

The logo features the acronym "DECC" in white, bold, sans-serif capital letters centered within a solid blue circle. This circle is overlaid on a light blue circle to its left and a larger, semi-transparent grey circle to its right. The grey circle has a rounded top-left corner and a rounded bottom-right corner.

DECC

Regular Board Meeting

DECC Authority Board of Directors
Thursday, December 12, 2024



AGENDA

DECC Authority Board of Directors Regular Meeting

MISSION

We host events, create experience, and drive our regional economy.

VALUES

Hospitality | Entertainment | Community | Visionary | Stewardship

MEETING AGENDA

- I. Call to Order
- II. Public Open Comment Period
 - a. *Members of the public sign in and each receive 3 minutes to speak.*
- III. Approval of Consent Agenda
 - a. Agenda
 - b. Regular Meeting Minutes - November 14, 2024
 - c. October 2024 Financials
- IV. New Business
 - a. Agreement for Auditing Services RFP
 - b. Purchasing and Procurement Policy
 - c. Travel and Expense Reimbursement Policy
 - d. DES Agreement
 - e. Bayfront Festival Park Agreement
 - f. 2025 Board Officer Slate
- V. Executive Director Report
 - a. Strategic Plan Update
 - b. Update
- VI. Committee Reports
 - a. Strategy
 - i. Update
 - b. Finance
 - i. Update
 - c. Governance
 - i. Update

VII. Old Business

- a. No Old Business

VIII. Other

- a. No Other Business

IX. Adjournment

UPCOMING MEETINGS

The next regular business meeting is scheduled for **Thursday, January 30, 2024**. Location to be determined.



DECC AUTHORITY BOARD OF DIRECTORS REGULAR MEETING

November 14, 2024, Meeting Minutes

CALL TO ORDER

A Regular Board Meeting was held Thursday, November 14, 2024, in the Harbor Side Convention Center. Chair Peter Singler called the meeting to order at 12:00 PM. A quorum of directors was present.

Chair Singler welcomed new Board Members: Schmidt and LaFleur. Chair Singler asked Board Members and DECC staff to introduce themselves.

BOARD MEMBERS PRESENT

Chair Peter Singler
Vice Chair Laura Mullen
Treasurer Tony Sertich
Secretary Jason Vincent
Zack Filipovich
Shane Peterson
Pat Mullen
Maya Mattke
Carli Amatuzio
Kristi Schmidt
Stephanie LaFleur

BOARD MEMBERS ABSENT

None

DECC STAFF PRESENT

Dan Hartman
Amanda Denton
Ronni Murphy
Lucie Amundsen

OTHERS PRESENT

Duluth City Council Liaison Tomanek
Media

OTHERS ABSENT

None

Media arrived at 12:02 PM.

PUBLIC OPEN COMMENT PERIOD

Chair Singler asked for a review of the public open comment period sign-up sheet. No members of the public signed up for comment.

APPROVAL OF CONSENT AGENDA

MOTION to amend the meeting agenda by moving New Business to follow Consent Agenda requested by Chair Singler. Motion made by Filipovich and seconded by Secretary Vincent. Motion carried unanimously.

Chair Singler reviewed the consent agenda. The consent agenda included the meeting agenda, meeting minutes from the Regular Board Meeting on October 31, 2024, and finance statements for September 2024. MOTION to approve the consent agenda requested by Chair Singler; motion made by P. Mullen and seconded by Mattke. Motion carried unanimously.

NEW BUSINESS

Executive Director Hartman introduced the 2025 Operating Budget, noting it has been reviewed by the Finance Committee. Hartman asked Finance Director Denton to provide a summary of the 2025 Operating Budget to Board Members.

Denton directed Board Members to the supplemental 2025 Operating Budget packet. Denton noted the summary page includes the 2025 Annual Budget, prior year actuals that include January - August of 2024 actuals plus September - December 2023 actuals for reference, and the 2024 Annual Budget. The 2025 Operating Budget includes revenues of \$13.7 million and expenses of \$14.4 million. The net of the non-operating revenues/expenses is estimated at \$1.1 million, leaving \$545,000 profit (before depreciation) by year-end.

The budget philosophy for 2025 includes: a lean staffing model, increased events bookings, and the assumption of a mid-level winter. The DECC continues to refine internal capital equipment budgeting. Additionally, the DECC continues to seek outside investments for capital improvements.

Hartman shared that the 2025 Operating Budget includes \$250,000 set aside as a separate plant fund for capital investments/repairs. Hartman noted that with the plant fund and lease agreements included, the DECC will likely be close to \$0, rather than \$545,000 by year-end as reflected in the budget.

Denton summarized the steps taken to develop projections for the creation of the 2025 Operating Budget noting that the budget is challenging to create due to the variability of events scheduling, staffing, weather, and utilities.

Treasurer Sertich summarized that the Finance Committee reviewed the budget and is comfortable with how the data was put together. There are many unknowns when putting together a budget for an entity like the DECC. The revenue goals included in the budget are truly stretch goals, the utilities assumptions may be impacted significantly due to weather and potential fee increases, and staffing is significantly impacted by the number of events. If the

DECC books more business to increase revenues, staffing and other associated costs will increase. It will be important to follow the forecast throughout 2025 as that will be updated to reflect more real-time information such as new business booked.

The Board discussed the 2025 Operating Budget.

MOTION to adopt the 2025 Operating Budget requested by Chair Singler. Motion made by Treasurer Sertich and seconded by Filipovich. Motion carried unanimously.

Chair Singler introduced the proposed Board Officer slate for 2025. The slate included: Laura Mullen, Chair; Tony Sertich, Vice Chair; Maya Mattke, Treasurer; and Jason Vincent, Secretary.

The Board discussed the proposed slate. Several Board Members were interested in Officer positions. The Board may be interested in updating the process for creating the Officer slate. Treasurer Sertich suggested that the 2025 Governance Committee create an updated process for developing the Officer slate going forward. The Committee can present the updated process to the Board for review. Council Liaison Tomanek suggested that a paper ballot could be used to select Board Officers.

Chair Singler introduced the proposed 2025 Regular Board Meeting schedule. The Board reviewed and discussed the schedule. MOTION to approve the 2025 Regular Board Meeting Schedule with an amendment to adjust the December meeting time to 12:00 PM to 1:30 PM requested by Chair Singler. Motion made by Vice Chair L. Mullen and seconded by Mattke. Motion carried unanimously.

Hartman announced that the City of Duluth has opened an RFP for the management of Bayfront Festival Park (Bayfront) with a five-year agreement. Hartman stated that he believes the DECC should apply for the management contract. Hartman shared that the City and several local promoters have also asked the DECC to consider applying for the RFP. Hartman believes that the DECC has additional reasons to ensure better coordination between Bayfront Festival Park due to the DECC's increased booking activities for indoor summer shows and the planned addition of the outdoor Portside Park space.

Hartman shared that it is part of the DECC's purpose to ask what is in the best interest of Duluth. Hartman believes that the community wants the best use of all of Duluth's big venues. Alternatively, a private Bayfront operator is more likely to think in terms of what is best for their profit margin.

Hartman further explained that DECC staff have a desire to run Bayfront. Walt Aplin, DECC Box Office Manager has a long history of serving as a promoter and assisting with events in the park. Aplin is strongly interested in coordinating the park on behalf of the City and is well-known by many of the regular Bayfront organizers.

Hartman stated that for the DECC to run Bayfront the DECC's role as a coordinator would need to be more defined. The DECC would support organizers by providing education and resources to support their events. The DECC has resources that Bayfront organizers need

such as calendar marketing, heavy equipment, shelter-in-place locations, and industry experience.

Hartman believes there is opportunity for the DECC at Bayfront. The DECC can collect ticket fees, marketing services, parking revenue, and equipment rental fees. Additionally, the DECC can bring shows to Bayfront that result in increased revenues such as alcohol, ticketing, and parking. The DECC continues to develop connections with industry professionals and associations that will support the DECC in bringing entertainment to Duluth. Hartman projects that in the short term the DECC could make \$100,000 a year, and in the long-term potentially \$300,000 a year.

The Board discussed the Bayfront RFP.

MOTION in support of the DECC submitting a proposal for the Bayfront Festival Park RFP requested by Chair Singler. Motion made by P. Mullen and seconded by Filipovich. Motion carried unanimously.

Hartman summarized negotiated updates to the Marcus Theatres rental agreement. Hartman stated Marcus Theatres is a great tenant, they pay on time, and they take care of the space. The previous agreement had a variety of payment terms. Hartman and Marcus Theatres updated the agreement to a typical real estate contract with a square footage model. The new agreement also contains a 3% escalator per year. Additionally, Marcus Theatres will be responsible for paying for utilities such as electricity and heat. Hartman advised approval of the updated agreement.

The Board discussed the Marcus Theatres agreement.

MOTION to approve the updated Marcus Theatres agreement requested by Chair Singler. Motion made by Treasurer Sertich and seconded by Filipovich. Motion carried unanimously.

COMMITTEE REPORTS

Strategy

Chair Singler provided an update on behalf of the Strategy Committee.

1. The Committee discussed the 2025 Operating Budget.

Finance

Treasurer Sertich provided an update on behalf of the Finance Committee.

1. The Committee reviewed September financials, the 2025 Operating Budget, and the Marcus Theatres agreement.

Governance

Secretary Vincent provided an update on behalf of the Governance Committee.

1. The Committee discussed the 2025 Board Officer slate.

OLD BUSINESS

No Old Business was discussed.

OTHER

No Other Business was discussed.

ADJOURNMENT

Chair Singler requested a motion to adjourn. The meeting adjourned at 1:32 PM.

UPCOMING MEETINGS

The next regular meeting will be held December 12, 2024, location to be determined.

Submitted by:

Peter Singler, Chair

Jason Vincent, Secretary

Date

Date



DECC

PURCHASING AND PROCUREMENT POLICY

Governance Policy
Approved: XX/XX/XXXX

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POLICY

This document describes the procurement and purchasing policies and procedures of the Duluth Entertainment and Convention Center Authority, hereinafter referred to as the "DECC." All personnel and board members are required to follow these policies to ensure that the DECC's budget funds are maximized and expenditures are properly authorized.

This policy has been designed to ensure that all relevant and applicable local, state, and federal laws and requirements are followed.

PROCEDURE

I. PROCESS PHASES OVERVIEW

- I. Pre-contract Phase**
- II. Solicitation, Negotiation, and Procurement Stage**
- III. Post-Procurement Monitoring and Follow Up**

II. GENERAL REQUIREMENTS AT ANY STAGE OF PROCUREMENT PROCESS

All DECC personnel involved in or charged with purchasing responsibility at any stage of the DECC's procurement process shall adhere to, review, and consider the following requirements when making decisions regarding procurement of purchases or contracts:

- I. Conflicts of Interest**

Any DECC personnel or board members involved in/with purchasing responsibility/decisions or other procurement tasks shall have read, signed, and adhere to the DECC's Conflict of Interest Policy. Involvement includes but is not limited to directly or indirectly influencing a purchasing decision by establishing specifications, testing purchased products, or evaluating purchased products or contracted services or work.

- a. General Conflict of Interest Prohibition**

No employee, officer, board member, or agent of the DECC may participate in the selection, award, or administration of a contract if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract.

The officers, employees, and agents of the non-Federal entity may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. However, non-Federal entities may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct must provide for disciplinary actions to be applied for

violations of such standards by officers, employees, or agents of the non-Federal entity.

II. Record-keeping

In addition to and to the extent not in conflict with state, local, and internal DECC record-keeping requirements, all financial records, supporting documents, statistical records, contracts, purchase orders, and any other DECC records pertinent to a contract (collectively referred to as "Records" for the purposes of this paragraph), purchase order, or other procurement shall be retained for a minimum of three-years following the Applicable Date, except to the extent that any litigation, claim or audit is started with regard to any contract, purchase order, or procurement before the expiration of the three-year period, then such Records shall be retained until all litigation, claims, or audit findings involving the records have been resolved and final action taken, if after the expiration of the three year period, or until the end of any extended retention period as notified in writing to the DECC by any state, federal, or local entity, as applicable. For purposes of this requirement, the "Applicable Date" at which the three-year period begins to run is as follows:

a. Contracts Renewed Quarterly or Annually

For contracts, purchase orders, and procurements pursuant to a Federal Award that is renewed quarterly or annually, from the date of submission of the quarterly or annual financial report, respectively, as reported to the Federal awarding agency or pass-through entity in the case of a subrecipient.

b. Contracts for Real Property or Equipment

Records for real property and equipment acquired with Federal funds must be retained for 3 years after final disposition.

c. Records Transferred to or Maintained by Federal Agency or Pass Through Entity

When records are transferred to or maintained by the Federal awarding agency or pass-through entity, the 3-year retention requirement is not applicable to the non-Federal entity.

d. Records for program income transactions after the period of performance

When the DECC is required to report program income after the period of performance, the retention period for the records pertaining to the earning of the program income starts from the end of the DECC's fiscal year in which the program income is earned.

e. Indirect cost rate proposals and cost allocations plans

This paragraph applies to the following types of documents and their supporting records: Indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations of the rate at which a particular group of costs is chargeable (such as computer usage chargeback rates or composite fringe benefit rates).

1. If submitted for negotiation

If the proposal, plan, or other computation is required to be submitted to the Federal Government (or to the pass-through entity) to form the

basis for negotiation of the rate, then the 3-year retention period for its supporting records starts from the date of such submission.

2. If not submitted for negotiation

If the proposal, plan, or other computation is not required to be submitted to the Federal Government (or to the pass-through entity) for negotiation purposes, then the 3-year retention period for the proposal, plan, or computation and its supporting records starts from the end of the fiscal year (or other accounting period) covered by the proposal, plan, or other computation.

III. PRE-CONTRACT PHASE

I. I. Description

Tasks included in the Pre-contract phase include identifying the need for goods or services for procurement, formulating the specifications of work/goods/services to be purchased or contracted for, and determining the proper means of procurement according the rules and procedures laid out herein.

II. II. Requirements

In undertaking the above-described tasks in §(III)(I), DECC personnel or board members shall:

- Avoid acquisition of unnecessary or duplicative items.
- Give due consideration/appropriate analyses for consolidating or breaking out procurements to obtain a more economical purchase, including analyses of lease versus purchase alternatives, as applicable.

IV. SOLICITATION, NEGOTIATION, AND PROCUREMENT PHASE

I. Description

Tasks included in the Solicitation, Negotiation, and Procurement Phase include soliciting Sealed Bids, Quotations, and Other Proposals via RFPs and/or Purchase Orders and other solicitation documents, negotiating with potential contractors and vendors, drafting contracts and Purchase Orders, and executing contracts and Purchase Orders and other documents.

II. Procurement Procedures and General Requirements/Provisions for All Contracts, Purchase Orders, RFPs, and Requests for Quotes/Procurement Documents, Regardless of Estimated Price Threshold:

a. General Commitment

The DECC is committed to securing goods, work, and services from reputable and responsible suppliers in an equitable and competitive manner and in accordance with applicable state and federal laws, regulations, and guidance.

b. Lawful Procurement Procedure

The DECC will use its own Procurement Procedures which reflect applicable federal, state, and local laws and regulations, provided that the procurements conform to applicable federal, state, and local laws and regulations, including 2 C.F.R. §§ 200.317 - 327.

c. Written Procurement Procedures

The DECC will maintain a written selection procedure for contracts, RFPs, and Purchase Orders.

d. Purchase Procedures and Purchase Orders

Where Purchases or Purchase Orders are required or used, the DECC's Purchasing Procedures and Purchase Order Requirements laid out in § (VI)(Definitions) herein, respectively, shall be followed.

e. Request for Proposals

Where Requests for Proposals are required or otherwise used, the DECC's Request(s) for Proposals Process laid out in § (VI)(Definitions) herein shall be followed.

f. Sealed Bids

Where Sealed Bids are required or otherwise used, the DECC's Sealed Bid process laid out in § (VI)(Definitions) herein shall be followed.

g. Procurement Periods

Unless otherwise specified, all contracts or purchase orders shall follow the Procurement Period Criteria laid out in § (VI)(Definitions) herein.

h. Responsible Contractors/Vendors

Only responsible contractors/vendors that can successfully complete contract and purchase order terms will be used. In assessing responsibility, consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and the basis for the contract price.

i. Excess Property/Goods

If feasible and resulting in reduced project costs, excess property and equipment will be used before purchasing new equipment.

j. Competition

All Solicitation, Negotiation, and Procurement of or through Contracts, Requests for Proposals, or Purchase Orders for goods, work, or services shall be conducted in a manner providing full and open competition and not restrictive thereon. Any lists of prequalified persons, firms, or products to be used by the DECC will be updated regularly and will ensure open and free competition. To ensure objective contractor performance and eliminate unfair competitive advantage, any third party DECC contractors that develop or draft Purchase Orders, Requests for Proposals, contracts, specifications, requirements, statements of work, invitations for bids, and any other Solicitation, Negotiation, and Execution related documents for the DECC shall be excluded from competing for such procurements. Situations considered to be restrictive of competition include but are not limited to:

- Placing unreasonable requirements on firms in order for them to qualify to do business;
- Requiring unnecessary experience and excessive bonding;
- Noncompetitive pricing practices between firms or affiliated companies;
- Noncompetitive contracts to consultants that are on retainer contracts;
- Organizational conflicts of interest;
- Specifying only a “brand name” product instead of allowing “an equal” product to be offered and describing the performance or other relevant requirements of the procurement; and
- Any arbitrary action in the procurement process.

k. Intergovernmental Cooperation

The DECC will avoid unnecessary or duplicative purchases and will utilize existing or enter into new state and local intergovernmental agreements or inter-entity agreements where appropriate for procurement or use of common or shared goods or services.

l. Records Retention

Detailed Records to substantiate procurement decisions, rationale, selection process history and other procurement methods will be maintained.

m. Inclusive Contracting

The DECC will take all necessary affirmative steps to assure that small and minority firms, women’s business enterprises, and labor surplus area firms are used when possible.

n. Preference for Domestically Produced Goods

The DECC will, to the greatest extent practicable, provide a preference for purchase, acquisition, or use of goods, products, and materials produced in the United States.

o. State Debarment and Suspension

The DECC shall not award any contracts or purchase goods or services from any person or entity currently listed on the Master Suspension and Debarment list maintained by the Minnesota Office of State Procurement pursuant to Minn. R. 1230.1150, Subp. 6.

II. Special Requirements/Provisions for Certain Contracts, Purchase Orders, RFPs, and Requests for Quotes/Procurement Documents, Regardless of Amount:

a. Group Insurance

If the DECC provides group insurance for 25 or more employees and does not participate in the public employee insurance program under Minn. Stat. § 43A.316 subd. 10, it will comply with the following bidding requirements in contracting for or renewing said insurance:

1. The RFP shall be in writing and shall include:
 - i. The coverage to be provided;
 - ii. The criteria for evaluation of proposals; and
 - iii. The aggregate claims record for the appropriate period.
2. The RFP notice shall be placed in a newspaper or trade journal at least 21 days before the final due date for submitting proposals.
3. A written rationale explaining the DECC's decision shall be prepared prior to entering into a contract.
4. The term of the contract shall be five years or less, including extensions.

b. Public Safety Equipment Purchase or Lease

If the DECC acquires public safety equipment (as that term is defined in Minn. Stat. § 471.3455) without competitive bidding or proposals, it shall adhere to the following requirements:

1. Public safety equipment means vehicles and specialized equipment used by a fire department, as defined in Minn. Stat. § 299N.01, subd. 2, in firefighting, ambulance, and emergency medical treatment services, rescue, and hazardous materials response; and
2. The public safety equipment shall be used; and
3. The equipment shall be clearly and legitimately limited to a single source of supply.

c. Prompt Payment Provision Required for Certain Contracts

For contracts or Purchase Orders with a prime contractor that will or may use subcontractors, the agreement with the prime contractor must require the prime contractor to pay any subcontractors within ten days of the prime contractor's receipt of payment from the DECC for undisputed services provided by the subcontractor. The agreement must require the prime contractor to pay interest of 1.5 percent per month or any part of a month to the subcontractor on any undisputed amount not paid on time to the subcontractor. The minimum monthly interest penalty payment for an unpaid balance of \$100 or more is \$10. For an unpaid balance of less than \$100, the prime contractor shall pay the actual penalty due to the subcontractor. A subcontractor who prevails in a civil action to collect interest penalties from a prime

contractor must be awarded its costs and disbursements, including attorney's fees, incurred in bringing the action.

d. Retainage Provision Required for Certain Contracts

Contracts for public improvement shall contain the following provisions:

1. The DECC may withhold up to five percent of any progress payment as retainage to ensure satisfactory performance. If it does so, it must release the retainage no more than 60 days after substantial completion.
2. "Substantial completion" is the date when construction is sufficiently completed so that the owner can occupy or use the improvement for its intended purpose. For streets, highways, and bridges, "substantial completion" is defined as the date when construction related traffic devices and ongoing inspections are no longer required.
3. The DECC is permitted to continue to withhold the following two amounts even after the 60-day period:
 - i. Up to 250 percent of the cost to correct or complete work known at the time of substantial completion, and
 - ii. The Greater of \$500 or one percent of the value of the contract pending submission of final paperwork.
4. The first amount must be released within 60 days of work completion. The second amount must be released within 60 days of submission of final paperwork.

e. Withholding Affidavit/Certificate Provision Required for Certain Contracts

Contracts requiring the employment of employees for wages by the contractor and by subcontractors shall contain the following provision:

1. Before making final settlement with any contractor or subcontractor pursuant to this contract, the DECC shall obtain a certificate by the Commissioner of Revenue that the contractor or subcontractor has complied with the withholding requirements of Minn. Stat. § 290.92 (either Form IC-134 or a Contractor's Withholding Affidavit Confirmation).

III. Additional Requirements for Certain Federal Award Related Contracts

In addition to the general requirements above, for certain Federal Award Related Contracts, if applicable, the DECC shall adhere to and include in said Contracts if necessary, the following requirements:

a. Geographic Restrictions

The DECC shall not use statutorily or administratively imposed geographical preferences in the evaluation of bids or proposals, except to the extent expressly mandated or encouraged by federal statutes, or where doing so would in effect

preempt state licensing law. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criterion provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the Contract.

b. Written Procurement Procedures

Any Purchase Orders, Requests for Proposals, contracts, specifications, requirements, statements of work, invitations for bids, and any other Solicitation, Negotiation, and Execution related documents utilized in the DECC's Procurement Procedures shall:

1. Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description must not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured and, when necessary, must set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a "brand name or equivalent" description may be used as a means to define the performance or other salient requirements of procurement. The specific features of the named brand which must be met by offers must be clearly stated; and
2. Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.

c. Availability of Technical Specifications

The DECC will make available, upon request of the awarding agency, technical specifications on proposed procurements where the awarding agency believes such review is needed to ensure that the item or service specified is the one being proposed for purchase.

d. Bid Guarantees

The DECC will obtain a bid guarantee from each bidder equivalent to 5% of the bid price in the form of a bid bond, certified check, or other negotiable instrument as assurance that the bidder will execute contractual documents within a specified period.

e. Performance Bond

The DECC shall obtain a performance bond on the part of the contractor for 100% of the contract price to secure fulfillment of all the contractor's requirements under the bid contract and payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

f. Prequalified Lists

Any prequalified lists of persons, firms, and all other factors used in acquiring goods and services shall be current and include enough qualified sources to ensure maximum open and free competition. The DECC shall not preclude potential bidders from qualifying during the solicitation period.

g. Contracts Estimated to Exceed the Simplified Acquisition Threshold

Contracts for more than the simplified acquisition threshold, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

h. Equal Employment Opportunity - Federally Assisted Construction Contracts

Except as otherwise provided under 41 C.F.R. Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 C.F.R. Part 60-1.3 must include the equal opportunity clause provided under 41CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part 1964 - 1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulation at 41 C.F.R. part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

i. Davis-Bacon Act

As amended (40 U.S.C. 3141 - 3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by the DECC must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The DECC must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The DECC must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The DECC must report all suspected or reported violations to the Federal awarding agency.

j. Rights to Inventions Made Under Certain Federal Award Related Contracts or Agreements

If the Federal award meets the definition of “funding agreement” under 37 CFR §401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

k. Debarment and Suspension (Executive Orders 12549 and 12689)–for Certain Federal Award-Related Contracts

A Federal Award Related Contract award (see 2 CFR 180.220) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549. When the DECC enters into a covered transaction with another person at the next lower tier, the DECC must verify that the person with whom it intends to do business is not excluded or disqualified by:

- Checking SAM Exclusions.
- Collecting a certification from that person; or
- Adding a clause or condition to the covered transaction with that person.

l. Solid Waste Disposal Act Compliance for all Contracts

As a state agency/agency of a political subdivision of the state of Minnesota, the DECC and its contractors must comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired by the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

m. Documented Procurement Procedures

The DECC shall have and use documents Procurement Procedures, consistent with the standards of 2 CFR 200.320 and §§ 200.317 - 319 for all procurement methods required under a Federal Award Related Contract.

III. Specific Requirements by Contract Threshold

Contracts or Purchase Orders Under \$1000

- a. **Contracting Power:** Contracts or Purchase Orders Under \$1000 may be purchased by authorized personnel without prior written approval by the Executive Director or Finance Director.
- b. **Contracting Procedures:** Contracts falling within this range may be made upon any of the following, if applicable:
 - i. **Quotation**

To the extent practicable, all Contracts within this range sought via quotation shall be based on at least two quotations, which shall be kept on file for a period of at least one year after their receipt. Evidence that a request for quotation can be maintained on file in absence of a quote, if applicable.
 - ii. **Open Market**

See §(VI)(Definitions) for definition and applicable requirements for this procurement method.
 - iii. **Best Value RFP**

Contracts for Construction, Alteration, Repair, or Maintenance Work may be made using the Best Value RFP procurement method. See §(VI)(Definitions) for definition and applicable requirements for this procurement method.
 - iv. **Cooperative Purchasing Venture**

Contracts for the purchase of supplies, materials, or equipment may be made using the Cooperative Purchasing Venture procurement method. See §(VI)(Definitions) for definition and applicable requirements for this procurement method.
 - v. **Reverse Auction Process**

Contracts for the purchase of supplies, materials, or equipment may be made using the Reverse Auction Process procurement method. See §(VI)(Definitions) for definition and applicable requirements for this procurement method.
 - vi. **Electronic Selling Process**

Contracts for the sale of certain supplies, materials, or equipment may be made using the Electronic Selling Process. See §(VI)(Definitions) for definition and applicable requirements for this procurement method.
 - vii. **Additional Procurement Alternatives**

Where applicable, the DECC reserves the right to utilize any Additional Procurement Alternatives as defined herein or otherwise allowed by law.

c. Contracts for the Acquisition of Supplies and Services - Micro-purchase Designation and Required Considerations for Certain Federal Award-Related Contracts

Federal Award Related Contracts within this range are "Micro-Purchases," as that term is defined in 2 CFR §§ 200.1 and 200.334.

Subject to state and local procurement laws and this Policy, the DECC may award Micro-Purchase contracts without soliciting competitive price or rate quotations if the DECC considers the price to be reasonable based on research, experience, purchase history, or other information and documents it files accordingly.

To the maximum extent possible, the DECC shall distribute micro-purchases equitably among qualified suppliers.

Purchase cards can be used for Micro-Purchases if documented and accompanied by a purchase order meeting the requirements of this contract price range.

Contracts Between \$1000 and \$9999

a. Contracting Power: The DECC's Executive Director, Finance Director, and other personnel on behalf of and as authorized by the Executive Director, are herein delegated the authority to procure Contracts between \$1000 and \$9999 without DECC Board approval, unless the Board directs otherwise. All Contracts in this range must have a completed contract or Purchase Order (subject to the Purchase Order Exemptions laid out in § (V)(k)(v) herein) bearing the signatures of the Executive Director and Finance Director. In the absence of either party, another authorized signer may act as signatory.

b. Contracting Procedures: Contracts falling within this range may be made upon any of the following, if applicable:

i. Quotation

To the extent practicable, all Contracts within this range sought via quotation shall be based on at least two quotations, which shall be kept on file for a period of at least one year after their receipt. Evidence that a request for quotation can be maintained on file in absence of a quote, if applicable.

ii. Open Market

See §(VI)(Definitions) for definition and applicable requirements for this procurement method.

iii. Best Value RFP

Contracts for Construction, Alteration, Repair, or Maintenance Work may be made using the Best Value RFP procurement method. See §(VI)(Definitions) for definition and applicable requirements for this procurement method.

iv. Cooperative Purchasing Venture

Contracts for the purchase of supplies, materials, or equipment may be made using the Cooperative Purchasing Venture procurement method. See

§(VI)(Definitions) for definition and applicable requirements for this procurement method.

v. **Reverse Auction Process**

Contracts for the purchase of supplies, materials, or equipment may be made using the Reverse Auction Process procurement method. See §(VI)(Definitions) for definition and applicable requirements for this procurement method.

vi. **Electronic Selling Process**

Contracts for the sale of certain supplies, materials, or equipment may be made using the Electronic Selling Process. See §(VI)(Definitions) for definition and applicable requirements for this procurement method.

vii. **Additional Procurement Alternatives**

Where applicable, the DECC reserves the right to utilize any Additional Procurement Alternatives as defined herein or otherwise allowed by law.

d. Contracts for the Acquisition of Supplies and Services - Micro-purchase Designation and Required Considerations for Certain Federal Award-Related Contracts

Federal Award Related Contracts in this range are "Micro-Purchases," as that term is defined in 2 CFR §§ 200.1 and 200.334.

Subject to state and local procurement laws and this Policy, the DECC may award Micro-Purchase contracts without soliciting competitive price or rate quotations if the DECC considers the price to be reasonable based on research, experience, purchase history, or other information and documents it files accordingly.

To the maximum extent possible, the DECC shall distribute micro-purchases equitably among qualified suppliers.

Purchase cards can be used for Micro-Purchases if documented and accompanied by a purchase order meeting the requirements of this contract price range.

Contracts Between \$10,000 and \$25,000

a. Contracting Power: The DECC's Executive Director, Finance Director, and other personnel on behalf of and as authorized by the Executive Director, are herein delegated the authority to procure Contracts within this range without DECC Board Approval, unless the Board directs otherwise. All contracts in this range must have a completed Purchase Order (subject to the Purchase Order Exemptions laid out in §(VI)(Definitions) herein) bearing the signatures of the Executive Director and Finance Director. In the absence of either party, another authorized signer may act as signatory.

b. Contracting Procedures: Contracts falling within this range may be made upon any of the following, if applicable:

i. **Quotation**

To the extent practicable, all Contracts within this range sought via quotation shall be based on at least two quotations, which shall be kept on file for a period of at least one year after their receipt. Evidence that a request for quotation can be maintained on file in absence of a quote, if applicable.

ii. **Open Market**

See §(VI)(Definitions) for definition and applicable requirements for this procurement method.

iii. **Best Value RFP**

Contracts for Construction, Alteration, Repair, or Maintenance Work may be made using the Best Value RFP procurement method. See § (VI)(b) for definition and applicable requirements for this procurement method.

iv. **Cooperative Purchasing Venture**

Contracts for the purchase of supplies, materials, or equipment may be made using the Cooperative Purchasing Venture procurement method. See § (VI)(c) for definition and applicable requirements for this procurement method.

v. **Reverse Auction Process**

Contracts for the purchase of supplies, materials, or equipment may be made using the Reverse Auction Process procurement method. See § (VI)(n) for definition and applicable requirements for this procurement method.

vi. **Electronic Selling Process**

Contracts for the sale of certain supplies, materials, or equipment may be made using the Electronic Selling Process. See § (VI)(d) for definition and applicable requirements for this procurement method.

vii. **Additional Procurement Alternatives**

Where applicable, the DECC reserves the right to utilize any Additional Procurement Alternatives as defined herein or otherwise allowed by law.

c. Contracts for the Acquisition of Property and Services - Small Purchase Designation and Required Considerations for Certain Federal Award-Related Contracts. Federal Award Related Contracts within this range are "Small Purchase" Contracts, as that term is defined in 2 CFR §§ 200.1 and 200.334.

At least three price or rate quotations must be obtained for Small Purchase Contracts.

d. Termination Provisions for Certain Federal Award-Related Contracts. All Federal Award Related Contracts falling within this range must address termination for cause and convenience by the DECC, including the manner by which it will be effected and the basis for settlement.

Contracts Between \$25,001 and \$49,999

- a. Contracting Power:** The DECC's Executive Director, Finance Director, and other personnel on behalf of and as authorized by the Executive Director, are herein delegated the authority to procure Contracts within this range without DECC Board Approval, unless the Board directs otherwise. All Contracts in this range must have a completed purchase order (subject to the Purchase Order Exemptions laid out in §(VI)(Definitions) herein bearing the signatures of the Executive Director and Finance Director. In the absence of either party, another authorized signer may act as signatory.
- b. Contracting Procedures:** Contracts falling within this range must be made upon one of the following applicable procurement methods, unless an applicable alternative procurement method applies:
- i. **Quotation**

To the extent practicable, all Contracts within this range sought via quotation shall be based on at least three quotations, which shall be kept in the DECC's permanent bidding file. For Contracts in which a fixed price contract or cost reimbursement contract is to be awarded, and when the conditions are not appropriate for the use of sealed bids, quotations/proposals may be used and awarded in accordance with the following requirements:

 - Written Evaluation Method. The DECC shall have a written method for conducting technical evaluations of the proposals/quotations received and making selections; and
 - Awarding. Contracts must be awarded to the responsible offeror whose proposal is most advantageous to the DECC, with price and other factors considered.
 - ii. **Sealed Bids**

Sealed Bids are the preferred method for procuring contracts for construction work. See §(VI)(Definitions) for definition and applicable requirements for this procurement method.
 - iii. **Mandatory First Method for the Purchase of Supplies, Materials, or Equipment - Cooperative Purchasing Process**

Before utilizing any other procurement method authorized for the purchase of supplies, materials, or equipment in this range, the DECC must first consider the availability, price, and quality of supplies, materials, or equipment that are available through the Cooperative Purchasing Venture. See § (V)(c) for definition and requirements for this procurement method. If no supplies, materials or equipment are available or are not of an adequate price or quality for the DECC's needs, the DECC may utilize any other procurement method required or authorized for contracts in this range.

The following alternative procurement methods may be utilized in lieu of or after the above-listed methods if applicable.

iv. **Best Value RFP**

Contracts for Construction, Alteration, Repair, or Maintenance Work may be made using the Best Value RFP procurement method. See § (VI)(b) for definition and applicable requirements for this procurement method.

v. **Reverse Auction Process**

Contracts for the purchase of supplies, materials, or equipment may be made using the Reverse Auction Process procurement method. See § (VI)(n) for definition and applicable requirements for this procurement method.

vi. **Electronic Selling Process**

Contracts for the sale of certain supplies, materials, or equipment may be made using the Electronic Selling Process. See § (VI)(d) for definition and applicable requirements for this procurement method.

vii. **Noncompetitive Procurement**

Contracts within this range may only utilize noncompetitive procurement in accordance with § (VI)(g).

viii. **Additional Procurement Alternatives**

Where applicable, the DECC reserves the right to utilize any Additional Procurement Alternatives as defined herein or otherwise allowed by law.

c. Contracts for the Acquisition of Property and Services - Small Purchase Designation and Required Considerations for Certain Federal Award-Related Contracts

Federal Award Related Contracts falling within this range are "Small Purchase" Contracts as that term is defined in 2 CFR §§ 200.1 and 200.334.

At least three (3) price or rate quotations must be obtained for Small Purchase Contracts.

d. Termination Provisions for Certain Federal Award-Related Contracts

All Federal Award Related Contracts falling within this range must address termination for cause and convenience by the DECC, including the manner by which it will be effected and the basis for settlement.

Contracts or Purchase Orders Between \$50,000 and \$99,999

- a. Contracting Power:** The DECC's Executive Director, Finance Director, and other personnel on behalf of and as authorized by the Executive Director, are herein delegated the authority to procure Contracts for goods, work or services (except professional services), within this range, subject to prior approval by the DECC Board of Directors, unless the Board directs otherwise. All executed Contracts in this range must have a completed RFP or Purchase Order (subject to the Purchase Order Exemptions laid out in §(VI)(Definitions) herein) bearing the signature of the Executive Director and Finance Director and written approval from the Board Chair. In the absence of any party, another authorized signer may act as signatory. The DECC shall also maintain written

documentation of Board approval. The DECC's Executive Director has the power to reject bids, proposals, or purchase order offers.

b. Contracting Procedures: Contracts falling within this range must be made upon one of the following applicable procurement methods, unless an applicable alternative procurement method applies. Contracts for services or work, as well as purchases within this range must have prior approval by the Board Chair prior to issuing the RFP or placing the Purchase Order.

i. **Sealed Bids**

Sealed Bids are the preferred method for procuring contracts for construction work. See §(VI)(Definitions) for definition and applicable requirements for this procurement method.

ii. **Mandatory First Method for the Purchase of Supplies, Materials, or Equipment - Cooperative Purchasing Process**

Before utilizing any other procurement method authorized for the purchase of supplies, materials, or equipment in this range, the DECC must first consider the availability, price, and quality of supplies, materials, or equipment that are available through the Cooperative Purchasing Venture. See § (V)(c) for definition and requirements for this procurement method. If no supplies, materials or equipment are available or are not of an adequate price or quality for the DECC's needs, the DECC may utilize any other procurement method required or authorized for contracts in this range.

The following alternative procurement methods may be utilized in lieu of or after the above-listed methods if applicable.

iii. **Best Value RFP**

Contracts for Construction, Alteration, Repair, or Maintenance Work may be made using the Best Value RFP procurement method. See § (VI)(b) for definition and applicable requirements for this procurement method.

iv. **Reverse Auction Process**

Contracts for the purchase of supplies, materials, or equipment may be made using the Reverse Auction Process procurement method. See § (VI)(n) for definition and applicable requirements for this procurement method.

v. **Electronic Selling Process**

Contracts for the sale of certain supplies, materials, or equipment may be made using the Electronic Selling Process. See § (VI)(d) for definition and applicable requirements for this procurement method.

vi. **Noncompetitive Procurement**

Contracts within this range may only utilize noncompetitive procurement in accordance with § (VI)(g).

vii. **Additional Procurement Alternatives**

Where applicable, the DECC reserves the right to utilize any Additional Procurement Alternatives as defined herein or otherwise allowed by law.

- c. Mandatory Contractual Responsible Contractor Requirement.** For constructions contracts falling within this range, the successful contractor shall be required to submit a verification of compliance signed under oath by an owner of officer verifying compliance with the minimum criteria set forth in Minn. Stat. § 16C.285, subd. 3 (with the exception of clause (7), as required by Minn. Stat. § 16C.285, subd. 4).
- d. Termination Provisions for Certain Federal Award-Related Contracts.** All Federal Award Related Contracts falling within this range must address termination for cause and convenience by the DECC, including the manner by which it will be effected and the basis for settlement.

Contracts or Purchase Orders Estimated to Exceed \$100,000 or more

- a. Contracting Power:** The DECC's Executive Director and Finance Director are herein delegated the authority to procure contracts for work or services (except professional services), as well as purchases within this range, subject to prior approval by the DECC Board of Directors, unless the Board directs otherwise. All contracts for services or work, as well as purchases, in this range must have a completed RFP or purchase order (subject to the exceptions laid out in §(I)(f)(iv) and §(I)(h)(ii) herein) bearing the signatures of the Executive Director and Finance Director and written approval from the Board of Directors. In the absence of any party, another authorized signer may act as signatory. The DECC shall also maintain written documentation of Board approval. The DECC's Executive Director has the power to reject bids, proposals, or purchase order offers.
- b. Contracting Procedures:** Contracts falling within this range must be made upon one of the following applicable procurement methods, unless an applicable alternative procurement method applies. Contracts for services or work, as well as purchases within this range must have prior approval by the Board of Directors prior to issuing the RFP or placing the order.
 - i. Sealed Bids**

Sealed Bids are the preferred method for procuring contracts for construction work. See §(VI)(Definitions) for definition and applicable requirements for this procurement method.
 - ii. Mandatory First Method for the Purchase of Supplies, Materials, or Equipment - Cooperative Purchasing Process**

Before utilizing any other procurement method authorized for the purchase of supplies, materials, or equipment in this range, the DECC must first consider the availability, price, and quality of supplies, materials, or equipment that are available through the Cooperative Purchasing Venture. See § (V)(c) for definition and requirements for this procurement method. If no supplies, materials or equipment are available or are not of an adequate price or quality for the DECC's needs, the DECC may utilize any other procurement method required or authorized for contracts in this range.

The following alternative procurement methods may be utilized in lieu of or after the above-listed methods if applicable.

iii. **Best Value RFP**

Contracts for Construction, Alteration, Repair, or Maintenance Work may be made using the Best Value RFP procurement method. See § (VI)(b) for definition and applicable requirements for this procurement method.

iv. **Reverse Auction Process**

Contracts for the purchase of supplies, materials, or equipment may be made using the Reverse Auction Process procurement method. See § (VI)(n) for definition and applicable requirements for this procurement method.

v. **Electronic Selling Process**

Contracts for the sale of certain supplies, materials, or equipment may be made using the Electronic Selling Process. See § (VI)(d) for definition and applicable requirements for this procurement method.

vi. **Noncompetitive Procurement**

Contracts within this range may only utilize noncompetitive procurement in accordance with § (VI)(g).

vii. **Additional Procurement Alternatives**

Where applicable, the DECC reserves the right to utilize any Additional Procurement Alternatives as defined herein or otherwise allowed by law.

c. Mandatory Contractual Bond Requirement for Certain Public Work Contracts Exceeding \$175,000

If the amount of a contract for public work is more than \$175,000, the contract shall require the contractor to give both a performance bond and a payment bond in an amount not less than the contract price.

d. Mandatory Contractual Responsible Contractor Requirement

For construction contracts falling within this range, the successful contractor shall be required to submit a verification of compliance signed under oath by an owner or officer verifying compliance with the minimum criteria set forth in Minn. Stat. § 16C.285, subd. 3 (with the exception of clause (7), as required by Minn. Stat. § 16C.285, subd. 4).

e. Termination Provisions for Certain Federal Award-Related Contracts

All Federal Award Related Contracts falling within this range must address termination for cause and convenience by the DECC, including the manner by which it will be effected and the basis for settlement.

f. Contract Work Hours and Safety Standards Act (40 U.S.C. 3141 - 3148) for Certain Federal Award Related Contracts

Where applicable, all Federal Award Related Contracts awarded by the DECC in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

g. Clean Air (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended– for Certain Federal Award Related Contracts

All Federal Award Related Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the DECC to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

h. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)– for Certain Federal Award Related Contracts

If the DECC or a contractor applies or bids for a federal award exceeding \$100,000, the DECC or the contractor must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

i. Contractor Code of Business Ethics and Conduct Provision for Certain Federal Award Related Contracts

If the value of Federal Award Related Contract is expected to exceed \$6 million and the performance period is 120 days or more, the DECC shall insert into the contract the "Contractor Code of Business Ethics and Conduct" provision in 48 C.F.R. 52.203-13.

j. Preventing Personal Conflicts of Interest Provision for Certain Federal Award Related Contracts

In solicitations and contracts that 1) exceed the simplified acquisition threshold (currently \$250,000); and 2) Include a requirement for services by contractor employee(s) that involve performance of acquisition functions closely associated with intergovernmental functions for, or on behalf of, a federal agency or department (but not including solicitations or contracts with a self-employed individual if the acquisition functions

closely associated with inherently governmental functions are to be performed entirely by the self-employed individual, rather than an employee of the contractor), the DECC shall insert the "Preventing Personal Conflicts of Interest provision in 48 C.F.R. 52.203 - 16.

k. Cost or Price Analysis

The DECC will perform a cost or price analysis in connection with every procurement action and any purchases above the simplified acquisition threshold (currently \$250,000), including contracting modifications and negotiations before bids or quotes are requested. Such analysis also includes making independent estimates before receiving bids or proposals.

V. POST PROCUREMENT STAGE

I. Description: Tasks included in the Post-Procurement phase include monitoring progress and making payments and settlements for contracts.

II. Requirements: In undertaking the above-described tasks in §V(a) DECC personnel or Board Members shall:

Maintain oversight to ensure contractors/vendors perform in accordance with the terms, conditions, and specifications of contracts or purchase order. Demonstrate sound business judgment for the settlement of any contract or procurement disputes including, but not limited to source evaluation, protests, and other claims. The DECC alone is responsible for settlement of contracts according to these principles. Violations of law will be referred to the local, state, or federal authority having the proper jurisdiction.

VI. DEFINITIONS

Alternative Dissemination of Bids and Requests.

Alternative Dissemination of Bids and Requests is a potential alternative process to Public Notice as defined herein.

Where applicable/allowed, the DECC may disseminate solicitations of bids, requests for information, and requests for proposals by a means authorized in paragraph (ii), if the DECC simultaneously publishes, either as part of the minutes of a regular meeting of the governing body or in a separate notice published in the official newspaper, a description of all solicitations or requests so disseminated, along with the means by which the dissemination occurred.

The DECC may use its website or recognized industry trade journals (as that term is defined in Minn. Stat. § 331A.01 subd. 11) as an alternative means of dissemination. A dissemination by alternative means must be in substantially the same format and for the same period of time as a publication required by this chapter.

“Recognized industry trade journal” means a printed or digital publication or website that contains building and construction news of interest to contractors in this state, or that publishes project advertisements and bids for review by contractors or other interested bidders in its regular course of business.

For the first six months after the DECC designates an alternative means of dissemination, it must continue to publish solicitation of bids, requests for information, and requests for proposals in the official newspaper in addition to the alternative method. The publication in the official newspaper must indicate where to find the designated alternative method. After the expiration of the six-month period, an alternative means of dissemination satisfies the publication requirements of law for solicitation of bids, requests for information, and requests for proposals.

Additional Procurement Alternatives.

Additional Procurement Alternatives are alternative methods of procurement allowed under Minn. Stat. § 471.345 and elsewhere in statute for certain discrete types of contracts, including but not limited to:

- Water Tank Service Contracts (Minn. Stat. § 471.345 subd. 5b);
- Procurement from Economically Disadvantaged Persons (Minn. Stat. § 471.345 subd. 8);
- Shared Hospital or Ambulance Service Purchasing (Minn. Stat. § 471.345 subd. 10);
- Fuel Contracts for Generation of Municipal Power (Minn. Stat. § 471.345 subd. 11);
- Procurement from Rehabilitation Facilities (Minn. Stat. § 471.345 subd. 12);
- Energy Efficiency Projects (Minn. Stat. § 471.345 subd. 13); and
- Construction Manager at Risk Contracts (Minn. Stat. § 471.463); and

Best Value RFP.

Best Value RFP refers to an alternative method of procurement. Where applicable, contracts for construction, alteration, repair, or maintenance work may be awarded to a vendor or contractor offering the best value via a Request for Proposal. The Request for Proposal or other solicitation document shall state the relative weight or price and other selection criteria, as detailed below. Factors for determining the best value include, but are not limited to:

- The quality of the vendor’s or contractor’s performance on previous projects;

- The timeliness of the vendor's or contractor's performance on previous projects;
- The level of customer satisfaction with the vendor's or contractor's performance on previous project;
- The vendor's or contractor's record of performing previous projects on budget and ability to minimize cost overruns;
- The vendor's or contractor's ability to minimize change orders;
- The vendor's or contractor's ability to prepare appropriate project plans;
- The vendor's or contractor's technical capabilities;
- The individual qualifications of the contractor's key personnel; or
- The vendor's or contractor's ability to assess and minimize risks.

Cooperative Purchasing Venture.

Cooperative Purchasing Venture refers to an alternative (and sometimes mandatory) method of procurement of contracts or purchases. Where applicable, the DECC may contract for the purchase of supplies, materials, or equipment by utilizing contracts that are available through the state of Minnesota's cooperative purchasing venture authorized by Minn. Stat. § 16C.11, or through a national municipal associations' purchasing alliance or cooperative created by a joint powers agreement that purchases items from more than one source on the basis of competitive bids or competitive quotations. In some instances where applicable, the DECC must first check the Cooperative Purchasing Venture before utilizing another procurement method.

Electronic Selling Process.

Electronic Selling Process refers to an alternative method of procurement. Where applicable, for the sale of supplies, materials, or equipment which is surplus, obsolete, or unused, the DECC may opt to utilize an electronic selling process in which purchasers compete to purchase the surplus supplies, materials, or equipment at the highest purchase price in an open and interactive environment.

Federal Award Related Contracts.

Federal Award Related Contracts are contracts subject to federal procurement requirements, specifically including those codified under 2 CFR 200.

General Services.

The DECC utilizes the definition of “General Services” codified under Minn. Stat. § 16C.02 subd. 7, which defines the term as: “any nonprofessional or technical services. General Services does not include construction.”

Noncompetitive Procurement.

Noncompetitive Procurement refers to an alternative procurement method. Where applicable, the DECC may utilize Noncompetitive Procurement in the following circumstances:

- The item is available only from a single source;
- A public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
- Subject to all state and local laws and this Policy, for Federal Award Related Contracts, where the federal awarding agency or pass-through entity expressly authorizes noncompetitive procurement in response to a written request from the DECC; or
- After solicitation of a number of sources, competition is deemed inadequate.

Open Market.

Open Market refers to a noncompetitive alternative form of procurement. Where applicable, the DECC may contract for the purchase or sale of goods and services in an open market, noncompetitive environment for price considered reasonable based on research, experience, purchase history, or other relevant information and documents.

Procurement Period.

A procurement period is the length of time that the completed procurement procedure is valid (i.e. receipt of quotes, RFPs, etc.), prior to the time the DECC must conduct another procurement procedure for goods, work, or services. Procurement periods can vary in length depending on the good or service and may be impacted by the length of a funding source, contract, the type of service provided, a need for customization, or other factors.

Generally, the DECC should conduct a procurement for most goods, work, and services every three to five years. However, the frequency at which the DECC conducts procurement processes should be reasonable and should take into account funding source requirements as well as the nature of the goods, work, and services procured. Unless otherwise specified, the default is for the DECC to conduct a procurement every five years for purchases that meet the definition of a small purchase or above (\$10,000 or more).

Extension or Renewal of Existing Contract or Purchase Order: For procurements greater than Simplified Acquisition Threshold (currently \$250,000) if the procurement period has not expired, the DECC may amend or renew an existing contract/purchase order to extend its term for the remainder of the procurement period if any adjustment in price is deemed reasonable and all other terms remain the same.

The DECC will perform a cost or price analysis, including contract modifications, prior to initiating a formal RFP. Cost and price analyses will include elements of the DECC purchasing threshold procedures stated above.

The DECC will abide by all federal provisions required of construction contracts in the code of federal regulations part 200.327, Appendix II that details contract provisions, standards, acts, etc., for non-federal entity contracts under federal awards.

Public Notice.

Public Notice means publication in qualified newspaper, as that term is defined in Minn. Stat. § 331A.01 - 02. Public Notice may be fulfilled through Alternative Dissemination of Bids and Requests or via the Transportation Contract Process.

Purchase Orders.

Purchases Orders are documents prepared for the purposes of soliciting and purchasing goods or services.

a. Purchase Order Preparation - General. Department director or manager completes a purchase order that includes:

- Vendor name and address
- Description of goods or services
- Rationale/justification for purchase
- Whether the item is budgeted or not
- General ledger coding (account coding/department coding)
- Location
- Quantity and price by line item
- Taxes or estimated taxes
- Shipping cost, if applicable
- If applicable, quotes received or request for quote documentation

b. Purchase Order Preparation - Sole Service Providers. If only one supplier provides a product or service, additional quotes are not required. This would be the case for equipment and dispensers which

require brand specific replacements or parts. Brand Names may be used in lieu of generic descriptions if good or service is not widely available. The person drafting these types of purchase orders shall write on the purchase order in the quote section "sole supplier" and provide a description of why the vendor is the only practical or reasonable source.

c. Purchase Order Preparation - Blanket Purchase Order. Blanket purchase orders may be used for purchases made on a regular basis such as advertising, expo supplies, or hourly supply rates.

- Blanket Purchase Orders expire on December 31st of the year for which it was approved, regardless of approval start date. As needed, a new Blanket Purchase Order may be drafted annually for repeat purchases such as advertising.
- Price Limits may be described as "not to exceed" a prescribed amount.
- Purchaser is responsible for tracking spending against the Blanket Purchase Order and ensuring limits are not exceeded. All purchases should have the Blanket Purchase Order number coded on invoicing.

d. Purchase Order Preparation - Emergency Purchases. An emergency situation requiring unscheduled expenditures without prior quotes and approval required to ensure the health, safety, or welfare of the DECC's personnel, guests, and property must be documented on a DECC Purchasing Order Exception Report and signed by the Executive Director and/or Finance Director. Because these purchases are emergent in nature, they do not require Board approval.

e. Purchase Order Preparation - Exemptions. No Purchase Order is needed for the following purchases:

- Administrative expenses and payments including organization dues, legal costs, audit fees, credit card fees, and financing payments.
- Food and beverage purchases, serving supplies, gift shop merchandise, cleaning supplies, and paper product purchases.

- Other expected or preapproved fees from contracted or licensed services necessary for business operation such as IT expenditures (wireless internet, software licensing, etc.).

Purchasing Procedures.

The DECC's Purchasing Procedures are as follows:

a. Placing the Order and Receipt of Goods.

1. The department director or manager places the order, requesting the vendor to reference the purchase order number, if applicable, on the invoice and billing documents.
2. The purchaser is responsible for informing the vendor of the DECC's City and County tax exempt status. The DECC is required to pay State sales tax, reference Appendix B. The DECC's Finance Department can also provide documentation to the vendor regarding the DECC's tax exempt status, if requested.
3. The DECC employee who receives the purchased item is required to inspect, approve, and sign for purchased goods or services upon receipt and acceptance. The employee should notify the purchaser that the item has been received and provide them a copy of the packing slip, if applicable.

b. Payment Authorization.

1. The department director, manager, or approved purchaser must sign and code the invoice with the DECC expense account code(s). The invoice should reference the approved purchase order and match quantities, items, and prices on the approved purchase order. Exceptions must be noted on the invoice.
2. Approved purchases not requiring a purchase order must be signed by the department director or manager and documented with the DECC expense account code(s).
3. Invoices should be turned in to the Finance Department in a timely manner. All purchases received during the month must be submitted within two weeks of the end of the month.
4. Price variance on approved invoices is limited to 5% of the extended price. If the variance is greater than 5%, the

purchaser must verify acceptance of higher price and explain the variance on a Purchase Order Exception Report.

5. The authorized purchaser is responsible for notifying the vendor of any goods or services that are not accepted based on price variance. If applicable, alert the Finance Department that invoicing is "on hold" for a particular item to ensure payment is not provisioned.

c. Purchases Made Without Authorization.

All invoices over \$999 which do not have an approved purchase order will be rejected for payment until the department director or manager provides a Purchase Order Exception Report signed by the Executive Director or Finance Director.

Request(s) for Proposals or "RFP(s).

Requests for Proposals or "RFPs" are a means of procurement in which either a fixed price or cost reimbursement type contract is awarded via formal invitations to potential contractors or vendors to submit a proposal to the need identified in the RFP, and may be used to solicit quotations or Sealed Bids, subject to the rules and requirements of the specific contracting process use and estimated Contract threshold. RFPs shall not be written so as to exclude all but one type of supplies or equipment.

Request for Proposal General Summary. Requests for Proposals must be put out by Public Notice and identify all evaluation factors and their relative importance. Proposals must be solicited from an adequate number of qualified offerors. Any response to publicized Requests for Proposals must be considered to the maximum extent practical.

- **Written Method.** The DECC shall have a written method for conducting technical evaluations of the proposals received and making decisions.
- **Award.** Contracts must be awarded to the responsible offeror whose proposal is most advantageous to the DECC, with price and other factors considered.
- **Purchases Over \$50,000.** Must be put out to bid via the below RFP Process, unless they meet the Exception requirements detailed above:
 - i. Formal Bid Document must be approved by the Executive Director.

- ii. Public Notice must be placed in the Duluth News Tribune or other approved legal newspaper at least 7 days prior to the last date of bid submission, and must run for at least 2 days. Advertising can be in digital or print format.
 - iii. Receipt of Affidavit of advertisement or adequate proof of advertisement must be maintained in the permanent bid file.
 - iv. Public Opening of Bids must begin at stated date and time.
 - v. Evidence of Receipt of Performance and Payment Bonds must be maintained in the permanent bid file.
 - vi. Approval by the Board. The Vendor RFP Proposal Documents must be approved by the DECC Board Chair for purchases from \$50,000 to \$99,999 or by the DECC Board of Directors for purchases greater than \$100,000.
 - vii. Purchases exceeding the Simplified Acquisition Threshold, currently set at \$250,000, will also be held to the DECC's Procurement Procedures.
- **Exceptions to Required Request for Proposal Process.** Purchases of \$50,000 and over may be exempt from the RFP process that:
 - i. Are purchases from other governmental bodies such as the City of Duluth or State of Minnesota.
 - ii. Contractual or professional services whereas the product desired is of a unique nature and competitive bidding is not reasonably possible.
 - iii. Purchases of damaged, distressed, or salvaged merchandise obtained at substantial discount from market prices.
 - iv. Evidence suggests that normal bidding procedures are not attaining fair, competitive, or acceptable bids.

Reverse Auction Process.

Reverse Auction Process refers to an alternative form of procurement. Where applicable, the DECC may opt to contract/purchase supplies, materials, or equipment using an electronic purchase process in which vendors compete to provide the supplies, materials, or equipment at the lowest selling price in an open and interactive environment. The DECC shall not utilize this option to contract for

services (as defined herein and by Minn. Stat. § 16C.02, subd. 17) or a service contract (as defined herein and by Minn. Stat. § 16C.02, subd. 7a).

Sealed Bid(s).

Sealed bids are a procurement method wherein bids are solicited by Public Notice, through a Request for Proposal, and a firm fixed price contract (lump sum or unit price) is awarded to the responsible bidder whose bid conforms with all the material terms and conditions of the Request for Proposal. If less than three bids are received, proof of the bid request and public notice thereof must be attached to a completed contract or purchase and retained in the DECC’s permanent bidding file.

Contracts or purchases procured via sealed bid shall be let to the lowest responsible bidder and purchases procured via sealed bid shall be let to the responsible bidder who offers to furnish the article(s) desired for the lowest sum. All bids received shall be preserved and on file until the appropriate records retention schedule has expired. For contracts or purchases procured by sealed bid, in determining the lowest responsible bidder, in addition to price, the following may be considered, if applicable:

- The ability, capacity, and 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 the performance of previous contracts or services;
- The sufficiency of the financial resources and ability of the bidder to perform the contract or provide the service;
- The quality, availability, and adaptability of the supplies or contractual service to the particular use required;
- The ability of the bidder to provide future maintenance and service for the use of the subject of the contract; and
- The number and scope of conditions attached to the bid.

a. Federal Award Related Contracts Additional Requirements:

Additionally, for Federal Award Related Contracts, the following requirements apply:

- i. Sealed Bids Preference. Sealed Bids are the preferred method for procuring contracts or purchases for construction work.
- ii. Feasibility. Sealed Bidding must be feasible. For sealed bidding to be feasible, the following conditions must be met:
 - 1. A complete, adequate, and realistic specification or purchase description is available.
 - 2. Two or more responsible bidders are willing and able to compete effectively for the business.
 - 3. 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.
- iii. Further Requirements. If sealed bids are used, the following requirements apply:
 - 1. Bids must be solicited from an adequate number of qualified sources, providing them sufficient response time prior to the date set for opening the bids, and must be publicly advertised.
 - 2. The Request for Proposals, which will include any specifications and pertinent attachments, must define the items or services in order for the bidder to properly respond.
 - 3. All bids will be opened at the time and place prescribed in the invitation for bids, and must be opened publicly.
 - 4. A firm fixed price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs must be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and

5. Any or all bids may be rejected if there is a sound documented reason.

b. Services. The DECC utilizes the definition of “Services” codified under Minn. Stat. § 16C.02 subd. 17, which defines the term as: “unless otherwise indicated, both professional and technical services under a general service contract.”

- i. Professional and Technical Services means services that require a peculiar skill or ability and/or that require a specialized skill or knowledge. Professional and Technical Services mean any and all services recognized as exempt from competitive bidding requirements under relevant law, and include but are not limited to:

- Architecture;
- Engineering;
- Construction Owner’s Representatives, Construction Managers at Risk, and other superintendent of construction projects;
- Attorney and legal services;
- Physician and medical services.

c. Transportation Contract Process. The Transportation Contract Process is a potential alternative process to Public Notice as defined herein.

- i. At the meeting of the DECC Board at which the Board designates its official newspaper for the year, the Board may designate in the same manner publication of transportation projects on the political DECC's website. Publication on the website may be used in place of or in addition to any other required form of publication. Each year after designating publication on the website for transportation projects, the DECC must publish, in a qualified newspaper in the jurisdiction and on the website, notice that the DECC will publish any advertisements for bids on its website. The DECC shall ensure that a permanent record of publication is maintained in a form accessible by the public.

PURPOSE

The purpose of this policy is to outline procedures for procurement and purchasing at the DECC.

RELATED INFORMATION

- Check Issuance and Signature Policy
- Conflict of Interest Policy
- Contract Authorization and Signature Policy
- Travel and Expense Reimbursement Policy

HISTORY

Effective: (Month, day, year)

Initial Approval: (Month, day, year)

Revision History: (list dates)

Approved by: Date (month, day, year) by DECC Authority Board

Signed by:

Name, Title

Date

PURCHASES MADE WITH GRANT FUNDS

Purchases made with grant funds will follow the procedures outlined in this policy and any additional stipulations set forth by the granting agency.

SANCTION CHECKS PROCEDURE: DEBARMENT, SUSPENSION, INELIGIBILITY, AND VOLUNTARY EXCLUSION

The DECC will execute due diligence to ensure, to the best of its ability, that the vendors with whom the DECC does business with are properly screened for exclusions and are authorized to participate in federal and state programs.

The DECC will not engage in a business relationship with anyone who is currently under sanction or exclusion by the System for Award Management (SAM).

The DECC shall screen all contractors, consultants, vendors, joint venture parties, and affiliates providing services or products against the System for Award Management (SAM) exclusion list prior to establishing a business relationship with said entity and at least monthly thereafter, so long as the DECC maintains a business relationship with said entity.

If it is determined upon reasonable due diligence that an individual or entity is listed as excluded or debarred by SAM, the relationship shall be immediately terminated.

The DECC Finance Department is responsible for carrying out the sanction check process and will maintain records of sanction checks in accordance with regulation.

PURPOSE

The purpose of this policy is to define purchasing and procurement standards and procedures for the DECC.

HISTORY

Effective January 1, 2023

Revision History: December 01, 2002; January 01, 2003; September 29, 2021; November 29, 2022

Approval: December 15, 2022, by Lynne Williams, DECC Authority Board Chair

Signed by:

Name, Title

Date

PROCUREMENT AND PURCHASING POLICY

POLICY

This document describes the procurement and purchasing policies and procedures of the Duluth Entertainment and Convention Center Authority, herein referred to as the DECC. All personnel are required to follow these policies to ensure that the DECC's budgets funds are maximized and expenditures are properly authorized.

This policy has been designed to ensure that all relevant and applicable local, state, and federal laws and requirements are followed.

PROCEDURE

AUTHORIZATION TO PURCHASE

Department directors or managers are authorized to purchase items less than \$20,000 after receiving written authorization on a properly completed Purchase Order.

The DECC Board Chair approves all purchases estimated between \$50,000 - \$99,999. Purchases exceeding \$99,999 require DECC Board of Directors approval.

Purchases or services over \$50,000 must be put out to bid via a request for proposal (RFP) process. A formal advertising bid process is used to procure and select the vendor or supplier on purchases over \$100,000.

PURCHASE THRESHOLD REQUIREMENTS

PURCHASE THRESHOLD | UNDER \$1,000

Items or services costing less than \$1,000 may be purchased by authorized personnel without prior written approval of the Executive Director or Finance Director.

PURCHASE THRESHOLD | \$1,000 to \$9,999

Items or services costing \$1,000 to \$9,999 must have a completed purchase order including signatures from both the Executive Director and Finance Director prior to placing the order.

PURCHASE THRESHOLD | \$10,000 to \$49,999

Items or services costing \$10,000 to \$49,999 must have a completed purchase order (and include quotes from at least three supplies documented or attached) including signatures from both the Executive Director and Finance Director prior to placing the order.

PURCHASE THRESHOLD | \$50,000 to \$99,999

Purchases over \$50,000 must be put out to bid via RFP and include quotes from at least three suppliers documented or attached to the purchase order. If vendors do not reply, proof of bid request should be attached. Purchases over \$50,000 and up to \$99,999 must have prior approval of the Board Chair.

PURCHASE THRESHOLD | \$100,000 or more

Purchases over \$100,000 must be put out to bid via RFP and include quotes from at least three suppliers documented or attached to the purchase order. If vendors do not reply, proof of bid request should be attached. Items or services costing \$100,000 or more must have approval from the DECC Board of Directors prior to placing the order.

PURCHASE ORDER PREPARATION

PURCHASE ORDER PREPARATION | GENERAL

Department director or manager completes a purchase order that includes:

- Vendor name and address
- Description of goods or services
- Location
- Quantity and price by line item
- Taxes, or estimated taxes
- Shipping cost, if applicable
- If applicable, quotes received, or request for quote documentation
- Executive Director and/or Finance Director approval

PURCHASE ORDER PREPARATION | SOLE SERVICE PROVIDERS

If only one supplier provides a product or service, additional quotes are not required. This would be the case for equipment and dispensers, which require brand specific replacements or parts. Brand names may be used in lieu of generic descriptions if good or service is not widely available.

Write on the purchase order in the quote section "sole supplier" and provide a description of why the vendor is the only practical or reasonable source.

PURCHASE ORDER PREPARATION | BLANKET PURCHASE ORDER

Blanket purchase orders can be used for purchases made on a regular basis such as advertising, expo supplies, or hourly supply rates.

Blanket purchase orders expire one year from the date of the purchase order.

Price limits may be described as "not to exceed" a prescribed amount.

Price variance on approved invoices is limited to 5% of the extended price. If the variance is greater than 5%, the purchaser must prepare a new blanket purchase order for the goods or service.

PURCHASE ORDER PREPARATION | EMERGENCY PURCHASES

An emergency situation requiring unscheduled expenditures without prior quotes and approval must be documented on a DECC Purchasing Order Exception Report and signed by the Executive Director and/or Finance Director.

PURCHASE ORDER PREPARATION | EXEMPTIONS

No purchase order is needed for the following purchases:

- Administrative expenses and payments including organization dues, legal costs, audit fees, and financing payments.
- Food and beverage purchases, serving supplies, gift shop merchandise, cleaning supplies, and paper product purchases.
- Other expected or preapproved fees from contracted or licensed services necessary for business operation such as IT expenditures (wireless internet, software licensing, etc.)

REQUEST FOR PROPOSAL (RFP) PROCESS

Purchases over \$50,000 must be put out to bid via RFP process:

1. Formal bid document must be approved by the Executive Director.
2. Public Notice must be placed in the Duluth News Tribune or other approved legal newspaper. Posting must occur for at least two (2) days, fourteen (14) days prior to the last day of bid submission.
3. Receipt of Affidavit of advertisement must be maintained in the permanent bid file.
4. Public opening of bids must begin at a stated date and time.
5. Evidence of performance and payment bonds.
6. The RFP bid documents must be approved by the Board Chair for purchases from \$50,000 to \$99,999 or by the DECC Board of Directors for purchases greater than \$100,000.
7. "Sealed Bid" method will be utilized for all construction bids and quotes above \$100,000.
8. Purchases exceeding the simplified acquisition threshold, currently at \$250,000, will also be held to the DECC's procurement procedures defined below in subsequent sections.

Purchases \$50,000 and over may be exempt from the RFP process if they meet the following definitions:

- Purchases from other governmental bodies such as the City of Duluth or State of Minnesota.
- Contractual or professional services whereas the product desired is of a unique nature and competitive bidding is not reasonably possible.
- Purchases of damaged, distressed, or salvaged merchandise obtained at substantial discount from market prices.
- Evidence suggests that normal bidding procedures are not attaining fair, competitive, or acceptable bids.

PURCHASING PROCEDURES

PLACING THE ORDER & RECEIPT OF GOODS

1. The department director or manager places the order, requesting the vendor to reference the purchase order number, if applicable, on the invoice and billing documents.
2. The vendor should be informed of our City and County tax exempt status. We are required to pay State sales tax, reference Appendix B. Finance can also provide documentation to the vendor regarding our tax exempt status, if requested.

3. The ordering department is required to inspect, approve, and sign for purchased goods or services upon receipt and acceptance.

PAYMENT AUTHORIZATION

1. The department director or manager must sign and code the invoice with the DECC expense account code(s). The invoice should reference the approved purchase order and match quantities, items, and prices on the approved purchase order. Exceptions must be noted on the invoice.
2. Approved purchases not requiring a purchase order must be signed by the department director or manager and documented with the DECC expense account code(s).
3. Invoices should be turned in to the Finance Department in a timely manner. All purchases received during the month must be submitted within two weeks of the end of the month.
4. Price variance on approved invoices is limited to 5% of the extended price. If the variance is greater, the purchaser must verify acceptance of higher price and explain the variance on the purchase order.
5. The authorized purchaser is responsible for notifying the vendor of any goods or services that are not accepted based on price variance. If applicable, alert the Finance Department that invoicing is "on hold" for a particular item to ensure payment is not provisioned.

PURCHASES MADE WITHOUT AUTHORIZATION

All invoices over \$999 which do not have an approved purchase order will be rejected for payment until the department director or manager provides a Purchasing Exception Report signed by the Executive Director or Finance Director.

PROCUREMENT PROCEDURES

The DECC is committed to securing goods and services from reputable and responsible suppliers in an equitable and competitive manner and in accordance with applicable state and federal laws, regulations, and guidance.

The DECC will use its own procurement procedures which reflect applicable federal, state and local laws and regulations, provided that the procurements confirm to applicable federal law and regulation.

The DECC will maintain a written selection procedure for procurement transactions.

Any lists of prequalified persons, firms, or products to be used by the DECC will be updated regularly and will ensure open and free competition.

Only responsible contactors that can successfully complete contract terms will be used.

If available and applicable, excess property and equipment will be used before purchasing new equipment.

The DECC will ensure no real or apparent conflicts of interest arise during procurement activities and will adhere to the DECC's code of ethics and conflict of interest policy.

All transactions will be conducted in a manner providing and encouraging full and open competition, avoiding any practices deemed unfair or restrictive to competition such as

- Placing unreasonable requirements on firms for them to qualify to do business
- Requiring unnecessary experience and excessive bonding
- Noncompetitive pricing practices between firms or between affiliated companies
- Noncompetitive contracts to consultants that are on retainer contracts
- Specifying “brand name” product instead of allowing “an equal” product to be offered.

The DECC will avoid unnecessary or duplicative purchases and will utilize existing or enter into new state and local intergovernmental agreements or inter-entity agreements where appropriate for procurement or use of common or shared goods and services.

The DECC will perform a cost or price analysis in connection with every procurement action and any purchases above the simplified acquisition threshold (currently set at \$250,000), including contract modifications and negotiations before bids or quotes are requested.

Detailed records to substantiate procurement decisions, rationale, selection process history and other procurement methods will be maintained.

The DECC will demonstrate sound business judgement for the settlement of any contract or procurement disputes including, but not limited to source evaluation, protests and other claims.

The DECC will take all necessary affirmative steps to assure that small and minority firms, women’s business enterprises, and labor surplus area firms are used when possible.

The DECC will, to the greatest extent practicable, provide a preference for purchase, acquisition, or use of goods, products and materials produced in the United States.

The DECC will make available, upon request of the awarding agency, technical specifications on proposed procurements where the awarding agency believes such review is needed to ensure that the item and/or service specified is the one being proposed for purchase.

The DECC will follow applicable bonding requirements per federal procurement standards such as:

Obtaining a bid guarantee from each bidder equivalent to 5% of the bid price in the form of a bid bond, certified check, or other negotiable instrument as assurance that the bidder will execute contractual documents within a specified period.

A performance bond on the part of the contractor for 100 percent of the contract price to secure fulfillment of all the contractor’s requirements under the bid contract and payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

The DECC will comply with section 6002 of the Solid Waste Disposal Act in procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part

247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

PROCUREMENT PURCHASE THRESHOLDS - PER FEDERAL REGULATION

Micro-purchase: less than \$10,000

Small purchase: \$10,000 to \$250,000

Competitive Proposals: greater than \$250,000

PROCUREMENT PERIOD

A procurement period is the length of time that the completed procurement procedure is valid (i.e., receipt of quotes, RFP, etc.), prior to the time the DECC must conduct another procurement procedure for goods or services. Procurement periods can vary in length depending on the good or service and may be impacted by the length of a funding source, contract, the type of service provided, a need for customization, or other factors.

Generally, the DECC should conduct a procurement for most goods and services every three to five years. However, the frequency at which the DECC conducts procurement processes should be reasonable and should take into account funding source requirements as well as the nature of the goods and services procured. Unless otherwise specified, the default is for the DECC to conduct a procurement every five years for purchases that meet the definition of a small-purchase or above (\$10,000 or more).

NEW CONTRACT OR PURCHASE ORDER

New contracts or purchase orders will follow the procedures outlined in this policy.

EXTENSION OR RENEWAL OF EXISTING CONTRACT OR PURCHASE ORDER

For procurements less than \$250,000, if the procurement period has not expired, the DECC may amend or renew an existing contract/purchase order to extend its term for the remainder of the procurement period if any adjustment in price is deemed reasonable pursuant to a cost analysis, and all other terms remain the same.

For procurements greater than Simplified Acquisition Threshold (currently \$250,000) if the procurement period has not expired, the DECC may amend or renew an existing contract/purchase order to extend its term for the remainder of the procurement period if any adjustment in price is deemed reasonable and all other terms remain the same. The DECC will perform a cost or price analysis, including contract modifications, prior to initiating a formal RFP. Cost and price analyses will include elements of the DECC purchasing threshold procedures stated above

The DECC will abide by all federal provisions required of construction contracts in the code of federal regulations part 200.327, Appendix II that details contract provisions, standards, acts, etc., for non-federal entity contracts under federal awards.

PURCHASES MADE WITH GRANT FUNDS

Purchases made with grant funds will follow the procedures outlined in this policy and any additional stipulations set forth by the granting agency.

SANCTION CHECKS PROCEDURE: DEBARMENT, SUSPENSION, INELIGIBILITY, AND VOLUNTARY EXCLUSION

The DECC will execute due diligence to ensure, to the best of its ability, that the vendors with whom the DECC does business with are properly screened for exclusions and are authorized to participate in federal and state programs.

The DECC will not engage in a business relationship with anyone who is currently under sanction or exclusion by the System for Award Management (SAM).

The DECC shall screen all contractors, consultants, vendors, joint venture parties, and affiliates providing services or products against the System for Award Management (SAM) exclusion list prior to establishing a business relationship with said entity and at least monthly thereafter, so long as the DECC maintains a business relationship with said entity.

If it is determined upon reasonable due diligence that an individual or entity is listed as excluded or debarred by SAM, the relationship shall be immediately terminated.

The DECC Finance Department is responsible for carrying out the sanction check process and will maintain records of sanction checks in accordance with regulation.

PURPOSE

The purpose of this policy is to define purchasing and procurement standards and procedures for the DECC.

HISTORY

Effective January 1, 2023

Revision History: December 01, 2002; January 01, 2003; September 29, 2021; November 29, 2022

Approval: December 15, 2022, by Lynne Williams, DECC Authority Board Chair

Signed by:

Name, Title

Date

TRAVEL & EXPENSE REIMBURSEMENT POLICY

POLICY

Employees incurring expenses for work-related travel should incur the lowest reasonable expenses. Employees are required to use the DECC corporate credit card program for travel-related expenses as available. In circumstances where an employee does not have access to the DECC corporate credit card program, the employee may submit for reimbursement. Reimbursement is allowed only when reimbursement has not been, and will not be, received from other sources. If a circumstance arises that is not specifically covered in this Policy, ~~then~~ the most conservative course of action should be taken.

DECC employees may incur reasonable and necessary expenses during approved work-related travel. It is the policy of the DECC to provide payment for approved expenses during work-related travel via the DECC corporate credit card program, or reimbursement as necessary.

PROCEDURE

AUTHORIZATION AND RESPONSIBILITY

Travel must be authorized by the employee's supervisor as stated below. Travelers should verify that planned travel is eligible to be expensed before making travel arrangements. If a traveler must submit for reimbursement, the traveler must submit a travel reimbursement form and appropriate supporting documentation within ~~tenthirty (10) business (30)~~ days of the trip.

An individual may not approve their own travel or reimbursement. The travel reimbursement form must be signed by the employee's supervisor. The form must also be signed by the Finance Director and Executive Director for reimbursement that totals \$1,000.00 or more.

All travel authorizations must follow the DECC's purchasing policies.

PERSONAL FUNDS

Travelers should review expense and reimbursement guidelines before utilizing the DECC corporate credit card program or spending personal funds for business travel to determine if such expenses are approved. The DECC reserves the right to deny any expense or reimbursement of travel-related expenses for failure to comply with policies and procedures.

Travelers who use personal funds to facilitate travel arrangements will not be reimbursed until proper documentation is submitted.

VACATION IN CONJUNCTION WITH BUSINESS TRAVEL

In cases in which vacation time is added to a business trip, any cost variance in airfare, car rental or lodging must be clearly identified on the [Travel Reimbursement Request](#) form. The DECC will not prepay any personal expenses with the intention of being “repaid” at a later time, nor will any personal expenses be reimbursed.

PERMISSABLE PREPAID TRAVEL EXPENSES

Before the travel occurs, The DECC may issue prepayments for airfare, rail transportation, rental vehicles, lodging, and conference registration fees. Applicable policies and methods of payments for these prepayments follow.

AIRFARE

Travelers are expected to obtain the lowest available airfare that reasonably meets business travel needs. Travelers are encouraged to book flights at least 30 days in advance to avoid premium airfare pricing. Coach class or economy tickets must be purchased for domestic or international flights with flight time totaling less than five consecutive hours (excludes layovers).

RAIL TRANSPORTATION

The DECC may prepay rail transportation provided that the cost does not exceed the cost of the least expensive airfare.

RENTAL VEHICLES

The DECC will pay for approved use of a rental vehicle. Employees are encouraged to use a rental car in lieu of requesting reimbursement for personal mileage in cases where a car rental does not exceed the cost of personal mileage reimbursement. Reference the section on reimbursements below [in](#) this section.

CONFERENCE REGISTRATION FEES

Conference registration fees can be prepaid with a credit card, or with a request for payment form. Business-related banquets or meals that are considered part of the conference can be paid with the registration fees; however, such meals must be deducted from the traveler’s per diem allowance.

LODGING

The DECC will prepay approved lodging fees. Reference the Lodging Reimbursement section for additional details.

REIMBURSEMENTS

Requests for reimbursements of travel-related expenses must be submitted on a [Travel Reimbursement](#) form. This form must be accompanied by supporting documentation. These forms must be submitted to the Finance Director within [ten \(10\) business days](#) ~~thirty days (30)~~ after the trip is completed. [Travel Reimbursement](#) forms not submitted within this time frame require exception approval from the Finance Director or Executive Director.

Reimbursement requests should only occur in instances where the traveler does not have access to the DECC’s corporate credit card program.

AIRFARE

If the airfare was not prepaid by the DECC, an ~~original~~ itemized airline receipt, an e-ticket receipt/statement or an ~~i~~Internet receipt/statement is required. The receipt must show the method of payment and indicate that payment was made.

RAIL TRANSPORTATION

If rail transportation was not prepaid by the DECC, an ~~original~~ itemized receipt, ~~original~~ e-ticket receipt/statement or ~~i~~Internet receipt/statement is required. The receipt must show the method of payment and indicate that payment was made.

AUTOMOBILE (PERSONAL MILEAGE)

A valid driver's license issued within the United States and personal automobile insurance are required for expenses to be reimbursed. Drivers should be aware of the extent of coverage (if any) provided by their automobile insurance company for travel that is business or not personal in nature.

The DECC follows Federal IRS mileage rates for mileage reimbursement, current rates can be accessed via this weblink: <https://www.irs.gov/tax-professionals/standard-mileage-rates> . For mileage calculation, begin and end the trip at the DECC facilities: 350 Harbor Drive Duluth, MN 55802. A ~~print out~~~~printout~~ of Google Maps, Map Quest, or another mileage calculator must be included for mileage reimbursement.

AUTOMOBILE (RENTAL CAR)

Reimbursement for a commercial rental vehicle as a primary mode of transportation is authorized only if the rental vehicle is more economical than any other type of transportation, or if the destination is not otherwise accessible. Vehicle rental at a destination city is reimbursable. Original receipts are required.

The DECC authorizes reimbursement for the most economic vehicle available. In certain circumstances which warrant their use, larger vehicles may be rented, with supervisory approval. The rental agreement must clearly show the date and the points of departure/arrival, as well as the total cost. Drivers must adhere to the rental requirements, and restrictions must be followed. Original receipts are required.

When vehicle rentals are necessary, the DECC encourages travelers to purchase collision damage waiver (CDW) and loss damage waiver (LDW) coverage. The DECC will reimburse the cost of CDW and LDW coverage; all other insurance reimbursements will be denied.

Drivers should be aware of the extent of coverage (if any) provided by ~~their~~~~his or her~~ automobile insurance company for travel that is business or not personal in nature.

~~Parking fees, tolls and other incidental costs associated with the vehicle use are not covered by the rental agreement.~~

Travelers must comply with any and all rules of the rental car agency including but not limited to purchasing the appropriate amount of fuel before returning the vehicle to the rental agency to avoid service fees and more expensive fuel rates.

CONFERENCE REGISTRATION FEES

If the conference fee was not prepaid, the DECC will reimburse these fees, including business-related banquets or meals that are part of the conference registration. ~~Original receipts to support the payment are required. If the conference does not provide a receipt, then a cancelled check, credit card slip/statement or documentation that the amount was paid is required for reimbursement.~~

~~A prorated amount for the meals provided must be deducted from the traveler's per diem. Reference the Meals section below for more detail.~~

LODGING

The cost of overnight lodging (room rate and tax only) will be reimbursed to the traveler if the authorized travel is 45 miles or more from the traveler's home or primary worksite. Exceptions to this restriction may be approved in writing by the Executive Director or by the Finance Director.

The DECC will reimburse lodging expenses at reasonable, single occupancy or standard business room rates up to 150% of the then current U.S. General Services Administration rate: <https://www.gsa.gov/travel/plan-book/per-diem-rates>. When the hotel or motel is the conference or convention site, reimbursement will be limited to the conference rate.

Only single room rates are authorized for payment or reimbursement unless the second party is representing the agency in an authorized capacity. If the lodging receipt shows more than a single occupancy, the single room rate must be noted. If reimbursement for more than the single room rate is requested, the name of the second person must be included.

MEALS

Per diem allowances are reimbursable for travel that is 45 miles or more from the traveler's home or primary worksite.

The DECC per diem rates are based on the then current U.S. General Services Administration Guidelines, which vary by city location: <https://www.gsa.gov/travel/plan-book/per-diem-rates>.

In addition to meals these rates include incidental expenses such as laundry, dry cleaning and service tips (e.g., housekeeping or porter tips). Incidental expenses, unless specifically cited in this policy, will not be reimbursed.

~~The meal & incidental expenses (M&IE) amount received on the first and last day of travel equals 75% of the M&IE total. For example, if the M&IE total for a destination is \$80.00, on the first and last day of travel the allowed amount would be \$60.00.~~

~~Per diem reimbursements are based on departure and return times over the entire 24-hour day and are prorated accordingly.~~

If a free meal is served on the plane, included in a conference registration fee, built into the standard, single hotel room rate, or replaced by a legitimate business meal; the per diem allowance for that meal may not be claimed.

~~Itemized r~~Receipts ~~are are not~~ required for per diem allowances. Per diem allowances are reimbursed after the trip is completed.

Alcohol is not allowed to be purchased with DECC funds and is not considered a reimbursable expense.

MEALS - BUSINESS

Travelers are required to follow the DECC's policies when requesting reimbursement for business meals. ~~Original i~~temized receipts are required.

Alcohol is not allowed to be purchased with DECC funds and is not considered a reimbursable expense.

BUSINESS EXPENSES

Business expenses, including but not limited to faxes, photocopies, Internet charges, data ports and business telephone calls incurred while on travel status, can be reimbursed.

~~Original i~~temized receipts are required.

PARKING

~~Original R~~ceipts are required for parking fees (including airport parking) ~~totaling \$25 or more~~. The lodging bill can be used as a receipt when charges are included as part of the overnight stay.

TELEPHONE CALLS

The costs of personal telephone calls are the responsibility of the individual.

TOLLS

~~Original r~~ceipts are required for tolls ~~totaling \$25 or more~~.

MISCELLANEOUS TRANSPORTATION

~~Original r~~ceipts are required for taxi, bus, subway, metro, ferry and other modes of transportation ~~if costs are \$25 or more for each occurrence~~.

VISA, PASSPORT, OR IMMUNIZATION FEES

If these items are required for international travel, their reimbursement is left to the discretion of your supervisor. If approved by the designated authority, ~~original~~ itemized receipts are required.

NON-REIMBURSEABLE TRAVEL EXPENSES

The following items that may be associated with business travel will not be reimbursed by the DECC:

- Airline club memberships.
- Airline upgrades.
- Business class for domestic flights or first class for all flights.
- Childcare, babysitting, house-sitting, or pet-sitting/kennel charges.
- Commuting between home and the primary work location.
- Costs incurred by traveler's failure to cancel travel or hotel reservations in a timely fashion.
- Evening or formal wear expenses.

- Haircuts and personal grooming.
- Laundry and dry cleaning.
- Passports, vaccinations and visas when not required as a specific and necessary condition of the travel assignment.
- Personal entertainment expenses, including in-flight movies, headsets, health club facilities, hotel pay-per-view movies, in-theater movies, social activities and related incidental costs.
- Travel accident insurance premiums or purchase of additional travel insurance.
- Other expenses not directly related to the business travel.

TRAVEL FOR NON-EMPLOYEES

Additional costs for travel, lodging, meal or other travel expenses for spouses or other family members will not be reimbursed unless the individual has a bona fide company purpose for engaging in the travel or attending the event. Such travel is generally limited to senior management and should occur infrequently.

PURPOSE

The purpose of this policy is to outline procedures for travel and expense prepayment or reimbursement.

HISTORY

~~Effective October 26, 2023~~

Revision History: January 25, 1993; January 29, 2008; February 6, 2023; November 25, 2024

Approval: ~~Peter Singler, DECC Authority Board Chair on October 26, 2023~~

Signed by:

Name, Title

Date

APPENDIX A

EXPENSE REPORT

DECC EXPENSE REPORT

Name:			
Location:			
Purpose:			
Dates:		to	

City	Breakfast	Lunch	Dinner	Mileage rate
[city name]	[rate]	[rate]	[rate]	\$0.670

Look up GSA rates by city: <https://www.gsa.gov/travel/plan-book/per-diem-rates>
 IRS Mileage rate: <https://www.irs.gov/tax-professionals/standard-mileage-rates>

Travel From								
Travel To								
Mileage [include printout]								

Date(s)	[date]	[date]	[date]	[date]	[date]	[date]	[date]	[date]
Breakfast								
Lunch								
Dinner								
Mileage @ Rate								
Taxi / RideShare								
Hotel								
Parking								
Miscellaneous								
TOTAL	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
<i>1st & Last day of travel: 75% of max daily per diem allowed (i.e., daily max = \$80, on 1st and last day 0.75(\$80) = \$60 max per diem</i>								

Requested by _____ Total \$0.00

Account Coding _____

Approved by _____

yellow = fill in data