing-Establishment.**

-There is hereby established in the Department of Administration a Division of Purchasing, and in said Division the Office of Purchasing Agent, as provided for in Article V, Section 38 of the St. Louis County Charter.

- **107.040 - Purchasing Agent-Powers and Duties.**

-The Agent shall be the head, and have general supervision, of the Division of Purchasing. He shall perform all duties required of a division head by the St. Louis County Charter and by law, and shall have the powers and duties prescribed by this chapter.

- **107.050 - Purchasing Agent—Qualifications, Bond.**

—The Director of Administration shall appoint, under the merit system, a purchasing agent who shall have charge of and be responsible for the purchasing of all supplies for the County and such other personal property and services as may be directed by ordinance. The Agent shall be at least twenty-five (25) years of age, and shall have had at least five (5) years' experience as a commercial or governmental purchasing or buying agent. He shall give an official bond to be approved by the County Counselor in the sum of fifty thousand dollars (\$50,000.00).

- **107.060 - Scope of Purchasing Authority.**

—The Agent shall have the power and it shall be his duty, except as may be otherwise provided by law or ordinance: To purchase or contract for all supplies, professional services and contractual services needed by any using agency which derives its support wholly or in part from the County, in accordance with purchasing procedures as prescribed by this chapter, such rules and regulations as the Agent shall adopt for the internal management and operation of the Division of Purchasing, and such other rules and regulations as may be prescribed by the County Executive and County Council. Except as may be otherwise provided by law or ordinance, the agent shall have exclusive authority to negotiate all purchases for using agencies. Except as herein provided, it shall be unlawful for any County officer to order the purchase of any supplies or make any contract within the purview of this chapter other than through the Division of Purchasing, and any purchases ordered or contract made contrary to the provisions hereof shall not be approved and the County shall not be bound thereby.

- **107.070 - Other Powers and Duties.**

1. In addition to the purchasing authority conferred in section [107.060](#) and in addition to any other powers and duties conferred by this chapter, the agent shall:

(a) Act to procure for the County a suitable quality in supplies, professional services and contractual services at the least expense to the County. The agent shall determine which method of purchase shall be used for the acquisition of supplies, professional services or contractual services.

(b) Discourage collusive or restrictive bidding and endeavor to obtain as full and open competition as possible on all purchases.

(c) Establish, and amend when necessary, all rules and regulations authorized by this chapter and any others necessary to its operation.

(d) Keep informed of current developments in the field of purchasing, prices, market conditions and new products, and secure for the County the benefits of research done in the field of purchasing by other governmental jurisdictions, national technical associations, trade associations having national recognition and by private businesses and organizations.

(e) Prescribe and maintain such forms as he shall find reasonably necessary to the operation of this chapter.

(f) Prepare and adopt a standard purchasing nomenclature for using agencies and suppliers.

(g) Prepare, adopt and maintain a vendors' catalog file. Said catalog shall be filed according to materials and shall contain descriptions of vendors' commodities, prices and discounts.

(h) Exploit the possibilities of buying "in bulk" so as to take full advantage of discounts.

(i) Act so as to procure for the County all federal tax exemptions to which it is entitled.

(j) Cooperate with the office of the County Accounting Officer and Budget Office so as to secure for the County the maximum efficiency in budgeting and accounting.

(k) Have the authority to declare as irresponsible bidders those vendors who default on their quotations, and to disqualify them from receiving any business from the County for a stated period of time.

(l) Have the authority to disqualify contractors and subcontractors from any contracts with the County for a stated period of time in accordance with the provisions of section [107.075](#).

(m) Work with the using agency to determine the required need of the department and term of the contract based on that need and the need to procure the supplies or services at the most competitive rate for the County. Unless otherwise provided by law, a contract for supplies, professional services or contractual services may be entered into for any period of time deemed to be in the best interests of the County as reasonably determined by the Agent and the using agency.

2. Except as otherwise provided in the Purchasing Code, all rights, duties and authority relating to the purchase and procurement of supplies, professional services and contractual services shall be vested in the agent.

3. Using agencies shall submit requests for invitations for bids (IFB) and requests for proposals (RFP) to the agent. Upon receipt of the using agency's request, the agent shall determine the method of purchase that will be used and work with the using agency to prepare the appropriate solicitation. The agent shall monitor the process with the using agency to ensure timely completion and the integrity of the method of purchase. The agent shall certify to the County Council that the method of purchase was properly followed at the time a request to award a contract or for legislation authorizing execution of a contract is submitted to the County Council.

• **107.071 - Minority and Women-Owned Business Enterprise Program.**

-1. (a) *Minority and Women-Owned Business Enterprise Program Established.* A St. Louis County Minority and Women-Owned Business Enterprise (M/WBE) Program is established by adoption of this section.

(b) *Management, Monitoring and Annual Report.* St. Louis County Department of Administration Division of Purchasing (DOP) shall manage and monitor the utilization of M/WBEs by St. Louis County and its prime contractors. Specifically, DOP shall: (1) adopt rules and procedures to implement the M/WBE Program; (2) create, maintain, and distribute the directory of certified M/WBEs doing business with St. Louis County; (3) provide information and assistance to M/WBEs to increase their ability to effectively compete for St. Louis

County contracts; County should maintain a centralized website that lists all procurement opportunities; (4) semi-annually review the progress of each agency, department, and the corporation's achievement of the M/WBE goals; each agency shall have a procurement officer or designee who shall be the point of contact for monitoring and reporting M/WBE compliance for the agency; (5) ensure that solicitations issued by St. Louis County adhere to the M/WBE procurement procedures contained herein; (6) monitor M/WBE goals throughout the duration of the contract; (7) the MBE contract goals should be based upon the combined availability of all ethnic groups and later than February 28 of each year detailing the participation of M/WBEs on St. Louis County contracts and all economic development partnerships.

(c) *Delegation of Duties.* DOP may delegate all or a part of the duties of certification and compliance of the M/WBE Program, with the approval of the County Council.

2. *Definitions.* When used in subsections 2 through 8 of this section:

M/WBE shall mean minority and women-owned business enterprise that is certified under a business certification program approved by the M/WBE Program Office. A minority-owned business enterprise (MBE) is a for-profit enterprise that is at least fifty-one (51) percent owned, operated and controlled on a daily basis by a minority group member who is either Asian, Black, Hispanic or Native American. A woman-owned business enterprise (WBE) is a for-profit enterprise that is at least fifty-one (51) percent owned, operated and controlled on a daily basis by a female.

Award shall mean the selection of a vendor for a contract or subcontract for a specific dollar amount. Contract awards are made by St. Louis County, acting through its Division of Purchasing (DOP), to a prime contractor and by a prime contractor to a subcontractor or all projects where the County provides economic development tools or incentives.

Bid shall mean a bidder's response to a solicitation for bids, proposals, or statements of qualifications for a project that is at least partially funded by the County, but does not include federally-funded projects which have requirements that preempt the local M/WBE program.

Bidder shall mean any individual, company, or association responding to St. Louis County and its associated entities solicitation.

Commercially-useful function shall mean a subcontract fulfilled by a bidder responsible for the materials, supplies, and services used in the performance of the contract. To determine whether a subcontractor is performing a commercially-useful function, the amount of work subcontracted shall be evaluated with respect to normal industry practices, including whether the amount the subcontractor is to be paid under the contract is commensurate with the work it is to perform. The subcontractor does not perform a commercially-useful function if its role is limited to an extra participant in a contract through which funds are passed in order to convey only the appearance of meaningful and useful subcontractor participation.

Contract shall mean a mutually-binding legal relationship or any modification thereof obligating the vendor to furnish construction, professional services, and/or supplies and contractual services and the County to pay for them.

Contract participation goals shall mean the goals established for a particular contract.

Formal procurement shall mean a competitive solicitation method by which bidders are invited by the County to bid through a published advertisement stating the scope, specifications, and terms of the proposed contract.

Good faith effort shall mean all actions taken by a bidder or prime contractor consistent with the requirements, rules and procedures established by DOP to engage M/WBEs toward meeting the goals for minority and women business enterprise utilization.

Labor hours shall mean labor productivity, that is, units of work placed or produced per man-hour.

Informal procurement shall mean a solicitation method by which competition is not required or an emergency work award is required, and the County is permitted to solicit bids directly from bidders. The County shall make all efforts to

include M/WBEs in such informal procurements and ensure that M/WBEs are given fair and ample opportunity to participate.

M/WBE utilization plan shall mean the list of MBEs and WBEs that a bidder commits will be utilized, designated by the applicable NAICS codes, including its own participation as an MBE or WBE. The M/WBE utilization plan, which includes the names of all M/WBEs to be utilized in the contract, certification information, the dollar value and scope of work to be performed, tier level of participation and their percentage of participation based on the bid amount, must be provided at time of bid. This time period for submission of the M/WBE utilization plan shall be reviewed and analyzed by June 30 annually by the Director of Minority Business Development and Compliance and submitted to the County Council which shall vote on retention, modification or dissolution.

Minority and women-owned business enterprise availability shall mean the number of businesses located in the St. Louis Metropolitan Area that are ready, willing and able to provide the supplies and contractual services being procured by St. Louis County.

Notice of intent to perform a subcontract shall mean the forms the bidders are required to submit to St. Louis County at time of bid, signed by each subcontractor listed in the M/WBE utilization plan. Failure to include a completed notice of intent form signed by each subcontractor will be sufficient cause to reject a bid as non-responsive. This time period for submission of the M/WBE utilization plan shall be reviewed and analyzed by June 30 annually by the Director of Minority Business Development and Compliance and submitted to the County Council which shall vote on retention, modification or dissolution.

Prime contractor shall mean the individual or business that has entered into an agreement with St. Louis County and that has the full responsibility for completing the terms of the agreement.

Public works shall mean all fixed works 1) constructed for public use or benefit or 2) paid for wholly or in part out of public funds.

Subcontractor shall mean an individual or business that has a contract with the prime contractor to perform a service or provide materials, equipment, or supplies as a part of the scope of work set forth in a prime contract with the County.

User Department shall mean the department that develops the requisitions for the County.

3. *M/WBE program funding.*

(a) *Commitment.* St. Louis County is committed to promoting fair and open competition for M/WBEs seeking to do business with the County. The County shall ensure that vendors at all tier levels do not discriminate in their solicitation, selection, or treatment of sub vendors. Therefore, the M/WBE program shall have the resources necessary for the effective implementation of the M/WBE policy and the components contained within the M/WBE program. The M/WBE program funding shall maintain an annual appropriation that is approved by the County Council. The M/WBE program and related responsibilities shall be communicated to the County's internal and external stakeholders.

(b) *Policy implementation.* The St. Louis County Disparity Study dated December 2017 prepared by Griffin & Strong P.C., its findings and recommendations shall be adopted to develop and implement a County M/WBE policy. The County shall take all necessary, reasonable, and legal action to alleviate documented disparity and ensure that all businesses are afforded the maximum opportunity for participation in the County's contracting. The M/WBE program shall ensure that the County contracts are awarded in a manner that promotes economic inclusion of all segments of the business population, regardless of race, sex, or gender, to maximize the economic vitality and development of the County.

(c) *Goals.* The St. Louis County Disparity Study dated December 2017 prepared by Griffin & Strong P.C. demonstrated disparity in different disciplines. The December 2017 Disparity Study documented a statistically significant disparity in the award of County construction prime contracts to minority, disabled veteran and women-owned businesses. In addition, minority, disabled veteran, and women-owned businesses were found to have a statistical disparity in the award of professional services prime contracts. The study also documented a statistical disparity in the award of

supplies and contractual services, prime contracts to minority, disabled veteran, and women-owned businesses.

Furthermore, the Disparity Study documented a statistical disparity in the award of construction subcontracts to minority, disabled veteran, and women-owned businesses by prime contractors. The 2017 Disparity Study documented a statistical disparity in the award of professional services subcontracts. Based upon the findings and data collected in the December 2017 Disparity Study, the following shall be implemented:

(1) Complete subcontract records will be collected for a twelve-month period and a disparity study update for construction and professional services subcontracts will be performed by January 31, 2019 and each year thereafter.

(2) Contract participation goals shall be applied to solicitations for construction bids. The contract participation goal is the goal that shall be met by utilization of minority and women-owned contractors. When goals are established for a contract, the goals shall be stated in any invitation for bids. No invitation for bids shall be released until goals have been requested and set in accordance this section. A prime contractor or subcontractor may only count toward the contract participation goal as an MBE or a WBE, but not both, even if the entity is certified as both an MBE and WBE. An M/WBE prime contractor may only receive credit toward the contract participation goal for work actually performed under the contract. If an M/WBE, either as a prime or as a subcontractor, subcontracts part of its work to another entity, the value of the subcontract may be credited toward the M/WBE goal only if the subcontractor is an M/WBE and performs the work with its own forces. Work that an M/WBE prime contractor subcontracts to a non-M/WBE firm will not be credited toward the contract participation goal.

(3) Contract participation goals shall be established for individual contracts by the Director of Minority Business Development and Compliance. The construction goals shall be twenty-four (24) percent for minority-owned business enterprises and nine and one-half (9.5) percent for women-owned business enterprises unless the Director of Minority Business Development and Compliance determines that, based on M/WBE availability, there is cause to adjust the goals to

apply to a particular contract, in which case the goals will be set by the Director of Minority Business Development and Compliance. In setting the goals for a particular contract, the following shall be considered:

(a) The scope of work; and

(b) The number and types of qualified MBEs and WBEs available to perform such work, or portions of it; and

(c) Whether the contract can be structured to create potential opportunities for qualified MBEs and WBEs to participate as subcontractors, service providers and/or suppliers; and

(d) The level of participation of certified MBEs and WBEs in similar contracts awarded by other County departments and incentive agencies, and on local projects awarded by the state and federal governments in the previous and current fiscal years; and (e) The potential dollar amount of the contract.

(4) Proof of contract participation goal attainment shall be provided by bidders and documented on the M/WBE utilization plan. If a bidder fails to meet the solicitation's contract participation goals, the bidder shall provide evidence of a good faith effort to meet the goal. The M/WBE utilization plan shall demonstrate goal compliance, verification of subcontractor certification, and evidence that the prime contractor or subcontractor shall perform a commercially useful function.

(5) Good faith effort elements are evaluated to determine whether a bidder has provided evidence of good faith efforts to meet the goals. To be considered a responsive bid, the bidder must demonstrate sufficient good faith efforts.

(6) A M/WBE prime contract bid discount shall be applied to construction and supplies and contractual services contracts of three hundred thousand dollars (\$300,000.00) or less. A five (5) percent bid discount on construction prime contracts shall be applied to minority and women-owned business enterprise bidders. A five (5) percent bid discount on supplies and contractual services prime contracts shall be applied to minority and women-owned business enterprise bidders. The bid discount shall be applied during the

evaluation process. It shall lower the eligible M/WBE's bid but shall not reduce the contract award amount. The solicitation shall describe the bid discount as applied to eligible M/WBE prime contractors in the two (2) industries. In order to qualify for the bid discount, the eligible M/WBE bidder shall include in its bid a copy of the current M/WBE certification approval letter issued by the M/WBE program.

(7) M/WBE incentive credits shall be applied to the evaluation of professional service prime contracts. A fifteen (15) percent incentive credit as part of the total points evaluated on professional service prime contracts shall be applied to minority and women-owned business enterprises.

The incentive credit shall be applied during the evaluation process. In order to qualify for the incentive credit, the M/WBE prime contractor must include a copy of the current M/WBE certification approval letter. The solicitation shall describe the incentive credit as applied to eligible M/WBE prime contractors.

4. Rules and regulations.

(a) *Management.* The Division of Purchasing (DOP) shall be the office that manages the M/WBE program. The DOP shall be responsible for annually identifying small contracts for the program.

(b) *Advertisements.* The County shall advertise solicitations within a sufficient period of time to allow bidders to solicit bids from M/WBE subcontractors. The County shall publish notices of contract opportunities in The County Journal and on the County's website at least thirty (30) days before the bid opening date. Bid notices shall additionally be disseminated through the certified M/WBE electronic mailing list at least thirty (30) days before the responses are due.

(c) *Templates.* All user departments shall adopt a standard template for advertisements with input from the Division of Purchasing (DOP). The DOP will review all advertisement templates and provide the user departments with comments.

(d) *Rejection.* If advertisements do not meet the M/WBE requirements, the DOP shall reject the advertisement and send it back to the user department and recommend the next

available publication date that complies with the thirty-day publication requirement.

(e) *Notice.* The notice shall include the name of the contract and bid opening date; project manager's name and contact information; pre-bid conference date, time, and location; deadline for submission of written questions; summary of the scope of work; contact information to secure the complete solicitation; and M/WBE subcontracting goals and bid discounts.

(f) *Electronic directory.* An electronic directory listing certified M/WBEs shall be maintained by the DOP. The directory shall be updated monthly to reflect any new certifications or changes to existing certifications. The directory shall be published on the County's webpage and be downloadable in Microsoft Office Excel and Word formats.

(g) *Mobilization payments.* When mobilization payments are approved for the prime contractor, the subcontractor shall be paid a reasonable amount not to exceed five (5) percent of the amount of their contract no later than five (5) business days before they are required to mobilize to start their contracted work. If a subcontractor makes a request to the prime contractor for mobilization payments, the prime contractor shall submit a request to DOP for mobilization payments.

(h) *Payment verification program.* The County shall establish a payment verification program. Payments made to M/WBE subcontractors shall be verified in order to monitor compliance with the Prompt Payment Act, Section 34.057.1 RSMo. The payment verification system shall allow subcontractors to electronically notify the County of late payments or non-payments in real time. Each subcontractor listed as paid for the previous billing cycle shall be electronically contacted to verify that payment was received. The Division of Purchasing (DOP) shall manage the program.

(i) *Resolving disputes.* Dispute resolution standards shall be established to allow businesses to resolve issues relating to contract work performance. Invoice disputes between the prime contractor and the subcontractor shall be presented to the Division of Purchasing (DOP) project manager. The Division of Purchasing (DOP) shall ensure that the dispute

resolution process is handled in a timely manner and in accordance with dispute resolution standards. The decision can be appealed to a mediator, and the County, through its Division of Purchasing (DOP), shall participate in mediation. The mediation process shall exhaust the administrative remedy available to the contractor and/or subcontractor.

5. *Minority and women-owned business enterprise program staff and staff training.* There shall be adequate staff to support the responsibilities of the Division of Purchasing (DOP). The DOP shall minimally have the following positions, as their budget allows:

(a) *Executive staff.*

(1) *Director.* The Director of Minority Business Development and Compliance shall develop programs and services that advance opportunities for growth of M/WBEs, act as M/WBE Program Manager with authority to direct office staff and ensure compliance with M/WBE program objectives and responsibilities.

(2) *Executive Assistant.* The Executive Assistant to the Director shall provide confidential assistance to the Director with responsibility for performing secretarial and administrative support duties. The Executive Assistant to the Director shall demonstrate the capabilities to handle sensitive information with discretion and the ability to work with businesses with diverse interests and backgrounds.

(b) *Technical staff.*

(1) *Contract Compliance Manager.* The Contract Compliance Manager shall assist the Director in managing the Minority Business Development and Compliance Office, oversee pre-award compliance with the M/WBE program requirements, and monitor post-contract compliance to ensure that the M/WBE contract provisions are adhered to during the term of the contract. The Contract Compliance Manager shall demonstrate audit skills, knowledge of the procurement processes, and the ability to work with businesses with diverse interests and backgrounds.

(2) *Contract & Workforce Compliance Specialists.* The Contract & Workforce Compliance Specialists shall monitor

M/WBE contract & workforce compliance and M/WBE contractor and subcontractor on site participation, investigate complaints and good faith efforts, ensure contracts are properly and legally executed, and create a profile of each contractor by preparing site visit reports, and track & report participation. The Contract Compliance Specialists shall demonstrate knowledge of procurement processes, the ability to work with public officials and the general public, and the ability to work with businesses with diverse interests and backgrounds.

(c) *Training.* The County M/WBE Program shall provide training to County departments and offices, including annual training on M/WBE Program requirements and procedures. The County M/WBE Program shall also provide training and guidance regarding implementation of the M/WBE Program, including application of the ordinance and M/WBE rules and regulations.

6. *Compliance tracking, monitoring and reporting.*

(a) *Centralized tracking and monitoring system.* The Office of Administration Division of Purchasing (DOP) shall maintain a centralized tracking and monitoring system such as "global project tracking system" (GPTS) and or designated system to ensure compliance with the M/WBE commitments listed in bid documents. The GPTS shall track subcontractor goals, commitments, and payments. The GPTS shall also monitor unauthorized subcontract substitutions, and late payments. A record of any discrepancies or proof of failure to comply with the contract goals and regulations shall be filed by the DOP, and appropriate ramifications shall be determined by the DOP. Compliance reports shall be submitted annually to the County Executive and the County Council.

(b) *Tracking compliance.* The GPTS shall track a prime contractor's compliance with the contract goal to ensure that the M/WBEs listed as subcontractors are utilized. In the absence of a finding of a good faith effort, a prime contractor's failure to meet an M/WBE subcontract goal during the contract term shall constitute a material breach of contract. The prime contractor shall be subject to liquidated damages for such a breach. Damages shall be assessed based upon the M/WBE goal shortfall and may not exceed the difference between the monetary amount of the participation goals set by the contract and the amount actually paid to M/WBEs damages shall be assessed during the project close-

out by the Division of Purchasing (DOP), and withheld from a retention amount established to cover liquidated damages in addition to any other retention held under the contract. Liquidated damages assessed shall be transferred to the Division of Purchasing (DOP). The DOP shall set aside funds from assessed damages. These funds shall be used solely to provide business development and enhancement services for M/WBEs. All contracts that contain participation goals for African American, Asian American, and women-owned businesses shall contain a provision that provides for the imposition of liquidated damages in the absence of a finding of good faith efforts in the event the prime contractor fails to achieve the participation goals specified by subsections 2 through 8 of this section.

7. Business Advisory Council (BAC) and the small business program.

(a) *Business Advisory Council.* A Business Advisory Council (BAC) shall be established and appointed by the County Executive and approved by the St. Louis County Council to serve as an advocate for M/WBEs to increase access to the procurement process. The BAC shall have ten (10) members, each appointed by the County Executive and approved by the County Council. A member may serve more than one term. The BAC members shall be approved by resolution of the St. Louis County Council. The BAC shall advise and make M/WBE program recommendations in the following areas:

- (1) Effectiveness of the M/WBE program;
- (2) Increasing access to contracting opportunities for M/WBEs;
- (3) Reviewing and advancing initiatives that impact M/WBE participation;
- (4) Enhancing the notification process regarding prospective contract opportunities;
- (5) Reviewing staff program recommendations for effectiveness and impact on M/WBEs and;
- (6) Any other issues deemed necessary by the BAC.

The Division of Purchasing (DOP) shall be responsible for developing rules and guidelines for the BAC consistent with applicable laws for the conduct of its business. The BAC membership and guidelines shall be published on the County's webpage. The committee shall consist of the following ten (10) members appointed by the County Executive, with the consent of the County Council:

- a. One (1) member of the St. Louis County Human Relations Commission;
- b. One (1) member of the MOKAN St. Louis Minority Contractors Association;
- c. One (1) member of the National Association of Women in Construction;
- d. One (1) member of the Associated General Contractors of Missouri;
- e. One (1) member of the Hispanic Chamber of Commerce;
- f. One (1) member of the St. Louis Council of Construction Consumers;
- g. One (1) member of the Coalition of Black Trades Unionist;
and
- h. One (1) member of the (NAACP) National Association for the Advancement of Colored People;
- i. One (1) member of the Asian American Chamber of Commerce;
- j. One (1) member of the St. Louis Building and Construction Trade Council.

(b) *Terms of members.* Members shall serve for staggered terms of three (3) years. Initially four (4) members shall be appointed for a term of three (3) years, three (3) members shall be appointed for a term of two (2) years and two (2) members shall be appointed for a term of one (1) year. Vacancies shall be filled in the same manner as the original appointments for the remainder of the vacant term. Each member shall serve without compensation.

(c) *Election of officers.* The committee shall elect a Chairman and a Secretary who shall each serve for three (3) years. One (1) month prior to the end of the Chairman's and the Secretary's term, successors shall be elected. The committee shall adopt rules consistent with applicable laws for the conduct of its business.

(d) *Meetings.* The committee shall meet quarterly to review compliance with this order. In addition, the committee shall at a minimum meet twice annually in open public session to receive general testimony from the public. All minutes and records of the committee shall be open to the public.

(e) *Monitoring.* The committee shall monitor the effectiveness of the County's program described in this order and make such recommendations to SLDC as it sees fit. The actions, decisions and recommendations of the Committee are to further the policies and goals of this Order and shall not be final or binding on the County but shall be advisory only.

(f) *Annual funding for M/WBE program.* Funding from the County's general fund will be appropriated annually to support the M/WBE program.

(g) *Sunset provision.* The County will require a periodic update of the disparity study to evaluate the effectiveness of the M/WBE program. The M/WBE program will sunset in eight years from adoption of the program. The County will perform a disparity study update within three (3) years prior to the sunset date.

8. *Approval of rules and regulations.* All rules and procedures not expressly stated in subsections 2 through 8 of this section for the implementation of the M/WBE program must be approved at least once annually by resolution by the County Council.

9. *Workforce.*

(a) *Interim workforce goals.* To develop and maintain a highly skilled, employment ready workforce that supports and enhances the economic health of St. Louis County and local business communities, interim workforce participation goals (equal opportunity goals) are established and expressed in percentages of total hours of employment and training of

women and minorities used on County contracts and projects. The County shall complete a formal workforce disparity study by December 31, 2019.

(b) *Participation goals for minorities and women.* On each public works contract, and County incentivize projects for which the design team's estimated base value of the contract is one million dollars or more, the contract goals shall be twenty-five (25) percent of all labor hours are to be performed by minorities and seven (7) percent of all contract labor hours are to be performed by women.

(c) *County resident participation.* On each public works contract, tax increment financed (TIF) project and St. Louis County bonded project for which the design team's estimated base value of the contract is one million dollars or more, the contract goals shall be twenty-three (23) percent of all labor hours are to be performed by persons who reside in the County ("County residents"). Such County residents, if they are minorities and/or women, may also be counted towards the goals set forth in minority and women-owned business enterprise program, in Office of Administration Division of Purchasing (DOP).

10. *Non-compliance.*

(a) *Material breach.* The failure to meet the requirements of the minority and women-owned business enterprise program in Office of Administration Division of Purchasing (DOP), including but not limited to failure to submit required documentation and reporting, failure to meet to resolve issues and failure to use good faith efforts to comply, deliberate submission of false and/or fraudulent documentation/information, constitutes a violation and shall be a material breach of the contract.

(1) If there is a violation of the minority and women-owned business enterprise program in the Office of Administration Division of Purchasing (DOP), the DOP will first cite the violator in writing giving the violator notice of the violation and a thirty-day notice to cure;

(2) If after the thirty (30) days there is no cure, the Agency may exercise the remedies for breach provided herein and any other remedies available by law.

(b) *Remedies for breach.* In the event of a violation of the minority and women-owned business enterprise program in the Office of Administration Division of Purchasing (DOP), the DOP may place the project owner, developer, and the general contractor on a list maintained by the DOP and be barred from participating in public works contracts or tax increment financed (TIF) projects for a period of one (1) year following the notice of violation, in addition to any other sanctions available to the Department of Public Works for public works contracts. The DOP shall make quarterly reports to the TIF Commission, the Department of Public Works, the St. Louis County Council, and the County regarding the project owners, developers and general contractors cited and listed for violations of this section.

(c) *Liquidated damages.* All contracts that contain participation goals for minorities, women, or County residents shall contain a provision that provides for liquidated damages in the event the project owner, developer, general contractor, or both fails or fail to achieve the participation goals specified by the Minority and Women-Owned Business Enterprise Program in Office of Administration Division of Purchasing (DOP).

The liquidated damages may not exceed the difference between the monetary amount of the participation goals set by the Agency and the amount actually paid to minorities, women, and County residents. An agency or organizations identified by the St. Louis County Council shall set aside funds from assessed damages. These funds shall be used solely to provide workforce training and development services for minorities and females. In determining the amount actually paid to minorities, women, and County residents, no credit shall be given for that portion of the minority, women, and County resident participation not approved by the minority and women-owned business enterprise program in Office of Administration Division of Purchasing (DOP), provided however that the DOP may allow credit if it determines, in its sole discretion, that the project owners, developers and general contractors acted in good faith.

• **107.075 - Disqualification of Vendors.**

-1. No contract or subcontract awarded pursuant to the provisions of this chapter shall be let to any contractor which is disqualified as hereinafter set out or is managed,

controlled or more than fifty (50) percent owned by a person or entity so disqualified. A contractor which is disqualified or is managed, controlled or more than fifty (50) percent owned by a person or entity that is disqualified shall not act as a subcontractor on any such County contract.

2. Any person may request that the Agent determine the suitability of a contractor or subcontractor for performance of future contracts with the County. Such request must state information which such person has regarding the contractor's unsuitability to engage in contracts with the County. The Agent may reject any request which fails to raise any specific aspect of the contractor's suitability for being awarded contracts with County.

3. When the Agent, in his discretion, shall determine that a review should be undertaken regarding the suitability of a contractor or subcontractor for performance of future contracts with the County, the Agent shall review the performance of such contractor or subcontractor in performing prior contracts with the County. In determining whether a contractor or subcontractor should be disqualified from receiving any County contracts for a period of time, the Agent may consider any of the following:

(a) Whether the contractor or subcontractor incorporated materials into the work which were not in accordance with or equal to the materials specified in the contract.

(b) Whether the contractor or subcontractor performed any work on the contract without the insurance required by the contract.

(c) Whether the contractor or subcontractor completed the work in a timely manner.

(d) Whether the contractor or subcontractor obtained all permits required by law, and whether the contractor or subcontractor observed all required safety precautions in connection with handling, storage and use of explosives.

(e) Whether the contractor or subcontractor concealed substandard work from inspectors.

(f) Whether the contractor or subcontractor falsified test results.

(g) Whether the contractor or subcontractor repaired all property damaged in the course of doing the work.

(h) Whether the contractor or subcontractor paid suppliers.

(i) Whether the contractor or subcontractor complied with law relating to equal opportunity in employment.

(j) Whether the contractor or subcontractor disposed of hazardous or regulated waste only in those locations and in the manner which have been approved as provided by law and, if applicable, in the contract.

(k) Whether the contractor or subcontractor shall pay any applicable tax due to St. Louis County.

(l) Whether the contractor or subcontractor pays the wage rates, including appropriate fringe benefits, as prescribed in the contract, and includes provisions in subcontracts that such wage rates, including appropriate fringe benefits, shall be paid.

(m) Whether the contractor or subcontractor permits a subcontractor or any employee to violate any of the requirements listed herein.

4. If violations are found, the Agent shall determine whether the bidder should be disqualified and the period of such disqualification. In determining whether a contractor should be disqualified and the period of disqualification imposed by the Agent, if any, following such a review of past performance of a contractor or subcontractor, the Agent shall consider the seriousness of the violation, whether the violation was intentional, and whether the contractor had been previously disqualified from contracts with St. Louis County. The period of disqualification under this section shall not exceed three (3) years.

5. Failure of the Agent to disqualify a contractor under the provisions of this section shall not estop the Agent from determining that a bidder is not the "lowest responsible bidder" under the criteria set forth in Section [107.130](#)(6).

- **107.080 - St. Louis County Purchasing Policy Committee.**

-1. There is hereby created in the Department of Administration the St. Louis County Purchasing Policy Committee which is referred to hereinafter as the Policy Committee.

2. The Policy Committee shall consist of the Director of Transportation, the Director of Public Works, the Director of the Public Health Department, the Director of Minority Business Development and Compliance, or their designees, and the Director of Administration who shall serve as chairman. The Purchasing Agent shall serve as an ex-officio member of the Policy Committee. The Chairman of the County Council or his/her designee shall participate as a non-voting, ex-officio member of the Policy Committee.

3. The Policy Committee shall have the authority and responsibility to promulgate regulations consistent with the Purchasing Code governing the procurement, management, control and disposal of any and all supplies, services, and construction to be procured by the County. The Policy Committee shall meet quarterly and shall strive to adopt regulations consistent with best practices in public procurement.

4. Purchasing procedures and administrative practices developed from the Policy Committee shall be uniformly standardized, but sufficiently flexible to account for isolated unique conditions. Items commonly used in the various departments shall be standardized whenever consistent with County goals and in the interest of efficiency and economy.

• **107.090 - Requisition and Estimates.**

-All using agencies, either by or with the authorization of the head of the department or office under which the using agency operates, shall file with the Agent detailed requisitions or estimates of their requirements in supplies and contractual services in such manner, at such times, and for such future periods as the Agent shall prescribe. A using agency shall not be prevented from filing, in the same manner, with the Agent at any time a requisition or estimate for any supplies and contractual services, the need for which was not foreseen when the detailed estimates were filed. The Agent shall examine each requisition or estimate and shall have the authority to revise it as to quality, quantity or

estimated cost, except where the using agency shall have the specific power and duty as otherwise provided by law or ordinance to determine the quality, quantity, and specifications or cost of any supplies; but revision as to quality shall be in accordance with the standards and specifications established pursuant to this chapter.

- **107.100 - Encumbrance of Funds.**

—The agent shall not issue any order for delivery on a contract or open market purchase until the County Accounting Officer shall have certified that there is to the credit of the using agency or agencies concerned a sufficient unencumbered appropriation balance in excess of all unpaid obligations to defray the amount of such order.

- **107.110 - Gifts and Rebates.**

—The Agent and every officer and employee of the County are expressly prohibited from accepting, directly or indirectly, from any person, company, firm or corporation to which any purchase order or contract is, or might be awarded, any rebate, gift, money, or anything of value whatsoever, except where given for the use and benefit of the County.

- **107.120 - Competitive Bidding Required.**

—All purchases of and contracts for supplies and contractual services shall, except as specifically provided herein, be based whenever possible, on competitive bids. All sales of personal property which has become obsolete and unusable shall, except as specifically provided herein, be based whenever possible on competitive bids.

- **107.130 - Formal Contract Procedure—Competitive Bidding.**

—All supplies, professional services and contractual services, except as otherwise provided herein, when the estimated cost thereof shall exceed twenty-five thousand dollars (\$25,000.00), shall be purchased by formal written contract from the lowest responsible bidder, after due notice inviting proposals:

(1) Public Notice inviting bids shall be published at least once in at least one official newspaper in the County with a circulation of at least five hundred (500) copies per

issue, which notice shall be published at least fifteen (15) days preceding the last day set for receipt of proposals and by any other method(s) the agent finds appropriate in light of the supplies, professional services or contractual services being solicited. The newspaper notice required herein shall include a general description of the articles to be purchased or sold, shall state where bid blanks and specifications may be secured and the time and place for opening bids. The agent shall also solicit sealed bids from all responsible prospective suppliers or purchasers who have requested their names to be added to a "bidders' list," which the agent shall maintain, by sending them a copy of such newspaper notice or such other notice as will acquaint them with the proposed purchase or sale. In addition, the agent may put public notice on the State of Missouri Buys website, if available, or other similar type service provided by the State of Missouri when such notice shall bring a competitive advantage to the County.

In any case, invitations sent to the vendors on the bidders' list shall be limited to commodities that are similar in character and ordinarily handled by the trade group to which the invitations are sent. All such purchases or sales shall also be advertised by a notice posted on the County website.

(2) When deemed necessary by the agent, bid deposits shall be prescribed in the public notice inviting bids. Unsuccessful bidders shall be entitled to return of surety or deposit where the agent has required such. A successful bidder shall forfeit any deposit or surety required by the agent upon failure on his part to enter into a contract within ten (10) days after the award.

(3) Intentionally blank.

(4) All bids shall be submitted sealed to the Agent and shall be identified as bids on the envelope. Bids shall be opened by the Agent or a duly authorized representative in the presence of the County Clerk or a duly authorized representative, at the date, time and location specified in the advertisement for bids. The Agent shall tabulate all bids received on a form specially designed for the purpose, and such tabulation shall be posted in the Office of the Agent and available for public inspection for at least five (5) days. The Agent shall forward the Bids to the interested Department Head, who shall return the Bids with his

recommendations to the Agent within the shortest practicable time.

(5) The Agent shall have the authority to reject all bids, parts of all bids, or bids for any one (1) or more supplies or contractual services included in the proposed contract, when the public interest will be served thereby.

(6) The Agent shall have the authority to award contracts within the purview of this chapter. Contracts shall be awarded to the lowest responsible bidder. In determining "lowest responsible bidder," in addition to price, the Agent shall consider: The ability, capacity or skill of the bidder to perform the contract or provide the service required; whether the bidder can perform the contract or provide the service promptly or within the time specified, without delay or interference; the character, integrity, reputation, judgment, experience and efficiency of the bidder; the quality of performance of previous contracts or services; the previous and existing compliance by the bidder with laws and ordinances relating to the contract or service; the sufficiency of the financial resources and ability of the bidder to perform the contract or provide the services; the quality, availability of the supplies, or contractual services to the particular use required; the ability of the bidder to provide future maintenance and service for the use of the subject to the contract; and the number and scope of conditions attached to the bid. When the award is not given to the lowest bidder, a full and complete statement of the reasons for placing the order elsewhere shall be prepared by the Agent with the concurrence of the County Counselor and filed with the other papers relating to the transaction. If all bids received are for the same total amount or unit price, the Agent shall re-advertise for bids, unless the public interest will not permit this delay. In such case, the Agent shall award the contract to one (1) of the tie bidders by drawing lots in the presence of the County Clerk or his duly authorized representative in public, or by purchasing the supplies or contractual services in the open market, provided the price paid therefor shall not exceed the lowest contract bid price submitted for the same supplies or contractual services. If two (2) or more bidders tie for low bid and elements of time or responsibility of the bidders are not sufficient to justify the award to one (1) of the tie bidders, the Agent shall award the contract to one (1)

of the tie bidders by drawing lots in the presence of the County Clerk or his duly authorized representative in public.

(7)

(a) As to construction projects, the term "responsible bidder" shall be further restricted to include, except as to federal or State projects if prohibited as a condition of funding, only those bidders who certify by notarized statement that: they have not been barred from bidding on any federal or State projects within the last year; that they have not had any State or County-issued business, trade or contracting license suspended or revoked within the last year; that they have and enforce a drug-testing policy for all employees in the field; that all employees will be licensed, with the appropriate licensing authority; that prevailing wages will be paid to all employees; that all on-site employees and on-site employee supervisors will be OSHA-certified in compliance with then-current OSHA safety requirements prior to working on the project; that all on-site employees will be ten-hour OSHA-certified; that all on-site employee supervisors will be thirty-hour OSHA-certified; and that they will comply with all applicable laws, ordinances, rules and regulations governing the conduct of business in St. Louis County and the State of Missouri.

(b) As used in this subsection:

i. "On-site employee" shall mean any laborer, workers, drivers, equipment operators, and craftsperson employed by contractors and subcontractors to be directly engaged in construction at the site of the construction project.

ii. "Directly engaged in construction" shall mean work performed in the actual erection of the structure or completion of the improvement constituting the public work project. Persons engaged solely in the transportation of materials, fuel or equipment to the site, and persons engaged in the business of landscaping, including, contractors who perform landscaping work, seeding, sodding and planting of trees and shrubs, and design and construction of common outdoor accessory features such as retaining walls, shall not be deemed to be directly engaged in construction.

iii. A "subcontractor" is a person who enters into a subcontract with a contractor for construction of public works and employs on-site employees for completion of the contract.

iv. A "supervisor" is a foreman, project manager, safety director or lead tradesman on the project.

(c) For construction projects with an estimated cost greater than seventy-five thousand dollars (\$75,000.00), contractor shall certify that contractor and any and all subcontractors that perform work on such project on behalf of said certifying contractor: (1) participate in or maintains apprentice programs registered with the U.S. Department of Labor and compliant with 29 C.F.R. Part 29 and 29 U.S.C. Sec. 50; (2) that each program has active, registered apprentices; and (3) that each program complies with all required federal Department of Labor regulations, including affirmative-action obligations described in 29 C.F.R. Part 30.

(8) All contracts of St. Louis County shall be executed by the County Executive and attested by the County Clerk, and shall bear thereon the approval of the County Counselor, and the certification of the Accounting Officer. A copy of each contract shall be filed with the Accounting Officer.

(9) The Agent shall adopt such rules and regulations as appropriate for the requirement of corporate surety bonds for contracts. These rules and regulations are to be approved by the County Counselor and shall become effective when approved by the St. Louis County Council by Council Order.

- **107.131 - Two-Step Sealed Bidding.**

-1. When, in the opinion of the Purchasing Agent, adequate specifications for a particular acquisition of supplies or contractual services, including those related to information technology, are not available to conduct competitive bidding in accordance with Section [107.130](#), and it is desirable to permit the development of a sufficiently descriptive and not unduly restrictive statement of the County's requirements, including an adequate technical data package, so that subsequent acquisitions may be made in accordance with Section [107.130](#), a two-step sealed bidding process as described herein may be utilized. As used in this context,

the word "technical" may be construed broadly, and includes, among other things, the engineering approach, special manufacturing processes and special testing techniques.

2.

The two-step bidding process may be utilized when, in the Agent's opinion, all of the following conditions are present:

(a) available specifications or purchase descriptions are not definite or complete or may be too restrictive without technical evaluation and any necessary discussion, of the technical aspects of the requirement to ensure mutual understanding between each source and the County;

(b) definite criteria exist for evaluating technical proposals;

(c) more than one technically qualified source is expected to be available;

(d) sufficient time will be available for use of the two-step method;

(e) a firm-fixed-price contract with economic price adjustment will be used.

3. Upon the Agent's determination to utilize two-step bidding, the selection of a contractor shall proceed as follows:

(a) In the case of acquisitions where the estimated value of the supplies or services exceeds twenty-five thousand dollars (\$25,000.00), notice shall be provided in accordance with Section [107.130](#). In the case of acquisitions where the estimated value of the supplies or services does not exceed twenty-five thousand dollars (\$25,000.00), bids shall be solicited in accordance with Section [107.140](#).

(b) Requests for proposals shall include the following at a minimum:

1) A description of the supplies or services required;

2) A statement of intent to use the two-step method;

-
- 3) The requirements of the technical proposal;
 - 4) The evaluation criteria, to include all factors and any significant subfactors;
 - 5) A statement that the technical proposals shall not include prices or pricing information;
 - 6) The date and hour by which the proposal must be received;
 - 7) A statement that, in the second step, only bids based on technical proposals determined to be acceptable, either initially or as the result of discussion, will be considered for awards, and that each bid in the second step must be based on the bidder's own technical proposals;
 - 8) A statement that the offerors should submit proposals that are acceptable without additional explanation or information; and that the County may make a final determination regarding a proposal's acceptability solely on the basis of the proposal as submitted; and that the County may proceed with the second step without requesting further information from any offeror; however, the County may request additional information from offerors of proposals that it considers reasonably susceptible of being made acceptable, and may discuss proposals with their offerors;
 - 9) A statement that a notice of unacceptability will be forwarded to the offeror upon completion of the proposal evaluation and final determination of unacceptability;
 - 10) A statement that either only one technical proposal may be submitted by each offeror or that multiple technical proposals may be submitted.

(c) Upon receipt of proposals, the Agent shall safeguard the proposals against disclosure to unauthorized persons and shall remove any reference to price or cost. The Agent shall categorize each proposal as either acceptable, reasonably susceptible of being made acceptable, or unacceptable. Any proposal which modifies or fails to conform to the essential requirements or specifications of the request for technical proposal shall be considered nonresponsive and categorized as unacceptable.

(d) The Agent may proceed directly with solicitation of bids if there are sufficient acceptable proposals to ensure adequate price competition and if further time, effort and delay to make additional proposals acceptable and thereby increase competition would not be in the County's best interest. If this is not the case, the Agent shall request bidders whose proposals may be made acceptable to submit additional clarifying or supplemental information. The Agent shall identify the nature of the deficiencies in the proposal or the nature of the additional information required. The Agent may also arrange discussions for this purpose. No proposal shall be discussed with any offeror other than its submitter.

In initiating requests for additional information, the Purchasing Agent shall fix an appropriate time for bidders to conclude discussions, if any; submit all additional information; and incorporate such additional information as part of the proposals submitted. Such time may be extended in the discretion of the Agent. If the additional information incorporated as part of a proposal within the final time fixed by the Agent establishes that the proposal is acceptable, it shall so be categorized. Otherwise it shall be categorized as unacceptable.

(e) When a technical proposal is found unacceptable (either initially or after clarification), the Agent shall promptly notify the offeror of the basis of the determination and that a revision of the proposal will not be considered. If no acceptable proposal or only one proposal is received, all offerors shall be so notified and the acquisition may be made under the Sole Source Purchase Procedure set out in Section [107.133](#) if appropriate.

(f) Invitations for bid shall be issued only to those offerors whose previously submitted proposals have been deemed acceptable by the Agent. The bid invitations shall state the time and place for opening of the bids and that the bidder shall comply with the specifications and the bidder's own proposal. When deemed necessary by the Agent, bid deposits shall be prescribed in the public notice inviting bids. Unsuccessful bidders shall be entitled to return of surety or deposit where the Agent has required such. A successful bidder shall forfeit any deposit or surety required by the Agent upon failure on his part to enter into a contract within ten (10) days after the award.

(g) The bids shall be opened and contracts awarded pursuant to the requirements of Section [107.130](#)

- **107.132 - Requests for Proposals Required.**

—1. Unless otherwise required by federal or State law, the following competitive request for proposals (RFP) procedure shall be utilized for the acquisition of professional services in excess of twenty-five thousand dollars (\$25,000.00) (excluding architectural, engineering and land surveying services as defined in section [107.020](#)) when, in the written opinion of the purchasing agent: the scope of work cannot be completely defined by the County; the exercise of discretion and independent judgment in the performance or design and an advanced, specialized type of knowledge, expertise, or training customarily acquired either by a prolonged course of study or equivalent experience in the field is necessary; the qualifications, experience or quality of the supplies and services to be delivered are significant factors for consideration; or the responses may contain varying levels of service or alternatives which lend themselves to negotiation. In the event the estimated cost of the services to be solicited via RFP exceeds the sum of one hundred thousand dollars (\$100,000.00), prior to publishing such RFP, the director of the using agency shall obtain approval of the County Council by order.

(1) The RFP shall identify the services sought, including the scope of the project; the specific factors that will be used in evaluating proposals; and the date and time by which proposals must be received;

(2) The RFP shall be given public notice published by posting on the County website for a minimum of fifteen (15) business days and by any other method(s) the purchasing agent finds appropriate in light of the services being requested so as to obtain the greatest number of responses from qualified providers of the required services;

(3) The director of the using agency shall convene an evaluation committee composed of County employees to review the proposals and shall provide notice to the purchasing agent of the names of the evaluation committee members and a timeline for review of the proposals. The evaluation committee shall:

(a) Consist of three (3) or more subject matter expert members including the using agency director or his subject matter expert designee and a merit system employee of the Division of Purchasing, who shall be a non-voting member of the evaluation committee and shall participate for the purpose of certifying that the method of purchase is properly followed;

(b) Develop a uniform scoring system to evaluate each proposal;

(c) Make a written recommendation to the using agency director and purchasing agent as to which proposal represents the best value to the County, taking into account the price; ability, capacity or skill of the proposer to provide the required services; whether the proposer can provide the service promptly or within the time specified, without delay or interference; the character, integrity, reputation, judgment, experience and efficiency of the proposer; the quality of performance of previous contracts or services; the previous and existing compliance by the proposer with laws and ordinances relating to the service; the sufficiency of the financial resources and ability of the proposer to provide the services; the quality and availability of the contractual services required; the ability of the proposer to provide any necessary future service; and the number and scope of conditions attached to the proposal;

(d) Prepare minutes of its meeting(s) to reflect deliberations, including details of why a particular entity was selected, the scoring process, and a summary of votes taken. The evaluation committee shall provide a copy of all said documentation to the purchasing agent for certification to the County Council that the RFP process was followed.

(4) Upon receipt of the evaluation committee's recommendation, using agency director shall decide whether to proceed with a written recommendation to the County Executive, to abandon efforts to secure the subject services if the proposal does not meet the RFP requirements or the using agency director determines the service is no longer necessary, or to solicit new proposals. If the using agency director decides to proceed with the recommendation to the County Executive, the using agency director shall notify the purchasing agent. The purchasing agent shall review the evaluation committee's recommendation to determine if the

RFP process was followed. If the purchasing agent determines that the RFP process was followed, he shall complete a written certification. The using agency director may then submit a written recommendation including the purchasing agent's certification to the County Executive. The purchasing agent's certification shall be submitted to the County Council with any request for legislation to authorize execution of a contract resulting from the RFP. No contract shall be executed without authorization from the County Council. If the using agency director elects to reject all proposals, he shall provide written notification to the purchasing agent of such decision to reject.

(5) The using agency director shall include the following information in the recommendation to the County Executive and such information shall be provided to the County Council:

- (a) The total amount requested and budgeted for the contract;
- (b) The source of funds to be used for the contract and any renewals, including any grant funding;
- (c) The services to be provided and whether the services are an expansion of a current program, project or service;
- (d) Any contingency funds requested; and
- (e) The written certification completed by the purchasing agent.

2. At the discretion of the using agency director, RFP contracts for which compensation is twenty-five thousand dollars (\$25,000.00) or less may be recommended to the County Executive by the using agency without the convening of an evaluation committee, so long as the RFP is published pursuant to the above section. The using agency shall notify the purchasing agent of all such RFPs prior to issuance. All such contracts shall be approved by the County Council unless County ordinances otherwise provide.

3. The provisions of this section shall not apply to the services of attorneys and expert witnesses engaged by the County Counselor under [chapter 110](#) SLCRO 1974 as amended.

4. The provisions of this section shall not apply to architectural, engineering or land surveying services as

identified in RSMo § 8.285 et seq. Those shall be awarded as provided under Missouri law.

5. Any contract resulting from the RFP process pursuant to this section shall be a firm fixed price contract. If the using agency director requests authorization for execution of change orders with the contract, the using agency director shall request a specific percentage and provide a written description of the need for such authority within the request for legislation.

6. The purchasing agent shall provide a quarterly report to the County Council containing a list of RFPs where County elected to reject all submitted proposals.

• **107.133 - Sole-Source Purchase Procedure.**

-1. A contract may be awarded for supplies or service without competitive bidding under Section [107.130](#) when the Purchasing Agent determines in writing that there is only one (1) source for the required supplies or service.

2. Sole-source purchase is not permissible unless a requirement is available from only a single supplier. A requirement for a particular proprietary item does not justify a sole-source purchase if there is more than one (1) potential bidder or offeror for that item. The following are circumstances which could necessitate sole-source purchase:

(a) Where the compatibility of equipment, accessories, or replacement parts is the paramount consideration.

(b) Where a sole supplier's item is needed for trial use or testing.

(c) Where a sole supplier's item is to be purchased for resale.

(d) Where public utility services are to be purchased.

(e) Where service must be obtained from original equipment contractor in order to maintain equipment operation.

The determination as to whether a purchase shall be made as a sole-source shall be made by the Purchasing Agent. Such

determination and the basis therefor shall be in writing. The Purchasing Agent will specify the application of such determination and the duration of its effectiveness. In cases of reasonable doubt, competition should be solicited. Any request by a using agency that a purchase be restricted to one (1) potential contractor shall be accompanied by a written explanation and signed by the head of the using agency as to why no other will be suitable or acceptable to meet the need.

3. The Purchasing Agent shall conduct negotiations, as appropriate, as to price, delivery, and terms. The County Counselor will approve the final contract terms.

4. A record of sole-source purchases which exceed the amount requiring formal contract procedure under Section [107.130](#) shall be maintained that lists:

- (a) Each contractor's name.
- (b) The amount and type of each contract.
- (c) A listing of the supplies or services, purchased under each contract.
- (d) The identification number of each contract file.
- (e) Using agency requesting the sole-source purchase.

- **107.134 - Reserved.**

- **Editor's note**— O. No. 27043, § 2, adopted May 8, 2018, amended the Code by repealing former § 107.134, which pertained to minority and women participation in construction contracts, and derived from O. No. 25816, adopted July 1, 2014.

- **107.135 - Tax Certification.**

- 1. The Purchasing Agent shall not award a contract for contractual services or supplies to be procured under the provisions of the Purchasing Code without first having obtained a certification from the Department of Revenue certifying that the low bidder for said contractual services or supplies who is subject to County taxation does not owe

to St. Louis County any current or past real estate, personal property or merchants or manufacturer taxes.

2. In the event the Department of Revenue certifies to the Purchasing Agent that a low bidder is subject to taxation by St. Louis County and that said low bidder is not on the tax rolls or owes to St. Louis County current or past real estate personal property or merchant or manufacturer taxes, the Purchasing Agent shall not make an award to the low bidder until the Department of Revenue issues a certification acknowledging the payment of any and all taxes due St. Louis County, Missouri.

- **107.140 - Open Market Procedure.**

-1. All purchases of supplies and contractual services of less than the estimated value of twenty-five thousand dollars (\$25,000.00) shall be made in the open market without newspaper advertisement and without observing the procedure prescribed in Section [107.130](#) hereof for award of formal contracts.

2. All open market purchases shall, whenever possible, be based on at least three (3) competitive bids and shall be awarded to the lowest responsible bidder in accordance with the standards set forth in subsection (6) of section [107.130](#) hereof. The Agent, or designated representative, shall solicit bids or quotes by using an online bidding system, by facsimile request or by telephone to prospective vendors and by public notice. Notice may be posted on the County's Internet site or on a third-party provider website with links from the County Internet site. The Agent shall maintain a file of all open market orders and the bids submitted in competition hereon and such record shall be open to public inspection.

3. Notwithstanding the requirements of subsections 1 and 2 hereinabove, upon the request of any using agency, the Agent may procure or sell through State or public auction, whether conducted online or in person, any item which the Agent determines should be so purchased or sold in the best interest of the County. The auction shall be operated in accordance with procedures approved by the Agent.

- **107.141 - Open Source Software Purchase Procedure.**

-1. For the purposes of this section, *open source software* and *open source software solution* shall mean any software or solution where the source code used to create the software is made publicly available for other developers to adopt or modify.

2. All purchases for open source software solutions with an estimated annual cost of less than one hundred thousand dollars (\$100,000.00) shall be made in the open market without newspaper advertisement and without observing the procedure prescribed in Section [107.130](#) hereof for award of formal contracts.

3. All open source software purchases shall, whenever possible, be based on at least three (3) competitive bids and shall be awarded to the lowest responsible bidder in accordance with the standards set forth in Subsection (6) of Section [107.130](#) hereof. Bids shall be for the total cost of ownership, including exit costs. The agent, or designated representative, shall solicit bids or quotes by using an online bidding system, by facsimile request, or in writing to prospective vendors and by public notice. Notice may be posted on the County's internet site or on a third-party provider website with links from the County internet site. The agent shall maintain a file of all open source software solution purchases and the bids submitted in competition hereon and such record shall be open to public inspection.

4. The County Executive is authorized to execute any agreements necessary for the purchase of open source software solutions pursuant to this section.

• **107.145 - Disposal of Personal Property.**

-1. The Purchasing Agent is authorized to dispose of personal property which has become obsolete and unusable upon terms advantageous to St. Louis County; provided that the Purchasing Agent shall prior to such disposal submit a list of items to be disposed of to the County Council for its approval by order, together with factual information in clear and specific terms to support the finding by the Purchasing Agent that the items to be disposed of are obsolete and unusable.

2. The Purchasing Agent is authorized to conduct or have conducted a public auction at which those items found by the

Purchasing Agent to be obsolete and unusable and approved by order of the County Council will be sold in a manner consistent with commonly accepted procedures for public auctions. Not less than ten (10) days prior to said auction, the Purchasing Agent shall publish a notice of said auction in at least one official newspaper in the County with a circulation of at least five hundred (500) copies per issue, which notice shall contain a general description of the items to be sold and the date and location of the proposed auction.

3. With the exception of those items sold at public auction, personal property having an estimated value in excess of twenty-five thousand dollars (\$25,000.00) shall be disposed of in accordance with the formal contract procedure, Section [107.130](#); and disposal of personal property having a value of less than twenty-five thousand dollars (\$25,000.00) shall be made in accordance with the open market procedure, Section [107.140](#).

4. Notwithstanding subsections 1, 2, and 3 of this section, the Purchasing Agent is authorized to dispose of unusable or surplus computers, computer accessories and related equipment by donation to a non-profit organization which will use such equipment for educational purposes. Prior to donation, the Purchasing Agent shall obtain the certification of the Chief Information Officer that the intended donee will permanently erase from any donated equipment all data stored therein, and that all data will be protected from retrieval prior to erasure. The Purchasing Agent shall advise the County Council semi-annually of all donations made pursuant to this subsection.

5. Notwithstanding subsections 1, 2 and 3 of this section, the Purchasing Agent is authorized to allow any person who resigns or retires from the Office of the Prosecuting Attorney, the Department of Justice Services, the Department of Parks and Recreation or the Department of Police after seven years of continuous service, to purchase, within one hundred twenty (120) days of resignation or retirement, such person's used County-assigned duty weapon at a price equal to the lesser of three hundred fifty dollars (\$350.00) or fair market value as determined by the Purchasing Agent. In the event any such duty weapon is seized as evidence pursuant to a law enforcement investigation prior to the sale of the weapon by the County to the former employee, the Purchasing Agent is authorized to allow such purchase within one hundred

twenty (120) days of the release of the duty weapon by the investigating agency. Such authority of the Purchasing Agent is contingent upon written concurrence of the department head of the department to which the resignee or retiree was assigned, or the Prosecuting Attorney if the retiree or resignee was assigned to the office of the Prosecuting Attorney. This subsection shall also apply to any resignee or retiree identified herein who resigned or retired one hundred twenty (120) days or less prior to the effective date of this ordinance.

6. Notwithstanding subsections 1, 2 and 3 of this section, the Purchasing Agent is authorized to allow the designated beneficiary of any employee of the Office of the Prosecuting Attorney, the Department of Justice Services, the Department of Parks and Recreation or the Department of Police who has died in the line of duty, to purchase the deceased's used County-assigned duty weapon within one hundred twenty (120) days of the death of the employee. The price of the weapon shall be equal to the lesser of three hundred fifty dollars (\$350.00) or fair market value as determined by the Purchasing Agent. In the event any such duty weapon is seized as evidence pursuant to a law enforcement investigation prior to the sale of the weapon by the County to the designated beneficiary, the Purchasing Agent is authorized to allow such purchase within one hundred twenty (120) days of the release of the duty weapon by the investigating agency. Such authority of the Purchasing Agent is contingent upon written concurrence of the department head of the department to which the deceased was assigned, or the Prosecuting Attorney if the deceased was assigned to the office of the Prosecuting Attorney. This subsection shall also apply to any designated beneficiary identified herein if the line of duty death occurred one hundred twenty (120) days or less prior to the effective date of this section.

7. Nothing in this section shall be construed as to authorize the Purchasing Agent or any other County employee to sell, transfer or otherwise provide any County-issued duty weapon to any individual who is prohibited by law from purchasing, owning or possessing such weapon.

• **107.146 - Discrimination by Contractors—Prohibited.**

—All contracts for professional services, supplies and construction wherein St. Louis County is a party, whether

negotiated or formally advertised, shall contain a nondiscrimination in employment clause which shall provide that the contractor in the performance of the contract will not discriminate against any employee or applicant for employment because of actual or perceived race; creed color; age; disability; religion; sex; sexual orientation; gender; gender identity; gender expression; political affiliation; or national, ethnic or cultural origin. Such nondiscrimination in employment clause shall further provide that the contractor in the performance of the contract will not discriminate against any employee or applicant for employment because of hairstyle, protective hair, or natural or cultural hair texture or style, unless based upon demonstrable workplace safety concerns directly related to duties and responsibilities of the employment position. Actions of the contractor shall include but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The County Counselor shall draft an appropriate clause for inclusion in all County contracts.

- **107.150 - Central Warehousing.**

—The Agent shall control and supervise all County storerooms and warehouses. The County Council shall provide a stores revolving fund of sufficient amount to finance the purchase and storage of supplies which are used in large quantities and which may be purchased and stored advantageously. Such fund shall be under the control of the Agent, subject to financial control of the County Auditor, and he shall be accountable for all supplies in his custody. Requisitions from supplies in a storeroom or warehouse shall be credited to the stores revolving fund by a charge against the appropriation of the using agency. The Agent shall cooperate with the County Auditor in the maintenance of a perpetual inventory record of all such supplies.

- **107.160 - Price Agreement Contract Procedure.**

—The Agent shall have authority to execute long-term price agreement contracts, subject to the provisions of this chapter, whereby the using agencies requisition and accept delivery of supplies and equipment in small lots, to meet requirements as needed. The Agent shall have authority to

charge the cost of such contract against the appropriations of such using agencies. The Agent shall prescribe by rules and regulations the procedure under which such requisition may be made by the heads of using agencies.

- **107.170 - Unforeseen Requirements.**

-1. In case of an immediate need which requires immediate purchase of supplies or contractual services, the County Executive shall be empowered to authorize the Agent to secure by open market procedure, as herein set forth, at the lowest possible price, any supplies or contractual services regardless of the amount of the expenditure; provided, however, that the County Auditor shall certify that the account to be charged for said services or purchase has a sufficient unencumbered balance to pay the same in the appropriation account against which such obligation is to be charged.

2. A full report of the circumstances of such immediate purchase shall be filed by the Agent with the County Supervisor and the County Council and shall be entered in the minutes of the Council and shall be open to public inspection.

3. In cases of emergency, where the immediate procurement of any supplies or contractual services is essential to prevent delays in the work of any using agency, which may vitally affect the life, health, welfare or convenience of citizens, and there is not sufficient time or the procedure set forth above to be followed, the Agent may authorize the head of any such using agency to purchase directly such supplies or contractual services. The head of such using agency shall send to the Agent a requisition and a copy of the delivery record, together with a full written report of the circumstances of the emergency. The report shall be filed by the Agent with the Council and County Supervisor as set forth above.

4. The Agent shall prescribe by rules and regulations the procedure under which emergency purchases by heads of using agencies may be made.

- **107.180 - Inspection and Testing.**

-1. The Agent shall inspect or supervise the inspection of all deliveries of supplies or contractual services to determine their conformance with the specifications set forth in the order or contract. The Agent shall have the authority to authorize using agencies having the staff and facilities for adequate inspection to inspect all deliveries made to such using agencies under rules and regulations which the Agent shall prescribe.

2. The Agent shall have the authority to require chemical and physical tests of samples submitted with bids and samples of deliveries which are necessary to determine their quality and conformance with the specifications. In the performance of such tests, the Agent shall have the authority to make use of laboratory facilities of any agency of the County Government or of any outside laboratory.

- **107.190 - Surplus Stock.**

-1. All using agencies shall submit to the Purchasing Agent, at such times and in such form as he shall prescribe, reports showing stocks of all supplies which are no longer used or which have become obsolete, worn out or scrapped. The Purchasing Agent shall have the authority to transfer surplus stock to other agencies, to sell all supplies which have become unsuitable for public use, including authority to sell said stock at public auction, or to exchange the same for, or trade in the same on new supplies. With the exception of those sales made at public auction, all sales under this section shall be made to the highest responsible bidder in compliance with Sections [107.130](#), [107.140](#) and [107.145](#), whichever is applicable.

2. The Purchasing Agent shall make necessary arrangements to keep the Accounting Officer informed of all transfers, sales, exchanges, and trade-ins so that the Accounting Officer's inventory record may be kept current.

- **107.200 - Cooperative Purchasing Programs.**

A. The County may purchase goods and services pursuant to a cooperative procurement agreement provided that the procuring entity's procurement process is consistent with County's competitive purchasing requirements in this chapter. All State of Missouri cooperative procurement

agreements qualify for this competitive purchasing documentation exemption; any other cooperative procurement agreement must be approved in writing by the Purchasing Agent prior to any purchase being made through the agreement.

B. The Purchasing Agent shall periodically check goods and services available through approved cooperative procurement agreements against the market and other cooperative agreements and direct departments to utilize another competitive purchasing mechanism when a lower price or better good or service appears to be available.

C. The Purchasing Agent is authorized to join with any public body or agency or educational institution as in the procurement of contractual services, supplies and construction.

- **107.210 - Procurement of Materials and Equipment Under Competitively Bid Construction Projects.**

—The Agent shall have the authority, with respect to County construction projects which have been competitively bid, to procure materials and equipment solely upon recommendation of the construction manager or of the contractor or subcontractor by whom the materials or equipment are to be used.

- **107.215 - False Representation Prohibited.**

—Whoever, in any matter within the jurisdiction of any office, department, division, board, commission, or the County Council of St. Louis County, knowingly and wilfully falsifies, conceals or covers up by any trick, scheme or device, a material fact, or makes any false, fictitious or fraudulent statement or representation, or makes or uses any false writing or document, knowing the same to contain any false, fictitious or fraudulent statement or representation, or makes or uses any false writing or document, knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than one thousand dollars (\$1,000.00), or imprisoned in the County Jail not more than one (1) year or both.

- **107.220 - Definitions.**

—The following terms, as used in Sections [107.221](#) through [107.223](#), shall have the meanings ascribed to them, thus:

Apparel means clothes, shoes and garments and accessories thereto;

Production facility means the facility that manufactures the finished apparel or textiles provided by a vendor with which the County has or intends to contract for the provision of apparel or textiles. When the context so requires, "production facility" shall also mean the owners and managers thereof;

Sweatshop practices means:

a) the failure to comply with domestic labor laws in the country where the apparel or textiles provided by a vendor to the County were manufactured all federal, State or local laws and workplace regulations, including those pertaining to wages and benefits, workplace health and environmental safety, freedom of association and the fundamental conventions of the International Labor Organization, including those pertaining to forced and child labor and freedom of association;

b) engaging in behavior or committing acts that harass or abuses a worker in a sexual, psychological or verbal manner; or subjects a worker to corporal punishment;

c) engaging in discriminatory employment practices on the basis of race, creed, color, gender, sexual orientation, gender identity or national origin; or requiring a pregnancy test as a condition of employment;

d) exposing a worker to toxic chemicals that endanger health; failing to take appropriate measures to safeguard workers when any aspect of work requires exposure to toxic chemicals;

e) failing to pay wages in compliance with federal or State regulations; and failure to maintain verifiable wage and hour records for each production worker, employee or independent contractor;

f) requiring hourly and quota-based workers to work more than either of 48 hours per week or the limits on regular

hours allowed by the country of manufacture, whichever is lower; failing to provide workers with days off as provided by applicable labor law;

g) requiring workers to work overtime hours unless the workers are paid at the rate of at least one and a half their regular hourly compensation rate as provided by the Fair Labor Standards Act;

h) failing to provide for mediation or a grievance process to resolve workplace disputes if required by federal law;

i) closing or reducing orders for a production facility as a punitive measure against workers for exercising their right to freedom of association or to avoid responsibility to take corrective action after there has been a determination that a violation of applicable workplace condition laws have occurred.

Textiles means all items of cloth that are produced by weaving, knitting, felting, sewing or similar production processes, including but not limited to cloth items such as sheets, pillows, pillowcases, towels, blankets and upholstery;

Vendor means a person or business entity with whom the County has a current procurement relationship, or who bids or proposes to provide apparel or textiles to the County in a total amount greater than \$5,000.00 per fiscal year.

• **107.221 - Apparel and textiles not to be provided from "sweatshop" production facilities.**

—1. No vendor shall fulfill a contract with the County for the supplying of apparel or textiles where the manufacture of the apparel or textiles originates from a production facility that engages in sweatshop practices. However, a vendor awarded a contract after having submitted a plan pursuant to Section 107.222.2 shall be considered to have complied with the provisions of this section, during the term of such contract.

2. Prior to executing a contract with the County for supplying apparel or textiles, the vendor shall certify by affidavit of its authorized official that the apparel or

textiles to be supplied were not, to the best of its knowledge, obtained from or manufactured at a facility engaging in sweatshop practices. Sufficient certification shall include identifying the original manufacturer of the apparel or textiles and specifying its location. In lieu of providing such an affidavit, the vendor may submit to the Purchasing Agent a report of a nonprofit independent agency with expertise in monitoring sweatshop practices in production facilities, as approved by the Purchasing Agent. No contract may be executed by a County official without the vendor having complied with the requirements of this section.

- **107.222 - Bid specifications to include prohibition of sweatshop-originated apparel or textiles.**

-1. The Purchasing Agent shall include as part of the bid specifications for all purchases of apparel or textiles within the scope of [Chapter 107](#) SLCRO the specification that vendors shall not fulfill a contract for the purchase of apparel or textiles that originate from a manufacturer engaging in sweatshop practices.

2. If a bidder believes itself unable to comply with Section [107.221](#), it may propose a plan to achieve compliance which shall include: ensuring communication of applicable labor standards to employees by the source manufacturer; ensuring the source manufacturer will maintain records regarding inspections, violations and corrective action pertaining to labor laws applicable to the source manufacturer; monitoring compliance of the source manufacturer with applicable labor laws; ensuring the source manufacturer will keep confidential communication of worker complaints; and providing apparel and textiles sourced from factories, subcontractors and commodity suppliers that have been certified by an independent third party to be in compliance with some or all applicable labor standards. A bidder submitting such a plan shall be considered to have met the specification described in subsection 1 of this section.

- **107.223 - Enforcement.**

-From time to time, the Purchasing Agent shall take such steps as are deemed necessary by the Purchasing Agent to audit compliance of vendors with Section [107.221](#). A vendor

determined by the Purchasing Agent to have violated Section [107.221](#) shall be debarred from future contracts with the County for a period of one year from the determination of the Purchasing Agent. The Purchasing Agent is authorized to and shall terminate any contract for the procurement of apparel or textiles with a vendor determined to have violated this section, unless the Purchasing Agent determines that termination would be economically impractical. The Purchasing Agent shall report to the County Council the facts underlying each such determination.

- **107.224 - Emergency procurement.**

—Where the Purchasing Agent determines that the failure to procure apparel or textiles required by a department will result in an imminent threat to health or safety, the Purchasing Agent is authorized to waive the requirements of Sections [107.221](#). The Purchasing Agent shall thereafter report to the County Council the fact of the waiver, and the circumstances justifying the waiver.

- **107.300 - Annual consolidated purchasing; annual assessment of requirements.**

—1. Commonly purchased data, communications, and technology infrastructure requirements. The Department of Administration shall perform an annual assessment of the annual or consolidated requirements of data transmission, communications and technology infrastructure needs for all County offices and departments and, in conjunction with the Department of Information Technology, shall procure such data, communications and technology infrastructure by lease or purchase on the most advantageous terms available to the County. The cost of such infrastructure shall be billed to, and paid by, the end user office or department of the County.

2. *All other requirements.* The Department of Administration and department directors shall perform an annual assessment of all other annual or consolidated requirements of all County offices and departments. This consolidated procurement of goods and services shall conform to the competitive purchasing requirements, as outlined in the Code; shall be done annually based on anticipated requirements for the ensuing fiscal year; and shall be accomplished, if practical, on a timetable to facilitate

firm cost figures to be incorporated into the budget for the ensuing calendar year, or, in the case of consolidations, shall be done one (1) time based on the consolidated requirements in a timetable to satisfy the requirements of the consolidation. Unless specifically exempt from annual consolidated purchasing by the County Council on the recommendation of the Director of Administration, the following shall be procured pursuant, to this Section and shall include the consumption requirements of all County offices and departments:

- a. Office supplies, equipment, and data processing and printing supplies, such as continuous forms, paper, printer ribbons, media, etc.
- b. Motor fuels and lubricants.
- c. Food and staples.
- d. Janitorial supplies and/or services.
- e. Vehicles, machinery, and road repair equipment.
- f. Highway, road, and bridge repair and maintenance materials.
- g. Vehicle and equipment repair services.
- h. Clothing and other merchandise carrying the County logo.
- i. Other goods and services that may be from time to time added or removed from the list as recommended by the Director of Administration.

• **107.305 - Grants.**

-1. The County encourages department directors to seek out grants to accomplish the work of the County that would otherwise have to be funded entirely by the County. Acceptance of the actual grant funds shall be approved by the County Council. Appropriation and spending of said grant funds shall require approval by the County Council upon submission of detailed explanation of how and where grant funds are to be spent.

2. The using agency director shall include the following information in the request for legislation to authorize any appropriation, spending, and execution of necessary agreements:

(a) A detailed explanation of how the grant funds will be spent;

(b) Any specific requirements imposed by the funding source;

(c) Any required partners or other participants specified in the grant application submitted to the funding source;

(d) A description of the services to be provided and whether the services are an expansion of a current program, project, or service;

(e) Identification of what entity will provide the services under the grant; and

(f) Whether processes under this chapter will be applied to select service providers.

- **107.310 - Local vendor preference.**

—1. It is the policy of St. Louis County to consider the residual benefits to the St. Louis County economy where the purchase or a component of the purchase has a local source or business. The County may give preference to all commodities manufactured, mined, produced, or grown within St. Louis County, and to products and services provided by, firms, corporations, or individuals doing business in St. Louis County. "Preference" shall be permitted where products and/or services are of equal or better quality and the difference in the price is negligible. For the purpose of this section, "local source or business" means a source or business that, has a physical business address located within the St. Louis Metropolitan Area from which the vendor is operating and has operated for the last six (6) months. Post office boxes shall not be used for the purpose of establishing the required physical business address. A vendor which submits a bid or proposal containing misrepresentations of any fact intended to demonstrate that it is a local source or business shall be disqualified from

consideration as being a local source or business for a period of two (2) years.

2. Notwithstanding the provisions of Subsection 1 above, the County solicits and will consider quotations, bids, and/or proposals from all interested and qualified vendors. Preference for a local source must be provided to and approved by the Purchasing Agent.

3. Products manufactured in the United States may be given preference if price difference is negligible and, the quality and other considerations are equal.

The term "negligible" as referenced herein means a bid that is less than one (1) percent different than the lowest responsible bid.

• **107.320 - Prevailing Wage Required for County Incentivized Economic Development Projects.**

-1. In the case of any economic development project which is incentivized by the guarantee of tax or other benefits conferred by the County particular to the project, including but not limited to tax increment financing (TIF) projects and Chapter 100 RSMo. tax abatement projects, the developer shall ensure that the contractors or subcontractors performing labor for the project shall pay not less than prevailing wages, as defined in Section 290.210(7) RSMo to any laborers or workers who perform labor on such project.

2. All agreements between the County and the developer of a County-incentivized economic development project, to the extent it does not disqualify County from receiving monies from external sources for the project in question, shall specify the requirement of paying prevailing wages as set out in this section, the amount to be determined as the rate in effect at the time the physical work begins on the incentivized project; shall specify that the Director of Administration or the Director's designee shall be permitted to audit or inspect such books or records of the developer and the developer's contractors and subcontractors for the purpose of determining compliance with this section; and shall specify that County may, upon written notice to the developer, suspend any incentives pertinent to such economic development project in the event of failure of the

developer's contractor or subcontractor to pay prevailing wages; and shall specify that the developer shall have five (5) business days to cure the defect noted in the written notice.

• **107.400 - Definitions.**

—The following terms, as used in Section [107.401](#), shall have the meanings ascribed to them, thus:

Cone of silence means the period of time during which there is a prohibition on communication regarding a particular solicitation.

County staff means County employees and officials, including elected and appointed officials and merit and non-merit employees.

Designated point of contact means the individual(s) designated in the solicitation document as the point of contact for communications regarding such solicitation.

Evaluation committee means a group of persons appointed or designated to evaluate, rank, select, or make a recommendation regarding a vendor and/or the vendor's response to the solicitation.

Using agency means any department, agency, commission, board, bureau or other unit using supplies or procuring contractual services.

Vendor means a person or entity that participates in a solicitation process under [Chapter 107](#) SLCRO or other applicable County ordinance to provide supplies or services to the County.

Vendor's representative means an owner, individual, employee, partner, officer, or member of the board of directors of a vendor, or a consultant, lobbyist, or actual or potential subcontractor or subconsultant who acts at the behest of a vendor in communicating regarding a solicitation.

• **107.401 - Application of Cone of Silence.**

-1. Subsequent to the posting of a request for proposals (RFP), request for qualifications (RFQ), invitation for bids (IFB), or any other solicitation method issued by the County, there shall be no communication between a vendor or vendor's representative and County staff regarding that solicitation and/or its related processes outside of the communication defined in the solicitation and the exceptions specified by this section. This requirement shall terminate at the time a contract resulting from the solicitation is executed or when all bids or proposals to the solicitation are rejected by the County.

2. This section shall not be interpreted as prohibiting the following communications:

(a) Written communication between a vendor or vendor's representative and the County's Procurement Division regarding the solicitation.

(b) Written communication between a vendor or vendor's representative and the designated point of contact regarding the solicitation.

(c) Written communication between members of the public who are not vendors or a vendor's representative, and County staff.

(d) Written communications regarding a Council agenda item with any County staff, unless specifically prohibited or limited by the applicable competitive solicitation. However, any such written communication must be filed by the communicator with the County Clerk. Any employee or officer in the Office of the County Council, including but not limited to the aides of individual Councilmembers and any Councilmember, receiving or making any such communication also must immediately file it with the County Clerk. In addition, the County Clerk shall include all written communication as part of the Council agenda item when publishing information related to the agenda.

(e) Oral communications between the designated point of contact, or his or her designee(s), and vendor or vendor's representative at pre-bid and pre-proposal conferences or during any official interview/meeting to review a proposal and/or statement of qualifications.

(f) Oral presentations before evaluation committees.

(g) Public statements made during public forum at any County Council meeting, subject to the discretion and limitation by the Council.

(h) Contract negotiations with County staff following the award recommendation from a competitive solicitation.

(i) Purchases exempt from the competitive process pursuant to Section [107.133](#) SLCRO, Section [107.170](#) SLCRO, and Section [107.200](#) SLCRO.

(j) Oral or written communications in response to communication from the Director of Minority Business Development and Compliance, the Contract Compliance Manager, or Contract and Workforce Compliance Specialists as defined in Section [107.071](#) SLCRO.

(k) Oral or written communications with the County Prevailing Wage Enforcement Coordinator regarding compliance with prevailing wage requirements.

3. The using agency shall notify the Director of Procurement at the time of imposition of the cone of silence. The Director of Procurement shall provide written notice to the affected departments, the County Executive, each County Council member, and the County Clerk. The using agency shall include in any solicitation for supplies or services a statement disclosing the requirements of the cone of silence ordinance. Failure to supply this notice shall not relieve any vendor, vendor's representative or County staff from any obligation under this section.

4. The following provisions shall apply generally to this section:

(a) All County staff shall be made aware of the requirements and prohibitions of the cone of silence.

(b) The using agency shall ensure that all solicitations include provisions describing the requirements and prohibitions of the cone of silence, including how a vendor or vendor's representative may communicate with County staff, or a reference to this section.

(c) This section shall not be interpreted as prohibiting County staff from communicating with each other regarding a competitive solicitation.

(d) Violation of this ordinance by a vendor or vendor's representative shall result in designation by the Director of Procurement of the bid, proposal, or statement of qualifications as non-responsive.

(e) Violation of this ordinance by a St. Louis County employee may subject said employee to disciplinary action up to and including dismissal from County service.

(f) The requirements of this section shall not apply to solicitations on projects where the County receives federal, state or other funding and the funding source prohibits application of this section.

SECTION 1: *Prevailing Wage Compliance Program*

- **107.500 - Prevailing Wage Compliance Program Established.**

—A St. Louis County Prevailing Wage Compliance Program is established by the adoption of Sections [107.500](#) through [107.680](#).

- **107.510 - Title of Sections 107.500 through 107.680.**

—These Sections shall be known and may be cited as "Prevailing Wage Compliance Program of St. Louis County, Missouri."

- **107.515 - Exception for Federally Financed and Assisted Construction Projects.**

—The prevailing wage compliance program in these sections shall not apply to those contracts or projects involving the expenditure of federal aid funds and shall not be enforced in such a manner as to conflict with any federal statutes or rules and regulations including, but not limited to, 23 U.S. Code § 113, 29 CFR Part 5, 2 CFR § 200.319, and 23 CFR § 635.110. This exception further applies to any contracts or projects where a funding source requires full compliance with the federal statutes and rules and regulations listed above.

- **107.520 - Prevailing Wage Policy.**

-St. Louis County, Missouri, reaffirms its long-standing policy that no less than the hourly prevailing wage shall be paid to workers performing construction of public works on behalf of St. Louis County.

- **107.530 - Construction of These Sections.**

-Nothing in these sections shall be construed to require a contractor or subcontractor to hire unqualified or incompetent personnel or to discharge qualified or competent personnel.

- **107.540 - Definitions.**

-For the purposes of these sections [107.500](#) through [107.680](#), all applicable terms and application as defined in the Missouri Prevailing Wage Law, sections 290.210-290.340 and 290.550-290.580, RSMo, and Prevailing Wage Regulations, 8 CSR 30-3.010 through 8 CSR 30-3.060 and 8 CSR 30-5.010 through 8 CSR 305.030, and applicable county ordinances including but not limited to [107.320](#) SLCRO, [1112.070](#) SLCRO and [107.130](#) SLCRO shall be adopted unless otherwise supplemented or designated below. The following definitions shall apply unless the context explicitly indicates otherwise:

(1) *Affiliate*. An "affiliate" is a contractor effectively controlled by another individual or entity under common ownership or control. A franchise company shall not be deemed to be an affiliate of the franchisor if the owner(s) of the franchise company has the right to profit from the franchise, the company has the right to profit from its effort proportionate to ownership and bears the risk of loss.

(2) *Prevailing wage enforcement coordinator*. "Prevailing wage enforcement coordinator" or "PWEC" is the County employee responsible for ensuring compliance with these sections.

(3) *Construction of public works*. "Construction of public works" generally includes construction activity, as distinguished from manufacturing, furnishing of materials, or servicing and maintenance work. The manufacture or furnishing of materials, articles, supplies, or equipment is

not "construction of public works" within the meaning of the Missouri Prevailing Wage Law, unless conducted in connection with and at the site of construction. "Construction of public works" also means all work done in the construction or development of a project, including without limitation, County incentivized construction projects as defined under section [107.320](#), altering, remodeling, replacing, demolishing existing structures, installation on the site of the construction of items fabricated off-site, painting and decorating, the transporting of materials and supplies to or from the site of the construction by the employees of the construction contractor or construction subcontractor, and the manufacturing or furnishing of materials, articles, supplies or equipment on the site of the construction by persons employed by the contractor or subcontractor.

(4) *Contract*. "Contract" means any lawful agreement for the construction of public works to which the County is a party and which is subject to the provisions of the Missouri Prevailing Wage Law by either Missouri statute or County ordinance.

(5) *Contractor*. "Contractor" means any prime or general contractor doing bidding for contracts or doing business or operating as an individual or entity employing one (1) or more persons which has undertaken a contract as defined herein. In determining whether an individual or entity employs one (1) or more persons, the following rules shall govern:

a. *Employees Counted*. All employees, including owner-employees, independent contractors, and all employees of every affiliate of the individual or entity, engaged in public works construction, shall be counted regardless of whether they are full-time or part-time, permanent or temporary.

b. *Employees Not Counted*. Notwithstanding anything to the contrary, any employee who is an owner of the entity and not performing work on the site shall not be counted.

(6) *Purchasing agent or agent*. "Purchasing agent" or "agent" is the purchasing agent of St. Louis County, Missouri.

(7) *Prevailing wage*. "Prevailing wage" means the prevailing hourly rate of wages established for St. Louis County,

Missouri, by the Missouri Department of Labor and Industrial Relations, as listed in the applicable annual wage order, including the annual incremental increases, and in accord with the definition and application of prevailing hourly rate of wages in Chapter 290 RSMo, and County ordinances.

(8) *Subcontractor*. "Subcontractor" means any individual or entity employing one or more person(s), which has undertaken by virtue of a separate contract with another individual or entity, whether or not such individual or entity is a contractor, to fulfill all or any part of the obligation of the other under a contract with St. Louis County, Missouri. In determining whether a subcontracting individual or entity employees one or more person(s), the rules of section [107.540](#)(5) shall govern.

(9) *These sections*. "These sections," as found in Sections [107.500](#) through [107.680](#), shall refer to Sections [107.500](#) through [107.680](#).

• **107.550 - Prevailing Wage Enforcement Coordinator (PWEC)**

Powers and Duties.

—The Prevailing Wage Enforcement Coordinator shall have the following powers and duties:

1. *Provide Notice of Ineligibility to Other County Employees*. The PWEC shall keep track of those bidders who have been deemed ineligible for contract because of noncompliance with these sections and shall notify the Director of Purchasing and/or Director of Transportation and Public Works.

2. *Provide Notice to Bidder of Ineligibility*. After a determination of ineligibility of a bidder by the Director of Purchasing and/or Director of Transportation and Public Works with review by the PWEC, the PWEC shall notify the bidder of their determined noncompliance and the reasons for such determination.

3. *Review Prevailing Wage Compliance*. The PWEC shall collect and review payroll records and documents, interview workers and contractors, and investigate any complaints of violations of the Missouri Prevailing Wage Law, these sections, or contract language, including compliance

with [Chapter 107](#) SLCRO. Collection of investigation-related information shall be enforced through the County Counselor's office when necessary.

4. *Notice of Noncompliance with These Sections to Other County Employees.* The PWEC shall notify the Director of Purchasing and/or Director of Transportation and Public Works of those contractors which are determined to not be in compliance with any provision of these sections and the reasons for the determination of noncompliance.

5. *Assist in Resolution of Violations.* The PWEC shall assist contractors, workers, and public entities and agencies working for, or within, the County in resolving questions, requests for assistance, complaints, and violations.

6. *Assess and Collect Penalties.* The PWEC shall determine wages owed workers, assess penalties due, and collect such wages and penalties.

7. *Recommend for Debarment.* The PWEC shall provide the Director of Purchasing with recommendations for debarment and provide any documentation or assistance necessary during the process.

8. *Provide Notice to Bidder of Reinstatement.* The PWEC, after determination by the Director of Purchasing and/or the Director of Transportation and Public Works, shall notify in writing within ten (10) business days every contractor whose eligibility has been reinstated for contract bidding under these sections.

9. *Keep List of Offenses.* The PWEC shall keep a list of offenses of violation of these sections and the associated contractors as found in [Section 107.650](#). The PWEC shall maintain this list and provide updates to the Director of Purchasing.

10. *Violation Complaints to State.* The PWEC shall be the decision-making public servant for the County under Missouri Prevailing Wage Law, Section 290.240 RSMo, subparagraph (1) and upon investigating a violation may file a corresponding complaint with the Missouri Department of Labor and Industrial Relations.

11. *Ensure Compliance.* The PWEC shall take all action authorized by law to ensure compliance by bidders, contractors, and subcontractors with all requirements of these sections and, in particular, with the requirement of compliance with all prevailing wage provisions.

12. *Assist Bidders, Contractors, and Subcontractors.* The PWEC shall selectively assist bidders, contractors, and subcontractors to achieve or maintain compliance with these sections.

13. *Recommend Revisions.* The PWEC shall recommend to the County Council any revisions to these sections deemed prudent.

14. *Design Documents and Forms.* The PWEC shall design documents, report forms, manuals, and other papers needed to perform the functions of the PWEC and to disseminate and accumulate information relevant to the enforcement of these sections.

15. *Verify Information.* The PWEC shall verify information from bidders, contractors, and subcontractors with onsite visits and request the submission of relevant employment and other related data from such.

16. *Make an Annual Report to County Council.* The PWEC shall submit to the County Council by March 15 of each year an annual report of the progress of the County in implementing the policy and intent of these sections.

17. *Monitoring.* The PWEC shall monitor construction companies awarded county contracts to ensure compliance with the State of Missouri's Prevailing Wage Law and any other state or federal laws which may impact a company's ability to competitively bid.

- **107.560 - Compliance by Contractor and Evidence Required.**

-1. *Compliance by Contractor.* The PWEC shall review all evidence submitted under these sections, and all other evidence available to the PWEC, and shall determine whether or not a contractor has complied with prevailing wage requirements, or is otherwise in violation of these sections. Notice of an adverse determination shall be promptly

communicated to such contractor in writing by registered or certified mail to the address listed on the bid of the contractor, which notice shall include notice of the right of appeal granted under Section [107.580](#). The PWEC shall specify to the offending contractor the corrective action required and shall request from the contractor a commitment in writing to accomplish the corrective action so specified. The PWEC shall also take reasonable steps to notify the offending contractor and subcontractor's employees of the offense and seek their input prior to accepting any corrective action.

2. *Evidence Required.* Every individual or entity claiming to be a contractor shall submit documentary evidence for review to the PWEC verifying the number of its employees and the employees of its affiliates, and the work being completed by those individuals or entities, and any other evidence deemed necessary to the PWEC.

• **107.570 - Review of Bidders.**

-1. The Director of Purchasing and the Director of Transportation and Public Works shall provide the PWEC with a list of the three (3) lowest responsive bidders submitting bids in response to each solicitation. For each of the three (3) lowest responsive bidders, the PWEC shall make the following findings:

(a) *Contractor or Subcontractor:* Determination of whether the individual or entity is a contractor or subcontractor; and,

(b) *Eligibility:* Whether the bidder of contractor is eligible under these sections to receive award of the proposed contract.

2. The PWEC shall within three (3) business days of the bid opening or sooner, communicate their review under this section to the Director of Purchasing. The Director of Purchasing, through the PWEC, shall promptly notify the three (3) lowest responsive bidders after bid opening and provide them until 5:00 p.m. on the next business day to submit additional prevailing wage information.

3. The Director of Purchasing, through consultation with the PWEC, shall promptly notify the three (3) lowest responsive

bidders of all decisions, findings, or other actions by the Director of Purchasing and of its appeal rights under Section [107.680](#).

- **107.580 - Contractor Compliance.**

-1. All contractors and subcontractors contracting for public works construction within the County shall comply with the State of Missouri Prevailing Wage Law, sections 290.210 through 290.340 and 290.550 through 290.580, RSMo ("the Law"), and 8 CSR 30-3.010 through 8 CSR 30-3.060 and 8 CSR 30-5.010 through 8 CSR 30-5.030 ("the regulations" or "the wage order"), including any annual incremental wage increase ("wage increase"), and these sections. Each contractor shall be ultimately responsible for the compliance of all its subcontractors.

2. Each contractor shall pay, and require its subcontractors to pay, workers performing work on contracts for public works to which St. Louis County is a party, not less than the prevailing hourly rate of wages for the type of work performed in accordance with this section, subject to the following exceptions:

(a) *Exception for Contracts or Projects Less Than \$75,000.00.* This subsection shall not apply to those contracts or projects for which the engineer's estimate of the awarded contract cost is \$75,000.00 or less, which are excepted from the provisions of the Missouri Prevailing Wage Law by virtue of Section 290.230.5, RSMo.

(b) *Exception for Registered Apprentices.* As authorized by Section 290.235, RSMo, such workers who are individually registered in a bona fide registered apprenticeship program approved by the U.S. Department of Labor, Office of Apprenticeship, may be paid less than the journeyperson rate of pay specified in the applicable wage order. Entry level workers, as that term is used in Section 290.235, must be registered apprentices. The authorized apprenticeship utilization ratio shall be no greater than one-to-one, apprentice to journeyperson of the same classification. Any worker on a County project who is not registered as an apprentice in accordance with this subsection shall be paid as a journeyperson, unless the applicable County Contract or Project is within the exceptions described in Subsections 107.580.2(a) or [107.580](#)(c).

(c) *Exception for Federally Financed and Assisted Construction Projects.* This subsection shall not apply to those contracts or projects involving the expenditure of federal aid funds and shall not be enforced in such a manner as to conflict with any federal statutes or rules and regulations including, but not limited to, 23 U.S. Code § 113, 29 CFR Part 5, 2 CFR § 200.319, and 23 CFR § 635.110. This exception further applies to any contracts or projects where a funding source requires full compliance with the federal statutes and rules and regulations listed above.

- **107.605 - Prevailing Wages to be Incorporated.**

-The law, regulations, wage order, and wage increases are to be incorporated into all public works construction contracts executed by the County.

- **107.615 - Signage Required.**

-Each contractor and subcontractor engaged in a contract with the County that exceeds two hundred fifty thousand dollars (\$250,000.00) shall have its name, and acceptable abbreviation or recognizable logo, and the name of the city and state of the contractor's or subcontractor's principal mailing address on each motor vehicle and motorized self-propelled piece of equipment which is used in connection with such contract during the time the contractor or subcontractor is engaged on such contract. The signs shall be legible from a distance of twenty (20) feet, but the size of the lettering need not be larger than two (2) inches. In cases where the equipment is leased or where affixing a legible sign to the equipment is impractical, the contractor may place a temporary stationary sign, with the information required pursuant to this subsection, at the main entrance of the location of the work on the contract in place of affixing the required information on the equipment, so long as such sign is not in violation of any state or federal statute, rule, or regulation. Motor vehicles which are required to have information affixed on them pursuant to requirements of a regulatory agency of the state or federal government are exempt from the provisions of this subsection.

- **107.620 - Requirement of Record Correction.**

-Each contractor must correct any errors in the contractor's or any subcontractor's records, or any violations of the

law, rules, annual wage order, incremental wage increases, or these sections, within fifteen (15) business days after receipt of notice from the County.

- **107.625 - Contractor Cooperation.**

-Each contractor shall require its subcontractors to cooperate with any authorized representative of the County, the Missouri Department of Labor and Industrial Relations, or any other state or federal agency, in the enforcement of this chapter, the law, rules, annual wage order, and incremental wage increases, and shall allow said representatives to interview any and all workers during working hours on any project, at contractor's or subcontractor's sole cost and expense.

- **107.630 - Penalty.**

-Each contractor shall forfeit as a statutory penalty to the county one hundred dollars (\$100.00) for each worker employed, for each calendar day or portion thereof, such worker is paid less than the prevailing hourly rate of wages for any work done under a County contract, by the contractor or any of its subcontractors, and additional penalties as provided in any other provision of these sections. If the contractor or any of its subcontractors has violated the law or these sections in the course of the performance of a county contract, the county shall, when making payments to the contractor coming due under such contract, withhold and retain all sums and amounts deemed due and owing as a result of any violations. The county shall adequately inform the contractor and its subcontractors of the same.

- **107.635 - Restitution to Workers.**

-In the event a violation is found, the PWEC has the authority to determine the amount of wages owed to workers as a result of that violation, to coordinate with the County Counselor to collect those wages on behalf of the workers, and to distribute those wages to the affected workers.

- **107.640 - Whistleblower Protection.**

-Any worker who provides information, complaints, or interviews, or who otherwise assists in an investigation of any violation of these sections shall not be disciplined,

discharged, or otherwise harmed for providing such assistance or information.

- **107.645 - Records—Certified Payroll Forms.**

—Each contractor shall keep, and require each of its subcontractors engaged in a contract with St. Louis County to keep and make available to the contractor, a certified payroll report form, the format to be of the contractor's own choosing unless the project owner determines otherwise, indicating each worker's name, address, social security number, occupational title, hours worked, and wages paid of every worker employed in connection with such contract. Each payroll must be accompanied by a certification form indicating the accuracy and authenticity of such records, and signed by the contractor's or subcontractor's representative. Information contained in such certification must incorporate the certification language required on the federal WH-347 payroll form, or its successor form as issued by the United States Department of Labor, but may be in an electronic format unless the PWEC determines otherwise.

(a) *Payroll Records Maintained.* The contractor and subcontractors will maintain payroll forms and any other payroll related records within the State of Missouri for a period of one (1) year following completion of the contract. Such payrolls, records, and certifications shall be considered public records, and shall be open to inspection by any authorized representative of the County, the Missouri Department of Labor and Industrial Relations, or other state or federal agency at any reasonable time. The certified payroll records shall be made available to and for inspection and copying by the PWEC upon request within three (3) business days of the request. In the event such payrolls or other records are requested under chapter 610, RSMo, the Missouri Sunshine Law, or other open records laws, all Social Security numbers for any and all workers listed on such payroll or records shall be removed or redacted.

(b) *Records to be Made Available.* To assure full compliance, documents and records must be available on private projects performed by a contractor under investigation if the private work in question is involved in an investigation of potential violation of a County contract. The PWEC shall have access to the public and private work construction sites, and

relevant offsite private offices and locations to ensure such compliance.

(c) *Wages to be Posted.* Each contractor shall post and keep posted, in a prominent and easily accessible place, a clearly legible statement of all prevailing hourly wage rates to be paid to workers employed by contractor and each of its subcontractors and how to report alleged violations of the same.

(d) *Affidavit of Compliance.* Upon completion of the contract and prior to final payment, the contractor shall file with the County, an affidavit of compliance from the contractor and each of its subcontractors stating that each has fully complied with the provisions and requirements of the Missouri Prevailing Wage Law and these sections. The County shall not make final payment until the affidavits, in proper form and order, are filed by the contractor.

• **107.650 - Penalty for Violation of Prevailing Wage.**

-1. Any County contractor found to be in violation of any provision of these sections, or the Missouri statutes and regulations providing for payment of the prevailing wage on construction of public works contracts, Sections 290.210–290.340 and 290.550–290.580, RSMo, and 8 CSR 30–3.010 through 8 CSR 303.060 and 8 CSR 30–5.010 through 8 CSR 30–5.030, shall pay a penalty to the County over and above that which is provided for in State law, as follows:

(a) *First Offense:* One hundred dollars (\$100.00) per day per worker paid less than the prevailing hourly rate of wages or for each violation of any other section of sections 290.210–290.340 or 290.550–290.580 RSMo.

(b) *Second offense:* One hundred fifty dollars (\$150.00) per day per worker paid less than the prevailing hourly rate of wages or for each violation of any other section of sections 290.210–290.340 or 290.550–290.580 RSMo, referral for debarment under Section 107.660, and referral to the County Prosecuting Attorney for possible filing of criminal charges.

(c) *Third and Subsequent Offenses:* Two hundred dollars (\$200.00) per day per worker paid less the prevailing hourly rate of wages or for each violation of any other section of

Sections 290.210–290.340 or 290.550–290.580, RSMo, referral for debarment under Section 107.660, and referral to the County Prosecuting Attorney for possible filing of criminal charges.

2. *Notice of Violation for Penalties Owed Pursuant to Section 290.250 RSMo.* The Director of Purchasing, with the assistance of the PWEC, shall give written notice to the contractor setting forth the workers who have been underpaid by contractor or its subcontractors, the amount of wages deemed owed, the statutory penalty and the amount of the penalty as provided for in Section [107.630](#). The contractor shall have 30 business days to dispute the notice in writing to the Director of Purchasing, which time may be extended by the Director of Purchasing upon written request. If contractor fails to respond within the specified time, the County's original notice shall be deemed final. If the contractor responds to the Director of Purchasing's notice, the Director of Purchasing will furnish the contractor a final decision in writing within five (5) business days of the PWEC completing any investigation.

- **107.655 - Willful Violation.**

–Any officer, official, member, agent or representative of any public body, contractor, or subcontractor who willfully violates or willfully fails to comply with any of the provisions and requirements of sections 290.210 to 290.340 and 290.550–290.580, RSMo, or 8 CSR 30–3.010 through 8 CSR 30–3.060 and 8 CSR 30–5.010 through 8 CSR 30–5.030, shall be guilty of an offense, and shall be punished for each willful violation thereof by a fine not exceeding five hundred dollars (\$500.00). Each day such violation or omission continues shall constitute a separate offense as contemplated by this section.

- **107.660 - Debarment of Bidders for Public Works Contracts.**

–1. No contract for the construction of County improvements of whatsoever kind or character or for the doing of any public work shall be let to any bidder which is itself debarred from the award of County contracts as hereinafter set out or is managed, controlled, or more than fifty (50) percent owned by a person or an entity so debarred. A contractor which is itself debarred or is managed, controlled, or more than fifty (50) percent owned by a person

or an entity that is debarred shall not act as a subcontractor on any such County contract.

a. *Standard for Debarment.* In the event that any contractor or subcontractor on a County contract is determined, as hereinafter set out, to be willfully and without good cause violating the requirements of the contract in any of the ways listed in Section 107.075.3 or the additional ways set out below, then such contractor and its chief operating officer and any owner or part owner who participated in the management of the contractor's business at the time of the violation shall be debarred and disqualified from participating, either as a contractor or subcontractor, in other County contracts for a period of up to three (3) years. In determining the period of debarment, the purchasing director shall take into account a review of past performance with these sections of a contractor or subcontractor, the seriousness of the violation, whether the violation was intentional, whether the contractor or subcontractor had been previously disqualified under these sections or under Section [107.075](#), and any extenuating circumstances as reviewed by the PWEC. In addition to the considerations found in Section 107.075.3, the Director of Purchasing shall consider:

i. Failing to complete the contract work;

ii. Failing to show good faith in attempting to meet County's MBE/WBE requirements under Section [107.071](#);

iii. Failing to enter into a contract after having been awarded the contract;

iv. Failing to obtain required permits;

v. Failing to pay the wage rates prescribed in the contract, or comply with prevailing wage requirements under these sections, Sections 290.210–290.340 and 290.550–290.580, RSMo, Missouri Regulations 8 CSR 303.010 through 8 CSR 30–3.060 and 8 CSR 30–5.010 through 8 CSR 30–5.030, the annual wage order, or all annual incremental wage increases as issued by the Missouri Department of Labor and Industrial Relations;

vi. Falsifying payrolls or work-related records;

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- vii. Misrepresenting employees as independent contractors;
 - viii. Failing to include provisions in subcontracts which are required to be included under the contract terms;
 - ix. Permitting a subcontractor to do any of the things listed herein or failing to take reasonable measures to assure that subcontractors do not do the things listed herein; or
 - x. Failing to comply with the contract requirements in any other manner which is deemed to be so serious and compelling as to justify debarment.

2. *Exception for Federally Financed and Assisted Construction Projects.* This subsection shall not apply to those contracts or projects involving the expenditure of federal aid funds and shall not be enforced in such a manner as to conflict with any federal statutes or rules and regulations including, but not limited to, 23 U.S. Code § 113, 29 CFR Part 5, 2 CFR § 200.319, and 23 CFR § 635.110. This exception further applies to any contracts or projects where a funding source requires full compliance with the federal statutes and rules and regulations listed above.

• **107.665 - Procedure for Debarment.**

—1. Action to debar a contractor under Sections [107.660](#) and [107.075](#) may be initiated by the Director of Administration, with the assistance of the PWEC, and shall proceed under the following provisions:

a. *Initiation of proceeding.* The proceeding may be initiated by the Director of Purchasing who shall issue a written notice of the proposed debarment to the contractor. The notice shall include a statement of the reasons for the proposed debarment and the date it is mailed.

b. *Notice.* Any notice required by the initiation of the proceeding and subsequent contacts related to the proceeding to the contractor shall be sent postage prepaid by registered or certified U.S. mail to the contractor at its last known address or at its registered office, if it is a corporation.

c. *Reasonable steps to contact.* If after the Director of Purchasing takes reasonable steps to notify the contractor

and is still unable to do so, then the debarment shall be final after ten (10) business days.

2. The order of the procedure of debarment under Sections [107.660](#) and [107.075](#) shall proceed as follows:

a. After the initiation of the proceeding under 107.665.1(a), the contractor shall be entitled to a hearing before the Director of Purchasing prior to debarment under this chapter. The contractor must request a hearing within ten business days of receipt of notification of proposed debarment.

b. At such hearing, evidence will be received for the purpose of determining whether or not such contractor shall be debarred or whether the contractor may be retained. The County Counselor shall provide procedural guidance and legal counsel to the Director of Purchasing regarding the hearing and the process for debarment under this chapter.

c. The contractor shall be notified by registered or certified mail or hand delivery of the decision of the Director of Purchasing. Said decision shall be accompanied by findings of fact and conclusions of law.

d. A contractor aggrieved by a decision of debarment has a right to appeal the decision under Section [107.680](#).

• **107.670 - Contracts Let Under Sections 107.130 or 1105.050 SLCRO.**

-No payment shall be made by the County to any contractor pursuant to any contract let under Section [107.130](#) SLCRO or Section [1105.050](#) SLCRO as the construction of public works under these sections if the PWEC has determined in writing that contractor or its subcontractors have failed to comply with the requirements of these sections.

• **107.680 - Right to Appeal of Decision of Debarment.**

-Any contractor, individual, or entity who is aggrieved by a final written decision of debarment under 107.665.2(c) shall have the right to appeal to the Circuit Court of St. Louis County in accordance with the provisions of Section 536.100 et seq. RSMo.]

ADOPTED: _____ CHAIR, COUNTY COUNCIL

APPROVED: _____ COUNTY EXECUTIVE

ATTEST: _____
ADMINISTRATIVE DIRECTOR

APPROVED AS TO LEGAL FORM:

COUNCIL ATTORNEY

