



Bill No. 22-20
Concerning: Amendments to Various Procurement
Code Sections
Introduced: September 6, 2022
Revised: _____ Draft No. _____
Enacted: _____
Effective: _____
Expires: December 5, 2022
Frederick County Code, Chapter _____
Section(s) Various

COUNTY COUNCIL FOR FREDERICK COUNTY, MARYLAND

By: Council President M.C. Keegan-Ayer on behalf of County Executive Jan Gardner

AN ACT to: amend various procurement code sections to enable necessary updates to the procurement process, reflect the proper County department titles, and make other minor changes for consistency purposes.

Date Council Approved: _____ Date Transmitted to Executive: _____

Executive: _____ Date Received: _____

Approved: _____ Date: _____

Vetoed: _____ Date: _____

Date returned to Council by County Executive with no action: _____

By amending:

Frederick County Code, §1-2 Section(s) Various

Other: _____

Boldface

Underlining

[Single boldface brackets]

Heading or defined term.

Added to existing law.

Deleted from existing law.

Existing law unaffected by bill.

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The County Council of Frederick County, Maryland, finds it necessary and appropriate to amend various sections of the Frederick County Code regarding the procurement process in order to enable necessary updates to the procurement process, reflect the proper County department titles, and make other minor changes for consistency purposes.

NOW, THEREFORE, BE IT ENACTED BY THE COUNTY COUNCIL OF FREDERICK COUNTY, MARYLAND, that the Frederick County Code be, and it is hereby, amended as shown on the attached Exhibit 1.

M. C. Keegan-Ayer, President
County Council of Frederick County,
Maryland

CHAPTER 1-2 ADMINISTRATION, ARTICLE II: PURCHASES

Section

1-2-16 Definitions

1-2-17 [Purpose] Authority and applicability

1-2-18 Ethics

1-2-19 Signature Authority

[1-2-18] 1-2-20 Powers and duties of Procurement and Contracting Director [generally]

[1-2-19] 1-2-21 Rules, [and] regulations, and policies

[1-2-20 Purchases or contracts made contrary to article to be void; splitting of requirements prohibited]

[1-2-21] 1-2-22 [Procedural] Prerequisites for award of contracts

[1-2-22] 1-2-23 [Specifications] Exemptions

[1-2-23] [Contract formation and award—methods of source selection (purchases in excess of \$30,000)]

1-2-24 [Competitive sealed bidding (purchases in excess of \$30,000)] Specifications

1-2-25 [Competitive sealed proposals (contracts in excess of \$30,000)] Open market purchases – Agency purchases, Informal Bids, Written Informal Bids

1-2-26 [Procurement of architectural and engineering services by qualification based selection] Formal Solicitations

1-2-27 [Piggybacking off other entities contracts and cooperative purchasing] Alternative methods of procurement

1-2-28 [Competitive negotiated procurement] Payment Vouchers

1-2-29 [Competitive reverse auctions] Contract terms and extensions

1-2-30 [Emergency purchases] Insurance

1-2-31 [Single source purchases] Bonds

1-2-32 [Open market purchases and sales (not in excess of \$30,000)] Agreements

1-2-33 [Procurement of construction (capital improvement projects)] Contractor responsibility board

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- 1-2-34 [Cancellation of solicitations] Limitations on award of contracts
1-2-35 [Responsibility of bidders and offerors] Records retention
1-2-36 Hiring of illegal aliens prohibited for performance of county work
[1-2-37] [Inspections and tests of materials, supplies, etc.]
[1-2-38] 1-2-37 Surplus, obsolete and waste articles
[1-2-39] [Health Department purchases]
[1-2-40] [Bid and purchase approval]
[1-2-41] [Limitation on award of contracts]

§ 1-2-16. DEFINITIONS.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section:

AGENCY. Any service area, division, department, board or commission of the [c]County, including all entities, however structured, that utilize the [c]County's financial system, except the County Board of Education and Frederick Community College.

AGENCY PURCHASE. An Open Market purchase of less than \$10,000 and conducted by the Agency.

AGREEMENT. The document resulting from a procurement and enforceable by law between the County and one or more entities.

[ALTERNATIVE DELIVERY METHOD PROCESS.] A process of construction using a construction manager process, a design/build process or job order cost process instead of the traditional design-bid-build process.]

AMENDMENT. An addition to, deletion from, correction or modification of a solicitation or [contract] Agreement.

[ARCHITECTURAL SERVICES.] Professional or creative work in connection with the design and supervision of construction or alteration of a building or its parts, requiring architectural education, training, and experience in consultation, investigation, evaluation, planning, architectural design and preparation of related documents, and coordination of services furnished by structural, civil, mechanical, electrical engineers, and other consultants.]

BEST VALUE. A [technique, in a]competitive bid/quote process, which permits the evaluation of objective criteria in addition to price to determine the best overall value to the C[c]ounty.

BID. A formal price offer submitted by a prospective [vendor] Contractor to furnish specific goods and/or services to the C[c]ounty in response to an Invitation for Bids (IFB).

BIDDER. An entity providing a response to a solicitation.

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64 **[BLANKET PURCHASE ORDER.** A purchase order whereby a vendor provides to the
65 county supplies, or services including maintenance work on demand or on a prescribed schedule,
66 which shall not exceed a period of 12 consecutive months. A blanket purchase order may be
67 used as a release and encumbrance document to authorize the county to order on an as-needed
68 basis a predetermined amount of supplies, services, or construction work from an indefinite
69 quantity contract.]

70 **BRAND NAME.** A [specification limited] specific manufacturer, firm, or trademark desired or
71 required which may be utilized in a specification description limiting acceptable responses to one
72 (1) or more items by manufacturers' names or catalog numbers.

73 **[BUSINESS ENTITY.** A corporation, general or limited partnership, sole proprietorship,
74 limited liability company, joint venture, unincorporated association or firm, institution, trust,
75 foundation or other entity operated for profit. **BUSINESS ENTITY** does not include a
76 governmental entity.]

77 **CAPITAL IMPROVEMENT PROJECT.** Any public improvement in the capital budget
78 planned and budgeted by the County in advance. [undertaken by the county, including the
79 construction or reconstruction, in whole or in part, of any building, plant, structure, road or other
80 facility necessary in carrying out the activities of the county.]

81 **CATALOG PRICE.** The price included in a catalog, price list, or schedule. [which:

82 (1) Is regularly maintained by a manufacturer or contractor; or

83 (2) Is either published or otherwise available for inspection by customers; and

84 (3) States prices at which sales are currently or were last made to a significant number of
85 any category of buyers or buyers constituting the general buying public for the supplies or
86 services involved.]

87 **CHANGE ORDER.** Any written modification to an existing Agreement [contract] authorizing
88 changes within the scope of work, additions or deletions to the work, or an adjustment to any
89 other provision of the contract.

90 **CONSTRUCTION.** The process of building, improving, altering or demolishing
91 improvements. CONSTRUCTION shall not include the operation, repair, or maintenance of
92 improvements.

93 **CONSULTANT.** A Contractor working in an advisory capacity that [person who agrees to
94 provide certain services under a contract with the county,] works according to [his] its own
95 methods or methods set forth in a solicitation. [, is not subject to the direction and control of the
96 county except as to the results of the work, does not receive a salary from the county, does not
97 accrue annual or sick leave, frequently does the majority of the work in his own office instead of
98 in a county office, and does not receive county benefits.]

99 **[CONSULTANT SELECTION COMMITTEE.** The committee that reviews offers and
100 responses to requests for proposals (RFP) from consultants, including but not limited to those for
101 engineering and architectural services, in accordance with the policies and procedures of this
102 article.]

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103 **[CONSTRUCTION MANAGER PROCESS.** The process of entering into a contract for the
104 design and construction of a project together with a contract with a business organization having
105 the expertise and resources to help manage the design and construction of the project and
106 establish a guaranteed maximum price for the project.]

107 **CONTRACT.** Any agreement enforceable by law between the C[c]ounty and Contractor(s), [or
108 more outside parties,] regardless ~~[of form or title.]~~ for the procurement of materials, services
109 or construction or the disposal of materials.]

110 **[CONTRACT AMENDMENT.** Any written alteration to the terms and conditions of any
111 contract accomplished by mutual action of the parties of the contract.]

112 **CONTRACTOR.** Any person, company, firm, legal entity or vendor having a contract or
113 Agreement with the C[c]ounty, including Consultants.

114 **CONTRACTOR RESPONSIBILITY BOARD (CRB).** The group that reviews the work and
115 projects of contractors performing for the County, including consultants, to address issues as
116 they arise.

117 **COOPERATIVE PURCHASING.** Procurement conducted by, or on behalf of, more than one
118 public procurement entity.

119 **[COST DATA.** Factual information concerning the cost of labor, material, overhead and other
120 cost elements which are expected to be incurred or which have been actually incurred by the
121 contractor in performing the contract.]

122 **COUNTY.** Frederick County, Maryland.

123 **COUNTY COUNCIL.** County Council of Frederick County, Maryland.

124 **COUNTY EXECUTIVE.** County Executive of Frederick County, Maryland, or their designee.

125 **[COUNTY GOVERNING BODY.** County Council and County Executive of Frederick
126 County, Maryland.]

127 **[DAYS.** Calendar days unless otherwise specified.]

128 **[DEPARTMENT.** The Department of Procurement and Contracting.]

129 **DESIGN-BID-BUILD.** A construction project delivery method in which [the agency or owner
130 contracts with separate entities for each of] the design and construction of a project are bid
131 sequentially and contracted for separately with two individual contracts.

132 **DESIGN/BUILD [PROCESS].** A [process for managing a] construction project delivery
133 method in which a [primary or main] contractor submits one [a combined] proposal to provide
134 both the design and construction services for the entire construction project.

135 **DESIGNEE.** A duly authorized representative of a person holding a superior position.

136 **[DIRECT FINANCIAL INTEREST.** Ownership of or control over an interest in a business
137 entity. **DIRECT FINANCIAL INTEREST** does not include ownership of less than 5% of the
138 shares of a publicly traded business entity.]

139 **DIRECTOR.** The Director of Procurement and Contracting unless otherwise stated.

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DISCOUNT-FROM-LIST CONTRACTS. Contracts wherein award [Those contracts whereby price] is determined by applying a percentage discount from established catalog prices. [This type of contract may be used when it is determined by the Procurement and Contracting Director that this contracting methodology is in the best interest of the county.]

[DISCUSSIONS. Communication with an offeror, bidder or respondent for the purpose of:

- (1) Eliminating minor irregularities, informalities, or apparent clerical mistakes in the offer or response;
- (2) Clarifying any offer or response to assure full understanding of, and responsiveness to, solicitation requirements;
- (3) Resolving minor variations in contract terms and conditions; or
- (4) Establishing the competency or financial stability of any offeror, bidder or respondent.]

ELECTRONIC. Electrical, digital, magnetic, optical, electromagnetic, or [any other] similar technology.

[ELIGIBLE PUBLIC PROCUREMENT ENTITY. Any state, county, city, town, other political subdivision, and any other public authority, educational, health or other institution, and to the extent provided by law, any other entity which expends public funds for the procurement of supplies, services and construction.]

ENGINEERING SERVICES. Professional [or creative] work in connection with the design or construction of public or private utilities, structures, buildings, machines, equipment, etc. by a certified and/or licensed engineer. [and processes for projects requiring engineering education, training, and experience and the application of special knowledge of the mathematical, physical and engineering sciences to such professional service or creative work as consultation, investigation, evaluation, planning, design, and supervision of construction for the purpose of assuring compliance with specifications and design.]

EVALUATION PROCESS. A process led by P&C in which an Evaluation Team determines award of a solicitation, including assessing and discussing the Proposals, interviewing Contractors, soliciting Best and Final Offers, and assisting in the negotiation of Best Value for the County.

EVALUATION TEAM. A group of individuals led by P&C selected to assist in determination of award of a solicitation process.

[FORCE ACCOUNT. Construction work performed by the county's regularly employed personnel.]

FORMAL SOLICITATIONS. The purchase of goods or services anticipated to be greater than \$50,000 conducted by P&C utilizing formal processes in writing and requiring Public Notice.

GOODS. Any tangible [personal] property other than services or real property.

IMPROVEMENTS. Any [structure, building, street, utility or other valuable] addition to real property amounting to more than mere repairs or partial replacement and intended to enhance its

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value or utility [or to adapt it for new or further purposes]. This term shall not include Maintenance.

INDEFINITE DELIVERY QUANTITY CONTRACT AGREEMENT (IDO). A[n] Master Agreement utilized [master contract for] to [completion of a project or provision of services or materials on an as-needed basis establishing] establish standard [all] terms, [and] conditions and pricing for an indefinite quantity of identified services or materials which the County will contract for in the future via issuance of a Task Order, and which does not identify a specific scope of work. [requested by the county except those contained in the task (work) orders to be issued pursuant to the indefinite quantity contract.]

INFORMAL BID. An Open Market purchase of less than \$25,000 by obtaining not less than three quotes and conducted by the Agencies at the discretion of P&C.

INFORMALITY. A minor or immaterial irregularity in a bid that is a matter of form rather than of substance; a variation of a bid or proposal from the exact requirements of the IFB or RFP, which can be corrected or waived without being prejudicial to other bidders, and has no material effect on the price, quality, quantity, or delivery schedule of the goods, services, or construction being procured.

INVITATION FOR BIDS (IFB). A formal request to prospective [vendors] Contractors soliciting bids for the purchase of goods or services. [; contains, or incorporates by reference, the specifications or scope of work and all contractual terms and conditions.]

INVITATION FOR REVERSE AUCTION BID. All documentation, written or electronic, whether attached or incorporated by reference, which are used for soliciting bids in accordance with procedures prescribed in § 1-2-29 of this article.]

JOB-ORDER-CONTRACTING. A method of obtaining an indefinite quantity of not specifically defined project services such as construction, preconstruction, finance, maintenance, operations, design, etc., performed via Task Orders issued during the course of the Master Agreement. [construction project delivery method in which:

(1) The contract is a requirements contract for indefinite quantities of construction.

(2) The construction to be performed is specified in job (task) orders issued during the contract.

(3) Finance services, maintenance services, operations services, preconstruction services, design services and other related services may be included.]

LANDSCAPE ARCHITECT SERVICES. Professional or creative work such as consultation, investigation, research, planning, design, and preparation of drawings and specifications. **LANDSCAPE ARCHITECT SERVICES** may also mean responsible supervision of the development of land areas when the objective is to preserve, enhance, or determine the following:

(1) Proper land uses;

(2) Natural land features;

(3) Planting;

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- 217 (4) Natural and aesthetic values;
218 (5) Settings and approaches to structure or other improvements;
219 (6) Settings of grades and determining drainage;
220 (7) Providing for storm drainage systems when these systems do not require the hydraulic
221 design, structural design, or system components and are restricted to the use, when relevant, of
222 any standards prescribed by local or state authorities; and
223 (8) Determination of environmental problems of land, including erosion, blight, and other
224 hazards.]

225 **LITIGATION SERVICES.** Professional or other services procured by the County Attorney
226 for the purpose of evaluating, preparing, providing or presenting evidence at the trial of any
227 lawsuit to which the county is a party.]

228 **KICKBACK.** Any money, fee commission, credit, gift, gratuity, thing of value or
229 compensation of any kind that is provided directly or indirectly to any Contractor, Contractor
230 employee, Subcontractor or Subcontractor employee for the purpose of improperly obtaining or
231 rewarding favorable treatment in connection with a Contract or Subcontract.

232 **LETTER OF INTEREST (LOI).** A step in the procurement process to ascertain interest in
233 performing a specific job or service for the County wherein Contractors are solicited to express
234 their interest in performing the services.

235 **MASTER CONTRACT.** An Agreement resulting from an Indefinite Delivery Quantity
236 Contract.

237 **MAINTENANCE.** Acts of repair, replacement or other actions necessary to keep [any
238 improvements or personal] property in proper condition and good working order. [, to prevent
239 decline in, failure or cessation of the existing condition of the improvement or personal property
240 or to restore any improvement to its original condition after partial failure or destruction.] This
241 term shall not include ~~I~~[i]mprovements.

242 **MATERIALS.** All personal property, including but not limited to supplies, equipment, parts,
243 printing and insurance; excluding, however, leases of a permanent interest in real property,
244 securities and financial paper.]

245 **MULTIPLE-AWARD CONTRACTS.** Those contracts which provide awards to more than
246 one vendor for the same item or type of items. The county may use this type of contract only
247 when it is determined by the Procurement and Contracting Director that the use of more than one
248 vendor is in the best interest of the county.]

249 **NEGOTIATIONS.** An exchange of information or any form of communication [cooperation]
250 during which the [offeror] Contractor and the C[c]ounty may formalize an Agreement or
251 Amendment to an Agreement for the purchase of goods or services. [alter or otherwise change
252 the conditions, terms, and price, unless prohibited, of the proposed contract.]

253 **OCA.** Office of the County Attorney.

254 **OFFEROR.** See Bidder.

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OPEN MARKET PURCHASE. A purchase of an amount less than \$50,000, made by an Agency utilizing the P&C rules and regulations and not requiring formal Public Notice.

P&C. Procurement and Contracting Office.

PAYMENT VOUCHER. A method of payment for certain approved transactions for which there is no competitive purchasing function. [The method of payment for certain approved transactions for which there is no competitive purchasing function; and the using agency may make a request for payment directly to accounts payable without processing the transaction through the office of purchasing. Direct payment vouchers require all the necessary approvals and signatures as a requisition. The following transactions are normally approved for payment using a payment voucher: debt- related expenses, mileage reimbursements, towing, forensic services, witness expenses, storage expenses, copies of records, transcripts, child support payments, housing assistance payments, payments issued to constitutional officers, indigent medical payments, indigent burials, medical insurance refunds (personnel only), memberships, outside counsel, other legal services, including paralegal services, expert witnesses, and court reporters, all types of taxes, assessments, fees, permits, utility payments for utilities which cannot be competed, deposits, postage (U.S. Post Office only), pre-approved interview and/or moving expenses (personnel only), taxes, parking violations, risk management claims settlements, subscriptions to and legal advertisements in newspaper and periodicals, tax deed application expenses, tuition, lab fees and books required course materials to approved schools (registration forms required).]

PIGGYBACK. A procedure of procuring goods or services without formal [bid] procedures via utilizing other public entity's award of solicitations, [an Invitation to Bid or Request for Proposal. This procedure permits piggybacks off] contracts awarded by the State of Maryland, [and] contracts[, and] awarded [bids] by local and state government agencies, [and] cooperative purchasing organizations, [or] purchasing associations, and federal government schedules [allowable by law of national government agencies] such as General Services Administration (GSA).

PILOT PROGRAM. A small-scale or limited time experimental purchase of goods or services conducted to determine the feasibility of use, processes, or functions and move toward making a determination for future purchases while limiting risk of large-scale involvement or cost.

PRICE DATA. Factual information concerning prices for items substantially similar to those being procured. "Prices" as used in this definition shall refer to offered or proposed selling prices, historical selling prices and current selling prices.]

PRICING AGREEMENT. An agreement by which procurements are conducted by or on behalf of more than one (1) governmental body.

PROCUREMENT. The purchasing, renting, leasing, or other acquisition of any materials, services, professional services or construction. **[PROCUREMENT]** It shall also include all functions that pertain to obtaining any supplies, services including professional services or construction, including the description of requirements, the selection and solicitation of sources and the preparation and award of contract. **[PROCUREMENT]** It shall not include the buying, purchasing, renting or leasing of real property, or any interest in real property.

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PROFESSIONAL SERVICES. The furnishing of labor, time, effort or expertise by a licensed or certified contractor with specialized knowledge acquired and formalized by a postgraduate degree in a specialized field, including but not limited to architects, auditors, doctors, engineers and lawyers.

PROGRAM. A detailed framework of steps or activities specifically designed to address a specific initiative of the County.

[PROFESSIONAL SERVICES. The furnishing of labor, time, effort or expertise by a contractor with specialized knowledge in a field, including but not limited to architecture, engineering, medicine, finance, accounting, appraisal and land surveying.]

PROPOSAL. The documents submitted in response to a solicitation [RFP to be used as the basis of negotiation, and/or to become incorporated in a contract upon acceptance by the county].

PROPOSAL REVISION. A change to a proposal made after the solicitation closing date, at the request of or as allowed by the Director of P&C [Procurement and Contracting Director], as the result of negotiation.

PUBLIC NOTICE. [Any publication reasonably calculated to inform responsible bidders or offerors. Public notice shall occur for a reasonable time and may be disseminated through any means of mass communication, including but not limited to newspapers, other written publications, posting, television, radio, other broadcasting media, web publishing and electronic billboards.] Advertising notification to the public of solicitations offered by the County, changes to solicitation, cancellation of solicitations, etc. which allows a reasonable amount of time for potential bidders to gather information and provide a response.

PURCHASE ORDER. A C[c]ounty document which encumbers funds and is used to authorize a purchase transaction with a Contractor. [vendedor. It should contain provisions for goods and/or services ordered; applicable terms as to payment, discounts, date of performance and transportation and other factors or conditions relating to the transaction.] Acceptance [by vendor] of a [county purchase order] Purchase Order by a Contractor shall constitute a contract, or part of a contract.

QUALIFICATIONS BASED SELECTION (QBS). A process for pre-qualifying or selecting one (1) or more entities to provide professional design services based on qualifications and experience designing similar work. [The QBS process usually includes all or part of the following steps:

- (1) The using agency identifies the general scope of work and project definition.
- (2) A schedule for selecting a design professional is established.
- (3) Purchasing calls for Statements of Qualifications (SOQs).
- (4) Statements of Qualifications are received and evaluated.
- (5) All firms are informed of their rating and ranking (optional).
- (6) A short-list of four to six firms is prepared, and a Request for Proposal (RFP) is issued (if required).

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(7) A tour of the site and/or facility may be arranged for short-listed firms.

(8) After proposals are received, interviews are conducted and the firms are ranked based on pre-established criteria.

(9) The client negotiates scope of services, fees/expenses, and payment schedules with the top-ranked firm. (If an agreement cannot be reached with the top-ranked firm, those negotiations are ended and negotiations begin with the second-ranked firm, and so on down the list until an agreement is reached.)

(10) An agreement is prepared.

(11) An award recommendation is made to the County Executive.

(12) All firms involved are informed of the outcome after the selection has been made.]

QUALIFIED RELATIVE. A spouse, parent, or child.

QUOTATION. A document containing cost information for goods and services valued at \$50,000 or less submitted in response to a solicitation [from a contracting authority].

[REDUCED CANDIDATE LIST. A "short list".]

REQUEST FOR INFORMATION (RFI). A nonbinding solicitation method whereby the County solicits input, comments, feedback or reactions from interested parties for a possible future solicitation. [of responses which will satisfy a need rather than a firm specification and in which the respondent is given latitude in order to develop a product and/or service which will fulfill the need.]

[REQUEST FOR LETTER OF INTEREST (RLI). A solicitation of responses from vendors whereby vendors are invited to state their interest in performing a specific job or service for the county. Requests for letters of interest are usually issued with requests for qualifications and utilized by the county to determine which vendors shall be short listed, interviewed, and selected for final contract negotiations.]

[REQUEST FOR QUALIFICATIONS. All documents, written or electronic, whether attached or incorporated by reference, which are used for soliciting responses from qualified respondents.]

REQUEST FOR PROPOSALS (RFP). All documents, whether attached or incorporated by reference, utilized for soliciting proposals wherein Best Value is determined in an evaluation process by an evaluation team, and price may not be a primary factor in determining award.

REQUEST FOR QUOTATION (RFQ). An informal request on the Open Market to prospective [vendors] Contractors soliciting pricing for goods and services valued at \$50,000 or less.

RESPONSIBLE BIDDER or OFFEROR. An [person] individual or entity that has submitted a response to a solicitation which has proven that it is fully capable to meet all of the requirements of a solicitation, that [who] meets the criteria specified in the solicitation, that [this article and who] has the capability in all respects to perform fully the contract requirements, and [the] that has the experience, integrity, reliability, capacity, facilities, equipment, insurance, and

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credit to [which will] ensure good-faith performance as determined by the Director of P&C. The Director of P&C may utilize the expertise of agencies in making the determination of Responsibility.

RESPONSIVE BIDDER or **OFFEROR**. An [person] individual or entity [whose] that has submitted a response to a solicitation that fully conforms to the requirements of the solicitation response requirements in all material respects, including form and substance as determined by the Director of P&C. [bid or offer conforms in all material respects to the requirements set forth in the invitation for bids or request for proposals.]

SERVICES. The furnishing of labor, time or effort by a C[c]ontractor [, consultant, subcontractor or subconsultant] which does not involve the delivery of a specific end product other than required performance and reporting. [design documents or reports and performance. Services do not include employment agreements or collective bargaining agreements. The definition of **SERVICES** includes, but is not limited to, consulting, personal, professional, legal counsel, auditing, technical, professional design and construction services.]

SHORT LIST. A reduced list of Offerors [candidates] winnowed by application of uniform criteria in an approved process, [applying uniform criteria from a longer list who have been selected for further consideration for award] that has been deemed eligible to move forward in an evaluation process by an Evaluation Team, and from which the successful [o]Offeror will be chosen.

SPECIFICATION. Detailed [Any] description of the physical or functional characteristics of or the nature of the goods or services required and what a Bidder or Offeror must be responsive to in order to be considered for award of a contract. [material, service or construction item. It may include a description of any requirement for inspecting, testing or preparing a material, service or construction item for delivery or a procedure for determining whether the requirements are satisfied.]

SUBCONTRACTOR [or **SUBCONSULTANT**]. An individual or entity that [person who] [contracts to] performs work or [render] provides service to or for a [c]Contractor that has a Contract with the County [or consultant as defined by this section or to another subcontractor or subconsultant as a part of a contract with the county.]

SURPLUS. Goods owned by the County deemed no longer necessary or useful and designated for disposal.

TASK ORDER. A written statement of work defining a service or material with a definite project, price and time of completion having been negotiated between a Contractor and the County on the basis of terms, conditions and pricing awarded in an Indefinite Delivery Quantity Agreement (IDQ) which details the specifics of a project. [written order defining a discrete service and/or material with a definite project, price and time of completion which is used in conjunction with a work order contract to create an enforceable contract.]

USING AGENCY. Any service area, division, department, board or commission of the county except the County Board of Education and Frederick Community College.]

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WRITTEN INFORMAL BID. An Open Market purchase of less than \$50,000 by obtaining not less than five quotes in writing and conducted by the Agency at the discretion of P&C.

[WRITTEN or IN WRITING. The product of any method for forming characters on paper, or other materials, or viewable screens, which can be read, retrieved, and reproduced, including information that is electronically transmitted and stored.]

§ 1-2-17. [PURPOSE] AUTHORITY AND APPLICABILITY.

(A.) **Intent.** The [purposes] intent of this article [are] is:

(1.) To provide for the fair and equitable treatment of all persons involved in [public purchasing by] the [c]County's procurement processes, to maximize the purchasing value of public funds, to codify and standardize the C[c]ounty 's purchasing procedures for the orderly and efficient administration thereof, to provide safeguards for maintaining a procurement system of quality and integrity and to foster effective, broad-based competition within the free enterprise system.

(2.) To secure for the C[c]ounty taxpayers the advantages and economies which will result from centralized control over the expenditures of [c]County funds for supplies, materials, equipment, public improvements, professional, and contractual services by the application of modern, business-like procurement and contracting methods and by better utilization of the articles procured at public expense.

(3.) To memorialize the [c]County's intent that with respect to [p]Procurement activities, the rules and regulations [and rules] established by or promulgated under authority of [the] this article shall extend to all [a]Agencies as defined herein and establish a uniform and standard [Court Procurement] Procurement practice.

(B.) **Applicability.** The provisions of this chapter shall apply to the following:

(1.) Every expenditure of public [monies] funds by the[is] [c]County unless otherwise exempted by the [c]County, irrespective of their source, including federal assistance monies;

(2.) Disposal of [s]Surplus [m]Material; and

(3.) Contracts where there is no expenditure of public monies or where the [c]County is offering something of value to the business community when the [c]County determines source selection and award of a contract.

(C.) **Requirement of good faith.** The provisions of this article require all parties involved in the development, performance, or administration of purchasing contracts of the [c]County to act in good faith.

(D.) **Exemptions.** The following are exempt from the provisions of this article:

(1.) The sale or lease of [c]County real property;

(2.) Contracts for professional witnesses if the purpose of such contracts is to provide for services or testimony relating to an existing or potential [probable] judicial proceeding

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in which this [c]County is or may become a party or to contracts for special investigative services for law enforcement purposes;

(3.) Goods and/or services specifically designated by law enforcement as necessary for undercover, investigative work;

(4.) Agreements negotiated by the County Attorney in settlement of litigation or threatened litigation;

(5.) The purchases of materials for resale in a concession operation which shall be made in accordance with procedures prescribed by the Director of P&C;

(6.) Contracts for municipal improvement districts;

(7.) Items identified as eligible for payment via [p]Payment [v]Voucher; [or]

(8.) Insurance proposals pursuant to the provisions of the most recently adopted resolution[.]; or

(9.) Purchases made by the Office of Economic Development for public relations purposes, subject to written approval by the Director of P&C.

[8] (E.) Agency authorization. The County Executive may authorize, in writing, any [a]Agency to purchase or contract for certain specified supplies, materials, equipment, capital improvement or contractual services independently of the Director of P&C [Procurement and Contracting Director], but shall require that such purchases or contracts shall be made in conformity with the applicable provisions of this article and shall further require periodic reports from the agency on the purchases and contracts made under such written authorization.

(F.) Legal services. The procurement of legal advice or engagement of a law firm to assist with County legal matters may only occur after receipt of written authorization from the County Attorney.

(G.) All purchases shall follow. All procurements are subject to the requirements of the Frederick County Charter and Code and the Rules and Regulations. Any procurement made contrary to the provisions herein is voidable by the Director of P&C, with the approval of the County Executive, and the County shall not be bound thereby. The head of the Agency making such purchase transaction shall be personally liable for the costs of such purchase or contract and, if already paid for out of County funds, the amount thereof may be recovered in the name of the County in an appropriate action therefore. Known violations of the provisions set forth herein may result in disciplinary action(s) as deemed appropriate by Human Resources.

(H.) Splitting requirements. An Agency may not split or divide into increments the amount of needed services, supplies, materials, or equipment in a manner that would then allow use of a different procurement method.

(I.) Electronic authorization. Electronic media, including acceptance of Electronic signatures, is authorized and may be utilized in accordance with the State of Maryland's applicability statute, regulatory and other guidance for use of such media, provided the media provides for:

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(1.) Appropriate security to prevent unauthorized access to the quotation, approval, and award processes; and

(2.) Accurate retrieval or conversion of Electronic forms of records and information into a medium which permits inspection and copying.

§ 1-2-18. ETHICS. [POWERS AND DUTIES OF PROCUREMENT AND CONTRACTING DIRECTOR GENERALLY.]

(A.) Conduct of P&C, including all employees, shall meet the highest ethical standards in accordance with the following principles:

(1.) To consider first the interest of the County in all transactions and carry out its established policies.

(2.) To buy without prejudice, seeking to obtain the maximum Best Value for each dollar of expenditure.

(3.) To strive consistently for knowledge of the materials and processes of manufacture, and to establish practical methods for the conduct of the office.

(4.) To subscribe to and to work for honesty and truth in buying and selling and to denounce all forms and manifestations of commercial bribery.

(5.) To accord a prompt and courteous reception, so far as conditions will permit, to all who call on a legitimate business mission.

(6.) To respect the obligations of a caller and to require that obligations to the caller and to the County be respected and be consistent with good business practice.

(7.) To counsel and assist fellow purchasing professionals in the performance of their duties whenever occasion permits.

(8.) To cooperate with all organizations and individuals engaged in activities designed to enhance the development, standards, and integrity of the public purchasing profession.

(B.) County employees involved in the procurement of goods and services shall:

(1.) Engage in conduct, both professional and personal, which does not in any way bring the County into disrepute.

(2.) Accept no gratuities or gifts from Bidders, Offerors, or Contractors other than those declared nominal in value and which have been sanctioned by the County.

(3.) Disallow offers of hospitality, or those with vested interests, to influence or be perceived to influence business decisions.

(4.) Maintain the highest standard of integrity in all business relationships.

(5.) Not use their authority or position for their own financial or personal gain or use their position to obtain a price consideration better than that offered to the general public, unless it is one offered to all employees separate from a solicitation or aware process.

(6.) Strive for equal and transparent competition.

(7.) Not allow an existing relationship with Bidders, Offerors, or Contractors to affect a negotiation with a competing contractor.

(8.) Immediately report any instances of unethical or questionable behavior by Bidders, Offerors, Contractors, or County employees.

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(C.) Contractors and Subcontractors

(1.) No Contractor or Subcontractor shall demand or receive from any of its suppliers or its subcontractors, as an inducement for the award of a subcontract or order, any payment, loan, subscription, advance, deposit of money, services or anything, present or promised, unless consideration of substantially equal or greater value is exchanged.

(2.) No subcontractor or supplier shall make or offer Kickbacks.

(3.) No person shall demand or receive any payment, loan, subscription, advance, deposit of money, services or anything of value in return for an agreement not to compete on Contract.

(4.) If a Subcontractor or supplier makes a Kickback or other prohibited payment as described in this section, the amount thereof shall be conclusively presumed to have been included in the price of the Subcontract or order and ultimately borne by the public body and shall be recoverable from both the maker and recipient. Recovery from one offending party shall not preclude recovery from other offending parties.

§ 1-2-19. SIGNATURE AUTHORITY.

(A.) The Director of P&C is authorized to:

(1.) Award bids for procurements in the amount of \$100,000 or less;

(2.) Execute documents binding on the County which are necessary or incidental to procurements in the amount of \$100,000 or less;

(3.) Execute documents binding on the County which are necessary or incidental to a settlement approved by the Contractor Responsibility Board under §1-2-33, in the amount of \$100,000 or less;

(4.) Approve purchases of vehicles and software as delegated by the County Executive and which were approved in the budget for the then current fiscal year; and

(5.) Terminate contracts of \$100,000 or less, when it is determined to be in the best interest of the County.

(B.) The County Executive is authorized to:

(1.) Award bids for procurements in amounts in excess of \$100,000, upon the recommendation of the Director of P&C;

(2.) Execute documents binding on the County which are necessary or incidental to procurements in amounts in excess of \$100,000, upon the recommendation of the Director of P&C;

(3.) Execute documents binding on the County which are necessary or incidental to a settlement approved by the Contractor Responsibility Board under §1-2-33, in amounts in excess of \$100,000;

(4.) Specify which vehicles and software approved in the budget for the then current fiscal year for which the authority to purchase is delegated to the Director of P&C; and

(5.) Terminate contracts in excess of \$100,000, when it is determined to be in the best interest of the County.

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(C.) The County Executive may delegate to any Division Director the authority to execute and bind the County via a Task Order in any dollar amount that does not exceed the estimated annual “not to exceed” dollar amount set forth in a non-binding Indefinite Delivery Quantity Master Agreement.

(D.) The Council shall authorize by law any contract in excess of \$20,000 that would obligate the County to appropriate funds in the Operating Budget for more than a single fiscal year.

§ 1-2-20. POWERS AND DUTIES OF PROCUREMENT AND CONTRACTING DIRECTOR [GENERALLY]. [RULES AND REGULATIONS.]

(A.) The [Procurement and Contracting] Director of P&C [shall] serve as the [public] purchasing official for the [c]County, [and shall be] is responsible for the procurement [and contracting] of all materials, services, professional services and construction services for the [c]County, [which are] as governed by the terms of this article.

(B.) The [Procurement and Contracting] Director of P&C or Designee [such individual as he may designate shall] will, subject to the provisions of this article:

(1.) Purchase all supplies, materials, equipment and contractual services required by the [a]Agencies and for all capital improvement projects of the [c]County, subject to the approval of the County Executive, when necessary.

(2.) Negotiate contracts for professional services, subject to the approval of the County Executive, when necessary.

(3.) Use specifications established in accordance with this article when[ever they are] applicable to purchase orders and contracts, and ensure compliance with such specifications through adequate inspection, including testing.

(4.) Solicit information via the Request for Information process to gain insight and information on goods, services, industry practices, industry interest, service standards, etc. which may not be easily gleaned from County employees and that may be utilized in a future solicitation or selection process.

(5.) Transfer to or between [a]Agencies or exchange, trade-in or sell those supplies, materials and equipment, which are surplus, obsolete or unused.

(6.) Develop, with the approval of the OCA [County Attorney] as to legal sufficiency, standard forms and conditions of solicitations [invitations to bid], purchase orders and contracts. Develop and prescribe the use by [a]Agencies of other forms required in carrying out the provisions of this article and amend or eliminate any forms.

(7.) Terminate contracts of [\$50,000]100,000 or less when the Director of P&C determines [he determines] that it is in the best interest of the [c]County. [The Procurement and Contracting Director shall submit as required to the County Executive a report on the work of his office in carrying out the provisions of this article.]

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612 (8.) Recommend termination of contracts in excess of \$100,000 to the County
613 Executive when the Director of P&C determines that it is in the best interest of the County.

614 (C.) The Director of P&C will submit, as required by the County Executive, a report on the
615 work of the P&C in implementing the provisions of this article.

616 (D.) The Director of P&C shall recommend revisions to these Code provisions as needed and
617 conduct a comprehensive review five (5) years from the date of the most recent comprehensive
618 update.

619 (E.) The Director of P&C has the authority to cancel any solicitations.

620 (1.) Any solicitation may be canceled, with all bids, proposals or submissions being
621 rejected in whole or in part as specified in the solicitation when the Director of P&C has
622 determined it to be in the best interest of the County.

623
624 (2.) Prior to a solicitation bid opening, a solicitation may be canceled in whole or in part
625 when the Director of P&C determines in writing that:

626
627 (a.) The County no longer requires the materials, services, or construction;

628 (b.) The County can no longer reasonably expect to fund the procurement;

629 (c.) Proposed amendments to the solicitation would be of such magnitude that a
630 new solicitation is in the best interest of the County; or

631 (d.) Any reason determined by the Director of P&C to be in the best interest of
632 the County.

633
634 (3.) The Director will provide Public Notice of the cancellation.

635
636 (4.) After bid opening, but prior to award, all bids, proposals or submissions may be
637 rejected in whole or in part when the Director of P&C determines in writing that:

638
639 (a.) The County no longer requires the materials, services, or construction;

640 (b.) Ambiguous or otherwise inadequate specifications or scopes of work were
641 part of the solicitation;

642 (c.) The solicitation did not provide for consideration of all factors of
643 significance to the County;

644 (d.) Prices exceed available funds and it would not be appropriate to adjust
645 quantities to come within available funds;

646 (e.) All otherwise acceptable bids, statements of qualifications, or proposals
647 received are at clearly unreasonable prices;

648 (f.) There is reason to believe that the bids, statements of qualifications, or
649 proposals may not have been independently arrived at in open competition, may
650 have been collusive, or may have been submitted in bad faith; or

651 (g.) Competition was insufficient or no bids, proposals, or submissions were
652 received.

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(G.) The Director of P&C will determine whether a Bidder or Offeror is Responsible by considering:

- (1.) The ability, capacity, and skill of the Bidder or Offeror to perform the contract or provide the services required;
- (2.) Whether the Bidder or Offeror can perform the contract or provide the service promptly and within the time specified without delay or interference;
- (3.) The character, integrity, reputation, judgment, experience, and efficiency of the Bidder or Offeror;
- (4.) The quality of the Bidder's or Offeror's performance of previous contracts or services;
- (5.) The previous and current compliance by the Bidder or Offeror with laws and ordinances relating to the contract or service;
- (6.) The sufficiency of the financial resources and ability of the Bidder or Offeror to perform the contract or provide the service;
- (7.) The quality, availability, and adaptability of the materials and services to the particular use required;
- (8.) The ability of the Bidder or Offeror to provide future maintenance and service for the use of the subject of the contract;
- (9.) Any other circumstances which may affect the Bidder's or Offeror's performance of the contract; and
- (10.) The Agency's research if it is called upon for assistance in determination.

(H.) No contract shall be awarded to any Bidder or Offeror who is in default on the performance of any other contract with the County or in the payment of any taxes, licenses, or other monies due the County or State.

(I.) The Director of P&C shall be the sole contact for Agreement negotiation with Contractors. No officer or employee of the County shall contract directly or indirectly with any vendor or Contractor except with the approval of the Director of P&C.

(J.) The Director of P&C is authorized to accept early payment discounts as the lowest price offered if it is determined that the County can meet the discount terms.

(K.) The Director of P&C will, when possible, avoid oral communications with Contractors and facilitate all interaction in writing so as to avoid misunderstandings and to provide a historical background and audit file.

(L.) The Director of P&C shall maintain an open record policy whereby prices obtained through open competition and quotations are available to the public after a purchase is made, upon written receipt of a request, pursuant to the Public Information Act State Government Article Title 10, Subtitle 6, Annotated Code of Maryland.

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697 (M.) The Director of P&C shall determine award methodology in the event competition was
698 insufficient or no bids, proposals, or submissions were received.

700 (N.) The Director of P&C may utilize a geographic distribution award methodology whereby
701 contract awards are made to different Contractors for the provision of goods or services in separate
702 identifiable geographic areas of the County when justified by the need for timely delivery, service,
703 availability, or price differential.

705 (O.) The Director of P&C is responsible for assuring specification conformance of purchased
706 goods and services.

708 (1.) The Director of P&C will inspect and test, or cause to be inspected and tested,
709 supplies, materials, and equipment, and the furnishing of contractual services, and the
710 construction of capital improvement projects, to ensure their conformance with the
711 specifications or fitness for use or performance requirements set forth in the purchase order
712 or contract.

713 (2.) Agencies may be authorized to complete the inspection and testing as deliveries are
714 made or services performed.

715 (3.) Chemical and physical tests of samples may be required by the Director of P&C
716 and an outside laboratory may be utilized for this purpose.

717 (4.) The Director of P&C shall promulgate necessary rules and regulations for
718 inspection of deliveries.

720 (P.) The Director of P&C will oversee purchases made by the Frederick County Health
721 Department. The Frederick County Health Department is authorized to fulfill its procurement
722 requirements by:

724 (1.) Conducting procurement actions through the Frederick County Government
725 procurement process;

726 (2.) Conducting procurement in-house as authorized in writing by the Director of P&C;
727 or

728 (3.) Conducting all procurement following the State of Maryland procurement
729 regulations as delineated in COMAR, Title 21.

731 (Q.) The Director of P&C will oversee purchases made by Citizens Care and Rehabilitation
732 Center and Montevue Assisted Living Facility.

734 (R.) The Director of P&C will oversee the selection process for grant awardees.

736 (S.) The Director of P&C may assess liquidated damages in accordance with solicitation or
737 contract terms and conditions when necessary and permitted by the solicitation and at the sole
738 discretion of the Director of P&C.

740 (T.) The Director of P&C has the sole authority to issue all County Purchase Orders.

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(1.) No purchases shall be made without a purchase order or contract except for the authorized use of procurement cards or as otherwise stated in this article.

(2.) Agency Directors will be personally responsible for the cost of all purchases or expenses incurred in a manner inconsistent with the provisions of the County Code and P&C Rules and Regulations.

(3.) No notice of award will be signed, no open market purchase order will be issued, or procurement card purchase made without prior verification that an unencumbered account balance in excess of all unpaid obligations is sufficient to pay the amount of the purchase order, contract award, or procurement card purchase.

(4.) The Budget Director is responsible for providing the Director of P&C with a detailed budget and capital outlay listing for each County Agency.

(5.) It is the responsibility of each Agency Director to monitor and control expenditures made by their Agency's employees via procurement cards.

(U.) The P&C may participate in joint or cooperative purchase activities with other public jurisdictions or agencies, including but not limited to the municipalities within Frederick County, the Frederick County Board of Education, and Frederick Community College, Metropolitan Washington Council of Governments Cooperative Purchasing (MWCOG), Baltimore Regional Cooperative Purchasing Committee (BRCPC), Northeast Maryland Waste Disposal Authority (NMWDA), etc. Volunteer Fire and Rescue companies that are recognized participants in the Frederick County Fire and Rescue system may also participate in such joint or cooperative purchases.

(V.) Notwithstanding §1-2-25, the Director of P&C may elect to manage any purchase not exceeding \$50,000 according to any of the procurement methods listed under §1-2-26 or §1-2-27.

§ 1-2-~~21~~[19]. RULES, [AND] REGULATIONS, AND POLICIES.

(A.) Rules and regulations. The [Procurement and Contracting] Director of P&C [shall prepare] may promulgate rules for the implementation of this [a]Article. [Such] [r]Rules [shall] may include, but not be limited to, provisions for:

(1.) The handling of bids, including advertising, [their] custody and safeguarding, [advertising,] opening and tabulation, acceptance or rejection and re-advertising. [, and the procedure for determining:]

(2.) Procedures to determine:

(a.) The lowest, Responsive and Responsible Bidder; and

(b.) Award recommendations based on Best Value when applicable.

[(1) The lowest, responsive and responsible bidder;

(2) Award recommendations based on "best value" when applicable;]

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783 [(B))(3.) _____ The procedure [and the forms] for securing from B[b]idders and
784 prospective B[b]idders the data necessary to determine whether or not the B[b]idders are
785 responsible and the bids are responsive.

786 [(C))(4.) _____ The procedure [and the forms] for reporting receipt of supplies, materials,
787 equipment, and services, and for reporting progress on and completion of capital
788 improvements.

789 [(D))(5.) _____ The procedure for submission, examination, and approval of invoices for
790 supplies, materials, equipment and services delivered to any and all agencies, and for
791 progress and final payment on capital improvements.

792 [(E))(6.) _____ Such other matters as may be necessary to give effect to such rules and to
793 the provisions of this article. The [Procurement and Contracting] Director of P&C shall
794 submit such rules to the County Executive for approval. The [Procurement and
795 Contracting] Director of P&C shall enforce such rules. A copy of them shall be [kept in
796 his office and shall be] open to public inspection during regular business hours. [(1959
797 Code, § 36-4)]

798 (B.) Policies. Policies outlining routines to be taken in the execution of the rules and regulations
799 shall be approved by the Chief Administrative Officer on an as-needed basis and shall be updated
800 no less than every five (5) years.

801
802
803 **[§ 1-2-20. PURCHASES OR CONTRACTS MADE CONTRARY TO ARTICLE TO BE**
804 **VOID; SPLITTING OF REQUIREMENTS PROHIBITED]**

805 [(A) If any agency purchases or contracts for any supplies, materials, equipment or services
806 contrary to the provisions of this article, such purchase or contract shall be void and of no
807 effect. The head of the agency making such purchase transaction shall be personally liable for
808 the costs of such purchase or contract and, if already paid for out of county funds, the amount
809 thereof may be recovered in the name of the county in an appropriate action therefore.

810 (B) It shall be unlawful for any agency to split its requirements for supplies, materials,
811 equipment and services in order to bypass, avoid or evade the provisions of § 1-2-25 of this
812 Code.]

813
814 **§ 1-2-22. [PROCEDURAL] PREREQUISITES FOR AWARD OF CONTRACTS.**

815 (A.) [In the case of a] When a procurement contract [for procurement] is primarily for the use
816 of a specific [department or] A[a]gency of the C[c]ounty, the Director of the Agency shall
817 recommend the approval of award to the Director of P&C who will reject, award or recommend
818 award of the contract. When more than one Agency utilizes the contract, the Director of P&C
819 will determine which Agency(ies) shall recommend. [the head of such using agency or designee
820 thereof shall also approve an award before written notice of the award is sent.]

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(B.) [In any case w]Where competitive sealed bids or proposals are required by this article and only one bid or proposal is received, the [Procurement and Contracting] Director of P&C shall document the rationale for rejecting or awarding the bid or proposal and may negotiate with the single responder to develop a contract.

(C.) Where responsive bids are received from two or more responsible Bidders and all bid prices received exceed the amount of allocated funds, the Director of P&C may: reduce or modify the scope of work and solicit revised bids from the responsive and responsible Bidders on the original solicitation; or cancel the solicitation and rebid.

[(C)](D.) The [Procurement and Contracting] Director of P&C may [shall] not award any contract or finalize any procurement [until] unless the funds necessary to defray the cost of such procurement are appropriated and available, except[ing only]:

(1.) [Cases of] In an emergency as defined in §[1-2-30] 1-2-27(B.) of this code; and

(2.) [Cases w]Where revenue to pay the [bidder or offeror] Contractor will be [raised] provided through the performance of the contract.

[(D)](E.) [No c]Contracts for the acquisition of property, [or] the construction of improvements, or other expenditures which [is] are to be financed by bonds or other obligations [shall be effective] may not take effect until the proceeds of the bonds or obligations have been received and verified as available by the Finance Director. Improvements to be paid for by special assessment[s] funds are exempt[ed] from this requirement.

§ 1-2-23. EXEMPTIONS.

(A.) An Agency Director may submit to the Director of P&C a written request for an exemption from the Rules and Regulations solicitation requirements: to purchase goods or services from other government entities or quasi-governmental agencies; for a short-term Pilot Program; when specific expertise is required; or to contract with a non-profit offering services to persons with disabilities or special needs.

(B.) An exemption from the Rules and Regulations may be approved or revoked at the sole discretion of the Director of P&C. Agencies granted an Exemption will be required to provide periodic reports to the Director of P&C on the purchases and performance under contracts executed pursuant to the exemption. The reports shall provide the Contractor's name, description of goods and services provided, quantities received and total prices paid.

(C.) If an exemption is granted, the Agency will still be bound by all applicable (non-exempted) provisions of the Frederick County Charter, Code and the P&C Rules and Regulations.

(D.) If the Director of P&C determines that the exemption is no longer warranted or in the best interest of the County, the exemption may be revoked.

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§ 1-2-~~22~~24. SPECIFICATIONS.

(A.) *Intent.* All specifications [, including but not limited to design, performance, and brand name specifications,] shall be drafted so as to provide a nonrestrictive, clear, and concise description of the material, service, or construction [desired] sought.

(B.) *Preparation.*

(1.) [Before any procurement, the Procurement and Contracting] The Director of P&C [shall cause to be prepared] will prepare written specifications detailing the C[c]ounty's requirements for the materials, service, or construction. The Director of P&C may also request that an Agency [other departments or agencies of the county] assist with the preparation of [to prepare] specifications for the procurement[s to be made primarily for such department or agency].

(2.) No person who, for compensation, prepares a Specification on behalf of the County shall submit a bid or proposal for that procurement or any portion thereof, or disclose to any Bidder or Offeror information concerning the procurement that is not available to the public. However, the Director of P&C may permit such person to submit a bid or proposal for the procurement or any portion thereof if the Director of P&C determines that the exclusion of the person would limit the number of potential qualified Bidders or Offerors in a manner contrary to the best interest of the County.

(C.) *Approval.* Both the Agency Director and the Director of P&C will approve the specification prior to public distribution. If the Agency Director and the Director of P&C are unable to reach an agreement, the matter will be referred to the Chief Administrative Officer for resolution.

[(1) Specifications prepared primarily for a procurement for a specific department or agency of the county shall be approved by both the Procurement and Contracting Director and the head of the using agency before being submitted for bid.]

(2) If the Procurement and Contracting Director and head of the using agency cannot agree, the matter shall be referred to the Chief Administrative Officer.]

(D.) *Brand N[n]ame specification.*

(1.) A B[b]rand N[n]ame specification may be used [when] after the [Procurement and Contracting] Director of P&C has determined that sufficient sources for competition exist for the procurement of the material and that the use of the B[b]rand N[n]ame specification is not intended to limit or restrict competition.

(2.) A B[b]rand N[n]ame specification may [also] be used to describe the standard of quality, performance, and other salient characteristics of a material in lieu of a description of its physical or functional characteristics[. In such cases] and, the solicitation [shall contain explanatory language] will state that the use of [a] the B[b]rand N[n]ame is for

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the purpose of describing the standard desired and that the substitution of equivalent materials is permitted.

(3.) A Brand Name specification may be used as the sole brand acceptable after the Director of P&C has determined that alternative products will result in a higher overall cost to the County, will otherwise harm the County's financial interests, or will impede the County's administrative functions or delivery of services to the public.

(4.) [A user] An A[a]gency requesting a B[b]rand N[n]ame specification [shall] will provide written evidence to support a B[b]rand N[n]ame determination to the Director of P&C for approval. Inconvenience of [drawing] drafting specifications or developing performance specifications [do] will not be sufficient justification[y] to the use of a B[b]rand N[n]ame specification.

(E.) Specifications prepared by other than C[c]ounty personnel. The requirements and intent of this section [article] regarding [the intent and] nonrestrictive[ness of] specifications [shall] applies[y] to [all] specifications prepared [other than] by non C[c]ounty individuals and entities [personnel], including, but not limited to, [those prepared by] architects, engineers, designers, and consultants for public contracts, or subcontractors. No [person] individual or entity that prepares[ing] specifications on behalf of the County may [shall] receive any direct or indirect benefit from the utilization of [such] those specifications.

[§ 1-2-23.] [CONTRACT FORMATION AND AWARD—METHODS OF SOURCE SELECTION. (PURCHASES IN EXCESS OF \$30,000).]

[All procurements subject to the terms of this article shall be awarded by competitive sealed bidding pursuant to § 1-2-24, except as provided in:

(A) Section 1-2-25 concerning awards by competitive sealed proposals;

(B) Section 1-2-26 concerning procurement of architectural and engineering services by qualification based selection (QBS);

(C) Section 1-2-27 concerning piggybacking off other entities contracts and cooperative purchasing;

(D) Section 1-2-28 concerning competitive negotiated procurement (Enterprise Funds);

(E) Section 1-2-29 concerning competitive reverse auctions;

(F) Section 1-2-30 concerning emergency purchases; and

(G) Section 1-2-31 concerning "Single Source" procurements.]

[§ 1-2-24.] [COMPETITIVE SEALED [BIDDING (PURCHASES IN EXCESS OF \$30,000)]]

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[(A) Procurements accomplished pursuant to this section shall be awarded to the lowest responsive and responsible bidder after competitive sealed bidding.

(B) An invitation for bids shall be issued and shall include specifications and all evaluation criteria. Contractual terms and conditions applicable to the procurement may be included within the solicitation document or incorporated by reference.

(C) Public notice shall be given and shall include the bid title, place, date and time of bid opening.

(D) All bids shall be opened in public at the time and place stated in the invitation for bids. The amount of each bid and such other relevant information as the Procurement and Contracting Director deems appropriate, together with the name of each bidder, shall be recorded. Thereafter, the record of bids and each bid shall be available for public inspection in the office of the Procurement and Contracting Director in the same manner as are other public records. In the event of good cause as determined by the Procurement and Contracting Director, bid openings may be postponed by issuance of written addenda prior to the time and date established for the opening of bids.

(E) *Late bids.* A bid is late if it is received at the location designated in the invitation for bids after the time and date set for bid opening. The Department's clock is the governing clock. A late bid shall be rejected. A late bid shall not be opened except for, if necessary, identification purposes. Such bids may be returned to the bidder. Bidders submitting bids that are rejected as late shall be so notified.

(F) Bids shall be accepted without alteration or correction, except as authorized in subsection (G) of this section. Bids shall be evaluated based on the requirements set forth in the invitation for bids, which may include criteria and/or processes for determining acceptability, such as inspection, provision of sample materials, testing, quality, workmanship, delivery and suitability for a particular purpose. Those criteria that will affect the bid price shall be objectively measurable, such as discounts, transportation costs and total or life cycle costs. The invitation for bids shall set forth all evaluation criteria to be used. No criteria may be used in bid evaluations that are not set forth in the invitation for bids.

(G) Correction or withdrawal of inadvertently erroneous bids before or after bid opening, or cancellation of awards or contracts based on such bid mistakes, may be authorized in adherence to the following:

(1) Mistakes of any type discovered before bid opening may be corrected or withdrawn in writing by the bidder. Any such corrections or notices of withdrawal must be received in the office designated in the invitation for bids prior to the time set for bid opening.

(2) After bid opening, a low bidder alleging a clerical error was made may be permitted by the County Executive, to withdraw its bid if:

(a) The clerical mistake is clearly evident on the face of the bid but the intended correct bid is not similarly evident, or

(b) The clerical mistake is not clearly evident on the face of the bid but the bidder submits evidence to the Procurement and Contracting Director which clearly and convincingly

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demonstrates that a clerical mistake was made, in which case the bidder must show the nature of the mistake and the bid price actually intended.

(c) A bidder who is requesting to withdraw his bid based on a judgmental mistake of fact shall not be permitted to withdraw his bid after bid opening.

(d) Errors in bids awarded by unit price may be corrected as follows:

1. Errors in the extension of unit prices stated in a bid or in multiplication, division, addition, or subtraction in a bid may be corrected by the Procurement and Contracting Director prior to award. In such cases, the unit prices shall not be changed.

2. No bidder shall be permitted to correct a bid mistake after bid opening that would cause such bidder to have the low bid, except that any bidder may correct errors in extension of unit prices stated in the bids, or in multiplication, division, addition, or subtraction. In such cases, unit prices bid shall not be changed.

3. Nothing herein is intended to prohibit the acceptance of a voluntary reduction in price from the lowest responsive and responsible bidder after bid opening provided such reduction is not conditioned on, or does not result in, the modification or deletion of any specifications or conditions contained in the invitation for bids.

(e) A prequalification process may be conducted prior to the issuance of an invitation for bids in order to establish a list of qualified bidders. In the event a prequalification process is used, only bids that are submitted from prequalified bidders shall be considered for award.

(f) *Contract award based on "best value"*. Notwithstanding § 1-2-24(A), a contract may be awarded on best value analysis provided that the criteria for analysis was included in the invitation for bids. The contract shall be awarded by written notice to the responsive, responsible bidder whose bid is determined to be the best value to the county and that conforms in all material respects to requirements and criteria set forth in the invitation for bids.

(g) All contracts in excess of \$50,000 shall be awarded by the County Executive.]

§ 1-2-25. [COMPETITIVE SEALED PROPOSALS (CONTRACTS IN EXCESS OF \$30,000).] OPEN MARKET PURCHASES – AGENCY PURCHASES, INFORMAL BIDS, WRITTEN INFORMAL BIDS.

(A.) LEVEL I Purchases.

(1.) LEVEL I- Agency Purchase, an Open Market purchase by which an Agency may procure small amounts of goods and services totaling less than \$10,000, without requirement of a bidding process and may be conducted on the Open Market by RFQ.

(2.) If the total cost of a purchase will exceed \$10,000, the purchase may not be split in order to appear to be a Level I purchase.

(B.) LEVEL II Purchases

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- (1.) LEVEL II- Informal Bid, an Open Market purchase where an Agency procures goods or services totaling less than \$25,000 by quote. Informal Bids are conducted by the Agency in the Open Market at the discretion of P&C.
- (2.) If the total amount of the expenditure for a service, commodity, or for a class of commodities normally obtainable from the same source of supply is estimated to be less than \$25,000, or if the sale of personal property which has become obsolete or unusable is estimated to be less than \$25,000, it may not be subject to the requirements of a formal solicitation conducted by P&C unless determined necessary by the Director of P&C.
- (3.) All Level II Open Market transactions require solicitation of not less than three (3) competitive quotes and shall be submitted for approval of P&C. Copies of quotations or proposals collected by the Agency in award of an Informal Bid are subject to review and approval of P&C prior to purchase.
- (4.) The Agency may solicit quotes from Contractors by telephone or Electronic methods.
- (5.) Award will be made to the lowest Responsive and Responsible Bidder or Offeror. A Best Value award may be utilized at the sole discretion of P&C.
- (C.) LEVEL III- Written Informal Bids.
- (1.) LEVEL III- Written Informal Bid, an Open Market purchase where an Agency procures goods or services totaling less than \$50,000 by written RFQ. Written Informal Bids are conducted by the Agency in the Open Market at the discretion of P&C but the method must be approved by P&C.
- (2.) If the total amount of the expenditure for a service, commodity, or for a class of commodities normally obtainable from the same source of supply is estimated to be less than \$50,000, or if the sale of personal property which has become obsolete or unusable is estimated to be less than \$50,000, it is not subject to the requirements of a formal solicitation conducted by P&C unless determined to be necessary by the Director of P&C.
- (3.) All Level III Open Market transactions require solicitation of not less than five (5) competitive written quotes and shall be submitted for approval of P&C. Copies of quotations or proposals collected by the Agency in award of a Written Informal Bid are subject to review and approval of P&C prior to purchase.
- (4.) The Agency may solicit quotes from Contractors by telephone, Electronic, or written methods, but the Contractor must provide its quote in writing.
- (5.) Award will be made to the lowest Responsive and Responsible Bidder or Offeror. A Best Value award may be utilized at the sole discretion of P&C.
- (6.) The Director of P&C may require the use of a more formal procurement method for a purchase not exceeding \$50,000 when it is determined that the nature of the procurement requires additional support.
- (7.) If the total cost of purchase will exceed \$50,000, the purchase may not be split in order to be a Level III- Written Informal Bid.

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1057 [(A) Procurements for the following are eligible for award by competitive sealed proposals:
1058 (1) Services when the Procurement and Contracting Director determines in writing that the
1059 use of competitive sealed bidding is either not practicable or not advantageous to the county;
1060 (2) Professional services and complex capital improvement projects when the Consultant
1061 Selection Committee determines that the use of alternative project delivery methods will provide
1062 substantial benefit to the county while retaining sufficient competitive pricing and performance.
1063 (a) The selection of Architects and Engineers and other selected professional services for
1064 the various projects undertaken by Frederick County is administered by the Frederick County
1065 Consultant Selection Committee under the chairmanship of the Frederick County Procurement
1066 and Contracting Director. It shall be the responsibility of the Consultant Selection Committee to
1067 make recommendation for professional service contracts in excess of \$30,000 subject to the
1068 provisions of this subsection (A)(2).
1069 (b) The Consultant Selection Committee shall be made up of the following members:
1070 1. Procurement and Contracting Director - Chairman
1071 2. Chief Administrative Officer or designee
1072 3. Public Works Division Director
1073 4. Utilities and Solid Waste Management Division Director
1074 5. Finance Division Director
1075 6. Planning Division Director
1076 7. Parks and Recreation Division Director
1077 8. Representative of Contracting Division or Agency (if not represented above)
1078 (c) The Chief Administrative Officer shall have the authority to designate selected
1079 professional services other than construction related services for consideration by the Consultant
1080 Selection Committee referenced under (A)(2)(a) above.
1081 (3) High technology and software procurements when the Procurement and Contracting
1082 Director determines in writing that the use of competitive sealed bidding is either not practicable
1083 or not advantageous to the county;
1084 (B) Procurements accomplished pursuant to this section shall be solicited through a request
1085 for proposals, subject to the following:
1086 (1) Public notice shall be given and shall include the proposal title, place, date and time of
1087 proposal opening.
1088 (2) The request for proposals shall state evaluation factors and their relative importance.
1089 (3) Proposals shall be "opened" so as to avoid disclosure of contents to competing offerors
1090 during the process of negotiation. A register of proposals shall be maintained containing the
1091 name of each offeror and shall be open for public inspection after the award of the contract in the

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office of the Procurement and Contracting Director in the same manner as are other public records.

(4) *Selection committee.* The Director shall appoint a selection committee to evaluate the proposals and make a recommendation based on the criteria set forth in the request for proposals. No other factors or criteria may be used in the evaluation.

(5) Interviews may be conducted with the highest ranked responsible offeror or offerors for the purpose of clarification and to assure full understanding of, and responsiveness to, solicitation requirements. Offerors selected for interview shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals. Revisions may be permitted after submissions and prior to award in order to reflect clarifications in the proposal's scope of work or contract amount. In conducting interviews, there shall be no disclosure of any information derived from proposals submitted by competing offerors, or of information discussed by the evaluation committee in selecting the highest ranked offeror. After the contract has been awarded and a written contract executed with the selected offeror(s), the scoring of the evaluation committee will be retained by the Procurement and Contracting Director for a period of time consistent with the County's record retention policy. Individual rating sheets and notes prepared or utilized by members of the evaluation committee shall not be made available for public inspection.

(6) Recommendation for award shall be for the selected responsible offeror whose proposal is determined to be the most advantageous to the county, taking into consideration the evaluation factors set forth in the request for proposals. No other factors or criteria shall be used in the evaluation.

(7) The Procurement and Contracting Director is authorized to negotiate the final price and precise scope of work with the selected offeror.

(8) A prequalification process may be conducted prior to the issuance of a request for proposals in order to establish a list of qualified offerors. In the event a prequalification process is used, the Procurement and Contracting Director and the proposal evaluation committee shall only consider proposals that are submitted from prequalified offerors.

(9) All contracts in excess of \$50,000 shall be awarded by the County Executive.]

§ 1-2-26. [PROCUREMENT OF ARCHITECTURAL AND ENGINEERING SERVICES BY QUALIFICATION BASED SELECTION.] FORMAL SOLICITATIONS.

(A.) A procurement estimated to exceed \$50,000 will be conducted by P&C through a Formal Solicitation. This includes all goods and services, as well as Discount-From-List Contracts or Pricing-Agreements.

(B.) The Formal Solicitation process will contain specifications, evaluation criteria, and contractual terms and conditions.

(C.) Public Notice of the initial posting of the solicitation and of all addendums to the solicitation is required.

(D.) Changes, additions, or modifications to the contents of a Formal Solicitation, or the bid or proposal opening date, time, and location may only be made by addendum.

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- (E.) Bids or proposals not received by P&C before the time and date of opening will be rejected.
The P&C time clock will govern.
- (F.) Bids or proposals will be evaluated solely on the solicitation requirements.
- (G.) To establish a list of qualified bidders, a prequalification process may be conducted prior to the issuance of a solicitation. If a prequalification process is used, only bids submitted by prequalified Bidders will be considered for award.
- (H.) An award may be based upon Best Value if evaluation criteria are identified in the solicitation.
- (I.) Bids or proposals may be withdrawn prior to the public opening.
- (J.) Bids or proposals may be changed prior to the public opening by submission of a written amendment on the bidder's letterhead.
- (K.) Contract awards of \$100,000 or less shall be awarded by the Director of P&C, while contract awards exceeding \$100,000 shall be awarded by the County Executive.
- (L.) The Council shall authorize by law any contract in excess of \$20,000 that would obligate the County to appropriate funds in the Operating Budget for more than a single fiscal year.
- (M.) The following types of Formal Solicitation may be utilized:
- (1.) INVITATION FOR BID
- (a.) After opening the competitive sealed bids, the award will be made to the Responsive and Responsible Bidder upon the lowest price per item, lowest overall cost, or highest discount. Discounts based on less than net 30 may be considered for award at the discretion of the Director of P&C.
- (b.) Bids will be opened in public at the same time and a tabulation of the totals made available for public inspection.
- (c.) Bids may be withdrawn after bid opening if a clerical error is clearly evident or after receipt of evidence of a clerical error if the Director of P&C allows the withdrawal of the bid.
- (d.) Errors may be corrected under the following circumstances:
- (i.) Errors in the extension of unit prices in multiplication, division, addition, or subtraction in a bid may be corrected by the Director of P&C prior to award. The unit prices prevail and will not be changed.
- (ii.) After bid opening, a Bidder may ask to correct errors in extension of unit prices, multiplication, division, addition, or subtraction. Unit prices prevail and will not be changed.
- (iii.) A voluntary reduction in price by the lowest Responsive and Responsible Bidder may be accepted after bid opening, provided the reduction is not conditioned on, or does not result in, the modification or deletion of any specifications or conditions contained in the Invitation for Bids.
- (2.) REQUEST FOR PROPOSALS
- (a.) An award will be made based upon Best Value after a competitive sealed procurement process.

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(b.) Entities submitting proposals in response to the solicitation will be identified in a list of respondents made available for public inspection. Contents of proposals, including price, will not be made available in any format until the award has been made. Price information for unsuccessful bids will be considered proprietary and not be disclosed to the public.

(c.) The following are eligible for award by competitive sealed proposals:

(i.) Goods, services, and professional services at the discretion of the Director of P&C;

(ii.) Capital improvement projects when the Director of P&C determines that the use of alternative project delivery methods would not provide substantial benefit to the County;

(iii.) Technology and software procurements at the discretion of the Director of P&C; and

(iv.) Job-Order-Contracting when the Director of P&C determines that it would provide substantial benefit to the County.

(d.) Request for Proposals will be evaluated by an Evaluation Team approved by the Director of P&C.

(e.) Evaluation will be conducted by the Evaluation Team following a confidential review and evaluation of each proposal and utilizing the criteria set forth in the solicitation and addenda, which may include oral interview discussions with all of the highest qualified Offerors, requests for clarification or Proposal Revisions, reference checks, and request for best and final offers, etc.

(f.) The Evaluation Team will determine a short list of Offerors, after which price submissions of the short-listed entities will be opened and evaluated. Award will be recommended by the Evaluation Team unanimously based on the offer that provides the Best Value to the County. Any non-unanimous Evaluation Team results will be determined by the Director of P&C.

(g.) The Director of P&C is authorized to negotiate the final price and scope of work with the recommended awardee to obtain the Best Value for the County and may allow Proposal Revisions during negotiation.

(h.) At the sole discretion of the Director of P&C, a prequalification process may be conducted prior to the issuance of a Request for Proposals to establish a list of prequalified Offerors. In the event a prequalification process is used, the Evaluation Team will only consider proposals submitted from the pre-qualified Offerors.

(3.) QUALIFICATION BASED SELECTION FOR ARCHITECTURAL AND ENGINEERING SERVICES

(a.) At the sole discretion of the Director of P&C, a Qualification Based Selection process may be utilized for preliminary and schematic phases, design development phase, contract document phase, bidding phase, construction phase, post-construction phase, commissioning services, or construction observation services.

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(b.) Upon receipt of an Agency's submittal of a comprehensive Program for the project which sets forth all of the information necessary to design the proposed improvement and a projected timeline, the P&C will request Statements of Qualification and Letters of Interest from prospective Offerors.

(c.) Upon receipt of the information requested from prospective Offerors, each submission will be reviewed by the Evaluation Team for inclusion on the Short List of qualified entities.

(d.) Entities included on the Short List are invited to respond to a Request for Proposal and only proposals submitted by entities on the pre-qualified Short List will be evaluated for award.

(4.) INDEFINITE DELIVERY QUANTITY:

(a.) Indefinite Delivery Quantity Agreements may be utilized at the sole discretion of the Director of P&C for the purpose of obtaining bids or proposals to provide materials and services routinely needed by one or more Agencies for different applications, to be provided on an as-needed basis.

(b.) Indefinite Delivery Quantity bids or proposals will be solicited by the appropriate procurement method as determined by P&C. Solicitations will include a list of potential materials and services sought, typical types of projects, and the explanation that the list is a representative sample of materials, services, and projects which may be contracted for. The list will not be considered as a limitation upon the type of projects for which a Task Order may be executed, nor will it prohibit an Agency from requesting that P&C conduct a formal solicitation for similar services for a specific project.

(c.) An award may be made to one or more Bidders or Offerors and a Master Agreement executed. The Master Agreement establishes pricing and standard terms and conditions required by the County applicable to future Task Orders, but does not include a specific scope of work to be performed.

(d.) Task Orders consistent with the terms of the Master Agreement may be executed in accordance with the authority set forth in this Article. The Task Order will define a specific scope of work to be performed and the amount of compensation to be paid determined under the compensation terms of the Master Agreement and constitute a binding contract between the County and the Contractor. The Agency may require competition among awarded Bidders or Offerors when the scope of work is estimated to exceed \$50,000 and the Task Order will be issued to the Bidder or Offeror providing lowest pricing. If one of several IDQ Bidders or Offerors possesses particular expertise in a field, is familiar with a specific site or structure, or is better able to complete the work in the required timeframe, a Task Order may be issued with or without competition among awarded Bidders or Offerors, or to a Bidder or Offeror that does not provide the lowest pricing.

(e.) The total scope of a project to be performed pursuant to an IDQ Agreement may not be split so that the cost of the Task Order is under \$50,000.

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1263 (f.) Indefinite Delivery Quantity Agreement solicited by P&C on behalf of one
1264 Agency may be utilized by any Agency.
1265

1266 (N.) CONSTRUCTION SERVICES:

1267 (1.) Alternatives. Solicitations for construction services shall be conducted in
1268 accordance with the requirements of §1-2-26 (M.)(1) INVITATION FOR BID and may
1269 use alternative methodologies including but not limited to Design-Bid-Build, Design-
1270 Build, and Job-Order Contracting at the discretion of the Director of P&C.

1271 (2.) Capital Improvement Projects. If an alternate construction delivery method has not
1272 been authorized for a Capital Improvement Project, competitive sealed bids will be secured
1273 and the contract awarded in accordance with the requirements.

1274

1275 [(A) *Applicability.*

1276 (1) This section establishes policy and procedures for the procurement and award of
1277 contracts, consultant agreements, or other for architectural services or engineering services
1278 utilizing Qualifications Based Selection.

1279 (2) The QBS process may be utilized to compete and develop contracts for all architectural
1280 and engineering services related to all or any combination of the phases listed:

- 1281 (a) Preliminary and schematics phase;
1282 (b) Design development phase;
1283 (c) Contract document phase;
1284 (d) Bidding phase;
1285 (e) Construction phase;
1286 (f) Post-construction phase;
1287 (g) Commissioning Services;
1288 (h) Construction Observation Services.

1289 (B) *Architectural/engineering services defined.* For the purposes of this section, architectural
1290 services and engineering services are defined in § 1-2-16 under “architectural services” and
1291 “engineering services” and “landscape architectural services”. The definition does not include
1292 construction inspection services.

1293 (C) *Requests for procurement of A & E Services.*

1294 (1) A user division desiring to procure architectural services or engineering services shall
1295 submit its request to the Procurement and Contracting Director including the following:

1296 (a) A comprehensive program for the project which sets forth all information necessary to
1297 design the proposed improvement.

1298 (b) A projected project time line.

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1299 (2) *Review of request.*

1300 (a) If the division director of the user department or the Procurement and Contracting
1301 Director believes that the requested solicitation should be conducted utilizing QBS, the
1302 Procurement and Contracting Director will schedule the request for consideration by the
1303 Consultant Selection Committee (CSC).

1304 (b) The Consultant Selection Committee will determine whether QBS will be utilized for
1305 this solicitation. If QBS is selected a Request for Qualifications and Letters of Interest will be
1306 utilized to create a short list of qualified candidates.

1307 (D) *Solicitations of Letters of Interest and Statements of Qualification.*

1308 (1) Purchasing shall request Statements of Qualification and Letters of Interest from firms
1309 who have registered to receive notification and via public announcement. An electronic Federal
1310 Form SF-330 Parts I and II, modified for county use, may be utilized to facilitate the collection
1311 and evaluation of qualifications.

1312 (2) *Public announcement and notification guidelines.*

1313 (a) Generally, public announcements shall be placed for a specific project. However, to
1314 the extent practical and feasible, as determined by the Procurement and Contracting Director,
1315 two or more projects which are similar in nature and scope of services may be included in a
1316 single public announcement, and multiple reduced candidate lists established from those
1317 responding to the announcement.

1318 (b) In some cases, the county may desire to award two or more open-end contracts which
1319 are identical in nature and scope of services, for work to be performed. In these cases, the public
1320 announcement shall indicate that two or more contracts may be awarded from a single reduced
1321 candidate list.

1322 (c) The requirement for public announcement pertains only to solicitation for which an
1323 award is estimated to be in excess of \$30,000. However, if state or federal guidelines related to a
1324 solicitation require public notice for a lesser amount the state or federal guidelines shall prevail.

1325 (3) The public announcements shall normally include the following:

1326 (a) Name of the using division(s).

1327 (b) Project number.

1328 (c) Description of the project, and the architectural or engineering service to be procured.

1329 (d) Notice that respondents must indicate their prime participant or participants, and the
1330 areas of involvement of each named subcontractor and that if respondents are placed on the
1331 reduced candidate list, their submission of proposals must substantially reflect this same
1332 composition and areas of involvement.

1333 (e) Indication that reduced candidate lists shall consist of two or more firms from whom
1334 technical proposals shall be requested, and that contract negotiations shall be conducted with the
1335 firm which submits the highest rated technical proposal.

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1336 (f) Indication that multiple reduced candidate lists may be established for two or more
1337 projects similar in nature and scope of services.

1338 (g) Indication that a single reduced candidate list may be established for two or more
1339 identical open-end contracts.

1340 (h) Specific requirements as a prerequisite for consideration.

1341 (i) Major factors/criteria for the establishment of a reduced candidate list.

1342 (j) Indication how interested firms may receive additional documentation about the
1343 procurement, if available.

1344 (k) Provision of 15 days, or other minimum period from the date of announcement for
1345 response by interested firms.

1346 (E) *Selection procedures.*

1347 (1) *Candidate list.* The Procurement and Contracting Department shall establish a list of all
1348 persons who have responded to the QBS solicitation.

1349 (2) *Qualification criteria.* Beyond the specific criteria to be applied to individual projects,
1350 general qualification criteria to be evaluated for each respondent firm may include, but not be
1351 limited to, the following:

1352 (a) General competence;

1353 (b) Past performance on similar work;

1354 (c) Compatibility of the size of the firm with the size of the proposed project;

1355 (d) Capacity to accomplish the proposed work in the required time;

1356 (e) Financial responsibility;

1357 (f) Measures of protection for the county against errors and omissions.

1358 (3) *Reduced candidate list.* The consultant screening committee shall evaluate the candidate
1359 list and establish a recommended reduced candidate list composed of two or more candidates.

1360 (4) The recommendation for reduced candidate list shall be submitted to the Procurement
1361 and Contracting Director.

1362 (5) The Procurement and Contracting Director shall present the screening committee's
1363 recommendation to the Consultant Selection Committee for action officially establishing a
1364 reduced candidate list and authorizing release of a request for proposals to all firms on the
1365 reduced candidate list.

1366 (6) *Notification to solicitation of interest respondents.*

1367 (a) The Procurement and Contracting Department shall promptly notify the respondents
1368 on the reduced candidate list that they can anticipate a request for technical proposals.

1369 (b) The Procurement and Contracting Department shall promptly notify the respondents
1370 not on the reduced candidate list and inform them that they might request a debriefing.

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1371 (F) *Request for technical proposals.*

1372 (1) Upon establishment of a reduced candidate list, the Procurement and Contracting
1373 Department shall:

1374 (a) Forward the reduced candidate list to the user division; and

1375 (b) In collaboration with the user division, prepare a request for technical proposals
1376 package, including a description of the project and a comprehensive scope of the services
1377 required, major factors/criteria to be used in evaluating proposals, and any other project
1378 requirements.

1379 (2) After preparation of technical proposals package, the Procurement and Contracting
1380 Department shall request technical proposals from each firm on the reduced candidate list. The
1381 request for proposals shall state that the county shall conduct contract negotiations with the firm
1382 that submits the highest rated technical proposal.

1383 (G) *Pre-proposal meeting.* Along with the request for proposals, a date shall be designated for
1384 a pre-proposal meeting, if deemed necessary by the Procurement and Contracting Director.

1385 (H) *Technical proposal evaluation and recommendation.*

1386 (1) The consultant screening committee shall:

1387 (a) Review technical proposals for consistency with the statement of qualifications
1388 submitted by each firm. Substantial modification in either composition or areas of involvement
1389 from that shown in the firm's statement may disqualify a proposal. However, upon a showing of
1390 compelling justification, the consultant screening committee may accept a proposal, as modified,
1391 if this is determined, in the committee's discretion, as necessary. This determination shall be
1392 made as soon as practicable after justification is submitted by a firm.

1393 (b) Evaluate technical proposals received in response to the request for proposals.

1394 (c) Recommend possible consultants for selection, in ranked order, to the Procurement
1395 and Contracting Director.

1396 (2) The Procurement and Contracting Director shall either concur with the
1397 recommendations of the consultant screening committee or otherwise document his reasons for
1398 non-concurrence.

1399 (3) The Procurement and Contracting Director shall present a ranked order recommendation
1400 to the Consultant Selection Committee. If the Procurement and Contracting Director's award
1401 recommendation differs from that of the Consultant Screening Committee, both
1402 recommendations shall be represented to the CSC. A representative of the Consultant Screening
1403 Committee shall be provided opportunity to present the committee's recommendation.

1404 (4) The Consultant Selection Committee shall establish an official ranking of all firms on a
1405 reduced candidates list.

1406 (5) The user department(s), after receiving negotiating direction from the Procurement and
1407 Contracting Director, shall proceed with contract negotiations with the top-ranked firm.

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(6) The Consultant Selection Committee may, with the concurrence of the Procurement and Contracting Director, elect to negotiate a contract with the top ranked firm based on the rankings from the Request for Qualifications and interviews without issuing technical proposals if after careful consideration of the project requirements and/or time considerations the Consultant Selection Committee believes that is in the best interests of the County.

(I) *Contract negotiations.*

(1) Negotiating teams shall include representation from the user agency(s) and purchasing. Additional team members may be added.

(2) A negotiating team shall be designated for the purpose of conducting contract negotiations.

(3) Contract negotiations shall be initiated as follows:

(a) The Procurement and Contracting Department, through the negotiating team, shall initiate contract negotiations with the firm which the agency's consultant screening committee has ranked highest based on the evaluation of the technical proposals.

(b) In those cases where the county desires to award two or more identical open-end contracts, negotiations may be conducted simultaneously with two or more of the firms which have submitted the highest rated technical proposals.

(4) The negotiating team shall determine that the negotiated price and all rates to be paid under the contract are fair, competitive, and reasonable. In making that determination, the negotiating team shall:

(a) Consider the scope and complexity of the professional services required; and

(b) Conduct a detailed analysis of the cost of the services.

(5) In cases of unsuccessful negotiations, the negotiating team shall act as follows:

(a) If the negotiating team is unable to negotiate a satisfactory contract with the highest ranked firm at a price which it determines to be fair, competitive, and reasonable, user division, with the approval of the Procurement and Contracting Director, shall terminate negotiations with that firm. The user division then shall negotiate with the second-ranked firm in the same manner. If agreement cannot be reached with the second-ranked firm, the user department shall negotiate with other ranked firms, consecutively in their order of ranking.

(b) In those cases when simultaneous negotiations are being conducted with two or more firms for the awarding of identical open-end contracts, and the user division is unable to negotiate a satisfactory contract with any of the highest ranked firms, then negotiations shall be conducted with other ranked firms, consecutively in their order of ranking.

(6) If the user agency is unable to negotiate a satisfactory contract with any of the firms selected and ranked by the consultant screening committee, the agency head shall request the:

(a) Consultant screening committee to make recommendations for the selection of additional firms, in ranked order; and

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(b) Negotiating team to continue negotiations in accordance with this section until a satisfactory agreement or impasse is reached.

(7) The negotiating team shall submit its recommendations to the Procurement and Contracting Director for concurrence. The Procurement and Contracting Director may elect to reject all remaining proposal and re-advertise.

(J) *Recommendation to the County Executive.* The Procurement and Contracting Director shall submit the recommendations of the agency's Consultant Selection Committee and negotiating team, with indication of his concurrence, to the County Executive, along with the documentation for the selection.]

§ 1-2-27. [PIGGYBACKING OFF OTHER ENTITIES CONTRACTS AND COOPERATIVE PURCHASING.] ALTERNATIVE METHODS OF PROCUREMENT.

(A.) Sole source.

(1.) Sole source or single source procurement may be utilized only when no reasonable alternative sources exist. A record of sole source procurements will be maintained as a public record.

(2.) When the County requires supplies, materials, or equipment which are produced by only one manufacturer, the Director of P&C may specify one manufacturer's make or brand in the solicitation and obtain competitive pricing from the authorized dealers or distributors of the manufacturer. If the manufacturer is the sole Bidder and sole source of supply, the Director of P&C is authorized to negotiate an open market purchase order or contract with the manufacturer at prices and on terms most advantageous to the County.

(3.) When the County requires supplies, materials, or equipment which are patented or proprietary and which are obtainable in two (2) or more equally satisfactory and competitive makes, brands, or types, the Director of P&C will identify all acceptable and competitive makes, brands, or types in the solicitation. Unless a prequalification process has been completed or the item has been "standardized" such lists will also include the phrase "or equal to".

(4.) When the County requests an estimate for repair of equipment and the cost to obtain the estimate is significant, the Director of P&C is authorized to negotiate price, delivery, and terms for the repair to be completed by the Contractor that provided the estimate, in lieu of expending additional funds to obtain multiple estimates.

(5.) The Director of P&C may accept bids which contain alternate or additional makes, brands, or types. The Bidder has the burden to prove to the satisfaction of the County that the alternate or additional make, brand, or type is equal in quality and performance to those listed in the solicitation.

(6.) A contract may be awarded without competition when, after conducting a good faith review of available sources or in the event competition was insufficient or no bids, proposals, or submissions were received, or the goods are used/refurbished, the Director of P&C determines in writing that there is only one responsible source for the required material, service, or construction item. If a sole source award is requested by an Agency,

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written evidence to support a sole source award must accompany the request. The Director of P&C may require that negotiations are conducted as to price, delivery, and terms. The Director of P&C may require the submission of cost or pricing data in connection with an award under this section.

(7.) Miscellaneous exemptions – A contract for materials, professional services, or services may be awarded without competition if the Director of P&C determines in writing that one (1) or more of the following conditions exists:

(a.) Although there exists more than one (1) responsible source, a competitive process cannot reasonably be used or, if used, will result in a substantially higher cost to the County, will otherwise injure the County's financial interests, or will substantially impede the County's administrative functions or the delivery of services to the public.

(b.) A particular material or service is required to maintain interchangeability or compatibility as a part of an existing integrated system.

(c.) A particular material, professional service, or service is required in order to standardize or maintain standardization for the purpose of reducing financial investment or simplifying administration.

(d.) The material is perishable.

(e.) The material qualifies as an object of fine art.

(f.) A particular material is required to match materials in use, so as to produce visual harmony.

(g.) The material, professional service, or service is the subject of a Change Order.

(h.) The contract is for electricity or utilities.

(i.) The contract is with another governmental, quasi-governmental agency, or Frederick County affiliated entity as determined at the sole discretion of the Director of P&C.

(j.) The contract is for high technology, online subscriptions, or software purchases wherein competitive sealed bidding is not practicable or advantageous to the County.

(8.) A construction Change Order which authorizes a new scope of work under a construction contract may be executed without competition when:

(a.) The new scope of work is required for the completion of the improvement under construction pursuant to a competitive bidding or competitive proposal process;

(b.) The new scope of work results from the discovery of differing or unforeseen physical conditions at the site of the improvement under construction and is required for the completion of the improvement under construction; and

(c.) An administrative finding has been made by the Director of P&C that it would be in the County's best interest to negotiate with the on-site Contractor for the new scope of work.

(9.) The requirements of any procurement using Federal or State of Maryland bid processes or funds take precedence over the County's requirements.

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1531 (B.) Emergency.

1532 (1.) An emergency will be deemed to exist when a threat to the health, safety, or welfare
1533 exists, when a breakdown of equipment or of an essential service occurs, or when
1534 unforeseen circumstances arise, which may include delays by contractors, transportation
1535 delays or failures, or when a revenue source may be compromised.

1536 (2.) Upon receipt of notice of an emergency situation, the Agency Director(s) will take
1537 immediate action to mitigate or remediate the emergency situation.

1538 (3.) Agency Directors are responsible for making all reasonable efforts to avoid the
1539 need for Emergency Procurements.

1540 (4.) If an emergency occurs during regular business hours, the Agency Director will
1541 immediately notify the Director of P&C, who will either purchase the required commodity
1542 or service or authorize the Agency Director to do so.

1543 (5.) If an emergency occurs at times other than regular business hours, the Agency
1544 Director may purchase the commodity or service required. The Agency Director will,
1545 whenever possible, secure competitive telephone bids and purchase from the lowest
1546 responsible Bidder.

1547 (6.) The Agency Director must submit to the Director of P&C a complete explanation
1548 of the circumstances of the emergency.

1549 (a.) If the emergency required expenditure(s) of less than \$50,000, the
1550 explanation may be provided via email from the Agency Director to the Director of
1551 P&C.

1552 (b.) If the emergency required expenditure(s) of \$50,000 or more, the
1553 explanation shall be provided by a memorandum from the Agency Director to the
1554 Director of P&C.

1555 (7.) The Director of P&C shall submit to the County Executive, as required, a tabulation
1556 of all emergency purchases in the amount of \$50,000 or more, with an explanation of the
1557 circumstances of each emergency purchase.

1558
1559 (C.) Riding a competitively bid solicitation.

1560 (1.) The County may ride or “piggyback” the competitively bid solicitation of another
1561 jurisdiction or entity so long as the following conditions exist:

1562 (2.) The solicitation must be active and not expired.

1563 (3.) The County’s award must be in accordance with terms and conditions, prices, time
1564 frames, and other criteria included in the solicitation. Changes to terms and
1565 conditions are not allowable except those driven by locale, application of Maryland
1566 law, public disclosure policy, or delivery costs. Addition of items or like services
1567 required to meet the intended use by the County are permitted if provided under the
1568 same discount pricing structure, and shall be included in the County’s Agreement.

1569 (a.) Determination of the eligibility to ride another jurisdiction’s contract and
1570 acceptance of the supporting price and documentation is at the sole discretion of
1571 the Director of P&C.

1572 (b.) The supporting documentation supplied shall include the original
1573 solicitation, the Contractor’s response, and indication that the County is eligible to
1574 ride the contract.

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(D.) Cooperative purchasing.

(1.) The County may participate in public cooperative purchasing when a cooperative purchasing agreement between public entities has been executed between the parties, or the parties are members of a cooperative purchasing group or authority that permits cooperative use among its membership.

(2.) The County may participate in or sponsor cooperative purchasing for the procurement of goods, services, or construction.

(3.) The County may choose to purchase, cooperatively utilize, and provide personnel or other internal resources, as requested and deemed necessary, to support the cooperative purchasing effort.

(4.) Independent Fire and Rescue companies authorized to operate in the County may participate through the County in piggyback, joint, or cooperative purchases.

(E.) Competitive negotiation.

(1.) Procurement of goods, services, products for resale or redistribution, distribution services, and competitive business arrangements related to the establishment of strategic business plans or relationships of any County utility or agency in a competitive market environment or failed competitive procurement process are eligible for award by competitive negotiation under this Section provided the following conditions are met:

(a.) The Agency Director has identified potential qualified vendors of the goods or services to be procured, and investigated and researched the market for such goods or services, and provides detailed information and justification in a memorandum to P&C.

(b.) The Director of P&C concurs with the Agency Director's memorandum and determines in writing that the use of competitive sealed bidding or competitive sealed proposal processes are either not practicable or not advantageous to the County; and

(c.) A minimum of two (2) Offerors are willing and able to provide the goods, services, or products to be procured and to participate in a competitive negotiation process.

(2.) The Director of P&C, working with the Agency Director, may contact identified Offerors and may consider qualified Offerors that have initiated contact with the County, provided that the criteria for identifying Offerors is applied consistently.

(3.) P&C shall be responsible for soliciting and receiving all offers.

(4.) Each Offeror participating in a competitive negotiation will be accorded a fair and reasonable opportunity to present and explain the goods or services to be provided.

(5.) The basis for the final selection of a Contractor under the competitive negotiation process, and the final terms of the contract for the goods or services to be procured will be subject to the review and approval of the Director of P&C.

(6.) Prior to the renewal or extension of any contract for goods or services procured by competitive negotiations beyond the original term, the Director of P&C will assess the

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Contactor's performance and the benefits to the County of continuing under the terms of the contract.

(F.) Expedited procurements.

(1.) The Director of P&C may authorize the use of an Expedited Procurement when the amount of the procurement is estimated to exceed \$50,000, no emergency exists, and prompt procurement action best serves the public interest, for example to avoid the loss of Federal or State funding or to avoid adverse impact on the economic welfare or economic development of the County.

(2.) Agencies are required to use all reasonable efforts to avoid the need for Expedited Procurements.

(3.) To the extent practicable, the procedures for Competitive Sealed Bidding and Competitive Sealed Proposals shall be used for Expedited Procurements.

(4.) The Director of P&C will document in writing the circumstances that cause there to be insufficient time for a standard competitive solicitation to be completed.

(G.) Reverse auction procurements.

(1.) Bids may be solicited through an invitation for reverse auction bids. The solicitation will include specifications and applicable evaluation criteria.

(2.) Notice of the invitation for reverse auction bids will be electronically posted and the solicitation available for public inspection prior to the date set forth therein for the close of the auction. The Public Notice will identify the location of the internet website hosting the reverse auction.

(3.) The Director of P&C will document in writing a decision to allow the correction of inadvertently erroneous bids before auction closing, the withdrawal of inadvertently erroneous bids after auction closing, or the cancellation of awards or contracts based on bid mistakes.

(4.) The contract will be awarded to the lowest Responsive and Responsible Bidder whose bid conforms in all material respects to requirements and criteria set forth in the solicitation.

[(A) *Piggybacking.* The county is authorized to utilize other public entities' awards of an Invitation to Bid or Request for Proposal under the following conditions:

(1) A piggybacked bid should not have been awarded more than 12 months prior to piggyback, or currently be during the term of the contract.

(2) The award must be in accordance with all the terms and conditions, prices, time frames, and other criteria as included in the Invitation to Bid. Changes to terms and conditions, are not allowable except for changes driven by locale such as application of Maryland law and public disclosure policy. Adjustments to delivery costs are permitted. Additional options may be included, including

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1659 additional items if they are provided at the same discount pricing structure and are required to
1660 meet the intended use by the county.

1661 (3) The documentation necessary to authorize shall include as relevant complete copies of
1662 the Invitation to Bid or Request for Proposal, pricing and cost data, and documentation of award
1663 including dates, signatures and expiration date.

1664 (4) Procurement and Contracting Department obtains a commitment letter/quotation letter
1665 from vendor offering to honor the same prices under the same terms and conditions as indicated
1666 in the Invitation to Bid or the final contract resulting from an RFP process.

1667 (5) Only purchases can be piggybacked, sale or trade-ins must be sold separately. Should
1668 the piggybacked bid have a line item(s) for trade-in of used equipment, this line item(s) cannot
1669 be piggybacked.

1670 (6) All piggyback purchases must be approved by the Procurement and Contracting Director
1671 and purchases exceeding \$50,000 must also be approved by the County Executive.

1672 (B) *Cooperative purchasing.* The county may participate in public cooperative purchasing
1673 when a cooperative purchasing agreement between public entities has been executed between the
1674 parties or the parties are members of a cooperative purchasing group or authority that permits
1675 cooperative use amongst its membership. All cooperative agreements entered into pursuant to
1676 this section shall be approved by the Procurement and Contracting Director. Contracts
1677 exceeding \$50,000 shall also be approved by the County Executive.

1678 (1) The county may either participate in, sponsor, conduct or administer a cooperative
1679 purchasing agreement for the procurement of any materials, services, or construction with one or
1680 more "eligible public procurement entity" in accordance with an agreement entered into between
1681 the participants.

1682 (2) Parties under a cooperative purchasing agreement may:

1683 (a) Sponsor, conduct or administer a cooperative agreement for the procurement or
1684 disposal of any materials, services, or construction.

1685 (b) Cooperatively use materials or services.

1686 (c) Commonly use or share warehousing facilities, capital equipment and other facilities.

1687 (d) Provide personnel resources in accordance with the agreement.

1688 (e) On request, make available to other eligible public procurement units informational,
1689 technical or other services that may assist in improving the efficiency or economy of
1690 procurement.

1691 (3) Independent fire and rescue companies, financially supported by the county, may
1692 participate through Frederick County Government in piggyback or joint or cooperative
1693 purchases.

1694 (4) With respect to purchases for the county's Citizens Care & Rehabilitation Center or
1695 Montevue Home, the Procurement and Contracting Director may participate in piggyback or
1696 joint or cooperative purchases with private purchasing groups if prices available to the county

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through a private purchasing group were (i) obtained by the private purchasing group on a verifiable competitive basis, or (ii) would be in addition to prices for the same or essentially similar items otherwise available to the county through existing public entity purchase agreements, it being the county's intent to obtain the lowest possible price for required materials and supplies meeting specifications and the "best value" for equipment and services.]

§ 1-2-28. [COMPETITIVE NEGOTIATED PROCUREMENT.] PAYMENT VOUCHERS.

(A.) Utilization of Payment Vouchers bypasses formal procurement measures and may only be used in instances wherein formal procurement measures are not practicable at the discretion of the Director of P&C.

(B.) Direct Payment Vouchers require the same approvals and signatures as a requisition.

(C.) The following transactions may be approved for payment via Payment Voucher:

(1.) Debt-related expenses;

(2.) Mileage reimbursements;

(3.) Storage expenses;

(4.) Copies of records or transcripts;

(5.) Child support payments;

(6.) Housing assistance payments;

(7.) Indigent medical payments, indigent burials, and medical insurance refunds (personnel only);

(8.) Memberships and subscriptions, legal advertisements in newspapers and periodicals;

(9.) Outside counsel and other legal services including paralegal services, expert witnesses, court reporters, witness expenses, forensic services, or payments issued to constitutional officers;

(10.) Taxes, assessments, and related fees or tax deed application expenses;

(11.) Permits;

(12.) Utility payments for utilities which cannot be competed;

(13.) Deposits;

(14.) Postage;

(15.) Pre-approved interview and/or moving expenses (personnel only);

(16.) Parking violations or towing expenses;

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1732 (17.) Risk management claims settlements;
1733 (18.) Tuition, lab fees, books, or required course materials to approved schools
1734 (registration forms required); and
1735 (19.) Other expenses for which formal procurement is not practicable as approved by
1736 the Director of P&C.
1737
1738 [(A) Procurement for goods, services, products for resale or redistribution, distribution services
1739 usage and competitive business arrangements that are related to the establishment of strategic
1740 business plans or relationships of any county utility or agency in a competitive market
1741 environment shall be eligible for award by competitive negotiation under this section, provided
1742 that the following conditions are met:
1743 (1) The Procurement and Contracting Director determines in writing, that the use of
1744 competitive sealed bidding or competitive sealed proposal processes are either not practicable or
1745 not advantageous to the county; and
1746 (2) There is a minimum of 2 vendors/ businesses willing and able to provide the basic
1747 goods, services or products to be procured through competitive negotiation.
1748 (B) In order to initiate a competitive negotiated procurement under this section, the procuring
1749 utility or agency shall, in a manner acceptable to the Procurement and Contracting Director as
1750 sufficient to identify potential appropriate and qualified vendors of the goods or services to be
1751 procured, investigate and research the market for such goods or services, and identify those
1752 vendors determined to be appropriate and qualified candidates in light of the competitive and
1753 other interests of the procuring utility or agency.
1754 (C) The procuring utility or agency may contact selected vendors, or may consider
1755 appropriate and qualified vendors that have initiated contact with the county, provided that a
1756 rational basis for identifying and selecting candidate vendors in view of the interests of the
1757 procuring utility or agency are applied consistently to all vendors reasonably known to the
1758 procuring utility.
1759 (D) The Procurement and Contracting Director shall be responsible for accepting and
1760 soliciting all offers made on behalf of the procuring agency under the provisions of this section.
1761 (E) Each vendor participating in competitive negotiations under this section shall be accorded
1762 a fair and reasonable opportunity to present and explain the goods or services to be provided by
1763 such vendor.
1764 (F) The basis for final selection of a vendor under a competitive negotiation process, and the
1765 final terms of the contract under which goods or services shall be procured under this section,
1766 shall each be subject to the review and approval of the Procurement and Contracting Director
1767 and County Executive if appropriate.
1768 (G) Prior to the renewal or extension of any contract for goods or services under this section
1769 beyond the original potential term of such contract, the Procurement and Contracting Director
1770 may require that an assessment of the subject vendor's performance and the benefits to the

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county of the terms of such contract be conducted by a qualified third party, to be selected by the Procurement and Contracting Director.]

§ 1-2-29. [COMPETITIVE REVERSE AUCTIONS.] CONTRACT TERM AND EXTENSIONS.

(A.) Every Contract will state the term and the length of time which it will be in effect.

(B.) A Contract may include provisions allowing for its extension or renewal for a like period of time if determined by the Director of P&C to be in the best interest of the County.

(C.) The provisions allowing any extension or renewal will include an objective method of determining the price(s) applicable to an extension or renewal, and will be included in the solicitation.

(D.) A Contract funded through the Operating Budget, having a term of an extension or renewal that extends beyond the County's current fiscal year must include a provision stating that the County's obligations are contingent upon the appropriation and availability of funding.

(E.) Prior to the renewal or extension of any contract, the Director of P&C may require that an assessment of the Contractor's performance and the benefits to the County be provided by the Agency or investigated by a third party.

[(A) Competitive reverse auction bids shall be solicited through an invitation for reverse auction bids. The invitation for reverse auction bids shall be issued and shall include specifications and any applicable evaluation criteria. Contractual terms and conditions may be included within the solicitation document or incorporated by reference.

(B) A prequalification process may be conducted prior to the issuance of an invitation for reverse auction bids in order to establish a list of qualified bidders. In the event a prequalification process is used, only bids that are submitted from prequalified bidders shall be eligible for award.

(C) *Public notice.* Notice of the invitation for reverse auction bids shall be electronically posted and the invitation for reverse auction bids shall be available for public inspection not less than 14 days prior to the date set forth therein for the close of the auction. A shorter time may be deemed necessary for a particular procurement as determined in writing by the Director. The public notice shall state the location of the internet website hosting the reverse auction.

(D) *Bid acceptance and bid evaluation.* Bids shall be unconditionally accepted without alteration or correction, except as authorized in this article. Bids shall be evaluated based on the requirements set forth in the invitation for reverse auction bids, which may include criteria to

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determine acceptability such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose. The invitation for reverse auction bids shall set forth the evaluation criteria to be used. No criteria may be used in bid evaluation that is not set forth in the invitation for reverse auction bids.

(E) *Correction or withdrawal of bids; cancellation of awards.* Correction of inadvertently erroneous bids before or withdrawal of inadvertently erroneous bids after auction closing, or cancellation of awards or contracts based on such bid mistakes, may be permitted where appropriate. Mistakes discovered before auction closing may be modified or withdrawn by written notice received in the department prior to the time set for auction closing. Mistakes discovered after auction closing may be withdrawn only to the extent that the bidder can show by clear and convincing evidence that a mistake of a nonjudgmental character was made, the nature of the mistake, and the bid price actually intended. After auction closing, no changes in bid prices or other bid provisions prejudicial to the interest of the county or fair competition shall be permitted. In lieu of bid correction, a bidder alleging a mistake may be permitted to withdraw its bid if:

(1) The mistake is clearly evident in the auction transcripts, but the intended correct bid is not similarly evident; or

(2) The bidder submits evidence that clearly and convincingly demonstrates that a mistake was made. All decisions to permit the correction or withdrawal of bids, or to cancel awards based on bid mistakes, shall be supported by a written determination made by the Director.

(F) *Contract award.* The contract shall be awarded to the lowest responsible and responsive bidder whose bid conforms in all material respects to requirements and criteria set forth in the invitation for bids.]

§ 1-2-30. [EMERGENCY PURCHASES.] INSURANCE.

(A.) Contractors providing goods or services to the County must maintain insurance for the term of the contract and any extensions or renewals of the type and in the amounts required by the Director of P&C in consultation with Risk Management.

(B.) Prior to the execution of an Agreement by the County, Contractors must provide current Certificates of Insurance evidencing the coverages required, with the exception of Emergency Procurements under §1-2-27 (B.). The Certificates of Insurance may be required to name Frederick County, Maryland including its agents, servants, and employees, as additional insureds.

(C.) In the event any of the Contractor's policies are cancelled before the expiration date of the contract, or completion of the scope of work, the Contractor must provide immediate notice to the County and provide replacement Certificates of Insurance before resuming the provision of goods or services under the Contract with the County.

[(A) The rules and regulations adopted pursuant to § 1-2-19 of this Code shall provide the procedures under which emergency purchases may be made. An emergency shall be deemed to

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exist when a threat to the health, safety, and/or welfare exists, when a breakdown in equipment or in an essential service occurs or when unforeseen circumstances arise, including delays by contractors, and delays in transportation or when a revenue source may be compromised.

(B) If an emergency occurs during regular business hours, the head of the using agency shall immediately notify the Procurement and Contracting Director, who shall either purchase the required commodity or authorize the head of the using agency to do so.

(C) If an emergency occurs at times other than regular business hours, the using agency may purchase directly the commodity required. However, the head of such agency shall, wherever possible, secure competitive telephone bids and order delivery to be made by the lowest responsible bidder. The agency head shall also, not later than the next regular business day thereafter, submit to the Procurement and Contracting Director a requisition, explanation of the circumstances of the emergency. The records of such emergency transactions shall be open to the public inspection during regular business hours.

(D) The Procurement and Contracting Director shall submit, as required, to the County Executive, a tabulation of all emergency purchases, with an explanation of the circumstances of each individual emergency purchase in excess of \$30,000. (1959 Code, § 36-6)]

§ 1-2-31. ["SINGLE SOURCE" PROCUREMENTS.] BONDS.

(A.) The Director of P&C will determine the applicability and amount, if any, of a bid bond, performance bond, or a payment bond; however Bid, Payment and Performance bonds will be required for all construction projects estimated to cost \$100,000 or more.

(B.) For the procurement of goods, services, or construction projects estimated to cost less than \$100,000, bonds may be required in an amount as deemed appropriate by the Director of P&C to protect the interests of the County in securing the provision of the goods, services, and construction.

(C.) Bonds shall be in the form prescribed by the Director of P&C and as approved by the OCA.

(D.) No contract for the acquisition of property or the construction of improvements or other expenditures which is to be financed by bonds or other obligations shall be effective until the proceeds of the bonds or obligations have been received and verified by the Finance Director.

(E.) When a successful Bidder or Offeror fails to execute a contract after the stipulated time, the bid deposit or bid bond may be forfeited and retained as liquidated damages, and not as a penalty for failure to execute the contract.

[(A) When the county requires supplies, materials or equipment which are produced by only one manufacturer, the Procurement and Contracting Director shall specify such manufacturers make or brand in the invitation to bid and shall obtain competitive bids from authorized dealers or distributors of such manufacturer. If such manufacturer is the sole bidder and sole source of

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1893 supply, the Procurement and Contracting Director is authorized to negotiate an open market
1894 purchase order or contract with the manufacturer at prices and on terms most advantageous to the
1895 county.

1896 (B) When the county requires supplies, materials, or equipment which are patented or
1897 proprietary and which are obtainable in 2 or more equally satisfactory and competitive makes,
1898 brands or types, the Procurement and Contracting Director shall list such acceptable and
1899 competitive makes, brands or types in the invitations to bid. Unless a pre-qualification process
1900 has been completed or the item has been "standardized" such lists shall also include the phrase
1901 "or equal to".

1902 (C) The Procurement and Contracting Director may permit bidders to bid on alternate or
1903 additional makes, brands or types. It shall be incumbent on each such bidder to prove to the
1904 satisfaction of the county that the alternate of additional make, brand or type is equal in quality
1905 or performance to those listed in the invitation to bid. (1959 Code, § 36-11)

1906 (D) Except as provided in § 1-2-31(E), a contract may be awarded without competition when
1907 the Director determines in writing, after conducting a good faith review of available sources, that
1908 there is only one responsible source for the required material, service, or construction item. The
1909 using agency requesting a sole source procurement shall provide written evidence to support a
1910 sole source recommendation. The Director may require that negotiations are conducted as to
1911 price, delivery, and terms. The Director may require the submission of cost or pricing data in
1912 connection with an award under this section. Sole source procurement shall be avoided, except
1913 when no reasonable alternative sources exist. A record of sole source procurements shall be
1914 maintained as a public record.

1915 (E) *Miscellaneous exemptions.*

1916 (1) A contract for materials, professional services or services may be awarded without
1917 competition if the Procurement and Contracting Director determines in writing that 1 or more of
1918 the following conditions exists:

1919 (a) Although there exists more than 1 responsible source, a competitive process cannot
1920 reasonably be used or, if used, will result in a substantially higher cost to the county, will
1921 otherwise injure the county's financial interests or will substantially impede the county's
1922 administrative functions or the delivery of services to the public;

1923 (b) A particular material or service is required to maintain interchangeability or
1924 compatibility as a part of an existing integrated system;

1925 (c) A particular material, professional service or service is required in order to standardize
1926 or maintain standardization for the purpose of reducing financial investment or simplifying
1927 administration;

1928 (d) The material is perishable;

1929 (e) The material qualifies as an object of fine art;

1930 (f) A particular material is required to match materials in use, so as to produce visual
1931 harmony;

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- 1932 (g) The material, professional service or service is the subject of a change order.
- 1933 (2) Any construction change order which authorizes a new improvement under a
- 1934 construction contract may be executed without competition when:
- 1935 (a) The new improvement is required for the completion of an improvement which is
- 1936 currently under construction pursuant to a competitive bidding or competitive proposal process;
- 1937 (b) The new improvement results from the discovery of differing or unforeseen physical
- 1938 conditions at the site of the improvement under construction and is required for the completion
- 1939 of the improvement under construction; and
- 1940 (c) An administrative finding has been made by the Procurement and Contracting Director
- 1941 that it would be in the county's best interest to negotiate with the on-site contractor for the
- 1942 construction of the new improvement.
- 1943 (F) The requirements of any procurement requiring use of federal or State of Maryland bid
- 1944 processes take precedence to the aforementioned requirements.]

1945

1946 **§ 1-2-32. [OPEN MARKET PURCHASES AND SALES (NOT IN EXCESS OF \$30,000).]**

1947 **AGREEMENTS.**

1948 (A.) A written Agreement between the County and a Contractor must be executed prior to the

1949 provision of services which exceed the \$50,000 formal threshold whenever possible, with the

1950 exception of Emergency Services provided under §1-2-27 (B.).

1951

1952 (B.) The Director of P&C may require written Agreements between the County and a

1953 Contractor prior to the provision of goods or services not exceeding the formal threshold as deemed

1954 necessary.

1955

1956 (C.) When possible, the County will use the standard Agreement forms approved by the OCA

1957 to contract with the awarded Contractor.

1958

1959 (D.) The Director of P&C with the assistance of the OCA will be the negotiator of the final

1960 terms and conditions and pricing in an Agreement.

1961

1962 [(A) If the amount of the expenditure for a service, commodity or for a class of commodities

1963 normally obtainable from the same source of supply is estimated to be no more than \$30,000 or

1964 if the sale of personal property which has become obsolete or unusable is estimated to no more

1965 than \$30,000 it shall not be subject to the requirements of § 1-2-24 or any of the processes

1966 referenced in § 1-2-23 of this article. All such open market transactions shall, wherever possible,

1967 be based on at least 3 competitive quotes and the approval of the Procurement and Contracting

1968 Director or his designee.

1969 (B) The Procurement and Contracting Director, or his designee, shall solicit quotes by direct

1970 mail requests, telephone, or electronically to prospective bidders for the class of commodities or

1971 services being purchased or sold, and recorded properly. When quotations are necessary, use of

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eMaryland marketplace or purchasing's electronic bid process is strongly preferred. If the above systems are not utilized, quotations shall be solicited from at least three suppliers who have registered themselves on the county's prospective vendor list.

(C) Purchases less than \$2,500, whenever possible, shall be made from pricing agreements, term contracts or should be based on at least 3 competitive quotes.

(D) All open market purchases shall be awarded to the lowest responsive and responsible bidder or on the basis of "best value" and all open market sales shall be made to the highest responsive and responsible bidder. (1959 Code, § 36-9)

(E) *Use of electronic transmissions.* The use of electronic media, including acceptance of electronic signatures, is authorized consistent with the State of Maryland's applicable statutory, regulatory or other guidance for use of such media, so long as such guidance provides for (i) appropriate security to prevent unauthorized access to the quotation, approval, and award processes; and (ii) accurate retrieval or conversion of electronic forms of such information into a medium which permits inspection and copying.

(F) Notwithstanding the provisions of this section, the Procurement and Contracting Director may elect to handle any purchase not exceeding \$30,000 according to any of the procurement methods listed under § 1-2-23 or in the case of construction § 1-2-33.]

§ 1-2-33. [PROCUREMENT OF CONSTRUCTION (CAPITAL IMPROVEMENT PROJECTS).] CONTRACTOR RESPONSIBILITY BOARD.

(A.) The Contractor Responsibility Board (CRB) will investigate and provide settlement recommendations for matters concerning the adequacy or quality of services rendered or performance by Contractors or Consultants primarily on competitively bid or capital improvement projects.

(B.) The CRB members include: the Director of P&C as Chairperson, the Chief Administrative Officer, the Chief Financial Officer, a representative of the County Attorney's Office, and the Director of any additional interested Agency, as well as any Division Directors appointed by the Director of P&C.

(C.) Matters related to Contractor or Consultant liability, protest, allegations of errors or omissions, Change Order issues, or dissatisfaction with the adequacy or quality of services rendered may be referred to the CRB for resolution.

(D.) The Chief Administrative Officer may designate issues arising from Professional Services contracts or capital improvement projects for consideration and settlement recommendation by the CRB.

(E.) Settlement recommendations from the CRB will be documented in the file in writing and, if applicable, in a Change Order executed in accordance with the Change Order Policy.

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[(A) If a capital improvement project is to be constructed by contract, and an alternate construction delivery method has not been authorized by the County Executive, competitive bids shall be secured and the contract shall be awarded by the County Executive in accordance with the requirements of § 1-2-24 of this code except for the provisions of § 1-2-24(G)(2)(f) Contract Award Based on Best Value.

(B) Capital Improvement Construction competitive sealed bid except as otherwise provided in this code.]

§ 1-2-34. [CANCELLATION OF SOLICITATIONS.] LIMITATION ON AWARD OF CONTRACTS.

(A.) The County may not award or enter into contracts with:

(1.) A County Council Member or the County Executive;

(2.) A business entity in which a County Council Member or the County Executive has a direct financial interest;

(3.) A business entity in which a County Council Member or the County Executive is an officer, director, trustee, or partner;

(4.) A Qualified Relative of a County Council Member or the County Executive;

(5.) A business entity in which a Qualified Relative or a County Council Member of the County Executive has a direct financial interest; or

(6.) A business entity in which a Qualified Relative of a County Council Member or the County Executive is an officer, director, trustee, or partner.

(B.) The County may not enter into a contract with:

(1.) A Bidder or Offeror who is in default on the performance of any other contract with the County or in the payment of any taxes, licenses, or other monies due the County.

(2.) A Bidder or Offeror located in Maryland that is either not registered to do business in Maryland or not in good standing with the Maryland Secretary of State.

[(A) *Cancellation of solicitations.* An invitation for bids, a request for proposals, a request for qualifications, an invitation for reverse auction bids or other solicitation may be cancelled, or any or all bids, proposals or statements of qualifications may be rejected in whole or in part as may be specified in the solicitation, when it is in the best interest of the county.

(B) Prior to opening a solicitation may be cancelled in whole or in part when the Procurement and Contracting Director determines in writing that such action is in the county's best interest for reasons including but not limited to:

(1) The county no longer requires the materials, services, or construction;

(2) The county no longer can reasonably expect to fund the procurement; or

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(3) Proposed amendments to the solicitation would be of such magnitude that a new solicitation is in the best interest of the county.

(C) When a solicitation is cancelled prior to opening, notice of cancellation shall be publicly posted.

(D) The notice of cancellation shall:

(1) Identify the solicitation;

(2) Briefly explain the reason for cancellation; and

(3) Where appropriate, explain that an opportunity will be given to compete on any resolicitation or any future procurements of similar materials, services, or construction.

(E) After opening, but prior to award, all bids, proposals or statements of qualifications may be rejected in whole or in part when the Procurement and Contracting Director determines in writing that such action is in the county's best interest for reasons including but not limited to:

(1) The County no longer requires the materials, services or construction;

(2) Ambiguous or otherwise inadequate specifications or scopes of work were part of the solicitation;

(3) The solicitation did not provide for consideration of all factors of significance to the county;

(4) Prices exceed available funds and it would not be appropriate to adjust quantities to come within available funds;

(5) All otherwise acceptable bids, statements of qualifications or proposals received are at clearly unreasonable prices;

(6) There is reason to believe that the bids, statements of qualifications or proposals may not have been independently arrived at in open competition, may have been collusive, or may have been submitted in bad faith; or

(7) Competition was insufficient.

(F) A notice of rejection shall be sent to all persons that submitted bids, statements of qualifications or proposals, and it shall conform to § 1-2-34(D).]

§ 1-2-35. [RESPONSIBILITY OF BIDDERS AND OFFERORS.] RECORDS RETENTION.

(A.) The official records for all formal procurements conducted by P&C are maintained in P&C and may be stored by Electronic methods. Records of purchases may also be maintained by the Agency for such period of time and under such conditions as determined by the Director of P&C.

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(B.) Records for formal procurements, excluding construction contracts, shall be maintained for a period of seven (7) years after completion, cancellation, or termination of the contract.

(C.) Records for construction contracts shall be maintained for a period of twelve (12) years after completion, cancellation, or termination of the contract.

(D.) The Director of P&C shall develop and issue minimum standard formats and procedures for contract administration records.

[(A) In determining whether a bidder or offeror is responsible, the following shall be considered:

(1) The ability, capacity and skill of the bidder or offeror to perform the contract or provide the services required;

(2) Whether the bidder or offeror can perform the contract or provide the service promptly and within the time specified without delay or interference;

(3) The character, integrity, reputation, judgment, experience and efficiency of the bidder or offeror;

(4) The quality of the bidder's or offeror's performance of previous contracts or services;

(5) The previous and existing compliance by the bidder or offeror with laws and ordinances relating to the contract or service;

(6) The sufficiency of the financial resources and ability of the bidder or offeror to perform the contract or provide the service;

(7) The quality, availability and adaptability of the materials and services to the particular use required;

(8) The ability of the bidder or offeror to provide future maintenance and service for the use of the subject of the contract;

(9) Any other circumstances which will affect the bidder's or offeror's performance of the contract.

(10) No contract shall be awarded to any bidder who is in default on the performance of any other contract with the county or in the payment of any taxes, licenses or other monies due to the county.]

§ 1-2-36. HIRING OF ILLEGAL ALIENS PROHIBITED FOR PERFORMANCE OF COUNTY WORK.

(A.) The C[c]ounty does not knowingly hire illegal aliens through direct employment or through its vendors, contractors, or their suppliers or subcontractors. The C[c]ounty expects its vendors, contractors and their subcontractors and suppliers to comply with all applicable federal, state and local laws, rules and regulations concerning lawful entitlement to work in Frederick County, the

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State of Maryland and in the United States of America. Therefore, the following shall be a requirement of all contracts for services entered into by the C[c]ounty:

"The C[c]ontractor warrants and, if requested, shall certify in writing that the C[c]ontractor and its subcontractors do not, and shall not employ under this contract, an illegal alien or any individual while knowing the illegal alien or individual is not authorized to work within the United States of America or without otherwise complying with all requirements of the federal immigration and nationality laws, including verification and record keeping requirements."

(B.) Compliance with the contractual requirement that C[c]ontractors hire only individuals lawfully entitled to work in the United States of America is material to the C[c]ounty. Breach of this material contractual obligation could result in contract termination in addition to, and not in lieu of, any and all other remedies available to the C[c]ounty and any and all other damages for which a C[c]ontractor might be liable. Nothing herein shall require the C[c]ounty to elect to terminate a contract for default to the exclusion of any other remedy.

[§ 1-2-37. INSPECTIONS AND TESTS OF MATERIALS, SUPPLIES, ETC.]

[(A) The Procurement and Contracting Director, or his designee, shall inspect or otherwise assure the inspection of deliveries of supplies, materials and equipment, or the furnishing of contractual services and the construction of capital improvement projects to determine their conformance with the specifications or fitness for use and/or performance requirements set forth in the purchase order or contract.

(B) Any agency which has the facilities for adequate inspection may be authorized by the Procurement and Contracting Director to inspect deliveries made to it or may be designated by the Procurement and Contracting Director to inspect deliveries made to other agencies.

(C) The Procurement and Contracting Director shall have authority to require chemical and physical tests of samples submitted with bids and of samples of deliveries to the extent necessary to determine their quality and conformance with the specifications. For such tests, the Procurement and Contracting Director shall have authority to make use of laboratory facilities of any county agency or to engage the services of any outside laboratory.

(D) The Procurement and Contracting Director shall prescribe any necessary rules and regulations for inspection of deliveries, in accordance with § 1-2-19 of this Code. (1959 Code, § 36-16)]

[§ 1-2-38] 1-2-37. SURPLUS, OBSOLETE AND WASTE ARTICLES.

(A.) All agencies shall submit to the [Procurement and Contracting] Director of P&C, at such times and in such form as [he shall]prescribed, reports showing stocks of all supplies, materials, and equipment which are no longer used or which have become obsolete, worn out, or scrapped.

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2164 (B.) The [Procurement and Contracting]Director of P&C shall have authority to transfer such
2165 supplies, materials, and equipment to another or other A[a]gencies in lieu of filling requisitions for
2166 the purchase of new and additional stock of the same or similar articles.
2167

2168 (C.) The [Procurement and Contracting]Director of P&C shall have authority to sell all such
2169 supplies, materials, and equipment which cannot be used by any A[a]gency or which have become
2170 unsuitable for C[c]ounty use or to exchange or trade in such articles in part of full payment for
2171 new supplies, materials, or equipment of a similar nature. [(1959 Code, § 36-18)]
2172

2173 **[§ 1-2-39. HEALTH DEPARTMENT PURCHASES.]**

2174 [The Frederick County Health Department is authorized to fulfill its procurement requirements
2175 by:

2176 (A) Conducting procurement actions through the county procurement process;

2177 (B) Conducting procurement in-house as authorized in writing by the Director of Finance; or

2178 (C) Conducting all procurement following the state procurement regulations as delineated in
2179 COMAR, Title 21.]
2180

2181 **[§ 1-2-40. BID AND PURCHASE APPROVAL.]**

2182 [(A) Notwithstanding any other provision of these purchasing rules, the Procurement and
2183 Contracting Director shall have the authority to approve all bids or purchases in the amount of
2184 \$50,000 or less.

2185 (B) The Procurement and Contracting Director is authorized to sign and bind the county to all
2186 documents necessary or incidental to all bids or purchases in the amount of \$50,000 or less.

2187 (C) The County Executive must approve all bids and purchases in excess of \$50,000.]
2188

2189 **[§ 1-2-41 LIMITATION ON AWARD OF CONTRACTS.]**

2190 [(A) The county may not award or enter into any contract with:

2191 (1) A County Council Member or the County Executive;

2192 (2) A business entity in which a County Council Member or the County Executive has a
2193 direct financial interest; or

2194 (3) A business entity in which a County Council Member or the County Executive is an
2195 officer, director, trustee, or partner.

2196 (B) The county may not award or enter into any contract with:

2197 (1) A qualified relative of a County Council Member or the County Executive;

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2198 (2) A business entity in which a qualified relative of a County Council Member or of the
2199 County Executive has a direct financial interest; or

2200 (3) A business entity in which a qualified relative of a County Council Member or the
2201 County Executive is an officer, director, trustee, or partner.]
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