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BEFORE THE BOARD OF COUNTY COMMISSIONERS
OF LANCASTER COUNTY, NEBRASKA

IN THE MATTER OF ADOPTING A)
BID PROTEST PROCEDURE FOR) RESOLUTION NO. R-10-0098
LANCASTER COUNTY, NEBRASKA)

WHEREAS, the Board of County Commissioners of Lancaster County, Nebraska, hereinafter "County Board," finds and determines that the adoption of a bid protest procedure is necessary for compliance with Federal Grant Regulations; and

WHEREAS, pursuant to the Interlocal Cooperation Act, Neb. Rev. Stat. § 13-801 *et seq.* (Reissue 2007), the City of Lincoln and Lancaster County entered into an interlocal agreement, found at County Contract No. C-74-1387, to provide purchasing services to the County of Lancaster through the Lincoln/Lancaster County Purchasing Department; and

WHEREAS, the City of Lincoln has previously enacted a bid protest procedure for use by the Lincoln/Lancaster County Purchasing Department; and

WHEREAS, the County Board desires to enact a bid protest procedure similar to that of the City of Lincoln for uniform administration by the Lincoln/Lancaster County Purchasing Department; and

NOW, THEREFORE, BE IT RESOLVED, by the County Commissioners of Lancaster County, Nebraska, that it hereby adopts the following procedure:

Bid Protests; Definitions; Appeals.

(a) Definitions.

- (1) Interested party shall mean an actual or prospective bidder whose direct economic interest would be affected by the award of a contract by the

County to another party, or by the failure of the County to award a contract to such actual or prospective bidder.

- (2) Protest shall mean a written objection by an interested party on any phase of the bidding process, including specification preparation, bid solicitation, and intent to award, for the acquisition of supplies or services.
- (3) Protester shall mean an interested party who has filed a protest pursuant to subsection (b).
- (4) Procurement Appeals Board shall mean the independent panel of five unbiased individuals, appointed by the Mayor of the City of Lincoln and currently serving on behalf of the Lincoln/Lancaster County Purchasing Department, which individuals have a thorough knowledge of the purchasing process and practices, and laws applicable thereto. Members of such board have been appointed for three-year, staggered terms.

(b) Right to Protest. An interested party may protest to the Purchasing Agent, which protest shall be submitted in writing on company letterhead. Protests based on alleged apparent improprieties in a solicitation or other request for proposals must be filed before bid opening. In all other cases, the protest must be filed within five working days following the bid opening or if the protest is based on the selection of the lowest responsible bidder, not later than five working days following the selection of the lowest responsible bidder. To expedite handling of protests, the envelope containing the protest should be clearly labeled "Protest".

The written protest shall include, at a minimum, the following:

- (1) The name and address of the interested party;

- (2) Appropriate identification of the relevant solicitation, and if a bid has been opened, its number, and date of opening;
- (3) A statement of reasons for the protest;
- (4) Supporting exhibits, evidence, or documents to substantiate any claims unless not available within the filing time, in which case the expected availability date shall be indicated.

Upon timely receipt of a protest, the County shall not proceed further with the solicitation or with the award of the contract and shall suspend performance under the contract until the Purchasing Agent has resolved the protest or the Procurement Appeals Board has made a decision on the protest.

(c) Authority to Resolve Protests. Prior to the commencement of an appeal to the Procurement Appeals Board concerning any protest, the Purchasing Agent shall attempt to resolve any protest filed by an interested party concerning any solicitation. If the protest is not resolved by mutual agreement, the Purchasing Agent shall issue a decision in writing within five working days. The decision shall (1) state the reasons for the action taken, and (2) inform the interested party of their right to administrative review as provided by the Procurement Appeals Board. A copy of the decision shall be mailed or otherwise furnished immediately to the protester and all other bidders. If not satisfied with the decision of the Purchasing Agent, any protester may appeal to the Procurement Appeals Board, but the decision shall be final unless the protester files a timely appeal with the County Clerk.

(d) Appeal Procedures. Any protester, within five working days of receipt of a decision of the Purchasing Agent, may file with the County Clerk a written notice of appeal for a hearing

before the Procurement Appeals Board. The Notice of Appeal must clearly state the action protested and the basis of appeal.

Upon receipt of an appeal from a protester, the Procurement Appeals Board shall convene, in person or by video teleconferencing, within ten working days or as soon thereafter as reasonably possible to conduct an administrative review of the appeal. The Procurement Appeals Board shall decide whether the solicitation being appealed was in accordance with the applicable laws and regulations and the terms and conditions of all applicable specifications, and whether waiver of specifications, conditions or defects in a bid, if any, were justified and in the best interest of the County.

Within ten working days of hearing such appeal, the Procurement Appeals Board shall submit its findings and recommendations to the Lancaster County Board of Commissioners. If all five members of the Procurement Appeals Board are present, an affirmative vote of three shall be required for final action. If only three members are present, only an affirmative vote of two shall be required for final action. Should it become impossible to obtain a quorum of three members, the appeal shall proceed directly to the County Board without Procurement Appeals Board action.

No determination by the Procurement Appeals Board concerning an issue of law or fact shall be final or binding on the County.

(e) Finality of Decision. The County Board shall consider the recommendations of the Purchasing Agent, the Procurement Appeals Board, and the Department Head or agency for which the solicitation was made and shall make the final decision on the protest. The County Board's decision shall be final and binding upon the County.

DATED this 23 day of November, 2010, at the County-City Building,
Lincoln, Lancaster County Nebraska.

BY THE BOARD OF COUNTY
COMMISSIONERS OF LANCASTER
COUNTY, NEBRASKA

APPROVED AS TO FORM
this 23 day of
Nov, 2010.

Brittany Bohren
for GARY E. LACEY
County Attorney

Bob Schorr
Bob Fleming Jr.
Randy Keen
Larry Hudson
Workman Absent