

CHAPTER 1-2 ADMINISTRATION, ARTICLE II: PURCHASES

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§ 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 County, including all entities, however structured, that utilize the 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.

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

BEST VALUE. A competitive bid/quote process, which permits the evaluation of objective criteria in addition to price to determine the best overall value to the County.

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

BIDDER. An entity providing a response to a solicitation.

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

CAPITAL IMPROVEMENT PROJECT. Any public improvement in the capital budget planned and budgeted by the County in advance.

CATALOG PRICE. The price included in a catalog, price list, or schedule.

CHANGE ORDER. Any written modification to an existing agreement authorizing changes within the scope of work, additions or deletions to the work, or an adjustment to any other provision of the contract.

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

CONSULTANT. A Contractor working in an advisory capacity that works according to its own methods or methods set forth in a solicitation.

CONTRACT. Any agreement enforceable by law between the County and Contractor(s), regardless of form or title.

CONTRACTOR. Any person, company, firm, legal entity or vendor having a contract or Agreement with the County, including Consultants.

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

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

COUNTY. Frederick County, Maryland.

COUNTY COUNCIL. County Council of Frederick County, Maryland.

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

DESIGN-BID-BUILD. A construction project delivery method in which the design and construction of a project are bid sequentially and contracted for separately with two individual contracts.

DESIGN/BUILD. A construction project delivery method in which a contractor submits one proposal to provide both the design and construction services for the entire construction project.

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

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

DISCOUNT-FROM-LIST CONTRACTS. Contracts wherein award is determined by applying a percentage discount from established catalog prices.

ELECTRONIC. Electrical, digital, magnetic, optical, electromagnetic, or similar technology.

ENGINEERING SERVICES. Professional 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.

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.

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 property other than services or real property.

IMPROVEMENTS. Any addition to real property amounting to more than mere repairs or partial replacement and intended to enhance its value or utility. This term shall not include Maintenance.

INDEFINITE DELIVERY QUANTITY CONTRACT AGREEMENT (IDQ). A Master Agreement utilized to establish standard terms, 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.

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 Contractors soliciting bids for the purchase of goods or services.

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.

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

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

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

MAINTENANCE. Acts of repair, replacement or other actions necessary to keep property in proper condition and good working order. This term shall not include Improvements.

NEGOTIATIONS. An exchange of information or any form of communication during which the Contractor and the County may formalize an Agreement or Amendment to an Agreement for the purchase of goods or services.

OCA. Office of the County Attorney.

OFFEROR. See Bidder.

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.

PIGGYBACK. A procedure of procuring goods or services without formal procedures via utilizing other public entity's award of solicitations, contracts awarded by the State of Maryland, contracts awarded by local and state government agencies, cooperative purchasing organizations, purchasing associations, and federal government schedules 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.

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. 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. It shall not include the buying, purchasing, renting or leasing of real property, or any interest in real property.

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.

PROPOSAL. The documents submitted in response to a solicitation.

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, as the result of negotiation.

PUBLIC NOTICE. 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 County document which encumbers funds and is used to authorize a purchase transaction with a Contractor. Acceptance of a 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.

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.

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.

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 Contractors soliciting pricing for goods and services valued at \$50,000 or less.

RESPONSIBLE BIDDER or OFFEROR. An 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 meets the criteria specified in the solicitation, that has the capability in all respects to perform fully the contract requirements, and that has the experience, integrity, reliability, capacity, facilities, equipment, insurance, and credit to 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 individual or entity 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.

SERVICES. The furnishing of labor, time or effort by a Contractor which does not involve the delivery of a specific end product other than required performance and reporting.

SHORT LIST. A reduced list of Offerors winnowed by application of uniform criteria in an approved process, that has been deemed eligible to move forward in an evaluation process by an Evaluation Team, and from which the successful Offeror will be chosen.

SPECIFICATION. Detailed 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.

SUBCONTRACTOR. An individual or entity that performs work or provides service to or for a Contractor that has 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 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.

§ 1-2-17. AUTHORITY AND APPLICABILITY.

(A.) *Intent.* The intent of this article is:

(1.) To provide for the fair and equitable treatment of all persons involved in the County's procurement processes, to maximize the purchasing value of public funds, to codify and standardize the County '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 County taxpayers the advantages and economies which will result from centralized control over the expenditures of 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 County's intent that with respect to Procurement activities, the rules and regulations established by or promulgated under authority of this article shall

extend to all Agencies as defined herein and establish a uniform and standard Procurement practice.

- (B.) *Applicability.* The provisions of this chapter shall apply to the following:
- (1.) Every expenditure of public funds by the County unless otherwise exempted by the County, irrespective of their source, including federal assistance monies;
 - (2.) Disposal of Surplus Material; and
 - (3.) Contracts where there is no expenditure of public monies or where the County is offering something of value to the business community when the 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 County to act in good faith.
- (D.) *Exemptions.* The following are exempt from the provisions of this article:
- (1.) The sale or lease of 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 judicial proceeding in which this 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 Payment Voucher;
 - (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.
- (E.) *Agency authorization.* The County Executive may authorize, in writing, any Agency to purchase or contract for certain specified supplies, materials, equipment, capital improvement or contractual services independently of the Director of P&C, 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:

- (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.

(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.

(C.) Contractors and Subcontractors

- (1.) No Contractor or Subcontractor shall demand or receive from any of his suppliers or his 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.

(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.

(A.) The Director of P&C serves as the purchasing official for the County, is responsible for the procurement of all materials, services, professional services and construction services for the County, as governed by the terms of this article.

(B.) The Director of P&C or Designee will, subject to the provisions of this article:

- (1.) Purchase all supplies, materials, equipment and contractual services required by the Agencies and for all capital improvement projects of the 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 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 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 as to legal sufficiency, standard forms and conditions of solicitations, purchase orders and contracts. Develop and prescribe the use by Agencies of other forms required in carrying out the provisions of this article and amend or eliminate any forms.

(7.) Terminate contracts of \$100,000 or less when the Director of P&C determines that it is in the best interest of the County.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(f.) 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

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

(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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(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. RULES, REGULATIONS, AND POLICIES.

(A.) *Rules and regulations.* The Director of P&C may promulgate rules for the implementation of this Article. Rules may include, but not be limited to, provisions for:

- (1.) The handling of bids, including advertising, custody and safeguarding, opening and tabulation, acceptance or rejection and re-advertising.
- (2.) Procedures to determine:
 - (a.) The lowest, Responsive and Responsible Bidder; and
 - (b.) Award recommendations based on Best Value when applicable.
- (3.) The procedure for securing from Bidders and prospective Bidders the data necessary to determine whether or not the Bidders are responsive and the bids are responsive.
- (4.) The procedure for reporting receipt of supplies, materials, equipment, and services, and for reporting progress on and completion of capital improvements.
- (5.) The procedure for submission, examination and approval of invoices for supplies, materials, equipment and services delivered to any and all agencies, and for progress and final payment on capital improvements.
- (6.) Such other matters as may be necessary to give effect to such rules and to the provisions of this article. The Director of P&C shall submit such rules to the County Executive for approval. The Director of P&C shall enforce such rules. A copy of them shall be open to public inspection during regular business hours.

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

§ 1-2-22. PREREQUISITES FOR AWARD OF CONTRACTS.

(A.) When a procurement contract is primarily for the use of a specific Agency of the County, the Director of the Agency shall recommend the approval of award to the Director of P&C who will reject, award or recommend award of the contract. When more than one Agency utilizes the contract, the Director of P&C will determine which Agency(ies) shall recommend.

(B.) Where competitive sealed bids or proposals are required by this article and only one bid or proposal is received, the 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.

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

- (1.) In an emergency as defined in §1-2-27(B.) of this code; and
- (2.) Where revenue to pay the Contractor will be provided through the performance of the contract.

(E.) Contracts for the acquisition of property, the construction of improvements, or other expenditures which are to be financed by bonds or other obligations 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 funds are exempt 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.

§ 1-2-24. SPECIFICATIONS.

(A.) *Intent.* All specifications shall be drafted so as to provide a nonrestrictive, clear, and concise description of the material, service, or construction sought.

(B.) *Preparation.*

(1.) The Director of P&C will prepare written specifications detailing the County's requirements for the materials, service, or construction. The Director of P&C may also request that an Agency assist with the preparation of specifications for the procurement.

(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.

(D.) *Brand Name specification.*

(1.) A Brand Name specification may be used after the Director of P&C has determined that sufficient sources for competition exist for the procurement of the material and that the use of the Brand Name specification is not intended to limit or restrict competition.

(2.) A Brand Name specification may 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 and, the solicitation will state that the use of the Brand Name is for 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.) An Agency requesting a Brand Name specification will provide written evidence to support a Brand Name determination to the Director of P&C for approval. Inconvenience of drafting specifications or developing performance specifications will not be sufficient justification to the use of a Brand Name specification.

(E.) *Specifications prepared by other than County personnel.* The requirements and intent of this section regarding nonrestrictive specifications applies to specifications prepared by non-County individuals and entities, including, but not limited to, architects, engineers, designers, and consultants for public contracts, or subcontractors. No individual or entity that prepares specifications on behalf of the County may receive any direct or indirect benefit from the utilization of those specifications.

§ 1-2-25. 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*

(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.

§ 1-2-26. 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.
- (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.
- (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.

(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.

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

(N.) **CONSTRUCTION SERVICES:**

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

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

§ 1-2-27. 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, 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.

(B.) *Emergency.*

- (1.) An emergency will be deemed to exist when a threat to the health, safety, or welfare exists, when a breakdown of equipment or of an essential service occurs, or when unforeseen circumstances arise, which may include delays by contractors, transportation delays or failures, or when a revenue source may be compromised.
- (2.) Upon receipt of notice of an emergency situation, the Agency Director(s) will take immediate action to mitigate or remediate the emergency situation.
- (3.) Agency Directors are responsible for making all reasonable efforts to avoid the need for Emergency Procurements.
- (4.) If an emergency occurs during regular business hours, the Agency Director will immediately notify the Director of P&C, who will either purchase the required commodity or service or authorize the Agency Director to do so.
- (5.) If an emergency occurs at times other than regular business hours, the Agency Director may purchase the commodity or service required. The Agency Director will, whenever possible, secure competitive telephone bids and purchase from the lowest responsible Bidder.
- (6.) The Agency Director must submit to the Director of P&C a complete explanation of the circumstances of the emergency.
 - (a.) If the emergency required expenditure(s) of less than \$50,000, the explanation may be provided via email from the Agency Director to the Director of P&C.
 - (b.) If the emergency required expenditure(s) of \$50,000 or more, the explanation shall be provided by a memorandum from the Agency Director to the Director of P&C.

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

(C.) *Riding a competitively bid solicitation.* The County may ride or “piggyback” the competitively bid solicitation of another jurisdiction or entity so long as the following conditions exist:

(1.) The solicitation must be active and not expired.

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

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

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

(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 Contractor'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.

§ 1-2-28. 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;
- (17.) Risk management claims settlements;
- (18.) Tuition, lab fees, or books required course materials to approved schools (registration forms required); and
- (19.) Other expenses for which formal procurement is not practicable as approved by the Director of P&C.

§ 1-2-29. 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.

§ 1-2-30. 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.

§ 1-2-31. 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.

§ 1-2-32. AGREEMENTS.

(A.) A written Agreement between the County and a Contractor must be executed prior to the provision of services which exceed the \$50,000 formal threshold whenever possible, with the exception of Emergency Services provided under §1-2-27 (B.).

(B.) The Director of P&C may require written Agreements between the County and a Contractor prior to the provision of goods or services not exceeding the formal threshold as deemed necessary.

(C.) When possible, the County will use the standard Agreement forms approved by the OCA to contract with the awarded Contractor.

(D.) The Director of P&C with the assistance of the OCA will be the negotiator of the final terms and conditions and pricing in an Agreement.

§ 1-2-33. 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.

§ 1-2-34. 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.

§ 1-2-35. 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.
- (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.

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

(A.) The County does not knowingly hire illegal aliens through direct employment or through its vendors, contractors, or their suppliers or subcontractors. The County 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 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 County:

"The Contractor warrants and, if requested, shall certify in writing that the Contractor 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 contractors hire only individuals lawfully entitled to work in the United States of America is material to the county. 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 county and any and all other damages for which a contractor might be liable. Nothing herein shall require the county to elect to terminate a contract for default to the exclusion of any other remedy.

1-2-37. SURPLUS, OBSOLETE AND WASTE ARTICLES.

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

(B.) The Director of P&C shall have authority to transfer such supplies, materials, and equipment to another or other Agencies in lieu of filling requisitions for the purchase of new and additional stock of the same or similar articles.

(C.) The Director of P&C shall have authority to sell all such supplies, materials, and equipment which cannot be used by any Agency or which have become unsuitable for County use or to exchange or trade in such articles in part of full payment for new supplies, materials, or equipment of a similar nature.