

**BOARD OF SUPERVISORS MEETING
FIFTIETH MEETING, 2021 SESSION (50)
DECEMBER 7, 2021**

The Buena Vista County Board of Supervisors met in regular session on Tuesday, December 7, 2021 at 8:30 A.M. in the Boardroom with Chairman Snyder presiding, and the following members present: Altena, Huseman, Merten, and Ringgenberg and with Auditor Susan Lloyd as clerk for the meeting.

Unless otherwise indicated, all of the following **motions** offered at this meeting were carried with the following vote: Ayes: Altena, Huseman, Merten, Ringgenberg, and Snyder. Nays: none. Abstentions: none.

Motion by Ringgenberg, second by Merten, to **approve the agenda**, as presented. Carried.

Motion by Huseman, second by Altena, to approve and authorize the Chair to sign the **Winter Maintenance Agreements** with the City of Rembrandt and the City of Truesdale. Carried.

Secondary Road Report: The crew has been brush cutting, but it has slowed down with the colder weather; the maintainers are on the gravel roads; they have been working around the shop; Engineer Wilkinson will be meeting with the City of Storm Lake regarding the speed limit on 90th Ave. part the new elementary school; next week, Wilkinson will be attending the annual meeting in Des Moines.

Env Health/Zoning Director Kim Johnson informed the Board that she would like to have her resignation rescinded. Johnson stated that she received an offer to purchase 40 acres of land, and she would therefore, like to continue working a few more years. Merten stated that he would back her in whatever she wants. Ringgenberg commented that it would give employees in the office time for more education and training, to be able to transition when Johnson retires. Motion by Ringgenberg, second by Altena, to **rescind the resignation** that was submitted by Env Health/Zoning Director Kim Johnson. Carried.

Stacia Timmer, CEO of **Elderbridge Agency on Aging**, presented the FY'21 Annual report. Timmer stated that they have received \$2.3 million in ARPA Funds, which must be spent in three years. Timmer stated that the census shows a decline population in the rural areas and increased population in the urban areas. Timmer said that the agency was cut in Federal and State funding, \$297,000. They took \$300,000 from the ARPA funds, but they still need the 25% match, which Timmer stated, is a struggle, so they use county funds for the 25% match. A total of \$204,156 funded services were provided to Buena Vista County seniors in FY'21. Timmer thanked the Board for their support. The Board thanked Timmer for the services provided to the county.

EMA Director Aimee Barritt brought a revised grant procurement policy to the Board, for their approval. Motion by Merten, second by Ringgenberg, to approve and authorize the Chair to sign **Resolution #2021-12-07-A** Grant Procurement Policy. Carried.

RESOLUTION #2021-12-07-A

BUENA VISTA COUNTY GRANT PROCUREMENT POLICY

PURPOSE

The purpose of this Procurement Policy is to ensure that sound business judgment is utilized in all procurement transactions and that supplies, equipment, construction, and services are obtained efficiently and economically and in compliance with applicable federal law and executive orders and to ensure that all procurement transactions will be conducted in a manner that provides full and open competition.

APPLICATION

This policy applies to the procurement of all supplies, equipment, construction, and services of and for Buena Vista County related to the implementation and administration of the award. All procurement will be done in accordance with the applicable provisions of 2CFR 200.317 through 200.327. This applies to all federally and to non-federally funded programs unless found in conflict with procurement procedures required in Iowa law.

POLICY

METHODS OF PROCUREMENT

Procurement under grants shall be made by one of the following methods, as described herein: (a) small purchase procedures; (b) sealed bids (formal advertising); (c) competitive proposals; (d) noncompetitive proposals.

- A. Small purchase procedures are relatively simple and informal procurement methods that are sound and appropriate for the procurement of services, supplies, or other property, costing in aggregate not more than \$100,000. If small purchase procedures are used for a procurement under a grant, price or rate quotation (minimum of 2) shall be obtained from an adequate number of qualified sources.
- B. In sealed bids (formal advertising), sealed bids are publicly solicited and a firm- price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all of the material terms and conditions of the invitation for bids, is the lowest in price. The sealed bids method is the required method for procuring construction.
 1. In order for formal advertising to be feasible, appropriate conditions must be present, including, at a minimum, the following:
 - a) A complete, adequate and realistic specification or purchase description is available.
 - b) Two or more responsible bidders are willing and able to compete effectively for Buena Vista County's business; and
 - c) The procurement lends itself to a firm-fixed-price contract, and the selection of the successful bidder can be made principally on the basis of price.
 2. When sealed bids are used for a procurement under a grant, the following requirements apply:
 - a) A sufficient time prior to the date set for opening of bids, bids shall be solicited (publicly advertised) from an adequate number of known suppliers.
 - b) The invitation for bids, including specifications and pertinent attachments, shall clearly define the items or services needed in order for the bidders to properly respond to the invitation for bids.
 - c) All bids shall be opened publicly at the time and place stated in the invitation for bids.
 - d) A firm-fixed-price contract award shall be made by written notice to that responsible bidder whose bid, conforming to the invitation for bids, is lowest. Where specified in the bidding documents, factors such as discounts, transportation costs, and life cycle costs shall be considered in determining which bid is lowest. Payment discounts may only be used to determine low bid when prior experience of Buena Vista County indicates that such discounts are generally taken.
 - e) Any or all bids may be rejected if there are sound documented business reasons in the best interest of the program.
- C. Procurement by competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed-price or cost-reimbursable type contract is awarded, as appropriate. Competitive proposals are generally used when conditions are not appropriate for the use of sealed bids. If the competitive proposals method is used for a procurement under a grant, the following requirements apply:
 1. Requests for Proposals shall be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals shall be honored to the maximum extent practical.
 2. Requests for Proposals shall be solicited from an adequate number of qualified sources.
 3. Buena Vista County shall have a method for conducting evaluations of the proposals received and for selecting awardees.

4. Awards will be made to the responsible offeror whose proposal will be most advantageous to the procuring party, with price (other than architectural/engineering) and other factors considered. Unsuccessful offerors will be promptly notified in writing.
5. Buena Vista County should use competitive proposal procedures for qualification-based procurement of architectural/engineering (NE) professional services whereby competitor's qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in the procurement of A/E professional services. It cannot be used to procure other types of services (e.g., administration professional services) even though NE firms are a potential source to perform the proposed effort.

6. Evaluation Criteria for Buena Vista County in the Procurement of Professional Services. In accordance with 2 CFR, Part 200, the following factors will be used to evaluate the proposals or requests for qualifications when the "competitive proposals" method of procurement (used for the procurement of professional services) is utilized to select awardees:

The firm's past experience with similar projects;
Recipient's familiarity with the firm;
The firm's availability of staff/capability of staff;
The firm's technical and financial resources;
The firm's geographic location,
The firm's ability to complete projects in a timely manner and within budgetary constraints;
The firm's integrity and compliance with public policy;
The firm is not on county, State of Iowa, HUD's or DOL's debarred or suspended lists;
and
Cost or anticipated compensation.

- D. Noncompetitive proposals is procurement through solicitation of a proposal from only one source, or after solicitation from a number of sources, competition is determined inadequate. Noncompetitive proposals may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids (formal advertising), or competitive proposals. Circumstances under which a contract may be awarded by noncompetitive proposals are limited to the following:
 1. The item is available from only a single source;
 2. After solicitation of a number of sources, competition is determined
 3. A public exigency or emergency exists when the urgency for the requirement will not permit a delay incident to competitive solicitation; and
 4. The awarding agency authorizes noncompetitive proposals. (Sole source procurement for supplies, equipment, construction, and services valued at \$25,000 or more must have prior approval of the Iowa Homeland Security and Emergency Management Department).
- E. Buena Vista County will provide, to the greatest extent possible, that contracts be awarded to qualified small and minority firms, women business enterprises, and labor surplus area firms whenever they are potential sources.
- F. Any other method of procurement must have prior approval of the Iowa Homeland Security and Emergency Management Department.

CONTRACT PRICING

- A. The cost plus a percentage of cost and percentage of construction cost method of contracting shall not be used.
- B. Buena Vista County shall perform some form of cost/price analysis for every procurement action, including modifications, amendments or change orders.

PROCUREMENT RECORDS

Buena Vista County shall maintain records sufficient to detail the significant history of a procurement, including the rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.

CODE OF CONDUCT

The purpose of this Code of Conduct is to ensure the efficient, fair, and professional administration of federal grant funds in compliance with 2 CFR; Part 200.318 and other applicable federal and state standards, regulations, and laws.

A. APPLICATION

This Code of Conduct applies to all officers, employees, or agents of Buena Vista County engaged in the award or administration of contracts supported by federal grant funds.

B. REQUIREMENTS

No officer, employee, or agent of Buena Vista County shall participate in the selection, award, or administration of a contract supported by federal grant funds, if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:

- a. The employee, officer, or agent;
- b. Any member of his/her immediate family;
- c. His/her partner; or
- d. An organization which employs, or is about to employ any of the above;

has a financial or other interest in the firm selected for award.

Buena Vista County officers, employees, or agents shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors, potential contractors, or subcontractors.

C. REMEDIES

To the extent permitted by federal, state, or local laws or regulations, violation of these standards may cause penalties, sanctions, or other disciplinary actions to be taken against Buena Vista County's officers, employees, or agents, or the contractors, potential contractors, subcontractors, or their agents, including termination.

Passed and adopted this 7th day of December, 2021.

/s/ Kelly Snyder, Chair, Board of Supervisors.....Attest: Susan K. Lloyd, County Auditor

Jamey Whitney, Executive Director for Upper Des Moines Opportunity reviewed the FY'21 reports of their activities. In the 12 months that ended September 30, 2021, they have assisted 3,308

individuals and 1,080 B V County households, at a cost of \$379,789.84. Whitney informed the Board that he would be leaving Upper Des Moines in January, 2022. The Board wished him well, in his new venture.

Hear the Public: John Pitstick informed the Board that he had more questions regarding the Platinum Crush project, and said that the developers of the project won't respond to him. Pitstick wants to know why the water will be going to Maple River, why the company needs twice as much land as the plant in Shell Rock, the capacity of the plant, and asked about how they were connecting to sanitary sewer. Merten informed Pitstick that there was a public meeting, at King's Pointe, today at 1:00, and invited him to attend and ask questions.

Auditor & Commissioner of Elections Susan Lloyd, Election Deputy Karla Ahrendsen (virtual), and GIS Coordinator Eric Chase, presented maps to the Board, showing two maps of possible changes to the voting precincts in the county. Due to the 2020 Census and the State of Iowa House of Representatives re-districting statewide, Buena Vista County has different House Districts assigned, with different boundaries than that of the last census. Buena Vista County will have House District 5 and District 6. A voting precinct cannot contain more than one House or Senate District. Either one of the proposed plans would reduce the voting precincts from ten to eight. A public hearing is required before the Board votes on which proposal is the "best plan" possible. Motion by Ringgenberg, second by Merten, to set a public hearing for December 20, at 6:00 p.m. in the Courthouse Public Meeting Room, to hear comments on the Buena Vista County **reprecincting proposal**. Carried.

Three members of the Buena Vista County **Library Association** (representing Albert City, Linn Grove, Rembrandt, and Storm Lake) came in to thank the Board for their past support of the County libraries. A letter was read from Dorothy Machholz, President of the Sioux Rapids Memorial Library Board, explaining they were in the process of hiring a replacement librarian, and none of the members of the Library Board could attend today. The librarians reviewed their past programs, and each thanked the Board for supporting their city's library. The Board thanked the Librarians for their service.

Members of the **Platinum Crush Project Committee** were present to update the Board on what has been discussed. Also present for this discussion were two media, John Pitstick, and Tom Nelson, Vice-President of Business for Iowa Lakes Corridor. Merten stated that the committee was working with Northland Securities and Ahlers & Cooney Law Firm. Merten stated that Iowa Economic Development looks at what the county commitment will be. Merten stated that IED needs a letter of intent, the first part of January, in order to be on their agenda on January 23. Merten stated that the company is doing borings this week, and they have flags out marking where things will go. Merten informed everyone that Platinum Crush was holding two public meetings today, at King's Pointe, and everyone was welcome to attend. Merten stated that the committee was working on different scenarios, whether the county pays for the roads or if the developers were to pay for the roads.

Motion by Merten, second by Ringgenberg, to approve the **minutes** of 11/30/21, as printed, today's **claims approval list**, **stamped drainage warrant register**, and the following **reports**: FY'21 Annual Report for Third Judicial District Department of Correctional Services, November Sheriff's Report of Fees Collected, and November Sheriff's Report of Federal Inmate Billings Carried.

The Board discussed the proposed Resolution #2021-12-07-B, that would declare BV County to be a **Second Amendment Sanctuary County**. Huseman stated that he had received an email from Howard Hatlelid, asking that the Board allow more time for the public to comment on this. The consensus of the Board was to table any action on this item for a week.

Motion by Ringgenberg, second by Huseman, to approve and authorize the Chair to sign **Resolution #2021-12-07-C** Authorizing BV County to enter into Settlement Agreements, Agree to the Terms of the Iowa Opioid Allocation Memorandum of Understanding and Authorize Entry into that Memorandum of Understanding.

RESOLUTION #2021-12-07-C

Authorizing Buena Vista County to Enter into Settlement Agreements with McKesson Corporation, Cardinal Health, Inc., AmerisourceBergen Corporation, Johnson & Johnson, Janssen Pharmaceuticals, Inc., Ortho-McNeil-Janssen Pharmaceuticals, Inc., and Janssen Pharmaceutica, Inc., Agree to the Terms of the Iowa Opioid Allocation Memorandum of Understanding and Authorize Entry Into that Memorandum of Understanding

WHEREAS, in 2018, the County Board of Supervisors authorized Buena Vista County (the "County") to enter into an engagement agreement with Crueger Dickinson LLC, Simmons Hanly Conroy LLC and von Briesen & Roper, s.c. (the "Law Firms") to pursue litigation against certain manufacturers, distributors, and retailers of opioid pharmaceuticals (the "Opioid Defendants") in an effort to hold the Opioid Defendants financially responsible for the impact on of the Opioid Epidemic on the County and resources necessary to combat the opioid epidemic;

WHEREAS, on behalf of the County, the Law Firms filed a lawsuit against the Opioid Defendants in 2018 and have been litigating against the Opioid Defendants since that time;

WHEREAS, negotiations to settle claims against several of the Opioid Defendants, specifically McKesson Corporation, Cardinal Health, Inc., AmerisourceBergen Corporation, Johnson & Johnson, Janssen Pharmaceuticals, Inc., Ortho-McNeil-Janssen Pharmaceuticals, Inc., and Janssen Pharmaceutica, Inc. (the "Settling Defendants") have been ongoing for several years;

WHEREAS, negotiations with the Settling Defendants have resulted in proposed nationwide settlements of state and local government claims involved in the Litigation;

WHEREAS, copies of the proposed terms of those proposed nationwide settlements have been set forth in the Distributors Master Settlement Agreement and the J&J Master Settlement Agreement (collectively "Settlement Agreements");

WHEREAS, copies of the Settlement Agreements as well as summary of the main terms of the Settlement Agreements, the deadlines for submitting the Participation Agreements to the Settlement Agreements and the MDL Court's Order setting deadlines for any Plaintiff who declines to enter into the Settlement Agreements have been provided to the County prior to the execution of this Resolution;

WHEREAS, the Settlement Agreements provide, among other things, for the payment of a certain sum to settling government entities in Iowa including to the State of Iowa and Participating Subdivisions, as that term is defined in the Settlement Agreements, upon occurrence of certain events as defined in the Settlement Agreements ("Iowa Opioid Funds");

WHEREAS, the Law Firms have engaged in extensive discussions with the State Attorney General's Office ("AGO") as to how the Iowa Opioid Funds will be allocated, which has resulted in the proposed Iowa Opioid Allocation Memorandum of Understanding ("Allocation MOU"), which is an agreement between all of the entities who are signatories to the Allocation MOU;

WHEREAS, a copy of the Allocation MOU and the Exhibits to that MOU has been provided with this Resolution;

WHEREAS, the Allocation MOU divides Iowa Opioid Funds as follows: (i) 50% to the State ("the Iowa Abatement Share") and (ii) 50% to Participating Local Governments ("LG Share"), less fees

and costs allocated to the Iowa Backstop Fund as set forth in Section D of the Allocation MOU and in this Resolution ("LG Abatement Share").

WHEREAS, the LG Abatement Share shall be distributed in direct payments to the Counties that are Participating Local Governments according to the allocation model developed in connection with the proposed negotiating class in the National Prescription Opiate Litigation (MDL No. 2804) in the amounts set forth on Exhibit 2 to the Allocation MOU ("Direct Distribution Percentage"). The Direct Distribution Percentage will be multiplied by the total LG Abatement Share to arrive at the total allocation to the Participating Local Government (the "Direct Distribution Amount").

WHEREAS, 100% of the Iowa Abatement Share and the LG Abatement Share, regardless of allocation, shall be utilized only for Opioid Related Expenditures incurred after the Effective Date of this MOU. The list of approved Opioid Related Expenditures are set forth in Exhibit 1 to this MOU.

WHEREAS at least 75% of the Iowa Abatement Share and 75% of the LG Abatement Share shall be utilized for only the "Core Strategies" listed in Schedule A of Exhibit 1 to this MOU.

WHEREAS, every Participating Local Government that receives a Direct Distribution Amount shall create a separate fund on its financial books and records that is designated for the receipt and expenditure of the entity's Direct Distribution Amount, called the "LG Abatement Fund." Funds in an LG Abatement Fund shall not be commingled with any other money or funds of the Participating Local Government. A Participating Local Government may invest LG Abatement Fund funds consistent with the investment of other funds of a Participating Local Government.

WHEREAS, Funds in a LG Abatement Fund may be expended by a Participating Local Government only for Opioid Related Expenditures. For avoidance of doubt, funds in a LG Abatement Fund may not be expended for costs, disbursements or payments made or incurred prior to the Settlement.

WHEREAS, each LG Abatement Fund shall be subject to audit in a manner consistent with Code of Iowa §§331.402(2)(i) and 11.6. Any such audit shall be a financial and performance audit to ensure that the LG Abatement Fund disbursements are consistent with the terms of this MOU. If any such audit reveals an expenditure inconsistent with the terms of this MOU, the Participating Local Government shall immediately redirect the funds associated with the inconsistent expenditure to an Opioid Related Expenditure.

WHEREAS, the County has contracted with the Law Firms for representation in the Litigation and the Law Firms have been representing those entities since 2018 and in consideration for the Law Firms' representation, the County entered into a contract with the Law Firms for a 25% contingency fee applied to County's total recovery from any settlement.

WHEREAS, the Settlement Agreements provide for the payment of attorney's fees and legal expenses owed by States and Participating Local Governments to outside counsel retained for Opioid Litigation. To effectuate this, the Court in the MDL Litigation has established a fund to compensate attorneys representing plaintiffs in the Litigation (the "National Attorney Fee Fund").

WHEREAS, the Law Firms intend to make application to the National Attorney Fee Fund. However, because there is still uncertainty regarding what counsel for litigating local governments will recover as compensation for the large volume of work done and the large out of pocket expense of the Litigation, and whereas the Parties to the Allocation MOU desire to fairly compensate outside counsel for the work done on behalf of the Participating Local Governments in Iowa, the Allocation MOU provides that a fund be created from 15 % of the LG Share attributable to the Litigating Local Governments, less any amounts a Litigating Local Government ("Iowa Backstop Fund")

WHEREAS, the Iowa Backstop Fund is meant to compensate outside counsel for participating local governments only for amounts not recovered at the National Fee Fund attributable to their Iowa clients;

WHEREAS, to be eligible for the Iowa Backstop Fund, the Law Firms must first seek payment from the National Attorneys' Fees Fund and may not recover amounts attributable to Counsel's representation of the County received at the National Attorneys' Fees Fund from the Iowa Backstop Fund;

WHEREAS, the County, by this Resolution, agrees to the creation of the Iowa Backstop Fund in the amount of 15% of the LG Share attributable to the Litigating Local Governments in order to fund a state-level "backstop" for payment of the fees, costs, and disbursements of the Law Firms;

WHEREAS, in no event shall the total of the amounts received by the Law Firms at the National Attorney's Fees Fund related to the County and the amount received at the Iowa Backstop Fund exceed the amount the Law Firms would have been entitled to pursuant their fee contract with the County;

WHEREAS, the County, by this Resolution, shall establish an account for the receipt of the LG Abatement Share consistent with the terms of this Resolution ("the LG Abatement Fund");

WHEREAS, the County's LG Abatement Fund shall be separate from the County's general fund, shall not be commingled with any other County funds, and shall be dedicated to funding opioid abatement measures as provided in the Settlement Agreements and the Allocation MOU;

WHEREAS, the County must comply annually with the reporting requirements in the Allocation MOU;

WHEREAS, the if the County elects to become a Participating Subdivision in the Settlement Agreements it will receive the benefits associated with the Settlement Agreement and the Allocation MOU, provided the County (a) approves the Settlement Agreements; (b) executes the Participation Agreements stating the County's intention to be bound by the Settlement Agreements; (3) approves the Allocation MOU; (4) executes the Acknowledgement and Agreement to be Bound to Memorandum of Understanding necessary to execute the Allocation MOU;

WHEREAS, the intent of this Resolution is to authorize the County to enter into the Settlement Agreements by executing the Participation Agreements and to enter into the Allocation MOU by executing the Acknowledgement and Agreement to be Bound to Memorandum of Understanding necessary to execute the Allocation MOU;

NOW, THEREFORE, BE IT RESOLVED: the County Board of Supervisors hereby approves and authorizes Chairman Kelly Snyder to settle and release the County's claims against the Settling Defendants in exchange for the consideration set forth in the Settlement Agreements, Allocation MOU and all exhibits thereto, including taking the following measures:

1. The execution of the Participation Agreement to the Distributors Settlement Agreement and any and all documents ancillary thereto.
2. The execution of the Participation Agreement to the Janssen Settlement Agreement and any and all documents ancillary thereto.

3. The execution of the Allocation MOU by executing the Acknowledgement and Agreement to be Bound to Memorandum of Understanding.

BE IT FURTHER RESOLVED: the County hereby establishes an account separate and distinct from the County's general fund which shall be titled "LG Abatement Fund" to receive the LG Abatement Share from the Settlement Agreements.

BE IT FURTHER RESOLVED that all actions heretofore taken by the Board of Supervisors and other appropriate public officers and agents of the County with respect to the matters contemplated under this Resolution are hereby ratified, confirmed and approved.

Adopted by the Buena Vista County Board of Supervisors this 7th day of December, 2021.

/s/ Kelly Snyder, Chair, Board of Supervisors.....Attest: Susan K. Lloyd, County Auditor

Motion by Huseman, second by Ringgenberg, to approve and authorize the Chair to sign the **Subdivision Distributor Settlement Participation Form**, the **Subdivision Janssen Settlement Participation Form**, and the **Iowa Opioid Allocation Memorandum of Understanding**. Carried.

Motion by Ringgenberg, second by Merten, to approve and authorize the Chair to sign the **Underwriter Engagement Letter** with Northland Securities, as underwriter for the issuance of General Obligation Capital Loan Notes Series 2022. Carried.

There being no further business, motion by Huseman, second by Ringgenberg, to adjourn the meeting at 11:05 a.m. until Tuesday, December 14 at 8:30 a.m. for a special session. Carried.