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COUNTY COUNCIL OF PRINCE GEORGE'S COUNTY, MARYLAND

Legislative Session

1992

Resolution No. CR-3-

1992

Proposed by The Chairman (by request - County Executive)

Introduced by Council Members Pemberton and Del Giudice

Co-Sponsors

Date of Introduction January 7,

1992

RESOLUTION

A RESOLUTION concerning

Procurement Regulations

FOR the purpose of approving the Procurement Regulations of the County governing emergency procurement procedures, sole source procurement procedures, special circumstance procurements, and the minority business enterprise program.

WHEREAS, Section 602 of the Charter of Prince George's County, Maryland, provides that the County Purchasing Agent shall prepare, for action by the County Council, reasonable rules and regulations governing emergency purchases, contracts,

and services or material and equipment of an unusual or noncompetitive nature not subject to competitive bidding; and

WHEREAS, Section 10A-105 of the Prince George's County Code, as adopted by CB-1-1992, provides that the Purchasing Agent shall recommend regulations concerning sole source procurements, emergency procurements, special circumstance procurements, and the Minority Business Opportunities Program, to the County Council for approval by resolution; and

WHEREAS, Procurement Regulations were prepared by the Purchasing Agent and submitted by the County Executive to the County Council on October 18, 1991, for review and approval by resolution; now, therefore

BE IT RESOLVED by the County Council of Prince George's County, Maryland, that the Procurement Regulations submitted by the County Executive, a copy of which has been filed with the Clerk of the Council and is incorporated herein by reference, be and the same are hereby approved.

Adopted this 24th day of November, 1992.

COUNTY COUNCIL OF PRINCE
GEORGE'S COUNTY, MARYLAND

BY:

Richard J. Castaldi
Chairman

ATTEST:

Joyce T. Sweeney
Acting Clerk of the Council

PRINCE GEORGE'S COUNTY

MARYLAND

Procurement Regulations

Adopted by the County Purchasing Agent and
the County Council for Prince George's County
on
November 24, 1992

Issued by:
Prince George's County
Office of Central Services
Contract Administration and Procurement Division
Largo Government Center
Landover, MD

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CHAPTER I

I. Authority to Adopt Regulations

- A. The County Council for Prince George's County has authority by virtue of Section 602 of the Charter for Prince George's County, Maryland, and Subtitle 10A of the Code for the adoption of regulations governing emergency purchases, contracts, and services of material and equipment of an unusual or noncompetitive nature which shall not be subject to competitive bidding. The following regulations contained herein have been adopted by the County Council as CR-4-1992 and are effective October 1, 1992:
1. Sole Source Procurement Procedures
 2. Emergency Procurement Procedures
 3. Special Circumstance Procurements
 4. Minority Business Opportunities Program
- B. The County Purchasing Agent has authority under Section 10A-105, of the Prince George's County Code, to adopt regulations and procedures which otherwise govern the procurement process of County. Except as provided under Section I.A., above, the regulations contained in this Chapter are hereby adopted by the County Purchasing Agent to take effect simultaneously with the regulations adopted by the County Council.

CHAPTER II

II. General

A. Purpose: The underlying purposes and policies of this Chapter are to:

1. Facilitate the timely delivery of quality public services;
2. Provide for public confidence in the procedures followed in public procurement;
3. Ensure the fair and equitable treatment of all persons who deal with the procurement system of the County;
4. Simplify, clarify and modernize the law governing procurement by the County;
5. Permit the continued development of procurement regulations, policies and practices;
6. Provide economy in County procurement activities and to maximize to the fullest extent the purchasing power of the County;
7. To promote and encourage full and active participation of Minority Business Enterprises in the procurement system of the County; and
8. Provide safeguards for the maintenance of a procurement system of quality and integrity.

B. Effect of Contracts in Contravention of Law or Regulation

1. No employee or official elected or appointed of the County may enter into, alter or suspend a contract except in accordance with the provisions of these Regulations.

2. The County shall not be bound by any contract, or contract alteration entered into in contravention of Law or these Regulations unless the Purchasing Agent determines that:
 - a. All parties have acted in good faith; and
 - b. Ratification would not undermine the purposes under Paragraph II.A. of this Chapter; and
 - c. The violation was insignificant or otherwise not substantive in nature.
3. A contractor, under a contract which is not ratified pursuant to this Section, may be granted actual expenses incurred under the contract upon a written determination of the Purchasing Agent that:
 - a. The contractor acted in good faith, and
 - b. The contractor had no knowledge of the violation prior to the award of the contract and did not contribute directly to the violation.
4. An employee or official of the County who knowingly committed or contributed to the violation may be held personally liable for payment to the contractor or repayment to the County for the expenses incurred under the contract.

CHAPTER III

III. Definitions

A. The words defined in this Chapter shall have the meanings set forth below whenever they appear in these Regulations unless the context in which they are used clearly requires a different meaning or a different definition is prescribed for a particular provision.

1. "Agency" means any department, agency, board, commission or any other unit of the County Government or any agency which (i) receives funding from County funds or (ii) is made subject to County procurement law by any local, State or Federal law.
2. "Architect-Engineer Services" means professional service within the scope of practice of architecture, professional engineering or registered land surveying pertaining to construction.
3. "Award" means the decision by the Purchasing Agent or his designee to execute a purchase agreement or contract after all necessary approvals have been obtained.
4. "Broker" generally means a person or business entity that operates as a middle man and sells goods and/or services on a pass through basis.
 - (i) In the case of requirements for goods or commodities, a business acts as a Broker if any preponderance of the following factors exists:
 - a. The business does not own, operate or maintain a

store, warehouse or other establishment in which materials, supplies, articles or equipment of the general character required under the contract are kept in stock in the regular course of business;

- b. The business does not regularly assume physical custody or possession of goods or commodities of comparable character with respect to those goods or commodities offered to the County;
- c. The business does not regularly assume or operate a vehicular transportation system for the delivery of goods or commodities of comparable character with respect to those goods and commodities offered to the County; or,
- d. The business exclusively acts as middleman in the provision of goods or commodities of comparable character with respect to those goods and commodities offered to the County.

(ii) In the case of requirements for services, a business acts as a Broker if it does not regularly maintain the present capability and capacity to perform services of comparable character with respect to those services offered to the County. For purposes of evaluating such present capacity, the County will give due regard to the following factors:

- a. Whether the principals or employees of the business adequately demonstrate adequate training, education or experience in the subject matter of the service

offered to the County;

b. Whether the principals or employees of the business are vested with all regulatory credentials necessary to perform services of comparable character with respect to those services offered to the County; and

c. Whether the business exclusively acts as a middleman in the provision of services of comparable character with respect to those services offered to the County.

5. "Business" means any Association, corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or any other legal entity through which business is conducted.
6. "Change Order" means a written order signed by the Purchasing Agent, or designee directing the contractor to make changes which a Changes Clause in the contract authorizes the Purchasing Agent to order without the consent of the contractor.
7. "Code" means the Prince George's County Code.
8. "Commission" means the Minority Business Opportunities Commission.
9. "Conditional Suspension" means an administrative action by the Purchasing Agent disqualifying a person for reasons of unsatisfactory performance or default on County contracts from either bidding or submitting proposals on County contracts, acting as a supplier of

goods or services on procurements or acting as a subcontractor on a County contract, until the disqualified person;

i) Complies with specified conditions;

ii) Corrects specified defects affecting performance or ability to perform; or

iii) Takes action to cure the conditions leading to the conditional suspension.

A conditional suspension shall be for such period as may be established by the Purchasing Agent but not exceeding the period necessary to cure the conditions leading to the suspension or 6 months, whichever is less.

10. "Construction" means the process of building, altering or improving any public road, bridge, structure, building or other public improvements of any kind to any public real property. It does not include the routine operation, repair, or maintenance of existing structures or buildings.

11. "Construction Management Services" means services performed by a person experienced in construction and has (i) the ability to evaluate and to implement plans and specifications as they affect time, cost, and quality of construction and (ii) the ability to coordinate the design and construction of a project, including the administration of change orders.

12. "Contract" means all written types of agreements,

grants, and orders for the purchase or disposal of supplies, services, construction, insurance or any other item. It includes but is not limited to contracts of a fixed-price, cost reimbursement, cost-plus-a-fixed-fee, or incentive type; contracts providing for the issuance of job or task orders; grants; leases; letter contracts; and purchase orders.

It also includes supplemental agreements with respect to any of the foregoing.

13. "Contract Modification" means any written alteration in the specifications, delivery point, rate of delivery, contract period, price, quantity, or other contract provisions of any existing contract, whether accomplished by unilateral action in accordance with a contract provision, or by mutual action of the parties to the contract. It includes bilateral actions, such as supplemental agreements, and unilateral actions, such as change orders, administrative changes, notices of termination, and notices of the exercise of a contract option.
14. "Contractor" means any business or person having a written contract with the County.
15. "County Based Business" means a business whose principal place of operation is located within Prince George's County.
16. "County Funds" means any monies received by the County or appropriated or approved by the Council or

to which the County may at any time have legal or equitable title.

17. "Conviction" includes a conviction entered upon a plea of nolo contendere and probation before judgment.
18. "Debarment" means the action whereby a prospective bidder or offeror or contractor is barred from participating in County procurement related activities for a specified period of time pursuant to the requirements Subtitle 10A of the Code.
19. "Delegated Procurement" means a procurement made by a Department Head or designee in a using agency pursuant to a written delegation of authority from the Purchasing Agent.
20. "Designee" means a duly authorized representative of a person holding a specified position. Such authorization shall be in writing.
21. "Employee" means any classified or exempt-service employee of the County and any County elected official.
22. "Established Catalog or Market Price" means the price included in the most current catalog, price list, schedule, or other form that (1) is regularly maintained by the manufacturer or vendor of an item and (2) is either published or otherwise available for inspection by customers, and (3) states prices at which sales are currently or were last made to a significant number of buyers constituting the general

buying public for that time or states discounted prices at which sales are currently or were last made to local, state, or Federal agencies.

23. "Evaluated Bid Price" means the dollar amount of a bid, after bid adjustments are made pursuant to the evaluation factors set forth in the Invitation for Bids, which measures the effective price to the County. Such price shall take into account factors which contribute to economy and effectiveness in the operation or use of the item being purchased, such as reliability, operational cost, maintainability, useful life and residual value.
24. "Executive Director" means the Executive Director of the Minority Business Opportunities Commission.
25. "False Claim" means a claim presented with knowledge that it is untrue.
26. "Improper Conduct" means intentional billing irregularities, allocating costs from firm fixed price contracts to cost reimbursement contracts, submitting false claims, causing competition to be restrained or limited, misrepresentation, involving falsely claiming to be a minority business enterprise indictment for any of the above causes or indictment for offenses specified in Division 6, Subdivision 8, Subtitle 10A when the indictment is the result of alleged misconduct in connection with a County bid, proposal or contract and other similar activities involving

deception or improper activities.

27. "Indictment" includes information or other filing by a competent authority charging a criminal offense.
28. "Invitation for Bids" means all documents whether attached or incorporated by reference, utilized for soliciting bids in accordance with the procedure set forth in Subtitle 10A, Section 112.
29. "Letter Contract" means the written preliminary contractual document that authorizes the contractor to begin a portion of the agreed upon services immediately. A letter contract is always associated with a definitive contract and can never be the sole document used to complete the procurement.
30. "Maryland Based Business" means a business whose principal place of operation is based within the State of Maryland.
31. "Minority Individuals" are those who have been subjected to prejudice or cultural bias because of their identity as a member of a group in terms of race, color, ethnic origin, or gender, without regard to their individual capabilities. Minority individuals are limited to members of the following groups:
 - a. African Americans (Black Americans);
 - b. Asian Americans;
 - c. Hispanic Americans; and
 - d. Females.

32. "Minority Business Enterprise" means any business enterprise (1) which is at least fifty-one percent (51%) owned by one or more minority individuals; or, in the case of any publicly-owned corporation, at least fifty-one percent (51%) of the stock of which is owned by one or more minority individuals, and (2) whose general management and daily business affairs and essential productive operation are controlled by one or more minority individuals and (3) which has been certified by the Commission as a Minority Business Enterprise.
33. Minority Business Opportunities Commission (MBOC) means the Commission established under the Code.
34. "Negotiation" means contracting by the methods set forth in Sections 10A-113, 10A-114 and 10A-115.
35. "Principal Place of Business" means an office location where the permanent base of work with respect to 50 percent or more employees is maintained or an office location from which the principal management functions or activities are regularly conducted.
36. "Procure" means the buying, renting, leasing, lease-purchase, or otherwise obtaining any supplies, services, or construction. It includes all functions that pertain to the obtaining of any public procurement, including description of requirements, selection and solicitation of sources and preparation and award of contract. The term does not include the

making of any grant or donation.

37. "Procurement Officer" means any person authorized by the Director of the Office of Central Services, in accordance with procedures prescribed by regulations, to enter into and administer contracts and make determinations and findings with respect thereto. The term also includes an authorized representative acting within the limits of authority.
38. "Proposal Analysis Group" is an issue specific groups which is responsible for the designing and drafting of Requests for Proposals, soliciting responses, evaluating responses and recommending the top three evaluated providers to the Director of Central Services as Purchasing Agent, for contracts for which competitive bidding is inappropriate.
39. "Purchase Request" means that document whereby a requiring agency requests that a contract be obtained for a specified need, and may include, but is not limited to, the technical description of the requested item, delivery schedule, transportation, criteria for evaluation of solicitation, suggested sources of supply, and information supplied for the making of any determination and finding required pursuant to any applicable provision of these regulations.
40. "Purchased Item" means any supply, service, printing, insurance policy or coverage, construction or any other item purchased by this County.

41. "Purchasing Agent" means the County's Director of Central Services.
42. "Request for Proposals" means all documents, whether attached or incorporated by reference, utilized for soliciting proposals in accordance with the procedures set forth in Section 10A-113 of the Code.
43. "Responsible Bidder or Offeror" means a person who has the capability in all respects to perform fully the contract requirements and the integrity and reliability which will assure good faith performance.
44. "Responsive Bidder" means one who has submitted a bid under Section 10-112 of the Code which conforms in all material respects to the Invitation for Bids.
45. "Services" means the rendering, by a contractor, of its time and effort rather than the furnishing of a specific end product, other than reports which are merely incidental to the required performance of services. It includes, but is not limited to, the services provided in maintaining equipment, cleaning facilities, providing security and those provided by architects, engineers, attorneys, accountants, physicians, consultants, etc.
46. "Solicitation" means any request of the County to enter into a contract.
47. "Supplemental Agreement" means any contract modification which is accomplished by the mutual

action of the parties.

48. "Supplies" means all tangible and intangible property except real property or any interest in real property.

49. "Suspension" means an administrative action taken to disqualify a person or a business from either bidding or submitting proposals on County contracts, from performing as a subcontractor, from acting as a supplier for work being performed for the County or from engaging in any combination of these actions pending a decision on debarment. Suspension differs from conditional suspension in that suspension is imposed pending debarment action only. A person or business may also be suspended and debarred if it was founded or established or operates in a manner designed to evade the application or defeat the purpose of these Regulations.

50. "Unsatisfactory Performance" means establishing a record of poor performance or default on one or more contracts for construction, services, supplies, architectural and engineering services, construction related services, or maintenance including, but not limited to, overshipments, undershipments, providing damaged or defective goods, making unauthorized substitutions, billing errors, or service deficiencies. The term includes intentional failure, without good cause, to perform in accordance with the

specifications or time limits provided in a contract, or a record of failure to perform, or of poor performance in accordance with the terms of one or more contracts unless the failure to perform or the poor performance was caused by acts beyond the control of the person.

51. "Using Agency" means any County agency which utilizes any supplies, services, or construction procured under these regulations.

CHAPTER IV

IV. Applicability and Exclusions

A. Applicability

This Chapter applies to procurements for supplies, services or construction involving expenditures of County funds under any contract, and to revenue producing contracts, except to the extent that the procurements are expressly exempted under the provisions of the Code.

B. Exclusions

Unless otherwise specifically directed by the Purchasing Agent, the following are not subject to the provisions of these Regulations and need not be procured through the office of the Purchasing Agent, however, to the extent practicable procurements exempted herein shall be made under competitive procedures that promote the purposes stated under Chapter II.A.:

1. Regulated public utilities where service and rates are not negotiable;
2. Supplies for resale to the public;
3. Works of art for museum and public display;
4. Published books, maps, periodicals, newspapers, and technical pamphlets;
5. Recreational lands and rights of way;
6. Conference, seminar and training fees;
7. Visiting speakers, professors and performing artists;
8. Acquisition of interests in real property;

9. Memberships, dues and fees for conference and seminars and associated or similar expenses;
10. Training courses and materials provided by accredited institutes of learning;
11. Construction projects meeting the requirements of Subtitle 10A, Div. 6, Subdivision 2 of the Code;
12. Employee relocation;
13. Experts or specialists employed under S902 of the Charter.
14. Grants; and
15. Employment contracts.

CHAPTER V

V. Centralization of Contractual Authority

- A. The County Purchasing Agent is vested with sole authority and responsibility relating to the acquisition of supplies, construction, services, printing and insurance, and the management, supervision and control of central warehousing of supplies, and the sale and disposal of supplies and personal property now vested in or exercised by any County agency, except as provided in Chapter IV.
- B. The County Purchasing Agent may delegate in writing any of his/her authority to subordinate staff, and to the heads of using agencies consistent with the promotion of efficiency and effectiveness in the County's purchasing system.
- C. The Purchasing Agent shall issue rules and procedures consistent with these Regulations governing delegated procurements, and shall assure compliance therewith.
- D. The Director of Central Services may designate "Procurement Officers" with limited authority to carry out specified delegated actions, or to enter into and administer contracts, or make determinations and findings with respect thereto in accordance with procedures defined in the written delegation. Such procedures are to be consistent with these regulations.

CHAPTER VI

VI. Determinations

A. Written determinations required

1. Any determination required under the provisions of these Regulations shall be in writing.
2. All written determinations required under these Regulations shall be retained in the official contract or record file for a period of not less than three (3) years.

B. Finality of Determinations

The determinations required under the provisions of these Regulations are final and conclusive unless they are clearly erroneous, arbitrary, capricious or contrary to law.

CHAPTER VII

VII. Approvals Required

A. Fund Certification

Certification of Adequacy and Availability of Funds.
Every contract or purchase, and any change or additions to such contracts requiring additional expenditures of County funds, are subject to certification of the Director of Finance in such manner as may be determined by the Finance Director, as to the adequacy of appropriations and the availability of funds.

B. Approvals, General

- 1) The Purchasing Agent shall issue reasonable procedures for (1) prescribing the process for review, control and approvals for each class of procurements, except those exempt under Chapter IV Section B of these Regulations, (2) and to implement the requirements of applicable administrative directives and executive orders.
- 2) The Purchasing Agent shall issue reasonable procedures prescribing the coordination and interaction between using agencies and the Procurement Office. These procedures shall be structured as to facilitate the mission and objectives of the using agencies, to provide maximum using agency participation in specification development and in the contract/bid review process, and shall be structured to promote

understanding and cooperation between the using
agencies and the Procurement Office.

CHAPTER VIII

VIII. Prohibited Types of Procurements - General

A. South Africa Contracts Prohibited

1. The Purchasing Agent shall not enter into any contract with a business entity having investments, licenses or operations in the Republic of South Africa.
2. The Purchasing Agent shall not knowingly procure any product originating from the Republic of South Africa.
 - a. A product originating in South Africa for purposes of this Section shall be defined as a finished or manufactured product, or if the procurement is for raw materials, such materials mined, or otherwise produced in the Republic of South Africa.
3. Any product, or services, the purchase of which is prohibited under regulations 1 and 2 above, may be procured if the Purchasing Agent makes a written determination that any of the following conditions exist:
 - a. The purchase is essential
 - 1) By way of example and not of limitation, a purchase may be considered essential if failure to make the purchase would result in a severe diminution in or an elimination of services, or an inability of a County agency to effectively perform its functions without the product.
 - b. No reasonable alternative to the purchase of the

product exists.

1) The determination of the reasonableness or unreasonableness of procuring alternative products may include considerations related to cost, time, and the availability elsewhere of functionally equivalent products or services.

c. The application of this prohibition would significantly impair competition.

1) In making this determination the Purchasing Agent shall consider the number of available sources. If sufficient known non-South African sources are available, solicitations for bids or offers may be limited to these available non-South African sources, notwithstanding whether or not the South African sources are listed in the County's bidder's list.

2) If less than three non-South African sources are available or respond to an invitation for bids or request for proposals, competition may be considered impaired for purposes of making the above determination.

CHAPTER IX

IX. Cooperative Purchasing with Other Jurisdictions

A. General

In order to promote cooperative relationships with other Governments and political jurisdictions, and to maximize economies of scale in procuring supplies and services, the Purchasing Agent shall develop and/or participate in, to the maximum extent possible, joint or cooperative purchases of common use supplies with such organizations; provided, however, that no such cooperative purchasing agreement shall defeat, encumber or circumvent any requirements of the Code.

1. Methods of Cooperative Purchasing

The Purchasing Agent may participate in or utilize any of the following methods of cooperative purchasing.

- a. Include County requirements in a solicitation for bids or offers where the requirements of multiple jurisdictions are combined for purposes of achieving economies of scale.
- b. Utilize the contracts of other jurisdictions when the following conditions exist:
 - 1) A decision is made that the quantity discounts available are likely to be greater than the County could obtain in its own independent procurement.
 - 2) The contract was established in a method

consistent with the purposes of Chapter II A, of these regulations.

3) Either the contract contains specific authority for other jurisdictions, including the County, to procure from it, or the contractor expressly grants the authority for the County to procure off the contract under the same terms and conditions as the contracting jurisdiction.

4) The contract is an established Federal Supply Schedule or State of Maryland competitive contract.

c. Purchase from another public entity when the public entity is willing to sell materials or supplies to the County at a cost not exceeding what it would charge its own agencies, plus a reasonable handling fee.

d. Sell supplies to another public entity

1) The County may sell such supplies to another public entity at the same price it sells to County agencies, and may establish a schedule of additional service fees as appropriate.

2. The facilities and services of the Purchasing Agent's office shall be made available, upon request, to other public activities in the County which obtain their financial support in part from the County and to municipalities.

a. As a condition to procuring supplies for the above

activities, the Purchasing Agent shall obtain a written commitment from the entity that such entity will assume legal and fiscal responsibility for such purchase(s).

CHAPTER X

X. Specifications

A. General Definition

A specification as used in these Regulations means a clear and accurate description of the functional characteristics, or the nature of a supply, service, or construction item to be procured. It may include a statement of any of the user's requirements and may provide for inspection, testing, or preparation of a supply, service, or construction item before procurement.

B. General Purpose

- 1) A specification is the basis of obtaining a suitable supply, service, or construction item in a cost effective manner. It is the policy of the County that specifications be written so as to permit maximum practicable competition without modifying the County's requirements. Specifications may not be drawn in such a manner as to favor a single vendor over other vendors. When applicable, specifications may include statements concerning:
 - a) Low noise level pursuant to Subdivision 3, Section 10A-142 of the Code;
 - b) Energy efficiency; and
 - c) The environment to facilitate recycling and waste stream reduction pursuant to Section 10A-143 of the Code.

- 2) Performance or functional specifications which describe required levels of function, form, fit and performance of the subject of the contract shall be the preferred type of specification. Design specifications and combined design and performance specifications may be used when it is impractical or otherwise not advantageous to use performance specifications.
- 3) Brand Name or Equal. Brand name or equal means a specification which uses one or more manufacturer's name or catalog number to describe the standard of quality, performance, and other characteristics needed to meet the user's requirements, and which provides for the submission of equivalent products. Salient characteristics of the brand name supply item shall, when practicable, be set forth in the specifications, when brand name or equal specifications are used. A brand name or equal specification may only be used upon approval of the Purchasing Agent or the Purchasing Agent's designee.
- 4) Qualified Products List
Qualified Products Lists are listings of specific brands of specific manufacturers of products which have been tested and evaluated by the County and have proven themselves effective in meeting the performance requirements of the County for the purpose intended. A qualified products list may be used exclusively as a

procurement specification when the following conditions have been met:

- a) All products tested which have met the performance standards of the County shall be included by brand name in the specification.
- b) No less than two qualified product names shall be included in the solicitation documents.
- c) A statement shall be included in the solicitation documents indicating that only suppliers offering the products listed on the Qualified Products List shall have their bids considered.
- d) A statement shall be included in the solicitation encouraging potential bidders to submit to the County for test and evaluation samples of other brands of products for possible inclusion on subsequent Qualified Products Lists.

5) Brand Name Only

Procurements may be limited to specific brand names under the following circumstances:

- a) The item(s) is for resale to inmates or patients in County facilities; or
- b) To meet specified requirements related to the provisions of medical care, assurance of human safety, or the preservation of life. In such situations, a written determination, signed by the requesting agency and the Purchasing Agent shall be made, citing the necessity for limiting competition

to the specified brands. This determination shall be retained in the procurement file.

C. Responsibility for Specifications

- 1) The Purchasing Agent, in cooperation with the using agency, shall be responsible for preparing specifications for all supplies used by the County. The using agency may prepare such specifications subject to review and approval of the Purchasing Agent.
- 2) The using agency, in cooperation with the Purchasing Agent, shall be responsible for the preparation of specifications for construction and services. These specifications shall be subject to the Purchasing Agent's approval.

D. Value Engineering

In any contract the County may include value engineering clauses, whereby the contractor and the County will proportionately share in savings resulting from contractor proposed cost savings proposals after the award of the contract. Any such value engineering proposal shall be subject to the County's acceptance or rejection. When used, the value engineering clauses shall specify the percentage of savings to accrue to both the County and the Contractor, if the proposal is accepted by the County.

E. Contract Incentives

The County may specify cost incentives/disincentives in

the contract whereby an amount specified as the solicitation, may be paid to a contractor for early completion, or deducted from monies due the contractor for late completion. In cost reimbursement type contracts, an incentive/disincentive clause may be used to adjust a contractor's fee, based upon total contract costs being more or less than a preestablished target price.

CHAPTER XI

XI. Conflicts Between Federal and State Regulations or Assistance Instruments and these Regulations.

All requirements set forth in State or Federal assistance instruments applicable to contracts let by the County under a State or federal assistance program, or grant, shall be satisfied. To the extent that the requirements which are specified in the assistance instrument or grant conflict with regulations adopted hereunder, the former shall apply, unless otherwise prescribed by law.

CHAPTER XII

XII. Procurement Methods

A. General

Unless otherwise authorized by law, all County contracts shall be awarded by one of the following methods:

1. Competitive Sealed Bidding
2. Competitive Sealed Proposals
3. Contract negotiation
 - a. After unsuccessful competitive sealed bid or proposal
 - b. Sole Source
 - c. Emergency
 - d. Special circumstances
4. Small Purchase Procedures

B. Preferred Methods:

It is public policy of the County that competitive sealed bidding is the preferred method of making procurements of \$15,000 or more in value.

C. Contract Review Committee

A Contract Review Committee will be convened by the Purchasing Agent to review each solicitation prior to action, (i.e. formal bidding, cooperative purchase, contract rider, etc.) to ensure that the best procurement method is being recommended, determine the nature of Minority Business Enterprise participation, review bidder's list, and resolve procurement related issues. The Contract Review Committee shall consist of the Purchasing Agent, the Procurement Administrator, Buyers and the Executive Director of the

Minority Business Opportunities Commission.

CHAPTER XIII

XIII. Contractor/Vendor Responsibility and Prequalification

A. Responsibility

1. All contracts shall be awarded to a responsible bidder or offeror.
2. In determining a bidder or offeror's responsibility the Purchasing Agent shall consider:
 - a. The ability, capacity and skill of the bidder to perform the contract or provide the service required within the specified time;
 - b. The character, integrity, reputation, judgment, experience and efficiency of the bidder;
 - c. The quality of performance of previous contracts or services performed for the County or other customers;
 - d. The previous and existing compliance by the bidder with laws and ordinances relating to previous contracts with the County or to the bidders employment practices;
 - e. The sufficiency of the financial resources and ability of the bidder to perform the contract or provide the services;
 - f. The ability of the bidder to provide future maintenance and service for the use of the subject of the contract;
 - g. Whether the bidder is in arrears to the County in

debt on contract or is a defaulter on surety to the County or whether the bidder's State, County or local taxes or assessments are delinquent;

- h. The bidder's compliance with Minority Business Enterprise requirements contained in the invitation to bid, or request for proposals.
- i. Whether the bidder is currently suspended or debarred from doing business with the County or with any other government.
- j. Whether the bid price is sufficient to assure the performance of the bidder is in compliance with the specifications and requirements of the Invitation For Bids.
- k. Such other information as may be required by the Purchasing Agent having a bearing on the decision to award the contract.

The failure of a bidder or offeror to promptly supply information in connection with a determination of responsibility shall be grounds for a determination that the bidder or offeror is not responsible.

B. Prequalification of Bidders or Offerors

1. General

The Purchasing Agent may employ a method whereby providers of supplies, services or construction may prequalify as responsible prospective contractors for the subject of a contract.

2. When the Purchasing Agent determines that it is in the best interest of the County to limit competition to the most qualified and capable bidders or offerors exclusive prequalification of bidders or offerors is permitted.
3. When Prequalification is permitted, only those prequalified bidders or offerors for a particular contract may submit, or have their bids or proposals considered when:
 - a. The performance ability of prospective contractors is critical or
 - b. The prior experience of prospective contractors is critical to the performance of the contract or
 - c. Bonding capacity is critical to the performance of the contract.
4. Procedure for Prequalification
 - a. The criteria for prequalification shall be set forth in the public notice for Letters of Interest.
 - 1) The prequalification criteria shall include, when applicable, a Minority Business Enterprise participation factor whereby a total of 15% of the prequalification points shall be allocated for Minority Business Enterprise participation in the contract, at either the prime or subcontract level, as specified in the solicitation.
 - b. The solicitation documents shall include a

statement that:

- 1) Bids or offers will only be received from those who satisfy the prequalification criteria.
 - 2) Describes when and where the prequalification information is to be submitted.
- c. All potential bidders or offerors who apply for prequalification and are not prequalified under this section shall be notified in writing, in sufficient time prior to the scheduled date for receipt of bids or offers to permit a debriefing by the Purchasing Agent or designee.
- d. Any bidder or offeror who requests so shall be granted an opportunity to meet with the Purchasing Agent or designee, prior to the scheduled time and date of bid opening, to discuss the determination that he is not prequalified, and to offer additional prequalification data as appropriate.

CHAPTER XIV

XIV. Procurement by Competitive Sealed Bidding

A. When Used

1. Except as otherwise provided in these regulations, the competitive sealed bidding method shall be used for procurements estimated to be \$15,000 or more; and
2. Specifications exist or can be developed wherein price or life cycle cost analysis can be performed on an equitable basis, yielding an award to the lowest responsive and responsible bidder.
3. The competitive sealed bidding method may be used for procurements estimated to be below the \$15,000 threshold when the Purchasing Agent or designee determines there exists adequate time between the time the using agency requires delivery of the supplies, services or construction being procured and the time required in the sealed competitive bidding process, or the administrative costs associated with sealed competitive bidding are not prohibitive in relationship to the anticipated contract value.

B. Invitation for Bids (IFB)

1. Use. The Invitation For Bids is used to initiate a competitive sealed bid procurement.
2. Content. The Invitation For Bids shall include the following:
 - a. Instructions and information to bidders concerning

the bid submission requirements, including the time and date set for receipt of the bids and the address where the bids are to be delivered;

b. The purchase description, delivery or performance schedule, and any special instructions necessary; and

c. Whether award shall be made on the basis of the lowest bid price or the lowest evaluated bid price, whichever is applicable. If the latter basis is used, the objective measurable criteria to be used shall be set forth in the invitation for bids.

d. Whether the solicitation is restricted, open competitive, or whether bonus points or mandatory MBE subcontracting is applicable.

3. Acknowledgment of Amendments. The IFB shall require acknowledgment of the receipt of all substantive amendments, addenda, and changes issued.

C. Bidding Time

Bidding time is the period of time between the date of publication in a County newspaper of record of the IFB and the time and date set for receipt of bids. The bidding time shall be a minimum of 21 calendar days to allow bidders time to prepare their bids, unless a written determination is made that necessitates a shorter bidding time.

D. Bidders Submissions

1. Bid Form. A form shall be provided wherein the bidder

shall state the price, sign and submit along with all other necessary submissions.

2. Content

- a. Bids shall be based upon the specifications contained in the IFB.
- b. Bids shall be typewritten or printed legibly in ink.
- c. All erasures or alterations shall be initialed by the signer in ink.
- d. All bids shall be signed.
- e. The bid shall be submitted in an envelope which clearly indicates that it contains a bid and states the IFB number and time and date of bid opening.
- f. The IFB shall contain or may incorporate by reference all clauses, forms, affidavits and other documents required by these regulations or otherwise required by law or applicable grant conditions governing the procurement.

2. Oral Bids. Oral bids shall not be accepted.

3. Bid Samples and Descriptive Literature.

Invitation for bids shall state when the bidder is required to furnish samples or descriptive literature.

E. Public Notice

Invitation for bids or notices of the availability of invitations for bids shall be published in County newspapers of record and such other publications as may be designated by the Purchasing Agent at least once and

posted no later than the date of publication on a bulletin board located in the Office of Central Services, and other such locations as the Purchasing Agent deems appropriate. Notices of availability shall indicate where, when, and for how long invitations for bids may be obtained, generally describe the supply, service, or construction desired, and may contain other appropriate information. A fee or deposit may be charged for the invitation for bids documents, if authorized by procedures promulgated by the Purchasing Agent. The Purchasing Agent or designee shall mail invitations for bids or notices thereof to those suppliers listed in the "Bidder's List" and to such other potential bidders as the Purchasing Agent or designee may identify. An informational copy of each bid invitation shall be sent to the using agency and each bid and bid notice shall be provided to the County's Minority Business Opportunity Commission. The Purchasing Agent shall, at least every two years, select one or more of the newspapers of record designated by the County Council for publication of bid and proposal solicitation notices. The selection process shall be a competitive one in which circulation, cost, and other applicable factors as determined by the Purchasing Agent are utilized. The process shall be fair and equitable and afford opportunity for all newspapers of record to be considered for selection. Until such time as a selection is made, public notice shall begin by

advertisement in all newspapers of record. If a newspaper of record goes out of business or is not designated as such by the County Council, then the Purchasing Agent shall designate which newspaper of record notices shall be published in until such time as a competitive selection can be accomplished.

F. Multi-Step Competitive Bidding

When it is considered not advantageous to prepare specifications to support an award based on price alone, an IFB may be issued requesting the submission of unpriced technical offers, or samples, or both, and a separate sealed submission of bid prices. Bidders whose technical submissions or samples, or both, have been found to be acceptable under the criteria set forth in the invitation for bids shall have their prices considered. When this method is used only bidders submitting acceptable technical offers or samples (or both) shall have their price bids opened and considered.

This shall be stated in the invitation for bids. When technical offers are evaluated using a point system at least 15% of the available points shall be allocated for Minority Business Enterprise utilization. If negotiations are to be conducted on the technical proposals, and a subsequent round(s) of technical proposals will be requested, such negotiations shall be carried out with all firms who submitted a technical proposal who are reasonably susceptible of receiving an

award. The contents of competing proposals shall not be revealed during negotiations. The procedure for the conduct of negotiations shall essentially conform to the procedures prescribed under Chapter XV, Section C(2) of these regulations.

G. Bidders Lists

1. Bidders lists shall be compiled and maintained current by the Purchasing Agent to include the names of businesses that may be interested in competing for various types of County contracts. Unless otherwise provided, inclusion or exclusion of the name of a business does not indicate whether the business is responsible in respect to a particular procurement or otherwise capable of successfully performing a County contract. Any person desiring to be included on the bidder's list with the County shall submit a County bidder's application to the Purchasing Agent indicating the types or kinds of services, supplies or construction he or she wishes to supply. The invitation for bids or notice thereof shall be provided to all businesses listed on the Bidders List for the item or service being processed, unless the solicitation is limited to Minority Business Enterprises as prescribed in Chapter XXVII of these regulations.
2. Businesses that fail to respond to solicitations on three consecutive invitations for similar items may be

removed from the applicable Bidders List. Prospective bidders who have been deleted may be reinstated on the list, upon completion of a new Bidders application form.

H. Pre-Bid Conferences

Pre-bid conferences may be conducted by the Purchasing Agent or his designee to explain the procurement requirements. They shall be announced to all prospective bidders who were sent an invitation for bids or who have obtained the bidding documents. The pre-bid conference **shall** be held long enough after the invitation for bids has been issued to allow prospective bidders to become familiar with the invitation for bids, but sufficiently before bid opening to allow consideration of the pre-bid conference results in the preparation of bids. Nothing stated at the pre-bid conference shall change the invitation for bids unless a change is made by the Purchasing Agent by written amendment. Changes, as well as substantive clarifications shall be made by written amendment. If a summary of the conference is made, it shall be supplied to all prospective bidders who were sent an invitation for bids or who have obtained the bidding documents. If a transcript is made, it shall be a public record, and a copy may be made available to each prospective bidder.

I. Amendments to Invitations for Bids

1. Form. Amendments to invitations for bids shall be identified as such and, when substantive, shall require that the bidder acknowledge receipt of amendments issued. The amendment shall reference the portion of the invitation for bids it amends.
2. Distribution. Amendments shall be mailed to all known prospective bidders who were sent an invitation for bids or who have obtained the bidding document. The mailing, pre-paid, to the last known address of the prospective bidder shall be complete and sufficient notice of the amendment.
3. Timeliness. Amendments shall be distributed within a reasonable time to allow prospective bidders to consider them in preparing their bids.

J. Pre-Opening Modifications or Withdrawal of Bids

1. Bids may be modified or withdrawn by written notice received in the office designated in the invitation for bids before the time and date set for bid opening. A telegraphic modification or withdrawal received by telephone from the receiving telegraph company office before the time and date set for bid opening shall be effective only if the bidder provides adequate proof of the time the message was received at the telegraph company's office before the time and date set for bid opening, and such other verification as the Purchasing Agent or designee deems necessary.
2. If a bid is withdrawn in accordance with this

regulation, the bid security, if any, shall be returned to the bidder.

3. All documents relating to the modification or withdrawal of bids shall be made a part of the appropriate procurement file.

K. Late Bids, Late Withdrawals, and Late Modification

1. Any bid received in the Purchasing Agent's office, or designee's office as specified in the solicitation, after the time and date set for receipt of bids is late. Any request for withdrawal or request for modification received after the time and date set for opening of bids at the place designated for opening is late.
2. A late bid, late request for modification, or late request for withdrawal shall not be considered. Late bids shall be returned to the bidder unopened.

L. Receipt, Opening, and Recording of Bids

1. Upon receipt, each bid and modification shall be time clocked in and stored in a secure place until the time and date set for bid opening.
2. Bids and modifications shall be opened publicly, at the time, date, and place designated in the invitation for bids. The name of each bidder, the bid price, and such other information as is deemed appropriate shall be read aloud and recorded at the time of bid opening. The bids shall be tabulated or a bid abstract made.

The opened bid shall be available for public inspection at a reasonable time after bid opening. A copy of the tabulation shall be provided to the County's Minority Business Opportunities Commission, and to any bidder who request a copy.

3. The Purchasing Agent shall examine the bids to determine the validity of any requests for nondisclosure of trade secrets and other proprietary data identified in writing, and shall not disclose or permit the review of any data which is determined to be proprietary, unless ordered by a court to do so.

M. Mistakes in Bids

1. Technicalities or minor irregularities in bids, may be waived or cured in accordance with the provisions of this section if the Purchasing Agent determines that to do so would be in the County's best interest.
2. A bidder may correct mistakes discovered before the time and date set for bid opening by withdrawing or correcting the bid.
3. When the Purchasing Agent knows or has reason to conclude that a mistake has been made, the bidder shall be requested to confirm the bid. Confirmation shall be requested when obvious, apparent errors appear on the face of the bid or a bid is unreasonably lower than the other bids submitted. If the bidder alleges mistake, the bid may be corrected or withdrawn subject to the following conditions:

- a. Apparent Clerical Mistakes. Any clerical mistake apparent on the face of a bid may be corrected prior to award upon written or telegraphic verification by the bidder of the bid actually intended. Examples of such apparent mistakes are typographical errors, errors in extending unit prices, transposition errors, and arithmetic errors.
- b. Other Mistakes. The Purchasing Agent or designee is authorized to make the following administrative determinations in connection with mistakes in bids other than apparent clerical mistakes alleged after opening of bids and prior to award:
 - 1) Where the bidder requests permission to withdraw a bid and clear and convincing evidence establishes the existence of a mistake, a determination permitting the bidder to withdraw his bid may be made.
 - 2) When the evidence is clear and convincing both as to existence of the mistake and as to the bid actually intended, and if the bid, both as uncorrected and as corrected, is the lowest received from a responsible bidder, a determination may be made to correct the bid and not permit its withdrawal.
 - 3) Where the bidder requests permission to correct a mistake in his bid and clear and convincing

evidence on the face of the bid establishes both the existence of a mistake and the bid actually intended, a determination permitting the bidder to correct the mistake may be made.

The determination shall not be made unless the existence of the mistake and the bid actually intended are ascertainable substantially from the invitation and the bid itself.

If the evidence is clear and convincing only as to the mistake but not as to the intended bid, a determination permitting the bidder to withdraw his bid shall be made.

4. Where the evidence is not clear and convincing that the bid, as submitted, was not the bid intended, a determination may be made requiring that the bid be considered for award in the form submitted.

4. Mistakes may not be corrected after award of the contract except when the Purchasing Agent or designee determines that it would be unconscionable not to allow the mistake to be corrected.

5. When a bid is corrected or withdrawn, or correction or withdrawal is denied, the Purchasing Agent or designee shall prepare a determination showing that the relief was granted or denied in accordance with these regulations.

N. Bid Evaluation and Award

1. The contract shall be awarded to the responsible and responsive bidder whose bid meets the requirements and evaluation criteria set forth in the invitation for bids in all material respects, and has either the lowest bid price or lowest evaluated bid price. A bid may not be evaluated for any requirement or criterion that is not disclosed in the invitation for bids.
2. Bids shall be evaluated to determine which bidder offers the lowest cost to the County in accordance with the evaluation criteria set forth in the invitation for bids. Only objectively measurable criteria which are set forth in the invitation for bids shall be applied in determining the lowest bidder. When determining the lowest bidder for contracts valued at one million dollars (\$1,000,000) or less the Bonus Points specified under Chapter XXVII of these regulations shall be applied to the bids of Minority Businesses. When determining the lowest bid price for contracts valued at more than one million dollars (\$1,000,000) the Bonus Factors specified under Chapter XXVII of these regulations shall be applied to bids of Minority Businesses. If stated in the invitation for bids, the County reserves the right to make the award by item, or groups of items, or total bid in the best interests of the County unless the bidder specifies in his bid that a partial or

progressive award is not acceptable. If the invitation for bids states that awards will be made by item, groups of items or on total bid basis, and the bidder states in his bid a partial or progressive award is not acceptable, the bid may be declared non-responsive.

3. Nothing in this regulation shall be deemed to permit contract award to a bidder submitting an item of greater value than that designated in the invitation for bids if that bidder is not also the lowest responsive and responsible bidder.
4. Upon determination of the lowest bidder, review of the bid for responsiveness, and satisfaction that the bidder is responsible, the Purchasing Agent shall award the contract to that bidder. No such purchase or contract shall be made or awarded within a period of one week from the date of the public bid opening. The Purchasing Agent may reject any or all bids or any part thereof when the interest of the County is best served by such action.

A bid shall be declared non-responsive if the Purchasing Agent or designee determines that any deviation from the advertised specifications contained in the invitation for bids materially affect price, quantity, quality, delivery or limits the liability of the bidder. Prior to awarding the contract, the Purchasing Agent shall first notify each bidder

rejected for responsiveness or responsibility reasons of the course for such rejection, and shall afford the bidder an opportunity to reply within seven days after receipt of the notice or ten days after mailing.

5. If bids are restricted to Minority Business

Enterprises under the provisions of Chapter XXVII of these regulations, a contract may not be awarded if the resultant low bid exceeds by 15% the most recent unit price for the same or recently comparable goods or services, unless a determination is made by the Minority Business Opportunities Commission that market prices have, for all vendors (not withstanding Minority status) increased beyond 15% since the last time the goods or services were procured.

O. Tie Bids

1. Tie bids are responsive bids from responsible bidders that are identical in price, terms, conditions, delivery or completion dates, and which meet all the requirements and evaluation criteria set forth in the invitation for bids.
2. In the instance of low tie bids, award shall be made in the following order: Prince George's County based certified minority business enterprise, Prince George's County based business, other certified minority business enterprise, Maryland based business and by any other and equitable manner determined by the Purchasing Agent. If low tie bids are received

from bidders with equal preference, award shall be determined by a public drawing of lots.

3. Records shall be made of all invitations for bids on which tie bids are received and a copy of the record shall be forwarded to the Office of Law. Suspected collusive bids may be forwarded to the Maryland Attorney General by the Office of Law, for possible investigation.

P. Documentation of Award

1. Following an award, a record showing the basis for determining the successful bidder shall be made a part of the procurement file. The record shall indicate why any low bid is rejected, and why any bidder has been determined non-responsible. If a low bid of a Minority Business Enterprise is rejected a copy of this record shall be forwarded to the Minority Business Opportunity Commission.

2. When procurement authority of \$15,000 or more is delegated by the Purchasing Agent to a Department head outside of the Office of Central Services, a written determination signed by the department head citing the reasons for not selecting the lowest bidder shall be forwarded to the Purchasing Agent for approval prior to the award of the contract.

Q. Revision of Successful Bid

The Purchasing Agent may accept a voluntary reduction in price from the successful bidder only following the

determination of final award.

In such instance, terms, conditions, specifications and quantities, as depicted in the initial bid shall remain unchanged, and binding upon the successful bidder.

R. Disposition of Bids

When bids are rejected, or a solicitation is canceled after bids are received, the bids which have been opened shall be retained in the procurement file, or if unopened, returned to the bidders upon request and the file so documented.

S. Time for Bid Acceptance

1. Unless otherwise provided in the invitation for bids, bid prices are irrevocable for a period of 90 days following bid opening.
2. After opening the bids, the Purchasing Agent may request bidders to extend the time during which the County may accept their bids, provided that, with regard to bids, no other change is permitted.

T. Limited Competition

1. Only one bid

If only one responsive bid is received from a responsible bidder, and the Purchasing Agent determines the price is fair and reasonable, and other potential bidders had reasonable opportunity to respond, an award may be made to the only bidder.

2. Only one or no responsive bids

If only one or no responsive bids are received from a responsible bidder and an award is not made to a single responsive bidder under regulation 1 above, the scope, specifications, or conditions of the purchase, may be modified and revised bids may be solicited. In such instance, public notice shall be given.

3. Solicitation of Revised Bids

In the event that all bids received from responsible and responsive bidders exceed the funds available for the purchase or the Purchasing Agent or designee determines that all bids are unreasonable, revised bids may be solicited under the following conditions:

- a. The scope, specifications, quantities, or conditions of the original bid shall be modified or reduced.
- b. All responsive and responsible bidders that responded to the initial solicitation shall be afforded fair opportunity to bid on the revised bid.

When revised bids are sought under this regulation, the Purchasing Agent or designee may waive the public notice requirements of Section E, of this Chapter, however, all potentially responsive and responsible bidders who responded to the initial solicitation shall be given opportunity to respond and be given adequate time to prepare their responses to the revised bid solicitation.

U. Multiple or Alternate Bids

Unless multiple or alternate bids are requested in the solicitation, these bids may not be accepted. However, if a bidder clearly indicates a base or primary bid, it shall be considered for award as though it were the only bid submitted by the bidder. The provisions of this regulation shall be set forth in the solicitation and, if multiple or alternate bids are allowed, it shall specify their treatments.

V. Conditioning Bids Upon Other Awards Not Acceptable

Any bid which is conditioned upon receiving award of both the particular contract being solicited and another County contract shall be deemed nonresponsive.

W. Novation or Change of Name

1. A County contract is not transferable, or otherwise assignable, without the prior written consent of the Purchasing Agent or designee provided, however, that a contractor may assign monies receivable under a contract after obtaining the written consent of the Director of Finance or designee.
2. A successor in interest may be recognized in a substitute agreement in which the transferor and the transferee shall agree that:
 - a. The transferee assumes all of the transferor's obligations
 - b. The transferor waives all rights under the contract as against the County; and

c. Unless the transferor guarantees performance of the contract by the transferee, the transferee shall, if required, furnish a satisfactory performance bond.

3. If a contractor requests to change the name in which it holds a contract with the County, the Purchasing Agent or designee may, upon receipt of a document indicating the change of name (for example, an amendment to the articles of incorporation of the corporation), enter into an agreement with the requesting contractor to effect the change of name. The agreement changing the name shall specifically indicate that no other terms and conditions of the contract are changed.

X. Subcontracting to Minority Business Enterprises

1. Subcontract Goals

a. Construction Contracts

In every construction contract, the bidder shall certify as part of its bid that at least 20% of the work will be subcontracted to certified minority businesses unless the bidder is a Certified Minority Business Enterprise. This requirement shall be stated in the invitation for bids.

- b. The Purchasing Agent may include in any solicitation for supplies or services a requirement that a specified percentage of the contract shall

be performed by certified minority business enterprise subcontractors.

- c. The requirements of Chapter XXVII of these regulations shall govern the minority business enterprise subcontracting method prescribed herein.

Y. Multiple Awards

In order to provide a sufficient number of sources for any given requirement, multiple awards may be made; provided, however, that the invitation for bids indicates multiple awards are intended, and, in the case of term contracts, the order of priority in ordering of supplies is indicated in the solicitation.

Z. Bid Protests

Bid protests shall be resolved as prescribed in Chapter XXV of these regulations.

CHAPTER XV

XV. Procurement by Competitive Sealed Proposals

A. Conditions of Use

The competitive sealed proposal method of procurement may be used under the following circumstances:

1. When the total projected contract cost will exceed \$15,000 or more.
2. Specifications cannot be prepared that permit an award on the basis of either the lowest bid price or the lowest evaluated bid price. In determining whether specifications can or cannot be prepared permitting an award based on price, or lowest evaluated price, the Purchasing Agent may consider elements of time, complexity and technical expertise available to develop the specifications;
3. Quality, availability, technical competence or capability is of paramount importance in relation to price;
4. The marketplace is likely to respond better to a solicitation permitting a range of alternate proposals and/or negotiations;
5. Bid prices received in response to an invitation to bid are determined by the Purchasing Agent or designee to be unreasonable;
6. When only one, or no responsive bids are received from a responsible bidder in response to an invitation for

bids; or,

7. When it is determined in writing that competitive sealed bidding is otherwise not advantageous to the County.

B. Solicitation of Proposals

1. Content of the Request for Proposals. The request for proposals shall include:
 - a. Instructions and information to proposers concerning the proposal submission requirements, including the time and date set for receipt of proposals and the address where proposals are to be delivered;
 - b. The purchase description, delivery or performance schedule, and any special instructions;
 - c. A description of each evaluation factor, including price either ranked in order of relative importance, or assigned specific weighted scoring factors.
 - d. A work statement or scope of services;
 - e. A statement of when and how price should be submitted;
 - f. A statement that price proposals are irrevocable for at least 90 days following the closing date for submission of price proposals; and
 - g. A statement that at least 15% of the allocated weighted or proposal evaluation factors shall be

allotted for minority business enterprise participation, either at the prime contractor level or any level of subcontractors pursuant to Chapter XXVII of these Regulations.

2. Public notice shall be given in the same manner provided for under Chapter XIV Section E. Public notice.
3. Proposal preparation time is the period of time between the date of publication in a newspaper of record of the request for proposals and the time and date set for receipt of proposals. The proposal preparation time shall be as prescribed under Chapter XIV, Section C., Bidding Time.
4. Pre-Proposal Conferences
Pre-proposal conferences may be conducted by the Purchasing Agent or his designee to explain the procurement requirements. The pre-proposal conference shall be announced to all prospective offerors who were sent a request for proposals or who have obtained the request for proposals. The pre-proposal conference should be held long enough after the request for proposals has been issued to allow prospective offerors to become familiar with it, but sufficiently before proposal opening to allow consideration of the pre-proposal conference results in the preparation of proposals. Nothing stated at the pre-proposal conference shall change the request

for proposals unless a change is made by the Purchasing Agent by written amendment. Substantive clarifications shall be included in the written amendment. When the summary of the conference is made and clarifications are substantive, a copy of the summary shall be supplied to all prospective offerors who were sent a request for proposals or who have obtained the request for proposals.

The summary shall be a public record and a copy may be made available to each prospective offeror.

5. Amendments to Requests for Proposal

a. Form. Amendments to requests for proposals shall be identified as such and shall require that the offeror acknowledge receipt of all substantive amendments issued. The amendment shall reference the portion of the request for proposals it amends.

b. Distribution. Amendments shall be mailed to all prospective offerors who were sent a request for proposals or who have obtained the request for proposals. The mailing, pre-paid, to the last known address of the prospective offeror shall be complete and sufficient notice of the amendment.

c. Timeliness. Amendments shall be distributed within a reasonable time to allow prospective offerors to consider them in preparing their proposals.

6. Any proposal, withdrawal, or modification received after the established due date and time at the place

designated for receipt of proposals is late and shall not be considered.

7. Proposals may not be opened publicly but shall be opened in the presence of not less than two County employees. Proposals and modifications shall be time clocked in upon receipt and held in a secure place until the established due date. After the established due date a register of proposals shall be prepared that identifies each offeror. Proposals and modifications shall be considered confidential business information and shall only be disclosed as required by the provisions of the Public Information Act. The register of proposals shall be available for public inspection only after the award of the contract.

C. Evaluation of Proposals, Negotiations and Award

1. Evaluation. The evaluation shall be based on the evaluation factors set forth in the request for proposals and developed from both the work statement and price. Numerical rating systems may be used but are not required. Factors not specified in the request for proposals may not be considered.

- (a) Evaluations for contracts estimated to be under \$25,000 may be made by the Purchasing Agent or designee.

- (b) Evaluations of proposals of \$25,000 or more shall be conducted by a Proposal Analysis Group

appointed by the Purchasing Agent, consisting of, at a minimum, the Purchasing Agent or designee; the using agency head or designee, and the Executive Director, Minority Business Opportunities Commission and such other representatives as the Purchasing Agent deems appropriate.

2. Negotiation

- a. When deemed appropriate and necessary, the Purchasing Agent or designee, or proposal analysis group, as applicable with the Purchasing Agent approval, may conduct negotiations with responsible offerors. Negotiations when conducted shall be conducted with all responsible offerors who are reasonably susceptible of obtaining the award.
- b. Conduct of Negotiations. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussions, negotiations, and clarification of proposals. The Purchasing Agent shall establish procedures and schedules for conducting interviews and negotiations. If negotiations indicate that there is a substantive need for clarification of or change in the request for proposals, the Purchasing Agent shall amend the request to incorporate the clarification. Disclosure of any information derived from competing proposals or discussions with other

offerors is prohibited. Any oral clarifications of substance of a proposal shall be reduced to writing by the offeror.

- c. Best and Final Offers. When in the best interest of the County, the Purchasing Agent shall establish a common date and time for the submission of best and final offers. Offerors shall be informed that in the event of failure to submit a notice of withdrawal or a best and final offer, the previous offer shall be construed as the best and final offer. As many series of negotiations and best and final offers as deemed necessary to reaching a final selection may be used.
- d. Confirmation of Proposal. When it appears from a review of the proposal before award that a mistake has been made, the offeror should be asked to confirm the proposal. If the offeror alleges mistake, the procedures pertaining to mistakes in bid under Chapter XIV Section M shall be followed.
- e. Award. Upon completion of negotiations, the Purchasing Agent, or the Purchasing Agent's designee, or Proposal Analysis Group, as applicable shall make a determination recommending to the Purchasing Agent award of the contract to the responsible offeror whose proposal is determined to be the most advantageous to the County, considering the evaluation factors set forth in the request for

proposals. After consultation with the using agency and certification of the availability of funds, the Purchasing Agent may award the contract.

D. Debriefing of Unsuccessful Offerors

1. Unsuccessful offerors shall be briefed by the Purchasing Agent or the Purchasing Agents designee upon their written request, provided the request is made within 30 days after contract award. Debriefings shall be provided at the earliest feasible time after contract award.
2. Information given offerors shall be factual and consistent with the evaluation. Offerors shall be informed of the areas in which their technical or management proposals were weak or deficient and furnished the basis for the selection decision and contract award.
3. A summary of the briefing shall be made a part of the contract file.
4. The content of competing offeror's proposals or the individual scores or evaluation notes of the raters shall not be disclosed during the briefings.

E. Protests

Protests relating to contract formation issues shall be resolved pursuant to the procedures prescribed in Chapter XXV of these Regulations.

CHAPTER XVI

XVI. Contract Negotiations - After Unsuccessful Competitive Sealed Bidding or Unsuccessful Competitive Sealed Proposals

A. Application

A negotiated award may be made under this Chapter if:

1. Only one bid has been received from a responsive and responsible bidder in response to an invitation for bid under Chapter XIV and the Purchasing Agent or designee determines it to be in the County's best interests to negotiate a contract award. In this case the single responsive and responsible bidder shall be given first opportunity to participate in negotiations; or
2. Competitive Sealed Proposals under Chapter XV have resulted in either no acceptable offers from a responsible offeror, or it has been impossible to reach a fair and reasonable agreement with any responsible offeror as determined by the Purchasing Agent.

B. Policy

1. Authority to negotiate a contract under this Chapter does not excuse compliance with the basic policy of obtaining maximum competition consistent with the needs of the occasion, to the end that all purchases shall be made in the best interests of the County.

2. A non-competitive negotiation may be conducted under the circumstances described in Section A above when the Purchasing Agent or designee determines that competition is not practicable or feasible.

CHAPTER XVII

XVII. Contract Negotiation - Sole Source

A. Application

The sole source method of procurement may be used when the Head of a using agency recommends in writing to the Purchasing Agent, and the Purchasing Agent or designee determines that competitive sealed bidding or competitive sealed proposal methods cannot be used in awarding a contract because there is only one available or practical source for the subject of the contract. When this determination is made, a contract may be entered into under this Chapter by non- competitive negotiation.

B. Sole Source Purchase Requests

1. Any request by a using agency that a procurement be made on a sole source basis and be restricted to one vendor shall include a written explanation of:
 - a. The factor stated in Section C below which supports the determination; and
 - b. An acceptable explanation as to why no other source can meet the agency's functional and performance requirements for the subject of the contract.
 - c. Efforts made to locate additional sources.
2. In cases of reasonable doubt as to the strength of the sole source justification or the sole source nature of the subject of the contract, competition shall be solicited under Chapters XIV or XV of these

regulations.

C. Circumstances Justifying Sole Source Procurement

1. When competition is precluded because of the existence of patent rights, copyrights, secret processes, control of basic raw material or similar circumstances where competition is impractical; or
2. When the contemplated procurement is for technical, non-personal services in connection with the assembly, installation or servicing (or the instruction of personnel therein) of equipment of a highly technical or specialized nature; or
3. When the contemplated procurement is for parts or components being procured as replacement parts in support of equipment specially designed by the same manufacturer, and where the Purchasing Agent or designee determines data available is not adequate to assure that a substitute part or component of another manufacturer will not perform the same functionally in the equipment as the part or component it is to replace; or
4. When the contemplated procurement involves construction where a contractor or group of contractors is already at work on the site and it would not be practicable to allow another contractor or an additional contractor to work on the same site, or when the amount and value of the work is too small

to interest other contractors to mobilize and demobilize; or

5. When property is required for experiment, test, development or research in conjunction with determining the relative merits of the product or property for subsequent buys; or
6. When only one product will meet the technical and performance requirements for the procurement.

D. Negotiation in Sole Source Procurement

The Purchasing Agent or designee shall conduct negotiations, as appropriate in order to achieve the best overall price, delivery and terms consistent with the best interests of the County. A sole source contract may not be entered into if the Purchasing Agent determines that the price is not fair and reasonable.

CHAPTER XVIII

XVIII. Contract Negotiation - Emergency Procurements

- A. General. The emergency procurement of supplies, services, or construction is authorized when competitive sealed bidding or competitive negotiation cannot be used in awarding or modifying a contract because of the existence of an emergency. An emergency shall mean a situation resulting from unexpected or unanticipated events which requires immediate action to maintain or restore existing levels of essential public services, preserve or prevent further deterioration of public property, provide temporary food, clothing and shelter to disaster victims, or to prevent damage to property or preserve life or safety.
- B. Scope. An emergency procurement shall be limited to those supplies, services, maintenance, or construction necessary to meet the emergency and the duration of any negotiated contract entered into under this Chapter shall not exceed the period of time necessary to abate the emergency.
- C. Authority. If the emergency occurs after County business hours, the using agency may make an emergency procurement provided that the agency's need cannot be met through normal or expedited procurement methods. If the emergency occurs during business hours, the using agency shall contact the Purchasing Agent or designee, who shall

either make the purchase or authorize the agency to do so.

D. Source Selection. The procedure used shall assure that the required supplies, services, maintenance, or construction are procured in time to meet the emergency.

Competitive procurement is preferred and as is practicable shall be obtained.

E. Record of Emergency Procurement. A record of each emergency procurement shall be made by the using agency head and forwarded to the Purchasing Agent as soon as practicable but not later than seven (7) calendar days following the procurement and shall set forth:

1. The basis of the emergency procurement including the date the emergency first became known;
2. A listing of supplies, services, or construction procured;
3. The number and names of businesses solicited, or the reason if solicitations were not made from more than one business;
4. The prices and time of performance by the businesses responding to the solicitation;
5. The name of and basis for the selection of a particular contractor;
6. The amount and type of the contract or contract modification;
7. A record of any known or related emergency contracts made by the same agency, including contract

modifications, executed for purposes of abating or avoiding the particular emergency situation, including the aggregate costs.

F. Report of Emergency Procurements

The Purchasing Agent shall submit at least annually a report to the Chief Administrative Officer of all procurements made under this Chapter. This report shall include the record of each emergency procurement provided under Section E, above, and an indication of any suspected abuses of the emergency procurement method.

CHAPTER XIX

XIX. Contract Negotiation - Special Circumstances

A. Application and Procedure

The Purchasing Agent or designee may negotiate a contract under the following circumstances:

1. The using agency certifies that a public exigency will not permit a delay incident to advertising and justifies the circumstances of the exigency which requires expedited procurement actions. Such public exigency shall not include emergency purchase circumstances under Chapter XVIII, but may include, by way of example and not of limitation, situations where the County faces possible imminent loss of State or Federal revenues, or both; or possible adverse impacts on the County's economic welfare or important economic development; if rapid procurement actions are not taken. Under these circumstances, and upon approval of the Purchasing Agent, the Purchasing Agent or designee may negotiate the contract. If the contract is not competitively negotiated, the Purchasing Agent or designee shall prepare a written determination explaining why it was not possible or practicable to conduct a competitive procurement; or
2. Goods or services are to be provided by or under contract with another government agency or government.

In this situation the Purchasing Agent, or designee

may non-competitively procure such goods or services directly from the other government upon making a decision that the prices are fair and reasonable and no substantial benefit would accrue to the County by making a competitive procurement.

B. General

Authority to negotiate a contract under this Chapter does not excuse compliance with the basic policy of obtaining maximum competition consistent with the needs of the occasion, to the end that all purchases will be made to the best interest of the County, price and other factors considered. The authority to negotiate contracts in no way eliminates the need of the Purchasing Agent to exert reasonable efforts to obtain the most favorable prices possible.

C. Procurement File

The procurement file shall include:

1. Any certification justification and determination required under Section A, above; and
2. The contract.

CHAPTER XX

XX. Small Purchases

- A. Application - Any contract anticipated to be \$15,000 or less may be entered into in accordance with the provisions of this Chapter.
- B. Intent - These small purchase regulations are intended to be a simplified, stand alone procurement process, therefore, the mandatory requirements stipulated in other Chapters, with the exception of the Minority Business Enterprises Regulations under Chapter XXVII, need not apply unless the Purchasing Agent determines that the application of one or more sections of these Regulations to a particular procurement is necessary, in the public interest and in the best interests of the County.
- C. Policy - It is the policy of the County that competition be obtained whenever practicable when making small procurements and that all small procurements be made in a manner consistent with Chapter II.A., Purpose, of these Regulations.
- D. Purchases in Excess of Small Procurement Threshold
1. No contract or purchase shall be subdivided in order to use the small procurement method instead of other procurement methods.
 2. The use of the small procurement method described in this part shall be based on an initial decision by the procuring official that the value of the contract will

be \$15,000 or less. When written competitive bids, quotations, or offers are solicited based upon the initial decision, and the lowest price received from a responsible supplier exceeds the above threshold levels the contract may be awarded under the small procurement method with the approval of the Purchasing Agent or designee.

E. Delegation of Authority

1. To the extent that the Purchasing Agent delegates authority to using agencies to make small procurements, these purchases shall be made in accordance with this Chapter and any furthering procedures or limitations prescribed by the Purchasing Agent in the letter of delegation.
2. Consistent with delegations made under this section the heads of using agencies shall designate, in writing, those officials under their respective jurisdiction who may authorize or make such purchases.
3. When procurement authority of \$15,000 or more is delegated by the Purchasing Agent to a Department head outside of the Office of Central Services, a written determination signed by the Department Head citing the reasons for not selecting the lowest bidder shall be forwarded to the Purchasing Agent for approval prior to the award of the contract.
4. The Purchasing Agent may withdraw any such delegations at any time upon a showing of abuse of these

procedures, and may request the using agency head to rescind any procurement authority given to any individual under the control of the agency head.

F. Categories

Small procurements are classified into four categories:

1. Category I Small Procurements - \$500.00 or less
2. Category II Small Procurements - \$500.01 to \$1,000.00
3. Category III Small Procurements - \$1,000.01 to \$5,000.00
4. Category IV Small Procurements - \$5,000.01 to \$15,000.00

G. Solicitation Objective

The objective of soliciting bids, quotes or offers is to foster competition in obtaining needed items in a cost effective manner. When needed items or their functional equivalents are either carried in County inventories or are under a requirements contract established by the Purchasing Agent, those items shall be procured from the County warehouse or from the contract source. When they are not available through these sources the degree of competition applicable to the categories of small procurement defined in Section F are as follows:

1. Category I - Competition should be sought to the extent practical, with consideration being given to such factors as availability of vendors, dollar value of the procurement as related to the administrative

costs involved in making the procurement, and the time available to make the procurement including delivery time;

2. Category II - At least two vendors shall be solicited, either orally or in writing;
3. Category III - At least three vendors shall be solicited, either orally or in writing;
4. Category IV - At least three vendors shall be solicited in writing.

H. Written Solicitation Contents

A written solicitation shall contain, at a minimum, the following elements:

1. A description of the item requested;
2. Time, date, place and form of response requested;
3. The basis of award; and
4. The name and telephone number of the procuring official to whom inquiries regarding the solicitation may be directed.

I. Solicitation Responses

1. In any oral solicitation made under Categories II or III, the Procuring Official may accept an oral response, but shall request that a confirmation of the response be made in writing.
2. A response to Category IV small procurement solicitations shall be in writing.

J. Restricted Small Procurements

When the Purchasing Agent determines that at least two certified minority business enterprises are regular dealers or providers of the needed supplies or services, the Purchasing Agent may limit competition to minority business enterprises.

K. Negotiated Minority Business Enterprise Small Procurements

Notwithstanding other provisions of this Chapter, a small procurement contract may be negotiated with a MBE when a written explanation is prepared by the Procurement Officer that: 1) a negotiated procurement is necessary to help achieve the County's MBE goals and, 2) the negotiated price is considered fair and reasonable.

L. Sole Source Small Procurements

1. Any procuring official shall obtain the approval of the Purchasing Agent, or designee prior to making any Category II, III or IV sole source small procurement.
2. When making any sole source small procurement either under Category I or with the Purchasing Agent or designee's approval under Categories II, III and IV, the procuring official shall make a written determination justifying why the procurement was made without competition. This determination shall be forwarded to the Purchasing Agent in a manner prescribed by the Purchasing Agent.

M. Basis for Award

The basis for award shall be:

1. Category I Small Procurements - The judgment of the procurement officer.
2. Categories II and III and IV Small Procurements - The lowest responsive bid, lowest evaluated bid price, or most advantageous offer, as specified in the solicitation.
3. The bonus point factors described in Chapter XXVII are applicable in determining the lowest bidder, on competitively bid small procurement contracts under Categories II through IV.

N. Contract Type and Evidence

Either oral or written contracts may be used in connection with small procurements as specified below. However, every small procurement shall be evidenced by some contract documentation, as follows:

1. Category I Small Procurements
 - a. Contract type - oral or written;
 - b. Minimum evidence - For oral contracts, a field purchase order, purchase order, a receipt, invoice, or voucher and payment request, as applicable.
2. Category II, III and IV Small Procurements
 - a. Contract type - written;
 - b. Minimum evidence - Written bids, quotations or offers or written confirmation of oral bids, quotations or offers, a summary annotating the basis of award and a purchase order.
3. The evidence shall be filed in the procurement file.

O. Small Procurement Written Contract Content

Any field purchase order, purchase order or written contract used for small procurements shall contain the following elements:

1. Identification of the parties to the contract;
2. A statement of the scope of the contract;
3. The dollar value of the contract, if known, or a not to be exceeded value if the actual value is not known;
4. The term of the contract, including completion or delivery date;
5. Name of the procuring official responsible for the contract.

CHAPTER XXI

XXI. Construction Contracting Methods

A. Application of Regulations and General Policy

1. Application. This Chapter contains provisions applicable to the selection of the appropriate method of management for construction contracts, that is, the contracting method and configuration that will most likely result in timely, economical, and otherwise successful completion of the construction project.
2. Flexibility. It is intended that the Purchasing Agent or designee have sufficient flexibility in formulating the project delivery approach in a particular project to fulfill the County's needs. In each instance, consideration commensurate with the project's size and importance should be given to the appropriate and effective means of obtaining both the design and construction of the project. The methods for achieving those purposes set forth in this Chapter are not to be construed as an exclusive list.
3. Selecting the Method of Construction Contracting. In selecting the construction contracting method, the Purchasing Agent or designee should consider the results achieved on similar projects in the past and the methods used. Consideration should be given to all appropriate and effective methods and their comparative advantages and disadvantages and how they

might be adapted or combined to fulfill County requirements.

4. Use of Regulations. These Regulations are intended to guide County personnel in selecting the appropriate contracting method. It is not intended to create any third party rights.

B. Lease, Buy, or Build

Before initiating a construction project, consideration should be given to leasing or buying existing building space as well as to constructing new space. As appropriate the Purchasing Agent or designee and the head of the Using Agency should participate in deciding whether to lease, buy, or build. Factors to consider when choosing between these three alternatives include, but are not limited to:

1. whether the County's requirements will be continuing or temporary;
2. the need for County control over the building;
3. the adequacy of available space to fit County needs;
4. to the extent they are reasonably known or ascertainable, the life-cycle costs associated with leasing, buying, or building;
5. which method can most timely meet and continue to meet County requirements;
6. the need to physically separate and distinguish County facilities from private facilities;

7. the dislocation of existing tenants, both commercial and residential, that may result; and
8. environmental effects.

C. General Descriptions

1. Use of Descriptions. The following descriptions are to provide a common vocabulary for use in the context of this Chapter and for general discussion concerning the construction contracting activities of the County. The methods described are not all mutually exclusive and often may be combined on one project. These descriptions are not intended to be fixed in respect to all construction projects of the County. In each project these descriptions may be adapted to fit the circumstances of that project. However, the Purchasing Agent or designee should endeavor to ensure that these terms are described adequately in the appropriate contracts, are not used in a misleading manner, and are understood by all relevant parties. Significant deviations from the descriptions provided in this Chapter should be explicitly noted.
2. Single Prime Contractor. The single prime contractor method of contracting is typified by one business (general contractor) contracting with the County to timely complete an entire construction project in accordance with plans and specifications provided by the County. Often these plans and specifications are prepared by a private architectural firm under

contract to the County. Further, while the general contractor may take responsibility for successful completion of the project, much of the work may be performed by specialty contractors with whom the prime contractor has entered into subcontracts.

3. Multiple Prime Contractors. Under the multiple prime contractor method, the County or the County's agent contracts directly with a number of specialty contractors to complete portions of the project in accordance with County plans and specifications. The County or its agent may have primary responsibility for successful completion of the entire project, or the contracts may provide that one of the multiple prime contractors has this responsibility.
4. Design-Build or Turnkey. In a design-build or turnkey project, a business contracts directly with the County to meet the County's requirements as described in a set of performance specifications by constructing a facility to its own plans and specifications. Design responsibility and construction responsibility both rest with the design-build contractor. This method can include instances where the design-build contractor supplies the site as part of the package.
5. Construction Manager. A construction manager is a person experienced in construction that has the ability to evaluate and to implement plans and specifications as they affect time, cost, and quality

of construction and the ability to coordinate the design and construction of the project, including the administration of change orders. The County contracts with a qualified construction manager to act for the County in the construction project as specified in the construction management contract. At times, the construction manager may become the single prime contractor, or may guarantee that the project will be completed on time and will not exceed a specified maximum price. At such times, the construction manager will become responsible, just as any single prime contractor, to complete the project at or below the specified price.

6. Sequential Design and Construction. Sequential design and construction denotes a method in which design of substantially the entire structure is completed prior to beginning the construction process.

7. Phased Design and Construction. Phased design and construction denotes a method in which construction is begun when appropriate portions have been designed, but before substantial design of the entire structure has been completed. This method is also known as "fast-track construction."

D. Criteria for Selecting Construction Contracting Methods

1. County Requirements. Before choosing the construction contracting method to use, a careful assessment must be made by the head of the using agency and the

Purchasing Agent or designee of requirements the project must satisfy and those other characteristics that would be desirable. In addition to those set forth in Subsections 2 and 3 below, some of the factors to consider are:

- a. when the project must be ready to be occupied;
- b. the type of project - for example, housing, offices, or heavy or specialized construction such as highway or water treatment;
- c. the extent to which the County's requirements and the ways in which they are to be met are known;
- d. the location of the project and whether a contractor's site may be used; and
- e. the size, scope, complexity, and economics of the project.

2. County Resources

- a. The amount and type of financing available for the project is relevant to the selection of the appropriate construction contracting method including:
 - 1) whether the budget is fixed or flexible;
 - 2) what the source of funding is, for example, general or special appropriation, federal assistance monies, public improvement bonds, or general obligation bonds.
- b. Proper selection of a contracting method depends upon a realistic appraisal of the availability,

qualifications, and experience County personnel can bring to the project and, of equal importance, how much time such personnel can devote to the project.

c. When examining resources for a proposed construction project, the availability of outside consultants may be considered. Such consultants may be able to handle tasks and supply valuable expertise otherwise unavailable to the County.

3. Prospective Contractors. Choice of the proper construction contracting method entails not only the internal examination described in Subsections D.(1) and (2) of this Section, but must take into account the characteristics, experience, and availability of the contractors who can work on the project. The design firms the County may contract with to prepare the plans and specifications must be evaluated as a group to determine whether they can efficiently divide the work into specialty packages if multiple prime contractors are to be used, or design the project in phases appropriate to the use of phased design and construction. Prospective construction contractors must also be appraised as a group to determine whether they have the capability and willingness to bid on the construction project as designed and as required by the contracting method chosen. Similarly, if the contracting method involves use of consultants, an evaluation of the availability of qualified

consultants should also be made. If the design-build method or some variation of it is considered, availability of firms capable of both designing and constructing the facility must be ascertained. In respect to all of the potential contractors, it is important to consider the amount of competition current in the market for the particular type of County contract and whether a price can be obtained that is fair and reasonable when considered together with the benefit to the County potentially obtainable from such a contract.

4. Procurement Officer's Determination. The Procurement Officer shall make a written determination supporting the contracting method chosen for each project. The determination shall describe the construction contracting method chosen and set forth the facts and conclusions which led to the selection of that method. This determination need only support the contracting method selected. It shall, however, demonstrate that the County's requirements, its resources, and the various groups of potential contractors were all considered in making the selection. If the determination was made by a delegated Procurement Officer the determination shall be subject to the approval of the Purchasing Agent or his/her designee.

E. Single Prime Contractor

1. Use with Sequential Design and Construction. When sequential design and construction is used with a single prime contractor, comprehensive plans and specifications that are precise enough to allow prospective prime (general) contractors to submit a competitive sealed bid should be prepared. The contractor awarded the contract takes responsibility for the coordination of the specialty subcontractors and timely completion of the project at the price specified in the contract. The architect-engineer, the County project manager, and, if used, the construction manager shall monitor the progress of the project and otherwise represent the County's interests all as set forth in the pertinent contracts.
 - a. Advantages. The primary advantage of the single prime contractor method is that the County can look to one prime contractor who has principal responsibility for completing the contract. The single prime contractor method may also give the County contractual insulation from many subcontractor claims. Also, when sequential design and construction is used, the County is given a fixed price for completion of the entire project before the construction has begun.
 - b. Disadvantages. The single prime contractor method removes specialty contractors from direct County

control. This method is likely to entail including in the cost of the total project the prime contractor's potential markup on each specialty contract. On the other hand, the prime contractor's services in managing these contractors may well offset any possible markup by eliminating the need for a construction manager.

2. Use with Phased Design and Construction. A single prime contractor may also be used with phased design and construction through the letting by the County of the early construction phases to specialty contractors, and the letting of a portion of the project to a prime contractor when the plans and specifications are sufficiently complete to allow bids to be made. If found advantageous after letting the prime contract, the County may transfer or assign to the contractor the administration of the specialty contracts it let earlier, as provided in the contract.

a. Advantages and Disadvantages of Use with Phased Design and Construction. Using a single prime contractor with phased design and construction has the advantages of having a single prime contractor responsible for the entire job and also allowing construction to begin before all of the design is completed. The disadvantages are that the County or its construction manager must supervise and coordinate the work of the early specialty

contractors, and the prime contractor will not be able to choose those early specialty contractors and may have to work with someone the prime contractor would not have chosen. As a consequence, the County may be exposed to more claims based upon assertions of mismanagement, and the prime contractor bids may be proportionately higher than they would have been otherwise.

3. Contractual Provisions. The rights, duties, and responsibilities of the County representatives, the architect-engineer, the general prime contractor, and, if applicable, the construction manager and any specialty contractors who contract with the County must be carefully detailed. If phased design and construction is used, administration of ongoing specialty contracts let before the prime contract will have to be transferred or assigned to the prime contractor. The terms of this assignment or transfer (including the duties of the County to ensure that the specialty contractors are at a certain point of completion at the time of assignment), what liability to the specialty contractors remains with the County after assignment, if any, and what duties and responsibilities the general prime contractor has with respect to the assigned specialty contractors must all be set forth in the specialty contracts and the

contract with the prime contractor.

F. Multiple Prime Contractors

1. Use. Multiple prime contractors may be used with sequential design and construction by splitting the plans and specifications into packages pertinent to recognized trade specialties. The County may undertake to manage and coordinate their work or contract with a construction manager to do so. The contracts may provide that responsibility for successful completion of the entire project rests with the County, the County's agent, or one of the multiple prime contractors. The contracts shall specify where this responsibility shall rest. Multiple prime contractors may be used effectively with phased design and construction only if the architect-engineer's work is closely coordinated with the specialty contractors' work. the specialty contractors may either contract directly with the County or with its construction manager.

a. Advantages. The multiple prime contractor method can lessen the prime contractor's markup, if any, on the specialty contractors' contracts and gives the County much greater control over the contractors doing the work. It permits the County to be more involved in the selection of specialty contractors, allows the County to prescribe how they will compete for the contract, and gives the

County more flexibility in deciding when to enter the construction market and with what size contracts.

- b. Disadvantages. The multiple prime contractor method places all the risk of managing and coordinating the construction work with the County.

The County or its representatives must actively and aggressively supervise the project to ensure timely and successful completion. A contract that merely requires specialty contractors to cooperate and to coordinate their work is insufficient. To undertake this responsibility successfully requires vesting clear authority in a County representative to quickly make decision essential to the continuation of the project.

- 2. Contractual Provisions. Whenever multiple prime contractors are used, the contract between the County and each prime contractor must clearly state the scope of each contractor's responsibility, when the portions of the work are to be complete, and provide a system of timely reports on progress of the contractor's work and problems encountered. The contract should also specify that each contractor is liable for damages caused other contractors and the County whether because of delay or otherwise. Such clauses should not, however, attempt to relieve the County of liability where it fails to properly coordinate and

manage the project. Further, the duties and authority of the County representative, the architect-engineer and, if one is employed, the construction manager with respect to the specialty contractors should be clearly delineated in all the parties' contracts.

G. Design-Build or Turnkey

1. Use. The design-build or turnkey method gives the contractor maximum control of the construction project consistent with County needs. The County prepares a set of performance specifications including functional criteria, any life-cycle cost considerations, and other evaluation factors. The County shall also specify the degree of detail necessary in a design proposal. The contractor is selected on the basis of its design proposal, proposed price, and other stated evaluation criteria. It may be appropriate to use a multi-step process to lessen the number of firms submitting final design proposals to reduce administrative burden and to keep preparation costs down. In appropriate circumstances, it may be advantageous to provide in the solicitation for payment to all or any of the firms of proposal preparation costs or a stipulated stipend to ensure adequate continuing competition. After award, the contractor completes the design, subject to review by the County or its architect-engineer as set forth in the contract, and constructs the project. The

contractor chooses whether to phase the project. Upon completion the County either accepts or rejects the project depending on how well the contractor has met the specifications.

a. Advantages. In the design-build method, a fixed price for the project is established early. Another advantage is that the contractor designs and builds the project with its own forces. Consequently, the duty and risk of proper management of project design and construction lies with the contractor. It also allows the contractor to design and perform in a manner best suited to its operations and experience. It may give the County earlier definition of the project. The method is most appropriate when the County will not need to be deeply involved in the project's design and construction.

b. Disadvantages. Less control over the design and construction process is one of the disadvantages in design-build. The contract is awarded on the basis of a design proposal, not a complete set of plans and specifications. The County's needs may not be met if the specifications are deficient, if the contractor's design proposals are not carefully evaluated, and if the design and construction process is not carefully monitored to ensure that both the specifications and the design proposal are

being followed.

2. Contractual Provisions. Careful preparation of the specifications and evaluation criteria is crucial to successful use of the design-build method. The contract documents should also delineate clearly the County's rights to inspect plans and specifications and the construction work in progress. They should also indicate precisely what will constitute completion of the project by the contractor.

H. Construction Manager

1. Use

- a. Planning and Design Phases. A construction manager may bring a valuable practical construction perspective to the County in both the planning and design phases of the project. For purposes of this Section, the planning phase encompasses those activities involved in determining County requirements, selecting the construction contracting management method, selecting an architect-engineer, and establishing progress schedules. During design, the construction manager reviews plans and makes suggestions to cut construction costs that may relate to the practicality of construction, market conditions in the construction industry, and items which should

be ordered early. A construction manager would also assist in phasing the design and construction process.

b. Construction Phase. Once construction commences the construction manager's role may be limited to monitoring construction progress, and inspecting and otherwise representing the County's interest if sequential design and construction with a single prime contractor is used. If the project is constructed by the phased design and construction method or the multiple prime contractors method, the construction manager will be responsible for the supervision and management of their work and may let contracts to the specialty contractors pursuant to the management contract with the County. In a project using phased design, the construction manager may also give the County a guaranteed maximum price for completion of the project prior to completion of all the drawings and specifications. To the extent the construction manager is the County's representative, the manager may assist in the final inspection and acceptance of the project by the County.

c. Advantages. The construction manager adds construction expertise to the County's team. Several benefits of this are:

(1) The selection of the construction contract

management technique, project design, and other crucial decisions in the early phases of the project can be made with a better understanding of their impact upon construction.

(2) The construction manager can manage the work of the various construction contractors as the County's representative instead of using a single prime contractor whose interests may not coincide with those of the County. In this way the County may gain more control of the actual construction project.

(3) Phased design and construction may be used more readily because a construction manager can greatly relieve the burden on the County to coordinate its duties with those of the architect-engineer and the various contractors.

(4) A construction manager may be able to give the County a guaranteed maximum price earlier in the design process than a general contractor because of its involvement in the project from the beginning. This may permit the County to effectively phase design and construction and still have a fixed price for funding purposes before construction is begun.

d. Disadvantages. The construction manager's fee is

added cost to the construction project. On smaller construction projects, construction management may not be cost effective.

2. Contractual Provisions. It is imperative that the construction management contract clearly set forth the duties and authority of the construction manager in respect to all the participants in the project. The contract should also attempt to define the possible liability of the County and the construction manager for failure to properly coordinate the specialty contractors' work.

I. Sequential Design and Construction

1. Use. The initial step in using sequential design and construction is to gather a team to design the project and provide a complete set of drawings and specifications to use in awarding the construction contract or contracts. This team may include a construction manager who, in addition to review the plans as they develop, may assist in separating them into packets if multiple prime contractors are to be used. Except for redesign necessitated by changes in County requirements or problems encountered during construction, design is complete at the time construction has begun.
2. Advantages. A project using sequential design and construction proceeds in clearly defined steps which

may aid in financing and gaining any necessary approvals as well as aiding in managing the entire project. Complex or unique projects can be completely thought through and planned before construction has begun. Also, before any construction has begun, a fixed price for the project can be established.

3. Disadvantages. Sequential design and construction requires a longer time to complete the project than phased design and construction. The complete package of drawings and specifications also freezes design decisions months or years before occupancy which will reduce flexibility.

J. Phased Design and Construction

1. Use. Phased design and construction may be used when the architect-engineer, working with the construction manager, if one is used, can settle on the major design decisions and then do the detail design work in the sequence necessary to construct the project. This design process then allows construction to begin before design is complete for the entire project (of course, design is complete on those portions being constructed). Construction should only be begun after the County's requirements are set, the overall (schematic) design is complete, and the complete drawings and specifications for the first construction phase are ready. (It may be possible to start site preparation prior to this stage.) A construction

manager is often necessary to assist in packaging the various specialty contracts and to manage the work under these contracts.

2. Advantages. Phased design and construction can result in reduced project completion time. It can also allow reduction in the scope of the project if prices on early portions indicate the project may exceed the budget. In a sequential project such redesign might delay the entire project. It also gives the County added flexibility in deciding when to let the various specialty contracts to take advantage of market conditions.
3. Disadvantages. In phased design and construction, portions of the project are begun before later portions are completely designed. Major changes in these later portions may necessitate costly changes in the early portions and result in costly delays to many other specialty contractors. The County bears the risk both for at least some coordination of specialty contractors and for ensuring that design of later portions does not adversely affect earlier ones. Neither of these risks need be assumed by the County in sequential design and construction.
4. Contractual Provisions. The contract must clearly establish the architect-engineer's duty to design to allow phasing, and the contracts with the specialty contractors must clearly delineate their scope of work

and duties to other contractors and the County.

Further, the management rights of the County and its construction manager, if one is used, must be set forth.

K. Contract Disputes

1. Any dispute concerning questions of fact arising under a contract which is not disposed of by agreement of the parties shall be decided by the Purchasing Agent/Director of Central Services. The provisions of Chapter XXV, Administrative Remedies shall govern the resolution of all contract disputes.
2. Every construction contract shall contain a disputes clause which shall give notice of the applicable procedures for resolving disputes and claims and shall stipulate the requirements for content and timelines when filing a claim or dispute.

CHAPTER XXII

XXII. Types of Contracts and Multi-Year Contracts

A. General

1. Scope. This chapter contains descriptions of types of contracts and limitations as to when they should be utilized by the County in its procurements.
2. Prohibition. Cost-plus-a-percentage-of-cost contracts are prohibited. This prohibition shall not apply to contracts based upon a manufacturer's established catalogue or market prices as to contracts for materials and services in short supply or where fluctuating market conditions make it impractical for suppliers to guarantee fixed prices for reasonable time periods.
3. Policy Regarding Selection of Contract Types
 - a. Subject to the limitation of Section 2, any type of contract which shall promote the best interests of the County may be used. However, preference shall be given in the order indicated to the following types of contracts:
 - 1) Fixed-price;
 - 2) Fixed-price incentive;
 - 3) Cost plus incentive fee; and
 - 4) Cost-plus fixed fee or cost-reimbursement.
 - b. The objective when selecting a contract type is to obtain the best value in needed supplies, services,

or construction in the time required and at the lowest cost or price to the County. In order to achieve this objective, the Procurement Officer, Purchasing Agent or the Purchasing Agent's designee before choosing a contract type, should review those elements of the procurement which directly affect the cost, time, risk, and profit incentives bearing on the performance.

c. Among the factors to be considered in selecting any type of contract are:

- 1) The type and complexity of the supply, service, or construction item being procured;
- 2) The difficulty of estimating performance costs such as the inability of the County to develop definitive specifications, to identify the risks to the contractor inherent in the nature of the work to be performed, or otherwise to establish clearly the requirements of the contract;
- 3) The administrative costs to both parties;
- 4) The degree to which the County may be required to provide technical coordination during the performance of the contract;
- 5) The effect of the choice of the type of contract on the amount of competition to be expected;
- 6) The stability of material or commodity market prices or wage levels;
- 7) The urgency of the requirement; and

- 8) The length of contract performance.
- d. Except for a firm fixed-price contract, no contract type may be used unless the Procurement Officer, Purchasing Agent or the Purchasing Agent's designee determines that the

contractor's accounting system will permit timely development of all necessary cost data in the form required by the specific type of contract contemplated and that the contractor's accounting system is adequate to allocate costs in accordance with generally accepted accounting principles.

B. Types of Fixed-Price Contracts

1. Definitions

"Fixed-price contract" means a contract which places responsibility on the contractor for the delivery of the product or the complete performance of the services or construction in accordance with the contract terms at a price that may be firm or may be subject to contractually specified adjustments.

a. "Firm fixed-price contract" means a fixed price contract that provides a price that is not subject to adjustment because of variations in the contractor's cost.

b. "Fixed-price contract with price adjustment" means a fixed price contract that provides for variation in the contract price under special conditions

defined in the contract, other than customary provisions authorizing price adjustments due to modifications.

2. Application

Fixed-Price Contract Generally. A fixed-price contract is appropriate for use when the extent and type of work necessary to meet County requirements can be reasonably specified and the cost can be reasonably estimated, as is generally the case for construction or standard commercial products.

a. Firm Fixed-Price Contract. A firm fixed-price contract should be used whenever prices which are fair and reasonable to the County can be established at the outset. Bases upon which firm fixed prices may be established include:

- 1) Adequate price competition for the contract;
- 2) Comparison of prices in similar prior procurements in which prices were fair and reasonable;
- 3) Establishment of realistic costs of performance by utilizing available cost or pricing data and identifying uncertainties in contract performance; or
- 4) Use of other adequate means to establish a firm price.

b. Fixed-Price Contract with Price Adjustment. When a

fixed-price contract with price adjustment is used, the formula or other basis by which the adjustment in contract price can be made shall be specified in the solicitation and the resulting contract. Adjustment allowed may be upward or downward only or both upward and downward.

Examples of conditions under which adjustments may be provided in fixed-price contracts are:

- 1) Changes in the contractor's labor agreement rates as applied to the industry or areawide;
- 2) Changes due to rapid and substantial price fluctuations, which can be related to an accepted index;

- 3) In requirements contracts:

When a general price change alters the base price (such as a change in a manufacturer's published price list or posted price to which a fixed discount or percentage add on is applied pursuant to the contract to determine the contract price).

C. Types of Cost-Reimbursement Contracts

1. Definitions

"Cost-reimbursement contract" means a cost contract or a cost-plus fixed fee contract.

a. "Cost contract" means a contract which provides for reimbursement for allowable costs but no fee.

b. "Cost-plus fixed fee contract" means a contract

which provides for reimbursement for allowable costs and in addition a fixed fee.

2. Application

- a. Generally, a cost-reimbursement contract is appropriate when the uncertainties involved in contract performance are of such magnitude that the cost of contract performance cannot be estimated with sufficient certainty to realize economy by use of any type of fixed-price contract. A reimbursement contract necessitates appropriate monitoring by County personnel during performance so as to give reasonable assurance that objectives are being met.
- b. Determinations. A cost-reimbursement contract may only be used when the Purchasing Agent or designee determines or approves a determination that:
 - 1) This contract is likely to be less costly to the County or otherwise more beneficial than any other type or that it is impracticable to otherwise obtain the supplies, services, or construction, of the kind or quality required except under such a contract;
 - 2) The proposed contractor's accounting system shall permit timely development of all necessary cost data in the form required by the specific contract type contemplated; and
 - 3) The proposed contractor's accounting system is

adequate to allocate costs in accordance with generally accepted accounting principles.

c. Cost-reimbursement contracts shall provide that costs shall be reimbursed only if they are costs recognized as allowable and allocable under cost principles to be specified in the solicitation and contract.

3. All cost reimbursement type contracts shall contain a provision that only costs determined to be allowable under Chapter XXIII will be reimbursable.

4. Each contractor under a cost reimbursement type contract shall give notice and secure approval, as required by the contract, before entering into:

a. A cost-reimbursement subcontract; or

b. Any other subcontract involving more than \$25,000, or 5 percent of the estimated cost of the prime contract, whichever is lesser.

D. Types of Cost Incentive Contracts

1. Definitions

a. "Cost-plus incentive fee" means a contract which provides for the reimbursement to the contractor of allowable costs incurred up to a ceiling amount and establishes a formula by which the contractor is rewarded for performing at less than target cost or is penalized if it exceeds target cost.

b. "Fixed-price incentive contract" means a fixed-price contract in which the parties establish at

the outset a target for performance and a formula by which the contractor is rewarded for exceeding performance and penalized if performance is not met.

- c. "Target" means the parties agreed best estimate as set forth in the contract.

E. Time and Material Contracts; Labor Hour Contract

1. Definitions

- a. "Labor hour contract" means a contract which only provides for the payment of labor performed.
- b. "Time and material contract" means a contract which provides an agreed basis for payment for materials supplied and labor performed.

2. Ceiling. Labor hour and time and material contracts shall state a dollar ceiling that may not be exceeded without the prior approval of the Purchasing Agent.

F. Term Contracts

1. Types

- a. "Definite quantity contract" means a fixed-price contract that provides for delivery of a specified quantity of supplies or services either at specified times or when ordered.
- b. "Indefinite quantity contract" means a contract for an indefinite amount of supplies or services to be furnished at specified times, or as ordered, that establishes unit prices of a fixed-price type.
- c. "Requirements contract" means an indefinite

quantity contract for supplies or services that obligates the County to order all the actual requirements of designated using agencies during a specified period of time.

2. Application

- a. Indefinite Quantity Contract. An approximate quantity or the best information available as to quantity shall be stated in the solicitation. The contract may provide a minimum quantity the County is obligated to order and may provide a maximum quantity that limits the County's obligation to order.
- b. Requirements Contracts. For the protection of the County and the contractor, requirements contracts shall include the following:
 - 1) A provision which requires the County to order its actual requirements of the supplies or services covered, provided, however, the County may reserve in the solicitation and in the resulting contract the right to take bids separately if a particular quantity requirement arises which exceeds the County's normal requirements or an amount specified in the contract; and
 - 2) An exemption from ordering under the contract:
When the Purchasing Agent or designee determines that the supply or services available under the

contract may not meet a nonrecurring, special need of the County.

G. Leases

1. Definition. "Lease" means a contract for the use of equipment or other supplies under which title may not pass to the County at any time.
2. Application. A lease may be entered into if:
 - a. It is in the best interest of the County;
 - b. All conditions for renewal and costs of termination are set forth in the lease; and
 - c. The lease is not used to circumvent normal procurement procedures.

H. Lease with Purchase Option

1. A purchase option in a lease (excluding a lease for real property) may be exercised when the lease containing the purchase option was awarded under competitive sealed bidding, competitive negotiations, competitive small procurement procedures, or the leased supply is the only supply that can meet the County's requirements, or when the Purchasing Agent determines that the exercise of the option will result in cost savings to the County.
2. Before exercising the option, the Purchase Agent or designee shall:
 - a. Investigate alternative means of procuring comparable equipment or supplies;

- b. Compare estimated costs and benefits associated with the alternative means with the exercise of the option.

I. Multi-Year Contracts

1. Application. A multi-year contract is appropriate when it is in the best interest of the County to obtain uninterrupted services extending over more than one fiscal period, when the performance of the services involves high start-up costs, when a changeover of services contractors involves high phase-in/phase-out costs during a transition period, or when it is an economically beneficial hedge against inflationary pressures. The multi-year method of contracting is also appropriate when special production of definite quantities of supplies for more than one fiscal period is necessary to best meet the County needs but funds are available only for the initial fiscal period.
2. Objective. The objective of the multi-year contract is to promote economy and efficiency in procurement by obtaining the benefits of sustained volume production and consequent low prices, and by increasing competitive participation in procurements which involve special production or high phase- in/phase-out costs during changeover of service contractors.
3. Conditions for Use of Multi-year Contracts. A multi-year contract may be used when:

- a. Special production of definite quantities or the furnishing of long-term services are required to meet County needs;
- b. Estimated requirements cover the period of the contract and are reasonably firm and continuing; and
- c. A multi-year contract shall serve the best interests of the County by encouraging effective competition or otherwise promoting economies in procurement. The following factors are among those relevant to this determination.
 - 1) Firms which are not willing or able to compete because of high start-up costs or capital investment in facility expansion may be encouraged to participate in the competition when they are assured of recouping these costs during the period of contract performance;
 - 2) Lower production costs because of larger quantity or service requirements, and substantial continuity of production or performance over a longer period of time, can be expected to result in lower unit prices;
 - 3) Stabilization of the contractor's work force over a longer period of time may promote economy and consistent quality; or
 - 4) The cost and burden of contract solicitation, award, and administration of the procurement may

be reduced.

4. Multi-year Contract Procedure

a. Solicitation. The solicitation shall state:

- 1) The amount or estimated amount of supplies or services required for the proposed contract period;
- 2) That a unit price or fixed catalogue or price list discount shall be given for each supply or service, and that these unit prices or discounts shall be the same throughout the contract (except to the extent price adjustments may be provided in the solicitation and resulting contract);
- 3) That the multi-year contract shall be canceled automatically if funds are not appropriated or otherwise made available to support continuation of performance in any fiscal period succeeding the first;
- 4) That the Purchasing Agent or designee shall notify the contractor on a timely basis when funds are not available for the continuation of the contract for each succeeding fiscal period;
- 5) Whether bidders or offerors may submit prices for:
 - a) The first fiscal period only,
 - b) The entire time of performance only, or
 - c) Both the first fiscal period and the entire

time of performance.

- 6) That a multi-year contract may be awarded and how prices shall be determined, if prices for the first fiscal period and entire time of performance are submitted;
- 7) That, the effect of termination is to discharge both parties from future performance of the contract, but not from their existing obligations.
- 8) Contract Option(s)
The solicitation may provide for a specific initial contract period (term), and further provide for subsequent option (renewal) periods provided:
 - a) The option periods are specified in the solicitation and
 - b) The option may be exercised unilaterally by the County.

An option to extend the contract term may only be exercised if it is provided for in the signed contract.

J. Letter Contracts

A. Applicability

- 1) A letter contract may be used to expedite the commencement of work under a design or construction contract while the final details and approvals required for the execution of a contract are being completed.

- 2) A letter contract may not amend the scope of services contained in the Invitation for Bids or Request for Proposals.

B. Conditions for Use of Letter Contracts

- 1) A letter contract may only be used with the written approval of the Purchasing Agent, and may only be amended with the Purchasing Agent's approval.
- 2) A letter contract shall, at a minimum contain statements regarding the following:
 - a) The County shall not be bound or obligated beyond monies available and appropriated for the project
 - b) The General and Special Terms and Conditions and other stipulations contained in the Invitation to Bid, or Request for Proposals are incorporated by reference
 - c) A definitive schedule for the execution of the completed contract
- 3) Letter contracts may only be executed by the Purchasing Agent, or designee
- 4) A letter contract may not be issued until the contractor's performance and payment bonds, certificates of insurance, and MBE participation documents, as applicable, have been filed with and approved by the County.

CHAPTER XXIII

XXIII. Contract Cost Principles and Procedures

A. Definitions

1. "Actual costs" means all direct and indirect costs which have been incurred for services rendered, supplies delivered, or construction built, as distinguished from allowable costs only.
2. "Cost objective" means any unit of work such as a function, an organizational subdivision, or a contract for which provision is made to accumulate and measure separately the cost of processes, products, jobs, capitalized projects, and similar items. A final cost objective is one that has allocated to it both direct and indirect costs and, in the contractor's accumulation system, is one of the final accumulation points.

B. Applicability of Cost Principles

1. Limitation. These cost principle regulations are not applicable to:
 - a. The establishment of prices under contracts awarded on the basis of competitive sealed bidding, or otherwise based on adequate price competition rather than the analysis of individual, specific cost elements, except that this Chapter does apply to the establishment of adjustments of price for changes made to these contracts;

- b. Prices which are fixed by law or regulation;
- c. Prices which are based on established catalog prices or established market prices.

2. Application

- a. The cost principles and procedures contained in this Chapter shall be used to determine the allowability of incurred costs for the purpose of reimbursing costs under contract provisions which provide for the reimbursement of costs, provided that any deviation from these cost principles may be made as provided in Section W.
- b. The cost principles and procedures set forth in this Chapter shall be used as guidance in:
 - 1) The establishment of contract cost estimates and prices under contracts awarded on the basis of negotiation where the award may not be based on adequate price competition, or the procurement is a sole source or emergency procurement;
 - 2) The establishment of price adjustments for contract changes on contracts that have been let on the basis of competitive sealed bidding, competitive negotiation, or otherwise based on adequate price competition;
 - 3) The pricing of termination for convenience settlements; and
 - 4) Any other situation in which cost analysis is

used.

C. Allowable Costs

1. General. Any contract cost proposed for estimating purposes or invoiced for cost-reimbursement purposes shall be allowable to the extent provided in the contract and, if inconsistent with these cost principles, approved as a deviation under Section W. The contract shall provide that the total allowable cost of a contract is the sum of the allowable direct costs actually incurred in the performance of the contract in accordance with its terms, plus the properly allocable portion of the allowable indirect costs, subject to any specific contract limitations, less any applicable credits (such as discounts, rebates, refunds, and property disposal income), plus profit.
2. Accounting Consistency. All costs shall be accounted for in accordance with generally accepted accounting principles. In pricing a proposal, a contractor shall estimate costs in a manner consistent with its cost accounting practices used in accumulating and reporting costs to other similar activities.
3. When Allowable. The contract shall provide that costs shall be allowed to the extent they are:
 - a. Reasonable;
 - b. Allocable;
 - c. Lawful under any applicable statute;

- d. Not prohibited under Sections F through S; and
- e. In the case of costs invoiced for reimbursement, actually incurred or accrued and accounted for in accordance with generally accepted accounting principles.

D. Reasonable Costs

1. Any cost is reasonable if, in its nature or amount, it does not exceed that which would be incurred by an ordinarily prudent person in the conduct of competitive business in that industry.
2. In determining the reasonableness of a given cost, consideration shall be given to:
 - a. Requirements imposed by the contract terms and conditions;
 - b. Whether the cost is of a type generally recognized as ordinary and necessary for the conduct of the contractor's business or the performance of the contract;
 - c. The restraints inherent in, and the requirements imposed by, such factors as generally accepted sound business practices, arms' length bargaining, and federal, State, and County laws and regulations;
 - d. The action that a prudent business manager would take under the circumstances, including general public policy and considering responsibilities to

the owners of the business, employees, customers, and the County;

e. Significant deviations from the contractor's established practices in relation to the County's requirements which may unjustifiably increase the contract costs; and

f. Any other relevant circumstances.

E. Allocable Costs

1. General. A cost is allocable if it is assignable or chargeable to one or more cost objectives in accordance with relative benefits received and if it:

a. Is incurred specifically for the contract;

b. Benefits both the contract and other work, and can be distributed to both in reasonable proportion to the benefits received; or

c. Is necessary to the overall operation of the business, although a direct relationship to any particular cost objective may not be evident.

2. Allocation Consistency. Costs are allocable as direct or indirect costs. Similar costs (those incurred for the same purpose, in like circumstances) shall be treated consistently either as direct costs or indirect costs except as provided by these regulations. When a cost is treated as a direct cost in respect to one cost objective, it and all similar costs shall be treated as a direct cost for all cost objectives. Further, all costs similar to those

included in any indirect cost pool shall be treated as indirect costs. All distributions to cost objectives from a cost pool shall be on the same basis.

3. Direct Costs. A direct cost is any cost which can be identified specifically with a particular final cost objective. A direct cost shall be allocated only to its specific cost objective. To be allowable, a direct cost shall be incurred in accordance with the terms of the contract.

4. Indirect Costs

a. An indirect cost is one identified with no specific final cost objective or with more than one final cost objective. Indirect costs are those remaining to be allocated to the several final cost objectives after direct costs have been determined and charged directly to the contract or other work as appropriate. Any direct costs of minor dollar amount may be treated as indirect costs, if this treatment produces substantially the same results as treating the cost as a direct cost.

b. Indirect costs shall be accumulated into logical cost groups (or pools), with consideration of the reasons for incurring the costs. Each group should be distributed to cost objectives benefiting from the costs in the group. Each indirect cost group shall be distributed to the cost objectives substantially in proportion to the benefits

received by the cost objectives. The number and composition of the groups and the method of distribution should not unduly complicate indirect cost allocation where substantially the same results could be achieved through less precise methods.

- c. The contractor's method of distribution may require examination when any one of the following apply:
- 1) Any substantial difference exists between the cost patterns of the work performed under the contract and the contractor's other work;
 - 2) Any significant change occurs in the nature of the business, the extent of subcontracting, fixed asset improvement programs, inventories, the volume of sales and production, manufacturing processes, the contractor's products, or other relevant circumstances;
 - 3) Indirect cost groups developed for a contractor's primary location are applied to off-site locations. Separate cost groups for costs allocable to off-site locations may be necessary to distribute the contractor's costs on the basis of the benefits accruing to the appropriate cost objectives;
 - 4) The base period for indirect cost allocation is the one in which the costs are incurred and accumulated for distribution to work performed

in that period; Normally, the base period is the contractor's fiscal year; A different base period may be appropriate under unusual circumstances; In these cases, an appropriate period should be agreed to in advance.

F. Advertising

1. Advertising costs are those incurred in using any advertising media when the advertiser has control over the form and content of what will appear, the media in which it will appear, or when it will appear. Advertising media includes newspapers, magazines, radio, television, direct mail, trade papers, billboards, window displays, conventions, exhibits, free samples, and the like. All advertising costs except those set forth below are unallowable.
2. The only allowable advertising costs are those for:
 - a. The recruitment of personnel assigned to the contract;
 - b. The procurement of scarce items;
 - c. The disposal of scrap or surplus materials;
 - d. Notices or advertisements required by contract, law or regulations; and
 - e. The delivery of services to the County.

G. Bad Debts

Bad debts include losses arising from uncollectable accounts and other claims, such as dishonored checks, uncollected employee advances, and related collection and

legal costs. All bad debt costs are unallowable.

H. Contingencies

1. Contingency costs are contributions to a reserve account for unforeseen costs. Contingency costs are unallowable except as provided below.
2. For the purpose of establishing a contract cost estimate or price in advance of performance of the contract, recognition of uncertainties within a reasonably anticipated range of costs may be required and is not prohibited by this regulation. However, if contract clauses are present which serve to remove risks from the contractor, a contingency factor for these risks may not be included in the contract. Further, contributions to a reserve for self-insurance in lieu of, and not in excess of, commercially available liability insurance premiums are allowable as an indirect charge.

I. Depreciation and Use Allowances

1. Depreciation and use allowances, that is, the allowance made for fully depreciated assets, are allowable to compensate contractors for the use of buildings, capital improvements, and equipment or for the provision of these facilities on a standby basis for subsequent use when these facilities are temporarily idle because of suspensions or delays in the contract not caused by the contractor, not

reasonably foreseeable, and not otherwise avoidable when the contract was awarded. Depreciation is a method of allocating the acquisition cost of an asset to periods of its useful life. Useful life refers to the asset's period of economic usefulness in the particular contractor's operation as distinguished from its physical life. Use allowances provide compensation in lieu of depreciation or other equivalent costs. Consequently, these two methods may not be combined to compensate contractors for the use of any one type of property.

2. The computation of depreciation or use allowances shall be based on acquisition costs. When the acquisition costs are unknown, reasonable estimates may be used.
3. Depreciation shall be computed using any generally acceptable method, if the method is consistently applied and results in equitable charges considering the use of the property. The straight-line method of depreciation is preferred unless the circumstances warrant some other method. However, a County agency shall accept any method which is accepted by the Internal Revenue Service.
4. In order to compensate the contractor for use of depreciated, contractor-owned property which has been fully depreciated on the contractor's books and records and is being used in the performance of a

contract, use allowances may be allowed as a cost of that contract. Use allowances are allowable, if they are computed in accordance with an established industry or government schedule or other methods mutually agreed upon by the parties. If a schedule is not used, factors to consider in establishing the allowance are the original cost, remaining estimated useful life, the reasonable fair market value, and the effect of any increased maintenance or decreased efficiency.

5. In accordance with Section 1, costs of idle facilities may be allowable for a reasonable period of time, ordinarily not to exceed one (1) year, depending on the initiative taken to use, lease, or dispose of these facilities.
6. Depreciation or use allowances are applicable on a pro rated basis to only those portions of the facility's costs attributable to the contract.

J. Entertainment

1. Entertainment costs include costs of social activities, and related incidental costs such as meals, beverages, lodging, transportation, and gratuities. Entertainment costs are unallowable.
2. Nothing in these regulations shall make unallowable a legitimate expense for employee morale, health, welfare, food service, or lodging costs; except that, where a net profit is generated by these services, it

shall be treated as a credit as provided in Section T.

This regulation allows costs incurred for meetings or conferences, including, but not limited to, costs of food, rental facilities, and transportation where the primary purpose of incurring the cost is the dissemination of technical information or the stimulation of production.

K. Fines and Penalties

Fines and penalties include all costs incurred as the result of violations of, or failure to comply with, federal, State, and local laws and regulations. Fines and penalties are unallowable costs.

L. Gifts, Contributions, and Donations

A gift, contribution, and donation is property transferred to another person without the other person providing return consideration of equivalent value. Gifts, contributions, and donations are unallowable costs.

M. Losses Incurred Under Other Contracts

A loss is the excess of costs over income earned under a particular contract. Losses may include both direct and indirect costs. A loss incurred under one contract may not be charged to any other contract.

N. Material Costs

1. Material costs are the costs of all supplies, including raw materials, parts, and components (whether acquired by purchase from an outside source

or acquired by transfer from any division, subsidiary, or affiliate under the common control of the contractor), which are acquired in order to perform the contract. Material costs are allowable, subject to Paragraphs 2 and 3, below. In determining material costs, consideration shall be given to reasonable spoilage, reasonable inventory losses, and reasonable overages.

2. Material costs shall include adjustments for all available discounts, refunds, rebates, and allowances which the contractor reasonably should take under the circumstances, and for credits for proceeds the contractor received or reasonably should receive from salvage and material returned to suppliers.
3. Allowance for all materials transferred from any division (including the division performing the contract), subsidiary, or affiliate under the common control of the contractor shall be made on the basis of costs incurred by the transferor (determined in accordance with this Chapter), except the transfer may be made at the established price if the price of materials is not determined to be unreasonable by the procurement officer, the price is not higher than the transferor's current sales price to its most favored customer for a similar quantity under similar payment and delivery conditions, and the price is established either by the:

- a. Established catalog price; or
- b. Lowest price offer obtained as a result of competitive sealed bidding or competitive negotiations conducted with other businesses that normally produce the item in similar quantities.

O. Taxes

1. Except as limited below, all allocable taxes which the contractor is required to pay and which are paid and accrued in accordance with generally accepted accounting principles are allowable.
2. The following costs are unallowable:
 - a. Federal, State and local income taxes and federal excess profit taxes;
 - b. All taxes from which the contractor could have obtained an exemption, but failed to do so, except where the administrative cost of obtaining the exemption would have exceeded the tax savings realized from the exemption;
 - c. Any interest, fines, or penalties paid on delinquent taxes, and;
 - d. Income tax accruals designed to account for the tax effects of differences between taxable income and pretax income as reflected by the contractor's books of account and financial statements.
3. Any refund of taxes which were allowed as a direct cost under the contract shall be credited to the contract. Any refund of taxes which were allowed as

an indirect cost under a contract shall be credited to the indirect cost group applicable to any contracts being priced or costs being reimbursed during the period in which the refund is made.

4. Direct government charges for services, such as water, or capital improvements, such as sidewalks, are not considered taxes and are allowable costs.

P. Compensation for Personal Services

1. Compensation for personal services includes, but is not limited to salaries, wages, directors' and executive committee members' fees, bonuses (including stock bonuses), incentive awards, employee stock options, employee insurance, fringe benefits, contributions to pension, annuity and management employee incentive compensation plans, allowances for off-site pay, incentive pay, location allowances, hardship pay, and cost of living differential, paid or accrued, in any form.
2. These costs are allowable to the extent that total compensation of individual employees is reasonable for services rendered. Compensation is reasonable to the extent that the total amount paid or accrued is commensurate with compensation paid under the contractor's established policy and conforms generally to compensation paid by other firms of the same size, in the same industry, or in the same geographic area, for similar services.

3. Determination should be made that compensation to owners of closely held corporations, partners, sole proprietors, or members of the immediate families thereof, is reasonable for the actual personal services rendered, rather than a distribution of profits.
4. When approved in advance by the County, bonuses and incentive compensation are allowable to the extent that the overall compensation is determined to be reasonable and the costs are paid or accrued pursuant to an agreement entered into in good faith between the contractor and the employees before the services were rendered, or pursuant to an established plan followed by the contractor so consistently as to imply, in effect, an agreement to make payment.
5. Deferred Compensation
 - a. Deferred compensation includes all remuneration, in whatever form, for which the employee is not paid until after the lapse of a stated period of years or the occurrence of other events as provided in the plans, except that it does not include normal end of accounting period accruals. It includes contributions to pension, annuity, stock bonus, and profit sharing plans, contributions to disability, withdrawal, insurance, survivorship, and similar benefit plans, and other deferred compensation, whether paid in cash or in stock.

b. Deferred compensation is allowable to the extent that it is:

- 1) Reasonable;
- 2) Paid pursuant to an agreement between the contractor and employees before the services are rendered or pursuant to a plan established and consistently applied; and
- 3) Deductible for the same fiscal year for federal income tax purposes.

6. Costs of fringe benefits, such as pay for vacations, holidays, sick leave, military leave, employee insurance, and supplement unemployment benefit plans, are allowable to the extent required by law, employer-employee agreement, or an established policy of the contractor.

Q. Rental and Leasing Costs for Organizations under Common Control

1. Charges in the nature of rent between any division, subsidiary, or organization under common control are allowable to the extent the charges do not exceed the allowable costs of ownership of the lessor. In determining the cost of ownership, items such as depreciation, taxes, insurance, and maintenance, shall be considered.
2. Rental costs of personal property leased from any division, subsidiary, or organization under common control which has an established practice of leasing

the same or similar property to unaffiliated leases, are allowable provided that they are reasonable.

Factors to be considered with respect to reasonableness may include rental costs of comparable property, market condition in the area, the type, life expectancy, condition, and value of the property leased, and other alternatives available.

R. Reimbursement for Direct Expenses

Direct expenses include meal subsistence, vehicle mileage, other transportation costs, lodging and certain other direct expenses. Direct reimbursement of necessary expenses, if provided for by the Purchasing Agent, are allowable only to the level of the actual cost of the necessary expense, but may not be more liberal than the current standard County Administrative Procedures governing expense reimbursements unless approved in writing by the County Office of Management and Budget before the expenditure is made.

S. Costs Requiring Prior Approval to be Allowable as Direct Costs

1. General. The costs described in this Chapter are allowable as direct costs to cost-reimbursement type contracts to the extent that they have been approved in advance by the Purchasing Agent. In other situations the allowability of these costs shall be determined in accordance with general standards set out in these cost principles.

2. Pre-Contract Costs. Pre-contract costs are those incurred in anticipation of, or prior to, the effective date of the contract and after notice of award of the contract. These costs are allowable to the extent that they would have been allowable if incurred after the date of the contract.
3. Bid and Proposal Costs. Bid and proposal costs are the costs incurred in preparing, submitting, and supporting bids and proposals. Reasonable ordinary bid and proposal costs are allowable as indirect costs in accordance with these cost principle regulations. Bid and proposal costs are not allowable as direct costs unless they are specifically permitted by the solicitation document. When bid and proposal costs are allowable as direct costs, to avoid double accounting, the same bid and proposal costs may not be charged as indirect costs.
4. Insurance and Bonding
 - a. Ordinary and necessary insurance costs are normally allowable as indirect costs. Direct insurance and bonding costs are the costs of obtaining insurance and bonding in connection with performance of the contract, or contributions to a reserve account for the purpose of self-insurance. Self-insurance contributions are allowable only to the extent of the cost to the contractor to obtain similar

insurance.

Insurance and bonding costs may be approved as a direct cost only if the insurance and bonding is specifically required for the performance of the contract.

- b. Actual losses which should reasonably have been covered by permissible insurance or were expressly covered by self- insurance are unallowable unless the parties expressly agree otherwise in the terms of the contract.

T. Applicable Credits

1. Definitions and Examples. Applicable credits are receipts of price reductions which offset or reduce expenditures allocable to contracts as direct or indirect costs. Examples include purchase discounts, rebates, allowances, recoveries or indemnification for losses, sale of scrap and surplus equipment and materials, adjustments for overpayments or erroneous charges, and income from employee recreational or incidental services and food sales.
2. Reducing Costs. Credits shall be applied to reduce related direct or indirect costs.
3. Refund. The County shall be entitled to a cash refund if the related expenditures have been paid to the contractor under a cost-reimbursement type contract.

U. Use of Federal Costs Principles

1. Cost Negotiations. In dealing with contractors operating according to federal cost principles, (such as Defense Acquisition Regulations, Section 15, or Federal Procurement Regulations, Part 1-15), the Purchasing Agent or designee, or the Procurement Officer, after notifying the contractor, may use the federal cost principles as guidance in contract negotiations, subject to Paragraph 2, below.
2. Incorporation of Federal Cost Principles; Conflicts Between Federal Principles and this Chapter. All requirements set forth in federal assistance instruments applicable to contracts let by the County under a federal assistance program shall be satisfied. Therefore, to the extent that the cost principles which are specified in the assistance instrument conflict with the cost principles issued pursuant to this Chapter, the former shall control.

V. Advance Agreements

1. Purpose. Both the County and the contractor should seek to avoid disputes and litigation arising from potential problems by providing in the terms of the solicitation and the contract the treatment to be accorded special or unusual costs which are expected to be incurred.
2. Form Required. Advance agreements may be negotiated either before or after contract award, depending upon when the parties realize the cost may be incurred, but

shall be negotiated before a significant portion of the cost covered by the agreement has been incurred. Advance agreements shall be in writing, executed by both contracting parties, and incorporated in the contract.

3. Limitation on Costs Covered. An advance agreement may not provide for any treatment of costs inconsistent with these cost principles regulations unless a determination has been made pursuant to Section W.

W. Authority to Deviate from Cost Principles

When the best interest of the County would be served by a deviation, the Procurement Officer, Purchasing Agent or the Purchasing Agent's designee may deviate from the cost principles set forth in these regulations, if a written determination is made specifying the reasons for the deviation. A determination made by a Procurement Officer shall be approved by the Purchasing Agent or his/her designee. A copy of the determination shall be filed promptly with the contract document and shall be effective only upon incorporation into the contract. However, all costs shall be reasonable, lawful, allocable, and accounted for in accordance with generally accepted accounting principles to be reimbursed, and a deviation may not contravene this principle.

CHAPTER XXIV

XXIV. Bid and Contract Security

A. General

Unless otherwise required by State or Federal law or regulation, or as a condition of State or Federal assistance, no bid, performance or payment bonds (or other forms of security) may be required if the contract price is less than \$25,000.

B. Bid Security

1. A bid security shall be mandatory for all construction contracts when the contract price is estimated to exceed \$50,000. The bid security on a construction contract shall be in an amount of at least 5% of the amount of the bid or proposal, or if a rate rather than a total cost is bid, the bond shall be in a dollar amount reasonably estimated to cover excess costs which might be incurred in the event of a bidder or offer's withdrawal of the bid or proposal, or the bidder or offer's refusal to enter into contract.
2. The Purchasing Agent may require a bid security for any other contract to be awarded by competitive sealed bidding or competitive sealed proposals if the amount of the contract is estimated to be \$25,000 or more. A bid security may not be required for contracts estimated to be under \$25,000.
 - a. The bid security shall be in an amount reasonably

estimated to cover excess costs which might be incurred in the event of a bidder's withdrawal of bid, or refusal to enter into contract.

3. Form of Bid Security

Bid securities shall be in any of the following forms:

- a. A bond provided by a surety company authorized to do business in the State of Maryland;
- b. Cashiers or Treasurers Check;
- c. Certified Check;
- d. Cash;
- e. Letter of Credit from a bank or savings institution which guarantees that funds are set aside or frozen, and guarantees payment to the County in the event of default;
- f. Annual Bid Bonds in an amount established by the Purchasing Agent and approved by the County Attorney; or
- g. Any other form of security approved by the Purchasing Agent or designee which will guarantee payment to the County.

4. Failure to Comply. If a bid security does not comply with the requirements of this Chapter, the bid shall be rejected as non-responsive unless the Purchasing Agent or designee determines that the failure to comply was non-substantive. In making this determination the Purchasing Agent or designee shall determine:

That the deficiency is not substantive and acceptance is in the best interest of the County, and either:

- a. Only one bid or proposal was received; or
- b. The security became inadequate as a result of a correction of a mistake in bid or proposal, or as a result of a modification to the bid or proposal, or
- c. That the risks involved are insignificant and the difference between the bid and the next lowest bid from a responsible bidder or offeror is adequately covered by the security received, and fiscal advantage could reasonably be expected to accrue to the County by acceptance of the bid or proposal.

C. Performance and Payment Bonds

1. Construction Contracts

Prior to the award of any construction contract exceeding \$50,000 in amount, a performance bond and a payment bond executed by a surety company authorized to do business in the State of Maryland, each in an amount not less than 50% of the value of the contract, shall be submitted to the Purchasing Agent or designee.

2. Contracts for Supplies and Services

A performance bond may be required by the Purchasing Agent or designee for any supply or service contract of \$25,000 or more. The bond shall be in an amount deemed sufficient to cover the County's anticipated excess procurement costs in the event the contractor

defaults on the contract.

3. Performance or Payment Security, Other than Bonds

The Purchasing Agent, or designee may accept in lieu of a performance or payment bond any form of security acceptable to the County Attorney, provided however that assets used for security shall be irrevocably assigned to the County, until released by the County.

CHAPTER XXV

XXV. Administrative Remedies

A. Purpose: To provide a system for the resolution of contract formation disputes (bid protests) between the County and prospective bidders, offerors or contractors who are or may be aggrieved in connection with the solicitation or award of a County contract or who files claims or disputes in connection with a contract which has been entered into and a dispute procedure has not been otherwise provided for in the contract document.

B. Application. This Chapter applies to protests relating to contracts of \$15,000 or more.

C. Definitions:

1. "Interested Party" means an actual or prospective bidder, offeror, or contractor that may be aggrieved by the solicitation or award of a contract, or by the protest, or by the administration of the contract.

2. "Protest" means any dispute relating to the solicitation, selection, or award of a County contract or any issue relating to the administration of a contract including contract changes, amendments, terminations or the settlement of contract claims.

3. "Protestor" means any actual or prospective bidder, offeror, or contractor who is aggrieved and who files a protest.

D. Filing of Protests

1. An interested party may protest against the award, or

the proposed award of a County contract for supplies, services, or construction or or unless provided in the contract document may protest any issue relating to the administration of a contract including contract changes, amendments, termination or the settlement of contract claims.

2. The protest shall be in writing.

E. Time for Filing

1. Protests based upon alleged improprieties in any type of solicitation which are apparent before bid opening or the closing date for receipt of proposals shall be delivered before bid opening or closing date for receipt of proposals.

2. In cases other than those covered in 1. above, protests shall be delivered not later than seven days after the bid opening, the protest is known, or should have been known.

3. Protests not delivered within the time periods specified in 1. or 2. above, as applicable, shall be untimely, and not considered, unless the Purchasing Agent determines that the basis of the protest raises significant and substantive questions of fairness in the solicitation, award or contract administration process.

F. Subject of Protest. Protestors may protest any phase of the solicitation or award, including but not limited to specification, bid or proposal solicitations, awards, disclosure of information protected by the Public Information Act, or issues pertaining to the administration of a contract or the settlement of contract claims.

G. Form. The protest shall be in writing and the envelope

marked "Protest." The protest shall, at a minimum include, the following:

1. The name and address of the protestor;
2. Identification of the procurement, including solicitation or contract number;
3. A statement of reasons for the protest; and
4. Evidence, exhibits, or documents to substantiate the claim made, unless not available within the protest delivery time, in which instance the expected date the material will be available is to be stated; and
5. Remedy sought.
6. Whether a hearing is requested.

H. Making Information On Protests Available

1. Information to Protestor: The Purchasing Agent shall, upon written request, make available to the protestor information submitted that bears on the substance of the protest except where information is proprietary, confidential, or otherwise not permitted or requested to be withheld in accordance with law or regulation. Persons who wish to keep such information submitted by them confidential, should so request by specifically identifying such information within documents submitted, and indicating on the front page of each document that it contains such information.

2. Information from Protestor: After reviewing the information submitted with the protest, the Purchasing Agent may request additional information and/or documentation. This information should be submitted within the time period

requested in order to expedite consideration of the protest. Failure to comply expeditiously may result in resolution of the protest without consideration of the requested information.

I. Stay of Procurement During Bid Protest

1. When a bid protest has been lodged prior to an award, that award shall not be made pending final resolution of the protest, unless:

a. Items are urgently required and declared as an emergency or a public exigency purchase by the County Purchasing Agent or;

b. Performance of the contract will be unduly delayed, and;

c. Prompt award is otherwise required in the best interest of the County.

2. Once the Purchasing Agent has issued a final determination the contract may be awarded. A determination to award a contract, notwithstanding the pendency of a bid protest, shall be documented and approved by the Purchasing Agent and written notice of the determination shall be given to the protestor and other concerned persons.

3. If an award is to be withheld pending resolution of the bid protest, the County Purchasing Agent or designee shall inform bidders affected thereby and request extension of the time limits for bid acceptance, as appropriate. Failure to receive time extensions for bid acceptance may be grounds to proceed with award.

4. If a bid protest is received after an award and it

reasonably appears that the contract award may be invalid and a delay in performance is not prejudicial to the County, a mutual non-cost "stop work" agreement may be sought with the contractor. If it appears that the award will not be disturbed or if a delay is prejudicial, contract performance should not be interrupted. This determination shall be made by the Purchasing Agent.

J. Determination by the Director of Central Services

1. The Director of Central Services shall issue a determination on the protest as expeditiously as possible.

2. The Director of Central Services, based on the information submitted by the protestor, and/or is otherwise in the record, shall schedule or deny the protestor's request for an administrative hearing.

3. Hearing Requirements. If a hearing is scheduled, the protestor shall be notified in writing no later than five (5) working days in advance of the hearing date.

4. Hearing Committee. The Director of Central Services, or designee shall be the hearing officer and the Director shall designate other appropriate persons to serve as a hearing committee to hear the protest.

5. Hearing Content. The complainant shall be afforded an opportunity to be heard and to offer evidence in support of the protest. The discussions shall be confined to those facts in the protest. Cross examination of witnesses may be permitted at the discretion of the Director of Central Services, or designee.

6. Hearing Decision. Within ten (10) working days of the hearing, the protestor shall be notified in writing by the Director of Central Services of his/her decision to direct or deny the relief requested by the protestor.

The decision will be final and not subject to higher administrative appeal or remedy other than that authorized by law.

7. Written Determination. If no hearing is scheduled, then the Director of Central Services shall notify the protestor in writing of his/her decision within ten (10) working days after receiving all relevant and requested information.

K. Request for Reconsideration. If a determination is made without an administrative hearing, a protestor may, within 5 calendar days after a receipt of the written decision, request in writing, (in duplicate), an administrative hearing. This request shall be filed with the Director of Central Services. The request for reconsideration shall contain a detailed statement on the factual grounds which reconsideration or modification of the determination is deemed warranted, specifying information not previously provided or considered.

L. Award Of Relief

1. Bid Preparation Costs: After considering all facts related to a bid protest, in addition to any other relief sought, the Director of Central Services may award the protesting bidder the reasonable costs incurred in connection with the solicitation including bid preparation costs not to

exceed \$5,000, when a protest or appeal is sustained and the protesting bidder or offeror should have been, but was not awarded the contract under the solicitation. In order to be eligible for bid preparation costs, the bidder or offeror shall request this remedy in the protest.

2. Other Costs: After considering all facts related to a dispute or claim under a contract entered into between the County and the Protestor, the Director of Central Services may direct that the dispute be settled in a fair and reasonable manner, and that any monies justly due to the contractor be paid.

M. Frivolous Protests

The County may seek recompense for any inconvenience or cost incurred as a result of any protests that are frivolous in nature.

N. Small Procurements

CHAPTER XXVI

XXVI. Suspension and Debarment

A. Purpose: The purpose of this Chapter is to:

1. Protect the County from risks associated with awarding contracts to persons or business entities having exhibited an inability or unwillingness to faithfully perform contracts awarded to the person or business entity by the County; and

2. Protect substantial County interests and the integrity of the County's procurement process by establishing a procedure whereby persons or business entities determined to have displayed improper conduct, or to have been indicted or convicted of, or to have been found civilly liable for certain violations of statutes can be suspended and debarred from doing business with the County.

B. Applicability

1. The Purchasing Agent may conditionally suspend a person or business for unsatisfactory performance.

2. The Purchasing Agent may suspend and debar a person or business for unsatisfactory performance, or for any cause stated in regulation D, below.

3. When a business entity is suspended or debarred, the officers, directors, partners, or owners of the entity, and any firm controlled or managed by them shall also be barred from the award of any County contract, or participation in any contract awarded by the County during the applicable period.

C. Causes for suspension and debarment. A person or business may be suspended and debarred if that person or

business has:

1. Obtained any contract in violation of any provision of the Code or the Laws of the State of Maryland or the United States of America;

2. Obtained payment for services not provided or goods not provided to the County on the basis of a false claim;

3. Been convicted under the provisions of Article 27 of the Annotated Code of Maryland of bribery, attempted bribery, or conspiracy to bribe in furtherance of obtaining a contract with the State of Maryland or any of its subdivisions based upon acts committed after July 1, 1977;

4. Been convicted under the provisions of Article 27 of the Annotated Code of Maryland of bribery, attempted bribery or conspiracy to bribe;

5. During the course of an official investigation or other proceeding has admitted, in writing or under oath, acts or omissions which would constitute bribery, attempted bribery or conspiracy to bribe under the provisions of Article 27 of the Annotated Code of Maryland;

6. Been convicted under the laws of another state, the District of Columbia or the United States of America for bribery, attempted bribery or conspiracy to bribe;

7. Been convicted under any state, the District of Columbia or United States of America statute of a criminal offense incident to obtaining or attempting to obtain or performing a public or private contract;

8. Been convicted under any state, the District of

Columbia or United States of America statute of fraud, embezzlement, theft, forgery, falsification or destruction of records or receiving stolen property;

9. Been found civilly liable under any state, the District of Columbia or United States of America antitrust statute for acts or omissions in connection with the submission of bids or proposals for a public or private contract;

10. Been criminally convicted of any violation of a state, the District of Columbia or United States of America antitrust statute;

11. Been convicted under the provisions of Title 18 of the United States Code for violation of the Racketeer Influence and Corrupt Organization Act, 18 U.S.C. Sec. 1961 et seq., or the Mail Fraud Act, 18 U.S.C. Sec. 1341 et seq., for acts arising out of the submission of bids or proposals for a public or private contract;

12. Been criminally convicted of conspiracy to commit any act or omission which would constitute grounds for conviction or liability under any statute described in paragraph 7, 8, 10, or 11;

13. Admitted, in writing or under oath, during the course of an official investigation, or other proceeding, acts or omissions which would constitute grounds for conviction or liability under any statute described in paragraphs (7) through (11);

14. Committed any improper conduct;

15. Unsatisfactorily performed any contract;

16. Done any other act which, under any County, State or Federal law, bars the person from participation in the award of any contract with any County, State or Federal agency.

D. Limitations

1. Unless otherwise prescribed by applicable law, a debarment under this chapter may not exceed three (3) years from the date the Purchasing Agent makes written findings supporting a debarment, regardless of subsequent changes in the debarred person's or business' status.

2. The Purchasing Agent may not conditionally suspend, suspend or debar a person or business for unsatisfactory performance if the Purchasing Agent finds the unsatisfactory performance to be caused by:

a. Acts of God, including floods, epidemics, and unusually severe weather;

b. Acts of war;

c. Acts of the County;

d. Acts of another person not in a contractual arrangement, whether oral or written, with the contractor, a supplier, or a subcontractor at any tier, or otherwise under the control of the contractor or any tier of supplier or subcontractor.

e. Fires;

f. Strikes; and

The person or business could not reasonably act to overcome the delays, unsatisfactory performance or default caused by a. - f. above.

E. Procedures: Conditional Suspensions

1. When the Purchasing Agent determines in writing that a person or business has performed unsatisfactorily on one or more contracts and the nature of the performance is sufficient to warrant possible conditional suspension to protect the County's interests, the Purchasing Agent shall notify the person, in writing by certified mail, return receipt requested, of the conditions and specific violations underlying the determination. The notice shall also indicate that the person may respond in writing within 15 days after the mailing date of the notice showing cause why conditional suspension should not be made, and, if applicable, stating what remedial action the person or business intends to take to cure or abate the conditions leading to the proposed conditional suspensions.

2. If the person or business fails to make timely response, the Purchasing Agent may conditionally suspend the person or business.

3. The Purchasing Agent shall evaluate any response to the notice and, if satisfied that the County's best interests will be served by either not initiating conditionally suspension action or by allowing the person to cure or remedy the problem, the Purchasing Agent shall notify the person in writing by certified mail, return receipt requested, either that a conditional suspension will not be made or that the action will be deferred pending an evaluation of the progress of the person's proposed remedial action.

4. If the Purchasing Agent subsequently determines that

the remedial action proposed by the person is unsatisfactory, or if conditional suspension action has been deferred pending remedial action being taken and these remedial actions taken by the person or business are unsatisfactory, conditional suspension may be imposed.

5. If requested by a person or business, the Purchasing Agent or designee shall grant a hearing to that person or business prior to making a final decision under Regulation 4 above.

F. Termination or Modification of Conditional Suspension

1. A person or business suspended under this Chapter may petition the Purchasing Agent to shorten or terminate the conditional suspension for good cause.

2. A request for termination of a conditional suspension shall be supported by documentation providing reasons for the termination including, for example:

a. Bona fide change in ownership or management of the business;

b. Elimination or mitigation of causes for which the conditional suspension was imposed; or

c. Compliance with the terms of the conditional suspension.

G. Procedures: Suspension and Debarment

1. When the Purchasing Agent receives information or becomes aware of reasons constituting possible grounds for debarment of a person or business, the Purchasing Agent shall forward the information to the County Attorney along with any

documentation in the Purchasing Agent's possession which may impact on a decision to pursue debarment action.

2. The County Attorney shall evaluate the information received, conduct such investigation as the County Attorney deems appropriate, and shall advise the Purchasing Agent whether suspension and debarment is reasonably lawful and prudent based upon the facts presented and obtained.

3. If the County Attorney advises it is reasonably lawful and prudent to debar a person or business, the County Attorney shall so advise the Purchasing Agent in writing of this determination.

4 The Purchasing Agent upon receipt of the County Attorney's determination, shall, when the determination supports a debarment action, notify the affected person or business by certified mail, return receipt requested, that debarment is being considered. The notification shall give the person or business an opportunity to respond in writing, within a reasonable time, but not fewer than 15 days from the date of mailing of the notice to the person or business.

5. After considering the original information, and any subsequently developed information, including the person's or business' response, if any, and any recommendations presented by the County Attorney, the Purchasing Agent shall make a determination that either an insufficient basis for debarment exists at that time, or that reasonable basis for continuing with debarment proceedings exists.

6. If the Purchasing Agent determines that insufficient

basis for debarment exists at that time, the Purchasing Agent shall send notice to the business of that determination.

7. If the Purchasing Agent determines that a reasonable basis for continuing with debarment proceedings exists, the Purchasing Agent may suspend the person or business pending the outcome of a hearing.

8. If the Purchasing Agent determines that a reasonable basis for continuing with debarment proceedings exists, the Purchasing Agent shall provide notice to the business. The notice shall indicate:

- a. The effective date of any suspension;
- b. That debarment proceedings have begun;
- c. The basis for the possible debarment;
- d. The person's or business' right to request a hearing on debarment by written communication delivered to the Purchasing Agent within 10 days after mailing of the notice, whichever is earlier; and
- e. The person's or business' right to be represented by counsel.

9. A person or business failing to make a timely request for a hearing:

- a. Waives the right to a hearing; and
- b. May be debarred for a period, generally not to exceed three (3) years deemed appropriate by the Purchasing Agent.

10. If a hearing is requested, the Purchasing Agent shall conduct the hearing within 30 days from the receipt of

the person's or business' request. The time for holding the hearing may be extended for good cause.

11. Hearing Procedure

a. Evidence shall be presented by concerned County Officials and the County Attorney or designee as to whether debarment is warranted and, if so, as to how long the debarment should be. The evidence may include, but is not limited to, evidence as to the person's or business' involvement in or connection with any of the activities listed in Section D, and whether the business has admitted to or been convicted of these activities, or if conditionally suspended, whether the business has complied with the remedial conditions established at the time the business was conditionally suspended.

b. The person or business may present evidence in its defense, including, but not limited to:

1) The extent of its participation in any activity listed in Section D, or the extent of its compliance with the terms of a conditional suspension;

2) Its cooperation with appropriate authorities investigating any activities listed in Section D or investigating any other alleged civil or criminal violations arising in connection with public or private contracts; and

3) Any actions the business has taken to correct the causes of unsatisfactory performance or improper conduct to make restitution, or otherwise to mitigate the harm resulting from its activities and to protect against the recurrence of these activities.

12. Within 30 days after a hearing, or if the person or business failed to request a hearing, within 30 days after mailing of the notice pursuant to Section H, Regulation 4, the Purchasing Agent shall notify the person or business that the person or business is:

a. Debarred, the reasons for debarment, the nature of the debarment sanctions applied, and the period of debarment; or

b. Not debarred and any suspension has been terminated as of the date of the Purchasing Agent's decision.

H. Scope of Sanctions

1. The County may, in suspending or debarring a person or business, disqualify it from participating in any one or combination of the following County contract-related activities:

- a. Submitting bids or proposals;
- b. Being awarded contracts;
- c. Performing as a subcontractor;
- d. Providing supplies for a contract; or
- e. Exercising a renewal option in a contract.

2. The Purchasing Agent may, in suspending or debarring a person or business, apply the sanctions listed in (1) to a single method or type of procurement or any combination of procurement methods or types.

3. At the time of debarment or at any time after debarment, the Purchasing Agent may, consistent with law, exercise or direct the exercise of the County's right to

terminate any existing contract with the business for the convenience of the County, and may also prohibit any modification, extension, or renewal of any contract.

4. The period of any debarment, including any suspension pending the Purchasing Agent's decision on that debarment, may not exceed three (3) years.

5. In determining the scope or period of a person or business' debarment, the Purchasing Agent may impose such conditions on the person's or business' County contract-related activities as the Purchasing Agent considers appropriate, including, for example, appropriate monitoring of the person's or business' future contracting activities with the County.

I. Termination or Modification of Suspension or Debarment.

1. Any person or business suspended or debarred under this Chapter may petition the Purchasing Agent to shorten, terminate, or otherwise mitigate the suspension or debarment.

2. A person or business' petition shall demonstrate, by affidavit or other competent evidence, good cause for the relief requested, such as:

a. Bona fide change in ownership or management of the business; or

b. Elimination or mitigation of causes for which the debarment was imposed.

3. The Purchasing Agent may, on his or her own initiative, or upon receipt of a petition from a suspended or debarred business, shorten, terminate, or otherwise mitigate the suspension or debarment, with or without a hearing. The

Purchasing Agent, in his or her discretion, may decide to take no action on any petition presented.

4. Upon obtaining information that the conviction or action forming the basis for suspension or debarment of any person or business has been reversed or otherwise rendered void, the Purchasing Agent shall terminate the person's or business' suspension or debarment immediately without future proceedings.

J. Hearings

1. Any hearing conducted by the Purchasing Agent under Section H of this Chapter shall be recorded, and a permanent record made of the determinations and findings.

2. The Purchasing Agent may appoint one or more hearing officers, or may appoint a committee composed of such persons deemed qualified to hear and determine the merits of a case, to conduct debarment proceedings in accordance with this Chapter, and present to the Purchasing Agent proposed findings of fact, and recommendations.

K. Appeals

1. A person or business entity which is conditionally suspended, suspended and/or debarred under this Chapter, or who has requested and has been denied the shortening or termination of a conditional suspension, suspension or debarment may appeal the action to the County's Director of Central Services.

2. The appeal shall be in writing and shall be delivered to the Director of Central Services within 15 days after

receipt of notice of the Purchasing Agent's final determination.

3. The appeal shall contain, at a minimum:

- a) The name of the protestor;
- b) The Purchasing Agent's determination;
- c) The reason the determination is unsatisfactory to the person or business;
- d) The remedy sought; and
- e) Any other facts bearing on the basis of the appeal

4. The Director of Central Services shall consider the appeal, the Purchasing Agents determination, evidence presented, transcripts of a hearing if one has been held, and any evidence of remedial actions by the persons or business having the effect of mitigating the determination made by the Purchasing Agent.

5. Within 30 days after the filing of the appeal the Director of Central Services shall notify in writing the person or business of his/her final decision.

CHAPTER XXVII

XXVII. Minority Business Enterprise Provisions

A. General - Purpose

This Chapter provides that maximum contractual opportunities be extended to Minority Business Enterprises (MBE's) and establishes a goal that 30% of the value of County procurements be awarded to Minority Business Enterprise. Each Department and Agency of the County Government which is subject to the County's procurement laws and regulations shall structure its procedures for procuring supplies, services, and construction to encourage participation by Minority Business Enterprises.

B. Scope

1. General

This Chapter applies to every procurement of supplies services, and construction by an Department or Agency of the County Government except as provided in Section (2) below.

2. Exempt Procurements

The following categories of expenditures are exempt from the Minority Business Enterprise base from which the 30% goal is measured, and for purposes of the MBE program are not considered as procurements:

- o Grants and contributions whereby the County furnishes assistance whether financial or otherwise

to any non-profit entity in support of a program authorized by law (excluding awards for which primary purposes are to produce and end product service or construction).

- o Public utility bills (electric, natural gas, water and sewer and telephone services where there is no reasonable alternative to local phone company provided services).
- o Real property acquisition and leases (includes deeds).
- o Right-of-way easements.
- o Permit and license fees.
- o Pay-outs directed as a result of legislative action or settlements of civil legal actions.
- o Employee reimbursements and allowances.
- o Debt service.
- o Financing and investment agreements, including master re- purchase agreements.
- o Postage.
- o Employee relocation expenses.
- o Stipends.
- o Landfill charges.
- o Travel expenses.
- o Membership dues.
- o Conference and seminar fees.
- o Contracts between units of the County government, or the County and other governments -- examples

would include contracts with state colleges for providing training.

- o Contract employee agreements where an employee/employer relationship exists.

C. Department and Agency Responsibilities

1. Every department and agency with procurement authority shall make its procurements in accordance with this Chapter.
2. When delegating procurement authority the purchasing agent shall condition the delegation on compliance with this Chapter.

D. MBE Coordinator

1. Every department and agency head shall designate in writing to the purchasing agent, an individual within the department or agency to be the MBE Coordinator.
2. The MBE Coordinator shall be responsible for coordinating agency outreach efforts to the MBE community, reviewing agency contracts to assure compliance with this Chapter, for preparing for the department or agency head all required MBE program reports, and for coordinating the preparation of the department or agencies' annual buying schedule.

E. MBE Notification

1. A department or agency which has delegated procurement authority shall assure that any solicitation for prices on commodities services or construction, be it oral or in writing, is made from certified Minority Business Enterprises if certified MBE's are available for the subject of the contract.
2. Solicitation notices of bids or offers for contracts with an estimated value of \$15,000 or more shall be

placed in at least one newspaper of record in accordance with the provisions of Chapter XIV, Section D, of these regulations. Additionally, when deemed appropriate by the Purchasing Agent, notices shall be placed in other publications which are targeted towards minority readers.

3. A copy of each solicitation under (2) above shall be sent to the Minority Business Enterprise Commission.
4. Solicitations or solicitation notices under (2) above shall be mailed to all Certified MBE's listed in the County's "bidders list", and in the County's MBE Directory, under the category of the subject of the solicitation.

F. Outreach.

It is the responsibility of the Purchasing Agent and every department or agency having delegated procurement authority to attempt to locate and contact MBE's for each procurement to be made by the respective development or agency. Further, if MBE's are identified which are not certified by the MBOC the department or agency shall encourage the MBE(s) to contact the Executive Director MBOC to seek County certification.

G. MBE Procurement Methods

1. Small Procurements (under \$15,000).

Small procurements shall be conducted pursuant to the provisions of Chapter XX of these regulations.

a. Solicitations for small procurements may be

restricted pursuant to the provisions of Section J, Chapter XX, of these regulations.

- b. When required to meet the County's MBE goals, small procurements may be negotiated with certified MBE's or MBE's pursuant to the provisions of Section K, Chapter XX, of these regulations.

2. Bonus Points/Open Competitive Bidding

- a. Bonus points shall be computed when evaluating formal bids of \$15,000 to \$1,000,000.
- b. In determining the lowest responsive and responsible bidder, for contracts valued at one million dollars (\$1,000,000) or less, the bid price(s) submitted by a MBE shall be adjusted by reducing the bid price(s) of such businesses according to the following schedule:

	Bid of Lowest <u>Responsive Bidder</u>	Non-Resident <u>MBE</u>
Resident <u>MBE</u>	Factored By:	.05 or
.10		

- c. Although the lowest responsive and responsible bid or offer will be accepted after application of bonus points, the actual value of the resulting contract will be the amount of the successful bidder's actual bid.
- d. For contracts valued at greater than \$1,000,000, the Purchasing Agent shall adjust the bid price submitted by a County based Minority Business

Enterprise or a Minority Business Enterprise for the purpose of evaluation and award only by reducing the bid price of such firm by the application of an Evaluation Bonus according to the following schedule:

Minority Business County <u>Enterprise</u>	Prince George's <u>Based MBE</u>
\$50,000.00	\$100,000.00

e. Bonus points shall only be applied to the bids of Certified MBE's.

3. Restricted Bidding or Restricted Proposal

a. When there are three or more Certified MBE's that are providers in the trade of goods or services for which a contract is to be advertised the Purchasing Agent or designee may restrict the bidding or request for proposals to certified MBE's.

b. Before restricting a bid or proposal to certified MBE's, the Purchasing Agent or designee shall first consult with the Executive Director, MBOC.

c. When a bid or proposal is restricted, solicitations and solicitation notices shall be mailed to certified MBE's.

d. The public notice required under Chapter XIV, Section D, of these regulations, shall indicate that the bid or proposal has been designated as a "restricted bid" or "restricted proposal."

e. No contract may be awarded under a "restricted bid"

if the resultant low bid exceeds by fifteen percent (15%) the most recent unit price for the same or most recently comparable goods or services unless the MBOC determines that prices in the relevant market have, for all vendors, without regard for minority status increased beyond 15% since the last time similar goods or services were procured or other contract requirements necessitated an increase in price. The MBOC shall consult with the Purchasing Agent when making this determination. Proposals shall not be restricted by this 15% requirement.

4. Mandatory Subcontracting

- a. Applicability. When restricted bidding under G. 3. above is not used, each contract bid or proposal solution shall be reviewed by the Purchasing Agent or designee and the MBOC to ascertain the feasibility of including a mandatory MBE subcontracting component. When deemed appropriate by the Purchasing Agent, or designee, after consultation with the MBOC, the Purchasing Agent or designee may include a mandatory minority subcontract clause in the bid or proposal solicitation that requires the equivalent of at least twenty percent (20%) of the contract's total value be performed by one or more certified minority business enterprises.

- b. The Purchasing Agent or designee may include a mandatory minority subcontracting goal that is less than 20% of the contract's total value only:
- (1) after consultation with the Commission or its authorized representative;
 - (2) upon a determination that a twenty percent (20%) mandatory minority subcontracting goal is not able to be obtained at a reasonable price; and
 - (3) upon a determination that the public interest is served.
- c. In making the determinations that the public interest is served, under b. (3) above, the Purchasing Agent or designee shall obtain the concurrence of the Executive Director of the Commission and may consider engineering estimates, the general market availability of minority business enterprises to provide the services requested, other bids and offers, the cost of the contract and any other relevant factor.
- d. Waivers. If, for any reason, a bidder is unable to achieve a subcontract goal for minority business enterprise participation, the bidder may request, in writing, a waiver of the goal with justification to include the following:
- (1) A detailed statement of the efforts made to select portions of the work proposed to be

performed by minority business enterprises in order to increase the likelihood of achieving the stated goal;

(2) A detailed statement of the efforts made to contact and negotiate with minority business enterprises including:

(a) The names, addresses, dates, and telephone numbers of minority business enterprises contacted, and

(b) A description of the information provided to minority business enterprises regarding the plans, specifications, and anticipated time schedule for portions of the work to be performed;

(3) As to each minority business enterprise that placed a subcontract quotation or offer which the bidder considered not to be acceptable, a detailed statement of the reasons for this conclusion; and

(4) A list of minority business enterprise subcontractors found to be unavailable to perform under the contract.

The Purchasing Agent may grant the waiver only upon a reasonable demonstration by the bidder that the minority business enterprise participation goal is unable to be obtained at a reasonable price and if the Purchasing Agent determines that the public

interest will be served.

e. Public Notice.

When public notice of the solicitation is given, the notice of the solicitation shall indicate if the contract contains a mandatory MBE subcontract component, or is a restricted bid.

f. Negotiated Contracts.

Notwithstanding the above, the Purchasing Agent or designee may require the inclusion of a mandatory MBE subcontract component in any negotiated contract.

5. Proposal Evaluation Criteria/Pre-qualification of Contractors.

- a. Whenever the County procures equipment, services, or professional services by pre-qualification of bidders, under the provisions of Chapter XIII, Section B, of these regulations, competitive sealed proposals under Chapter XV, Section B. 1. g., or otherwise enters into contracts on a negotiated competitive basis whereby evaluation factors are assigned weights for evaluation purposes, up to 15% of the available evaluation points shall be awarded for Minority Business Enterprise participation in the contract, unless the proposals are restricted pursuant to the provisions of Section G. 3. above.

- b. Every solicitation for proposals shall contain a provision which prescribes the formula for the awarding of evaluation points for MBE participation.
- c. The Purchasing Agent or designee shall consult with the Executive Director MBOC or designee before finalizing the 15% MBE contract provisions applicable to each specific contract.

H. Reporting

1. Responsibility.

- a. Every Department and Agency which has been delegated procurement authority, notwithstanding the limitations on the delegations, shall submit a monthly report to the Purchasing Agent in such form as the Purchasing Agent shall prescribe.
- b. The Purchasing Agent shall submit to the County Executive and the Chair of the County Council a monthly and annual report of Minority Business contracting activities. The report shall:
 - 1. identify problems encountered or anticipated in meeting the County's MBE goals;
 - 2. report on progress made in meeting the goals;and
 - 3. contain the numbers, dollar amount and method of award of contracts and subcontracts awarded MBE's.