

Harvey County Purchasing Policy

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Purpose:

Harvey County has established this policy to provide guidelines for the prudent expenditure of County funds. The policy governs the purchase or lease of goods and services made on the County's behalf.

**HARVEY COUNTY PURCHASING POLICY
TABLE OF CONTENTS**

| | <u>Page</u> |
|---|-------------|
| SECTION 1 – GENERAL PROVISIONS | 2 |
| 1.1 Purpose | 2 |
| 1.2 Application and Waivers | 2 |
| 1.3 Responsibilities and Records | 2 |
| 1.4 Public Records | 3 |
| SECTION 2 - DEFINITIONS | 3 |
| SECTION 3 – PURCHASING PROCEDURES | 5 |
| 3.1 Petty Cash Funds | 5 |
| 3.2 Change Funds | 5 |
| 3.3 Purchasing Cards | 5 |
| 3.4 Purchases of Commodities, Service, or Combined Commodities & Services ... | 5 |
| 3.5 Purchases Subject to Statutory Procedures..... | 8 |
| 3.6 Request for Qualifications..... | 9 |
| 3.7 Informal Bids/Proposals..... | 9 |
| 3.8 Formal Bids/Proposals..... | 10 |
| 3.9 Emergency Purchases..... | 11 |
| 3.10 Contracts..... | 11 |
| 3.11 Extensions on Contracts | 11 |
| 3.12 Purchases Mandated by Law | 11 |
| 3.13 Lease and Lease/Purchase Arrangements..... | 12 |
| SECTION 4 – BONDS & CONTRACT CLAUSES | 12 |
| 4.1 Bid Security | 12 |
| 4.2 Performance Bonds | 12 |
| 4.3 Payment Bonds..... | 13 |
| 4.4 Authority of Board of County Commissioners..... | 13 |
| 4.5 Contract Clauses | 13 |
| SECTION 5 – STATE AND FEDERAL REQUIREMENTS | 14 |
| SECTION 6– ETHICS IN COUNTY CONTRACTING | 15 |
| 6.1 General Standards of Ethical Conduct..... | 15 |
| 6.2 Employee Conflict of Interest..... | 15 |
| 6.3 Employee Disclosure Requirements..... | 16 |
| 6.4 Gratuities, Kickbacks, and Contingent Fees..... | 16 |
| 6.5 Restrictions on Employment of Present and Former Employee..... | 16 |
| 6.6 Use of Confidential Information..... | 16 |
| 6.7 Civil and Administrative Remedies against Employees and Non- Employees who Breach Ethical Standards..... | 16 |

**SECTION 1
GENERAL PROVISIONS**

1.1 PURPOSE

Harvey County has established this policy to provide guidelines for the prudent expenditure of County funds. The policy governs the purchase or lease of goods and services made on the County's behalf. Efforts have been made to ensure that this policy is easy to use and meets or is stricter than all of the standards set forth in the Kansas statutes. It is intended to ensure fair and equitable treatment of all vendors and citizens of Harvey County and to provide an efficient and economical use of Harvey County funds.

1.2 APPLICATION AND WAIVERS

This policy shall apply to all expenditures using Harvey County funds, whether such funds are budgeted or not, and includes grant funds. The Board of County Commissioners, by majority vote, or County Administrator may waive the use of this policy when either deems it to be in the best interest of the County to do so, as long as the waiver does not contravene any Kansas statute or federal requirements. The use of this policy is required by all Harvey County employees, Harvey County elected officials, and judges and staff in the District Court.

1.3 RESPONSIBILITIES AND RECORDS

It shall be the responsibility of the Assistant County Administrator/Director of Finance to oversee the application of this policy. In the Assistant County Administrator/Director of Finance's absence, the County Administrator or the County Administrator's designee shall assume these responsibilities. Unless this policy provides that records be maintained longer, all records related to purchasing shall be maintained consistent with K.S.A. 45-401 et.seq, the Public Records Preservation Act, and amendments thereto, and any Records Retention and Disposition Schedules created by the State Records Board. For example:

- A. Documents related to request for proposals, bids, quotations, or estimates shall be retained for 5 fiscal years.
- B. Records related to construction projects, such as correspondence, bids, specifications, plans, drawings, reports, and notes shall be retained permanently.
- C. Contracts, including all associated documents, shall be retained until 5 calendar years after expiration of the contract.
- D. Copies of forms and supporting documents used to remove capital equipment from office inventory shall be retained for 3 fiscal years.
- E. Records concerning purchases from specific vendors, such as invoices, correspondence, and vouchers shall be retained for 5 fiscal years.

The Kansas Local Records Management Manual, which contains the current Local Records General Retention and Disposition Schedule, is currently located on the Kansas Historical Society web-site.

Department Heads (including Elected Officials) shall ensure that all acquisitions made by their staff conform to the guidelines established by this policy and State law. Administration Staff shall provide assistance in the purchasing process where appropriate, including, but not limited to, specification development and negotiations. All final contracts and purchasing documentation shall be kept by the Department for record keeping.

1.4 PUBLIC RECORDS

Purchasing documents are public records to the extent provided in the Kansas Open Records Act, K.S.A. 45-215 et seq. and amendments thereto. Several exceptions to the Kansas Open Records Act, as listed in K.S.A. 45-221(i), are relevant to the purchasing process, such as:

- A. Specifications for competitive bidding, until the specifications are officially approved.
- B. Sealed bids and related documents, until a bid is accepted or all bids rejected.
- C. Financial information submitted by contractors in qualifications statements.

Fees for providing access to and copies of such documents shall be charged in accordance with the fee policy established by the Board of County Commissioners.

SECTION 2 DEFINITIONS

The words defined in this Section shall have the meanings set forth below whenever they appear in this manual:

Bid: an offer, as a price, for payment or acceptance. A bid can either be an offer to the County by a vendor or a buyer.

Bid Security: a guarantee, in the form of a bond or deposit, that the bidder, if selected, will sign the contract as bid; otherwise the bidder (in the case of a deposit) or the bidder or their guarantor (in the case of a bond) will be liable for the amount of the bond or deposit.

Change Order: a written order signed by the Assistant County Administrator/Director of Finance or designee, directing the contractor to make changes in the contract.

Commodity: a tangible good.

Cooperative or State Contract: a contract established through a bidding process that allows multiple governmental agencies to utilize the pricing.

Construction: the process of building, altering, repairing, improving, or demolishing any public structure or building, or other public improvements of any kind to any public real property. It does not include the routine operation, routine repair, or routine maintenance of existing structures, buildings or real property.

Contract: an agreement between the County and one or more persons/businesses by which the other persons/businesses agree to provide, in exchange for consideration, any type of property, whether tangible or intangible, services or any other benefit to or for the County.

Contract Modification: any written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of any contract accomplished by mutual action of the parties to the original contract.

Contractor: any person/business having a contract with the County.

Department: any office or department having a County budget and that utilizes any supplies, services or construction purchased under this manual.

Department Head: the manager, whether elected or appointment, in charge of a department, including the District Court.

Emergency Purchase: the purchase of supplies, services, and/or construction where the urgency of need does not permit the delay in utilizing formal competitive selection methods.

Employee: any individual receiving County compensation, such compensation being a result of hiring, appointment or election to a County position.

Extensions to Contracts: An addendum to a contract for an incidental service or commodity not anticipated or necessary to the original purchase.

May: denotes the permissive.

Purchasing: buying, renting, leasing, or otherwise acquiring any supplies, services, and/or construction. It also includes all functions that pertain to the obtaining of any supply, service, and/or construction, including description of requirements, selection and solicitation of vendors, preparation and award of contract, and all phases of contract administration.

Purchase Description: the words used in a solicitation to describe the supplies, services, and/or construction to be purchased, and include specifications attached to, or made a part of, the solicitation.

Purchase Requisition: a notification to Administration issued by a Department requesting that a contract be entered into for a specified need. Such notification may include, but is not limited to, the technical description of the requested time, delivery schedule, criteria for evaluation, suggested vendors, and information supplied for the making of any written determination required by this policy.

Purchasing Card: a method of payment with limits determined by the Assistant County Administrator/Director of Finance. Such payments must be compliant with the Harvey County Purchasing Card Policy.

Request for Sealed Proposals: all documents, whether attached or incorporated by reference, utilized for soliciting proposals.

Informal Bids/Proposals: an informal offer or bid containing price and other terms made by a vendor in writing, telephone, or verbally.

Request for Qualifications: a documented process to narrow the selection of qualified vendors to respond to a solicitation of a bid/proposal, or to determine a list of qualified consultants that can be accessed as needed.

Request for Sealed Bids: all documents, whether attached or incorporated by reference, utilized for soliciting bids.

Responsible Bidder: a person/business who has the capability in all respects to perform fully the contract requirements, and the tenacity, perseverance, experience, integrity, reliability, capacity, facilities, equipment, and credit which will assure good faith performance.

Responsive Bidder: a person/business who has submitted a bid that conforms in all material respects to the Request for Bids/Proposals.

Services: the furnishing of labor, time, and/or effort by a vendor.

Shall: denotes the imperative.

Sole Source of Supply: there is only one source for the required supply, service, or construction item due to uniqueness of the product, quality or performance of the item, or need to maintain uniformity with past purchases.

Specification: any description of the physical or functional characteristics, or of the nature of a supply, service, or construction item. It may include a description of any requirement for inspection, testing, or preparing a supply, service, or construction item for delivery.

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

Surplus: any supplies no longer having any use to the County. This includes obsolete supplies, scrap materials, and nonexpendable supplies that have completed their useful life cycle.

Vendor: a seller of commodities and/or services.

SECTION 3 PURCHASING PROCEDURES

3.1 PETTY CASH FUNDS

Petty cash funds of \$25.00 or less may be established by the Department Head for the purchase of miscellaneous small items. Petty cash funds greater than \$25.00 must be established by approval of the County Administrator. Receipts of expenditures must be submitted when requesting replenishment of petty cash funds.

3.2 CHANGE FUNDS

Departments may keep cash on hand for the sole purpose of making change for cash transactions. Such funds must be identified and kept separate from other cash, and may not be in an amount in excess of \$500.00, except for the Treasurer's Office, which may not be in an amount in excess of \$2,500.00.

3.3 PURCHASING CARDS

Employees to whom purchasing cards are assigned must sign the Purchasing Card Cardholder Agreement. The Assistant County Administrator/Director of Finance is responsible for the oversight of Purchasing Cards, including establishment of limits and types of purchases authorized.

3.4 PURCHASE OF COMMODITIES, SERVICES, OR COMBINED COMMODITIES AND SERVICES

A. Department Head Approval Levels: With the exception of purchases as outlined below, when the purchase price of a commodity or service acquisition is less than or equal to \$3,000, the Department Head shall have the authority to make the acquisition without prior approval.

1. Motor Fuels: The purchase of motor fuels may be made by the Department Head exceeding the above limits subject to obtaining informal bids and subject to available budget authority.
2. Postage: The purchase of postage may be made exceeding the above limits subject to available budget authority.

3. Major Equipment Repair: When, in order to repair major items of equipment, there is a necessity to tear down said equipment prior to any repair and it is not thereafter reasonable to reassemble the piece of equipment in order to gather additional quotes for the repair itself, the approval of the repair may be made by the Department Head exceeding the above limits, subject to available budget authority, and approval of the County Administrator. "Major equipment" means those repairs needed for vehicles, construction and other heavy equipment that go beyond the scope of standard maintenance.

B. Administration Approval Levels: Approval for purchases of commodities, services, or a combination may be made by the County Administrator or the Assistant County Administrator/Director of Finance at the following levels:

1. Cooperative or State Contracts: When the purchase price of the commodity, service or combined acquisition is between \$3,000.01 and \$14,999.99, and the commodity and/or service may be purchased through a cooperative or state contract for which bids were originally issued.
2. Sole Source: When the purchase price of the commodity, service or combined acquisition is between \$3,000.01 and \$14,999.99, and the commodity and/or service may only be purchased through one vendor due to uniqueness of the product/service, quality or performance of the item/service, or need to maintain uniformity with past purchases.
3. Informal Bids: When the purchase price of the commodity, service or combined acquisition is between \$3,000.01 and \$14,999.99, and a cooperative purchasing agreement or state contract is not available or is not being utilized, and informal bids/proposals have been solicited.

C. Board of County Commissioners Approval: Approval from the Board of County Commissioners is required when the purchase price of a commodity, service or combination is greater than \$15,000. Cooperative Purchasing Agreements or State Contracts, Sole Source, or Formal Bids may be utilized for such purchase.

D. Purchasing Procedures: Purchases authorized under parts A. and B. of this section shall be made in accordance with the Harvey County Purchasing Procedures.

1. Purchases of \$3,000 or less (Micro Purchases)

- a. To document authorization for purchases of \$3,000 or less, the Harvey County Claim Voucher shall be utilized. It is available as an Excel template.
- b. When the need for goods and services are identified, informal bids should be acquired. Then a Claim Voucher should be prepared to include the name of the vendor, description of the item(s) or service(s) and the quantity required. The department head or designated representative then signs the form. This establishes departmental authorization to make the purchase and when this document is presented to a vendor, provides the vendor assurance the purchase is a valid obligation of Harvey County. Informal bid documentation isn't required, but is recommended for purchases in this category.
- c. Upon receipt of the goods and/or services, attach the signed vendor invoice to the Claim Voucher and turn it into the County Clerk's office for processing. Statements cannot be substituted for invoices.
- d. The County Clerk's Office will add the vendor number and process the Claim Voucher and invoice for payment in the next payment cycle.

2. Purchases from \$3,000.01 to \$14,999.99 (Small Purchases)

- a. The Harvey County Purchase Requisition Form is the document used to inform the County Administrator or Assistant County Administrator/Director of Finance that a department needs to purchase goods and/or services of greater than \$3,000.01, but less than \$14,999.99. Prior to making the purchase, the following steps are required:
 - i. Identify a need for goods and services with an estimated cost between \$3,000.01 and \$14,999.99.
 - ii. Solicit informal quotes from at least three vendors. These solicitations should be written, or in the form of a letter, fax, or e-mail, but can also be received via telephone, catalog prices, or newspaper advertisements. The solicitation shall include the vendors contacted, the contact process, and the quote price. If the low bid is not selected, written justification must be submitted with the bids. If only one vendor provides the goods and/or services, indicate this with the quotes with a comment that the provider is the sole source for these particular goods/services, or if the purchase is being completed through a cooperative purchasing agreement.
 - iii. Once quotes are received and a bidder is selected, the Purchase Requisition Form should be filled out, and submitted to the Assistant County Administrator/Director of Finance. This form is available as an Excel template.
 - iv. Once received, the Assistant County Administrator/Director of Finance will review the Purchase Requisition and bids to verify that the goods/services are budgeted and that the necessary funds are available, that the Purchase Requisition document is properly filled out, and assign a purchase order (PO) number. Purchase Requisitions failing any of these conditions will be returned to the originator with an annotation of the reason for rejection.
 - v. The Assistant County Administrator/Director of Finance will review the information, and may solicit additional quotes, select another vendor other than the one selected by the requesting department, or approve as is. The Assistant County Administrator/Director of Finance will notify the requesting department of any changes made to the Purchase Requisition.
 - vi. Upon approval, the Purchase Requisition will be forwarded to the County Clerk's office, who will establish an encumbrance for the amount of the purchase requisition. The purchase requisition will then be forwarded to the initiating department.
 - vii. The goods and/or services can now be ordered/purchased.
 - viii. When the goods and/or services are received, sign the invoice, attach it to the purchase requisition, and forward it to the County Clerk's Office within three working days after the receipt of goods and/or services for payment processing.
 - ix. The County Clerk's Office will match the signed invoice with the suspended Purchase Requisition and process payment, liquidating the encumbrance.

3.5 PURCHASES SUBJECT TO STATUTORY PROCEDURES.

Except when other provisions of this Policy specifically require stricter or additional standards than required by applicable Kansas statutes, the applicable Kansas statutes shall control. As such, all Kansas statutes governing purchases, including the following, shall be followed (subject to exceptions enumerated by statute in the event of emergency, disaster, hardship, etc.):

A. Construction of County Buildings.

All contracts for the expenditure of County funds for the construction of any courthouse, jail or other County building in excess of \$25,000 shall be awarded in accordance with K.S.A. 19-214 et.seq, which requires a public letting and award to the lowest and best bid. Notice of the request for bids shall be published in a newspaper designated by the Board of County Commissioners.

The notice shall specify with reasonable minuteness the character of the improvement contemplated, the time and place at which the contract will be awarded, and invite sealed bids for the same. Plans and specifications of the proposed work shall be available for the inspection of bidders at a County office, or other designated location, for at least 30 days prior to the time of awarding the contract.

The contractor awarded the contract shall give the County a good and sufficient surety bond by a surety company authorized to do business in the State of Kansas, to be approved by the County Counselor, in the amount of the contract, and conditioned upon the faithful performance of the contract.

Pursuant to K.S.A. 19-214, this subsection shall not apply to the expenditure of County funds for professional service, for contracts subject to K.S.A. 68-521 (relating to construction of County roads), or to the purchase of contracts of insurance.

B. Construction of County Bridges and Culverts.

All contracts for the construction or repair of any County bridge or culvert shall be awarded in accordance with K.S.A. 68-1101 et seq., and any amendments thereto. Among other things, the foregoing statutes provide for the following:

1. Possibility of protest petition by 5% of the legally qualified electors of the County if Harvey County's share of the expense to build or repair a bridge exceeds \$250,000;
2. The County Engineer's approval of plans for the construction or repair of any bridge or culvert if the estimated cost does not exceed \$200,000 and the Kansas transportation engineer's approval of plans if the estimated cost does exceed \$200,000;
3. Award of contract to lowest responsible bidder after public bidding by sealed bid;
4. Bid security in the amount of not less than 5% of the bid proposal;
5. The contract may not be awarded for more than 110% of the County Engineer's estimated cost;
6. The bidder to whom the contract is awarded must provide a bond to Harvey County in a penal sum equal to the amount of the contract price, conditioned upon faithful performance of the contract in a form approved by the County Counselor;
7. Retainage on contracts of no less than 5%; and

8. Determination of the County Counselor that the contract has been awarded in strict compliance with all statutory requirements.
9. Notice of letting of contracts for County bridge and culvert projects shall be similar to the requirements for County road projects as found in K.S.A. 68-521. K.S.A. 68-521 stipulates that the County Clerk shall give not less than 20 days notice of letting by publication in at least two consecutive weekly issues of the official county paper, the first publication of such notice to be not less than 20 days prior to such letting.

C. Construction of County Roads.

All contracts for construction, surfacing, repairing or maintaining of any County road when the County Engineer's estimated cost is in excess of \$25,000 shall be awarded in accordance with K.S.A. 68-521, which requires a public letting and award to the lowest responsible bidder. Notice of the request for bids shall, at a minimum, be published twenty (20) days prior to such letting, at least twice in a newspaper designated by the Board of County Commissioners.

The published notice shall specify with reasonable minuteness the character of the improvement contemplated, where it is located, the kind of material to be used, the hour, date, and place at which the contract will be awarded, when the work is to be completed, and invite sealed proposals for the same. Plans and specifications of the proposed work, which have been approved by the Board of County Commissioners, shall be displayed for the inspection of bidders at a County office, or other designated location, for at least twenty (20) days prior to the time of letting the contract. The notice should also provide proposal blanks on which all bids shall be made. Each bid shall be submitted with bid security in the amount of not less than 5% of the bid proposal. No contract shall be let for an amount exceeding the 110% of the County Engineer's estimated cost of the work.

The contractor awarded the contract shall give the County a good and sufficient performance bond by a surety company authorized to do business in the State of Kansas, to be approved by the County Counselor, in the amount of the contract and conditioned upon the faithful performance of the contract. The County Counselor shall approve the form of the bond.

D. Construction of Roads in Benefit Districts.

All contracts for improvement of roads in benefit districts shall be awarded in accordance with K.S.A. 68-704, which requires a public letting and award to the lowest responsible bidder. Procedures to follow are similar as those set forth in above with respect to County roads generally, except publication of the notice of the request for bids need only be published one time and there is no requirement that the contract price be less than the County Engineer's estimate.

3.6 REQUEST FOR QUALIFICATIONS.

A Request for Qualifications (RFQ) may be used to establish a list of qualified consultants or vendors that can be accessed as needed, rather than processing multiple requests for bids/proposals. The process is identical as that for Request for Proposals up to, but excluding, the award of a single contract. Additionally, when the purchase of a commodity and/or service warrants the formal bidding process, the Department Head may elect to issue a Request for Qualifications which will require vendors to be pre-qualified based on the criteria set forth in the RFQ. This process must be pre-approved by the Assistant County Administrator/Director of Finance.

3.7 INFORMAL BIDS/PROPOSALS.

In situations where informal bids/proposals are required, at least three (3) bids/proposals must be solicited from qualified vendors when possible. The bids/proposals should be written, or in the

form of letter, fax, or e-mail, but can also be received via telephone, catalog prices, or newspaper advertisements. If only one vendor provides the goods and/or services, or if the purchase is being completed through a cooperative purchasing agreement, indicate this with the quotes with a note that the provider is the sole source for these particular goods and/or services, or the purchase is part of a cooperative purchasing agreement or state contract. Informal bids/proposals between \$3,000.01 and \$14,999.99 must be submitted to the Assistant County Administrator/Director of Finance along with a purchase requisition, as detailed in the Harvey County Purchasing Procedures (3.4 D). Written justification, approved by the Assistant County Administrator/Director of Finance, must be provided if the low bid is not accepted.

3.8 FORMAL BIDS/PROPOSALS.

- A. Notice to Commissioners.** Written notice of the issuance of a formal request for bid or proposals must be provided to Commissioners.
- B. Publication.** The publication shall include deadline for submission, the place and manner of submission, and the date, time and place of opening.
- C. Formal Bid/Proposal Submission.** Formal bids/proposals must be submitted in writing, signed by an authorized representative, and submitted prior to the bid deadline in a sealed envelope or package. Unless otherwise noted in the Request, faxed and email bids/proposals will not be accepted. Bids/proposals submitted after the deadline will not be accepted and will be returned unopened. The County Administrator and/or Assistant County Administrator/Director of Finance shall have the authority to make exceptions when special circumstances exist; documentation of these circumstances shall be required.
- D. Bid/Proposal Opening.**
 - 1. Bids. Bids shall be opened publicly in the presence of the County Commission or the Commission designee at the location and time stated in the Request. The amount of each bid and any other relevant information, together with the name of each bidder, shall be recorded. The record of bids/proposals shall be open to public inspection.
 - 2. Proposals. Proposals shall not be opened publicly, but shall be recorded publicly in the presence of the County Commission or the Commission's designee at the location and time stated in the Request. The name of the vendor shall be recorded. The proposal information shall not be made public until after the approval of the award.
- E. Changes/Withdrawals to Bids/Proposals.** Bids/proposals may be corrected or withdrawn prior to the stated deadline. Requests for all such transactions must be submitted to the Assistant County Administrator/Director of Finance or designee prior to the deadline. Correction or withdrawal of inadvertently erroneous bids/proposals or proposals after the deadline but before the award, or cancellation of awards or contracts based upon such mistakes, shall be permitted only upon authorization by the County Administrator and/or Assistant County Administrator/Director of Finance.
- F. Awards.** The purchase and/or contract shall be awarded to a qualified vendor submitting the lowest responsible bid or best proposal as determined by the Board of County Commissioners after review of all vendor proposals and recommendations by the user department. The purchase and/or contract shall be awarded or rejected with reasonable promptness. Written justification must be provided if the recommendation for award is not the lowest bid or proposal.
- G. Cooperative Purchasing Agreements.** Purchases and/or contracts made through cooperative purchasing agreement can be utilized in place of a formal request for bids or proposals due to the purchase price having already been determined through a competitive bidding process. In situations where cooperative purchasing agreements are utilized for

purchases of \$15,000 or above, the Board of County Commissioners must formally approve the purchase.

H. Purchase of Used Vehicles, Machinery, and Equipment. Used vehicles, machinery, and equipment may be purchased by soliciting information bids/proposals from at least three (3) qualified vendors when possible. The bids/proposals shall be in written form. In situations where the informal bids/proposals are utilized for purchases of \$15,000 or above, the Board of County Commissioners must formally approve the purchase.

1. Vehicle, Machinery, and Equipment Trades. When the County is making a purchase which involves trading in vehicles, machinery, or equipment, the financial thresholds in this policy apply to the purchase price of the vehicles, machinery, or equipment, not the purchase price net of the amount offered for the trade.

3.9 EMERGENCY PURCHASES

A. Emergency Repairs and/or Purchases. The County Administrator and/or Assistant County Administrator/Director of Finance shall have the authority to authorize emergency repairs and/or purchases in an amount up to \$15,000 without the solicitation of bids/proposals. The County Administrator shall also be responsible for notifying the Board of County Commissioners at the next regularly scheduled County Commission meeting that such an emergency purchase was made.

B. Declared Emergency Situations. The County Administrator or his/her designee may make or authorize others to make emergency purchases without monetary limit when there exists a threat to public health, welfare, or safety under declared emergency conditions. Prior to the authorization, approval must be received from the Chairman of the Board of County Commissioners; in the event of the absence of the Chair, the approval shall be received from the Vice Chair or other board Member. Where possible, such competition as is practical under the circumstances shall be attempted.

3.10 CONTRACTS

A. Length. Contracts for commodities and/or services may be written in such a manner that they are renewable for up to four (4) years.

B. Repository. All contracts for commodities and services shall be maintained in their respective Department for a period of five (5) calendar years after expiration of the contract. Any formal bid documentation must be submitted with the contract.

C. Signatures. Signature authority shall be based upon approval authority as outlined in Section 3 or as designated by the Board of County Commissioners.

3.11 EXTENSIONS ON CONTRACTS

Extensions to contracts shall be considered separate purchases, and shall follow the guidelines set forth above. The extension must be an incidental service or commodity not anticipated or necessary to the original purchase.

3.12 PURCHASES MANDATED BY LAW

Purchases mandated by law shall be approved through the budgetary process and shall not be subject to the above monetary limitations. The department head shall be responsible for making the purchases within the limitations established by the budget. (Example: purchase of chemicals for resale.)

3.13 LEASE AND LEASE/PURCHASE ARRANGEMENTS

Consistent with K.S.A. 10-1116b and 10-1116c, and any amendments thereto, relating to the Kansas Cash Basis Law, when it is in the best interests of the County to lease or lease/purchase goods rather than acquire them, the policies outlined herein shall be applied in the same manner as an acquisition.

SECTION 4 BONDS & CONTRACT CLAUSES

4.1 BID SECURITY

Bid security shall be required when the Board of County Commissioners, County Administrator, or Assistant County Administrator/Director of Finance deems it appropriate or when required by law. As noted in Section 3.5, K.S.A. 68-521, K.S.A. 68-704, and 68-1114, and amendments thereto, any bidder for the construction of any road, bridge or culvert must provide bid security in an amount of not less than 5% of such bid proposal.

Bid security shall be a bond provided by a surety company authorized to do business in Kansas, or the equivalent in cash, certified check, cashier's check or otherwise provided in a form satisfactory to the Board of County Commissioners, all payable to the Harvey County Treasurer. When bid security is required, noncompliance shall result in rejection of the bid. If a bidder is permitted to withdraw its bid prior to an award (but after opening of bids/proposals), no action shall be held against the bidder or the bid security.

4.2 PERFORMANCE BONDS

A performance bond shall be required when the Board of County Commissioners, County Administrator, or Assistant County Administrator/Director of Finance deem appropriate and when required by law.

Kansas law requires a performance bond for construction of any:

- Public building (K.S.A. 19-214)
- Bridge or culvert (K.S.A. 68-1117)
- Any County road (K.S.A. 68-521 and K.S.A. 68-704)

When a contract is awarded and a performance bond is required, a performance bond or security shall be delivered to the County on the County's designated bond form and shall become binding on the parties upon the execution of the contract. The performance bond shall be conditioned upon the faithful performance of the contract.

A performance bond satisfactory to the County, executed by a surety company authorized to do business in Kansas or otherwise secured in a manner satisfactory to the County, in an amount determined by the Board of County Commissioners or their designee, except as required by law, including but not limited to the following:

- A. Construction of any Public Building.** Pursuant to K.S.A. 19-214, and any amendments thereto, the bidder to whom any contract for the construction of any public building shall be awarded shall give a performance bond to the County in a sum equal to the contract price. The County shall not be bound until the County Counselor approves the form of the bond as legal and binding upon both parties by the County Counselor's signature endorsed thereon.
- B. Construction or Repair of any Bridge or Culvert.** Pursuant to K.S.A. 68-1117, and any amendments thereto, the bidder to whom any contract shall be awarded for the construction or repair of any bridge or culvert shall give a performance bond to the County in a sum equal

to the amount of the contract price. The sufficiency of the bond shall be approved by the chairperson of the Board of County Commissioners, but the County shall not be bound until the County Counselor approves the form of the bond as legal and binding upon both parties by the County Counselor's signature endorsed thereon.

C. Construction, Surfacing, Repairing or Maintaining of any County Road. Pursuant to K.S.A. 68-521 and/or K.S.A. 68-704, any amendment thereto, the bidder to whom any contract shall be awarded for constructing, surfacing, repairing or maintaining any County road shall give a performance bond to the County in a sum equal to the amount of the contract price. The sufficiency of the bond shall be approved by the chairperson of the Board of County Commissioners, but the County shall not be bound until the County Counselor approves the form of the bond as legal and binding upon both parties by the County Counselor's signature endorsed thereon.

4.3 PAYMENT BONDS

A payment bond shall be required when the County enters into a contract in any sum exceeding \$100,000 with any bidder for the purpose of making any public improvements, or constructing any public building or making repairs on the same or in other instances that the Board of County Commissioners, County Administrator, or Assistant County Administrator/Director of Finance deems appropriate and when required by law. Pursuant to K.S.A. 60-1111, a payment bond is required when the County enters into a contract in any sum exceeding \$100,000 with any bidder for the purpose of making any public improvements, or constructing any public building or making repairs on the same. No exception to or waiver of this policy shall be made in violation of the requirements of the foregoing statute, and amendments thereto.

A payment bond shall be a bond to the State of Kansas, provided by a surety company authorized to do business in Kansas or otherwise secured in a manner satisfactory to the County, conditioned that such contractor or the subcontractor of such contractor shall pay all indebtedness incurred for labor furnished, materials, equipment or supplies, used or consumed in connection with the work provided for in the contract. The bond shall be in an amount determined by the Board of County Commissioners or their designee and shall be in the form designated by the County, but shall not be less than the contract price. The payment bond shall be filed with the Clerk of the District Court of Harvey County; and a copy of the filing receipt must be submitted to the County.

4.4 AUTHORITY OF THE BOARD OF COUNTY COMMISSIONERS

Nothing in this section shall be construed to limit the authority of the County to require other security in addition to the bonds described above. Unless the Kansas statutes require the bond, the Board of County Commissioners may withdraw the requirements for the bond at any time in the purchasing process.

4.5 CONTRACT CLAUSES

A. Mandatory Clauses

Pursuant to K.S.A. 44-1030, and any amendments thereto, unless (i) the bidder to whom any contract shall be awarded employs fewer than four employees or (ii) has contracts with the County that cumulatively total less than \$5,000 during the County's fiscal year, any contract for the construction, alteration or repair of any public building or public work or for the acquisition of materials, equipment, supplies or service shall contain provision by which the contractor agrees that:

1. The contractor shall observe the provisions of the Kansas Act against discrimination and shall not discriminate against any person in the performance of work under the present contract because of race, religion, color, sex, disability, national origin or ancestry;

2. In all solicitations or advertisements for employees, the contractor shall include the phrases "equal opportunity employer," or a similar phrase to be approved by the commission;
3. If the contractor fails to comply with the manner in which the contractor reports to the commission in accordance with the provisions of K.S.A. 44-1031 and amendments thereto, the contractor shall be deemed to have breached the present contract and it may be canceled, terminated or suspended, in whole or in part, by the County; If the contractor is found guilty of a violation of the Kansas act against discrimination under a decision or order of the commission which has become final, the contractor shall be deemed to have breached the present contract and it may be canceled, terminated or suspended, in whole or in part, by the County; and
4. The contractor shall include the provisions of subsection 1 through 3 in every subcontract or purchase order so that such provisions will be binding upon such subcontractor or vendor.

B. Discretionary Contract Clauses

The Board of County Commissioners may require the inclusion in County contracts of clauses providing for adjustment in prices, time of performance or other contract provisions, including but not limited to, the following subjects:

1. The unilateral right of the County to issue change orders in the work and changes in the time of performance of the contract.
2. Variations occurring between estimated quantities of work and actual quantities;
3. Suspension of work ordered by the County;
4. Site conditions differing from those indicated in the contract, or ordinarily encountered, except that differing site conditions clauses need not be included in negotiated contracts or when the contractor provides the site or design or when the parties have otherwise agreed with respect to the risk of differing site conditions;
5. Liquidated damages as appropriate;
6. Specified excuses for delay or nonperformance;
7. Termination of the contract for default; and,
8. Termination of the contract in whole or in part for the convenience of the County.
9. Workman's compensation insurance.

SECTION 5 STATE AND FEDERAL REQUIREMENTS

Where a purchase involves the expenditure of federal assistance or contract funds, the Board of County Commissioners or its designee shall comply with such federal law and authorized regulations, which are mandatory, applicable and which are not presently reflected in this policy.

The provisions of this policy are subordinate to any State statutes governing County-purchasing practices.

**SECTION 6
ETHICS IN COUNTY CONTRACTING**

6.1 GENERAL STANDARDS OF ETHICAL CONDUCT

A. General Statement.

Any attempt to realize personal gain through County employment by conduct inconsistent with the proper discharge of the employee's duties is a breach of public trust. County employment includes any person who receives County compensation, such compensation being a result of either appointment or election to a County position. Also, for the purposes of this policy, employees of the District Court are required to adhere to these standards. In order to fulfill this generally prescribed standard, employees must also meet the specific standards set forth in this section.

B. Employee's Responsibilities.

It shall be the responsibility of employees involved in any decision to purchase goods and/or services on behalf of the County to avoid the appearance of impropriety in such decision-making.

6.2 EMPLOYEE CONFLICT OF INTEREST

A. Definitions.

1. Contract. The term "contract" as used herein shall mean any agreement between the County and one or more other persons or businesses by which the other persons or businesses agree to provide, in exchange for consideration, any type of property, whether tangible or intangible, services, or any other benefit to or for County.
2. Employee. The term "employee" as used in this section shall apply to any person, whether appointed or elected, who receives a paycheck from the County; or spends County funds, such as District Court employees.
3. Substantial Interest. The term "substantial interest" is defined at K.S.A. 75-4301a(a). A substantial interest includes any legal or equitable interest of an employee or employee's spouse in a business exceeding \$5,000 or 5% of any business of an employee or the employee's spouse.

B. Kansas Statutes

Pursuant to K.S.A. 75-4304, it shall be a breach of ethical standards for any County employee, in his/her capacity as such employee, to make or participate in the making of a contract with any person or business by which he/she (or his/her spouse) is employed or in whose business he/she has a substantial interest. A County employee shall not make or participate in the making of a contract if he/she has abstained from any action with regard to the contract.

C. Exceptions.

Section 6.2B does not apply when either of the following circumstances are in place:

1. Contracts let after competitive purchasing practices have been followed using the procedures outlined in previous sections of this policy.
2. Contracts for property or services for which the price or rate is fixed by law.

6.3 EMPLOYEE DISCLOSURE REQUIREMENTS

Except in cases of the minimum purchases, an employee who has, or obtains, any benefit from any County contract with a business or person in which the employee (or the employee's spouse) has a financial interest shall report such benefit to the Board of County Commissioners; provided, however, this Section shall not apply to a contract with a business where the employee's interest in the business has been placed in an independent trust. Any employee who knows or should have known of such benefit and fails to report such benefit to the Board of County Commissioners is in breach of ethical standards.

6.4 GRATUITIES, KICKBACKS, AND CONTINGENT FEES

A. Gratuities.

It shall be a breach of ethical standards for any person to offer, give or agree to give any employee or former employee, or for any employee or former employee to solicit, demand, accept or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation or preparation of any part of a program requirement or a purchase requisition; influencing the content of any specification or purchasing standard; or rendering of advice, investigation, auditing or in any other advisory capacity, in any proceeding or application, request for ruling, determination, claim or controversy or other particular matter; pertaining to any program requirement or a contract or subcontract, or to any solicitation or proposal there for. Except as provided in below, gratuities shall not mean pens, calendars or other novelty items used for advertising purposes, meals or other meeting circumstances for the purpose of conducting or discussing official business.

B. Kickbacks.

It shall be a breach of ethical standards for any payment, gratuity or offer of employment to be made by or on behalf of a subcontractor under a contract or order to the prime contractor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract or order.

C. Contingent Fees.

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

6.5 RESTRICTIONS ON EMPLOYMENT OF PRESENT AND FORMER EMPLOYEES

Except as may be expressly permitted by the Board of County Commissioners or their designee, it shall be a breach of ethical standards for any County employee who is participating directly or indirectly in the purchasing process to become or be, while being a County employee, the employee of any person contracting with the County.

6.6 USE OF CONFIDENTIAL INFORMATION

It shall be a breach of ethical standards for any employee or former employee knowingly to use confidential information for actual or anticipated personal gain, or for the actual or anticipated gain of any other person.

6.7 CIVIL AND ADMINISTRATIVE REMEDIES AGAINST EMPLOYEE AND NON-EMPLOYEES WHO BREACH ETHICAL STANDARDS

Civil and administrative remedies against employees and non-employees, which are in existence on the effective date of this manual, shall not be impaired. In addition to existing remedies for

breach of ethical standards of this section, remedies in accordance with the Harvey County Personnel Manual, may also be imposed.

The value of anything transferred or received in breach of the ethical standards of this section, or regulations promulgated hereunder, by an employee or a non-employee may be recovered from both the employee and non-employee.

All procedures under this Section shall be in accordance with due process requirements. To the extent that violations of the ethical standards of conduct set forth in this Section constitute violations of federal or state law, they shall also be punishable as provided therein. Such sanctions shall be in addition to the civil remedies set forth in this policy.