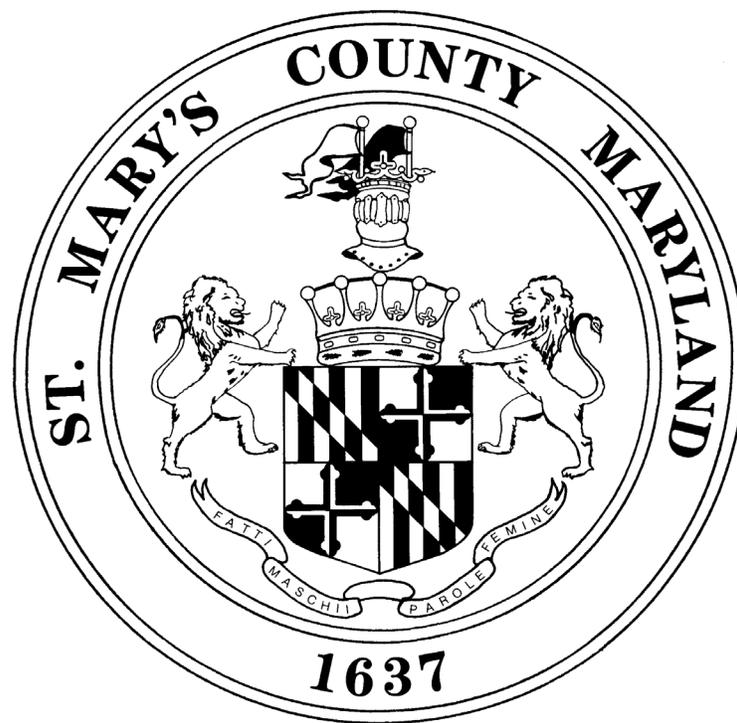


ST. MARY'S COUNTY GOVERNMENT



PROCUREMENT MANUAL

September 8, 2020

LIBER0028 FOLIO379

Subject: To Repeal and Replace Chapter 178 of the Code of St. Mary's County, Maryland by Adopting new Procurement Manual

RESOLUTION

TO AMEND CHAPTER 178 OF THE CODE OF ST. MARY'S COUNTY MARYLAND, BY REPEALING AND REPLACING THE PROCUREMENT MANUAL

WHEREAS, pursuant to §12-301(c)(1) of the *Local Government Article* of the *Annotated Code of Maryland*, the Commissioners of St. Mary's County, Maryland, are authorized to establish a competitive bidding process for any county work and the making and awarding of contracts for the purchase of materials and supplies in excess of \$30,000 and to require bonds in connection with the work or contracts, regardless of the amount, whenever the county commissioners consider it proper to require a bond; and if no bids are submitted in response to any request for bids, to place the order in a manner that the county commissioners consider appropriate; and

WHEREAS, on September 10, 2019, the Commissioners of St. Mary's County adopted Resolution No. 2019-31 thereby adopting a Procurement Manual for St. Mary's County, effective September 24, 2019; and

WHEREAS, the Commissioners of St. Mary's County find that it is in the best interest of the health, safety and welfare of the citizens of St. Mary's County to amend Chapter 178 of the *Code of St. Mary's County, Maryland*, by repealing and replacing the Procurement Manual,

NOW, THEREFORE, BE IT RESOLVED, by the Commissioners of St. Mary's County, pursuant to §12-301(c)(1) of the *Local Government Article* of the *Annotated Code of Maryland*, that Chapter 178 of the *Code of St. Mary's County, Maryland*, be, and the same hereby is, amended as follows:

SECTION ONE. Resolution No. 2019-31 is hereby repealed.

SECTION TWO. The St. Mary's County Procurement Manual as set forth in Attachment One (1) hereto, is adopted as the St. Mary's County Procurement Manual.

SECTION THREE. Typographical errors and other matters of a similar nature that do not affect the intent of this Resolution, as determined by the Chief Financial Officer and County Attorney, may be corrected with the endorsement of the County Administrator, or designee, without the need for formal approval by the Commissioners of St. Mary's County.

SECTION FOUR. This Resolution shall be effective upon the date written below.

Those voting Aye: 5

Those voting Nay: 0

LIBR0028 TAN380

Subject: To Repeal and Replace Chapter 178 of the Code of St. Mary's County, Maryland by Adopting new Procurement Manual

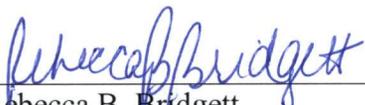
Those Abstaining: 0

Date of Adoption: August 25, 2020

Effective Date: September 8, 2020

ATTEST:

COMMISSIONERS OF ST. MARY'S COUNTY



Rebecca B. Bridgett
County Administrator



James R. Guy, Commissioner President



Eric Colvin, Commissioner

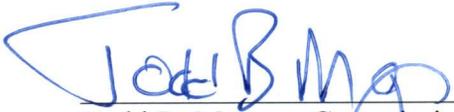
Approved as to form and legal sufficiency:



Michael L. Hewitt, Commissioner



David A. Weiskopf
County Attorney



Todd B. Morgan, Commissioner



John E. O'Connor, Commissioner

LIBER 0028 FOLIO 381

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Circuit Court for St. Mary's County
PO Box 676
41605 Courthouse Drive
Leonardtown, MD 20650
(301) 475-7844

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DEFINITIONS

Acceptance: means, in terms of goods: the County's approval of the contractor's invoice for such goods after a reasonable opportunity to inspect; in terms of services: the County's approval of the Contractor's invoice for such services.

Affiliate: means an individual or business that controls, is controlled by, or is under common control with another individual or business. A person controls an entity if the person owns, directly or indirectly, more than ten percent (10%) of the voting securities of the entity. For the purposes of this definition "voting security" means a security that (i) confers upon the holder the right to vote for the election of members of the board of directors or similar governing body of the business or (ii) is convertible into, or entitles the holder to receive, upon its exercise, a security that confers such a right to vote. A general partnership interest shall be deemed to be a voting security.

Amendment: means a written addition to, deletion from, correction, clarification or modification of an active solicitation for the purposes of communicating official information.

Architect: means an individual licensed, or an organization legally authorized, to practice architecture in the State of Maryland, or the authorized representative of the licensed individual or organization.

Best Value: means the overall combination of quality, price, and various elements of required services that in total is optimal relative to the County's needs. The best value process is used to select the most advantageous bid or offer by evaluating and comparing pre-established factors, including, but not limited to, quality, technical features, experience, and past performance, in addition to cost and price.

Bid: means a bidder's offer to provide specific goods and/or services at specified prices and per the conditions set forth in an IFB.

Bidder: means any person who submits a bid in response to an IFB offering to enter into a contract with the County.

Blanket Purchase Agreement: means a competitively established agreement with a vendor for the supply of goods and services when required by the County.

Blanket Purchase Order (BPO): means a payment vehicle for ongoing purchases between the County and the vendor for goods and/or services during a specific period of time and allows for the issuing of orders against them for the life of the contract, i.e. office supplies.

Brand Name or Equal Specification: means a specification limited to one or more items by manufacturers' names or catalogue numbers to describe the standard of quality, performance, and other salient characteristics needed to meet County requirements, and which provides for the submission of equivalent products.

Business Day: means any day other than a Saturday, Sunday, County holiday, or other day on which the County is closed.

DEFINITIONS

Business Hours: means business days from 8 a.m. to 5 p.m. excluding weekends and all County recognized holidays.

Buyer: means a County employee or representative whose responsibilities include issuing bids, solicitations or other contractual documents, and drafting, analyzing, and negotiating contracts under the direction and supervision of a Contracting Officer (CO).

Calendar Day: means any day in a year, from midnight to midnight, including weekends and holidays.

Capital Property: means tangible personal property which costs more than \$5,000 and has a useful life of at least three years.

Certificate of Insurance (COI): means a document issued by an insurance company or broker used to verify the existence of insurance coverage under specific conditions granted to listed individuals. The document lists the effective date of the policy, the type of insurance coverage purchased, the types and dollar amounts of applicable liability, and other relevant information.

Change Order: means any written alteration issued by the County directing the contractor to make a change in the specification, delivery point, rate of delivery, period of performance, price, quantity, or other provision of the agreement.

Competitive Negotiation: means a formal method of source selection for a procurement, which includes discussions between the County and an offeror on the basis of response to a RFP. Award is based on an evaluation of specified factors set forth in the RFP, and is made to the offeror whose proposal is determined to be the most advantageous to the County.

Competitive Sealed Bids: means a formal method of source selection for a procurement in which an award is made to the lowest responsive and responsible bidder whose bid complies with specifications contained in the IFB.

Construction: means building, altering, repairing, improving, or demolishing any structure, building or highway, and any draining, dredging, excavating, grading or similar work on real property.

Construction Management Contract: means a contract in which a party is retained by the County to coordinate and administer contracts for construction services for the benefit of the County, and may also include, if provided in the contract, the furnishing of construction services to the County.

Contract: means all types of agreements, regardless of what the agreement may be called, for the procurement or disposal of goods, services, insurance, equipment, or construction. The elements of a contract are offer and acceptance by competent parties to furnish and receive goods and/or services for an agreed upon consideration.

DEFINITIONS

- Standard Contracts include Purchase Orders or other binding documents which have been approved by the County Attorney as to legal form and are used on a recurring basis to enter into agreements for the purchase of goods, services, insurance or construction; and
- Non-Standard Contracts include any binding document not previously approved by the County Attorney as to legal form being used for the first time to enter into an agreement for the purchase of goods, services, insurance, or construction.

Contract Period: means the period allotted in the contract documents for substantial completion of the work, together with any time extensions granted in accordance with the terms of the contract.

Contract Sum: means the total amount payable to the contractor for performance of the work. The contract sum is stated in the contract and shall include any adjustments granted by change order(s).

Contracting Officer (CO): means the Purchasing authority who administers and makes related determinations and findings for County contracts as authorized by, and under the general supervision of, the Procurement Officer/Chief Financial Officer.

Contracting Officer's Representative (COR): means the duly employed Department Head of the using Department who shall manage awarded contracts for their Department.

Contracting Officer's Technical Representative (COTR): means the County employee who serves as the COR's technical representative for the purposes of administering the contract. The COTR may designate one or more additional representatives to assist with contract administration, and as approved by the COR.

Contractor: means the individual, firm or organization which contracts with the County to perform the Work. As employed herein, the term "Contractor" may refer to an individual, an organization, or to the Contractor's authorized representative.

Cost: means factual information concerning the value of labor, material, overhead, and other elements which are expected to be incurred in the performance of a contract.

- Direct Costs are readily identified with an expenditure objective, i.e., labor, material.
- Indirect Costs are not readily identified with an expenditure objective, i.e., overhead, profit.
- Types of Cost include historic, projected, standard, replacement and imputed.

Cost Reimbursement Contract: means an agreement under which a contractor is reimbursed for expenditures which are allowable and allocable under the terms of the contract. Cost

DEFINITIONS

Reimbursement Contracts may be categorized as cost plus a fixed fee, cost plus incentive fee, cost without fee, and cost sharing. **Cost plus a percentage of cost contracts shall not be used by the County.**

County: means St. Mary's County, in Maryland, and its authorized representatives and employees.

County Commissioners: means the elected Commissioners of St. Mary's County.

County Employee: means any individual drawing a salary or wages from County funds, whether elected or appointed, and any non-compensated individual performing services for the County.

County Procurement Manager: means the Procurement Manager of St. Mary's County. The Procurement Manager is the County's principal public purchasing official and is in charge of the Purchasing Division (Purchasing).

Damages for Delay: means a specific sum to be paid for each calendar day that the time for substantially completing the work exceeds the contract period.

Debarment: means the removal of a contractor, by the Contracting Officer, for cause from a current contract or from consideration for contract award for a period up to three (3) years.

Delegated Authority: means the written and specific grant of authority from a designated official to another person to carry out all or a portion of the duties and responsibilities given to the granting official by the County Code. With the approval of the Procurement Officer, the Procurement Manager may delegate authority to purchase certain supplies, services or construction items to other County officials, if such delegation is deemed necessary for the effective procurement of those items.

Department Head: means the chief management official of a line or staff agency of the County appointed by the County Administrator or other County Code authority and responsible for the provision of services to the citizens of the County, to other County departments, or both.

Design-Build Contract: means a contract in which the contractor agrees to both design and build a structure, roadway, or other item specified in the contract.

Direct or Indirect Participation: means involvement through decision, approval, disapproval, recommendation, or preparation of any part of a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity.

Fair Procurement: means procurement that encourages participation by an appropriate number of qualified suppliers so the County may acquire goods and services on terms most favorable to the County, which is conducted in an impartial manner so as to ensure equal treatment of all participants. To ensure fairness, all of the County's procurement processes must be

DEFINITIONS

conducted using well-defined and properly approved rules so as to minimize discretion and favoritism in the procurement process. The procurement rules must be readily accessible to all participants and the public, and include provisions for appropriate internal controls, accountability, due process, and an appeals procedure where appropriate. Fair and competitive procurement is important because it reduces the opportunity for favoritism and inspires public confidence that County contracts are awarded equitably.

Final Completion: means the certification by the architect and/or the County that all work has been accepted and is complete in accordance with the contract documents. Unless otherwise agreed, final completion shall occur within thirty (30) calendar days of the date of substantial completion.

Final Payment: means the payment of the balance of the contract sum, following the acceptance of all goods and/or services delivered pursuant to the contract.

Goods: means all material, equipment, supplies, printing, and automated data processing hardware and software.

Holidays: means the County recognized holidays, to include but not be limited to: New Year's Day, Martin Luther King, Jr. Day, President's Day, Good Friday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veteran's Day, Thanksgiving Day, Day after Thanksgiving Day, and Christmas Day.

Informality: means a minor defect or variation of a bid or proposal from the exact requirements of the IFB or RFP which does not affect the County's cost, quantity, delivery schedule, or quality of the purchase, or prejudice other bidders.

Insurance: means a contract whereby, for a stipulated consideration, one party undertakes to compensate the other for loss on a specified subject by specified perils.

Invitation for Bid (IFB): means all documents, whether attached or incorporated by reference, used for soliciting competitive sealed bids.

Modification: means a written alteration to a provision of any contract accomplished by mutual agreement of the parties to the contract.

Multiple Award Schedule Contract (MASC): means the schedule of contractors issued a contract by the County pursuant to a RFP for similar or comparable supplies or services, at varying prices, from which the County selects contractors to provide work under the RFP on a job-by-job basis established by task order.

Nominal Value: means so small, slight, or the like, in comparison to what might properly be expected, as scarcely to be entitled to the name.

Non-Professional Services: means any services not specifically identified as a professional service.

DEFINITIONS

Notice of Award (NOA): means a written notice by the County to the successful bidder or proposer stating that the bidder or proposer has been awarded a Contract.

Notice of Intent to Award (NOI): means a written notice to the selected Contractor that upon submission and verification of Contract related documents (i.e. COI's, Bonds, etc.) the County intends to award a contract.

Notice of Non-Award: means a written notice by the County to the unsuccessful bidder(s) that the bidder will not be selected for award under the contract.

Notice to Proceed (NTP): means a written notice from the County to the contractor directing the contractor to proceed with the work.

Pecuniary Interest: means of or pertaining to money.

Practicably: means only one capable of being used in a particular situation.

Price Analysis: means the evaluation of pricing data, without analysis of the separate cost components and profit as in cost analysis, which may assist in arriving at prices to be paid and costs to be reimbursed.

Pricing Data: means factual information concerning the value to be charged for items being procured. A price may be computed from a combination of cost elements, both direct and indirect. Types of prices include offer or selling price, historic selling price and current selling price. Contracts may be categorized as firm fixed price, fixed price with economic price adjustment, time and materials, labor hour, fixed rate, fixed price with redetermination, and fixed price with incentive.

Professional Services: means work performed by an independent contractor within the scope of the practice of accounting, actuarial services, architecture, insurance and investment consultants, and surveying, landscape architecture, law, medicine or professional engineering.

Project: means the entire improvement of which a Contract forms a part and which may include construction by the County or by separate contractors.

Public Body: means any legislative, executive, or judicial body, agency, office, department, authority, commission, committee, institution, board, political subdivision, or other entity created by law to exercise some sovereign power or to perform some governmental duty.

Public Contract: means any contract between the County and a nongovernmental source that is enforceable in a court of law.

Purchase Order (PO): means a form executed by the Procurement Manager to place an order for goods and/or services with a contractor.

DEFINITIONS

Purchase Requisition (PR): means the Corporate Application process for use by departments to communicate their requirements for goods, services, insurance, or construction to Procurement.

Request for Proposals (RFP): means all documents, whether attached or incorporated by reference, used to solicit proposals for professional services, non-professional services, and other complex requirements where specifications are not well-defined and price is not the sole factor in determining award.

Request for Qualifications (RFQU): means a solicitation document used for requesting the submittal of qualifications or specialized expertise in response to the scope of services required. No pricing is solicited with a RFQU. Generally, an RFP will follow to those deemed qualified.

Responsible Bidder or Proposer: means a person or business who has the capability, in all respects, to perform fully the contract requirements, the moral and business integrity and reliability which will assure good faith performance and who has been prequalified, if required.

Responsive Bidder or Proposer: means a person or business who has submitted a bid or proposal which conforms in all material respects to the IFB or RFP.

Reverse Auctioning: Procurement method wherein bidders are invited to bid on specified goods or nonprofessional services through real-time electronic bidding, with the award being made to the lowest responsive and responsible bidder. During the bidding process, bidders' prices are revealed and bidders shall have the opportunity to modify their bid prices for the duration of the time period established for bid opening.

Services: means any work performed by an independent contractor wherein the service rendered does not consist primarily of acquisition of equipment or materials or the rental of equipment, materials, and supplies.

Small Business: means a United States business which is independently owned and which is not dominant in its field of operation or an affiliate or subsidiary of a business dominant in its field of operation.

Specification: means a clear and concise description of the physical or functional characteristics or the nature of a good, service, or construction item. It may include a description of any requirement for inspecting, testing, or preparing a good, service, or construction item for delivery. Specifications may be categorized as performance, design, or a combination of performance and design.

Subcontractor: means any individual, firm or organization, other than an employee of the contractor, who contracts with the contractor to furnish or who actually furnishes labor, materials, services or equipment, or any combination thereof to the contractor in connection with the Work.

Substantial Completion: means certification by the architect and/or the County that the work has

DEFINITIONS

been sufficiently completed, in accordance with the contract documents, to allow the work to be utilized for the purpose for which it was intended.

Surety: means any person, firm or corporation that has executed as surety the contractor's performance or payment bonds securing performance of the contract or providing for protection of claimants who have and fulfill contracts to supply labor or materials to the contractor or subcontractor in connection with the Work.

Suspension: means the removal of a contractor, by the Contracting Officer, for cause from a current contract or from consideration for contract award for a period of up to three (3) months.

Tangible Personal Property: All non-expendable and non-consumable property that is used in the performance of the functions of government. The definition includes both Capital Property and Non-Capital Property.

Task Order: means an order to the contractor(s) to render services or deliver products as ordered from time to time based on specified requirements placed against an established contract.

Time Extension: means a written notice, signed by the Procurement Manager, extending the contract period.

Time(s) for Performance: means the date(s) and time(s) by which goods are required to be delivered and/or services are required to be provided, in accordance with the contract.

Vendor: means a person or company offering to provide goods, services, insurance, or construction.

Work: means the services required under the contract.

SUMMARY

This Purchasing Manual establishes St. Mary’s County, MD countywide purchasing policies and procedures and serves as a guide to the purchasing process for County Staff. This Manual establishes procedures to assure that goods, services, insurance, and construction are purchased in an autonomous process that is: fair; impartial; administratively efficient; accessible to all qualified vendors; the best value for the County; and the maximum feasible degree of competition.

Essential Information in this Chapter
<ul style="list-style-type: none"> • This Manual identifies the applicable policies and procedures for the purchasing of goods and services. • Failure to abide by the procedures established in this Manual may result in a delay of the purchase of goods and services, or violation of the County’s or Maryland’s procurement law, regulations or procedures. • Failure to abide by the procedures established in this Manual may result in personal liability and imposition of penalties, up to, and including termination.
Key Legal References
<p>The contents of this Manual are authorized/required by the following:</p> <p>Code of St. Mary’s County, Maryland Annotated Code of Maryland, State Finance & Procurement Article, Division II, Titles 11 through 18 Annotated Code of Maryland, Title 21 Maryland Procurement Regulations</p>

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1-1 PURPOSE

The purpose of this Manual is to provide detailed instructions for employees of the County involved in requesting, ordering, receiving, paying for, and/or disposing of goods and services required by County departments. All expenditures of funds by County departments for goods and services and the sale and disposal of County personal property shall be made in accordance with these procedures. These procedures are designed to:

1. Preserve the highest standards of fairness and equitable treatment in the purchasing of goods, services, insurance, and construction by the County;
2. Ensure that all County purchases are conducted in a fair and impartial manner with the avoidance of any impropriety or appearance of impropriety;
3. Achieve the maximum feasible degree of competition; and
4. Maximize the purchasing value of public funds and provide safeguards for maintaining a purchasing system of quality and integrity.

1-2 ROLES AND RESPONSIBILITIES

Procurement Officer: The Chief Financial Officer exercises overall responsibility for the County's purchasing system, and approves any purchasing rules and regulations.

Contracting Officer (CO): The Procurement Manager serves as the Chief Procurement official for the County and serves under the general supervision of the Procurement Officer. The CO shall serve as the Procurement authority to administer and make related determinations and findings for County contracts as authorized by, and under the general supervision of the Procurement Officer. The Contracting Officer is responsible for:

1. The procurement of goods, services, construction, and insurance required by the County;
2. Promulgating, establishing, amending and revising all rules and regulations necessary to carry into effect the procurement provisions of the Code of St. Mary's County, Maryland;
3. Adopting operational procedures governing the internal functions of the Procurement Office;
4. Exercising general supervision over the procurement of all supplies and other inventories of goods belonging to the County, as applicable;
5. Establishing and maintaining programs for specifications development, contract administration, inspection, and acceptance in cooperation with the departments using the goods and/or services;
6. Providing training; and
7. Delegating purchasing responsibility, within their authority, to other County employees.

Procurement Division (Procurement): Procurement is the coordinating and implementing office for the procedures set forth in this Manual for County purchases and for the disposal of County property. The Contracting Officer shall serve as the Procurement Division Manager.

Department Heads: Department Heads are responsible for their Department's compliance with this Manual when procuring goods and services, including activities such as:

1. Establishing written internal Departmental procedures and controls to assure that goods and/or services are purchased in accordance with the procedures set forth in this Manual;
2. Assuring that purchases are made for authorized purposes and within the budgetary limits approved by the Commissioners of St. Mary's County;
3. Anticipating the Department's needs and determining the quantity, general type or character of services, supplies, materials or equipment required;
4. Exercising delegated purchasing responsibility within the limits and procedures established by this Manual and other relevant procurement laws, regulations or policies; and
5. Assuring that appropriate personnel are trained and have access to copies of this Manual and relevant procurement laws and regulations.

Contracting Officer's Representative (COR): The Department Head of the using Department who shall manage awarded contracts for the Department. The COR is the official representative of the CO and acts as the direct communication between the Contractor and the CO.

Contracting Officer's Technical Representative (COTR): The assigned technical representative of the COR who acts as the project representative for the contract. The COTR must be a County employee of the COR's Department and shall facilitate communication between the Contractor and the COR.

1-3 PROCEDURES

A. Policies

1. In the purchase of goods and services, the County shall not discriminate against a vendor because of race, religion, color, sex, national origin, age, disability, its status as a faith-based organization, or other basis prohibited by law.
2. Formal competitive sealed bidding or competitive negotiation, as appropriate, shall be used to enter into contracts with nongovernmental vendors for the purchase or lease of insurance, construction, goods or non-professional services for all purchases of \$50,000 or more except emergency or sole source purchases.
3. Upon a determination made in advance by the Contracting Officer and set forth in writing, that competitive sealed bidding is neither practicable nor fiscally advantageous to the public, goods and services may be purchased by competitive negotiation. This determination shall document the basis for this decision.

4. It is unlawful for anyone to disclose the identity or information derived from competing proposals to any proposer that might provide an unfair advantage in competitive negotiations.
5. All County employees, whether compensated or uncompensated, are subject to St. Mary's County Public Ethics Code, whether directly or indirectly involved in a procurement transaction. Violations of these provisions may be grounds for disciplinary action under any applicable County Policy, to include termination, pecuniary liability, or legal action in the event of fraud or corruption.
6. Any purchase or contract entered into by any elected or appointed County official, Department Head, or employee that violates the provisions of the County Code, or Maryland State Procurement Regulations (as applicable) or this Manual shall be the personal and financial responsibility of that individual.
7. If any part of this Manual is held invalid, such invalidity shall not affect other provisions or applications of this Manual which can be given effect without the invalid provision.
8. When a purchase involves the expenditure of Federal or State funds for a contract, the purchase shall be conducted in accordance with any applicable Federal or State laws or regulations. A department shall comply with the terms and conditions of any grant, gift, or bequest which are otherwise consistent with the law.

B. Exemptions

1. The following entities are exempt from the requirements set forth in this Manual:
 - a. Any institution to which the County makes a lawful grant-in-aid and over which it retains no management control, is exempt from the requirements set forth in this Manual.
2. The following purchases are exempt from the requirements set forth in this Manual:
 - a. Cooperative Purchases using other local or State contracts or other political subdivisions;
 - b. Legal services, expert witnesses, and services associated with actual or potential litigation, adoption of ordinances or regulatory proceedings;
 - c. Purchase of water, sewer, electric, telephone, internet, and other utility services and motor vehicle license plates directly from a governmentally regulated entity or a government agency;
 - d. Purchases for special operations or undercover police investigations when the goods or services are certified by the Sheriff of St. Mary's County to the Contracting Officer as necessary for that purpose;

- e. Purchase for resale to the general public of recognized brand name commodities from wholesale distributors when the resale is in furtherance of the mission of a County department and the Contracting Officer or the Procurement Officer has approved the purpose and procedures of the purchase in advance;
- f. Purchase of voting equipment, services, ballots, statements of election results or other materials essential to the conduct of an election;
- g. Purchases of goods and personal services for direct use by individual recipients of services under programs administered by the County; and
- h. Rental or Lease of real property, executed by the Commissioners of St. Mary's County.

C. Changes

Any individual using this Manual is encouraged to recommend changes to Procurement.

Proposed changes should be addressed in writing to the following:

Procurement Manager
Department of Finance
PO Box 653
Leonardtown, MD 20650
procurementhelp@stmarysmd.com

SUMMARY

The Procurement Cycle is the series of activities or steps that must be undertaken for the purchase of goods or services in order for the County’s departments to perform their functions in an efficient and effective manner.

Essential Information in this Chapter
<ul style="list-style-type: none"> • Individual departments are responsible for assessing their procurement needs and working with Procurement to coordinate their procurement activities. • For competitive sealed bids, the award shall go to the lowest responsible and responsive bidder. • For competitive negotiations, a Technical Evaluation Committee (TEC) shall be formed to review and evaluate each technical proposal and make a recommendation for a contract award. Procurement will negotiate with proposers.

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2-1 PURPOSE

This section provides a broad outline of the Procurement cycle to give the user a basic understanding.

2-2 ROLES AND RESPONSIBILITIES

Department Responsibilities: Departments are responsible for working with Procurement through the procurement process, which includes:

- Recognizing the need for goods/services;
- Ensuring adequate funds are budgeted;
- Developing specifications;
- Submitting requisitions to Procurement;
- Administering the contract, to include processing timely payments and ensuring contract performance by the both County and contractor;
- Ensuring contractor possesses required permits and licenses; and
- Determining when an asset is no longer of use or value and initiating the asset disposal.

Procurement Responsibilities: Procurement will work directly with the departments to:

- Review specifications for completeness and accuracy;
- Determine the procurement method; and
- Solicit quotation, bids, or proposals and make an award.

2-3 PROCEDURES

Generally, a Procurement cycle consists of the following steps:

A. Identify a Need

1. Departments shall determine their purchasing needs in advance. It is recommended that departments determine their procurement plans one year in advance or as far in advance as possible. Departments shall meet with Procurement prior to the end of each fiscal year to conduct a Fiscal Year Procurement Plan Meeting to ensure that all upcoming fiscal year procurements based on both Capital and Operating budgets, are identified in advance and to ensure that Procurement can properly allocate its resources to the various projects.
2. Requirements for each requisition shall be identified and budget plans reviewed to ensure proper fund allocation.
3. A Department should notify Procurement immediately when it realizes it has a procurement need that requires Procurement's assistance and has not been identified previously during the department's Fiscal Year Procurement Plan Meeting.

B. Procurement Planning and Specification

1. A Department shall analyze the good(s), service(s), construction, or professional service(s) that are needed. Questions that a department may use to analyze its need include:

- a. What type of good or service does the department wish to procure;
 - b. Is there a contract in place through another County department or available through cooperative purchasing from which to procure the good or service;
 - c. What specific requirements are needed;
 - d. Are there grantor requirements that impact the procurement;
 - e. What is the deadline for fulfillment;
 - f. What is the average lead time;
 - g. Is there sufficient time to obtain the item requested; and
 - h. What are the budget parameters for the fulfillment?
2. The Department shall consult with Procurement to develop an action plan and specifications for the procurement.

C. Requisition Processing

1. The Department shall review its specifications and create a requisition through the Corporate Application.
2. The Comments section of the requisition is where departments can provide specific information concerning the purchase. Notes shall be written clearly and concisely to ensure that Procurement has a clear understanding of the department's needs.

D. Determine Procurement Method

1. The Contracting Officer shall determine the type of procurement method to utilize for purchases that require formal solicitation.
2. The County's preference is to utilize competitive sealed bidding for goods and non-professional services expected to be \$50,000 or more. Professional services exceeding \$50,000 will be procured through a competitive RFP process when practicable.

E. Prepare and Publish Solicitation Documents

1. The Department and the COTR assigned to the project shall prepare solicitation documents pursuant to the applicable Procurement procedures, as outlined in this Manual.
2. The Department should consult with the COTR to determine if and when a pre-bid/proposal conference or site visit is required.
3. Pre-bid conferences and site visits must be stated in the solicitation documents. A site visit is similar to a pre-bid/proposal conference, but allows bidders to observe the land, structures, or other attributes related to the procurement. Site visits or pre-bid conferences are held primarily for complex procurements and allow an opportunity for prospective bidders or proposers to ask questions and clarify any possible issues.

F. Proposal Submission / Evaluation and Bid Opening

1. Bid opening and proposal submission dates may be extended or cancelled by amendment.
2. Bid openings are public and attendance shall be taken.
3. Bid price and name of bidder shall be read aloud and recorded during bid opening.
4. During a bid opening, the Buyer shall be mindful of the following questions:
 - a. Has the bid/proposal been received in a sealed envelope?
 - b. Is the bid signed?
 - c. Was the bid received on or before the submission date and time?
5. Procurement shall not provide an opinion on contract award at the bid opening.
6. Proposals submitted pursuant to a competitive negotiation will not be opened publicly. Procurement will review proposals for submission completeness and distribute those that have met the submission requirements to the Technical Evaluation Committee.

G. Bid/Proposal Evaluation

1. For competitive sealed bids, bids must be reviewed to determine responsiveness and responsibility. A price comparison is then conducted by preparing a bid tabulation. Award(s) is/are made to the lowest responsive and responsible bidder(s).
2. For competitive negotiations, a pre-selected TEC evaluates submitted proposals. Each proposal must be scored and discussed on its own merits against the criteria outlined in the solicitation. The proposer(s) achieving the highest score(s) following Cost Proposal evaluation by Procurement shall be recommended for contract award and negotiations will begin. Procurement shall conduct all negotiations with recommended proposers.

H. Contract Award

1. All bidders/proposers must be notified of the contract award in writing via electronic mail or U.S. mail. For sealed bids, notification should include a copy of the bid tabulation.
2. Unsuccessful bidders/proposers have the right to request a debriefing by Procurement.
3. Any bidder/proposer may protest the award or decision to award a contract by submitting such protest in writing to the Contracting Officer no later than 5 business days after public notice of the award or the announcement of the decision to award;

whichever occurs first.

I. Receipt of Goods or Services

Goods or services are accepted by the County if they are in accordance with the contract. The County has the right to accept or reject non-conforming goods or services.

J. Payment

Payments under the contract must be made pursuant to any contract terms, or in the absence of any relevant contract terms, within forty-five (45) days after the goods or services are received and approved, or a correct invoice is rendered, whichever is later. Within thirty (30) days after receipt of the invoice or the goods or services, whichever is later, the Department shall notify the contractor of any defect or impropriety which would prevent payment by the required payment date.

K. Contract Administration

The COTR shall supervise the performance of the contractor and ensure the contractor's compliance with the contract.

L. Disposal of Goods

Department Heads shall be responsible for ensuring that disposal of their Department's surplus goods is within the applicable County policy at the time of disposal.

SUMMARY

This chapter provides an overview of the various procurement methods and the appropriate use of each method. The cost of the purchase and type of the purchase are the two main factors to consider when determining the proper procurement method.

Essential Information in this Chapter	
<ul style="list-style-type: none"> • No County employee shall purchase goods or services by splitting requirements to circumvent formal procurement procedures that would otherwise apply. • Written, rather than oral, quotations are required except for certain emergency purchases. • The purchase of goods or non-professional services expected to cost \$50,000 or more requires competitive sealed bidding or competitive negotiation. If the costs are expected to be less than \$50,000, small purchase or exempt procedures may be used. • The purchase of professional services expected to cost more than \$50,000 must be procured by a competitive RFP process when practicable. • If the purchase comes from a sole source or is an emergency, the requirement of competitive procedures may be waived in accordance with Chapters 10 or 11. 	

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3-1 PURPOSE

To summarize the purchase methods that should be used in different procurement situations.

3-2 ROLES AND RESPONSIBILITIES

Contracting Officer: The Contracting Officer determines the Procurement Method for all purchases exceeding or expected to exceed \$50,000.

Department Head(s): The Contracting Officer may delegate certain purchase responsibilities to Department Heads following the issuance of a Purchase Order.

3-3 PROCEDURES**A. Determining Which Procedure Applies**

To determine the appropriate procurement process to use, the following procedures must be used:

1. Determine the expected cost of the goods or services:
 - a. The Department shall determine the expected cost of the goods or value of services to be procured.
 - b. If the expected cost of the goods or services is less than \$30,000, then one of the exempt purchase procedures below may be used.
 - c. If the expected cost of the goods or services is between \$30,000 and \$49,999 then the Small Procurement Process shall be followed.
 - d. If the purchase is expected to be \$50,000 or more it shall be classified as one of the following:
 - i. goods;
 - ii. non-professional services;
 - iii. professional services;
 - iv. construction; or
 - v. financial services/insurance.
2. Goods are generally procured by competitive sealed bidding. Goods may be purchased by competitive negotiation if the Contracting Officer determines in advance and in writing that the competitive sealed bidding procedure is either not practicable or not fiscally advantageous to the public.
3. Non-professional services may be purchased by competitive sealed bidding or by the competitive RFP process if the Contracting Officer determines in advance and in writing that competitive sealed bidding is neither practicable nor fiscally advantageous to the public. Non-professional services are any that are not specifically identified as professional services.
4. Professional services must be purchased by a competitive RFP Process. Professional services are specific to work performed by an independent contractor within the scope of practice of: accounting; actuarial services; architecture; land surveying; landscape architecture; dentistry; law; medicine; optometry; pharmacy; professional engineering or other discipline approved by the Contracting Officer.
5. Construction is procured by competitive sealed bidding, except that the construction of highways and any draining, dredging, excavation, grading or similar work upon real property may use competitive negotiation when the Contracting Officer determines in writing that competitive sealed bidding is neither practicable nor fiscally advantageous to the public.

6. Financial Services/Insurance is procured by competitive sealed bidding, unless it is purchased through a County contracted insurance broker or agent selected through competitive negotiation when the Contracting Officer determines in writing that the competitive sealed bidding procedure or competitive negotiation is either not practicable or not fiscally advantageous to the public.

B. Exempt Purchases - Less than \$30,000

1. Competition is not required for purchases below \$30,000.
2. Purchases may not be split to fall below this threshold.
3. Multiple quotes should be obtained and submitted, when practicable.
4. Persons making unauthorized purchases may be held personally liable.

C. Small Purchases - Between \$30,000 and \$49,999

1. For purchases between \$30,000 and \$49,999, the Department must:
 - a. Prepare a requisition requesting a Small Procurement Posting.
 - b. Obtain or document the request of at least three written quotations from known vendors. Requests for informal quotations must contain any terms and conditions required by the Department.
 - c. Document quotations received.
 - d. The vendor making the lowest acceptable quotation shall be selected.
 - e. The Department Head or designee must approve the purchase.
 - f. Copies of all quotes must be attached to the requisition.
2. Capital property may be purchased within this threshold, provided the funds are available in the approved budget. Unbudgeted capital property may be purchased after budget transfer requests have been approved by the Department of Finance (Finance). Finance approval must be documented. Vehicle purchases must be in the approved budget and listed on the vehicle replacement list.
3. Each Department shall adopt an internal controls policy with established checks and balances, including separating the responsibilities of the person who seeks and approves orders and those who provide final approval of the payment.

D. Purchases Over \$50,000

1. Departments shall submit a purchase requisition along with detailed specifications for approval to Procurement for purchases exceeding \$50,000.
2. Procurement shall review the requisition and contact the Department with any questions.

3. Unless a purchase falls under one of the Exemptions listed in Chapter 01 of this Manual, the procurement of goods or non-professional services estimated to cost \$50,000 or more shall be procured by Procurement through formal solicitation.
4. All capital purchases shall be in the Department's budget. All requisitions for unbudgeted capital purchases must be approved by Finance, after completing an approved Budget Amendment.
5. Procurement shall prepare and issue an IFB, RFP, or other appropriate type of solicitation through a formal solicitation process incorporating the draft submitted by the Department.
6. Procurement shall determine whether competition shall be sought using IFBs or RFPs based on an analysis of the requirements, the criteria to be used in determining award, and other factors.

SUMMARY

This chapter explains the obligations of County departments to establish written internal procedures and controls for departmental purchasing activities. The procedures and controls are necessary to ensure compliance with purchasing, accounting, and auditing policies and procedures.

Essential Information in this Chapter	
<ul style="list-style-type: none"> • Each Department is required to establish written internal procedures and controls that must designate positions responsible for carrying out the County’s purchasing procedures and specifies the approvals that are necessary to ensure compliance with purchasing policies and procedures within the Department’s delegated spend threshold. • Internal procedures and controls should contain the following sections: <ol style="list-style-type: none"> 1. Policy, 2. Purpose, 3. General Procedures, 4. Specific Procedures and 5. Ethics. 	

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- 1. Policy
- 2. Purpose
- 3. General Procedures
- 4. Specific Procedures
- 5. Ethics

4-1 PURPOSE

The purpose of this chapter is to provide guidance to departments regarding the development and implementation of internal procedures and controls.

4-2 ROLES AND RESPONSIBILITIES

Department Head: The Department Head is responsible for establishing written internal procedures and controls to assure that goods, services, insurance, and construction are procured in accordance with procedures established by the Purchasing Agent and within their delegated spend threshold.

Procurement Manager: The Procurement Manager is responsible for approving and ensuring that each Department has established written internal procedures and controls.

4-3 PROCEDURES**A. Internal Controls**

1. Each Department shall issue written internal procedures and controls based upon this Manual, and the Code of St. Mary's County, Maryland.
2. Each Department's internal procedures and controls shall:
 - a. Designate positions responsible for carrying out the County's purchasing procedures; and
 - b. Specify the approvals that are necessary to ensure compliance with purchasing, financial accounting, and auditing policies and procedures.
3. One copy of the Department's internal control document shall be available to the Finance Department and the Procurement Manager. Internal control documents should be posted on the County Intranet to meet this requirement.

B. Recommended Outline

The Procurement Manager recommends that County Departments use the following format for the development of departmental internal procedures and controls:

Internal Procedures and Controls for Purchasing
[Department/Office Name]

1. **Policy:** This will be the Department's policy statement on the implementation of the purchasing internal procedures and controls. The following is a recommended policy statement: *Purchasing activities by [department/office] shall provide for the fair and equitable treatment of all persons involved; will maximize the purchasing value of public funds; and will provide safeguards for maintaining the integrity and quality of purchasing activities.*
2. **Purpose:** This will provide a general purpose of why the internal procedures and controls were established, e.g., *"The purpose of this policy statement is to instruct Department employees in the conduct required to support the Department's purchasing function. Additionally, this document establishes appropriate checks and balances for purchasing activities."*
3. **General Procedures**
 - a. Organization for purchasing: This section should state the organization for purchasing within the Department. It should identify those individuals and positions designated to perform purchasing functions and establish a section of checks and balances for each function.

- b. Reviews: This section should stipulate those positions responsible for reviewing purchasing documents within the Department.
 - c. Signatures: This section should stipulate those positions responsible for approval authority on specific purchasing documents within the Department, including, but not limited to, purchase orders, requisitions, memorandums of agreement with other entities, and memorandums of understanding with other entities. Signature authority for all purchase orders, external agreements, contracts, etc. lies solely with the Contracting Officer or the Procurement Officer.
 - d. Sensitivity of Procurement Information: This section should discuss when non-disclosure agreements are required and specify individuals with authority to execute non-disclosure agreements, the safeguards required for contract documents, and when information is releasable to the public. Furthermore, there should be a discussion on how to handle Maryland Public Information Act (MDPIA) requests and the County policy regarding those requests.
4. **Specific Procedures**: This section should explain how specific types of purchases will be handled within the Department and describe the Department's document workflow for purchasing.
- a. Exempt Purchases: This section should explain the departmental procedures and responsibilities for handling each type of exempt purchase, including but not limited to:
 - i. exempt purchases less than \$5,000; and
 - ii. exempt purchases between \$5,000 and \$29,999.
 - b. Small Purchases of goods and non-professional services, insurance and construction (purchases between \$30,000 and \$49,999): This section should explain the departmental procedures for creating and forwarding requisitions to Procurement that exceed \$30,000.
 - c. Informal Purchases of professional services (purchases above \$30,000): This section should explain the departmental procedures for creating and forwarding requisitions to Procurement that exceed \$30,000.
 - d. Contracts: This section should explain the departmental procedures for administering and ordering against contracts.
 - e. Sole Source Procurement: This section should explain the departmental procedures for processing requests to the Procurement Manager for determination of sole source.
 - f. Emergency Procurement: This section should explain the departmental procedures for processing requests for approval of emergency procurement.
 - g. Reporting and Vendor Performance: This section should explain the departmental procedures for reporting receipts and deficiencies; and recording vendor performance.

CHAPTER 4

INTERNAL CONTROLS

- h. Property Management: This section should explain the departmental procedures for accounting for property, safeguarding property, and disposing of surplus property.
5. **Ethics**: This section should explain the departmental procedures for guaranteeing that individuals involved with the purchasing of goods or services comply with the ethics rules contained in this Manual, and the St. Mary's County Public Ethics Ordinance.

SUMMARY

A specification is a portion of a solicitation that describes the characteristics of the good or service required by the Department. A well-written, detailed specification assures that the Department will receive the good or service requested in a timely manner.

Essential Information in this Chapter

- The Contracting Officer must approve all specifications prior to their use in a solicitation.
- The Department and Procurement shall work together to develop a complete specification.
- Specifications shall not be used which are so narrowly written that they restrict competition.

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5-1 PURPOSE

The purpose of this chapter is to provide guidance on writing well-defined specifications that translate the Department’s needs and requirements into the delivery of goods or services. The development of specifications must be a cooperative effort between the Department and Procurement.

5-2 ROLES AND RESPONSIBILITIES

Contracting Officer: The Contracting Officer shall review and approve all specifications.

Procurement: Procurement is responsible for assisting the Department in drafting specifications and reviewing specifications for clarity.

Department: The Department is responsible for researching the requirements of the goods or services it wishes to purchase and drafting the specifications for the procurement. The Department has the responsibility to develop clear and concise specifications that fully articulate its need(s.)

5-3 PROCEDURES

A. Types of Specifications

There are several types of specifications. The development, selection, and use of a particular type are dependent on the situation, time, information available, and needs of the user. A list and explanation of commonly used specifications follows:

1. **Performance Specifications:** Performance specifications define the capabilities that the good or service must satisfy and provides any essential functional requirements. The County prefers that performance specifications are used. The following are often included in a performance specification:
 - a. A general nomenclature or description;
 - b. Required performance characteristics including all pertinent items related to the good or service (e.g., speed, storage, production capacity, usage, performance ability);
 - c. Operational requirements;
 - d. Site preparation requirements for which the contractor or the County will be responsible;
 - e. Compatibility requirements with existing equipment or programs;
 - f. Conversion requirements for maintaining the existing equipment or system until switching to the new equipment or system;
 - g. Installation requirements;
 - h. Delivery date;
 - i. Maintenance requirements;
 - j. Supplies and parts requirements;
 - k. Quantity and method of pricing;
 - l. Warranties required; and
 - m. Service locations and service response time.

2. **Design Specifications:** Design specifications employ dimensional and other physical requirements and specify how a product is fabricated, rather than what it should do. Design specifications are normally prepared by architects and engineers for construction or custom manufactured products. The following are common elements of a design specification:
 - a. Dimensions, tolerances, and specific manufacturing or construction processes;
 - b. Manufacturer's brand name or model number references; and
 - c. Use of drawings and other detailed instructions to describe the product.

3. **Brand Name or Equal:** When a specification references a manufacturer's brand name or model number, it shall include the words "or equal." In this regard, "or equal" is interpreted to mean "substantially equal and capable of performing the essential functions of the referenced brand name or model." The Department shall identify in the requisition any specific features of the referenced brand that must be met.

B. Specification Guidelines

1. Departments shall attach specifications to a requisition via Corporate Application for approval and processing by Procurement.
2. Specifications should be clear and detailed enough to assure that potential bidders are bidding on the same goods or services and on the same terms.
3. A specification may include requirements for inspection, testing, warranty, and packaging. Specifications used for competitive sealed bidding or competitive negotiation process should not contain bidding instructions or similar material. These items will be included elsewhere in a solicitation.
4. If Samples or Prototypes will be required, they should only be requested from the lowest responsive and responsible bidder(s) with sufficient time allowed for delivery.
5. Specifications shall address the following questions:
 - a. What Department wants the product?
 - b. What product does the Department want?
 - c. When does the Department want the product?
 - d. Where does the Department want the product?
 - e. How does the Department want the product?
 - f. Why does the Department want the product?
 - g. Will the awarded contract sufficiently mitigate risk to the County during contract performance given the scope of work?
 - h. Are additional contract provisions required to mitigate risk to the County?
6. Departments shall also ensure that specifications make sense, do not contain conflicts, are not repetitive or redundant, and can be understood by the public.
7. Once approved, the specification will be included in the final solicitation document.
8. After Procurement has reviewed the specifications, attached the standard terms and conditions, and created the applicable solicitation, the Department will have the opportunity to approve the specification and solicitation document.
9. After review by the Department and approval by the Contracting Officer, the solicitation document will be released.

C. Tips for Writing a Specification

1. Use the word "shall" to describe a command or mandatory requirement.
2. Use the words "should" or "may" to describe an advisory or optional requirement.

3. Use the word "and" to describe a requirement that must have both or multiple compliances.
4. Use the word "or" to describe when either choice is acceptable for a specification.
5. Use the word "will" to describe something the County or Department will do, within the terms of the Contract.
6. Be specific and detailed in presenting mandatory requirements.
7. State a requirement of fact once and avoid duplication.
8. Do not present something as mandatory if it is really only optional.
9. Do not write specifications to restrict responses to a single bidder or proposer.
10. When sizes or measurements are part of your specifications for an item, indicate maximums or minimums or approximates. If the item must fit into a given space, indicate the available space dimensions.
11. When weight is an important factor, indicate the acceptable range or minimum or maximum acceptable weight.
12. Delivery, warranty, or training requirements shall be clearly defined.
13. When compatibility with existing equipment is a factor, describe the equipment, connectors, interfaces, and brand and model of the existing equipment.
14. Verify that models are still available before submitting specifications. Valuable time may be lost by requesting models that have been discontinued.
15. When installation is required, provide details regarding what is expected of the contractor.
16. When maintenance is requested, define the extent of service, parts, labor, travel, service hours required, number of preventative maintenance inspections, and any other inclusions or exclusions.
17. When the specifications include options, it is important to point out in the specifications that prices for those options shall be included in the vendor's price.
18. When the specifications state the desired brand and model number, invite competitive brands by indicating "or equal."
19. If a response time is required request a reasonable number of days so as not to restrict competition.

20. When referencing an outside source for compliance, i.e. FEMA, MTA, etc. make sure you research the referenced material to ensure the specification/direction/payment information is exactly what you want. Referenced material may have further references in its language that you do not want included, i.e. payment terms that conflict with the bid pricing desired; references to differing chapters/publications that conflict with the drawings, terms and/or conditions of the solicitation, etc.

D. Bidder Qualifications

To meet the objectives required by the County, your draft solicitation document may propose minimums that each bidder must meet to qualify for consideration of a Contract Award. Such qualifications should encourage qualified participants, but not limit competition between experienced bidders capable of delivering the goods or performing the services required. These qualifications can include, but not be limited to:

1. Vendor's years of experience in the required field or discipline.
2. Number of years in business or operating continuously.
3. Specific sizes and types of similar projects that were recently and successfully completed.
4. Inventory Availability and Delivery Estimates.
5. Equipment certifications demonstrating the access to and availability of the proper equipment to complete the project.
6. Manpower Estimates.
7. Manufacturer Certifications when applicable.
8. Proper Licensing when applicable.
9. Other qualifications deemed appropriate by the Contracting Officer for the proposed Scope of Work.

SUMMARY

The competitive sealed bidding procedure is the preferred purchasing method of the County. This chapter provides an overview for purchasing goods and non-professional services using the competitive sealed bidding procedure.

Essential Information in this Chapter	
<ul style="list-style-type: none"> • The competitive sealed bidding process consists of the following elements: issuance of a written Invitation for Bid (IFB), public opening, evaluation of bids, and award. • A bid may be modified or withdrawn by a bidder any time prior to the bid opening (the time and date bids must be received by Procurement) by notifying the Contracting Officer in writing. • The Contracting Officer may modify an IFB by issuing a written amendment no later than five (5) business days prior to the date bids must be received. If the amendment extends the bid due date or time, it may be issued at any time prior to the bid closing date and time. • The Contracting Officer may waive or cure informalities in bids. • Bids are evaluated based upon the criteria set forth in the IFB and awarded to the lowest responsive and responsible bidder or bidder(s.) • The Contracting Officer may cancel the IFB or reject all of the bids for any reason when it is in the best interest of the County to do so. 	

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6-1 PURPOSE

The purpose of this chapter is to establish procedures for the purchase of goods and non-professional services which are expected to cost \$50,000 or more using competitive sealed bidding. In the competitive sealed bidding process, an IFB is issued to request bids from interested bidders. Bids received by the bid opening date/time are evaluated to determine the lowest, responsive and responsible bidder for contract award.

6-2 ROLES AND RESPONSIBILITIES

A. Department Responsibilities. The Department shall be responsible for the following during the competitive sealed bid process:

1. Providing the COR's recommendation for COTR to the CO;
2. Submitting a requisition with an attached set of specifications or scope of work describing the design or performance characteristics of the goods or services required;
3. Meeting with the applicable Buyer to discuss the submitted requisition and project details;
4. Reviewing the draft IFB prior to publication;
5. Attending any pre-bid conferences to answer substantive questions regarding the IFB;
6. At the request of Procurement, reviewing bid documents of the apparent lowest responsive and responsible bidder and checking references to ensure that the bidder offers goods or services meeting the requirements of the IFB;
7. If necessary, documenting reasons why the apparent lowest responsive and responsible bidder should not be considered for an award;
8. Providing the recommendation for award to the lowest responsive and responsible bidder(s); and
9. COR/COTR administering the awarded contract;

B. Procurement Responsibilities. Procurement is responsible for the following during the competitive sealed bid process:

1. Assigning a Buyer.
2. Preparing IFB documents based upon the requisition and draft specifications submitted by the Department so that the process is open, equitable, and fair to all potential bidders;

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3. Determining the method of procurement;
4. Issuing the IFB;
5. Receiving and securing bids prior to bid opening;
6. Publicly opening bids at the date and time set forth in the IFB;
7. Analyzing the bids and determining the apparent lowest responsive and responsible bidder;
8. Providing copies of bid documents from the apparent lowest, responsive and responsible bidder to the Department for its review and recommendation for award;
9. Making the award to the lowest responsive and responsible bidder(s) meeting the requirements;
10. Notifying all bidders of the results of the bidding process; and
11. Assisting the Department with Contract Administration.

6-3 PROCEDURES

A. First Steps

1. The Department shall prepare a requisition and submit a completed requisition through the Corporate Application.
2. A requisition must include:
 - a. Draft statement of work, which shall include specifications of the good or service required;
 - b. Certified funds by Finance;
 - c. Independent Cost Estimate (ICE);
 - d. Technical documents, as required;
 - e. Required non-standard contract clauses, such as those required for the use of grant, state or federal funding;
 - f. Recommended vendors, if any are known; and
 - g. Type of solicitation requested.
3. Consider the following questions when drafting the specifications or statement of work:
 - a. Who: Who needs it? Who will receive the good or service? Who will administer the contract and ensure compliance by the bidder? Who is authorized to approve the requisition?
 - b. What: What is needed? What are the critical features that the Department must have? What minimum qualifications or unique offerings are required of the bidder? What is the budget estimate?
 - c. Where: Where must the good or service be delivered or performed? Where will it be

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- used?
- d. When: When must the good or service be delivered or performed? When will the Department be able to receive the good or service?
 - e. Why: Why is the item needed? Why is the delivery time important? Why are certain features important?
 - f. How: How is the good or service to be used? How should the good be packaged for delivery? How will the item be paid for?
4. After submittal of the requisition to Procurement, it will be assigned to a Buyer.
 5. The Contracting Officer shall make a determination of the procurement process to use. There is a County preference to use competitive sealed bidding when the anticipated cost is \$50,000 or more. However, professional services which cannot be purchased through the competitive sealed bid process must be purchased through competitive negotiation (see Chapter 7.)
 6. The Buyer will prepare a draft IFB utilizing the specification or scope of work submitted and meet with the Department, as needed, to discuss the requirements. An IFB should be as comprehensive and clear as possible to ensure bidders will understand the County's needs and requirements.
 7. The Procurement Draft will be submitted for Legal review on projects exceeding \$100,000, prior to completion of the final draft.
 8. Once a final draft of the IFB is approved by the Department, the IFB is submitted for final approval by the Contracting Officer or their designee.
 9. After approval, the IFB can be issued.
 10. The competitive sealed bid process includes the following elements:
 - a. Issuance of an IFB: An IFB must have the following parts:
 - i. Submission Instructions;
 - ii. Anticipated Timeline: Procurement and the Department should work together to determine a realistic completion date and identify key milestones throughout the process to include in the IFB. These milestones may include, but are not limited to:
 - a) IFB Issuance
 - b) Pre-bid Conference
 - c) Bidder Clarification Questions
 - d) Bid Opening Date
 - iii. Specification or Scope of Work: The following is an outline of the information that should be included in a specification or scope of work:

- a) General Requirements: Describe the contractor's responsibility to provide the goods or services to the Department;
 - b) Specific Requirements: If applicable, address the specific tasks, sub-tasks, parameters, and limitations which must be considered in providing the goods or services. The following factors should be considered:
 - (I) Details of the work environment;
 - (II) Amount of goods or services needed;
 - (III) Location of services;
 - (IV) Definition of service unit;
 - (V) Time limitations;
 - (VI) Travel regulations or restrictions;
 - (VII) Special equipment required; and
 - (VIII) Other factors affecting working environment.
 - c) County Provided Materials or Services: List any plans, reports, statistics, work space, personnel, or other County provided items that must be used by the contractor; and
 - d) Deliverables, Reports, and Delivery Dates: Identify the specific delivery dates for all documentation or other products the contractor must furnish. Be clear about the expectations of the County for the contractor's performance.
- iv. Submission Instructions and Procedures: Provide instructions for bidders on how to submit bids.
 - v. Contractual Terms and Conditions: Set the terms and conditions of the IFB, which shall be incorporated into any contract issued pursuant to the IFB.
 - vi. Required Submittal Forms: The following Required Submittals are required:
 - a) Contract Offer and Award Form
 - b) Key Personnel
 - c) 1st Tier Sub-Contractors
 - d) Representations and Certification Form
 - e) Bidder's Pricing Schedule
 - f) Reference List
 - g) W-9 – Request for Taxpayer Identification Number and Certification
 - h) Required Information Form(s)
- b. Public notice:
- vii. The Bid Notice shall be posted on the eMaryland Marketplace Advantage, and the County's Procurement web site.
 - viii. Notice inviting bids shall be published at least twenty-one (21) calendar days prior to the deadline for receipt of bids.
 - ix. Notice shall contain:
 - a) Purchasing entity name;
 - b) IFB number and title;
 - c) Brief description of the good or service to be purchased;

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- d) Date and time of the bid opening;
 - e) Date and time of the pre-bid conference, if applicable; and
 - f) Purchasing contact information for inquiries.
- c. Public bid opening at the date and time advertised and announcement of all bids received;
- d. Evaluation of bids based upon responsiveness and responsibility; and
- e. Award to the lowest, responsive and responsible bidder(s) or a cancellation if determined by the Contracting Officer to be in the best interest of the County.

B. Pre-Bid Conferences or Site Visits

1. A pre-bid conference should be held when the goods or services sought are highly technical, unique, and complex; the work under the IFB involves special work sites or conditions; or the County is procuring consultant services.
2. The IFB or an amendment must provide the time, date, and location of the pre-bid conference.

Attendance at a pre-bid conference is normally optional. However, if a pre-bid conference is critical and written justification is provided, the pre-bid conference may be designated mandatory upon the approval of the Contracting Officer. If attendance at a pre-bid conference is mandatory, only bids from bidders who were present at the pre-bid conference are eligible under the IFB.

3. The County shall advise all participants at the beginning and end of the pre-bid conference that oral representations made by the County or its representatives are not binding upon the County. Questions and points of contention presented by prospective bidders should be noted by the Buyer. The Buyer should encourage bidders to submit relevant questions and points of contention in writing before the deadline given for receipt of questions. Responses may be addressed in a written amendment after the pre-bid conference in response to written questions from bidders.

C. Bidder Prequalification

1. The Contracting Officer is authorized to prequalify prospective bidders prior to the issuance of any solicitation. Prequalification procedures shall be established in writing and sufficiently in advance of their implementation to allow prospective bidders a fair opportunity to complete the process.
2. At least 30 days prior to the date established for submission of bids under the IFB for which the prequalification applies, the Buyer shall advise, in writing, each prospective bidder which has submitted documents to prequalify whether that prospective bidder has been prequalified. In the event that a prospective bidder is denied prequalification, the written notification shall state the reasons for denial and the factual basis.
3. The Contracting Officer may deny prequalification to a prospective bidder only in the following circumstances:

- a. The prospective bidder does not have sufficient financial ability to perform the contract. If a bond is required to ensure performance of a contract, evidence that the prospective bidder can acquire a surety bond from a corporation included on the US Treasury list of acceptable surety corporations in the amount and type required by the County shall be sufficient to establish such financial ability.
- b. The prospective bidder does not have appropriate experience to perform the contract.
- c. The prospective bidder, or any officer, director, or owner of the prospective bidder, has had judgments entered against them within the past 10 years for breach of contract.
- d. The prospective bidder has been in substantial noncompliance with the terms and conditions of one or more prior contracts with a public body without good cause. This provision can be used if the facts underlying such substantial noncompliance are documented in writing in the previous contract file and such information was provided to the prospective bidder at that time, with opportunity to respond.
- e. The prospective bidder or any officer, director, owner, project manager, procurement manager, or chief financial official of the prospective bidder has been convicted within the past 10 years of a crime related to construction or contracting.
- f. The prospective bidder or any officer, director or owner of the prospective bidder is currently debarred pursuant to an established debarment procedure from bidding or contracting by any public body.
- g. The prospective bidder failed to provide to the County in a timely manner any information requested by the County as listed in C.3 (a-f) above.

D. Average Processing Times

To ensure a fair and efficient sealed bid process, the following time guidelines should be used:

1. Preparation of IFB Documents: Allow up to forty-five (45) days to prepare, edit, and issue an IFB. Add 15 days for Legal Review on contracts exceeding \$100,000;
2. Public Notice Period: Generally, an IFB will be issued for twenty-one (21) days of public notice. The public notice period may be extended in large or complex procurements;
3. Evaluation of bids: Allow at least five (5) days to evaluate bids and issue a notice of intent to award;
4. Notice of Intent to Award (NOI): Allow fifteen (15) days for the bidder to provide, and have verified, required contract documents necessary for contract award, i.e. insurance, bonds, etc.;
5. Execution of Contract: Allow at least five (5) days to execute the contract after receipt of NOI documents. Additional time is required for CSMC Approval on Contracts exceeding \$1 million;
6. Delays: Whenever a review is expected to take more than the anticipated time, the Department or Procurement should notify the other promptly of the reasons for delay. Excessive delay by either may result in expiration and cancellation of bids. The above timelines may be adjusted based on the size and complexity of the procurement and other relevant factors.

E. Vendor Questions

1. All vendor questions regarding the IFB must be submitted to the Buyer or the ProcurementHelp email box by the deadline set forth in the IFB.
2. The Buyer shall send all non-procurement related questions to the Department. The Department shall provide the written answers back to the Buyer at least eight (8) days prior to the Bid Opening, to allow the preparation of an amendment. Procurement related questions will be answered by the Buyer.
3. All questions shall be formally answered through a bid amendment.

F. IFB Amendments

1. An amendment is issued to clarify an omission or ambiguity, to add or delete information from the original IFB, or to answer contractor questions prior to the date that bids must be received.
2. Amending an IFB: If an IFB must be amended or clarified, after it was issued but prior to receipt of bids, the CO may issue an amendment to modify the IFB to provide the necessary clarifications or corrections. The following procedures apply:
 - a. Authority to issue: The Contracting Officer shall have the sole authority to issue an amendment;
 - b. Amendment must be in writing: No oral modification of any provision of an IFB shall be permitted;
 - c. Timing of amendment issuance: If it is determined that an amendment is necessary, it shall be issued no later than five (5) calendar days prior to the date bids must be received. An amendment extending the date for the receipt of bids or withdrawing the IFB may be issued any time prior to the date bids must be received;
 - d. Notification to prospective bidders: An amendment shall be available to all potential bidders by posting it on the eMaryland Marketplace Advantage and the County's Procurement web site; and
 - e. Changing bid opening date: The Contracting Officer shall consider the effect the amendment will have on the time it takes prospective bidders to prepare their bids. If additional preparation time is likely to be necessary, the amendment may also extend the date bids must be received by a reasonable period of time.

G. Bid Submittal

1. Bids shall comply with the following:
 - a. All erasures and changes in the bid shall be signed or initialed by the bidder;
 - b. Oral, telephonic, email, or faxed bids are not acceptable; and
 - c. Bids containing conditions, omissions, erasures, alterations or items not called for in the bid may be deemed non-responsive.

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2. Bids must be received by the time and date stated in the IFB or applicable amendment. All sealed bids will be received in person, through the mail or parcel service. All bidders who submit hand delivered bids in hard copy will be provided with a receipt.
3. All bids delivered to Procurement, either via mail or in-person shall be submitted in a sealed envelope.
4. Bids submitted to Procurement by hand delivery, mail, or parcel service must be time stamped. The time stamp clock in Procurement shall be the clock used to determine whether a bid is timely received. In the event that the time stamp clock is not operable, the time the bid is received shall be written on the envelope. The time from the clock available to the public in the Procurement Office shall be used to record the time. The time shall be written in ink. A Procurement employee shall observe the process and sign the outside of the envelope. Postmarks or other items used to date documents shall not be used to determine the timeliness of a bid. At times, the Contracting Officer may elect to use a camera with time stamp to establish the receipt time for sealed bids, in lieu of the manual process described above.
5. Timely receipt of bids is the sole responsibility of the bidder. The County assumes no responsibility in assuring that bids are timely received.
6. All bids received prior to bid opening shall be kept by Procurement in a secure location until the time and date set for bid opening.
7. Prior to bid opening, the identity and number of bids shall remain confidential and may only be disclosed to County officials if the Contracting Officer determines the disclosure is necessary for the proper conduct of the bidding process.
8. If a bid must be opened because it does not contain proper identification on the envelope, or if a bid is inadvertently opened, the Contracting Officer shall write an explanation of the opening, the IFB number, and date and time of the opening on a separate sheet of paper and then sign and date the explanation. The Contracting Officer also shall write the IFB number on the front of the envelope. A witness from Procurement shall be present when a bid is opened and shall sign and date the explanation regarding the opening of the bid. The explanation shall then be placed in the envelope and the bid shall then be resealed and secured with the other bids.
9. Bids not received by the due date and time shall not be considered and will be returned unopened to sender.

G. Withdrawing a Bid

1. Modifying or Withdrawing a Bid Prior to Bid Receipt Date and Time:

A bid may be modified or withdrawn prior to the bid opening by the bidder, subject to the following requirements:

- a. Notification: The bidder shall notify the Contracting Officer in writing of the intention to modify or withdraw the bid before the deadline for receipt of bids;
 - b. Time to modify: In order to modify the bid, the bidder must submit and Procurement must receive the corrected sealed bid before the deadline for receipt of bids. An attempt to modify a bid by writing on the exterior of bid envelope shall render the bid invalid;
 - c. A bidder who withdraws or modifies a bid shall not reveal the amount of its original bid; and
 - d. Resubmittal of withdrawn bid: Withdrawn bids may be resubmitted to Procurement up to the time and date bids must be received. The resubmitted bid shall comply with the bid submittal requirements.
2. Withdrawing a Bid After Bid Opening:
- a. The procedures for withdrawing a bid after bid opening must be stated in the IFB;
 - b. Except as provided in section c. below, a bidder may withdraw the bid from consideration if the price of the bid was substantially lower than other bids due solely to a clerical mistake therein, provided:
 - i. The bid was submitted in good faith;
 - ii. The mistake was a clerical mistake as opposed to a mistake in judgment and was due to an unintentional arithmetic error or an unintentional omission of a quantity of work, labor, or material made directly in the compilation of the bid;
 - iii. The unintentional nature of the arithmetic error or omission is clearly shown to the satisfaction of the Contracting Officer by objective evidence drawn from original work papers, documents, and materials used in the preparation of the bid sought to be withdrawn; and
 - iv. The bidder gave notice in writing to the Contracting Officer of the claim of right to withdraw within two (2) business days after the conclusion of the bid opening procedure and submitted original work papers, documents, and materials with such notice.
 - c. A bid may not be withdrawn when the contract would be awarded to the withdrawing bidder or another bidder in which the withdrawing bidder has more than a five percent (5%) ownership interest.
 - d. No bidder who withdraws a bid subsequent to bid opening shall supply any material or labor; perform any subcontracting work for the bidder to whom the contract is awarded; or shall benefit from the performance of the project for which the withdrawn bid was submitted.
 - e. If the Contracting Officer denies the request for withdrawal of a bid after bid opening, the Contracting Officer shall:
 - i. Notify the bidder within five (5) business days of their decision denying the bidder's request to withdraw;
 - ii. State the reason(s) for such decision;
 - iii. If applicable, award the contract to the bidder at the bid price, provided that such bidder is found to be responsive and responsible; and
 - iv. Return all work papers submitted by the bidder.

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I. Process for Opening Bids

The Buyer shall conduct a bid opening pursuant to the following procedures:

1. An attendance sheet shall be completed by everyone in attendance;
2. Bids Opened and Read Aloud: All bids timely received shall be opened and read aloud at the time and date established for such opening; and
3. The Buyer shall read aloud and record the following information for each bid:
 - a. Name of the bidder; and
 - b. Bid price.

J. Bid Evaluation

After all bids are received and opened, bids must be evaluated based upon the requirements set forth in the IFB, which may include special qualifications of potential contractors, life cycle costing, value analysis, and any other criteria such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose, which are helpful in determining acceptability. A contract shall be awarded to the lowest responsive and responsible bidder, unless the Department provides written justification that the lowest offer is unacceptable. The determination of responsiveness and responsibility shall be based upon criteria set forth in the IFB, information in the bid, and information available to the County regarding the bidder.

K. Determination of Non-Responsiveness

Responsiveness is related only to the Bid Package, not the Bidder or their Organization.

1. A responsive bid is one that is in substantial conformance with the requirements of the IFB. There is no opportunity for a bidder to provide additional information to the Contracting Officer after the bid is opened regarding the bid's responsiveness.
2. The following is a non-exhaustive list of reasons why a bid may be declared non-responsive:
 - a. The bidder failed to sign the bid, the bidder did not provide an original signature on the bid form, the bidder failed to provide required information or documents, or the bidder failed to substantially complete required forms and certificates;
 - b. The bidder changed delivery terms, e.g., the bidder changed "FOB Destination" to "FOB Shipping Point;"
 - c. The bidder did not offer goods or services that substantially complied with the requirements of the IFB;
 - d. The bidder qualified the bid in a manner that rendered it unacceptable to the County, e.g., nullifying or limiting its liability to the County;
 - e. The bidder did not offer firm prices;

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- f. The bidder substituted its standard terms and conditions for the County's terms and conditions, unless the County reserves the right in the IFB to consider such terms and conditions;
 - g. The bid fails to meet the County's required delivery schedule;
 - h. The bidder qualified its prices in such a manner that the bid price cannot be determined, e.g., the price is not stated in conformance with the required bid format, or the bidder qualified the price to protect the bidder from unknown future conditions. Administrative errors, such as miscalculations, are not to be considered pricing defects that would deem a bid non-responsive. In miscalculations of extended price, unit prices shall govern over extended prices;
 - i. The bidder failed to furnish any required bid surety;
 - j. The bidder attempted to limit the rights of the County under any term or condition in the IFB;
 - k. The bid contained a condition that requires advance payment when not permitted by the IFB. However, progress payments may be made at the discretion of the County;
 - l. The bid proposes an alternate item when alternate items are not authorized by the IFB; and
 - m. Other basis or "exception" where the bid does not substantially comply with the requirements set forth in the IFB.
3. Informalities may be waived or cured by the Contracting Officer at their sole discretion. The Contracting Officer may consider the following factors in determining whether a defect in a bid is an informality:
- a. Nature of the Defect: If the defect is only a matter of form or an immaterial variation from the exact requirements of the IFB, then the informality is minor.
 - b. Significance of the Defect: If the defect affects price, quality, quantity, or delivery, determine how significant the defect is. To be waived or cured, as an informality, the defect must be trivial.
 - c. Creation of unfair competitive advantage: If the defect potentially gives the apparent low bidder an unfair competitive advantage, then the defect is material.
4. To avoid inconsistent treatment of bidders on their pricing schedules the following statement (or similar one) should be included in the pricing schedule of relevant solicitations:
- "In the spaces below, the Bidder shall submit pricing for the goods or services set forth in the IFB and fill in the pricing schedules using US Dollars. Any Bidder who enters a zero (0), leaves blank, or uses characters on a pricing blank may be deemed non-responsive."
5. When a bid is declared non-responsive, the bidder shall be notified in writing of the determination and the reasoning for such determination. All documentation regarding a non-responsive determination shall be kept in the solicitation file.

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L. Determination of Non-Responsibility

Responsibility is related to the Bidder or their Organization, not their Bid Submission.

A responsible bidder is one who has the capability, including: the capacity; financial ability; integrity; and the moral and business integrity that will assure good faith performance in fully performing the contract requirements. The Buyer, or designee may perform the following actions to determine whether a bidder is responsible:

1. Perform the following checks:
 - a. Search the System for Award Management (SAM) to determine if the bidder is on the excluded parties list. The website can be found at: <https://www.sam.gov/>
 - b. Search the bidder's name on the Debarments List published by the Maryland Board of Public Works.
 - c. Search the bidder's name at the Maryland Department of Assessments and Taxation to verify good standing.
2. Department will conduct a reference check by contacting all references provided by the apparent lowest bidder. Buyer shall review the references when determining the responsibility of the apparent lowest bidder.
3. To make a responsibility determination, the Contracting Officer or their designee, shall consider the following criteria:
 - a. Sufficient Financial Ability: Does the bidder have sufficient financial ability to perform the contract? If a bond is required to ensure performance of the contract, the bidder's acquisition of a surety bond from a corporation included on the US Treasury list of acceptable surety corporations in the amount and type required by the County shall be sufficient to establish the financial ability of the bidder to perform the contract;
 - b. Experience: Does the bidder have appropriate experience to perform the contract? Is the bidder a regular supplier or dealer of the goods or services offered;
 - c. Judgments: Has the bidder or any officer, director, or owner thereof had a judgment entered against them within the past ten (10) years for breach of either a governmental or nongovernmental contract;
 - d. Noncompliance: Has the bidder been in substantial noncompliance with the terms and conditions of any prior contract with the County or any other public body, without good cause? This criterion shall apply only if the facts underlying the prior substantial noncompliance were documented in writing and the information related thereto was given to the bidder with an opportunity to respond and resolve;
 - e. Criminal conviction: Has the bidder or any officer, director, owner, project manager, procurement manager, or chief financial officer thereof been convicted within the past ten (10) years of a crime related to governmental or nongovernmental contracting;

- f. Debarred: Is the bidder or any officer, director, or owner thereof currently debarred from bidding or contracting by any public body or agency of any state, or by an agency of the federal government, pursuant to an established debarment procedure;
 - g. Failure to provide information: Has the bidder purposely failed to provide the County any information relevant to the criteria identified in this section that is required by the County;
 - h. Capability: Does the bidder have the capability of complying with the required delivery or performance schedule; and
 - i. Collusion: Is there suspected and documented collusion on the part of the bidder?
4. The Contracting Officer is authorized to require a bidder to provide additional assurance of responsibility, including, but not limited to, requiring the bidder to provide a guarantee by a financially stronger parent company, requiring the County's prior approval or designation of a particular project manager or superintendent, and requiring a guarantee from the bidder that management will be present at the job site during specified times.
 5. When the low bidder is declared non-responsible, the following procedure shall be utilized:
 - a. The Contracting Officer shall notify the bidder in writing of the preliminary determination of non-responsibility, provide the factual support for such determination, and provided the bidder the opportunity to inspect any documents related to the determination, if so requested by the bidder within five (5) business days after receipt of the notice of the preliminary determination.
 - b. Within ten (10) business days after receipt of notice, the bidder may submit rebuttal information challenging the preliminary determination.
 - c. If rebuttal information is provided, the Contracting Officer has five (5) business days after receipt of the rebuttal information to issue a final determination which shall be sent to the bidder via certified mail with return receipt. If rebuttal information is not received, the initial determination shall become final.
 - d. The notice shall set forth the basis for the determination and provide that the determination shall be final unless the bidder appeals the decision within ten (10) days of receipt by invoking the administrative procedures set forth in the contract, these regulations or the Code of St. Mary's County, Maryland.

M. Determining the Low Bidder

1. After the bid opening, the Buyer shall review each bid for clerical errors in the calculation of the bid price. The Buyer shall then determine which bid will require the least expenditure of funds as stipulated in the IFB. Such considerations may utilize not only initial costs, but also:
 - a. Best Value Concepts: Best value concepts may be considered when procuring goods and non-professional services, but not construction or professional services. Best value is used to select the most advantageous bid by evaluating and comparing pre-established factors, including, but not limited to, quality, technical features, experience, and past performance in addition to cost or price. Factors used in best value concepts must be approved by the Contracting Officer and included in the IFB.

- b. Life Cycle Cost: Life cycle cost purchasing allows the calculation of all costs of ownership, not just the initial purchase price. Examples of these costs would be operation or fuel costs, maintenance costs, and resale or trade-in value. The use of these factors must be approved by the Contracting Officer and included in the IFB.
- c. Costs Related to Multiple Versus Aggregate Award: If the IFB provided that awards could be made to more than one bidder, the Contracting Officer shall consider the expenses associated with the administration of multiple contracts.
- d. Special qualifications of a bidder.

N. Special Situations in Determining the Low Bidder

1. Single Bid Received:

- a. An IFB receiving a single bid from a responsive and responsible bidder may be caused by one or more reasons, such as:
 - i. The goods or services sought are available only from a sole source;
 - ii. The specifications were too restrictive and could only be met by a single bidder; or
 - iii. The qualifications of potential bidders were too limiting.
- b. If a single responsive and responsible bid is received, the Contracting Officer may consider rejecting the bid and re-soliciting the procurement with revised specifications or list of qualified bidders. The bid may be accepted if the specifications and bidder qualifications were appropriate, or the goods or services requested are available only from the bidder that submitted the bid.
- c. The bid may also be accepted if the Contracting Officer provides written justification which deems it in the best interest of the County, particularly to avoid the expense and delay of restarting the solicitation process, or when other potential bidders chose not to or were unable to submit a bid, through no fault of the County.

2. Alternate Items Bid:

If an alternate item functionally meets or exceeds the IFB specifications and alternative items are authorized by the IFB, the Contracting Officer may consider the alternate item. If the alternate item is selected, the Contracting Officer shall make a written determination justifying the acceptance of the alternate item bid.

3. Tie Bids:

- a. If two or more bids received are for the same total amount or unit price, quality and service being equal, the contract shall be awarded to a local bidder whose record with the Maryland Department of Assessments and Taxation identifies their Principal Office address is in St. Mary's County.
- b. If there are no local bidders, preference shall be given to goods that are produced in Maryland or goods and services provided by Maryland persons, firms, or corporations.
- c. If (a) or (b) do not resolve a tie bid, preference shall be given to Veteran-Owned persons, firms or corporations.

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- d. If none of the provisions in this section resolves the tie, the County shall invite the tied bidders to resubmit written bids below their original bid and an award shall be made to the lowest, responsive and responsible bidder.
- e. In the event that none of the foregoing provisions resolve the tie, the Contracting Officer may cancel the solicitation and rebid.
- f. Procurement shall maintain records of any proceeding connected with tie bids.

O. Confidentiality and Bid Inspection

1. After bids or proposals are opened and reviewed by the Procurement Division, only bidders and proposers related to the particular solicitation are permitted to review the bids or proposals. However, no one is entitled to review the bids or proposals if they are not accepted and bids or proposals are re-solicited. Once a contract is awarded the bids are open to public inspection under the Maryland Public Information Act.
2. Cost estimates relating to a proposed procurement transaction, prepared by or for the County shall not be open to public inspection.
3. Upon the request of a bidder to an IFB to inspect bids, Procurement shall provide the bidder the opportunity to inspect bid records within a reasonable time after the opening of all bids but prior to contract award, except when the County will not accept any bids and will rebid the solicitation. Bidders who submit a No-Bid Form shall not be entitled to inspection.
4. After receiving a request from a bidder, Procurement will arrange a two (2) hour window for the requester to review the bid records. A Procurement representative shall monitor the inspection of bid records. Inspections shall be subject to reasonable restriction to ensure the security and integrity of records.
5. Department staff shall not discuss bids with competing bidders. Bidder questions must be referred to the Contracting Officer. Department staff shall not discuss with any bidder or any other contractor the recommended award or the reasons for award or non-award to any bidder.
6. Trade secrets or proprietary information submitted by a bidder in connection with a procurement transaction shall not be subject to public inspection or disclosures under this section, provided that the bidder clearly identified this information upon submission of the trade secrets or proprietary information, identified the data and other materials containing such secrets and information, or stated the reasons protection is necessary.

P. Lowest Responsive and Responsible Bidder

1. Once the Buyer determines the lowest responsive and responsible bidder, the Buyer shall prepare a memorandum with a bid tab and the lowest responsive and responsible bid attached. The memorandum shall be approved by the Contracting Officer and forwarded to the Department for final recommendation and approval by the Department Head.

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2. If the Department and Procurement disagree about the award recommendation, the Department Head (or designee) and the Contracting Officer (or designee) may meet to review the reasons for the disagreement. The mutual goal of the Department and Procurement is to award to the lowest responsive and responsible bidder for goods or non-professional services that meets the Department's requirements contained in the IFB. Final decisions regarding purchases made pursuant to an IFB shall rest with the Contracting Officer.
3. After receiving the recommendation and approval of the Department Head and Contracting Officer, the Buyer shall prepare and send a Notice of Intent to Award to the recommended bidder stating that they have fifteen (15) days to provide contract related documents.
4. Upon receipt and verification of contract related documents from the recommended bidder, the Buyer shall submit the following to the Contracting Officer:
 - a. Complete Contract (signed by the chosen bidder) to be signed by the Contracting Officer;
 - b. Notice of Award Letter to the winning bidder; and
 - c. Notice of Non-Award Letter to other vendors who submitted a response to the IFB, including the name of the winning bidder, the total price of the winning bid, and the bid tabulation.

A copy of the executed contract and Notice of Award Letter shall be sent to the winning bidder and the COR. The Notice of Non-Award Letters shall be sent to all other bidders.

5. Upon execution of the Contract and notification of all parties, the Buyer shall notify the Department to complete the submission of requisitions and execute Purchase Orders.

Q. Cancellation of Bids

1. At any time prior to award of the contract, and for any reason, the Contracting Officer may cancel the IFB or reject any or all of the bids.
2. Justifications for cancelling bids often include, but are not limited to, the following:
 - a. Narrowly Written: The Contracting Officer may consider canceling an IFB if they determine that the specifications or other requirements within the IFB precluded a reasonable pool of bidders.
 - b. Inadequate Competition: The Contracting Officer should consider canceling an IFB or rejecting all bids received if there were inadequate bids received to achieve a competitive purchasing process.
 - c. Ambiguous Instructions: If multiple bidders were determined to be non-responsive for a similar reason and it is determined that the cause of the non-responsiveness may be the result of ambiguous instructions in the IFB, the Contracting Officer should consider rejecting all bids if it is determined that there is an inadequate number of responsive bidders.
 - d. Substantial Omission in the Specifications: If it is determined that an essential requirement was omitted from the specifications, the Contracting Officer should

consider cancellation of the IFB or rejection of all bids if the Contracting Officer is unable to determine whether the goods or services offered will meet the County's needs absent compliance with the omitted requirement or if, in taking into account the omitted requirement during the bid evaluation process, fairness, impartiality, or competitiveness in the purchasing process is compromised.

- e. All Prices Bid Exceed Available Funds: The Contracting Officer should reject all bids if the price bid by the apparent low bidder exceeds available funds unless the bid is for a construction project. If the bid is for a construction project and the bid does not exceed available or amended funds, the Contracting Officer may negotiate an adjustment of the bid price with the lowest, responsive and responsible bidder when time or economic considerations preclude re-solicitation.
 - f. Reasonable Suspicion of Collusive Bidding: The Contracting Officer should reject all bids if a reasonable suspicion exists that collusive bidding has occurred.
 - g. Other justifications determined by the Contracting Officer in order to maintain fairness and effectiveness within the bidding process.
3. If the Contracting Officer decides to cancel the IFB or reject all bids, the Contracting Officer shall state their reasons in writing and place in the solicitation file.

R. Opportunity to Protest

Within five (5) days after public notice of award or the announcement of the decision to award, whichever comes first, a bidder may file a protest in accordance with Chapter 19 of this manual.

SUMMARY

This chapter provides the procedures to use when procuring goods or services using competitive negotiations. The competitive negotiations procedure is permitted for the procurement of goods and non-professional services if the costs of goods or non-professional services are expected to cost \$50,000 or more, and it is determined in advance that the competitive sealed bidding procedure is either not practicable or not fiscally advantageous to the public. The competitive negotiations procedure is required for the procurement of professional services, unless provided otherwise herein.

Essential Information in this Chapter	
<ul style="list-style-type: none"> • A Request for Proposals (RFP) must include: (a) a description of the goods or services to be procured; (b) contractual terms and conditions applicable to the procurement; (c) statement of any requisite qualifications of the proposer; (d) submittal instructions and requirements; and (e) description of the evaluation criteria including any unique capabilities or qualifications which will be required of the proposer. • The Contracting Officer may modify an RFP by issuing a written amendment no later than five (5) days prior to the date proposals must be received. If the amendment extends the proposal due date or time, it may be issued at any time prior to the proposal closing date and time. • After the submission date, a Technical Evaluation Committee reviews and scores each received proposal based on the evaluation criteria included in the RFP. • Based on the Technical Evaluation Committee scoring, a “short list” of proposers may be invited to provide a formal presentation and interview with the Technical Evaluation Committee. • The Contracting Officer may cancel an RFP or reject any or all of the proposals for any reason. 	

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7-1 PURPOSE

The purpose of this chapter is to establish procedures for purchasing goods or non-professional services expected to cost \$50,000 or more using competitive negotiation.

7-2 ROLES AND RESPONSIBILITIES

Technical Evaluation Committee (TEC): The TEC is responsible for evaluating, meeting and discussing each proposal, selecting a short list of proposers (if necessary), interviewing short listed proposers (if necessary), and recommending a proposer for a contract award. Each individual member is responsible for grading and evaluating each proposal independently, prior to meeting with the committee.

Procurement: Procurement is responsible for the following during the competitive negotiation process:

1. Preparing an RFP based upon the requisition and specifications submitted by the Department;
2. Issuing and advertising the RFP;
3. Receiving and securing proposals prior to the RFP closing date and time;
4. Opening proposals;
5. Inventorying the proposals;
6. Distributing proposals to the TEC;
7. Guiding the TEC throughout the procurement process;
8. Meeting with TEC to determine a shortlist, if necessary;
9. Issuing Notices of Intent to Award;
10. Negotiating with selected proposer(s);
11. Awarding the contract; and
12. Notifying all proposers of the results of the competitive negotiation process;

Department: The Department is responsible for identifying the goods or services to be procured, developing a scope of work or specification, submitting a requisition, and working with

Procurement throughout the evaluation and selection process. After contract award, the COTR shall be responsible for overseeing and administering the contract.

7-3 PROCEDURES

A. General Procedures

1. The Department shall identify and develop a comprehensive scope of work or specifications of the good or service to be procured.
2. The Department shall prepare a requisition and submit a completed requisition for approval.
3. A requisition must include:
 - a. Draft scope of work;
 - b. Certified funds by Finance;
 - c. Independent Cost Estimate (ICE);
 - d. Technical documents, as necessary;
 - e. Required non-standard contract clauses required for the use of grant, state or federal funding;
 - f. Recommended vendors, if any;
 - g. Recommended TEC; and
 - h. Type of solicitation requested.
4. Consider the following questions when drafting the statement of work or specifications:
 - a. Who: Who needs it? Who will receive the good or service? Who will administer the contract and ensure compliance by the contractor? Who is authorized to approve the requisition?
 - b. What: What is needed? What are the critical features that the Department must have? What are the minimum qualifications or unique offering required of the proposer? What funds will be used to pay for the good or service? What is the budget estimate? What are the proposed evaluation criteria for evaluating proposals?
 - c. Where: Where must the good or service be delivered or performed? Where will it be used?
 - d. When: When must the good or service be delivered or performed? When will the Department be able to receive the good or service?
 - e. Why: Why is the item needed? Why is the delivery time important? Why are certain features important?
 - f. How: How is the good or service to be used? How should the good or service be packaged for delivery?
5. After receipt of the requisition, the Contracting Officer shall make a determination whether the competitive negotiation process is appropriate.
6. The competitive negotiation process shall be used for the procurement of professional services, unless provided otherwise herein. Additionally, the competitive negotiation

process shall be used when competitive sealed bidding is not practicable, not fiscally responsible, or when competitive negotiations are required by procurement procedures or law. Factors to consider when determining whether the competitive sealed bidding procedure is not practicable or fiscally advantageous include:

- a. Whether the contract needs to be other than a fixed-price type;
 - b. Whether discussion may need to be conducted with vendors concerning technical and price aspects of their proposals;
 - c. Whether vendors may need to be afforded the opportunity to revise their proposals;
 - d. Whether the market will respond better to a solicitation permitting a range of proposals with evaluation and discussion of them prior to making an award;
 - e. Whether the award may need to be based upon a comparative evaluation of differing price, quality, and contractual factors in order to determine the most advantageous offering to the County; and
 - f. Whether the primary consideration in determining the award may not be price.
7. Construction projects shall only be procured through competitive sealed bidding, not competitive negotiations, unless the construction is:
- a. On a fixed price design-build basis or construction management basis, when the contract is not expected to cost more than \$1 million;
 - b. For highways, streets, and alleys;
 - c. For draining, dredging, excavation or grading of, or similar work upon, real property.
8. The Contracting Officer is required to make a written determination that competitive sealed bidding is either not practicable or not fiscally advantageous prior to authorizing a competitive negotiation solicitation to be conducted for non-professional services. If the Contracting Officer makes a determination that an RFP is not appropriate, the Contracting Officer shall direct the use of competitive sealed bids.
9. Upon approval of using the competitive negotiation process by the Contracting Officer, the Buyer shall work with the Department to determine: the evaluation criteria to be used for the RFP; names and contact information of the TEC; and a draft schedule for the RFP process.
10. An RFP must contain:
- a. Description of the goods or services to be procured, including specifications or a detailed scope of work, deliverables, and contract requirements;
 - b. Contractual terms and conditions applicable to the procurement;
 - c. Statement of any requisite qualifications of the proposer, including any unique capabilities or qualifications which will be required of the proposer;
 - d. Submittal instructions and requirements;
 - e. Description of the evaluation criteria; and
 - f. Description of the short list and award criteria.

11. Procurement and the Department should establish a schedule to ensure the purchase of the goods or services are completed on or before the date the goods or services are required.
12. Procurement will prepare a draft RFP and submit it to the Department for review and approval.
13. Notification of release will be sent to the registered proposers and the RFP will be advertised by Procurement after all edits are made to the draft RFP, and the final copy of the RFP is ready to be publicized. The notification shall be provided as follows:
 - a. Manner of giving public notice: The County must notify the public of a professional services RFP issuance by posting the RFP to the eMaryland Marketplace. The County also may post notice by any other means the Contracting Officer may reasonably believe would increase competition.
 - b. Notice shall be given a reasonable amount of time prior to the last day set for receipt of proposals but at least twenty-one (21) calendar days prior to receipt of proposals.
 - c. Public notice shall contain:
 - i. Purchasing entity name;
 - ii. RFP number and title;
 - iii. Brief description of the good or service to be purchased;
 - iv. Date and time of the proposal due date;
 - v. Date and time of the pre-proposal conference, if applicable;
 - vi. Purchasing contact information for inquiries.

B. Special Requests for Professional Services

The following provisions must be followed when procuring professional services by competitive negotiations:

1. An RFP for professional services shall not seek estimates of person hours or costs for services, except as part of a separately sealed Cost Proposal.
2. The TEC shall rank the proposers by professional qualifications and proposed services based on the evaluation factors published in the RFP and information developed during the selection process. The Contracting Officer shall begin negotiations with the proposer ranked first.
3. The Contracting Officer shall engage with one or more proposers deemed fully qualified, responsible, and suitable on the basis of their proposals and with emphasis on professional competence to provide the required services. Repetitive informal interviews with proposers are permitted. During these initial engagements nonbinding estimates of total costs can be discussed. Methods to arrive at the price for services may also be discussed. Proprietary information from other proposers shall not be disclosed.
4. If a contract can be negotiated satisfactorily and to the advantage of the County at a

price considered fair and reasonable with the first ranked proposer, the award shall be made to that proposer. If a contract cannot be agreed to between the County and the first ranked proposer, negotiations with the first ranked proposer shall be terminated. Negotiations with the proposer ranked second shall then commence. If a contract cannot be put in place with the second ranked proposer, negotiations with the second ranked proposer shall be terminated. Negotiations with the proposer ranked third may then commence. This procedure shall repeat until a contract can be negotiated or until the Contracting Officer determines that is in the County's best interest to cancel or re-solicit the proposal. Once a negotiation is terminated with a proposer, negotiations with that proposer may not be reopened.

5. If the terms and conditions for multiple awards are included in the RFP, the County may award contracts to multiple proposers.
6. If the professional service involved is for legal services to be procured through competitive negotiation, the County Attorney may meet with proposers, rank each proposer, and negotiate with the proposer(s) until a contract is awarded.
7. A contract for architectural or professional engineering services relating to construction projects may be negotiated by the Contracting Officer for multiple projects provided:
 - a. Projects require similar experience and expertise;
 - b. The nature of the projects is clearly identified in the RFP; and
 - c. The contract term is limited to three (3) years.
8. Architectural or professional engineering contracts for multiple projects may be awarded to multiple proposers, provided:
 - a. The RFP states that multiple proposers may receive an award; and
 - b. Fair and reasonable prices, as negotiated, shall be used in determining the cost of each project performed;
 - c. The Contracting Officer has established procedures for awarding multiple projects among the selected contractors during the contract term.

C. Pre-Proposal Conferences and/or Site Visit

1. A pre-proposal conference or site visit is a meeting among Procurement, the Department, and prospective proposers that provides the County an opportunity to explain the specifications, scope, and objectives of the procurement, review the critical elements of the RFP, and encourage input and questions from proposers.
2. A site visit is similar to a pre-proposal conference but includes the element whereby proposers are able to observe the land, structures, or other attributes related to the procurement.
3. A pre-proposal conference should be held when the County seeks goods or services that are highly technical, unique, or complex.

4. The RFP must provide the time, date, and location of the pre-proposal conference.
5. Attendance at a pre-proposal conference should be optional in order to assure that qualified proposers unable to attend are not excluded from submitting a proposal. A Department must justify making a pre-proposal site visit mandatory and must receive written approval from the Contracting Officer. If attendance is mandatory, only proposals from proposers represented at the pre-proposal conference shall be considered. A record of all people at the pre-proposal conference must be taken.
6. Oral representations made at the pre-proposal conference or site visit are not binding upon the County. An announcement at the beginning of the pre-proposal conference shall be made to advise participants that any oral representation made at the pre-proposal conference will not be binding upon the County. Questions and points of contention should be noted by the Contracting Officer or its designee. Relevant questions and points of contention shall be addressed in a written amendment after the pre-proposal conference.

D. RFP Amendment

1. Any RFP issued is subject to change. It may become apparent that the RFP contains an omission or ambiguity that must be corrected or clarified prior to the date proposals must be received.
2. A RFP may be amended by the Contracting Officer. The following procedures shall apply:
 - a. Authority to issue: The Contracting Officer shall have the sole authority to issue an amendment.
 - b. Initiation of an amendment: An amendment may be initiated by the Contracting Officer upon a determination of the need; upon the request of the Department; or upon the request of a prospective proposer who requests clarification of a provision of the RFP.
 - c. Amendments must be in writing: No oral modification of any provision of a RFP shall be permitted.
 - d. Timing of issuance of amendments: If the Contracting Officer determines that an amendment is necessary, it shall be issued no later than five (5) days prior to the date proposals must be received unless the amendment extends the date for the receipt of proposals or withdraws the RFP. In these cases, amendments may be issued any time prior to the date proposals must be received.
 - e. Changing the date proposals must be received: When issuing an amendment, the Contracting Officer may extend the proposal date and time if the changes in the amendment would likely require more time for proposer to prepare. The Contracting Officer shall make all amendments available by posting to the County's electronic site.

E. Proposal Receipt

1. Procurement shall receive and secure all proposals in its office until the date and time announced for the closing. At that time, the proposals will be recorded (not public) and reviewed to be certain the requirements of the RFP have been met.
2. All proposals must be submitted in the format required by the RFP.
3. The Procurement Division will not accept telephone, fax, e-mail, or oral proposals in response to an RFP.
4. Hand delivered proposals shall be submitted in a sealed envelope with the RFP number on the envelope. RFP responses shall be manually time stamped by Procurement.
5. All proposals shall be reviewed for compliance with the requirements of the RFP. Proposals containing conditions, omissions, erasures, alterations, or items not delineated in the RFP may be rejected by the Contracting Officer as non-responsive.
6. Proposals shall be signed by an authorized representative of the proposer to be considered.
7. Proposals received by Procurement in sealed envelopes that do not contain a proposal number shall be immediately opened by the Contracting Officer to determine the proposal number of the submission. The Contracting Officer shall open submissions with at least one other witness from Procurement. The Contracting Officer shall write an explanation of the opening including the RFP number, the time and date of the opening, and the names and signatures of the Contracting Officer and witness. The explanation shall be placed inside the submission envelope. The submission envelope shall be re-sealed until the proposal closing date and time.
8. Identity of proposers shall remain confidential and may be disclosed only to County officials when disclosure is necessary for the proper conduct of the RFP process.
9. Proposals received after the deadline for submission shall be returned to the vendor unopened, except as provided in paragraph 7 above, and not be considered.
10. A proposer may withdraw its proposal after it has been submitted for any reason prior to the proposal's due date and time.

F. Proposal Evaluation

1. A meeting shall be held with the Buyer and the Technical Evaluation Committee. The Buyer shall attend the initial meeting and all subsequent meeting as a non-voting liaison. At this initial meeting the following shall occur:
 - a. Non-disclosure agreements and conflict of interest forms shall be distributed, reviewed, and signed prior to a member receiving the proposals for evaluation.
 - b. Copies of all proposals received in a timely matter and meeting all necessary

- administrative requirements shall be distributed to Technical Evaluation Committee members.
- c. An instruction memorandum describing the procurement process shall be reviewed and distributed.
 - d. Copies of the RFP and any amendments shall be distributed.
 - e. Address any questions as required.
2. Technical Evaluation Committee members shall independently read and evaluate the proposals using the criteria contained in the RFP prior to the committee's first meeting on the proposal. Committee members must treat the information in the proposals as confidential during the evaluation process.
 3. The Buyer will assist the committee to ensure that evaluations are fair, and be available to address any questions. The Buyer will, if necessary, arrange interviews, address clarifications, conduct reference checks, and coordinate all contact with proposers.
 4. After initial evaluations, the committee may compile a list of proposers that the committee deems most meritorious of being selected for award. This list is referred to as a "short list." The size of the short list depends on the size, scope and complexity of the project and the number of qualified proposals. Short list criteria may also be included in the RFP.
 5. The committee may require vendors to participate in interviews to provide clarification of proposals, qualification, and experience.
 6. During vendor presentations, the committee shall not:
 - a. Assist a proposer in bringing its proposal to the level of other proposals through successive rounds of discussion;
 - b. Indicate to a proposer a cost or price it must meet to obtain further consideration;
 - c. Disclose proprietary information of another proposer;
 - d. Disclose the identity of competing proposers or information derived from competing proposals; or
 - e. Advise a proposer of its price standing relative to another proposer.
 7. During presentations, the committee shall listen to each proposer's presentation, ask any relevant questions from an approved list of questions, and further negotiate with responsible proposers on the short list. Proposers shall be accorded fair and equal treatment for an opportunity to discuss and revise their proposals.
 8. After proposer's presentations, if any, committee members shall review the proposals and score the proposals in accordance with the evaluation criteria set forth in the RFP. The Buyer will then rank the proposers according to the combined scores of the individual committee members. The committee, through the Buyer, may contact a proposer to clarify any uncertainty in the proposer's best and final offer without reopening negotiations.

9. The Technical Evaluation Committee Chairperson will then evaluate the Bid Tally, and submit the final Award recommendation to the Contracting Officer.
10. Negotiations, when necessary, should then take place between the highest ranked proposer and Procurement. Negotiations allow the opportunity for proposers to address deficiencies, uncertainties, and mistakes in a proposal. Negotiations allow the County to address any concerns and negotiate the best final price.
11. The committee's recommendation based on a negotiated award must contain the following:
 - a. Name and location of the proposers considered;
 - b. A summary of the committee's meetings;
 - c. The criteria used for evaluation;
 - d. An explanation for the basis of selection or non-selection of all proposers based upon the evaluation criteria;
 - e. Recommendations for any provisions or prices that are to be negotiated with the recommended proposer; and
 - f. Include all completed evaluation forms with Comments to justify evaluations.
12. The committee recommendation does not authorize the Chairperson, or any member of the Technical Evaluation Committee or Department to notify any proposer of the status of the evaluation.

G. Contract Award

1. After completing any necessary negotiations and receiving the Department's recommendation, the Contracting Officer shall select the proposer that is the most advantageous to the County, taking into consideration price and the evaluation factors set forth in the RFP. The Contracting Officer shall negotiate the contract award solely with the selected proposer.
2. After an agreement on all terms is made, a contract shall be executed.
3. Procurement shall notify all proposers of the selection by issuing a Notice of Intent to Award or Notice of Non-Award to proposers.
4. Procurement may debrief any proposers requesting a debriefing, in accordance with section J and the Code of St. Mary's County, Maryland.

H. Cancelling the RFP or Rejecting All Proposals

At any time prior to contract award, the Contracting Officer may cancel the RFP or reject all of the proposals.

1. Cancellation or rejection is appropriate for, but not limited to, the following:
 - a. RFP is too narrowly written: When the RFP was written too narrowly and thus, precluded a reasonable pool of candidates from submitting proposals, the Contracting

- Officer should reject all proposals.
- b. Ambiguous Instructions: If upon review, it becomes apparent that numerous proposals were deficient for a similar reason and it is determined that ambiguous instructions in the RFP were likely the cause of deficiencies, the Contracting Officer should reject all proposals.
 - c. Substantial omission in the specifications: The Contracting Officer should reject all proposals, if:
 - i. an essential requirement was omitted from a RFP; and
 - ii. either:
 - (a) the Contracting Officer determines that none of the proposals will meet the County's needs; or
 - (b) the omitted requirement compromises the fairness, impartiality, or competitiveness in the purchasing process.
 - d. Cost or price exceeds available funds: If the cost of all the submitted proposals exceeds available funds, the Contracting Officer may cancel the procurement after:
 - i. the Contracting Officer requests that the Department provide a reduction in scope;
 - ii. the proposers are invited to amend their proposals in accordance with the new, reduced scope; and
 - iii. no qualified proposer submits a proposal in accordance with the reduced scope within the funds available.
 - e. Inactivity of Negotiations: If negotiations are inactive for a period of 60 days, or fail to produce an acceptable result within 365 days of initiation, the RFP may be canceled by the Contracting Officer without explanation or further obligation.
2. If the RFP is cancelled or all proposals are rejected, the Contracting Officer shall state reasons in writing and place it in the contract file.

I. Access To Procurement Information

1. The RFP record shall include all proceedings, contracts, and other records relating to the requested procurement transaction.
2. Proposal records shall be open to public inspection only after award of the contract and after a request is under the Maryland Public Information Act.
3. Proposers and the public will be permitted to inspect proposal records for two (2) hours under the supervision of the Contracting Officer or their designee. Inspection shall occur in the Procurement Office.
4. The following proposal information shall not be provided to the public or other proposers:
 - a. Cost estimates relating to a proposed procurement transaction prepared by or for the County.
 - b. Trade secrets or proprietary information submitted by a proposer if the proposer in its proposal:

- i. Identifies the data and other materials containing such secrets and information to be protected; and
- ii. States the reasons why protection is necessary.

J. Debriefing

1. Proposers must submit their written request for a debriefing to the Contracting Officer within five (5) days after the date upon which the proposer received its notification of contract issuance or non-award.
2. Post award debriefings for successful or unsuccessful proposers may be oral, written, or provided in any other manner acceptable to the Contracting Officer.
3. Debriefings may:
 - a. Not include comparisons of the debriefed proposer's proposal with those of other proposers;
 - b. Not reveal any information prohibited from disclosure or exemption by state or federal law or the Code of St. Mary's County, Maryland including, but not limited to:
 - i. Trade secrets;
 - ii. Privileged or confidential manufacturing processes and techniques;
 - iii. Commercial and financial information that is privileged or confidential, including cost breakdowns, profit, indirect cost rates, and similar information; and
 - iv. The names of individuals providing reference information about a proposer's past performance.
 - c. Include the County's evaluation of the significant weaknesses or deficiencies in the proposer's proposal, if applicable;
 - d. Include the overall evaluated cost or price (including unit prices) and technical rating, of the successful proposer (subject to subparagraph b.) and the debriefed proposer, and past performance information on the debriefed proposer;
 - e. Include a summary of the rationale for award; and
 - f. Include reasonable responses to relevant questions about whether source selection procedures contained in the solicitation, applicable regulations, and other applicable authorities were followed.
4. A summary of the debriefing shall be included in the contract file.

K. Opportunity to Protest

After public notice of award or the announcement of the intent to award, whichever comes first, a proposer may file a protest within five (5) days in accordance with Chapter 19.

SUMMARY

Cooperative procurement is a process in which two or more procurement entities cooperate to purchase goods or services. Cooperative procurement often leads to increased efficiency and reduction of overall expenses.

Essential Information in this Chapter
<ul style="list-style-type: none"> • The County may: (1) cooperatively work with other public bodies to obtain a contract, (2) seek the aid and cooperation of the Maryland Department of General Services in the purchasing of supplies, materials, and equipment, (3) ride or piggyback another jurisdiction’s contract, (4) purchase from the federal government any surplus or other supplies, materials, and equipment, and (5) negotiate against any publicly solicited contract that serves the best interest of the County. • "Shopping" cooperative contracts (using one jurisdiction's contracts to bargain with vendors) is considered an unethical purchasing practice and shall not be done.

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8-1 PURPOSE

This chapter explains the various methods to cooperatively procure goods and services. Cooperative procurement is beneficial in procuring goods and services because it reduces administrative costs, eliminates duplication of effort, lowers prices, and allows jurisdictions to take advantage of expertise and information that may be available in other jurisdictions.

8-2 ROLES AND RESPONSIBILITIES

Contracting Officer. The Contracting Officer has the authority to enter into a contract made by another public body or participate in a cooperative procurement agreement with other public bodies or private not-for-profit health or educational institutions. The

Contracting Officer may purchase supplies, materials, or equipment from the federal government or any of its agencies, or seek the aid and cooperation of the State of Maryland, Department of General Services in the purchasing of supplies, materials, and equipment.

8-3 PROCEDURES

A. Types of Cooperative Procurement

There are four types of cooperative procurements that may be used by the County:

1. Agreements with other Public Bodies: One of the participants serves as lead jurisdiction and performs the administrative details of preparing and issuing the solicitation, analyzing responses to the solicitation, and issuing a contract. The other jurisdictions add their input and commit to using the resulting contract for their requirements of the commodity to be purchased.
2. Purchases under contracts competitively entered into by another public body, private not-for-profit health institutions or educational institutions: If the contractor has agreed to extend its contract to other jurisdictions, such as the County, and the County wishes to ride the contract, the contractor must agree to offer the goods or services to the County at the same terms and conditions that were offered to the contracting jurisdiction. The Contracting Officer must approve use of another jurisdiction's contract before orders may be placed against it. All terms and conditions contained in the original contract apply to both the County and the contractor. The Contracting Officer may negotiate against any publicly solicited and awarded Contract.
3. Purchasing from the Federal Government or through any of its agencies.
4. Assistance from the State of Maryland or agencies thereof.

B. Agreements With Other Public Bodies

1. Prior to Issuing a Solicitation
 - a. If a Department is aware that another jurisdiction may issue a solicitation for goods or services that the Department may also require, or if the Department wishes to create a cooperative of Public Bodies to purchase goods or services, the Department should contact Procurement to investigate a cooperative purchase.
 - b. After notifying Procurement, the Department shall submit a requisition via Corporate Application. The requisition shall contain information to assist Procurement in arranging for a combined solicitation with the other jurisdiction(s). Sufficient time should be allowed to coordinate the combined solicitation. Complex or unique procurements will require more time to coordinate.
 - c. Procurement shall contact other Public Bodies regarding the cooperative procurement to reach an agreement regarding a solicitation.
 - d. The Public Body with most qualified staff should be chosen to lead the procurement.

- e. As jurisdictions often work under different policies and procedures, cooperative governments should agree on procurement policies and procedures in advance.
- f. The lead Public Body shall prepare the solicitation document with participation by all cooperative members.
- g. The draft solicitation should be circulated among members for comments and suggested amendments.

2. Issuing the Solicitation

- a. The solicitation shall list the lead jurisdiction to serve as a single point of contact for all vendor inquiries.
- b. The solicitation shall be advertised by each participating jurisdiction in accordance with prevailing law and procedure.
- c. The designated contact shall respond to any inquiries, manage any pre-solicitation conferences, and issue all amendments.

3. Evaluating the Solicitations

- a. For an Invitation for Bid (IFB), bids shall be publicly opened at the time, date, and place designated in the IFB. If the IFB is utilized, evaluation committee members shall select the lowest responsive and responsible bidder.
- b. For a Request for Proposals (RFP), proposals shall be reviewed for administrative requirements by the lead procurement body and distributed to the evaluation committee. If an RFP is utilized, the lead procurement body shall negotiate terms and conditions with the proposers in conformance with the solicitation.
- c. In evaluating vendors' responses, the terms and conditions must conform to all jurisdictions legal requirements and the proposer's ability to service all cooperative bodies must be considered.

4. Contract Award and Administration

- a. The lead Public Body shall notify all participating members and proposers of the contract award.
- b. Unless otherwise agreed, the lead Public Body shall be responsible for ensuring that all contract documents are properly executed.
- c. After contracts are executed, each participating Public Body, if practicable, should handle routine contract administration.
- d. Contract disputes should be handled by the lead Public Body.
- e. Purchase order disputes and discrepancies should be handled by the individual cooperative members.

C. Purchases Under Contract Competitively Entered into by Other Public Bodies (Riding Another Jurisdiction's Contract or Piggybacking)

1. When a Department becomes aware of a contract in another jurisdiction that meets a procurement need and would benefit the County, the Department should submit a purchase requisition via Corporate Application for the goods or services

required.

2. The completed requisition shall contain all necessary information and explain the existence of the contract with as much information, including, if available, the actual contract, to assist Procurement in its review of the contract.
3. After the requisition is received, Procurement shall:
 - a. Ensure that the cooperative contract allows the County to ride the contract;
 - b. Analyze the contract for goods or services specifications, price, terms and conditions, and other factors to ensure that the contract is in the best interest of the County and was competitively issued and awarded;
 - c. Review the contract for conformance with County procurement laws and procedures;
 - d. Contact the Public Body to verify contract application and eligibility;
 - e. Verify whether the contract permits negotiation of additional price concessions. If volume discounts are available, ensure they are utilized in riding the contract; and
 - f. Compare other similar contracts, if available, for the required goods or services.

The Contracting Officer may negotiate against any publicly solicited contract when it is deemed to be in the best interest of the County, except as restricted in C.4.

4. Procurement cannot ride another contract if the contract is for:
 - a. Architectural or engineering services only, or
 - b. Construction in excess of \$200,000, from the contract of another local public body if the Contractor is more than a straight-line distance of seventy-five (75) miles from the County boundary. Exceptions to this prohibition include the installation of artificial turf or work on other specialized facilities.
5. If Procurement determines the cooperative contract is in the best interest of the County, Procurement shall enter into a contract with the vendor per the terms and conditions of the cooperative contract.

D. Purchasing from the Federal Government

1. The Contracting Officer may purchase from the federal government or through any of its agencies, as allowable, any surplus or other supplies, materials, and equipment needed by the County when purchases will serve the best interest of the County. The competitive provisions of the County Code are waived if purchases are made through the Federal Government.
2. Departments must contact Procurement to be certain that purchases from the federal government have been coordinated and approved before attempting to place orders. Requirements and restrictions on many programs can be found at: <http://www.gsa.gov/portal/content/105300>.

E. Assistance from the State of Maryland

1. The Contracting Officer may seek the aid and cooperation of other State Agencies, including the Maryland Department of General Services (DGS) in the purchase of supplies, materials, and equipment for the County so that prices beneficial to the County may be obtained.
2. DGS is the central purchasing office for goods and printing and maintains oversight of most statewide contracts.
3. In addition to purchases from DGS, County Departments are authorized to purchase directly from Maryland Correctional Enterprises.

F. Shopping of Cooperative Contracts Prohibited

"Shopping" cooperative contracts (using a jurisdiction's contract to bargain with a vendor) is considered an unethical purchasing practice. It is the duty of the County to be fair to all vendors and promote impartiality. County employees shall not engage in the practice of "Shopping".

SUMMARY

This chapter provides an overview of the various contract types used by the County, the advantages and disadvantages of certain County contracts, and guidance for different contracts uses.

Essential Information in this Chapter
<ul style="list-style-type: none"> • There are various contracting methods that the County may utilize to serve its best interests in issuing a contract. • A firm fixed price contract is generally the preferred contract type for use by the County. • Non-standard contracts must be approved by Procurement, and if applicable, the County Attorney.

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9-1 PURPOSE

To explain the various types of contracts utilized by the County and provide guidance as to when the various types should be used.

9-2 ROLES AND RESPONSIBILITIES

Department: The Department is responsible for verifying that any non-standard contract document (quotation, proposal, etc.) received that contains terms and conditions is submitted to Procurement for approval before any action is taken regarding them.

County Attorney: The County Attorney’s Office is responsible for ensuring legal sufficiency in non-standard contract documents as applicable.

Procurement: Procurement is responsible for determining acceptability of contractual terms and conditions of any non-standard contract document.

9-3 PROCEDURES

A. Origin of Contracts

Contracts are originated in several different ways before they are used by County departments:

1. **County Contracts:** These contracts are executed by Procurement either for County-wide purposes or for a specific Department. For purposes of reference, the County assigns a contract number to all of these contracts. The contract numbers are used when placing orders to ensure that the order is linked to the correct contract.
2. **State Contracts:** These contracts are entered into by the State of Maryland Department of General Services, or other State of Maryland departments with contractual authority. If these contracts have a cooperative purchasing clause acknowledged by the contractor, the contract may be used by other political jurisdictions, such as the County.
3. **Cooperative Purchase Contracts:** These are contracts that may be entered into by two or more Public Bodies, or a contract procured through a competitive process where the contractors agrees to allow other Public Bodies to use the contract, such as the County.

Whenever Procurement assigns a contract number for a County Contract involving a particular commodity or service, departments must use that agreement unless approval is received by the Contracting Officer to utilize a different contract.

B. Contract Approvals

1. Only the Procurement Officer and the Contracting Officer are authorized to sign contracts which bind the County for the purchase of goods or services, unless a specific delegation or exemption is made by Code, regulation, or letter of authority to another official or employee by the Commissioners of St. Mary's County.
2. The Contracting Officer, or designee will sign standard contract documents if the documents are authorized and comply with procurement procedures.
3. Non-standard contracts and documents shall be processed as follows:
 - a. The Department shall review the document and forward to Procurement Division for approval;
 - b. The Procurement Division shall forward the document to the County Attorney for approval as to legal form as applicable;
 - c. The Procurement Division may execute the contract on behalf of the County if it is

approved.

C. Multiple Award Schedule Contracts (MAS Contracts)

MAS Contracts provide a pool of pre-qualified contractors for future required service(s). To establish a MAS Contract, the following procedures shall be followed:

1. The Contracting Officer shall make a written determination setting forth the reasons for a MAS Contract, which determination shall be made a part of the purchasing file.
2. The Contracting Officer should avoid situations in which a single contractor is awarded a component of the statement of work to minimize the likelihood that orders in those areas will be awarded on a sole-source basis.
3. MAS Contracts shall not be awarded when a single award will meet the County's needs without sacrifice of economy or service.
4. Any such awards shall be limited to the least number of suppliers necessary to meet the valid requirements of the Department.
5. The RFP process is normally used to establish a MAS Contract.
6. Prices are negotiated as part of the evaluation and contract award process. These prices shall become part of the contract and are used for subsequent task orders.
7. The process for utilization of a MAS Contract shall be as follows:
 - a. Projects/Task Orders valued less than \$15,000 will be awarded by the Department requiring work to the contractor that attained the highest ranked point score, or the pre-established pricing as determined during the evaluation process as stated in the Contracts award(s).
 - b. Projects/Task Orders for projects valued between \$15,000 and \$29,999 will be issued by the Department. Task orders will be sent to the firms who were issued contracts under the RFP requesting price proposals. The Project will be awarded to the low bidder.
 - c. Projects/Task orders for projects valued above \$30,000 will be issued by Procurement. Procurement will send solicitations to all firms issued contracts under the relevant RFP who have the expertise to perform the required task(s). Procurement will issue a purchase order to the contractor who provides the lowest responsible and responsive bid. Quotes will be based on the pre-established pricing negotiated in the RFP process.
 - d. In emergency situations, the County may use emergency procedures for selecting one of the contractors if such procedures are provided in the contract.
8. When an IFB is scheduled for Multiple Awards, the evaluation factors in the IFB must clearly state in the conditions for award, how purchase orders will be awarded and issued to multiple vendors.

D. Indefinite Delivery/Indefinite Quantity (IDIQ)

1. An IDIQ contract is used when the Department is unable to determine, above a certain minimum, the precise quantities or services that the Department may require during a contract period.
2. IDIQ contracts are most often used for service contracts, architect-engineering services, and certain supplies.
3. IDIQs streamline the contract process and speed delivery.
4. Awards are usually made for a definite number of base years and include County option periods.
5. The County places delivery orders (for supplies) or task orders (for services) against a contract for individual requirements. Minimum and maximum quantity limits may be specified in the contract as either number of units (for supplies) or as dollar values (for services).
6. Under an IDIQ, a Department does not commit to buy all its needs from the contractor. The Department may commit, however, to buy an identified minimum quantity of goods or services and the contractor commits to provide the minimum requested goods or services.
7. The vendor knows exactly when or how much of a good or service is needed when task and delivery orders are issued.

E. Contracts For Personal Services

1. Before approval of an individual or entity to provide personal services to the County, it should be certain that no violation of Internal Revenue Service regulations will occur. A personal services contract shall not establish an employer-employee relationship with the County.
2. Generally, the IRS will expect the following tests to apply to support a personal services contract with an individual:
 - a. The individual or entity has performed similar services on a contractual basis with other clients;
 - b. The individual or entity has paid tax withholding and social security withholding as a self-employed person and agrees to do so during their contract with the County; and
 - c. The individual or entity will perform the duties independently without direct detailed supervision by the County, to include independence in establishing work hours and location of performance of duties.
3. As alternatives to requesting personal services contracts, the Department should

contact the County's temporary services contractor(s) or use the County's Human Resources Department rules to employ temporary or part time temporary personnel.

F. Multi-Award Contracts

1. A multi-award contract may be used when an uncertain amount of goods or services will be required, and when the Contracting Officer deems it to be in the best interest of the County.
2. Multi-award contracts shall not be awarded for the purpose of making available product or supplier selection to allow for user preference unrelated to the best interests of the County; or avoiding the resolution of tie bids.
3. A multiple award contract may be made when award to two or more bidders or proposers for similar products are necessary for adequate delivery, service, or product compatibility.
4. The Solicitation document shall clearly state in the conditions for award, how purchase orders will be awarded and issued to multiple vendors.
5. At the Contracting Officer's discretion under a multi-award contract, multiple vendors may be assigned an order of precedence (primary, secondary, and tertiary) and ranked based on their bids or proposals. Rankings shall be based on criteria set forth in the solicitation and multiple vendors will be awarded a contract.
 - a. The vendor ranked first will be considered the primary vendor and will be contacted first for all purchase or task orders issued under the contract. If the primary vendor is able to completely fulfill the order, the primary vendor will be awarded the full order.
 - b. If the primary vendor is unable to fulfill the complete order, the County may award a portion of the order to the primary vendor and award the remaining portion to the secondary vendor.
 - c. If the primary and secondary vendors are unable to completely fill the requirements, the tertiary vendor may be selected to complete any remaining portions of the order.

G. Requirements Contracts

1. A contract whereby the County is obligated to order and the Vendor is obligated to supply all of the County's normal requirements for a specified price during a specified period.
2. A requirements contract may be appropriate for acquiring any supplies or services when the County anticipates recurring requirements but cannot predetermine the precise quantities of supplies or services that the County will need during a definite period.

H. Time and Material Contracts (T&M Contracts)

1. T&M contracts are used when it is not possible to accurately estimate the extent or duration of the work or to anticipate costs with any reasonable degree of confidence.
2. Because a T&M contract shifts most of the risk from the contractor to the County, these contracts should be used only when no other contract vehicle is available.
3. T&M contracts are based on paying the vendor:
 - a. the actual cost of direct labor at fixed hourly rates, which include wages, overhead, general and administrative expenses, and profit; and
 - b. the actual cost of materials.
4. T&M contracts do not provide incentives to the contractor for cost control. Therefore, it is imperative that the Department closely monitor the contractor to assure that the contractor is performing efficiently and using effective cost control measures.
5. The Contracting Officer may add a Not to Exceed (NTE) clause to a T&M contract. An NTE clause allows the vendor to charge for its labor and materials up to a certain maximum. Any time and materials costs that exceed the NTE will be the responsibility of the contractor.
6. A NTE clause offers incentive for the supplier to work efficiently and helps provide a good estimate for internal budgets.
7. The value of a NTE clause, however, may be adjusted upward or downward depending on changes in the scope of work or specifications.
8. The NTE amount shall be listed on the Purchase Order.

I. Cost Plus

1. A type of contract wherein the County agrees to pay the cost of all labor and materials plus an amount for contractor overhead and profit. **Cost plus a percentage of cost are not permitted.**

J. Firm Fixed Price (FFP)

1. This contract type places upon the contractor maximum risk and full responsibility for all costs and resulting profit or loss.
2. FFP contracts provide maximum incentive for the contractor to control costs and perform effectively. They also impose a minimum administrative burden upon the contracting parties.
3. A FFP contract is the preferred contract type for use by the County.

4. A FFP contract is suitable for acquiring goods and services on the basis of certain specification when fair and reasonable prices can be easily determined, such as when:
 - a. There is adequate price competition;
 - b. There are reasonable price comparisons with prior purchases of the same or similar goods, supplies or services made on a competitive basis or supported by valid cost or pricing data;
 - c. Available cost or pricing information permits estimates of the probable costs of performance; or
 - d. Performance uncertainties can be identified, and reasonable estimates of their cost impact can be made, and the contractor is willing to accept a firm fixed price representing assumption of the risks involved.

5. FFP contracts may also include terms that allow the fixed price to change depending on circumstances. A common additional term allows for a FFP contract with economic price adjustments. By adding this term, the contractor agrees to provide goods or services for a certain specified priced that can be adjusted with certain economic conditions. Generally, the price is linked to the CPI-U for the Washington-Baltimore Metropolitan Area.

SUMMARY

This chapter establishes the process for purchasing goods or services when only a single vendor is practicably available to provide the goods or services.

Essential Information in this Chapter	
<ul style="list-style-type: none"> • A sole source is the only vendor practicably available to provide the goods or services required by the County. • The requirement for competition is excused when it is determined that the good or service to be procured by the County is practicably available from only a sole source. • The determination to procure a good or service on a sole source basis shall be made in writing by the Contracting Officer. 	

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10-1 PURPOSE

The purpose of this procedure is to establish the process for procuring a good or service when there is only one vendor practicably available to provide the requisite goods or services. The requirement of competitive procurement is excused when the Contracting Officer determines in writing that the good or service is practicably available from only a sole source.

10-2 ROLES AND RESPONSIBILITIES

Contracting Officer: The Contracting Officer shall issue a written notice stating that only one source was determined to be practicably available and identifying that which is being procured and the contractor selected. The Contracting Officer is responsible for reviewing and investigating sole source requests and for authorizing sole source procurements.

Department Head: The Department Head is responsible for reviewing sole source requests from within their Department, justifying such requests and forwarding requests to Procurement for concurrence.

10-3 PROCEDURES**A. Criteria**

The justification for sole source procurement must be included with the Sole Source Justification Form and must be based on one or more of the following reasons:

- a. The vendor is the original manufacturer and there are no regional distributors. If the vendor is the original manufacturer, written evidence should be included with the Sole Source Justification Form to support the claim.
 - b. The goods or services required are not interchangeable with similar goods or services available from another source and no other source will satisfy requirements.
 - c. No other goods or services are available that will meet the specialized needs of the Department or perform the intended function.
 - d. Detailed justification which establishes beyond doubt that the vendor is the only source practicably available to provide the goods or services required.
2. Sole source justification based solely on a single vendor's capability to deliver the required good or service in the least amount of time is not appropriate since availability alone is not a valid basis for determining sole source procurements.
 3. Prior to making a sole source determination, the Contracting Officer should conduct their own investigation and request any necessary information.

B. Purchases Between \$30,000 and \$100,000

The following procedures shall be used for sole source procurement for purchases between \$30,000 and \$100,000:

1. The Department shall complete the Sole Source Justification Form. The Sole Source Justification Form shall provide:
 - a. A description of the goods or services;
 - b. The reason(s) the Department believes that the required goods or services may be procured only from a single vendor using the criteria in Section (A) above; and
 - c. An explanation of the Department's efforts made to reach its conclusion that the goods or services may be procured only from a single vendor.
2. Documentation or justification to support the determination of sole source shall be included with the Sole Source Justification Form.
3. The Department Head must sign the Sole Source Justification Form.
4. The Department must submit the Sole Source Justification Form to Procurement for review and approval/disapproval by the Contracting Officer.

5. If approved by the Contracting Officer: The Contracting Officer shall sign the Sole Source Justification Form and advise the Department of the determination. The Contracting Officer also shall post the determination on the Finance Department/Procurement Division bulletin board or other designated public area by the date of decision to award the contract or date of announcement of such award, whichever occurs first. The written notice shall state:
 - a. One source has been determined to be practicably available;
 - b. The goods or services being procured; and
 - c. The contractor selected.
6. The Sole Source Justification Form can be used for public notice if all necessary information is provided.
7. The approved Sole Source Justification Form should be attached to the requisition submitted in the Corporate Application.
8. If not approved by the Contracting Officer: the Contracting Officer shall inform the Department of the decision and shall not approve the Sole Source Justification Form. The Department shall comply with the standard procedures in order to purchase the required goods or services.

C. Purchases Greater than \$100,000

The following procedures shall be used for sole source procurements for purchases greater than \$100,000, and requires an additional approval by the Procurement Officer:

1. The Department prepares a requisition for the goods or services.
2. The Department completes the Sole Source Justification Form. The Sole Source Justification Form shall include:
 - a. A description of the goods or services;
 - b. The reason(s) why the Department believes that the goods or services may be procured only from a single vendor using the criteria in this chapter; and
 - c. An explanation of the Department's efforts made to reach its conclusion that the goods or services may be procured only from a single vendor.
3. Documentation or justification to support the determination of sole source shall be included with the Sole Source Justification Form.
4. The Department Head must sign the requisition and the Sole Source Justification Form.

5. Submit the requisition and Sole Source Justification Form, via Corporate Application, for review and approval/disapproval by the Contracting Officer, and subsequent concurrence and approval by the Procurement Officer.
6. If a sole source request is disapproved, the Contracting Officer shall notify the Department of the determination and include a written statement supporting the determination. The Department shall comply with the standard procedures in order to purchase the required goods or services.
7. If approved, Procurement shall post a copy of the approved Sole Source Justification Form on the Finance Department/Procurement Division bulletin board on the date of decision to award the contract or the date of announcement of the contract, whichever comes first.

D. Contract/Price Negotiation

1. Upon approval of the Sole Source Justification Form, a contract may be negotiated and awarded without competition. A sole source determination does not, however, eliminate the requirement for a written offer and conditions of sale from a vendor prior to issuing a purchase order or signing a contract.
2. All contracts shall be signed only by the Contracting Officer or the Procurement Officer except as otherwise delegated by the Commissioners of St. Mary's County.
3. For contracts under \$30,000, the Department may negotiate the contract cost. For all contracts greater than \$30,000, Procurement shall be responsible for all negotiations.
4. Written documentation of the negotiations shall be included in the contract file.
5. The Department or Procurement shall fully research the good or service and determine in writing what is a fair and reasonable price. For example, if the good or service has been provided before, document what price was previously paid. The research and determination will provide valuable pricing information that can be used in the course of negotiations and in determining price reasonableness.
6. Except as provided in the subsections below, an approved sole source determination may be valid for subsequent purchases of the same item or service for a maximum period of two (2) years.
 - a. An approved sole source determination may be valid for a period of less than two (2) years if the determination is rescinded by the Contracting Officer or sole source was issued with a shorter term.
 - b. The Contracting Officer may approve a sole source determination for a period longer than two (2) years up to a maximum of five (5) years if the Contracting Officer provides written justification that a period longer than two (2) years is in the best interest of the County.

SUMMARY

This chapter explains when and how to promptly procure goods, services, insurance, or construction in situations deemed to be emergencies.

Essential Information in this Chapter
<ul style="list-style-type: none"> • Competitive sealed bidding and competitive negotiation procedures are excused when it is determined that an emergency exists that necessitates the need for the procurement. • An emergency may exist when: (a) unforeseen causes may create delays or halt work, essential services, contracts, or transportation; (b) unforeseen causes may create spoilage; or (c) there is a pressing need to protect the public health, safety, infrastructure or welfare.

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11-1 PURPOSE

The purpose of this chapter is to establish the procedures and processes to be used when making purchases on an emergency basis.

11-2 ROLES AND RESPONSIBILITIES

Procurement Officer: The Procurement Officer may authorize an emergency to meet a pressing need to protect the public’s health, safety, infrastructure or welfare. This authorization must be in writing and the Commissioners of St. Mary’s County must be notified in writing of such action with a statement detailing the emergency and relevant transactions within thirty (30) calendar days of the authorization.

Department Head: The Department Head is responsible for authorizing emergency purchases during non-business hours and submitting all applicable paperwork supporting their determination to Procurement. During normal business hours, the Department Head must seek authorization of the Contracting Officer prior to making an emergency procurement.

Contracting Officer: The Contracting Officer is responsible for approving emergency

purchases that are requested during normal business hours and reviewing emergency purchases that occur during non-business hours.

11-3 PROCEDURES

Emergency procedures may be used to purchase only that which is necessary to cover the requirements of the emergency. This does not alleviate the Department from negotiating a fair and reasonable price. The Department may procure materials, equipment or supplies above its delegated authority with the advance written approval of the Contracting Officer. The Department must prepare a confirming Requisition as soon as practicable, after directing the contractor to proceed. The Department should include all terms, conditions, insurance, etc., including price(s) in full detail. The Department must keep documentation indicating the nature of the emergency and the reason for selecting a particular contractor on file.

A. Criteria

1. Competitive sealed bidding and competitive negotiation procedures are excused when it is declared that an emergency exists which necessitates the need for the procurement of the goods or services using the procedure provided.
2. An emergency may exist if:
 - a. unforeseen causes may create delays or halt work, essential services, contracts, or transportation;
 - b. unforeseen causes may create spoilage; or
 - c. there is a pressing need to protect the public health, safety, infrastructure or welfare.
3. An emergency purchase shall be used only if the need for the goods and/or services is immediate and non-recurring.

B. Emergencies Outside County Business Hours

The following procedures shall be used for emergency purchases outside County business hours:

1. The Department Head may approve immediate action to make emergency purchases once it has been determined that an emergency exists.
2. The Department Head, when practicable, should seek and document competitive sources and prices.
3. It is preferred that all quotations and communications with vendors be in writing.
4. When practicable, the selected contractor shall be the lowest responsive and responsible bidder.

5. As soon as possible, but not later than the end of the next business day after an emergency purchase occurs, the Department shall provide the following to Procurement:
 - a. a written justification of the purchase approved by the Department Head;
 - b. a tabulation of any informal quotes obtained;
 - c. basis for selecting the vendor;
 - d. copy of the delivery record; and
 - e. the applicable requisition.
6. The Contracting Officer shall, if necessary, issue a purchase order or contract with the vendor selected for the applicable procurement.

C. Emergencies During County Business Hours

The following procedures shall be used for emergency purchases made during normal business hours:

1. The Department shall notify the Contracting Officer of the emergency situation and obtain written or verbal approval to proceed with the emergency purchase. The Department should complete and submit an Emergency Purchase Requisition to the Contracting Officer for approval.
2. The Department must present the following information to the Contracting Officer:
 - a. description of the goods or services to be purchased on an emergency basis; and
 - b. basis for determining that an emergency exists.
3. If the Contracting Officer disapproves the Department's request for the emergency purchase, the Department shall comply with all applicable standard purchasing procedures for the purchase of the goods or services.
4. If the Contracting Officer approves of the emergency purchase, the Department shall, whenever practicable, secure at least three informal quotes and purchase from the lowest responsible and responsive bidder. It is preferred that the three informal quotes are received in writing and documented on the Informal Quotation Form.
5. The Department shall provide the following to Procurement by the next business day:
 - a. a written justification of the purchase approved by the Department Head;
 - b. a tabulation of any informal quotes obtained;
 - c. basis for selecting the vendor;
 - d. copy of the delivery record; and
 - e. the applicable requisition.

D. Public Notice

1. In the event a contract may be awarded without competitive sealed bidding or competitive negotiation pursuant to the emergency procedures, the Contracting Officer shall post a written notice or the Sole Source Justification form on the Procurement Division bulletin board which shall include the following information:
 - a. a statement that a contract will be or was awarded on an emergency basis;
 - b. a description of the goods or services being procured;
 - c. the identity of the vendor; and
 - d. the date on which contract was or will be awarded.
2. If immediate notice is not possible, the public notice shall be posted as soon as practicable.

E. Emergency Declared by the Commissioners of St. Mary's County

1. The Commissioners of St. Mary's County are authorized to declare the existence of an emergency and authorize the purchase of goods and services on an emergency basis where the emergency purchase is necessary to meet a pressing need for other than a regular or recurring requirement in order to protect the public health, safety, infrastructure or welfare.
2. Any such declaration will be made in writing.
3. The Department Head shall notify the Contracting Officer with a written statement explaining the emergency and providing a description of the related transaction within ten (10) days of any purchase made pursuant to the Commissioners of St. Mary's County's declaration of an emergency.
4. The Department shall provide the following to Procurement as soon as practicable:
 - a. a written justification of the purchase approved by the Department Head;
 - b. a tabulation of any informal quotes obtained;
 - c. basis for selecting the vendor;
 - d. copy of the delivery record; and
 - e. the applicable requisition.

SUMMARY

A Blanket Purchase Order (BPO) is a tool used to increase productivity and efficiency in the purchasing of goods or services made on a recurring basis.

Essential Information in this Chapter
<ul style="list-style-type: none"> • A BPO is used as a payment vehicle for ongoing purchases between the County and the vendor for goods or services during a specific period of time and allow for the issuing of orders against the BPO for the life of the contract, e.g., office supplies. • A BPO is administered and managed through the Corporate Application system by Procurement.

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14-1 PURPOSE

To increase efficiency and productivity in the purchase of items that may be required on a recurring basis.

14-2 ROLE AND RESPONSIBILITIES

Procurement: Procurement is responsible for issuing BPOs for Departments to utilize.

Department: Each Department is responsible for:

1. Placing the order to the vendor using the BPO as a reference;
2. Arranging delivery of goods or services pursuant to the BPO; and
3. Approving invoices related to the BPO as designated by the Department Head.

14-3 PROCEDURES

A BPO is created to enable ongoing purchases between the County and the contracted vendor for goods or services during a specific period of time and allow for the processing of orders against a BPO for the life of the contract.

1. BPOs are generally used in the following circumstances:
 - a. Purchases of the goods or services, including inventory, that may occur several times during the current year;
 - b. Purchases that occur only once each year but are purchased every year. Items such as prepaid maintenance contracts, use permits, and software licenses are included

- in this category; or
 - c. Purchases for goods or services that are required on very short notice.
2. For a Department to obtain a BPO, the Department shall submit a requisition for a BPO, providing the following information:
 - a. Identify the requisition as a blanket order or encumbrance of funds;
 - b. A brief description of the goods or services required;
 - c. Effective dates of the BPO (include a reasonable beginning and ending date); and
 - d. Reference the applicable contract number the BPO will be used against.
 3. After the BPO is issued by Procurement, the Department may order goods or services from the vendor pursuant to the terms and conditions of the BPO.
 4. A standard Purchase Order with an encumbrance of funding with a unit of measure in Dollars may also be considered a Blanket Order for non-inventoried items.
 5. BPOs shall not take the place of standard POs or purchases that require full and open competition.

SUMMARY

This chapter provides an overview of the procedure for preparing a purchase order (PO) to procure goods and non-professional services.

Essential Information in this Chapter
<ul style="list-style-type: none"> • A PO is used to order goods or services from a vendor or contractor on behalf of the County. • To be valid, a PO must be signed by the Contracting Officer prior to placing an order. • A PO can be written in any amount.

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15-1 PURPOSE

A PO is used to order goods or services from a vendor or contractor. A PO also provides an audit trail for such transactions.

15-2 ROLES AND RESPONSIBILITIES

Accounting Division: The Accounting Division is responsible for verifying remittance addresses, and processing payment requests submitted by the Department.

Department of Finance (Finance): Finance is responsible for determining whether funds are available within the budget for submitted requisitions.

Procurement: Procurement is responsible for reviewing and approving requisitions for the purchase of goods, non-professional, or professional services valued greater than the established exempt purchasing thresholds.

Department: The Department is responsible for preparing requisitions, with back-up documentation, for the purchase of goods or services through Corporate Application and for obtaining any necessary approvals prior to converting the requisition into a PO necessary to order goods or services.

15-3 PROCEDURES

- A. A PO is generated from Procurement by converting a requisition prepared, approved, and issued through the County’s Corporate Application system.

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- B. The Department shall prepare a requisition for the purchase of goods or services and ensure that all necessary documentation is attached to the requisition.
- C. After conversion, the PO must be “printed” by Procurement for issuance.
- D. Upon issuance, Procurement shall deliver the PO to the vendor via U.S. Mail or eMail as practicable. The PO shall include all necessary attachments.
- E. Procurement may reject a requisition for reasons including, but not limited to:
 - 1. Vendor is not under contract with the County;
 - 2. Quotes are not provided;
 - 3. Correct number of quotes are not provided;
 - 4. Bid tabulation not included;
 - 5. Vendor has been debarred;
 - 6. Department attempts to use contracts not previously approved by Procurement;
 - 7. Finance advises that there are insufficient funds;
 - 8. Finance did not approve the funding (lack of funds);
 - 9. Incorrect Accounting information;
 - 10. Incorrect remittance, shipping, or billing address(es);
 - 11. Missing or unfavorable shipping terms (the shipping term FOB Destination is more favorable to the County than the shipping term FOB Origin or FOB Shipping Point);
 - 12. No authorization from the Department Head; or
 - 13. Lack of appropriate backup documentation.

SUMMARY

A change order is a modification to a contract or PO. All change orders, regardless of amount or content, must be approved by the Contracting Officer in writing. Departments must utilize Corporate Application to request a change order.

Essential Information in this Chapter
<ul style="list-style-type: none"> • Change orders for fixed price contracts that are \$50,000 or more must be approved by the Procurement Officer in the Corporate Application prior to execution. • All change orders must be approved in writing by the Contracting Officer prior to execution. • A change order cannot be approved orally. • A change order must be approved by the Contracting Officer or Procurement Officer.

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16-1 PURPOSE

These procedures establish the process to be followed when processing a change order.

16-2 ROLES AND RESPONSIBILITIES

Procurement Officer: Change orders in fixed price contracts where the change order is \$50,000 or more require Procurement Officer approval in the Corporate Application before any action can be taken.

Department of Finance (Finance): Finance is responsible for determining whether funds are available within the budget for change orders.

Contracting Officer: The Contracting Officer is responsible for reviewing and approving all change orders.

Procurement: Procurement will review the change order to ensure validity under the contract terms and that it is reasonable.

Department: The Department is responsible for requesting a change order and providing all back up information to support such requests.

16-3 PROCEDURES

A. Request for Change Orders

1. Introduction:
 - a. Change orders are generally utilized to:
 - Increase or decrease the number of units originally ordered;
 - Increase or decrease the amount of the funds pertaining to the contract or relevant PO;
 - Change the delivery date;
 - Change the delivery location;
 - Extend the contract term;
 - Cancel all or part of a purchase order;
 - Modify the work within the scope of the original work;
 - Incorporate CPI-U changes; and
 - Correct clerical errors.
 - b. There is no minimum value for a change order.
 - c. Work pursuant to a change order shall not begin until the change order has been approved by the Contracting Officer and signed (when applicable) by the Vendor.
 - d. Change order requests shall be discussed between the contractor and the COTR.
2. A change order must be completed in writing by the COTR and submitted for approval in Corporate Application through the original requisition. Additional information required to justify the change order should be included with the request.
3. Finance will verify whether additional funds are available in the approved Budget for the proposed contract modification. If funds are not available, the change order may not be approved by Finance.
 - a. A change order for a fixed-priced contract that seeks to increase the cost by more than \$50,000 must receive Procurement Officer approval.
 - If the Procurement Officer approves, the Procurement Division reviews the change order.
 - If the Procurement Officer rejects, the change order cannot be approved and utilized. The COTR may work with the contractor to edit the change order request to resubmit for approval.
 - No change order shall be effective until approved by the Contracting Officer in

the Corporate Application.

4. If Finance and, if applicable, the Procurement Officer approve, Procurement will review the change order to ensure validity under the contract terms and that it is reasonable. A Buyer shall forward its findings and recommendation to the Contracting Officer for authorization. The Contracting Officer will review and determine whether to approve the change order.
5. If approved, the change order must be “printed” by Procurement for issuance.
6. Upon issuance, Procurement will deliver the change order to the contractor via U.S. Mail, email, or facsimile (including all necessary attachments) and will coordinate signature and execution of the change order requirements with the contractor.
7. If rejected, the change order is not valid and the COTR will be notified.

NOTE: County personnel who provide unauthorized change orders to contractors (i.e., not approved by the Contracting Officer) **may be personally liable** for increased charges to the County and are subject to discipline in accordance with the County’s Manual of Personnel Policies and Procedures.

SUMMARY

This procedure outlines the policies and guidelines governing the management of certificates of insurance (COI) to ensure that the required insurance coverage is maintained by contractors who have been awarded County contracts.

Essential Information in this Chapter
<ul style="list-style-type: none"> • Selected contractors must submit required insurance within fifteen (15) days of receipt of a notice of intent to award (NOI). • If an IFB, RFP, or cooperative contract requires insurance, Procurement will be responsible for ensuring that the awarded contractor has the required insurance coverage outlined in the contract documents. • The COR/COTR is responsible for verifying that awarded Contractors maintain the required insurance throughout the life of a contract.

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17-1 PURPOSE

Verification of the existence of insurance coverage, either by Procurement (in the case of competitive negotiations, competitive sealed bids or cooperative contracts) or by the Department (concerning actions within its delegated authority), is required for active County contracts to reduce the County’s risk of being held financially responsible for claims against, or losses by, its contractors.

17-2 ROLES AND RESPONSIBILITIES

Procurement: Procurement is responsible for acquiring and verifying contractor insurance before awarding any contract resulting from an IFB, RFP, or cooperative solicitation.

COTR: The COTR is responsible for ensuring that contractors maintain the required insurance coverage for the life of an awarded contract or during their business with the County.

17-3 PROCEDURES

1. If the IFB or RFP requires that a contractor have insurance during its performance of the contract, insurance coverage shall be verified before contract issuance by Procurement. Departments are responsible for ensuring that contractors have the required insurance for exempt purchases made by the Department.

2. Procurement shall notify the contractor to submit, within fifteen (15) days of receipt of NOI, documentation that the requisite insurance policies name the County as an additional insured and such policies require notice of cancellation or nonrenewal to the County.
3. Upon receipt of the insurance documentation from the contractor, the Buyer shall review the insurance documentation (e.g., copy of insurance policy, COI) and verify that the contractor has the requisite insurance coverage as stipulated in the applicable solicitation and contract documents. If the insurance documentation is not in compliance, the Buyer shall inform the contractor to supply a compliant document. A contract shall not be executed until Procurement receives compliant insurance documentation.
4. The Buyer shall forward, by email, insurance documentation to the Department which indicates the length of time the insurance must be maintained by the contractor and what contract it is associated with.
5. If any insurance documentation lapses, the COTR shall provide the contractor with notice of lapsed coverage. The notice shall make a demand that the contractor provide evidence of up-to-date coverage(s) as stipulated and agreed to in the County's contract. The COTR shall also notify Procurement of the lapsed insurance.
6. The County's Risk Manager shall make periodic review of the County's Master Contracts List to monitor insurance policy expiration dates, respond to termination/cancellation notices, and maintain necessary communication with contractors regarding their insurance coverage requirements.
7. The inability to obtain or maintain compliant insurance and provide the County with the requisite insurance documentation is cause for terminating the contract.
8. In the event there is a question regarding the amount, type, or identified need for insurance coverage, the Risk Manager should be consulted.
9. After a contract is ended, the Risk Manager will contact the insurance provider to inform it that the contract is expired.

17-4 BONDING

1. Bid Bonds may be required by the Contracting Officer for any Solicitation. Bid Bonds shall be required when the value of the base bid is estimated to exceed \$50,000, or as required by law.
2. Payment and Performance Bonds may be required by the Contracting Officer for Contract Award, when the value of the base bid Award exceeds \$50,000, or as required by law.
3. Bonds submitted by the Contractor must be acceptable to the Contracting Officer, in its sole discretion for the duration of the Contract.

SUMMARY

This chapter establishes procedures for addressing bidder and proposer protests. Protests provide a bidder or proposer the opportunity to contest the County’s notice of intent to award (NOI) or the notice of award under specific guidelines.

Essential Information in this Chapter
<ul style="list-style-type: none"> • A protest shall be received by the Procurement Division not later than five (5) calendar days of the electronic NOI or the notice of award, whichever occurs first. • The Contracting Officer shall issue a written response to the protest not later than ten (10) calendar days of receiving a valid protest. The response shall state the reasons for either denying or upholding the protest. • A protest cannot claim that the selected vendor is not responsible.

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19-1 PURPOSE

Provide procedures that the County shall follow when a prospective bidder or proposer desires to protest a notice of intent to award or the notice of award to another bidder or proposer.

19-2 ROLES AND RESPONSIBILITIES

Contracting Officer: The Contracting Officer is responsible for responding to any protests that are received by Procurement.

19-3 PROCEDURES

A. Competitive Sealed Bids

1. Grounds for Protest. Grounds for protests in a competitive sealed bid procedure include:

- a. The protestor claims its low bid was erroneously determined to be nonresponsive;
 - b. The protestor claims that it was erroneously determined to be not responsible; or
 - c. The protestor who submitted a higher bid claims low bidder's bid was not responsive.
2. No protest shall be allowed for a claim that the selected bidder or proposer is not a responsible bidder or proposer.
 3. To minimize protests when using competitive sealed bidding, Procurement shall:
 - a. Confirm the correctness of determination that low bidder was nonresponsive or not responsible;
 - b. Confirm that the apparent low bidder is responsive; and
 - c. Confirm that any deviations from the IFB were minor informalities.

B. Competitive Negotiations

1. Grounds for Protest. Grounds for protests in a competitive negotiation process include:
 - a. Arbitrariness in the process or in a substantive decision;
 - b. Failure to follow the RFP and its evaluation criteria; and
 - c. Failure to conduct the process in a fair and impartial manner.
2. No protest shall be allowed for a claim that the selected vendor is not responsible. No protest shall be allowed to challenge the validity of the terms or conditions of the IFB or RFP.
3. To minimize protests when utilizing competitive negotiations, Procurement shall:
 - a. Confirm that the selection was based only upon the factors in the RFP;
 - b. Confirm that the process was not arbitrary;
 - c. Confirm that the decision was not arbitrary;
 - d. Advise prospective proposers that verbal statements made during the process are not binding upon the County;
 - e. Confirm that the successful proposer satisfies all requirements of the RFP;
 - f. Assure that the requirements do not change without fair notice to all proposers; and
 - g. Assure that methods for evaluating proposals are accurately and objectively performed.

C. Making a Non-Responsibility Determination

If the Contracting Officer preliminarily determines that a bidder or proposer is not responsible, the Contracting Officer shall:

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1. Prior to issuing a final written determination of non-responsibility:
 - a. Notify the apparent bidder or proposer in writing of the preliminary determination that the bidder or proposer is not responsible;
 - b. Disclose the factual support for the preliminary determination; and
 - c. Allow the bidder or proposer an opportunity to inspect any documents which relate to the preliminary determination, if requested by the bidder or proposer within five (5) business days after receipt of the notice.
2. Within five (5) business days after receipt of the notice, the bidder or proposer may submit rebuttal information challenging the preliminary determination.
3. The Contracting Officer shall issue a final determination of responsibility, including a basis for the determination, based on all information in their possession, including any rebuttal information, within five (5) calendar days of the date the Contracting Officer receives the rebuttal information. If rebuttal information is not submitted by the bidder or proposer, the Contracting Officer shall issue a final determination within five (5) calendar days after the bidder's or proposer's five (5) calendar day rebuttal response deadline expires. The final determination, which includes the basis for the determination, shall be sent to the bidder or proposer via electronic mail with the original sent via U.S. mail.
4. The Contracting Officer's final determination decision shall be final unless the bidder or proposer appeals the decision within five (5) calendar days of receipt of the written decision by either:
 - a. Invoking the administrative procedures set forth in the solicitation, if any; or
 - b. Instituting legal action.

D. Effect of Protest on Contract Award

1. The Contracting Officer may award a contract during the period allowed to protest.
2. If a timely protest is made no further action to award the contract shall be taken unless:
 - a. There is a written determination that proceeding without delay is necessary to protect the public interest; or
 - b. The bid or offer would expire.

E. Protest Procedures

1. A protest shall be in writing and shall include the basis for the protest and the relief sought.
2. A protest for competitive sealed bidding or competitive negotiation must be submitted to the Contracting Officer no later than five (5) calendar days after public notice of the award or announcement of the decision to award, whichever occurs first.

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3. The Contracting Officer shall reject any protest that is untimely received or fails to state the basis for the protest and the relief sought.

F. Response to Protest

1. The Contracting Officer shall issue a decision in writing within five (5) calendar days after receipt of the protest. The response shall be in writing and shall state the reasons for either denying or upholding the protest.
2. In making their decision to deny or uphold the protest, the Contracting Officer shall consider the following factors:
 - a. Whether, based on the evidence presented in the protest or discovered by the Contracting Officer as part of its investigation, it is more likely than not that the grounds stated in the protest are true.
 - b. If the grounds stated in the protest are true, whether such grounds render the decision to award arbitrary or capricious.
3. The Contracting Officer will consult with the County Attorney's office as to any matter pertaining to the decision to deny or uphold a protest.
4. The Contracting Officer's decision shall be final unless the protesting vendor appeals the decision not later than five (5) calendar days of receipt of the written decision by either:
 - a. Invoking the administrative procedures set forth in the solicitation, if any; or
 - b. Instituting legal action.

G. If Decision to Award is Arbitrary or Capricious

If it is determined that the award is arbitrary or capricious, the following will occur:

1. Prior to Contract Award: Cancellation of the proposed award or revision to comply with the law.
2. After contract award, but prior to contract performance: Performance of the contract may be enjoined.
3. Contract performance has begun: Declare that the contract is void upon a finding that this action is in the best interest of the public.
 - a. Where a contract is declared void, the performing contractor shall be compensated for the cost of performance up to the time of such declaration.
 - b. In no event shall the performing contractor be entitled to lost profits.

SUMMARY

This chapter establishes the procedures the Contracting Officer may utilize to debar or suspend a prospective or current vendor. Debarments and suspensions assist the procurement process by preventing vendors who have displayed improper conduct from contracting with the County for a specified amount of time.

Essential Information in this Chapter
<ul style="list-style-type: none"> • The Contracting Officer is authorized to debar or suspend current and prospective vendors from the procurement process pursuant to the procedures set forth below. • Determinations regarding debarment or suspension shall be in writing, based upon all available information, and be made only after the vendor has an opportunity to respond to the Contracting Officer’s determination.

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20-1 PURPOSE

The purpose of debarment or suspension is to protect the County from risks associated with awarding contracts to vendors having exhibited an inability or unwillingness to fulfill contractual requirements, and to protect the County’s interests and the integrity of the procurement process by preventing vendors who have displayed improper conduct from participating in the County’s business for specific periods of time.

20-2 ROLES AND RESPONSIBILITIES

Contracting Officer: The Contracting Officer is responsible for suspending or debarring a prospective or current vendor from participating in the procurement process pursuant to the procedures set forth herein.

Procurement Officer: The Procurement Officer is responsible for hearing all vendor appeals of a Contracting Officer’s final determination to debar or suspend a vendor.

20-3 PROCEDURES**A. Debarment Criteria**

The Contracting Officer may debar a vendor for any of the following reasons:

1. Criminal conviction of an incident related to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract.
2. Criminal conviction under state or federal statutes for embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which currently and directly affects responsibility as a County contractor.
3. Conviction under state or federal antitrust laws arising out of the submission of bids or proposals.
4. Violation of contract terms, which are regarded by the Contracting Officer to be so serious as to justify debarment action, including:
 - a. Deliberate failure, without good cause, to perform in accordance with contract specifications or within the time limit provided in the contract; or
 - b. Recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts; provided that failure to perform or unsatisfactory performance caused by acts beyond the control of the Contractor shall not be considered.
5. Any other cause the Contracting Officer determines to be serious and compelling as to affect responsibility, including debarment by another governmental entity or for violation of the St. Mary's County Public Ethics Ordinance.

B. Debarment Procedure

Debarment procedures include:

1. Notice. The Contracting Officer shall issue a determination to debar sent by certified mail, return receipt requested. The decision shall:
 - a. Notify the vendor in writing of the grounds for the debarment;
 - b. Disclose the factual support for the debarment;
 - c. Allow the vendor to inspect any documents related to the debarment within seven (7) calendar days after receipt of notice;
 - d. Inform the vendor of its rights concerning judicial or administrative review; and
 - e. Allow the vendor seven (7) calendar days after receipt of notice to respond to the debarment.

2. If a written response to the proposed debarment is provided, the Contracting Officer shall issue a response within fifteen (15) calendar days of receipt of the vendor's written response.
3. If a vendor response is not provided, the Contracting Officer's initial determination shall become final.
4. The vendor may appeal the final decision to the Procurement Officer within seven (7) calendar days after receipt of the Contracting Officer's decision.
5. The debarment shall be for a period commensurate with the seriousness of the cause as determined by the Contracting Officer. Debarment cannot be for a period of less than ninety (90) calendar days nor more than three (3) years.
6. Debarment shall be considered just cause for cancellation of any existing contracts held by the person or business debarred.

C. Suspension Criteria

The Contracting Officer may suspend a bidder or proposer from consideration for award of a contract if there is probable cause to believe that a party has engaged in an activity that may lead to debarment.

D. Suspension Procedure

1. The Contracting Officer shall issue a proposed written decision to suspend sent by certified mail, return receipt requested. The proposed decision shall state the grounds for the suspension action and inform the suspended vendor of its rights concerning judicial or administrative review.
2. The suspended vendor may respond to the Contracting Officer's written decision within seven (7) calendar days after receipt of notice.
3. The Contracting Officer shall issue a final determination within fifteen (15) calendar days of receiving the vendor's response. If no response is received by the vendor, the initial written decision shall become final.
4. The Contracting Officer's final determination shall be upheld unless the vendor appeals to the Procurement Officer within seven (7) calendar days after receipt of the Contracting Officer's decision.
5. A suspension cannot be for more than three (3) months.
6. During a suspension, a vendor may not submit a proposal or bid for any County contracts. Additionally, suspension shall be considered just cause for cancellation of any existing contracts held by the person or business suspended.

SUMMARY

This chapter provides the procedures for the purchase of County vehicles. Vehicle purchases, with the exception of the St. Mary’s County Sheriff’s Office, must be approved by both the Department of Finance (Finance) and the Vehicle Maintenance Division (VM) prior to approval by Procurement.

Essential Information in this Chapter
<ul style="list-style-type: none"> • To replace a vehicle, the vehicle must have been fully depreciated over its established life, unless the unit is involved in an accident and established to be an accident write-off; does not meet operating needs of the County; or has documented performance issues rendering the unit obsolete, unusable, or unsafe. • Departments should contact the Department of Public Works for assistance in determining units eligible for replacement.

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21-1 PURPOSE

The purpose of this chapter is to establish procedures for departments to procure vehicles for use in furtherance of County business.

21-2 ROLES AND RESPONSIBILITIES

Department: Departments are responsible for their fleet units; for planning vehicle acquisitions on an annual basis; entering necessary requisitions; receiving the required fleet units; and ensuring proper maintenance of the vehicles.

Procurement: Procurement is responsible for review and approval of all requisitions for vehicles and placing vehicle.

Vehicle Maintenance Division (VM): The Department of Public Works, VM is responsible for approving all vehicles, receiving vehicles, and maintaining vehicles after delivery. VM also provides acquisition support in either developing specifications or identifying existing contracts such as state or other cooperative contracts that could be used.

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21-3 PROCEDURES

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A. Purchasing Vehicles

1. A vehicle may be replaced if it has been fully depreciated over its established life. However, a unit may be replaced sooner if it:
 - a. Is involved in an accident and established to be an accident write-off;
 - b. Does not meet the operating needs of the Department; or
 - c. Has documented performance issues.
2. Departments must plan their annual fleet replacements in time for budget submission for the following fiscal year. Departments shall contact Vehicle Maintenance for support in identifying units that are eligible for replacement.
3. To purchase County vehicles, Departments must submit a requisition through Corporate Application. Cooperative purchasing of vehicles is preferred.
4. All requisitions shall:
 - a. Reference in the Corporate Application Comments section a Blanket Purchase Order (BPO) number or Contract number and, if applicable, another jurisdiction's contract name and number that will be utilized for the particular purchase. If a Department intends to utilize another jurisdiction's contract, the contract, contract's current Notice of Award, and pricing shall be attached to the requisition. (Please note: Vehicle purchases under another jurisdiction's contract cannot be validated until Procurement has first established a contract between the County and the contractor.)
 - b. Provide the make, model, and a short description of the vehicle(s);
 - c. Indicate the interior and exterior colors of the requested vehicles. All County vehicle exteriors are mandated to be white in color, except police vehicles and other emergency vehicles. If a color is not specified, the order will be delayed until the Department specifies the color for the vehicle(s). All backup documentation must be attached to the respective Department's Corporate Application requisition;
 - d. Reference the unit number of the vehicle(s) being replaced; and
 - e. Ship To/Delivery address as: Code VM in Corporate Application.
5. Requisitions must be approved by Finance. If a requisition is disapproved, it will be returned to the Department.
6. Once approved by Finance, all vehicle requisitions (except those from the St. Mary's County Sheriff's Office) must be sent to VM for approval. VM will approve or disapprove each requisition. If approved, the requisition will be forwarded to Procurement. If the requisition is disapproved, it will be returned to the Department.
7. After the appropriate approvals are obtained, requisitions will be processed and the Department shall convert the requisition to a purchase order (PO). Upon the printing of the PO by Procurement, the Department shall deliver the PO to the vendor via email, facsimile, or mail. The PO shall include all necessary attachments. The Department must include the Corporate Application PO number in their email correspondence related to the new vehicle purchase.

- B.** New vehicles shall be delivered to VM prior to use by the Department. When a new vehicle

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is delivered to VM by the vendor, VM will inspect it for damage, conformance to specifications, and ensure proper operation. VM will then register the vehicle, install the applicable County logo(s), unit number, and other decals, make any adjustments and install any accessories, enter the unit in the maintenance management system, and enter other related information. Subsequently, the vehicle will be ready for pick up by the Department. If the new vehicle is a replacement vehicle, VM will not release the new vehicle to the Department unless the old unit being replaced has been returned.

- C.** Upon pick-up of the vehicle by the Department, the Department's vehicle requisitioner shall go into Corporate Application and complete the PO receiving report.
- D.** After the PO receiving report has been completed and upon receipt of the vehicle invoice from the vendor, the Department's vehicle requisitioner must complete the three-way match in Corporate Application. The requisitioner must process the invoice by going into Invoice Entry.

All procedures listed above, must be followed to avoid non-registration of the vehicle(s). If incorrect addresses or other information is entered, there may be extensive delays in vehicle registration.

SUMMARY

Planning for contract administration should begin prior to issuance of the solicitation. The goal of contract administration is to ensure that a contract is satisfactorily performed and the responsibilities of both parties are properly discharged. The extent of contract administration will not be the same for all contracts. The level of contract administration necessary varies with the complexity, level of risk, and terms of the contract.

Essential Information in this Chapter	
<ul style="list-style-type: none"> • Observations of contractor performance should be written and placed in the file. These may be developed through visits to contractor work sites, inspections, and notes of conferences with a contractor. • Invoices should be reviewed to ensure that the contractor’s billing coincides with the contract’s progress. • Contract administration shall be the responsibility of the Department’s Contracting Officer’s Representative (COR), the Department’s Contracting Officer’s Technical Representative (COTR), and supported by the Contracting Officer (CO). 	

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22-1 PURPOSE

The purpose of this chapter is to outline the procedure for contract administration and provide steps for the CO/COR/COTR to monitor a contractor’s job progress.

22-2 ROLES AND RESPONSIBILITIES

Procurement Manager: The Procurement Manager for the County is responsible for all aspects of the contracting process. The responsibilities include, but are not limited to:

1. Executing Contracts;
2. Approving contract modifications;
3. Providing determinations on contract disputes;
4. Executing contract terminations; and
5. Executing all other duties required by Federal, State, and/or County law/ordinance for procuring goods and services.

Contracting Officer (CO): The authorized Procurement representative who has the prime responsibility for contract formation, solicitation, administration and making determinations and findings. Their responsibilities include, but are not limited to:

1. Designating the COTR;
2. Approving change orders;
3. Providing primary determinations on contract disputes;
4. Maintaining the County's Contract file on the project;
5. Issuing cure notices and demand letters to contractors;
6. Maintaining records of contractor performance;
7. Renewing contracts, if authorized by the original procurement process; and
8. Monitoring contractor compliance with other contract requirements.

Contracting Officer's Representative (COR): The Department Head who is responsible for the active contract administration once a contract has been awarded. Its responsibilities include, but are not limited to:

1. Assigning the COTR;
2. Providing direct oversight of the COTR;
3. Providing general oversight of the contract effort;

4. Understanding the requirements of the statement of work and specifications set forth in the contract;
5. Serving as the contact between the CO and contractor for correspondence and direction concerning the contract;
6. Promptly notifying the CO of any disputes, failures to perform, significant events, or other problems with the contractor;
7. Assisting in inspecting the work and materials and evaluating contractor performance;
8. Verifying and approving payment requests; and
9. Completing all contract closeout requirements and forwarding to CO.

The COR shall not issue any direction to the contractor concerning commonly accepted means or methods of how the work is to be completed.

Contracting Officer's Technical Representative (COTR): The Department representative who serves as the technical representative for contract administration. Their responsibilities include, but are not limited to:

1. Providing daily technical oversight of the contract effort;
2. Understanding the requirements of the statement of work and specifications set forth in the contract;
3. Serving as the contact between the COR and contractor for correspondence and technical direction;
4. Providing technical guidance to the contractor;
5. Ensuring that all technical direction (where commonly accepted means or methods; or a written manufacturer's specifications does not exist) is recorded in writing;
6. Maintaining a project file including all technical instructions that are issued, as well as all deliverables received;
7. Inspecting work and materials and accepting contractor performance;
8. Evaluating contractor performance;
9. Documenting all activities regarding the contract and forwarding copies of the documents to the Procurement for the contract file; and
10. Providing support verification for payments and contract close-out documents in a timely manner.

The COTR shall not issue any direction to the contractor concerning commonly accepted means or methods of how the work is to be completed.

22-3 PROCEDURES

A. Contract Administration

1. The statement of work should be the roadmap for contract administration. Therefore, planning for contract administration should begin prior to issuance of a solicitation. The goal of contract administration is to ensure the contract is satisfactorily performed and the responsibilities of both parties are properly discharged. The COTR (with oversight by the COR) is responsible for ensuring satisfactory performance of the contract.
2. It is the contractor's responsibility to perform and meet the requirements of the contract. However, the contractor may need technical direction and approval from the County when commonly accepted means or methods; or a manufacturer's written specification does not exist. Thus, the COTR must provide the necessary technical direction and approval to the contractor in a timely and effective manner. This **does not include** specifying or providing direction on the contractor's means and methods in accomplishing the contract requirements.
3. All guidance provided to a contractor must be within the scope of the contract **and in writing.**
4. The extent of contract administration will not be the same for all contracts. The level of contract administration necessary will vary with the complexity, level of risk, terms, and dollar value of the contract.

B. Planning

1. A critical part to contract administration is the advance coordination and scheduling of resources to assist in the performance of the contract. In order to properly plan for contract administration, the COR and COTR must ensure that they thoroughly understand all of the components of the solicitation and contract. Contract components include:
 - a. **Expected Outcome:** Measures which should be tied to the payment schedule.
 - b. **Costs:** The total cost including any indirect cost allocation of the goods and services to be performed.
 - c. **Contract Performance:** When, where, and how the goods and services are to be delivered.
 - d. **Acceptance or Rejection of Good or Services:** The Department's right to inspect and accept or reject the goods and services and the conditions of acceptance or rejection.
 - e. **Contract Dates:** The effective date, notice to proceed date, completion date, renewal terms, and any additional dates necessary to monitor contract performance.

- f. **Contact Information:** Where correspondence is to be sent, and where payments are to be made.
2. After contract award, a post-award conference may be held. A post award conference is a meeting between the contractor, COR and COTR, a representative from Procurement and other interested parties of the County. It is an orientation for the contractor to ensure a clear and mutual understanding of all contract terms and conditions, and the respective responsibilities of all parties. The conference also serves as a tool to clarify and resolve any potential misunderstandings. Although both the contractor and the COR and COTR should be fully aware of the contract requirements, the post-award conference better ensures that those directly involved in the contract administration process understand all requirements of contract performance.
3. The post award conference should:
 - a. Introduce all participants and identify key personnel.
 - b. Discuss the scope of the contract (i.e., what the County is buying).
 - c. Summarize contract terms and conditions, particularly any special contract provisions. This may prevent any subsequent misunderstandings and allows the contractor to gain a better understanding of the terms prior to beginning work.
 - d. Discuss the technical and reporting requirements of the contract. The contractor must understand the importance of any reports required under the contract and the importance of submitting them in accordance with contract requirements.
 - e. Discuss applicable contract administration procedures, including contract monitoring and progress measurement.
 - f. Contractor performance evaluation procedures should be summarized. The COTR should explain that the contractor will be evaluated on its performance both during and at the conclusion of the contract and that such information may be considered in the selection process for future contracts.
 - g. Address potential contract problem areas and possible solutions. Any issues or contract areas that the COR and COTR believes may lead to a problem or may be subject to differing interpretations should be discussed.
 - h. Discuss invoicing requirements and payment procedures.
 - i. Explain the COR's and COTR's authority and obtain the same information regarding contractor personnel.
 - j. After the conference, the COTR should prepare a summary of the meeting for the contract file which details the topics covered. The summary should include a list of participants, open issues, identification of individuals and their assigned responsibility for resolving open issues, and the due date(s) for those actions. Copies of the meeting summary should be distributed to all conference participants.
4. While a post-award conference is not required for every contract, there should be discussion between the COR and COTR and the contractor after award to ensure that all parties agree on the performance requirements and the administrative procedures applicable under the contract. For less complex, low risk, and/or low dollar value contracts, a telephone call with the contractor may be sufficient. During the telephone conversation, the COTR should review the major points of the contract with the contractor (e.g., amount of contract, major performance milestones, deliverables, reports,

meetings, and time and place of delivery).

5. The post award conference cannot be used to change the terms of the contract. All changes to the contract must be done via a contract modification approved by the Contracting Officer.

C. Monitoring Contract Performance

1. The COTR shall gather and record information on contractor performance based on requirements and terms contained in the contract. One goal of contract administration is to ensure that all available information is recorded and a comprehensive picture of contractor performance is contained in the contract file. Two tools to gather information that should be utilized, depending on the contract, include:
 - a. Site Visits: Site visits can be used to verify actual performance against scheduled or reported performance. They can also ensure that the contractor is dedicating sufficient resources and appropriate personnel to the contract. Site visits also reinforce the importance of the contract and provide the opportunity to enhance communications with the contractor. When performing a site visit, the department should develop a comprehensive and objective monitoring form which:
 - i. Focuses on the outcomes, but also includes compliance requirements and monitoring criteria that references applicable contract requirements; and
 - ii. Assesses contractor performance and addresses any issues. Issues that have been noted should be outlined up front so that the contract may be closely monitored.
 - b. Document Review: The review of submitted or contractually required documents such as contractor invoices and expenditure requests to determine if the rates and services are the same as allowed by the contract, and documents that adequately support the request for payment.

If the contractor consistently provides incorrect invoices or the supporting documents are insufficient to support the request, then additional monitoring may be necessary.

More complex contracts and those that the COR perceives as having a higher degree of risk may require both reviews and visits to the contractor's facilities to ensure progress is in accordance with the contract schedule.

2. Observations of contractor performance should be written and placed in the contract file. These may be developed through visits to work sites, inspections, and notes of conferences with the contractor.
3. Under a firm, fixed price contract, the COTR should ensure that:
 - a. The number of units billed is the same as the number of units received.
 - b. The quantity and price of the units agree with the contract amounts.

- c. The units meet the contract specifications.
4. All complaints from citizens or County personnel relating to the performance of a contractor should be documented and the CO should be notified. Attempts by all parties to resolve complaints should be documented.
5. If the COR believes that conditions exist which may lead to a breach of contract, they should notify the CO in writing. The CO shall follow-up with the contractor regarding the possibility of a breach of contract within a reasonable time.
6. The Vendor Performance Form should be completed to: document any contractor performance that is contrary to specifications or other provisions of the contract; indicate substandard or unsatisfactory performance; or denote contractor's compliance and successful execution of the contract. This report may also be used to document contractor performance prior to contract renewal.
7. Unsatisfactory performance may be cause for contract termination or debarment or suspension of the contractor. The COR should notify the Contracting Officer immediately of any and all concerns related to Contractor Performance.

D. Payment Approval

1. Contractor charges should be in accordance with the contract terms.
2. Invoices should be reviewed to verify that the contractor's billing is consistent with the contract's progress and/or schedule of values.
3. If the COTR believes that an invoice is not accurate regarding the goods or services received, an explanation should be requested from the contractor prior to approval of the invoice. Payment for the disputed goods or services should be withheld until a there is a resolution regarding the disputed goods or services.
4. Invoices should be reviewed to v e r i f y :
 - a. The contractor is billing only for goods or services received by the Department;
 - b. The goods or services have been accepted;
 - c. The invoice is correct and complies with the terms and conditions of the contract; and
 - d. The total payments do not exceed the contract limits.
5. Payments are made in accordance with the County policy which requires that correct invoices be paid within 30 days from the date a properly submitted invoice was received or the date the services or goods received, whichever is later, unless otherwise provided for in the contract.

E. Withholding Payment

The COR and COTR have the responsibility to protect the interests of the County and, under appropriate circumstances, it may be necessary to withhold payments from contractors.

Circumstances where it may be necessary to withhold payment include:

1. Contractual requirements (retainage);
2. Defective work not remedied;
3. Third-party claims filed or reasonable evidence indicating probable filing of such claims;
4. Failure of the contractor to make payments properly to subcontractors or failure of the contractor to make payments for labor, materials, or equipment;
5. Reasonable evidence that the contract work cannot be completed for the unpaid balance of the contract sum;
6. Damage to the County or another contractor;
7. Reasonable evidence that the contract work will not be completed on or before the time(s) for performance;
8. Persistent failure to perform work in compliance with the contract; or
9. Liability, damage, or loss due to injury to persons or damages to the work or property of other contractors, subcontractors, or persons, caused by the act or neglect of the contractor or any of its subcontractors.

F. Termination for Convenience

1. A termination for convenience allows the Contracting Officer, following consultation with the County Attorney, to terminate any contract, in whole or in part, at its sole discretion, if it is determined that such termination is in the best interest of the County.
2. The Contracting Officer shall provide the contractor with written notice specifying whether the termination is for all or part of the contract. Full termination may be effective immediately. If the contract is being selectively terminated, the Contracting Officer must provide at least seven (7) days of notice to the contractor, and specify which part(s) of the contract are being terminated.
3. A termination notice must include the following:
 - a. Citation of the relevant portion of the contract authorizing a termination for convenience;
 - b. Statement directing the contractor to stop work, terminate subcontracts, and place no orders on behalf of the County after a certain date as determined by the Contracting Officer;
 - c. Effective Date of Termination; and
 - d. Instructions to the contractor to:
 - i. Keep adequate records of the contractor's compliance with the termination

- notice, including the extent of completion on the date of termination;
 - ii. Immediately notify all subcontractors and suppliers, if any, of the notice of termination;
 - iii. Notify the County of any matter that may be adversely affected by this termination; and
 - iv. Take any other action required by the County to expedite this termination.
4. Any invoice received from the contractor for work performed prior to the notice of termination shall be thoroughly reviewed by the COR to verify that no excessive costs are included.
 5. The County shall pay the contractor after being terminated for convenience an amount equal to the lesser of:
 - a. The actual cost of any work, labor, or materials actually performed or in place and the actual cost of any labor, equipment, or materials ordered in good faith that could not be canceled, less the salvage value thereof; or
 - b. The pro rata percentage of completion based upon any schedule of payments set forth in the contract, plus the actual cost of any labor, equipment, or materials ordered in good faith that could not be canceled, less the salvage value thereof.

G. Termination for Default

1. A termination for default is designed to protect the interests of the County while obtaining the necessary goods or services from another source.
2. A contract may be terminated for default, in whole or in part, when the Contracting Officer concludes that:
 - a. The contractor has failed to deliver the goods or perform the services within the time(s) for performance, and has not cured the failure within ten (10) calendar days of receipt of notice from the CO;
 - b. The contractor has failed to perform in accordance with any of the other provisions of the contract, has failed to make progress so as to endanger performance of the contract in accordance with its terms, and has not cured such failure within ten (10) calendar days of receipt of notice from the CO; or
 - c. The contractor commits a default referenced in sections (a) or (b) of this subsection more than two (2) times during any consecutive twelve (12) month period, whether or not the contractor cured the earlier default(s).
3. In the event the Contracting Officer terminates the contract, in whole or in part, for default, the County may purchase from other vendors goods or services similar to those required pursuant to the contract. The contractor shall be liable to the County for any excess costs incurred by the County in connection with the purchase of goods or services from other vendors because the contractor has failed to perform, make progress, or in any way breaches the contract.
4. The Contracting Officer is not required to terminate a contract for default even though

the circumstances permit such action. The Contracting Officer may determine that it is in the County's best interest to pursue other alternatives.

5. Factors to consider when determining whether to terminate a contract for default include:
 - a. Whether the County has done everything within reason to assist the contractor in curing any default;
 - b. The provisions of the contract and applicable regulations;
 - c. The specific contractual failure(s) and the explanation, if any, provided by the contractor, for the failure(s);
 - d. The urgency of the need for the contracted supplies or services. The COR and COTR may need to weigh the respective benefits and disadvantages of allowing a delinquent contractor to continue performance or engaging a new contractor;
 - e. The availability of the supplies or services from other sources and the time required to obtain them (compared to the additional time the current contractor needs to complete the work); and
 - f. Availability of funds and resources to re-purchase in the event such costs cannot be recovered from the delinquent contractor. Under a termination for default, the County is entitled to demand re-procurement costs from the defaulting contractor. However, the contractor may not be financially capable to finance the re-purchase, or such demand may result in protracted legal action.
6. If a vendor is terminated for default, the contractor is liable for actual damages and costs incurred by the County unless the contract states otherwise.

H. Termination for Default Notifications

1. Prior to terminating a contractor for default, a cure notice shall be sent to the contractor and, if applicable, any Surety.
2. A cure notice is a letter provided to the contractor that provides it a period of time, generally, ten days, to correct or "cure" the deficiency or violation.
3. A cure notice shall:
 - a. Be sent by U.S. Certified Mail with return receipt requested to the contractor's address;
 - b. Identify the contract;
 - c. Identify the termination clause within the contract;
 - d. Identify the specific failures providing reasons for the termination;
 - e. Provide a cure period (generally, ten days) for the contractor to cure the failure(s) or provide a satisfactory explanation acceptable to the Contracting Officer; and
 - f. Advise of County's option to terminate for default after the cure period.
4. If the contractor fails to cure the default in a timely manner or provide a satisfactory explanation acceptable to the Contracting Officer within the cure period, the contract may be terminated. The notice of termination should contain:

- a. The contract number;
- b. The termination clause within the contract;
- c. The effective date of termination;
- d. A concise and accurate statement of the facts justifying the termination;
- e. A statement that the work, materials or services contracted for may be re-procured and that the contractor will be held liable for any additional costs incurred due to the re-purchase if the right is available under the contract; and
- f. If applicable, call any bonds associated with the contract.

I. The Contract Administration File

1. The COR and COTR shall keep one complete master contract administration file.
2. The file will provide a basis for settling claims and disputes should they arise in administrative or court actions.
3. Throughout the term of the contract, the contract administration file should include the following items:
 - a. A copy of the current contract and all modifications;
 - b. A copy of all specifications, drawings, or manuals incorporated into the contract by reference;
 - c. A reference list or a list of prior contracts with this specific contractor;
 - d. The solicitation document, the contractor's response, evaluation determination, and the notice of award document;
 - e. For construction projects: a list of contractor submittals including materials and drawings requiring County approval;
 - f. A list of County provided property or services that are utilized in the performance of the contract;
 - g. A list of documents provided to the contractor by the County;
 - h. A copy of the post-award conference summary, if conducted;
 - i. A schedule of compliance review and internal correspondence, if applicable;
 - j. A copy of all general correspondence related to the contract;
 - k. The originals of all contractor data or reports;
 - l. A copy of all routine reports required by the contract such as sales reports, pricing schedules, approval requests, and inspection reports;
 - m. A copy of all notices to proceed, stop work, or cure;
 - n. A copy of all change orders which were requested, and denied or approved, with supporting documentation;
 - o. A copy of all letters of approval pertaining to such matters as materials, the contractor's quality control program, prospective employees, and work schedules;
 - p. The records and minutes of all meetings, both internal and external, including sign-in sheets and agendas;
 - q. A copy of all contractor invoices, information relative to discount provisions for prompt payment, and letters pertaining to contract deductions or fee adjustments;
 - r. A copy of all supporting documentation for contractor payment or progress payment and copies of any audits;
 - s. A copy of all termination letters and complaints; and

- t. A copy of all contract closeout documents.

J. Contract Option Renewal

Term contracts that have base terms and available option years require the Department to notify Procurement of the desire to exercise option years before the base term or exercised option terms expire. The COR is responsible for notifying the CO within sixty (60) calendar days prior to the expiration of the current contract term, or after 80% completion of the term, whichever first occurs, of its intent to exercise any remaining options. This allows the CO to notify the contractor, to get its concurrence in exercising the option, and to receive updated contractual documents, i.e. Certificates of Insurance, Bonds, etc. Should the contractor not wish to exercise the option, this period allows the Department and Procurement to re-solicit for the goods or services.

K. Contract Closeout

The final step in contract administration is contract closeout. This is a critical step in ensuring that all contract provisions have been met and that payment has been completed. The COR is responsible for submitting to the CO:

1. Release of Liens: The COR shall provide to the contractor the County's Release of Liens form to be completed and returned by the contractor and, if applicable, its sub-contractor(s);
2. A written statement, with supporting documentation, that all valid invoices have been submitted and paid;
3. A written request to release retainage held, if applicable; and
4. A complete digital copy of the contract administration file.

SUMMARY

This chapter sets forth requirements and policies regarding ethical standards that apply to all public employees and County contractors involved in a procurement transaction with the County. Appearances of a conflict of interest in public procurement may be as harmful to public confidence as an actual case of misconduct. All personnel involved in procurement transactions shall be guided by the highest standards of ethical conduct. Ethical requirements may apply to former County employees involved in procurement transactions.

Essential Information in this Chapter	
<ul style="list-style-type: none"> • All public employees, and contractors who have official responsibility for the procurement of goods, services, insurance, or construction must comply with St. Mary’s County Public Ethics Ordinance, Maryland Title 21, and other applicable state and County ethics laws. • Public employees shall not engage in transactions where there is a direct conflict of interest. • Public employees shall not solicit or accept gifts from vendors, contractors, or other entities engaged in procurement activities with the County. • Former County employees are subject to certain post-employment restrictions 	

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24-1 PURPOSE

The purpose of this chapter is to provide instruction regarding ethical considerations for all public employees involved in a procurement transaction. Additionally, this chapter provides guidance for County contractors and former employees that were involved in a procurement transaction. It should be noted that this chapter supplements but does not supersede other provisions of law including, but not limited to, the State and Local Government Ethics Laws.

24-2 ROLES AND RESPONSIBILITIES

This chapter shall apply to all public employees, contractors, and former County employees who are involved in a County procurement transaction.

24-3 PROCEDURES**A. Prohibited Participation by Employees in Procurement Transactions**

No public employee having official responsibility for a procurement transaction shall participate in that transaction on behalf of the County when the employee knows that:

1. the employee is contemporaneously employed by a bidder, proposer, or contractor involved in the procurement transaction; or
2. the employee, or a member of the employee's immediate family:
 - a. holds a position with a bidder, proposer, or contractor such as an officer, director, trustee, partner, or the like, or is employed in a capacity involving personal and substantial participation in the procurement transaction, or owns or controls an interest of more than five (5%) percent of the bidder's, proposer's, or contractor's company, firm, or other business structure;
 - b. has a pecuniary interest arising from the procurement transaction; or
 - c. is negotiating, or has an arrangement concerning prospective employment with a bidder, proposer, or contractor.

B. Subsequent Employment with Vendor

No public employee or former public employee having official responsibility for procurement transactions shall accept employment with any bidder, proposer, or contractor with whom the employee or former employee dealt in an official capacity concerning procurement transactions for a period of one (1) year after the public employee's or former public employee's separation from the County unless the employee or former employee provides written notification to the Commissioners of St. Mary's County, or their designee, prior to commencement of employment by that bidder, proposer, or contractor.

C. Solicitation or Acceptance of Gifts Prohibited

1. No public employee having official responsibility for a procurement transaction shall solicit, demand, accept, or agree to accept from a bidder, proposer, contractor or subcontractor any payment, loan, subscription, advance, deposit of money, services, or anything of more than nominal value or exceeding \$20, present or promised, unless consideration of substantially equal or greater value is exchanged.
2. The County may recover from the employee the value of anything conveyed in violation of this section.

3. No bidder, proposer, contractor or subcontractor shall confer upon any public employee having official responsibility for a procurement transaction any payment, loan, subscription, advance, deposit of money, services, or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is exchanged.

D. Kickbacks

1. No contractor or subcontractor shall demand or receive from any of their suppliers or subcontractors, as an inducement for the award of a subcontract or order, any payment, loan, subscription, advance, deposit of money, services, or anything, present or promised, unless consideration of substantially equal or greater value is exchanged.
2. No subcontractor or supplier shall make or offer to make kickbacks.
3. No person shall demand or receive any payment, loan, subscription, advance, deposit of money, services, or anything of value in return for an agreement not to compete on a public contract.
4. If a subcontractor or supplier makes a kickback or other prohibited payment as described in this section, the amount thereof shall be conclusively presumed to have been included in the price of the subcontract or order and ultimately borne by the County and shall be recoverable from both the maker and recipient. Recovery from one offending party shall not preclude recovery from other offending parties.

E. Participation in Bid Preparation; Limitation on Submitting Bid for Same Procurement

1. No person who, for compensation, prepares an IFB or RFP for or on behalf of the County shall submit a bid or proposal for that procurement or any portion thereof.
2. No person who, for compensation, prepares an IFB or RFP for or on behalf of the County shall disclose to any potential bidder or proposer information concerning the procurement which is not available to the public.

F. Purchase of Materials, etc., from Architect or Engineer Prohibited

1. No building materials, supplies, or equipment for any building or structure constructed by or for the County shall be sold by or purchased from any person employed as an independent contractor by the County to furnish architectural or engineering services, but not construction, for such building or structure or from any partnership, association, or corporation in which such architect or engineer has a personal interest.
2. No building materials, supplies, or equipment for any building or structure constructed by or for the County shall be sold by or purchased from any person who has provided or is currently providing design services specifying a sole source for such materials, supplies, or equipment to be used in the building or structure to the

independent contractor employed by the County to furnish architectural or engineering services in which such person has a personal interest.

3. The provisions of these subsections shall not apply in cases of emergency. Emergency procedures are further discussed in Chapter 11 of this manual.

G. Certification of Compliance Required; Penalty for False Statements

A. The County may require public employees having official responsibility for procurement transactions in which they participated, to annually submit for such transaction a written certification that they complied with the ethics provisions of the County Code.

B. Any public employee required to submit a certification as provided in section A who knowingly makes a false statement in the certification shall be punished as provided in section I.

H. Misrepresentations Prohibited

No public employee having official responsibility for a procurement transaction shall knowingly falsify, conceal, or misrepresent a material fact; knowingly make any false, fictitious or fraudulent statements or representations; or make or use any false writing or document knowing it to contain any false, fictitious, or fraudulent statement or entry.

I. Penalty for Violation

Any person convicted of a willful violation of any provision of this chapter shall be guilty of a Class 1 misdemeanor. Upon conviction, any public employee, in addition to any other fine or penalty provided by law, shall be subject to disciplinary action(s) outlined in the County's Manual of Personnel Policies and Procedures.