

# County Council Of Howard County, Maryland

2020 Legislative Session

Legislative Day No. 15

## Resolution No. 173-2020

Introduced by: The Chairperson at the request of the County Executive

A RESOLUTION pursuant to Section 4.104 of the Howard County Code, amending the Purchasing Manual in order to change the name of the Office of Purchasing to be the Office of Procurement and Contract Administration; to change the name of the Office Administrator accordingly; to make technical corrections; to update the Office's Mission statement; and generally relating to the Howard County Purchasing Manual.

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Introduced and read first time \_\_\_\_\_, 2020.

By order \_\_\_\_\_  
Diane Schwartz Jones, Administrator

Read for a second time at a public hearing on \_\_\_\_\_, 2020.

By order \_\_\_\_\_  
Diane Schwartz Jones, Administrator

This Resolution was read the third time and was Adopted \_\_, Adopted with amendments \_\_, Failed \_\_, Withdrawn \_\_, by the County Council on \_\_\_\_\_, 2020.

Certified By \_\_\_\_\_  
Diane Schwartz Jones, Administrator

NOTE: [[text in brackets]] indicates deletions from existing law; TEXT IN SMALL CAPITALS indicates additions to existing law; Strike-out indicates material deleted by amendment; Underlining indicates material added by amendment

1           **WHEREAS**, the County’s Purchasing Manual sets forth the operating procedures for the  
2 County’s procurement process; and

3  
4           **WHEREAS**, Council Bill No \_\_\_\_-2020 proposes to change the name of the Office of  
5 Purchasing to be the Office of Procurement and Contract Administration and that change needs  
6 to also be reflected in the Purchasing Manual; and

7  
8           **WHEREAS**, the title of the Office Administrator also needs to be amended accordingly  
9 and the Office of Procurement and Contract Administration would like to update the Office’s  
10 “Mission” as reflected in the Purchasing Manual; and

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12           **WHEREAS**, there are other technical corrections to be made including Code reference  
13 corrections.

14  
15           **NOW, THEREFORE, BE IT RESOLVED** by the County Council of Howard County,  
16 Maryland this \_\_\_ day of \_\_\_\_\_, 2020, that the Purchasing Manual is amended as shown  
17 in the attached Exhibit A.

18  
19           **AND BE IT FURTHER RESOLVED**, that the County Purchasing Agent may correct  
20 obvious errors, capitalization, spelling, grammar, headings and similar matters and may format  
21 the Purchasing Manual by adding or amending covers, title pages, table of contents, and graphics  
22 to improve readability.

**PURPOSE**

The purposes of this manual are to:

Implement the purchasing policies set out in Article VIII, *Centralized Purchasing*, of the Howard County Charter and Subtitle 1, *Purchasing*, of the Howard County Code.

Make the procurement procedures in the user agencies as consistent as possible.

Instill the public's confidence in the County's procurement procedures.

Ensure the fair and equitable treatment of all persons dealing with the County and promote maximum competition.

Provide increased economy in County procurement activities and maximize the purchasing value of County funds.

Safeguard the high quality and integrity of public procurement.

Ensure that expenditures of public funds (including State and Federal funds) comply with the terms and conditions of the funding source. If State or Federal requirements conflict with the provisions of this manual, nothing in the manual shall prevent the County from complying with the terms and conditions of the State or Federal requirements.

## **PRINCIPLES**

Personnel associated with the purchasing function shall comply with the following principles:

1. In all transactions to consider first the interests of the County;
2. To believe and carry out the established policies of the County;
3. To be receptive to competent counsel from colleagues;
4. To be guided by counsel without impairing the dignity and responsibility of the office;
5. To strive consistently for knowledge of the materials and process of manufacture;
6. To establish practical methods for the conduct of the office;
7. To subscribe to and work for honesty and truth in buying and selling and to denounce all forms and manifestations of commercial bribery;
8. To accord a prompt and courteous reception to all who call on a legitimate business mission;
9. To counsel and assist fellow purchasing agents in the performance of their duties;
10. To cooperate with all organizations and individuals engaged in activities designed to enhance the development and standards of purchasing;
11. To encourage participation in the Equal Business Opportunity (EBO) program in order to attain increased EBO participation in purchasing activities;
12. To encourage participation in the Veteran-Owned Business Enterprise Program in order to attain increased Veteran participation in purchasing activities; and
13. To subscribe to the National Institute of Governmental Purchasing, Inc. (NIGP) Code of Ethics.

## POLICIES

### 1. Centralized Purchasing

- a. The objective of centralized purchasing in Howard County is to obtain the maximum benefit from every tax dollar spent. The Office of [[Purchasing]]PROCUREMENT AND CONTRACT ADMINISTRATION is responsible for the centralized purchasing of all supplies and services for the County government.
- b. In accordance with Charter Sec. 802, the Chief Administrative Officer, who is also the County Purchasing Agent, hereby delegates the purchasing functions to a Deputy Purchasing Agent known as the [[Purchasing]] Administrator OF THE OFFICE OF PROCUREMENT AND CONTRACT ADMINISTRATION.

### 2. Ethics and Professional Conduct

- a. The National Institute of Governmental Purchasing, Inc. (NIGP) Code of Ethics will govern the conduct of every employee in the Office of [[Purchasing]]PROCUREMENT AND CONTRACT ADMINISTRATION and any employees in using agencies that are granted delegated purchasing authority. Delegation of authority to using agencies is contingent upon specific employees receiving appropriate training on the fundamentals of public purchasing. The Code of Ethics is Exhibit II of this Manual.
- b. All employees and contractors must abide by the provisions of the Howard County ethics law (Exhibit III).
- c. Vendors or bidders who offer gifts, entertainment, etc. may be declared irresponsible bidders and may be debarred from bidding.
- d. An employee who accepts a gift, entertainment, etc. shall be subject to disciplinary action.

### 3. Relations with Vendors

- a. No officer or employee of the County (excluding employees in the Office of [[Purchasing]]PROCUREMENT AND CONTRACT ADMINISTRATION) shall negotiate directly or indirectly for supplies or services, except where an emergency exists after normal working hours or with the approval of the [[Purchasing]] Administrator OF THE OFFICE OF PROCUREMENT AND CONTRACT ADMINISTRATION.
- b. In consideration of legal aspects and trade relations with vendors, the Office of [[Purchasing]]PROCUREMENT AND CONTRACT ADMINISTRATION shall not purchase supplies or services for the private use of employees.
- c. Vendor contact with employees in user agencies shall be through or with the knowledge of the appropriate purchasing representative. The intent is

to prevent vendors from bypassing the Office of  
[[Purchasing]]PROCUREMENT AND CONTRACT ADMINISTRATION in an  
attempt to influence employees and agencies.

4. Relations with Other Agencies

- a. Whenever it is practical to do so, supplies and services shall be purchased through contracts. The County will benefit from quantity discounts, fewer purchasing transactions and reduced paperwork.
- b. All questions concerning any aspect of a contact, from initial request through final acceptance of the purchase, shall be addressed to the Office of [[Purchasing]]PROCUREMENT AND CONTRACT ADMINISTRATION.

5. Cooperative Purchasing

The Office of [[Purchasing]]PROCUREMENT AND CONTRACT ADMINISTRATION shall maintain a program for joint or cooperative purchasing with the Howard County Board of Education, Howard County Library, and Howard Community College and with other public jurisdictions including cities, counties, states and the federal government.

6. Advisory Committee on Standardization

- a. The process of establishing standard specifications for items of similar usage leads to savings for the County. Therefore, achieving cost savings through standardization shall be one of the major objectives of the Office of [[Purchasing]]PROCUREMENT AND CONTRACT ADMINISTRATION.
  - (1) Pursuant to Code Sec. 4.105, the [[Purchasing]] Administrator OF THE OFFICE OF PROCUREMENT AND CONTRACT ADMINISTRATION shall establish a purchasing advisory committee on standardization composed of the [[Purchasing]] Administrator and the directors of each department of the director's designee. The [[[Purchasing]] Administrator shall serve as chairperson. The members of the committee shall serve without additional compensation.
  - (2) The committee shall advise the [[Purchasing]] Administrator OF THE OFFICE OF PROCUREMENT AND CONTRACT ADMINISTRATION on:
    - (a) The need to establish standard items of equipment, supplies, or materials to promote economy and efficiency in County operations;
    - (b) The minimum number of quantities, sizes, and varieties of supplies consistent with the efficient operation of the County government;
    - (c) The development of standard specifications; and

- (d) Preparing, adopting and issuing written specifications so that effective competition is encouraged.
- (3) The [[Purchasing]] Administrator OF THE OFFICE OF PROCUREMENT AND CONTRACT ADMINISTRATION and the committee may:
  - (a) Make use of the County's staff and technical facilities in the development of specifications and in the testing of supplies received under the standard specifications; and
  - (b) Arrange for the testing of supplies through the facilities of testing laboratories.
- b. The [[Purchasing]] Administrator OF THE OFFICE OF PROCUREMENT AND CONTRACT ADMINISTRATION shall, to the maximum extent possible, adopt for the County's use the standard specifications of other government jurisdictions and standards setting entities.

7. Leasing and Rental Agreements

- a. The Office of [[Purchasing]]PROCUREMENT AND CONTRACT ADMINISTRATION is responsible for equipment rental and lease agreements where the County's equipment requirements may be provided more economically by rental or lease than by purchase.
- b. Equipment may be leased for varying periods of time when in the best interest of the County. Due to the susceptibility of special or technical equipment to obsolescence, it may be to the County's advantage for the vendor to lease the equipment to the County and to provide maintenance.

8. Formal Purchase Report to County Council

- a. Pursuant to Code Sec. 4.103(v), the Purchasing Agent shall submit to the County Council an annual report of all purchases awarded through formal bidding procedures. The report for the period January through June may be included in the annual report, and the report for the period July through December shall be submitted no later than March 30 of the following year.
- b. [[Pursuant to Code Sec. 4.103(w), a]]A listing of all change orders shall be required annually at the end of each fiscal year and may be included in the annual report.

9. Waiver of Formal Competitive Bidding

Pursuant to Code Sec.4.106(E), waiver of the formalities in competitive bidding or waiver of the formal competitive bidding requirements must be accompanied by a written justification approved by the department head or designee explaining why the waiver would be in the best interests of the County.

10. Public Access to Records

Purchasing documents that are open to inspection pursuant to Title 4 of the General Provisions Article of the Annotated Code of Maryland are subject to the following:

- a. Proposals submitted in response to requests for proposals and other specialized procurement methods shall be open for public inspection as provided by law.
- b. Other documents, including Invitations to Bid, shall be available for public inspection upon written request, pursuant to the Public Information Act, during normal business hours by appointment. A purchasing employee shall be present during the review;
- c. Copies of appropriate records are available to the public subject to a copying charge as set by the County Council.

11. Protests

Bidders may deliver a written protest to the Office of [[Purchasing]] PROCUREMENT AND CONTRACT ADMINISTRATION within ten days of issuance of award notification. The [[Purchasing]] Administrator OF THE OFFICE OF PROCUREMENT AND CONTRACT ADMINISTRATION reviews the protested decision, examines any additional information provided by the bidder and responds to the bidder within ten days of receipt of the protest.

12. Public Notice for Formal Solicitations

- a. Public notice includes a general description of the supplies or services to be purchased or sold, the source of the solicitation package and the date, time and place of bid opening.
- b. Public notice may, as determined by the [[Purchasing]] Administrator OF THE OFFICE OF PROCUREMENT AND CONTRACT ADMINISTRATION, include any means reasonably determined to notify the public and promote competition such as the Internet, and other forms of advertising media.

13. Purchasing Manual Distribution

The Office of [[Purchasing]] PROCUREMENT AND CONTRACT ADMINISTRATION maintains the Purchasing Manual and provides the manual to user departments.

14. Electronic Signatures

- a. The Office of [[Purchasing]] PROCUREMENT AND CONTRACT ADMINISTRATION may conduct procurements, including the solicitation, bidding, award, execution, and administration of a contract by electronic means. (Reference Code Sec. 4.124)
- b. Bidding on a solicitation by electronic means shall constitute consent by



the bidder to conduct by electronic means all elements of the procurement that the Office of [[Purchasing]]PROCUREMENT AND CONTRACT ADMINISTRATION agrees to conduct by electronic means.

c. Definitions:

- (1) “Electronic” means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities. (From Section 21-101 (F) of the Commercial Law Article, Maryland Annotated Code, State Procurement Regulations, COMAR 21.03.05.02)
- (2) “Signature” means a manual or electronic identifier or the electronic result of an authentication technique, attached to or logically associated with a record that is intended by the person using it to have the same force and effect as a manual signature.
- (3) “Written” or “In Writing” means the product of any method of forming characters on paper, other materials, or viewable screens, which can be read, retrieved, and reproduced, including information that is electronically transmitted and stored.

15. Insurance

The procurement of insurance policies, whereby an insurance company is required to protect the County against loss, damage or liability arising from an unknown or contingent incident, is exempt from competitive bidding. An insurance policy is not a contract for goods or services, but is, rather, an indemnification contract.

16. Retirement Plans

Procurement of services and supplies related to management of the Howard County Police and Fire Employees Retirement Plan and the Howard County Retirement Plan shall be exempt from the bidding requirements of the Howard County Purchasing Code.

## PROCEDURES

### Section A    *Requesting Supplies or Services*

User agencies request supplies or services by using the appropriate form listed below:

1.     Shopping Cart
  - a.     Definition

An electronic form completed by user agencies for requesting supplies or services.
  - b.     Procedure
    - (1)    User agency initiates a Shopping Cart using SAP.
    - (2)    Internal approvals such as Finance and Technology take place electronically in SAP.
    - (3)    Office of [[Purchasing]]PROCUREMENT AND CONTRACT ADMINISTRATION receives Shopping Carts and reviews for completeness. The Office [[of Purchasing]] is responsible for questioning any item(s) in Shopping Carts that may be unnecessary or unreasonable. If an item is questioned, the [[Purchasing]] Administrator OF THE OFFICE OF PROCUREMENT AND CONTRACT ADMINISTRATION may require the user agency to substantiate the validity of the Shopping Cart in writing.
    - (4)    The Office of [[Purchasing]]PROCUREMENT AND CONTRACT ADMINISTRATION reviews the request to determine if surplus property or requirements contract may be utilized to fulfill the request. If so, the requisition is returned to the user agency with that notation.
    - (5)    The Shopping Cart is assigned to a Buyer who determines the method of procurement.
    - (6)    After completion of the bidding process, the Buyer, with input from the user agency when necessary, analyzes the bid results and determines the successful bidder.
    - (7)    The Office of [[Purchasing]]PROCUREMENT AND CONTRACT ADMINISTRATION enters the prices, terms of payment, FOB point, delivery date, and successful bidder.
    - (8)    The Office of [[Purchasing]]PROCUREMENT AND CONTRACT ADMINISTRATION issues a Purchase Order.

- (9) The [[Purchasing]] Administrator OF THE OFFICE OF PROCUREMENT AND CONTRACT ADMINISTRATION or designee authorizes/signs the Purchase Order.
- (10) The Office of [[Purchasing]]PROCUREMENT AND CONTRACT ADMINISTRATION distributes the Purchase Order.
- (11) After completion of the bidding process, for those transactions totaling less than the formal bid threshold, the buyer may place an order utilizing their PDQ card as payment. All recordkeeping shall be in accordance with the Office of [[Purchasing]]PROCUREMENT AND CONTRACT ADMINISTRATION Procurement Card Program Policy and Procedure.

2. Change Order Form

- a. Definition: A form used to make changes to an existing Purchase Order.
- b. Procedure  
  
User agency completes the form and forwards to the Office of [[Purchasing]] PROCUREMENT AND CONTRACT ADMINISTRATION.
- c. Policy: Change orders that increase the original amount of the Purchase Order by 15% or more must be accompanied by a justification further explaining the request and may not be executed until the following conditions have been met:
  - (1) Cost Analysis: A technical appraisal of the estimated costs of additional labor and materials has been performed;
  - (2) Notification: A copy of the change order in which the price has been increased and written justification supporting the need for the change has been approved by the Chief Administrative Officer.
- d. Limitation on Use of Change Order Requisitions
  - (1) A change order is needed to pay overruns or underruns when deemed necessary by the Office of [[Purchasing]]PROCUREMENT AND CONTRACT ADMINISTRATION.
  - (2) Except when the F.O.B. point is Destination, a change order requisition is not needed to pay reasonable freight charges.
  - (3) Change order requests that:
    - Increase a Purchase Order charged to an operating budget may only be submitted during the fiscal year of the original Purchase Order.
    - Increase a Purchase Order charged to a capital budget may be submitted at any time.

- Decrease a Purchase Order, whether operating or capital, may be submitted at any time.
- (4) The County may change or cancel a Purchase Order at any time as long as the change or cancellation is within the legal boundaries of contract law.
  - (5) Changes or cancellations may be submitted after visible physical work has been performed or services rendered.
  - (6) A vendor may not make the change or cancellation until receipt of the change order form.
  - (7) A vendor may request the County to initiate a change order.

3. Authorized Approvers

Each agency head shall designate individuals in the agency who are authorized to approve purchase documents. These authorizations are maintained in SAP.

## **Section B    *Specifications***

### 1.     Definition

Specifications are a description of the physical characteristics, functional characteristics or the nature of supplies or services.

### 2.     Purpose

- a.     To fulfill the requirements of the user agency
- b.     To assure maximum practicable competition
- c.     To obtain the best performance at the lowest possible price.

### 3.     Preparation of Specifications

- a.     User agencies prepare draft specifications. User agencies shall send draft specifications as part of (or as an attachment to) Shopping Carts in sufficient time for the Office of [[Purchasing]]PROCUREMENT AND CONTRACT ADMINISTRATION to review and approve prior to the bidding process.
- b.     In the case of specifications for capital projects, the Director of Public Works, or the Director's designee, determines whether or not the specifications shall be prepared within the Department of Public Works or by an architect/engineering consultant.

### 4.     Form of Specification

Specifications shall be clear and accurate descriptions with sufficient detail to provide for suitable purchases and may include: functions and standards; characteristics; preparation for shipment; delivery point; quality assurance and acceptance tests (where applicable); and warranties, guarantees, and service support requirements.

### 5.     Review and Approval

The Office of [[Purchasing]]PROCUREMENT AND CONTRACT ADMINISTRATION will review submitted specifications to ensure that all necessary information is included and that there are no requirements that unnecessarily restrict or limit competition. The Office [[of Purchasing]] is responsible for final approval of the specifications.

**Section C    *Formal Competitive Bidding – Invitation for Bids (IFB) Non-Capital Projects*  
*(Reference Code Sec. 4.107)***

1.    When Used:    Formal competitive bidding is the method used to purchase supplies or services involving the expenditure of \$30,000 or more or to sell surplus property with an estimated value of \$30,000 or more. Solicitations are publicly advertised and awarded to the lowest responsive and responsible bidder.

2.    Multi-Step Purchasing Methods

Multi-step purchasing methods may be used in formal competitive bidding when it is in the best interest of the County. The multi-step procedure must be disclosed at the beginning of the solicitation process. Potential bidders are told the number of steps that will be used in the solicitation.

a.    Invitation for Bids

The multi-step method (usually 2 steps) may be used when it is not practical to initially prepare a definitive purchase description that will be suitable to permit an award based on price. Samples may be required and are permissible in this solicitation approach.

- (1)    Under this method, technical proposals are received and opened on the date and time indicated. Only the names of the responding firms are identified and tabulated.
- (2)    The technical proposals received are evaluated against pre-established criteria that were stated in the solicitation. Purchasing, the user agency and other knowledgeable persons may conduct the evaluation. The County may, as necessary, request more refined technical information from the accepted firms. The technical proposals received from unacceptable firms are returned immediately following the evaluation determination.
- (3)    Bidders who submitted technically acceptable bids are invited to submit competitive sealed price bids. Price bids are received at the predetermined date and time when they are opened and read. Under the multi-step method for Invitation for Bid, price negotiation is not permitted.

b.    Request for Information

A 3-step method is a method under which, in addition to the technical and price proposals, a Request for Information (RFI) may be required and is an acceptable multi-step procurement method.

In all multi-step procurements, after technical proposals or samples or both have been evaluated, prices shall be solicited only from those vendors whose technical offers or samples or both have been accepted.

In all other respects, multi-step sealed purchasing methods shall be treated in the same way as other purchasing methods.

3. Solicitation Package

- a. Upon receipt of a purchase requisition and completion of proper specifications, the Office of [[Purchasing]]PROCUREMENT AND CONTRACT ADMINISTRATION prepares the solicitation package.
- b. The solicitation package may include, but not be limited to, terms and conditions, general instructions, specifications, a sample agreement form when the procurement is services and price page.
  - (1) Pursuant to Code Sec. 4.118(b)(8), all formal contracts shall be accompanied by an Affidavit covering non-collusion, disclosure of interest, anti-bribery, and non-discrimination in employment practices.
  - (2) Equal Business Opportunity participation is required when the bid is estimated at \$50,000 or more.

4. Place the Public Notice.

5. Submission of Bids

- a. Bidders shall return all County bid forms in the quantity specified and any exceptions the bidder may take to the Office of [[Purchasing]]PROCUREMENT AND CONTRACT ADMINISTRATION prior to the date and time of bid opening.
- b. Bidders shall submit any required bid deposit with the bid.
- c. Bids shall be submitted in a sealed envelope/carton marked with the name and number.
- d. Bidders may withdraw or change bids and resubmit them before bid opening time. The bidder may make corrections on the original bid by initialing the change and resealing the bid.
- e. The Office of [[Purchasing]]PROCUREMENT AND CONTRACT ADMINISTRATION shall retain bids in a secure place prior to opening.

- f. Any exceptions or objections to the technical specifications of the solicitation documents shall be in writing and shall be submitted to the Office of [[Purchasing]] PROCUREMENT AND CONTRACT ADMINISTRATION no later than 5 days prior to the bid opening date. The Office [[of Purchasing]] shall review each such exception or objection to determine whether an addendum to the specifications is required.
6. Cancellation of IFB Before Opening
- a. If it becomes necessary to correct an inadequate, deficient or ambiguous invitation for bids, then the invitation shall be canceled and a new invitation shall be issued.
  - b. When a solicitation is canceled, bids that have been received shall be returned unopened to the bidders with a notice of cancellation.
  - c. Notice of cancellation shall also be publicly posted and shall explain why the solicitation is being canceled.
7. Bid Opening
- a. The bid opening shall be held on the date and at the time and place announced in the bid or the date, time and place announced in any addenda.
  - b. The [[Purchasing]] Administrator OF THE OFFICE OF PROCUREMENT AND CONTRACT ADMINISTRATION, or designee, shall determine when the time of official bid opening has been reached.
  - c. After bid opening time, all bids are considered the property of the County and will not be released. Bidders may not withdraw bids after bid opening time.
  - d. The [[Purchasing]] Administrator OF THE OFFICE OF PROCUREMENT AND CONTRACT ADMINISTRATION, or designee, shall publicly open the bids at the specified time, date and place with at least one other County employee present.
  - e. The [[Purchasing]] Administrator OF THE OFFICE OF PROCUREMENT AND CONTRACT ADMINISTRATION, or designee, shall reject all bids received after the scheduled bid opening.
  - f. The Office of [[Purchasing]] PROCUREMENT AND CONTRACT ADMINISTRATION may post a bid summary on the bulletin board after the bid opening.
  - g. The buyer of record will review all bids. The buyer when necessary may request review of bids by the user agency.
  - h. A mistake that is discovered after the bid opening may not be corrected unless the mistake is an obvious and apparent error on the face of the bid



such as a typographical error, transposition error or an arithmetical error.

- i. In situations where the [[Purchasing]] Administrator OF THE OFFICE OF PROCUREMENT AND CONTRACT ADMINISTRATION determines that the low bid submitted is so low due to a demonstrable mistake other than a mistake in judgment that the bidder may incur severe loss, and that a potential unconscionable contract may be formed, the bidder may be allowed to withdraw the bid subject to forfeiture of the bid deposit, if any.

#### 8. Cancellation of IFB After Opening

When it is determined before an award, but after opening, that the invitation for bids contains inadequate, deficient or ambiguous specifications; does not provide for consideration of all factors; or the scope of the work needs to be modified; then the bid shall be canceled. Each bidder shall be notified of the cancellation and the notice shall state the reason for such action.

#### 9. Evaluation of Bids

- a. The Office of [[Purchasing]]PROCUREMENT AND CONTRACT ADMINISTRATION evaluates each bid in terms of criteria stated in the solicitation to determine the lowest responsive, responsible bidder (on purchases) and highest responsive, responsible bidder (on sales).
- b. The [[Purchasing]] Administrator OF THE OFFICE OF PROCUREMENT AND CONTRACT ADMINISTRATION has the authority to either accept or reject bids, or any part of the bids when, in the Administrator's judgment, when it is in the public's best interest. If all bids are rejected, the supplies or services may be re-bid.
- c. If only one bid is received for procurement valued at less than \$1,000,000 and there is not sufficient time to re-solicit, the Office of [[Purchasing]] PROCUREMENT AND CONTRACT ADMINISTRATION may negotiate a final offer with the supplier.
- d. Any procurement exceeding \$1,000,000 that receives less than three responsive bids requires approval by the Contract Review Committee.
- e. If the required number of responsive bids is not received, the supplies or services may be re-bid, after the Office of [[Purchasing]]PROCUREMENT AND CONTRACT ADMINISTRATION coordinates with the user agency on specifications, etc. to encourage greater response.
- f. If no responsive bids are received on a procurement valued at less than \$100,000, and time does not permit a re-bid, the Office of [[Purchasing]] PROCUREMENT AND CONTRACT ADMINISTRATION may engage in competitive negotiations with any potential vendor or vendors and award a contract when negotiation is completed. The same procedure may be used for procurements valued in excess of \$100,000; however, approval of the Contract Review Committee is required prior to award.

10. Award

- a. The Office of [[Purchasing]]PROCUREMENT AND CONTRACT ADMINISTRATION recommends the award of the lowest responsive, responsible bidder for purchases and the highest responsive, responsible bidder for sales.
- b. If there is a tie bid and quality and service are equal, the award goes to the local bidder. If there is no local bidder, or more than one local bidder, the Office of [[Purchasing]]PROCUREMENT AND CONTRACT ADMINISTRATION draws lots to determine the award.
- c. The Office of [[Purchasing]]PROCUREMENT AND CONTRACT ADMINISTRATION recommends multiple awards for the same goods or services if they cannot be provided, in the fashion and time required, from one vendor.
- d. Bid deposits are returned to all unsuccessful bidders within 10 days following the award notification or within 65 days following the public opening of the bid, whichever first occurs.
- e. If the bid is not awarded to the lowest bidder (for purchases) or the highest bidder (for sales), the Office of [[Purchasing]]PROCUREMENT AND CONTRACT ADMINISTRATION secures well-documented and fully substantiated written reasons for this decision.
- f. If the successful bidder fails to execute a contract within 10 working days of receiving the notification of award, the bid deposit may be forfeited as liquidated damages for failure to execute the contract, and not as a penalty.
- g. The Office of [[Purchasing]]PROCUREMENT AND CONTRACT ADMINISTRATION issues an award notification to the successful bidder and similarly notifies all unsuccessful bidders. A contract or Purchase Order may be issued with the award notification if a performance bond or insurance certificate is not required of the bidder. If appropriate, a Procurement Card (PDQ Card) may be used in lieu of a Purchase Order.
- h. The contract or Purchase Order is either not printed or held until any performance bond or insurance certificate is received from the bidder.
- i. The County reserves the right to cancel the award of any contract at any time before the contract is executed by all parties, without any liability against the County.

11. Special Services Procurement Method

- a. When Used: To purchase services where the nature of the work prevents the establishment of a firm price prior to the commencement of work. Examples of special service work include, but are not limited to, motor

repairs and plumbing repairs where the concealed nature of the work prohibits establishing a firm price.

b. Procedure

- (1) The Office of [[Purchasing]]PROCUREMENT AND CONTRACT ADMINISTRATION shall make every effort to establish requirements contracts so that services can be contracted in advance at pre-arranged prices.
- (2) The user agency initiates a Shopping Cart and sends it to the Office of [[Purchasing]]PROCUREMENT AND CONTRACT ADMINISTRATION.
- (3) The buyer contacts a known responsive, responsible source capable of handling such services, either: (i) an original equipment manufacturer authorized repair service (the preferred source), or (ii) a qualified vendor based on past performance, reputation, and recommendations.
- (4) The buyer obtains the best estimate possible given the concealed nature of the work.
- (5) The buyer authorizes the work by issuing a Purchase Order marked "Special Services" as the procurement method.

**Section D Formal Competitive Bidding – Invitation for Bids (IFB)  
Capital Projects  
(Reference Code Sec.4.126)**

1. When Used: Formal competitive bidding is the method used to purchase supplies or services involving the expenditure of \$30,000 or more for capital projects. Solicitations are publicly advertised and awarded to the lowest responsive and responsible bidder.
2. Specifications
  - a. The Director of Public Works, or the Director’s designee, determines whether a project is to be constructed by contract or by County employees.
  - b. If the project is to be constructed by contract, the Director of Public Works determines whether the plans and specifications are to be prepared by the Bureau of Engineering or whether they are to be prepared by an architectural/engineering consultant firm. If the preparation is to be done by a consultant firm, the procurement of the consultant's services shall be accomplished through procedures outlined in this manual for Professional Services (i.e. Architects and Engineers), Section J.
  - c. The Department of Public Works (DPW) initiates a Shopping Cart in SAP.
  - d. DPW prepares plans and specifications and a solicitation package.
  - e. Contracting Options:
    - (1) Firm Fixed Price Plus Incentive/Disincentive Contracts: Firm fixed price plus incentive/disincentive contracts may be used when the Purchasing Agent determines use of such a contract will result in a savings for the County. Contractors may be offered an incentive to complete a project sooner than projected or charged a disincentive per day for every day the contract schedule is not met.
    - (2) Design/Build Contracting: May be used when deemed beneficial for capital construction projects.
3. Solicitation Package

The solicitation package may include, but not be limited to, terms and conditions, general instructions, specifications, construction plans, drawings, price pages and sample contract form.

- a. Pursuant to Code Sec. 4.118(b)(8), all formal contracts shall be accompanied by an Affidavit covering non-collusion, disclosure of interest, anti-bribery, and non-discrimination in employment practices.
- b. Equal Business Opportunity participation is required when the bid is estimated at \$50,000 or more.

- c. Performance and Payment Bonds for construction contracts of \$50,000 or less may be required at the County's discretion.
- d. Bid Bonds are required when construction contracts are estimated to equal or exceed \$50,000.
  - (1) The bid deposit shall not exceed 2% of the bid amount for contracts with an estimated value between \$50,000 and \$100,000.
  - (2) The bid deposit shall not exceed 5% of the bid amount for contracts estimated to exceed \$100,000.
- e. In accordance with state law and for the protection of the County, performance bonds shall be required in conjunction with a bid bond in an amount adequate to cover the completion of work in the event of default.
- f. A payment bond shall be required for the protection of all persons supplying labor and materials in the execution of the work provided for in the contract. The payment bond shall be for 100% of the total amount payable by the terms of the contract. Any contractor receiving a progress or final payment under a contract subject to this subsection shall certify in writing that the contractor has made payment from proceeds of prior payments, and that the contractor will make timely payments from the proceeds of the progress or final payment then due to the subcontractors and suppliers in accordance with the contractual arrangements between them. No contractor will be paid a second or subsequent progress payment or final payment until such written certification is presented.
- g. Upon written request, the Office of [[Purchasing]]PROCUREMENT AND CONTRACT ADMINISTRATION shall release 50% of the security interest on the contract when 70% of the contractor's obligations have been completed. Before releasing the security, the [[Purchasing]] Administrator OF THE OFFICE OF PROCUREMENT AND CONTRACT ADMINISTRATION shall consider whether the unreleased portion of the security is sufficient to cover the remaining contract obligations, including subcontractors. The contractor shall furnish an affidavit agreeing that the partial release of the security does not relieve the contractor of his obligations under the contract. A contractor may be prohibited from utilizing the procedures in this subparagraph if any of the following causes exist:
  - Failure to fulfill the obligations under any bonds;

- Any false or misleading statements or representation on a bond; or
- Any other cause of a compelling nature that may warrant exclusion.

4. Place the Public Notice.

5. Cancellation of IFB Before Opening

If it becomes necessary to correct an inadequate, deficient or ambiguous invitation for bids, then the invitation shall be canceled and a new invitation shall be issued.

- a. When a solicitation is canceled, bids that have been received shall be returned unopened to the bidders with a notice of cancellation.
- b. Notice of cancellation shall also be publicly posted and shall explain why the solicitation is being canceled.

6. Submission of Bids

- a. Bidders shall submit one copy (or more when specified) of the bid on the County's forms to the Office of [[Purchasing]]PROCUREMENT AND CONTRACT ADMINISTRATION prior to the date and time of bid opening.
- b. Bidders shall submit any required bid deposit along with the bid.
- c. Bids shall be submitted in a sealed envelope/carton marked with the solicitation name and number.
- d. Bidders may withdraw or change their bids and resubmit them before bid opening time. The bidder may make corrections on the original bid, by initialing the change and resealing the bid.
- e. The Office of [[Purchasing]]PROCUREMENT AND CONTRACT ADMINISTRATION shall retain bids in a secure place prior to opening.
- f. Any exceptions or objections to the technical specifications of the solicitation documents shall be in writing and shall be submitted to the [[Purchasing]] Administrator OF THE OFFICE OF PROCUREMENT AND CONTRACT ADMINISTRATION no later than 5 days prior to the bid opening date. The Office of [[Purchasing]]PROCUREMENT AND CONTRACT ADMINISTRATION shall review each such exception or objection to determine whether an addendum to the specifications is required.

7. Bid Opening

- a. The bid opening shall be held on the date and at the time and place announced in the bid or the date, time, and place announced in any addenda.

- b. The determination that the time of official bid opening has been reached shall be solely that of the [[Purchasing]] Administrator OF THE OFFICE OF PROCUREMENT AND CONTRACT ADMINISTRATION, or designee.
- c. After bid opening time, all bids are considered the property of the County and will not be released. Bidders may not withdraw bids after bid opening time.
- d. The [[Purchasing]] Administrator OF THE OFFICE OF PROCUREMENT AND CONTRACT ADMINISTRATION, or designee, shall publicly open the bids at the specified time, date and place with at least one other County employee present.
- e. The [[Purchasing]] Administrator OF THE OFFICE OF PROCUREMENT AND CONTRACT ADMINISTRATION, or designee, shall reject all bids received after the scheduled bid opening.
- f. The Office of [[Purchasing]]PROCUREMENT AND CONTRACT ADMINISTRATION may post a bid summary on the bulletin board after the bid opening.
- g. The Office of [[Purchasing]]PROCUREMENT AND CONTRACT ADMINISTRATION sends copies of the bids and a copy of the bid summary to the Department of Public Works for review and award recommendation.
- h. Individual bidders may inspect the bids pursuant to the Public Information Act following the bid opening, provided this does not interfere with subsequent bid openings. A bidder may arrange an appointment for this purpose.
- i. A mistake that is discovered after the bid opening may not be corrected unless the mistake is an obvious and apparent error on the face of the bid such as a typographical error, transposition error or an arithmetical error.
- j. In situations where the [[Purchasing]] Administrator OF THE OFFICE OF PROCUREMENT AND CONTRACT ADMINISTRATION determines that the low bid submitted is so low due to a demonstrable mistake other than a mistake in judgment that the bidder may incur severe loss if awarded the bid, and that a potential unconscionable contract would be made, the bidder may be allowed to withdraw the bid, subject to forfeiture of the bid deposit.

8. Cancellation of IFB After Opening.

When it is determined before an award but after opening that the invitation for bids contains inadequate, deficient or ambiguous specifications; does not provide for consideration of all factors; or the scope of the work needs to be modified; then the bid shall be canceled. Each bidder shall be notified of the cancellation and the notice shall state the reason for such action.

9. Evaluation of Bids

- a. The Department of Public Works evaluates each bid in terms of criteria stated in the IFB to determine the lowest responsive, responsible bidder.
- b. The [[Purchasing]] Administrator OF THE OFFICE OF PROCUREMENT AND CONTRACT ADMINISTRATION has the authority to either accept or reject bids, or any part of the bids when, in the Administrator's judgment it is in the public's best interest. If all bids are rejected, the supplies or services may be re-bid.
- c. If only one bid is received for a project valued at less than \$1,000,000 and there is not sufficient time to re-solicit, the Office of [[Purchasing]] PROCUREMENT AND CONTRACT ADMINISTRATION may negotiate a final offer with the vendor.
- d. Any project exceeding \$1,000,000 that receives fewer than three responsive bids requires approval by the Contract Review Committee.
- e. If the required number of responsive bids is not received, the supplies or services may be re-bid after the Department of Public Works adjusts the specifications, etc. to encourage greater response.
- f. If no responsive bids are received on procurement valued at less than \$100,000, and time does not permit a re-bid, the Office of [[Purchasing]] PROCUREMENT AND CONTRACT ADMINISTRATION may engage in competitive negotiations with any potential vendor or vendors and award a contract when negotiation is completed. The same procedure may be used for procurements valued in excess of \$100,000; however, approval of the Contract Review Committee is required prior to award.

10. Award

- a. The Department of Public Works recommends the lowest responsive, responsible bidder.
- b. The Office of [[Purchasing]]PROCUREMENT AND CONTRACT ADMINISTRATION prepares the award notification. The Office [[of Purchasing]] shall return all bid deposits to all unsuccessful bidders within 10 days following the award notification or within 65 days following the public opening of the bids, whichever first occurs.



- c. If the successful bidder fails to execute a contract within 10 working days of receiving the notification of award, the bid deposit may be forfeited as liquidated damages for failure to execute the contract, and not as a penalty.
- d. Multiple awards for the same goods or services are permitted if one vendor cannot provide them adequately. This method of award must be disclosed in the solicitation.
- e. All pertinent paperwork, including contracts, is also forwarded to the Office of [[Purchasing]]PROCUREMENT AND CONTRACT ADMINISTRATION.
- f. The Office of [[Purchasing]]PROCUREMENT AND CONTRACT ADMINISTRATION secures signatures and related documents from the contractor and routes them for signature.
- g. Upon receipt of the executed Agreement, the Office of [[Purchasing]]PROCUREMENT AND CONTRACT ADMINISTRATION issues a contract or Purchase Order.
- h. The County reserves the right to cancel the award of any contract at any time before all parties execute the contract, without any liability against the County.

**Section E    *Formal Competitive Sealed Proposals – Request for Proposals (RFP)*  
*(Reference Code Sec. 4.108)***

1.     When Used

- a.     To purchase complex or highly technical supplies or services including, but not limited to, information technology services and software applications, financial services, risk management services, employee health benefit insurance, various consulting services, attorney services, physician services, etc., with an estimated value of \$30,000 or more.
- b.     When formal competitive bidding (IFB) is not practical or not advantageous to the County and the County requires a best value determination on factors other than the just the lowest responsive and responsible bidder.
- c.     A request for proposals may be utilized to procure a combination of services and tasks, including but not limited to design, construction, financing, operations and maintenance services and tasks, under a single contract, for both capital and non-capital projects, all at the discretion of the County Purchasing Agent.
- d.     A combination of purchasing methods may be used including, but no limited to, expressions of interest and a request for proposals, for both capital and non-capital projects, all at the discretion of the County Purchasing Agent.

2.     Multi-Step Purchasing Methods

Multi-step purchasing methods may be used in formal competitive sealed proposals. This approach may be used whenever it is in the best interest of the County. The multi-step procedure must be disclosed at the beginning of the solicitation process. Potential bidders are told the number of steps that will be used in the solicitation.

a.     Technical and Cost Proposals Submitted Separately at Different Times

(1)    When Used: The multi-step method (usually 2 steps) under which technical and price proposals are submitted separately at different times may be used when the County wishes to award a contract based on technical expertise and price. Samples may be required and are permissible in this solicitation approach.

(2)    Procedure

- (a)    Under this method, technical proposals are received and opened on the date and time indicated. Only the names of the responding firms are identified and tabulated.
- (b)    The technical proposals received are evaluated against pre-

established criteria that were stated in the solicitation. Purchasing, the user agency or other knowledgeable persons may conduct the evaluation. The technical proposals received from unacceptable firms are returned immediately following the evaluation determination.

- (c) Proposers who submitted technically acceptable proposals are invited to submit competitive sealed price proposals. Price proposals are received at the predetermined date and time when they are publicly opened. Only the respondent's name is read at this time. Negotiation is acceptable in this procurement method and shall be conducted with the assistance of purchasing personnel. The negotiation process may be determined prior to the dissemination of the solicitation.

b. Technical and Cost Proposals Submitted Separately but Simultaneously

- (1) When Used: A multi-step method (usually 2-steps) under which both technical and price proposals are submitted simultaneously in separate sealed envelopes may be used when the County wishes to award a contract based on technical expertise and price. Each envelope must identify whether it is technical or price information.

- (2) Procedure

- (a) Under this method, technical proposals are received and opened on the date and time indicated. Only the names of the responding firms are identified and tabulated.
- (b) The technical proposals received are evaluated against pre-established criteria that were stated in the solicitation. However, the price information may not be opened until the technical evaluation is complete. Purchasing, the user agency or other knowledgeable persons may conduct the evaluation. The firms found unacceptable during the technical evaluation shall not be given further consideration. The County may, as necessary, request more technical information from the accepted firms.
- (c) Price proposals from the technically accepted firms are opened following the technical evaluation. Proposer selection is made based on the evaluation criteria. Negotiation is acceptable in this procurement method and shall be conducted with the assistance of purchasing personnel. The negotiation process may be determined prior to the dissemination of the solicitation.

c. Request for Information (RFI)

- (1) When Used: An RFI may be used when, in addition to the technical and price proposals, information is required relative to the subject matter prior to issuing the Request for Proposal
- (2) Procedure
  - (a) In all multi-step procurements, after technical proposals or samples or both have been evaluated, prices shall be solicited only from those vendors whose technical offers or samples, or both, have been accepted.
  - (b) In all other respects, multi-step purchasing methods shall be treated in the same way as other purchasing methods.

3. Solicitation Package and Preparation

- a. Upon receipt of a Shopping Cart and specifications, the Office of [[Purchasing]]PROCUREMENT AND CONTRACT ADMINISTRATION prepares the solicitation package.
- b. The solicitation package may include, but not be limited to table of contents, terms and conditions, general instructions, specifications, sample agreement form and price page.
- c. Pursuant to Code Sec. 4.118(b)(8), all formal contracts shall be accompanied by an Affidavit covering non-collusion, disclosure of interest, anti-bribery, and non-discrimination in employment practices.
- d. Equal Business Opportunity participation is required when the proposal is estimated at \$50,000 or more.

4. Place the Public Notice.

5. Cancellation of RFP Before Opening

- a. The County Purchasing Agent shall cancel a solicitation when
  - (1) The solicitation specifications are inadequate, ambiguous or deficient
  - (2) The request for proposal does not adequately address or provide for consideration of all factors;
  - (3) The scope of the work needs to be modified; or
  - (4) When it is in the best interest of the County.
- b. If it becomes necessary to correct an inadequate, deficient or ambiguous solicitation, then the solicitation shall be canceled and a new solicitation shall be issued.

- (1) When a solicitation is canceled, proposals that have been received shall be returned unopened to the proposers with a notice of cancellation.
- (2) Notice of cancellation shall be publicly posted. The notice shall explain why the solicitation is being canceled.

6. Submission of Proposals

- a. Proposers shall provide the County with one original and as many copies of the proposal as specified in the solicitation package and any exceptions the proposer may take to the Office of [[Purchasing]]PROCUREMENT AND CONTRACT ADMINISTRATION prior to the date and time of proposal opening.
- b. Each proposal shall be submitted in a sealed envelope/carton marked with the solicitation name and number.
- c. Proposers may withdraw or change proposals and resubmit them before proposal opening time. The proposer may make corrections on the original proposal by initialing the change and resealing the proposal.
- d. The Office of [[Purchasing]]PROCUREMENT AND CONTRACT ADMINISTRATION shall retain proposals in a secure place prior to opening.
- e. Any exceptions or objections to the technical specifications of the solicitation documents shall be in writing and shall be submitted to the Office of [[Purchasing]]PROCUREMENT AND CONTRACT ADMINISTRATION no later than 5 days prior to the proposal opening date. The [[Purchasing]] Administrator OF THE OFFICE OF PROCUREMENT AND CONTRACT ADMINISTRATION shall review each such exception or objection to determine whether an addendum to the specification is required.

7. Proposal Opening

- a. The proposal opening shall be held on the date and at the time and place announced in the proposal or the date, time, and place announced in any addenda.
- b. The determination that the time of official bid opening has been reached shall be solely that of the [[Purchasing]] Administrator OF THE OFFICE OF PROCUREMENT AND CONTRACT ADMINISTRATION, or designee.
- c. After proposal opening time, all proposals are considered the property of the County and will not be released. Proposers may not withdraw proposals after proposal opening time.
- d. The [[Purchasing]] Administrator OF THE OFFICE OF PROCUREMENT AND CONTRACT ADMINISTRATION, or a designee, shall publicly open the proposals at the specified time, date and place with at least one other County employee present. Only the technical proposals are opened; price

proposals shall remain sealed. A tabulation of proposals shall be prepared showing the names of proposers who have submitted and shall be open to the public.

- e. The [[Purchasing]] Administrator OF THE OFFICE OF PROCUREMENT AND CONTRACT ADMINISTRATION shall reject all proposals received after the scheduled proposal opening.
- f. The Office of [[Purchasing]] PROCUREMENT AND CONTRACT ADMINISTRATION may post a proposal summary on the bulletin board after the proposal opening.
- g. The Office of [[Purchasing]]PROCUREMENT AND CONTRACT ADMINISTRATION keeps the original proposal and forwards the remaining copies to the evaluation committee for evaluation.
- h. A mistake that is discovered after the proposal opening may not be corrected unless the mistake is an obvious and apparent error on the face of the proposal such as a typographical error, transposition error or an arithmetical error.
- i. In situations where the [[Purchasing]] Administrator OF THE OFFICE OF PROCUREMENT AND CONTRACT ADMINISTRATION determines that the low proposal submitted is so low due to a demonstrable mistake other than a mistake in judgment that the proposer may incur severe loss, and that a potential unconscionable contract may be formed, the proposer may be allowed to withdraw the proposal subject to forfeiture of the bid deposit, if any.

8. Cancellation of RFP After Opening

- a. When it is determined before an award, but after opening, that the invitation for bids contains inadequate, deficient or ambiguous specifications; does not provide for consideration of all factors; or the scope of the work needs to be modified; then the bid shall be canceled. Each bidder shall be notified of the cancellation and the notice shall state the reason for such action.

9. Evaluation of Proposals

- a. All proposals are reviewed based on the evaluation criteria including price. Numerical rating systems may be used but are not required. Only the criteria specified in the request for proposal will be used for evaluation.
- b. A short list of proposals may be established based on the numerical rating system. The short-listed vendors will move on to the discussion phase.
- c. Proposers not making the short list shall be notified immediately that their proposals are no longer being considered.

- d. Discussions may be conducted with proposers who make the short list. Discussions may be held for purposes of clarification to assure full understanding of and responsiveness to the solicitation requirements. Proposers shall be afforded fair and equal treatment with respect to any opportunity for discussion of proposals and discussion may be permitted after submission and before award for the purpose of obtaining best and final offers. In conducting discussion there shall be no disclosure of any information derived from proposals submitted by competing proposers.
- e. Except as provided below, the [[Purchasing]] Administrator OF THE OFFICE OF PROCUREMENT AND CONTRACT ADMINISTRATION has the authority to either accept or reject all proposals, or any part of the proposals when, in the [[Purchasing]] Administrator's judgment, it is in the best public interest. If all proposals are rejected, the supplies or services may be re-solicited.
- f. Any procurement exceeding \$1,000,000 that receives less than three responsive bids requires approval by the Contract Review Committee. (Reference Code Sec. 4.106A)
- g. If the required number of responsive bids is not received, the supplies or services may be re-solicited, after the Office of [[Purchasing]] PROCUREMENT AND CONTRACT ADMINISTRATION coordinates with the user agency on requirements, etc. to encourage greater response.
- h. If no responsive bids are received on procurement valued at less than \$100,000, and time does not permit a re-bid, the Office of [[Purchasing]] PROCUREMENT AND CONTRACT ADMINISTRATION may engage in competitive negotiations with any potential vendor or vendors and award a contract when negotiation is completed. The same procedure may be used for procurements valued in excess of \$100,000; however, approval of the Contract Review Committee is required prior to award.

10. Award

- a. The evaluation committee recommends the successful proposer based on the evaluation criteria. The recommendation shall have the concurrence of the Office of [[Purchasing]]PROCUREMENT AND CONTRACT ADMINISTRATION. Award shall be made to the proposer whose offer best meets the objectives set forth in the request for proposal and represents the best value.
- b. If there is a tie proposal and quality and service are equal, the award goes to the local proposer. If there is no local proposer, or more than one local proposer, the [[Purchasing]] Administrator OF THE OFFICE OF PROCUREMENT AND CONTRACT ADMINISTRATION draws lots to determine the award.
- c. Multiple awards for the same goods or services are permitted if one vendor cannot provide them adequately. This method of award must be disclosed in the solicitation.

- d. Bid deposits are returned, when applicable, to all unsuccessful proposers, within 10 days following the award notification or within 65 days following the public opening of the proposal, whichever occurs first.
- e. If the successful proposer fails to execute a contract within 10 working days of receiving the notification of award, the County Purchasing Agent may take any bid deposit and consider it as liquidated damages for failure to execute the contract, and not as a penalty.
- f. The Office of [[Purchasing]]PROCUREMENT AND CONTRACT ADMINISTRATION notifies the remaining unsuccessful proposers and issues an award notification to the successful proposer(s).
- g. The contract or Purchase Order is either not printed or held until any agreement, performance bond or insurance certificate is received from the proposer.
- h. The County reserves the right to cancel the award of any contract at any time before the contract is executed by all parties, without any liability against the County.



**Section F**    ***Informal Bidding***  
***(Reference Code Sec. 4.109)***

1.    When Used: Informal bidding is the method used to purchase supplies or services with an estimated value of less than \$30,000; or to sell surplus supplies with an estimated value of less than \$30,000.
  - a.    Informal Quotes (Requests for Quotations (Email, Fax, Telephone), eMaryland Marketplace (electronic), etc.)
    - (1)    When Used: Informal quotations are used to purchase supplies or services when the estimated value of the purchase is \$10,001 and less than \$30,000, or to sell surplus supplies when the estimated value of the sale is \$10,001 and less than \$30,000.
    - (2)    Procedure
      - (a)    The user agency submits a Shopping Cart.
      - (b)    Based upon the information received, the Office of [[Purchasing]]PROCUREMENT AND CONTRACT ADMINISTRATION obtains at least three quotes from potential vendors.
      - (c)    The buyer records all pertinent quote information and makes an award to the lowest responsive, responsible bidder.
    - (3)    Delegated Authority Procedure:
      - (a)    Upon obtaining written delegated authority from the [[Purchasing]] Administrator OF THE OFFICE OF PROCUREMENT AND CONTRACT ADMINISTRATION, using agencies may expedite procurements by electing to secure written quotes and forward requisitions accompanied by quotations to the Office of [[Purchasing]]PROCUREMENT AND CONTRACT ADMINISTRATION for procurement review and issuance of Purchase Orders.
      - (b)    Delegated authority is contingent upon completion of a public purchasing training class, periodic refresher training and monitoring of purchases.
  - b.    Informal Request for Proposals (RFP)
    - (1)    When Used: A request for proposals method is used to purchase services with an estimated value of \$10,001 and less than \$30,000 that require specialized knowledge, abilities and intellectual skills in the performance of the services.

- (2) Procedure: With prior approval of the County Purchasing Agent, a small purchase contract may be awarded based on best value following competitive sealed proposals.
  - (a) The user agency submits a Shopping Cart.
  - (b) The buyer obtains approval to use the request for proposal method.
  - (c) Pre-proposal conferences and interviews are at the discretion of the buyer.
  - (d) The buyer keeps the price separate from the technical proposal until the technical proposal is evaluated and scored.
  - (e) The buyer proceeds in accordance with the procedures outlined in Section E, Formal Competitive Sealed Proposals – Request for Proposals (RFP) of this manual, with the exception that public notice is waived.

c. Evaluation and Award

- (1) After receipt of quotes, the Office of [[Purchasing]]PROCUREMENT AND CONTRACT ADMINISTRATION evaluates the quotes and determines the lowest responsive, responsible bidder (for purchases) or the highest responsive, responsible bidder (for sales).
- (2) The Office of [[Purchasing]]PROCUREMENT AND CONTRACT ADMINISTRATION issues a Purchase Order or makes a Procurement Card purchase.
- (3) If the initial estimate of the purchase is less than \$30,000 and the lowest responsive and responsible bid exceeds \$30,000, the solicitation may be awarded with the written approval of the [[Purchasing]] Administrator OF THE OFFICE OF PROCUREMENT AND CONTRACT ADMINISTRATION.

2. Procurement Card (PDQ Card) Transactions (Reference Code Sec. 4.116)

a. When Used:

- (1) At the discretion of the [[Purchasing]] Administrator OF THE OFFICE OF PROCUREMENT AND CONTRACT ADMINISTRATION, County employees may use procurement cards to make small purchases up to \$10,000.
- (2) Buyers may use procurement cards to make purchases of less than \$30,000 after appropriate competition is obtained.

b. Procedure: The individual to whom the card is issued makes purchases

directly from vendors.

- (1) Procurement cards shall not be used as a means of avoiding standard purchasing procedures, i.e. dividing a large transaction into several smaller transactions.
- (2) Purchase requisitions are not required for procurement card purchases made by user agencies.
- (3) Competition is encouraged whenever practicable on purchases between \$5,000 and \$10,000 for supplies or services that are not on an existing contract.

- c. Cardholders: Department heads or their designee shall determine those individuals who will be issued procurement cards, and shall determine the monthly credit limit for each cardholder.
- d. PDQ Card usage shall be in compliance with Howard County Policy and Procedure No. 300.4 and any subsequent revisions.

3. Waiver of Informal Bidding (REFERENCE CODE SEC. 4.106(E)(1))

The [[Purchasing]] Administrator OF THE OFFICE OF PROCUREMENT AND CONTRACT ADMINISTRATION, at the Administrator's sole discretion, is authorized to waive informal bidding requirements for purchases or sales of less than the formal bidding threshold when informal bidding is not practical or feasible. The [[Purchasing]] Administrator may require justification from the user agency explaining why informal bidding is not practical or feasible.

**Section G**    ***Sole Source Purchase***  
***(Reference Code Sec. 4.110)***

1.    When Used: For purchases in excess of the small purchase threshold, when the specifications are not overly restrictive for the County's needs, and the product is made by a single manufacturer and distributed through a single dealer or vendor.
  
2.    Procedure
  - a.    The user agency determines that the need exists. The user agency completes a Shopping Cart along with a written justification stating that the specifications for supplies/services are not overly restrictive for the County needs and explaining the nature of the sole source, and forwards it to the Office of [[Purchasing]]PROCUREMENT AND CONTRACT ADMINISTRATION.
  
  - b.    The Office of [[Purchasing]]PROCUREMENT AND CONTRACT ADMINISTRATION analyzes the Shopping Cart and the justification to determine if alternative goods may be substituted.
  
  - c.    The Office of [[Purchasing]]PROCUREMENT AND CONTRACT ADMINISTRATION attempts to find more than one supplier of the supplies or service.
  
  - d.    The Office of [[Purchasing]]PROCUREMENT AND CONTRACT ADMINISTRATION, negotiates an order or contract with the sole-source supplier at prices and on terms most advantageous to the County.
  
  - e.    The Office of [[Purchasing]]PROCUREMENT AND CONTRACT ADMINISTRATION issues a contract or Purchase Order.
  
3.    Extension of Sole Source Procurements
  - a.    When it has been determined that it is in the best interest of the County to extend a sole source contract, the [[Purchasing]] Administrator OF THE OFFICE OF PROCUREMENT AND CONTRACT ADMINISTRATION may authorize contract extensions in one-year increments, not to exceed three years.
  
  - b.    Prior to each extension, a determination shall be made that the requirement is in fact still sole source.
  
  - c.    If the contract is extended beyond the third year, the County Council must approve the extension by a resolution prior to the beginning of each subsequent contract year.
  
  - d.    When the contract requires County Council approval, the Office of [[Purchasing]]PROCUREMENT AND CONTRACT ADMINISTRATION will assist the user agency in the preparation and submission of the necessary documentation to the Legislative Coordinator, through the Department of

County Administration, for the processes associated with a Council Resolution.

4. Contract Review Committee (CRC) for Sole Source Procurements (Reference Code Sec. 4.106A)
  - a. The CRC is composed of the County Chief Administrative Officer or designee, the County Auditor or designee, and the Director of the Department of Finance or designee.
  - b. Sole source procurements greater than \$100,000 must be approved by majority vote of the CRC prior to execution of the Purchase Order.

**Section H**    ***Emergency Purchases***  
***(Reference Code Sec. 4.111)***

1.    **When Used:** To make purchases in excess of the small purchase threshold in an emergency (defined as (i) a dangerous condition caused by a breakdown in machinery; (ii) a dangerous condition caused by a threatened termination of essential services; or (iii) an unforeseen circumstance causing curtailment of diminution of an essential service).
  
2.    **Procedure During Business Hours**
  - a.    Agency head (or authorized representative) determines that an emergency exists and notifies the Office of [[Purchasing]]PROCUREMENT AND CONTRACT ADMINISTRATION of the need for an emergency purchase.
  
  - b.    The Office of [[Purchasing]]PROCUREMENT AND CONTRACT ADMINISTRATION obtains competitive bids for the purchase or authorizes the agency head to do so.
  
  - c.    Upon determination of the lowest responsive, responsible bid, either the Office of [[Purchasing]]PROCUREMENT AND CONTRACT ADMINISTRATION or the agency head (or authorized representative) authorizes the purchase.
  
  - d.    The user agency prepares a Shopping Cart for the purchase and an emergency authorization form and forwards them to the Office of [[Purchasing]]PROCUREMENT AND CONTRACT ADMINISTRATION.
  
  - e.    Based upon the information in the Shopping Cart and the emergency authorization, the Office of [[Purchasing]]PROCUREMENT AND CONTRACT ADMINISTRATION issues a Purchase Order.
  
3.    **Procedure After Business Hours**
  - a.    Agency head (or authorized representative) determines that an emergency exists.
  
  - b.    The agency head makes every effort to contact the [[Purchasing]] Administrator OF THE OFFICE OF PROCUREMENT AND CONTRACT ADMINISTRATION for authorization of the purchase.
  
  - c.    If the [[Purchasing]] Administrator OF THE OFFICE OF PROCUREMENT AND CONTRACT ADMINISTRATION can be reached, he/she may authorize the purchase or authorize the agency head to make the purchase.
  
  - d.    If the [[Purchasing]] Administrator OF THE OFFICE OF PROCUREMENT AND CONTRACT ADMINISTRATION cannot be reached, the agency head (or authorized representative) is authorized to make the purchase.
  
  - e.    If at all possible, the user agency shall make an effort to obtain competitive bids.

- f. After determining the lowest responsive, responsible bidder, the agency head (or authorized representative) places the order.
  - g. The user agency prepares a Shopping Cart and an emergency justification form and forwards them to the Office of **[[Purchasing]]PROCUREMENT AND CONTRACT ADMINISTRATION**.
  - h. Based upon the information in the Shopping Cart and the emergency authorization, the Office of **[[Purchasing]]PROCUREMENT AND CONTRACT ADMINISTRATION** issues a Purchase Order.
4. Records and Reports
- a. The Purchasing Agent submits a monthly report, prepared by the Office of **[[Purchasing]]PROCUREMENT AND CONTRACT ADMINISTRATION**, to the County Council via the County Executive tabulating all emergency purchases exceeding \$30,000 for the previous month and explaining the circumstances of each purchase.
  - b. The Office of **[[Purchasing]]PROCUREMENT AND CONTRACT ADMINISTRATION** maintains current files supporting emergency purchases.

**Section I    *Expedited Procurements***  
***(Reference Code Sec. 4.112)***

1.    When Used: For purchases in excess of the small purchase threshold when procurement is needed that best serves the interest of the public, that is not an emergency, but one in which the expedited process outweighs the benefits of either competitive sealed bidding or competitive sealed proposals.
  
2.    Procedure
  - a.    The user agency determines that the need exists.
  
  - b.    The user agency obtains advance written approval from the County Purchasing Agent through the Office of [[Purchasing]]PROCUREMENT AND CONTRACT ADMINISTRATION.
  
  - c.    To the extent practicable Formal Competitive Bidding shall be utilized when making an expedited procurement. The County Purchasing Agent may waive the public notice requirements of newspaper advertising and may approve the written justification that supports noncompetitive selection if competitive solicitations cannot be made due to insufficient time between when the need to make an expedited procurement first became known and when the contract must be performed, or for such other reasons that preclude the use of competition.
  
  - d.    The Office of [[Purchasing]]PROCUREMENT AND CONTRACT ADMINISTRATION takes the appropriate procurement action based on the estimated dollar amount.
  
  - e.    After determination of the low responsive, responsible bidder, the Office of [[Purchasing]]PROCUREMENT AND CONTRACT ADMINISTRATION issues a Purchase Order.
  
3.    Records and Reports
  - a.    The Purchasing Agent submits an expedited procurement report monthly prepared by the Office of [[Purchasing]]PROCUREMENT AND CONTRACT ADMINISTRATION to the County Executive tabulating all expedited procurements exceeding \$30,000 for the previous month. The report shall explain the circumstances of each purchase.
  
  - b.    The Office of [[Purchasing]]PROCUREMENT AND CONTRACT ADMINISTRATION maintains files supporting expedited purchases.



**Section J Professional Services – Quality Based Selection (QBS)  
(Reference Code Sec. 4.113)**

1. When Used:
  - A. Generally for professional services requiring individuals or organizations that possess a high degree of technical knowledge and skills, including but not limited to, architects and engineers, where competitive selection is used.
  - B. A combination of purchasing methods may be used including, but not limited to, expressions of interest and a request for proposals, for both capital and non-capital projects, all at the discretion of the County Purchasing Agent.
2. Phase I - Expression of Interest (EOI)
  - a. Procedure
    - (1) The user agency prepares an outline of the intended scope with summary description of the project and the type of services required.
    - (2) Place the public notice. The notice will include the requirement for completion of Form SF 330, if applicable.
    - (3) Expressions of Interest packages will be posted on the County's website and will be provided to firms upon request. In addition to the description of the service need, the Expression of Interest will also include any special requirements, i.e., Equal Business Opportunity, Veteran-Owned Business Enterprise Program, federal and state requirements and insurance requirements.
  - b. Submission of Expression of Interest
    - (1) Expressions of Interest are submitted to the Office of [[Purchasing]]PROCUREMENT AND CONTRACT ADMINISTRATION prior to the closing date and time.
    - (2) The Office of [[Purchasing]]PROCUREMENT AND CONTRACT ADMINISTRATION shall retain Expressions of Interest in a secure place prior to opening.
    - (3) Each Expression of Interest shall be submitted in a sealed envelope marked with the project number and name.
    - (4) The consultant may withdraw or change the Expression of Interest prior to opening. The consultant may make corrections on the original Expression of Interest by initialing the changes and resealing the Expression of Interest.
  - c. Opening of Expression of Interest

- (1) On the date, time and place indicated, the [[Purchasing]] Administrator OF THE OFFICE OF PROCUREMENT AND CONTRACT ADMINISTRATION or designee opens the Expression of Interest with at least one other County employee present.
- (2) The [[Purchasing]] Administrator OF THE OFFICE OF PROCUREMENT AND CONTRACT ADMINISTRATION or designee shall reject all Expressions of Interest received after the scheduled opening
- (3) After Expression of Interest opening, all Expressions of Interest are considered County property and may not be withdrawn by the firm.
- (4) The Office of [[Purchasing]]PROCUREMENT AND CONTRACT ADMINISTRATION forwards the Expression of Interest to the designated leader of the Quality Based Selection (QBS) Committee (minimum 5 members) to coordinate the evaluation of the Expression of Interest.

d. Evaluation

The designated leader of the Qualifications Based Selection (QBS) Committee will coordinate the evaluation of the Expression of Interest using the developed criteria. The leader of the QBS Committee will forward a memo to the [[Purchasing]] Administrator OF THE OFFICE OF PROCUREMENT AND CONTRACT ADMINISTRATION with the committee's findings including the identification of the firms (minimum 3) for interviewing. The Office of [[Purchasing]]PROCUREMENT AND CONTRACT ADMINISTRATION will notify each participating firm of their selection/non-selection.

e. Appeal

Consultants not receiving pre-qualification status may appeal the County's decision, in writing, within 10 days of notification. The Office of [[Purchasing]] PROCUREMENT AND CONTRACT ADMINISTRATION will be responsible for responding within ten days of receipt of the appeal. The [[Purchasing Administrator's]] ADMINISTRATOR OF THE OFFICE OF PROCUREMENT AND CONTRACT ADMINISTRATION'S decision relative to the appeal shall be final.

3. Phase II - Interviews

a. Procedure

- (1) The QBS committee establishes dates and times for interviews for each competing firm/team/consultants.
- (2) Consultants complete interviews with the QBS Committee per promulgated guidelines.
- (3) QBS Committee notified [[Purchasing]] Administrator OF THE

OFFICE OF PROCUREMENT AND CONTRACT ADMINISTRATION of selected consultant via memo.

- (4) [[Purchasing]] Administrator OF THE OFFICE OF PROCUREMENT AND CONTRACT ADMINISTRATION issues letter to firm; Buyer issues letter to non-selected firms.

4. Phase III - Competitive Negotiation and Contract Award

a. Negotiation Procedure

- (1) The top ranked firm(s) for the requirement will provide a scope of work consisting of technical specifications, architectural program, and any special requirements for the specific project. The County, as applicable, may provide the budget cost estimate, proposed completion date and other pertinent information relative to the project.
- (2) The selected firm shall prepare a proposal comprising the complete scope of work.
- (3) Prior to the start of negotiations, the selected firm shall submit the proposed scope of work, including special and unique management approaches, involvement of principals and consultants, and a proposed schedule, to the leader of the QBS Committee.
- (4) The leader of the QBS Committee arranges the initial negotiation meeting. Negotiations will center upon mutual understanding of the scope of work.
- (5) Firms will then submit to the Office of [[Purchasing]]PROCUREMENT AND CONTRACT ADMINISTRATION service fees by project phase, expectations as to specific architect and consultant costs, and the level of activity and fees for each phase. Additional service rates, by discipline, will also be established during this negotiation. The type of fee shall be lump sum.
- (6) The leader of the QBS Committee may enter into fee negotiations.
- (7) If the committee is unable to negotiate a satisfactory contract with the firm ranked first at a price considered to be fair and reasonable after two tries, negotiations shall be formally terminated. Negotiations shall then be undertaken with the second-ranked firm, and if necessary, the third-ranked firm.

b. Award of Contract Procedure

- (1) The finalized fee proposal with recommendations will be forwarded to the Director of Public Works, or the Director's designee, for submission to the [[Purchasing]] Administrator OF THE OFFICE OF

PROCUREMENT AND CONTRACT ADMINISTRATION. If either rejects the recommendation, it will go back for review and further negotiation.

- (2) The County will notify all firms under consideration of the award of contract, award amount, and appeal rights.

c. Appeal

Firms who were not selected may appeal the County's decision, in writing, within ten days of notification. The Office of [[Purchasing]]PROCUREMENT AND CONTRACT ADMINISTRATION will be responsible for responding within 10 days of receipt of the appeal. The [[Purchasing Administrator's]] ADMINISTRATOR OF THE OFFICE OF PROCUREMENT AND CONTRACT ADMINISTRATION'S decision relative to the appeal shall be final.

5. Professional Services For Which It Is Not Practical To Bid (Reference Code Sec. 4.113(a))

Whenever practical, the purchase of professional services shall be made through a competitive bidding process. When it is not practical to purchase professional services using one of the methods mentioned above, the user agency shall consult with the [[Purchasing]] Administrator OF THE OFFICE OF PROCUREMENT AND CONTRACT ADMINISTRATION to select another method which will provide as much competition as is practical given the nature of the services and the circumstances under which the services are needed.

**Section K Purchases Requiring Confidentiality  
(Reference Code Sec. 4.114)**

1. When Used: When the County requires services that are confidential in nature,
2. Procedure
  - a. The user agency determines that the need exists.
  - b. The user agency seeks approval from the [[Purchasing]] Administrator OF THE OFFICE OF PROCUREMENT AND CONTRACT ADMINISTRATION.
  - c. The [[Purchasing]] Administrator OF THE OFFICE OF PROCUREMENT AND CONTRACT ADMINISTRATION authorizes the user agency to obtain competitive proposals, if available, for the requirement.
  - d. For the benefit of confidentiality, the advertisement and public notice are waived.
  - e. The user agency obtains written proposals from the potential bidders.
  - f. If there is only one respondent or a single source, the [[Purchasing]] Administrator OF THE OFFICE OF PROCUREMENT AND CONTRACT ADMINISTRATION may authorize the user agency to negotiate a best offer.
  - g. After determination of the low responsive, responsible bidder, the user agency prepares a Shopping Cart and a justification for the confidential purchase. The Shopping Cart and justification are forwarded to the Office of [[Purchasing]]PROCUREMENT AND CONTRACT ADMINISTRATION.
  - h. The Office of [[Purchasing]]PROCUREMENT AND CONTRACT ADMINISTRATION issues a contract or Purchase Order.

**Section L Cooperative Purchasing (Inter and Intra-Governmental)  
(Reference Charter Sec. 807 and Code Sec. 4.115)**

1. **When Used:** To purchase goods or services through (i) contracts or surplus lists established by other governmental purchasing/supply agencies such as the federal government, states, or the governments of other municipalities, when it is to the County's advantage (a.k.a. Intergovernmental Cooperative Purchasing; or (ii) contracts with a federal or state agency created to assist local governments with particular types of projects).
  - a. Forms of Intergovernmental Cooperative Purchasing:
    - (1) **Joint Bid Method:** Two or more public procurement agencies agree on specifications and contract terms and conditions for a given item of common usage and combine their requirements in a single solicitation.
    - (2) **Piggyback Method (a.k.a. Bridging or Hitchhiking):** One public procurement agency issues and awards a solicitation and arranges, as part of the contract, for other public purchasing agencies to purchase from the selected contractor under the same terms and conditions as itself.
    - (3) The County may contract with other Howard County entities, other counties or public entities including, without limitation, boards of education, colleges, universities, and libraries when in its best interest.
2. **Procedure**
  - a. User agency completes Shopping Cart and sends it to the Office of [[Purchasing]]PROCUREMENT AND CONTRACT ADMINISTRATION, noting the recommended agency/contract.
  - b. The Office of [[Purchasing]]PROCUREMENT AND CONTRACT ADMINISTRATION determines that request may be filled through contracts of other governmental purchasing/supply agencies.
  - c. Office of [[Purchasing]]PROCUREMENT AND CONTRACT ADMINISTRATION notes on Shopping Cart that the purchase will be filled through other governmental contracts or supply lists. Buyer obtains copy of the contract.
  - d. The Office of [[Purchasing]]PROCUREMENT AND CONTRACT ADMINISTRATION issues a contract or Purchase Order using the prices and terms of the other governmental contract. In some cases executed agreements, insurance, and EBO forms may be required.

## Section M *Forms of Contracts*

1. Commodity Contract
  - a. Definition: An agreement with a vendor to provide commodities at a pre-determined price for predetermined items.
  - b. When Used: To purchase commodities that are not stocked by the County and that are needed on a periodic basis by County departments. Benefits resulting from price agreements include: (i) lower prices through quantity discounts; (ii) reduction in quantity of purchasing transactions and thus a reduction in paperwork; and (iii) reduction of “emergency” purchases.
2. Services Contract
  - a. Definition: An agreement with a vendor to provide services at pre-determined prices.
3. When Used: To purchase services not provided by the County and are needed by County Departments.
4. Procedure
  - a. User agency determines the need for certain commodities or services (professional, non-professional, or a combination) on a periodic basis and notifies the Office of [[Purchasing]]PROCUREMENT AND CONTRACT ADMINISTRATION of this need.
  - b. The Office of [[Purchasing]]PROCUREMENT AND CONTRACT ADMINISTRATION uses informal or formal bidding procedures, based on the specifications and on the estimated price of the purchase, to arrive at the price, terms, and conditions for the purchase of the supplies or services.
  - c. Contracts may also be established by using a form of cooperative purchasing referred to as piggybacking another jurisdiction’s contract that was already competitively bid.
  - d. The Office of [[Purchasing]]PROCUREMENT AND CONTRACT ADMINISTRATION issues the contract for the supplies or services and provides copies of the contract to all agencies utilizing the contract.
  - e. To order from contracts, user agencies initiate Shopping Carts against contracts.

## **Section N    *Purchasing Documents - Defined***

1.     Change Order  
Definition: A change order is a document issued to vendors by the Office of [[Purchasing]]PROCUREMENT AND CONTRACT ADMINISTRATION formalizing all additions, deletions, and/or changes made to a purchase transaction.
  
2.     Commodity Contract  
Definition: The document for commodities/goods that is based on the items, prices, terms and conditions set forth in the solicitation.
  
3.     Contract Change  
Definition: A contract change is a document issued to vendors by the Office of [[Purchasing]]PROCUREMENT AND CONTRACT ADMINISTRATION formalizing all additions, deletions, and/or changes to a contract.
  
4.     Purchase Order  
Definition: A Purchase Order is a document issued to vendors by the Office of [[Purchasing]]PROCUREMENT AND CONTRACT ADMINISTRATION formalizing all terms and conditions of a purchase transaction. A Purchase Order is a form of contract and, therefore, legally binding.
  
5.     Release Purchase Order  
Definition: A release Purchase Order is a document to place orders through established commodity and service contracts.
  
6.     Service Contract  
Definition: The document for services that is based on the items, prices, terms and conditions set forth in the solicitation as well as the legal agreement, when applicable.



## **Section O    *Parked Documents (Formerly Direct Payment Claims)***

- 1     **Definition:** A parked document initiates a payment directly in the financial system without the use of a Purchase Order or purchasing card. Parked documents may be used to request the following payments:
- a. Advertising
  - b. Court Costs (including, but not limited to, expert witnesses, settlement costs, bailiff fees, mediation fees, etc.)
  - c. Election Judges
  - d. Extradition Costs that cannot be paid using the purchasing cards.
  - e. Grants (i.e. Section 8, subsidies, Community Development Block Grants, etc.)
  - f. Howard County Departments/Boards/Commissions/Authorities, etc. (i.e. Community College, Public Schools and Library when no procurement was conducted (including, but is not limited to grants and reimbursements))
  - g. Human Services (including, but not limited to, dental services for clients, medical procedures for clients, services, etc.)
  - h. Independent Contractors where the [[Purchasing]] Administrator OF THE OFFICE OF PROCUREMENT AND CONTRACT ADMINISTRATION has pre-approved the payment method (including, but not limited to, entertainment providers such as puppeteers, musical acts, dancers, or dance instructors, etc. related to Recreation and Parks, Community Resources and Services, etc. programs and activities.)
  - i. Insurance Premiums and Settlements
  - j. Military Leave Payments to Employees
  - k. Miscellaneous Payments (Not of a procurement nature with approval of the [[Purchasing]] Administrator OF THE OFFICE OF PROCUREMENT AND CONTRACT ADMINISTRATION or Director/ Deputy Director of Finance)
  - l. State of Maryland and Other Government Entities when no procurement was conducted (i.e. State Highway Administration, Department of Agriculture, City of Baltimore, Washington Suburban Sanitary Commission, etc.)
  - m. Payments under the small purchase threshold to vendors who do not accept County purchasing cards.
  - n. Petty Cash Replenishment
  - o. Postage (in excess of the small purchase threshold usually for meters)
  - p. Publications (including books on CDs)
  - Q. REAL PROPERTY ACQUISITIONS AND LEASES
  - [[q]]R. Self-Sustaining Programs (programs that are fully or primarily funded by registration fees of participates – i.e. Recreation and Parks Self-Sustaining Program Fund, activities and outings for seniors facilitated by Community Resources and Services, etc.)
  - [[r]]S. Seminar registration fees, speakers, travel fees, lodging, meals
  - [[s]]T. Settlements (property and lease financing, etc.)
  - [[t]]U. Subscriptions
  - [[u]]V. Trade Show registration fees (expos, fairs, etc.)
  - w. REFUNDS ISSUED BY COUNTY DEPARTMENTS AND OFFICES
  - x. UTILITY PAYMENTS
  - y. GOVERNMENT ENTITIES

## **Section P    *Receiving***

### 1.     Delivery Locations

Commodities or services are delivered: (i) directly to the user agency, (ii) to an agency authorized to inspect deliveries for other agencies; or (iii) to a central receiving agency. The delivery address is designated on the Purchase Order.

### 2.     Standards for Inspection

All delivered commodities or services are inspected or evaluated to determine the following factors:

- a.     Condition of Packaging - record condition of packaging especially if it indicates rough or faulty handling.
- b.     Description - check whether the delivered goods/services match the description on the Purchase Order. Check whether there are any deviations from the order.
- c.     Condition of Goods/Services - check whether the delivered goods/services match or exceed the specifications. If they do not match, indicate how they differ.
- d.     Quantity - check whether the quantity delivered matches the quantity ordered. If not, indicate the difference.

### 3.     Performing The Inspection Upon Delivery

- a.     Each user agency appoints responsible individual(s) to inspect delivered supplies.
- b.     Every effort shall be made to inspect the supplies upon delivery in the presence of the shipping and/or vendor representative. If not inspected upon delivery, they shall be inspected promptly thereafter.
- c.     On the recommendation of the Purchasing Agent, the County Executive may authorize an agency with the necessary facilities and staff to inspect deliveries for other agencies.
- d.     The Purchasing Agent may use the laboratory facilities of any agency to determine conformance of supplies or samples with specifications. The Purchasing Agent may engage the services of any outside laboratory to make the determinations.

4. Receiving Process

- a. Supplies are delivered to the delivery address designated on the Purchase Order.
- b. The individual appointed by the user agency to inspect the supplies checks the delivery and signs to indicate receipt of goods only. The individual notes any deviation from the quantity and quality of supplies ordered. Agencies designated to inspect deliveries for other agencies follow the same procedure.
- c. If there are discrepancies in the order, or damage, the individual performing the receiving process, reports this to the agency head or authorized representative.
- d. It is the initial responsibility of the agency head or authorized representative, to contact the vendor in cases of damages or discrepancies in order to arrange for a mutually satisfactory correction of the problem. If unsuccessful, the discrepancy is referred to the Office of [[Purchasing]] PROCUREMENT AND CONTRACT ADMINISTRATION for resolution.
- e. If the County feels that specifications have not been met, the Office of [[Purchasing]]PROCUREMENT AND CONTRACT ADMINISTRATION may arrange testing by a recognized impartial laboratory/facility. If this is done, the Office [[of Purchasing]] notifies the vendor indicating that the vendor will be responsible for the cost of the test if the reports indicate that specifications have not been met. The County assumes the cost of the test if the supplies meet specifications.
- f. Test results, which indicate non-conformance with specifications, may be used as a basis for non-conformance of contract.
- g. Upon final acceptance of the order, the responsible individual for the user agency confirms receipt of the goods or services in SAP. Once an accurate invoice is received, that individual completes the invoice process in SAP to initiate payment to the vendor.
- h. Upon final acceptance of assets, asset tags are attached to the equipment.

5. Partial Deliveries

Partial deliveries may be accepted and paid for by completing an electronic partial delivery report form.

**Section Q    *Surplus Property***  
***(Reference Code Sec. 4.129)***

1.    Agency Determination of Surplus

- a.    If an agency has surplus property (with the exception of CPUs, laptops, PDAs) that it no longer needs, the agency prepares a Surplus Property Declaration form and sends the form to the Office of [[Purchasing]]PROCUREMENT AND CONTRACT ADMINISTRATION.
- b.    Prior to the disposal of CPUs, laptops and PDAs (or anything with a hard drive), the Department of Technology and Communication Services (DTCS) must obtain these devices to secure and/or destroy the data on the device. The destruction will be performed and certified with Service Tag/Serial Number of both the device (i.e. Laptop, desktop) and the hard drive serial number. This process will be witnessed by personnel from DTCS. DTCS will inform the Office of [[Purchasing]]PROCUREMENT AND CONTRACT ADMINISTRATION when it is ready for surplus by completing the Surplus Property Declaration Form with the required information releasing the devices for surplus and delivering the devices to the Surplus Room.

2.    Disposal of Surplus

The Office of [[Purchasing]]PROCUREMENT AND CONTRACT ADMINISTRATION is responsible for the disposition of surplus property. Real property shall be disposed of pursuant to the provisions of Title 4, Subtitle 2 Real Property, of the Howard County Code.

After an analysis, surplus property may be disposed of by one of the methods set forth in Section 4.129 of the Howard County Code.

3.    Records

The Office of [[Purchasing]]PROCUREMENT AND CONTRACT ADMINISTRATION maintains records noting the disposition of all surplus property.

4.    Policy and Procedure 300.3 Compliance

Disposal of surplus property shall be in compliance with Howard County Policy and Procedure 300.3 and any subsequent revisions.

**Section R    *Equal Business Opportunity (EBO)*  
*(Refer to Code Subtitle 6, Sec. 4.122)***

Recognizing that an active program of outreach and technical assistance to Minority Business Enterprises (MBEs), Women Business Enterprises (WBEs), and Disabled Business Enterprises (DBEs) to increase procurement opportunities is essential in realizing progressive social and economic development goals, the EBO Program is designed to foster participation by MBEs, WBEs, and DBEs in the County's procurement process.

It is the Office of [[Purchasing]]PROCUREMENT AND CONTRACT ADMINISTRATION'S policy to assure all people and businesses an equal opportunity to participate in the County's procurement process. The EBO Program is an extension of current Purchasing procedures and is practiced on an on-going basis, with assistance provided to businesses whenever and wherever possible.

1.     MBE, WBE, and DBE Procurement Guidelines and Procedures

The Office of [[Purchasing]]PROCUREMENT AND CONTRACT ADMINISTRATION will:

- a.     Provide maximum opportunity for MBEs, WBEs, and DBEs to participate in the County's procurement process through dissemination of information and solicitations; and
- b.     Comply with monitoring and reporting requirements.

2.     Program Practices

- a.     Encourage MBE/WBE/DBE participation in every procurement.
- b.     The Office of [[Purchasing]]PROCUREMENT AND CONTRACT ADMINISTRATION will seek qualified MBE/WBE/DBEs through neighboring jurisdictions.
- c.     Encourage MBEs/WBEs/DBEs to be prime contractors.
- d.     Encourage the use of MBE/WBE/DBE subcontractors by contractors awarded County projects.
- e.     Submit appropriate reports and cooperate fully in studies or surveys as required by the EBO program.
- f.     Include equal business opportunity clauses in all solicitations and contracts as appropriate.
- g.     Ensure MBE/WBE/DBEs on the bidders list are given the same opportunity as others.

- h. Identify specific commodities and services where MBE/WBE/DBEs are not currently being used and encourage their participation in the procurement process.
  - i. Identify qualified MBE/WBE/DBEs through annual participation in business opportunity fairs, meetings, trade shows, communications with other procurement personnel and directories identifying MBE/WBE/DBEs.
  - j. During pre-bid and pre-proposal conferences, review the equal business opportunity clause, explain the County's EBO goal and policy encouraging the use of MBE/WBE/DBEs, and explain the requirements for state and federally funded projects, if appropriate.
  - k. Provide technical assistance to potential MBE/WBE/DBE suppliers as necessary to ensure that they are given sufficient information regarding bid requirements and procedures.
  - l. Maintain records on all procurements that would identify:
    - (1) Name of vendor awarded contract and/or Purchase Order;
    - (2) Award amount;
    - (3) Names, addresses and MBE/WBE/DBE code(s) of all vendors contacted for each solicitation;
    - (4) Service or commodity code(s) of the item(s) purchased; and
    - (5) Total amount of all awards to MBE/WBE/DBEs.
3. Records and Reports
- a. The Office of [[Purchasing]]PROCUREMENT AND CONTRACT ADMINISTRATION shall maintain records to determine compliance with EBO Program procedures including:
    - (1) The commodity or service capability of each MBE/WBE/DBE,
    - (2) All contracts awarded, type of service or commodity purchased, amount of award and ethnic and gender code of awarded contractor; and
    - (3) Documentation of solicitations made to obtain services of MBE/WBE/DBEs.
  - b. The County's Equal Business Opportunity Program Coordinator will maintain a list of subcontracting participation by MBE/WBE/DBEs, including the names of subcontractors, amount of subcontracts, type of product(s) or service(s) provided and fiscal year when the products were provided or the work was performed.

**Section S**    ***Auction Bids***  
***(Reference Code Sec. 4.123)***

1.    When Used: Auction bids is a procurement method for commodities with an estimated contract value of \$30,000 or more or for the sale of personal property that has become obsolete and unusable with an estimated contract value of \$30,000 or more.
2.    An Invitation for Auction Bids shall include:
  - a.    The specifications of the procurement contract;
  - b.    Whether the procurement contract will be awarded based on the lowest (highest for sales) bid price or the lowest (highest for sales) evaluated bid price;
  - c.    If the procurement contract will be based on evaluated bid price, the objective measurable criteria by which the lowest (highest for sales) evaluated bid price will be determined.
  - d.    The date and time when bidding will commence and the date and time when bidding will end or the event upon which bidding will end.
3.    At the discretion of the Purchasing Agent, the Invitation for Auction Bids may:
  - a.    Include a request for unpriced technical offers or samples;
  - b.    Direct bidders to submit price bids after [[Purchasing]] THE OFFICE OF PROCUREMENT AND CONTRACT ADMINISTRATION evaluates the technical offers or samples and finds they are acceptable under the criteria set forth in the invitation for auction bids; and
  - c.    Inform all bidders who submitted technical offers or samples of the identity of each bidder who submitted an acceptable technical offer or sample.
4.    Price bids may not be received until after [[Purchasing]] THE OFFICE OF PROCUREMENT AND CONTRACT ADMINISTRATION has completed evaluation of the technical offers or samples.
5.    A price bid may not be received at any time from a bidder whose technical offer or sample has been evaluated as unacceptable to [[Purchasing]] THE OFFICE OF PROCUREMENT AND CONTRACT ADMINISTRATION.
6.    [[Purchasing]] THE OFFICE OF PROCUREMENT AND CONTRACT ADMINISTRATION shall give public notice of an Invitation for Auction Bids in the same manner as required for formal, written contracts.
7.    Multiple price bids are permitted in response to an Invitation for Auction Bids. When a bidder submits multiple bids, each bid shall be judged independently and

shall not revoke previous bids of that bidder.

8. [[Purchasing]] THE OFFICE OF PROCUREMENT AND CONTRACT ADMINISTRATION shall:
  - a. Receive bids in public at the time and place designated in the Invitation for Auction Bids; and
  - b. Record and post the amount of each bid at the time it is received.
9. The amount of a price bid shall be available for public inspection from the time it is received.
10. The identity of the bidder submitting a price bid shall not be available for public inspection until bidding has ended.
11. A bid is irrevocable, after receipt, for the period specified in the Invitation for Auction Bids.
12. Purchasing may allow a bidder to correct or withdraw a bid if correction or withdrawal is allowed under the solicitation terms and conditions.
13. [[Purchasing]] THE OFFICE OF PROCUREMENT AND CONTRACT ADMINISTRATION shall award the procurement contract to the responsible bidder who submits the responsive bid that:
  - a. Is the lowest (highest for sales) bid price; or
  - b. If the Invitation for Auction Bid so provides, is the lowest (highest for sales) evaluated bid price.
14. If, after bids have been received, [[Purchasing]] THE OFFICE OF PROCUREMENT AND CONTRACT ADMINISTRATION determines that only one responsible bidder has submitted a responsive bid, Purchasing may negotiate the procurement contract with that one bidder under the procedure in Purchasing Manual Section E (8) (9).
15. After bids have been received, [[Purchasing]] THE OFFICE OF PROCUREMENT AND CONTRACT ADMINISTRATION may award a procurement contract on the basis of revised bids if:
  - a. All bids are rejected in accordance with
  - b. All bid prices exceed the funds available for the procurement; or
  - c. [[Purchasing]] THE OFFICE OF PROCUREMENT AND CONTRACT ADMINISTRATION determines that all bids are unreasonable as to at least one requirement and the delay that would result from issuing a new Invitation for Auction bids with revised specifications or quantities would be fiscally disadvantageous or otherwise not in the best interests of the County.
16. If there is more than one bidder, discussions about revised specifications or



quantities shall be conducted with all responsible bidders who submitted responsive bids. The bidders shall be treated fairly and equally with respect to any discussions.

17. If one of the conditions set forth under 14 exists, as promptly as possible, [[Purchasing]] THE OFFICE OF PROCUREMENT AND CONTRACT ADMINISTRATION shall:
  - a. Issue an Invitation for Revised Auction Bids, which shall state whether the award will be made without competitive negotiations; and
  - b. Require a prompt response to the invitation.
18. An Invitation for Revised Auction Bids is not subject to the notice requirements in Section 5 of this section.
19. After revised bids have been submitted, negotiations with bidders may not be conducted unless [[Purchasing]] THE OFFICE OF PROCUREMENT AND CONTRACT ADMINISTRATION determines that there is a compelling reason to negotiate.
20. After revised bids have been received, [[Purchasing]] THE OFFICE OF PROCUREMENT AND CONTRACT ADMINISTRATION shall award the procurement contract to the responsible bidder who submits a responsive bid that:
  - a. Is the lowest (highest for sales) bid price; or
  - b. If the Invitation for Revised Auction Bids so provides, is the lowest (highest for sales) evaluated bid price.

**Section T    *Purchase of Recycled and Environmentally Preferable Products and Equipment*  
*(Reference Code Subtitle 5, Sec. 4.500)***

The Office of [[Purchasing]]PROCUREMENT AND CONTRACT ADMINISTRATION recognizes that an active program of buying products made from recycled materials is essential to reducing the amount of material added to the waste stream and that it aids in the preservation of our natural resources. Purchasing products made from recycled and environmentally preferable materials is an extension of the current purchasing procedures and will be practiced on an ongoing basis.

1.     Definitions

- a.     Environmentally Preferable Products and Equipment (EPP): A product or equipment that possesses one or more of the following environmentally beneficial qualities:
  - (1)    Maximizes Recycled or reused products content;
  - (2)    Maximizes potential for reuse or recycling;
  - (3)    Minimizes resources used for producing, manufacturing, transporting, operation, maintaining, or disposing;
  - (4)    Eliminates or minimizes the toxic or degrading agents in product content or manufacturing process;
  - (5)    Minimizes pollution;
  - (6)    Minimizes adverse effects on human health; or
  - (7)    Minimizes environmental degradation.
  
- b.     Percentage Price Preference: The percentage for which a responsive bid may exceed the lowest responsive bid that is not an EPP. The percentage price preference shall not exceed 5% for the purchase of EPPs on the EPP list.
  
- c.     Product Preference: The preference given a product containing recycled material when all other factors are the same.
  
- d.     Recycled Material: Material recovered from or otherwise diverted from the waste stream. It includes post-consumer waste, industrial scrap material, obsolete inventories and recycled paper. It does not include mill broke or similar paper waste generated in a paper mill prior to completion of the paper-making process or, in other industries, those materials and by-products generated in and commonly reused within an original manufacturing process.

2.     Exceptions

The County Purchasing Agent may exempt the purchase of a product made from recycled materials or EPP percentage price preference when:

- a. Written evidence from the Office of [[Purchasing]]PROCUREMENT AND CONTRACT ADMINISTRATION showing that the products were required to be purchased under a contract entered into prior to the implementation of this initiative, or
- b. Written explanation from the user agency showing the use of products made from recycled materials is not practical and that imposing the requirements on that item would cause undue hardship, or
- c. Giving a percentage price preference to EPP's will cause a denial of federal or state funding or is inconsistent with federal or state law.

3. Procedure

- a. Review specifications to determine if the items can be: (i) products made from recycled materials or (ii) remanufactured and reusable products. When either objective can be met, the buyer shall contact the user agency to inform them of the decision and, if necessary, revise the specifications.
- b. Include statements in each solicitation that encourage suppliers to: (i) utilize packaging materials made of recyclable or biodegradable materials for this order and (ii) minimize waste to the greatest extent possible in fulfilling contracts.
- c. When possible, give preference to products made from recycled materials. Following is a list of products for consideration.

- (1) Antifreeze
- (2) Asphalt (shredded tires)
- (3) Auto Parts
- (4) Clean Backfill (crushed glass)
- (5) Concrete (ground glass)
- (6) Entrance Door Mats
- (7) Fiberglass
- (8) Glass Beads
- (9) Laser Cartridges
- (10) Oil
- (11) Outdoor Benches and Picnic Tables
- (12) Packing Materials for Storm Drains (crushed glass)
- (13) Paper Products
- (14) Playground Surfaces (shredded tires)
- (15) Retread Tires
- (16) Sandblasting Materials
- (17) Splash/Drain Mats

**Section U *Veteran-Owned Business Enterprise Program (VOBE)*  
*(Reference Code Sec. 4.130)***

The Veteran-Owned Business Enterprise Program is designed to foster participation by Veteran-Owned Business Enterprises in the County's procurement process.

1. Guidelines and Procedures

The Office of [[Purchasing]]PROCUREMENT AND CONTRACT ADMINISTRATION will:

- a. Provide maximum opportunity for VOBES to participate in the County's procurement process through dissemination of information and solicitations; and
- b. Comply with monitoring and reporting requirements.

2. Program Practices

- a. Encourage VOBES participation in every procurement.
- b. Include Veteran-Owned Business Enterprise clause in all solicitations and contracts as appropriate.
- c. Ensure VOBES on the bidders list are given the same opportunity as others.
- d. Identify specific commodities and services where VOBES are not currently being used and encourage their participation in the procurement process.
- e. Identify qualified VOBES through annual participation in business opportunity fairs, meetings, trade shows, communications with other procurement personnel and directories identifying VOBES.
- f. During pre-bid and pre-proposal conferences, explain the County's VOBES goal and policy encouraging the use of VOBES, and explain the requirements for state and federally funded projects, if appropriate.
- g. Provide technical assistance to potential VOBES suppliers as necessary to ensure that they are given sufficient information regarding bid requirements and procedures.
- h. Maintain records on all procurements that would identify:
  - (1) Name of vendor awarded contract and/or purchase order;
  - (2) Award amount;
  - (3) Names, addresses and VOBES code(s) of all vendors contacted for each solicitation;

- (4) Service or commodity code(s) of the item(s) purchased; and
- (5) Total amount of all awards to VOBES.

3. Records and Reports

- a. The Office of ~~[[Purchasing]]~~PROCUREMENT AND CONTRACT ADMINISTRATION shall maintain records to determine compliance with VOBES Program procedures including:
  - (1) The commodity or service capability of each VOBES,
  - (2) All contracts awarded, type of service or commodity purchased and amount of award; and
  - (3) Documentation of solicitations made to obtain services of VOBES.

**Section V Federal Grant Funded Purchases  
(Reference Code Sec. 4.118)**

1. When Used: To purchase goods or services using federal funds. Such purchases are required to meet the uniform guidance procurement standards as set forth in Appendix I and Appendix II of this section.
2. Appendix I:  
Full text for uniform guidance procurement standards.
3. Appendix II:  
Full text of federally mandated contract provisions.

### **§200.317 Procurements by states and other non-federal entities**

When procuring property and services under a federal award, a non-federal entity must use its own documented procurement procedures providing they conform to state and local laws and regulations and they are expected to conform to the guidance in 200.318-326. All other non-federal entities, including subrecipients of a state, will follow §§200.318 general procurement standards through 200.326 contract provisions.

### **§200.318 General procurement standards**

(a) The non-federal entity must use its own documented procurement procedures which reflect applicable state, local, and tribal laws and regulations, provided that the procurements conform to applicable federal law and the standards identified in this part.

(b) Non-federal entities must maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

(c) (1) The non-federal entity must maintain written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award and administration of contracts. No employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a federal award 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.

(2) If the non-federal entity has a parent, affiliate, or subsidiary organization that is not a state, local government, or Indian tribe, the non-federal entity must also maintain written standards of conduct covering organizational conflicts of interest. Organizational conflicts of interest means that because of relationships with a parent company, affiliate, or subsidiary organization, the non-federal entity is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization.

(d) The non-federal entity's procedures must avoid acquisition of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.

(e) To foster greater economy and efficiency, and in accordance with efforts to promote cost-effective use of shared services across the federal government, the non-federal entity is encouraged to enter into state and local intergovernmental agreements or inter-entity agreements where appropriate for procurement or use of common or shared goods and services.

(f) The non-federal entity is encouraged to use federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.

(g) The non-federal entity is encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost.

(h) The non-federal entity must award contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical

resources. See also §200.213 suspension and debarment.

(i) The non-federal entity must maintain records sufficient to detail the history of procurement. These records will include, but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.

(j) (1) The non-federal entity may use a time and materials type contract only after a determination that no other contract is suitable and if the contract includes a ceiling price that the contractor exceeds at its own risk. Time and materials type contract means a contract whose cost to a non-federal entity is the sum of:

- (i) The actual cost of materials; and
- (ii) Direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit.

(2) Since this formula generates an open-ended contract price, a time-and-materials contract provides no positive profit incentive to the contractor for cost control or labor efficiency. Therefore, each contract must set a ceiling price that the contractor exceeds at its own risk. Further, the non-federal entity awarding such a contract must assert a high degree of oversight in order to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls.

(k) The non-federal entity alone must be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation, protests, disputes, and claims. These standards do not relieve the non-federal entity of any contractual responsibilities under its contracts. The federal awarding agency will not substitute its judgment for that of the non-federal entity unless the matter is primarily a federal concern. Violations of law will be referred to the local, state, or federal authority having proper jurisdiction.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75885, Dec. 19, 2014; 80 FR 43309, July 22, 2015]

## **§200.319 Competition**



(a) All procurement transactions must be conducted in a manner providing full and open competition consistent with the standards of this section. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals must be excluded from competing for such procurements. Some of the situations considered to be restrictive of competition include but are not limited to:

- (1) Placing unreasonable requirements on firms in order for them to qualify to do business;
- (2) Requiring unnecessary experience and excessive bonding;
- (3) Noncompetitive pricing practices between firms or between affiliated companies;
- (4) Noncompetitive contracts to consultants that are on retainer contracts;
- (5) Organizational conflicts of interest;
- (6) 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
- (7) Any arbitrary action in the procurement process.

(b) The non-federal entity must conduct procurements in a manner that prohibits the use of statutorily or administratively imposed state, local, or tribal geographical preferences in the evaluation of bids or proposals, except in those cases where applicable federal statutes expressly mandate or encourage geographic preference. Nothing in this section preempts state licensing laws. 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.

(c) The non-federal entity must have written procedures for procurement transactions. These procedures must ensure that all solicitations:

- (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.

(d) The non-federal entity must ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, the non-federal entity must not preclude potential bidders from qualifying during the solicitation period.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75885, Dec. 19, 2014]

### **§200.320 Methods of procurement to be followed**

The non-federal entity must use one of the following methods of procurement.

(a) Procurement by micro-purchases. Procurement by micro-purchase is the acquisition of supplies or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold (§200.67 micro-purchase). To the extent practicable, the non-federal entity must distribute micro-purchases equitably among qualified suppliers. Micro-purchases may be awarded without soliciting competitive quotations if the non-federal entity considers the price to be reasonable.

(b) Procurement by small purchase procedures. Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than the simplified acquisition threshold. If small purchase procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources.

(c) Procurement by sealed bids (formal advertising). Bids are publicly solicited and a firm fixed price contract (lump sum or unit price) is awarded to the responsible bidder

whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. The sealed bid method is the preferred method for procuring construction, if the conditions in paragraph (c)(1) of this section apply.

(1) In order for sealed bidding to be feasible, the following conditions should be present:

(i) A complete, adequate, and realistic specification or purchase description is available;

(ii) Two or more responsible bidders are willing and able to compete effectively for the business; and

(iii) The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.

(2) If sealed bids are used, the following requirements apply:

(i) Bids must be solicited from an adequate number of known suppliers, providing them sufficient response time prior to the date set for opening the bids, for local, and tribal governments, the invitation for bids must be publicly advertised;

(ii) The invitation for bids, which will include any specifications and pertinent attachments, must define the items or services in order for the bidder to properly respond;

(iii) All bids will be opened at the time and place prescribed in the invitation for bids, and for local and tribal governments, the bids must be opened publicly;

(iv) 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

(v) Any or all bids may be rejected if there is a sound documented reason.

(d) Procurement by competitive proposals. The technique of competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed price or cost-reimbursement type contract is awarded. It is generally used when conditions

are not appropriate for the use of sealed bids. If this method is used, the following requirements apply:

(1) Requests for proposals must be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals must be considered to the maximum extent practical;

(2) Proposals must be solicited from an adequate number of qualified sources;

(3) The non-federal entity must have a written method for conducting technical evaluations of the proposals received and for selecting recipients;

(4) Contracts must be awarded to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and

(5) The non-federal entity may use competitive proposal procedures for qualifications-based procurement of Architectural/Engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms are a potential source to perform the proposed effort.

(e) [Reserved]

(f) Procurement by noncompetitive proposals. Procurement by noncompetitive proposals is procurement through solicitation of a proposal from only one source and may be used only when one or more of the following circumstances apply:

(1) The item is available only from a single source;

(2) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;

(3) The federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the non-federal entity; or

(4) After solicitation of a number of sources, competition is determined inadequate.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75885, Dec. 19, 2014; 80 FR 54409, Sept. 10, 2015]

**§200.321 Contracting with small and minority businesses, women's**

## **business enterprises, and labor surplus area firms**

(a) The non-federal entity must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

(b) Affirmative steps must include:

(1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;

(2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;

(3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;

(4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;

(5) Using the services and assistance, as appropriate, of such organizations as the small business administration and the minority business development agency of the department of commerce; and

(6) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (1) through (5) of this section.

### **§200.322 Procurement of recovered materials**

A non-federal entity that is a state agency or agency of a political subdivision of a state 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 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.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75885, Dec. 19, 2014]

**§200.323 Contract cost and price**

(a) The non-federal entity must perform a cost or price analysis in connection with every procurement action in excess of the simplified acquisition threshold including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, the non-federal entity must make independent estimates before receiving bids or proposals.

(b) The non-federal entity must negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration must be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

(c) Costs or prices based on estimated costs for contracts under the federal award are allowable only to the extent that costs incurred or cost estimates included in negotiated prices would be allowable for the non-federal entity under subpart e—cost principles of this part. The non-federal entity may reference its own cost principles that comply with the federal cost principles.

(d) The cost plus a percentage of cost and percentage of construction cost methods of contracting must not be used.

**§200.324 Federal awarding agency or pass-through entity review**

(a) The non-federal entity must make available, upon request of the federal awarding agency or pass-through entity, technical specifications on proposed procurements where the federal awarding agency or pass-through entity believes such review is needed to

ensure that the item or service specified is the one being proposed for acquisition. This review generally will take place prior to the time the specification is incorporated into a solicitation document. However, if the non-federal entity desires to have the review accomplished after a solicitation has been developed, the federal awarding agency or pass-through entity may still review the specifications, with such review usually limited to the technical aspects of the proposed purchase.

(b) The non-federal entity must make available upon request, for the federal awarding agency or pass-through entity pre-procurement review, procurement documents, such as requests for proposals or invitations for bids, or independent cost estimates, when:

(1) The non-federal entity's procurement procedures or operation fails to comply with the procurement standards in this part;

(2) The procurement is expected to exceed the simplified acquisition threshold and is to be awarded without competition or only one bid or offer is received in response to a solicitation;

(3) The procurement, which is expected to exceed the simplified acquisition threshold, specifies a "brand name" product;

(4) The proposed contract is more than the simplified acquisition threshold and is to be awarded to other than the apparent low bidder under a sealed bid procurement; or

(5) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the simplified acquisition threshold.

(c) The non-federal entity is exempt from the pre-procurement review in paragraph (b) of this section if the federal awarding agency or pass-through entity determines that its procurement systems comply with the standards of this part.

(1) The non-federal entity may request that its procurement system be reviewed by the federal awarding agency or pass-through entity to determine whether its system meets these standards in order for its system to be certified. Generally, these reviews must occur where there is continuous high-dollar funding, and third-party contracts are awarded on a regular basis;

(2) The non-federal entity may self-certify its procurement system. Such self-certification must not limit the federal awarding agency's right to survey the system. Under a self-certification procedure, the federal awarding agency may rely on written assurances

from the non-federal entity that it is complying with these standards. The non-federal entity must cite specific policies, procedures, regulations, or standards as being in compliance with these requirements and have its system available for review.

### **§200.325 Bonding requirements**

For construction or facility improvement contracts or subcontracts exceeding the simplified acquisition threshold, the federal awarding agency or pass-through entity may accept the bonding policy and requirements of the non-federal entity provided that the federal awarding agency or pass-through entity has made a determination that the federal interest is adequately protected. If such a determination has not been made, the minimum requirements must be as follows:

- (a) A bid guarantee from each bidder equivalent to five percent of the bid price. The “bid guarantee” must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.
- (b) A performance bond on the part of the contractor for 100 percent of the contract price. A “performance bond” is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.
- (c) A payment bond on the part of the contractor for 100 percent of the contract price. A “payment bond” is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

### **§200.326 Contract provisions**

The non-federal entity's contracts must contain the applicable provisions described in Appendix II to part 200— Contract provisions for non-federal entity contracts under federal awards.



**Appendix II:** Full text of the federally mandated contract provisions in addition to other provisions required by the federal agency or non-federal entity, all contracts made by the county under the federal award must contain provisions covering the following, as applicable.

(a) Contracts for more than the simplified acquisition threshold currently set at \$150,000, 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.

(b) All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-federal entity including the manner by which it will be affected and the basis for settlement.

(c) Equal Employment Opportunity. Except as otherwise provided under 41 CFR part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 CFR part 60-1.3 must include the equal opportunity clause provided under 41 CFR 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 regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”

(d) 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 non-federal entities 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 non-federal

entity 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 non-federal entity 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 non-federal entity must report all suspected or reported violations to the federal awarding agency.

(e) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-federal entity 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.

(f) Rights to inventions made under a contract or agreement. 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.

(g) Clean Air Act (42 U.S.C. 7401-7671q.) And the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended— Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-federal award 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) Debarment and Suspension (Executive Orders 12549 and 12689)— A 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.

(i) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)— Contractors that apply or bid for an award exceeding \$100,000 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.

(j) See §200.322 Procurement of recovered materials.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75888, Dec. 19, 2014]

## EXHIBIT I

### DICTIONARY OF PURCHASING TERMS

**ACCEPT:** To receive with approval or satisfaction; to receive with intent to retain (e.g., accept delivery of material at receiving).

**ACKNOWLEDGEMENT:** A form used to inform the buyer that the seller has accepted the order.

**ADVERTISING:** The solicitation of competition through public announcement (i.e. electronic media, bulletin boards, newspapers).

**AGREEMENT:** See Contract

**ALL OR NONE:** A term used in bidding where vendor conditions the bid prices upon acceptance and award for all items or group of items bid.

**ALTERNATIVE BID:** A bid that invites for consideration one or more offers of an option or choice based upon equipment or satisfactory performance by user (e.g., such bid is only acceptable when the variance is deemed to be immaterial).

**AUCTION BID:** A bid submitted through an electronic commerce portal that is in response to an Invitation for Auction Bids that must conform to a prescribed format identified in the Invitation for Auction Bids.

**AWARD:** The presentation of a purchase agreement or contract to a bidder after all necessary approvals have been obtained; the acceptance of a bid or proposal.

**BACK DOOR BUYING:** Making a purchase without going through the central or designated purchasing authority.

**BACK DOOR SELLING:** The endeavor to sell to departments or agencies of government without authorization of designated purchasing authority.

**BACK ORDER:** The undelivered part of a previous order that the vendor agrees to ship later.

**BID:** A competitive price offer made by an intended seller, usually in reply to an invitation to bid. A price offer made at a public auction.

**BID BOND:** An insurance agreement in which a third party agrees to be liable to pay a certain amount of money in the event the awarded bidder fails to sign the contract as bid. See Bid Deposit.

**BID DEPOSIT:** A sum of money or check deposited with and at the request of the government to guarantee that the bidder (depositor) will, if selected, sign the contract as bid. If the bidder does not sign the contract, the deposit is forfeited in full.

**BID OPENING:** The act of publicly opening the bid envelopes at specified dates and times.

**BIDDERS LIST:** A list of potential vendors including names and addresses from whom

bids and proposals may be solicited.

**BLANKET ORDER:** Encumbers a sum of money in one fiscal period to be purchased against.

**BULK PURCHASING:** Purchasing in large quantities in order to reduce the price per unit; volume purchasing.

**CASH DISCOUNT:** A discount from the purchase price allowed to the purchaser if he pays within a specified period. (i.e. 2% 10 days, net 30 days).

**C.O.D. (CASH ON DELIVERY):** Payment due and payable upon delivery of goods.

**CERTIFICATE OF NON-COLLUSION:** A statement signed by a bidder and submitted with bid to affirm that bid is made freely without consultation with any other bidder.

**COLLUSION:** A secret agreement or cooperation between two or more persons to accomplish a fraudulent, deceitful or unlawful purpose.

**COMAR:** Code of Maryland Regulations, Title 21, State Procurement Regulations as amended.

**COMMODITY:** An article of trade or value, something that is bought or sold, any moveable or tangible item that is produced or used as the subject of trade or commerce (a.k.a. goods, materials, supplies, equipment).

**COMMODITY CONTRACT:** Contracts for commodities issued for specific items and at fixed prices or discounts or based on discounts off list prices or some fixed percentage.

**COMPETITIVE BIDDING:** The offer of firm bids by individuals or firms competing for a contract, privilege, or right to supply specified services or merchandise.

**CONFIRMING ORDER:** A Purchase Order restating the same terms originally placed orally.

**CONTRACT:** An SAP document, enforceable by law, between two or more competent parties, to do or not to do something not prohibited by law, for a consideration. An example is a contract for the procurement of commodities or services.

**CONTRACT ADMINISTRATION:** The management of all facets of contracts to assure the contractor's total performance is in accordance with his contractual commitments and that the obligations of the purchases are fulfilled. In government, this management is conducted within the framework of delegated responsibility and authority and includes the support of using agencies.

**CONTRACT, FIRM-FIXED PRICE:** A contract that provides for a price not subject to any adjustment by reason of the cost experience of the contractor in the performance of the contract. It is used for contracts awarded after formal bidding, also used in negotiated contracts when reasonably definite specifications are available and costs can be estimated with reasonable accuracy to enable the negotiation of a fair price.

**CONTRACT, FIXED-PRICE WITH ESCALATION:** A fixed price type of contract that provides for the upward and downward revision of the stated contract price upon the occurrence of certain contingencies (such as fluctuations in material prices and labor rates) specifically defined in the contract.

**CONTRACTOR:** One who agrees to furnish goods or services at a specified price (especially for construction).

**COOPERATIVE PURCHASING:** The combining of requirements of two or more public entities in order to obtain the benefits of volume purchases and/or reduction in administrative expenses.

**DEPUTY PURCHASING AGENT:** [[Purchasing]] Administrator OF THE OFFICE OF PROCUREMENT AND CONTRACT ADMINISTRATION.

**DISABLED BUSINESS ENTERPRISE (DBE):** (Refer to Code Sec. 4.102(k)) A business that is (i) at least 51% owned by one or more disabled individuals; or (ii) in the case of any publicly owned corporation, at least 51% of the stock of which is owned by one or more individuals with disabilities, whose ownership interest is real and continuous, and not created solely to meet the disabled owned business provisions of the Equal Business Opportunity Program, and whose general management and daily business affairs and essential productive operations are controlled by one or more individuals with disabilities; and which has been certified by the Equal Business Opportunity Commission as a Disabled Business Enterprise.

**ELECTRONIC SIGNATURE:** An electronic (electrical, digital, magnetic, wireless, optical, electromagnetic or similar capabilities) identifier or the electronic result of an authentication technique attached to or logically associated with a record that is intended by the person using it to have the same force and effect as a manual signature.

**EMERGENCY:** The necessity for the immediate purchase of commodities or services essential to protect the life, health or public safety.

**ENCUMBRANCE:** Reserved obligations in the form of Purchase Orders or contract, which are chargeable to an appropriation is reserved. Funds cease to be encumbrances when paid or when the actual Purchase Order is set up.

**EQUIPMENT:** Commodities of durable nature which retain their identity throughout their useful life (i.e. vehicles, computers, etc.)

**EVALUATION OF BIDS:** The process of examining a bid after opening to determine the bidder's responsibility, responsiveness to requirements, and other characteristics of the bid relating to the selection of the award bid.

**EXPEDITE:** To facilitate or hasten delivery of goods ordered by purchaser, generally

according to the contract terms.

**FIDELITY BOND:** A bond that secures an employer up to an amount stated in the bond for losses caused by dishonesty or infidelity on the part of an employee.

**FISCAL YEAR:** A period of twelve consecutive months selected as a basis for annual financial reporting, planning, or budgeting. (July 1 – June 30 for Howard County).

**FORMAL BID PROCEDURE (Invitation to Bid or Request for Proposal):** An advertised request for the submission of bids in a sealed envelope and in conformance with a prescribed format to be opened publicly at a specified time.

**F.O.B. (FREE ON BOARD):** A shipping term defining the point at which the buyer takes legal title to the goods, who is responsible for payment of freight, and who is responsible for prosecuting claims against carriers for loss or damage to the goods in transit.

**F.O.B. DESTINATION:** A shipping term that indicates that title changes hands from vendor to purchaser at the destination of the shipment; vendor owns goods in transit and files any claims.

**F.O.B. ORIGIN:** A shipping term that indicates that title changes hands from vendor to purchaser at the origin of the shipment; purchaser owns goods in transit and files any claims.

**GOODS:** See Commodity.

**IDENTICAL BID:** A bid that agrees in all respects with another bid; tie bid.

**INFORMAL BID PROCEDURE:** A request for written price quotations for commodity or service that does not require advertising, a public opening or reading of bids.

**INSURANCE:** A contract in which one party, for a fee, undertakes to protect another party against loss, damage or liability arising from an unknown or contingent incident. Coverage by a contract binding a party to indemnify another against specified loss in return for premiums paid.

**INVENTORY:** A stock of goods or an itemized list of a stock of goods indicating volume and values.

**INVOICE:** Seller's itemized document stating prices and quantities of goods and/or services delivered, and sent to buyer for payment.

**LEASE PURCHASE AGREEMENT:** An acquisition contract in which the lease's periodic payments or parts thereof are applied both to fulfill the lease obligation and as installments for equity and eventual ownership of the commodity upon completion of the agreement.

**MAINTENANCE:** The upkeep of buildings, facilities, structures, grounds and equipment to keep it in an efficient operating condition.

**MATERIALS:** See Commodity

**MINORITY BUSINESS ENTERPRISE (MBE):** (Refer to Code Sec. 4.102(r)) A business that is: (i) at least 51% owned by one or more minority individuals; or (ii) in the case of any publicly owned corporation, at least 51% of the stock of which is owned by one or more minority individuals, whose ownership interest is real and continuous, and not created solely to meet the minority owned business provisions of the Equal Business Opportunity Program, and whose general management and daily business affairs and essential productive operations are controlled by one or more minority individuals; and that has been certified by the Howard County Equal Business Opportunity Commission as a minority business enterprise.

**NO BID:** A response to an invitation for bids stating that respondent does not wish to submit an offer. It usually operates as a procedures consideration to prevent suspension from the bidders list for failure to submit bids.

**CHANGE ORDER:** Purchaser's written modification or addition to a Purchase Order.

**PAYMENT BOND:** A bond furnished by a surety company that provides security that all work bid will be performed.

**PERFORMANCE BOND:** A bond furnished by a surety company that provides security that all work bid will be performed.

**PIGGYBACK CONTRACT:** A form of cooperative purchasing in which an entity has competed and awarded a contract and the vendor is willing to provide the same prices, terms and conditions of the contract to another entity.

**PRE-BID/PRE-PROPOSAL CONFERENCE:** Meeting held with prospective bidders prior to solicitation of bids or proposals, to recognize state of the art limits, technical aspects, specifications and standards relative to the subject and elicit expertise and bidders interest in pursuing the task.

**PRE-QUALIFICATION OF BIDDERS:** The screening of potential vendors in which a government considers such factors as financial capability, capacity to perform, reputations, management, etc., in order to develop a list of vendors qualified to bid on government contracts.

**PROCUREMENT:** Purchasing, renting, leasing, or otherwise acquiring any commodities, services, or construction; includes all functions that pertain to the acquisition, including description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration. The combined functions of purchasing, inventory control, traffic and transportation, receiving, receiving inspection, storekeeping, and salvage and disposal operations.

**PROCUREMENT CARD (a.k.a. PURCHASING CARD, PDQ CARD):** A payment method whereby user agencies make purchases directly from suppliers using a credit card, with predetermined transaction limits and monthly limits, issued by a bank or major credit card provider.



**PURCHASE ORDER:** A written document ordering supplies, services or construction for the County. The document shows all terms and conditions of the purchase.

**PURCHASING:** The act and function of responsibility for the acquisition of equipment, materials, commodities, and services.

**PURCHASING AGENT:** County Administrative Officer

**OFFICE OF [[PURCHASING]] PROCUREMENT AND CONTRACT ADMINISTRATION:** The division within the Department of County Administration responsible for centralized control over all purchases made by the County.

**QUOTATIONS:** An offer by a vendor to sell to the County. It may be verbal or written. Used for items less than the formal bid limit.

**REPAIR:** To restore to sound condition.

**REQUEST FOR PROPOSAL:** A method for acquiring goods or services in which discussions or negotiations may be conducted with responsible offerors who submit proposals in the competitive range.

**RESPONSIBLE BID:** A bidder who is deemed qualified to perform all mandatory and essential requirements of the solicitation.

**RESPONSIVE BID:** A bidder whose bid or proposal is deemed to conform to all mandatory and essential requirements of the solicitation.

**REVENUE GENERATING AGREEMENTS:** Contracts or Purchase Orders reflecting incoming funds to the County via commissions on vending machine sales, advertising, auctions, etc. (Excludes outright sale of surplus equipment.)

**SERVICE CONTRACT:** Contracts for services issued for specific items at fixed prices or discounts, or based on discounts off list prices or a fixed percentage.

**SERVICES/PROFESSIONAL SERVICES:** The rendering of time, effort, or work, rather than the furnishing of a specific physical product other than reports incidental to the required performance. This includes, but is not limited to, the professional personal, and/or contractual services provided by attorneys, accountants, physicians, architects, engineers, and consultants providing services that require specialized knowledge or skills and intellectual skill in the performance or the service.

**SMALL BUSINESS:** As defined by Code of Maryland Regulations. (COMAR) 21.01.02.01 B (80) as follows:

A business, other than a broker, which meets the following criteria:

It is independently owned and operated;

It is not a subsidiary of another firm;

It is not dominant in its field of operation;

Its wholesale operations did not employ more than 50 persons, and its gross sales did not exceed an average of \$2,000,000 in its most recently completed three fiscal years;

Its retail operations did not employ more than 25 persons, and its gross sales did not exceed an average of \$2,000,000 in its most recently completed three fiscal years;  
Its manufacturing operations did not employ more than 100 persons, and its gross sales did not exceed an average of \$2,000,000 in its most recently completed three fiscal years;  
Its service operations did not employ more than 100 persons, and its gross sales did not exceed an average of \$2,000,000 in its most recently completed three fiscal years.

**SMALL PURCHASES:** Commodities and services valued at up to \$5,000.

**SOLE SOURCE:** The purchase of a commodity or service that is only available from one supplier, usually because of its technological, specialized, unique, or proprietary character.

**SOLICITATION:** A request for a priced offer to provide commodities or services.

**STOCK:** A supply of material maintained on hand at storage points in a supply system to meet anticipated demands for it.

**SUPPLIER:** See Vendor.

**SUPPLIES:** See Commodity.

**TABULATION OF BIDS:** The recording of bids and bidding data that was submitted in response to a specific invitation for the purpose of comparison, analysis, and recordkeeping.

**TIE BID:** See Identical Bid.

**UNAUTHORIZED PURCHASES:** Purchases made by the using agency without the prior approval of the buyer. A justification detailing the nature of the purchase must accompany the requisition.

**USING AGENCY:** Any department, agency, commission, bureau, or other unit in the county government using the commodities or services.

**VENDOR:** One who sells something; a "seller".

**VETERAN-OWNED BUSINESS ENTERPRISE (VOBE):** Veteran-Owned Business Enterprise (VOBE) means a business enterprise that is verified by the Center for Verification and Evaluation of the United States Department of Veterans Affairs as a Veteran-Owned Small Business Enterprise.

**WOMAN BUSINESS ENTERPRISE (WBE):** A business enterprise which is: (i) At least 51 percent owned by one or more women; or (ii) in the case of any publicly owned corporation, at least 51 percent of the stock of which is owned by one or more women, whose ownership interest is real and continuous, and not created solely to meet the women owned business provisions of the Equal Business Opportunity Program, whose general management and daily business affairs and essential productive operations are controlled

by one or more women, which has been certified by the Equal Business Opportunity Commission as a women business enterprise.

## EXHIBIT II

### NATIONAL INSTITUTE OF GOVERNMENTAL PURCHASING, INC.

#### CODE OF ETHICS

*The Institute believes, and it is a condition of membership, that the following ethical principles should govern the conduct of every person employed by a public sector procurement or materials management organization.*

Seeks or accepts a position as head (or employee) only when fully in accord with the professional principles applicable thereto and when confident of possessing the qualifications to serve under those principles to the advantage of the employing organization.

Believes in the dignity and worth of the service rendered by the organization, and the societal responsibilities assumed as a trusted public servant.

Is governed by the highest ideals of honor and integrity in all public and personal relationships in order to merit the respect and inspire the confidence of the organization and the public being served.

Believes that personal aggrandizement or personal profit obtained through misuse of public or personal relationships is dishonest and not tolerable.

Identifies and eliminates participation of any individual in operational situations where a conflict of interest may be involved.

Believes that members of the Institute and its staff should at no time, or under any circumstances, accept directly or indirectly, gifts, gratuities, or other things of value from suppliers, which might influence or appear to influence purchasing decisions.

Keeps the governmental organization informed, through appropriate channels, on problems and progress of applicable operations by emphasizing the importance of the facts.

Resists encroachment on control of personnel in order to preserve integrity as a professional manager.

Handles all personnel matters on a merit basis, and in compliance with applicable laws prohibiting discrimination in employment on the basis of politics, religion, color, national origin, disability, gender, age, pregnancy and other protected characteristics.

Seeks or dispenses no personal favors. Handles each administrative problem objectively and empathetically, without discrimination.

Subscribes to and supports the professional aims and objectives of the National Institute of Governmental Purchasing, Inc.

#### EXHIBIT III

## HOWARD COUNTY CHARTER AND CODE REFERENCES TO ETHICS

### ***Charter Section 901. Conflict of Interest.***

- (a) **Prohibitions.** No officer or employee of the County, whether elected or appointed, shall in any manner whatsoever be interested in or receive any benefit from the profits or emoluments of any contract, job, work, or service for the County. No such officer or employee shall accept any service or thing of value, directly or indirectly, from any person, firm or corporation having dealings with the County, upon more favorable terms than those granted to the public generally, nor shall he receive, directly or indirectly, any part of any fee, commission or other compensation paid or payable by the County, or by any person in connection with any dealings with the County, or by any person in connection with any dealings with or proceedings before any branch, office, department, board, commission or other agency of the County. No such officer or employee shall directly or indirectly be the broker or agent who procures or receives any compensation in connection with the procurement of any type of bonds for County officers, employees or persons or firms doing business with the County. No such officer or employee shall solicit or accept any compensation or gratuity in the form of money or otherwise for any act or omission in the course of his public work; provided, however, that the head of any department or board of the County may permit an employee to receive a reward publicly offered and paid for, for the accomplishment of a particular task.
- (b) **Rules of construction; exceptions by Council.** The provisions of this Section shall be broadly construed and strictly enforced for the purpose of preventing officers and employees from securing any pecuniary advantages, however indirect, from their public associations, other than their compensation provided by law.

In order, however, to guard against injustice, the Council may, by resolution, specifically authorize any County officer or employee to own stock in any corporation or to maintain a business in connection with any person, firm or corporation dealing with the County, if, on full public disclosure of all pertinent facts to the County Council by such officer or employee, the Council shall determine that such stock ownership or connection does not violate the public interest.

The County Council may, by ordinance, delegate to the Howard County Ethics Commission the power to make such determinations and to authorize the ownership or connection. Any ordinance which delegates this power shall provide for procedures including a public hearing, and shall establish criteria for determining when the ownership or connection does not violate the public interest.

- (c) **Penalties.** Any officer or employee of the County who willfully violates any of the provisions of this Section shall forfeit his office. If any person shall offer, pay, refund or rebate any part of any fee, commission, or other form of compensation to any officer or employee of the County in connection with any County business or proceeding, he shall, on conviction, be punishable by imprisonment for not less than one or more than six months or a fine of not less than \$100.00 or more than \$1,000.00, or both. Any contract made in violation of this Section may be declared void by the Executive or by resolution of the Council. The penalties in this Section shall be in addition to all other penalties provided by law.

**Code Section 22.204. Prohibited Conduct and Interests.**

(a) *Participation Prohibitions.*

- (1) Except as permitted by Commission regulation or opinion, an official or employee may not participate in:
  - (i) Except in the exercise of an administrative or ministerial duty that does not affect the disposition or decision of the matter, any matter in which, to the knowledge of the official or employee, the official or employee or a qualified relative of the official or employee has an interest.
  - (ii) Except in the exercise of an administrative or ministerial duty that does not affect the disposition or decision with respect to the matter, any matter in which any of the following is a party:
    - a. A business entity in which the official or employee has a direct financial interest of which the official or employee may reasonably be expected to know;
    - b. A business entity for which the official, employee, or a qualified relative of the official or employee is an officer, director, trustee, partner, or employee;
    - c. A business entity with which the official or employee or, to the knowledge of the official or employee, a qualified relative is negotiating or has any arrangement concerning prospective employment;
    - d. If the contract reasonably could be expected to result in a conflict between the private interests of the official or employee and the official duties of the official or employee, a business entity that is a party to an existing contract with the official or employee, or which, to the knowledge of the official or employee, is a party to a contract with a qualified relative;
    - e. An entity, doing business with the County, in which a direct financial interest is owned by another entity in which the official or employee has a direct financial interest, if the official or employee may be reasonably expected to know of both direct financial interests; or
    - f. A business entity that:
      1. The official or employee knows is a creditor or obligee of the official or employee or a qualified relative of the official or employee with respect to a thing of economic value; and
      2. As a creditor or obligee, is in a position to directly and substantially affect the interest of the official or employee or a qualified relative of the official or employee.
- (2) A person who is disqualified from participating under paragraph 1. of this subsection shall disclose the nature and circumstances of the conflict and may participate or act if:
  - (i) The disqualification leaves a body with less than a quorum capable of acting;
  - (ii) The disqualified official or employee is required by law to act; or
  - (iii) The disqualified official or employee is the only person authorized to act.
- (3) The prohibitions of paragraph 1. of this subsection do not apply if participation is allowed by regulation or opinion of the Commission.

(b) *Employment and Financial Interest Restrictions.*

- (1) Except as permitted by regulation of the commission when the interest is disclosed or when the employment does not create a conflict of interest or appearance of conflict, an official or employee may not:
  - (i) Be employed by or have a financial interest in any entity:
    - a. Subject to the authority of the official or employee or the County agency, board, commission with which the official or employee is affiliated; or

- b. That is negotiating or has entered a contract with the agency, board, or commission with which the official or employee is affiliated; or
    - (ii) Hold any other employment relationship that would impair the impartiality or independence of judgment of the official or employee.
  - (2) The prohibitions of paragraph (1) of this subsection do not apply to:
    - (i) An official or employee who is appointed to a regulatory or licensing authority pursuant to a statutory requirement that persons subject to the jurisdiction of the authority be represented in appointments to the authority;
    - (ii) Subject to other provisions of law, a member of a board or commission in regard to a financial interest or employment held at the time of appointment, provided the financial interest or employment is publicly disclosed to the appointing authority and the Commission;
    - (iii) An official or employee whose duties are ministerial, if the private employment or financial interest does not create a conflict of interest or the appearance of a conflict of interest, as permitted and in accordance with regulations adopted by the Commission; or
    - (iv) Employment or financial interests allowed by regulation of the Commission if the employment does not create a conflict of interest or the appearance of a conflict of interest or the financial interest is disclosed.
- (c) *Post-Employment Limitations and Restrictions.*
  - (1) A former official or employee may not assist or represent any party other than the County for compensation in a case, contract, or other specific matter involving the County if that matter is one in which the former official or employee significantly participated as an official or employee.
  - (2) For a year after the former member leaves office, a former member of the County Council may not assist or represent another party for compensation in a matter that is the subject of legislative action.
- (d) *Contingent Compensation.* Except in a judicial or quasi-judicial proceeding, an official or employee may not assist or represent a party for contingent compensation in any matter before or involving the County.
- (e) *Use of Prestige of Office.*
  - (1) An official or employee may not intentionally use the prestige of office or public position for the private gain of that official or employee or the private gain of another.
  - (2) This subsection does not prohibit the performance of usual and customary constituent services by an elected official without additional compensation.
- (f) *Solicitation and Acceptance of Gifts.*
  - (1) An official or employee may not solicit any gift.
  - (2) An official or employee may not directly solicit or facilitate the solicitation of a gift, on behalf of another person, from an individual regulated lobbyist.
  - (3) An official or employee may not knowingly accept a gift, directly or indirectly, from a person that the official or employee knows or has the reason to know:
    - (i) Is doing business with or seeking to do business with the County office, agency, board or commission with which the official or employee is affiliated;
    - (ii) Has financial interests that may be substantially and materially affected, in a manner distinguishable from the public generally, by the performance or nonperformance of the official duties of the official or employee;
    - (iii) Is engaged in an activity regulated or controlled by the official's or employee's governmental unit; or
    - (iv) Is a lobbyist with respect to matters within the jurisdiction of the official or employee.
  - (4)
    - (i) Subsection (4)(ii) does not apply to a gift:
      - a. That would tend to impair the impartiality and the independence of judgment of the official or employee receiving the gift;

- b. Of significant value that would give the appearance of impairing the impartiality and independence of judgment of the official or employee; or
  - c. Of significant value that the recipient official or employee believes or has reason to believe is designed to impair the impartiality and independence of judgment of the official or employee.
- (ii) Notwithstanding paragraph (3) of this subsection, an official or employee may accept the following:
- a. Meals and beverages consumed in the presence of the donor or sponsoring entity;
  - b. Ceremonial gifts or awards that have insignificant monetary value;
  - c. Unsolicited gifts of nominal value that do not exceed \$20.00 in cost or trivial items of informational value;
  - d. Reasonable expenses for food, travel, lodging, and scheduled entertainment of the official or the employee at a meeting which is given in return for the participation of the official or employee in a panel or speaking engagement at the meeting;
  - e. Gifts of tickets or free admission extended to an elected official to attend a charitable, cultural, or political event, if the purpose of this gift or admission is a courtesy or ceremony extended to the elected official's office;
  - f. A specific gift or class of gifts that the Commission exempts from the operation of this subsection upon a finding, in writing, that acceptance of the gift or class of gifts would not be detrimental to the impartial conduct of the business of the County and that the gift is purely personal and private in nature;
  - g. Gifts from a person related to the official or employee by blood or marriage, or any other individual who is a member of the household of the official or employee; or
  - h. Honoraria for speaking to or participating in a meeting, provided that the offering of the honorarium is not related, in any way, to the official's or employee's official position.
- (g) *Disclosure of Confidential Information.* Other than in the discharge of official duties, an official or employee may not disclose or use confidential information, that the official or employee acquired by reason of the official's or employee's public position and that is not available to the public, for the economic benefit of the official or employee or that of another person.
- (h) *Participation in Procurement.*
- (1) An individual or a person that employs an individual who assists a County, agency or unit in the drafting of specifications, an invitation for bids, or a request for proposals for a procurement, may not submit a bid or proposal for that procurement, or assist or represent another person, directly or indirectly, who is submitting a bid or proposal for the procurement.
  - (2) The Commission may establish exemptions from the requirements of this section for providing descriptive literature, sole source procurements, and written comments solicited by the procuring agency.



# Howard County, Maryland Office of ~~[[Purchasing]]~~PROCUREMENT AND CONTRACT ADMINISTRATION

## ***Mission Statement***

[[The Office of Purchasing provides centralized procurement with integrity and transparency by promoting broad competition and using collaborative and cost-effective methods to provide timely customer support.]]

OUR OFFICE PROVIDES CENTRALIZED PROCUREMENT SERVICES ON BEHALF OF ALL COUNTY DEPARTMENTS, WITH INTEGRITY AND TRANSPARENCY, THROUGH INNOVATIVE AND COST-EFFECTIVE BEST PRACTICES. WE PROMOTE RESPONSIBLE STEWARDSHIP OF COUNTY RESOURCES AND ETHICAL USE OF TAXPAYER DOLLARS, ENCOURAGE PARTICIPATION FROM DIVERSE AND LOCAL BUSINESSES, AND FOSTER BROAD COMPETITION THROUGH A FAIR AND OPEN PROCESS TO OBTAIN THE HIGHEST QUALITY GOODS AND SERVICES.

## ***Vision Statement***

The Office of ~~[[Purchasing]]~~PROCUREMENT AND CONTRACT ADMINISTRATION shall foster a diverse workforce and vendor community, motivated by integrity and teamwork, to procure goods and services that increase operational readiness, embody innovative technology, enhance mission performance and drive efficiency and effectiveness.