

PROCUREMENT POLICY OF MONTGOMERY COUNTY

1. Purpose.

This Policy provides a standard reference to established policy, procedures, and guidelines for the procurement of supplies, services, and construction in Montgomery County (“the County”) under the authority of the Commonwealth’s Second Class County Code, 16 P.S. § 3101 et seq. The underlying purposes of this Policy are:

- (a) to simplify, clarify, and modernize the law governing procurement by this County;
- (b) to permit the continued development of procurement policies and practices;
- (c) to provide for increased public confidence in the procedures followed in public procurement;
- (d) to ensure the fair and equitable treatment of all persons who deal with the procurement system of this County;
- (e) to provide increased economy in County procurement activities and to maximize to the fullest extent practicable the purchasing value of public funds of the County;
- (f) to foster effective broad-based competition within the free enterprise system;
- (g) to provide safeguards for the maintenance of a procurement system of quality and integrity, and
- (h) to obtain in a cost-effective and responsive manner the materials, services, and construction required by the County in order to better serve this County’s businesses and residents.

2. Application.

The Policy will become effective upon approval of the Board of Commissioners. Unless otherwise provided by law, this Policy applies to contracts solicited or entered into after the effective date. This Policy shall apply to every expenditure of public funds irrespective of their source, including state and federal assistance monies except: (a) as otherwise specified in Article 8 (Compliance with State and Federal Requirements), and (b) this Policy shall not apply to either grants, or contracts between the County and its political subdivisions or other governments, except as provided in Article 17 (Cooperative Purchasing). Nothing in this Policy shall prevent the County, or any governmental body or political subdivision from complying with the terms and conditions of any grant, gift, bequest, or cooperative agreement.

3. Changes

This Policy is intended to serve as a living document reflecting best procurement practices, and changes may be made to this Policy from time to time. The Chief Operating Officer/Chief Clerk or Chief Financial Officer may issue official interim or supplemental procurement policy guidance in the form of Policy Directives. Changes and interim or supplemental guidance shall be effective when approved by the County Commissioners and shall

apply to procurements in progress to the extent feasible under the terms of the issued solicitation documents.

4. Public Access to Procurement Information.

(a) *Policy.* Procurement information shall be a public record to the extent provided in the Pennsylvania Right to Know Law, 65 P.S. §67.101 et seq., and shall be available to the public as provided in such statute. All solicitations and contract awards shall be posted on the County's website.

(b) *Exemptions.* Documents that contain trade secrets or confidential proprietary information are exempt from public disclosure. In order for this provision to be applicable, the bidder/offeror/contractor must provide, with the bid, quote, proposal, or contract, a written statement noting that the document contains a trade secret or confidential proprietary information. The Solicitor must be consulted whenever a request is made for materials that are labeled as containing trade secrets or confidential proprietary information.

5. Responsibility of Bidders and Offerors.

(a) *Policy.* To obtain true economy, the County must minimize the possibility of a subsequent default by the contractor, late deliveries, or other unsatisfactory performance which would result in additional administrative costs. Prior to any contract award, there must first be a written determination that the bidder or offeror will be a responsible contractor. In order to be considered a responsible bidder or a responsible offeror, the bidder/offeror must possess the capability to fully perform the contract requirements in all respects and the integrity and reliability to assure good faith performance. Responsibility concerns the ability to perform the contract and goes to the capacity of the bidder, offeror, or contractor rather than its willingness to perform on the County's terms.

(b) *Standard of Responsibility.* Factors to be considered in determining whether the standard of responsibility has been met include whether a prospective contractor:

- (1) has available the appropriate financial, material, equipment, facility, and personnel resources and expertise, or the ability to obtain them, necessary to indicate its capability to meet all contractual requirements;
- (2) has a satisfactory record of performance;
- (3) has a satisfactory record of integrity;
- (4) is qualified legally to contract with the County;
- (5) is not currently suspended, debarred, or otherwise determined to be ineligible for award of contracts by the County, the Commonwealth of Pennsylvania, any other State or local jurisdiction, or agency of the United States Government; and
- (5) supplied all necessary information in connection with the inquiry concerning responsibility.

(c) *Standard of Responsibility for Construction Contractors.* In addition to the factors set forth in subsection (b) above, with the Commissioners' approval and as set forth in the solicitation, the following additional factors may be considered to determine whether the standard of responsibility has been met for prospective construction contractors:

- (1) a record of compliance with labor laws, including prevailing wage laws, OSHA, etc.;
- (2) a bona fide apprenticeship program approved and registered with the United States Department of Labor's Bureau of Apprenticeship and Training or the Commonwealth of Pennsylvania for each apprenticeable trade or occupation represented in their workforce; and
- (3) comprehensive health and hospitalization benefits for employees and their families.

(d) *Certifications:* Before a bid or proposal is considered for award, the prospective contractor shall submit certifications demonstrating compliance with the foregoing responsibility requirements. In addition, prospective contractors may be requested to submit additional documentation in connection with the responsibility determination. Failure by the bidder or offeror to provide such additional information may render the bidder or offeror ineligible for award.

(e) *Nonresponsibility Determination.* If a bidder or offeror who otherwise would have been awarded a contract is found to be not responsible, a written determination of nonresponsibility setting forth the basis of the finding shall be prepared by the Chief Operating Officer/Chief Clerk or Chief Financial Officer. A copy of the determination shall be sent promptly to the nonresponsible bidder or offeror. The final determination shall be made part of the procurement file. A bidder or offeror has the right to protest the rejection of its bid/proposal because of a finding of non-responsibility pursuant to Article 18 of this Policy.

6. Suspension & Debarment.

(a) *Authority.* After reasonable notice to the business concern or person involved and reasonable opportunity for that business concern or person to be heard, the County shall have authority to debar a business concern or person for cause from consideration for award of contracts. The debarment shall not be for a period of more than three years if found to have engaged in the conduct that is cause for debarment for the first time, or five years if found to have engaged in the conduct that is cause for debarment a second or subsequent time. The County shall have authority to suspend a person from consideration for award of contracts if there is probable cause for debarment. The suspension shall not be for a period exceeding three months.

(b) *Causes for Debarment or Suspension.* The causes for debarment or suspension include the following:

- (1) conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract;

- (2) conviction under State or federal statutes of 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, seriously, and directly affects responsibility as a County contractor;
- (3) conviction under State or federal antitrust statutes arising out of the submission of bids or proposals,
- (4) violation of contract provisions, as set forth below, of a character which is regarded by the County to be so serious as to justify debarment action:
 - (i) deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or
 - (ii) a 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 to be a basis for debarment.
- (5) submission of false certifications with bids or proposals;
- (6) any other cause the County determines to be so serious and compelling as to affect responsibility as a County contractor, including debarment by another governmental entity for any cause listed in regulations; and
- (7) for violation of the ethical standards set forth in Article 20 (Ethics in Public Contracting).

(c) *Decision.* The County shall issue a written decision to debar or suspend. The decision shall state the reasons for the action taken and inform the debarred or suspended business concern or person involved of the rights to administrative review as provided in Article 18 of this Policy.

(d) *Maintenance of List of Debarred and Suspended Concerns.* The Chief Operating Officer/Chief Clerk or Chief Financial Officer shall maintain and update a list of debarred and suspended business concerns or persons. Such list shall be posted on the County's website.

7. Assistance to Local, Small and Disadvantaged Businesses

(a) *Statement of Policy.* In order to help business and industry located in this County, attract new business and industry to this County, and provide additional tax revenue both from those receiving contracts and those employed by County contractors, it shall be the policy of this County to assist local, small and disadvantaged businesses in learning how to do business with the County.

(b) *Definitions.* For purposes of this Policy, the following words shall be the following meanings:

- (1) "Local" business means a person, partnership, corporation or other business entity authorized to transact business in this County and having a bona fide establishment for transacting business in this County at which it was transacting business on the date when bids or proposals for the public contract were first solicited.
- (2) "Small" business means a person, partnership, corporation or other business entity in the United States 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.
- (3) "Disadvantaged" business means a person, partnership, corporation or other business entity in the United State which is owned or controlled by a majority of persons, not limited to members of minority groups, who have been deprived of the opportunity to develop and maintain a competitive position in the economy because of social disadvantages.

(c) *Implementation.* The Chief Procurement Officer shall implement the policy set forth in Subsection (a) of this Article in accordance with the following:

- (1) *Assistance.* The Chief Procurement Officer shall be responsible for assisting local, small and disadvantaged businesses in learning how to do business with the County.
- (2) *Source Lists.* The Chief Procurement Officer shall compile, maintain, and make available source lists of local, small and disadvantaged businesses for the purpose of encouraging procurement from local, small and disadvantaged businesses.
- (3) *Solicitation of Small and Disadvantaged Businesses.* The Chief Procurement Officer shall assure that local, small and disadvantaged businesses are solicited on each procurement for which such businesses may be suited.
- (4) *Evaluation Criteria.* The Chief Procurement Officer may, as appropriate, include in solicitations price preferences or evaluation credit for local, small or disadvantaged business status.
- (5) *Bonding.* The Chief Procurement Officer may reduce the level or change the types of bonding normally required or accept alternative forms of security to the extent reasonably necessary to encourage procurement from local, small and disadvantaged businesses.
- (6) *Progress Payments.* The Chief Procurement Officer may make such special provisions for progress payments as may be deemed reasonably necessary to encourage procurement from local, small and disadvantaged businesses.

(d) *Exemption.* The provisions of this Article shall not be applicable when the application of this Article may jeopardize the receipt of federal or state funds.

8. Compliance with Federal & State Requirements.

Where a procurement involves the expenditure of federal or state assistance or contract funds, the County shall comply with such federal or state law and authorized regulations which are mandatorily applicable and which are not presently reflected in this Policy.

9. Methods of Source Selection.

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

- (a) Competitive Sealed Bidding;
- (b) Competitive Sealed Proposals;
- (c) Small Purchases;
- (d) Sole Source Procurement; or
- (e) Emergency Procurements.

10. Competitive Sealed Bidding.

(a) *Conditions for Use.* Unless exempt, all contracts or purchases in excess of eighteen thousand five hundred dollars (\$18,500) shall be awarded by competitive sealed bidding.¹

(b) *Invitation for Bids.* An Invitation for Bids shall be issued and shall include a purchase description, and all contractual terms and conditions applicable to the procurement. The Invitation for Bids shall set forth the evaluation criteria to be used, which may include criteria to determine acceptability such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose. Those criteria that will affect the bid price and be considered in evaluation for award shall be objectively measurable, such as discounts, transportation costs, and total or life cycle costs.

(c) *Public Notice.* Public notice of the Invitation for Bids shall be given a reasonable time prior to the date set forth therein for the opening of bids. Public notice shall be advertised in at least one newspaper of general circulation, published or circulating in the county at least two (2) times, at intervals of not less than three (3) days where daily newspapers of general circulation are employed for such publication, or in case weekly newspapers are employed, then the notice shall be published once a week for two (2) successive weeks. The first advertisement shall be published not less than ten (10) days prior to the date fixed for the opening of bids.² Notice shall also be provided through the County's website.

(d) *Bidder Lists.* The County may maintain bidder lists of prospective contractors, but distribution of the solicitation shall not be limited to contractors on such lists, nor may a prospective contractor be denied award of a contract simply because such contractor was not on

¹ 16 P.S. § 5001(a).

² 16 P.S. § 5001(a).

a bidders list. The fact that a prospective contractor is included on a bidders list does not necessarily represent a finding of responsibility.

(e) *Bid Acceptance.* The acceptance of all bids shall be by the County Controller.³ Upon its receipt, each bid and modification shall be time-stamped but not opened and shall be stored in a secure place until the time and date set for bid opening. Bids shall be accepted electronically at the time and in the manner designated in the Invitation for Bids.

(f) *Bid Opening.* Bids shall be opened publicly at a time and place to be designated in the public notice. All bids shall be announced publicly by the Chief Clerk, or designee, and referred to the appropriate departments for tabulation without the presence of the County Commissioners. Bids shall be opened publicly in the presence of one or more witnesses at the time and place designated in the public notice.⁴ Whenever, for any reason, the bid openings shall not be held, the same business may be transacted at a subsequent meeting, the time and place of which shall have been announced at the previous meeting held for such openings. The amount of each bid, and together with the name of each bidder shall be announced publicly by the chief clerk or his designee and recorded; the record and each bid shall be open to public inspection. Any bid received after the time and date set for receipt of bids is late. No late bid will be considered unless it would have been timely but for the action or inaction of County personnel directly serving the procurement activity.

(g) *Bid Evaluation.* Bids shall be unconditionally accepted without alteration or correction, except as authorized by this Policy.⁵ Minor informalities or insignificant mistakes that can be corrected without prejudice to other bidders may be waived. Bids shall be evaluated based on the requirements set forth in the Invitation for Bids. No criteria may be used in bid evaluations that are not set forth in the Invitation for Bids.

(h) *Correction or Withdrawal of Bids; Cancellation of Awards.* Correction or withdrawal of inadvertently erroneous bids before or after award, or cancellation of awards or contracts based on such bid mistakes, shall be permitted.⁶ After bid opening, no changes in bid prices or other provisions of bids prejudicial to the interest of the County or fair competition shall be permitted. All decisions to permit the correction or withdrawal of bids, or to cancel awards or contracts based on bid mistakes, shall be supported by a written determination made by the Chief Operating Officer/Chief Clerk or Chief Financial Officer.

(i) *Award.* Award shall be made by written notice to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the Invitation for Bids. The contract shall be awarded or all bids shall be rejected within thirty (30) days of the opening of the bids.⁷ Thirty-day extensions of the date for the award may be made by the mutual written consent of the Chief Operating Officer/Chief Clerk or Chief Financial Officer and any bidder who wishes to remain under consideration for award. The reasons for requesting such

³ 16 P.S. § 5001(b).

⁴ 16 P.S. § 5001(b).

⁵ Competitive sealed bidding does not include negotiations with bidders after the receipt and opening of bids. Award is to be made based strictly on the criteria set forth in the Invitation for Bids.

⁶ To maintain the integrity of the competitive sealed bidding system, a bidder may not be permitted to correct a bid mistake after bid opening that would cause such bidder to have the low bid unless the mistake is clearly evident from examining the bid document; for example, extension of unit prices or errors in addition.

⁷ 16 P.S. § 5001(b).

extension shall be documented. The Chief Operating Officer/Chief Clerk or Chief Financial Officer shall excuse from consideration any bidder not wishing to agree to a request for extension of the date for the award.⁸ In the case of low tie bids, award may be made by drawing lots. All contracts shall be filed with the controller immediately after their execution.⁹

(j) *Publicizing Awards.* Written notice of award shall be sent to the successful bidder. Each unsuccessful bidder shall be notified of the award in writing or through electronic means. Notice of award shall be made available to the public through the County's website.

(k) *One Bid Received.* If only one responsive bid is received in response to an Invitation for Bids, an award may be made to the single bidder if the Chief Operating Officer/Chief Clerk or Chief Financial Officer finds that the price submitted is fair and reasonable, and that either other prospective bidders had reasonable opportunity to respond, or there is not adequate time for re-solicitation. Otherwise the bid may be rejected and:

- (1) new bids or offers may be solicited;
- (2) the proposed procurement may be cancelled; or
- (3) if the Chief Operating Officer/Chief Clerk or Chief Financial Officer determines in writing that the need for the supply or service continues, but that the price of the one bid is not fair and reasonable and there is no time for re-solicitation or re-solicitation would likely be futile, the procurement may then be conducted under Article 13 (Sole Source Procurement) or Article 14 (Emergency Procurements), as appropriate.

(l) *Nonreceipt of Bids.* If no bids are submitted in response to an Invitation for Bids the item shall be rebid.¹⁰ If no bids are submitted within 45 days of the second advertising date the County may procure the goods pursuant to Article 13 of this Policy (relating to sole source awards).

(m) *Exemptions.* The contracts or purchases involving an expenditure of over \$18,500 which may be awarded by alternative methods of source selection authorized by this Policy are as follows:

- (1) Emergencies. In cases of actual emergency, which shall be declared and stated by resolution of the commissioners, the requirements of this subsection need not be followed.¹¹
- (2) Maintenance, repairs or replacements for water, electric light, or other public works. Provided that the requirement does not constitute new additions, extensions or enlargements of existing facilities and equipment.¹²
- (3) Patented or Copyrighted products. Those where particular types, models or pieces of new equipment, articles, apparatus, appliances, vehicles or parts thereof are desired.¹³

⁸ 16 P.S. § 5001(b).

⁹ 16 P.S. § 5001(b).

¹⁰ 73 P.S. § 1641.

¹¹ 16 P.S. § 5001(a.1).

¹² 16 P.S. § 5001(d)(1).

¹³ 16 P.S. § 5001(d)(3).

- (4) Insurance policies or surety company bonds.¹⁴
- (5) Public utility service and electricity, natural gas or telecommunication services.¹⁵
- (6) Personal or professional services.¹⁶
- (7) Tangible client services provided by nonprofit agencies.¹⁷
- (8) Those involving contracts entered into by nonprofit cooperative hospital service associations for hospitals and nursing homes which are part of the institutional district or which are owned by the county, operated by the county or affiliated with the county by the purchasing of or participating in contracts for materials, supplies and equipment.¹⁸
- (9) Those involving the purchase of milk.¹⁹
- (10) Those made with any public body.²⁰
- (11) Those exclusively involving construction management services.²¹
- (12) Those involving computer software, equipment and services related to technology and information systems.²²

11. Competitive Sealed Proposals.

(a) *Conditions for Use.* A contract may be entered into by competitive sealed proposals when the Chief Operating Officer/Chief Clerk or Chief Financial Officer determines in writing that the procurement is exempt from the requirement to use competitive sealed bidding under Article 10 of this Policy.

(b) *Request for Proposals.* Proposals shall be solicited through a Request for Proposals.

(c) *Public Notice.* Public notice shall be provided in at least one (1) newspaper of general circulation, and through the County's web site. Public notice of the Request for Proposals shall be given a reasonable time prior to the date set forth therein for the submission of proposals.

(d) *Source Lists.* The County may maintain source lists of prospective contractors, but distribution of the solicitation shall not be limited to such prospective contractors, nor may a

¹⁴ 16 P.S. § 5001(d)(4).

¹⁵ 16 P.S. § 5001(d)(4).

¹⁶ 16 P.S. § 5001(d)(5).

¹⁷ 16 P.S. § 5001(d)(6).

¹⁸ 16 P.S. § 5001(d)(6.1).

¹⁹ 16 P.S. § 5001(d)(7).

²⁰ 16 P.S. § 5001(d)(8).

²¹ 16 P.S. § 5001(d)(9).

²² 16 P.S. § 5001(d)(10), 16 P.S. § 5001(d.1).

prospective contractor be denied award of a contract simply because the contractor was not on a source list. The fact that a prospective contractor is included on a source list does not necessarily represent a finding of responsibility.

(e) *Receipt of Proposals.* Proposals and modifications shall be time-stamped upon receipt and held in a secure place until the established due date. Bids shall be accepted electronically at the time and in the manner designated in the Request for Proposals. Proposals shall be opened so as to avoid disclosure of contents to competing offerors during the process of negotiation. Proposals shall not be opened publicly but shall be opened in the presence of two or more procurement officials. A Register of Proposals shall be prepared which shall be open to public inspection only after award of the contract.

(f) *Evaluation Factors.* The Request for Proposals shall state the relative importance of price and other factors and subfactors, if any.

(g) *Discussion with Responsible Offerors and Revisions to Proposals.* As provided in the Request for Proposals, discussions may be conducted with responsible offerors who submit proposals determined to be reasonably susceptible of being selected for award for the purpose of clarification to assure full understanding of, and responsiveness to, the solicitation requirements. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals, and such revisions may be permitted after submissions and prior to award for the purpose of obtaining best and final offers. In conducting discussions, there shall be no disclosure of any information derived from proposals submitted by competing offerors.

(h) *Award.* Award shall be made to the responsible offeror whose proposal conforms to the solicitation and is determined in writing to be the most advantageous to the County taking into consideration price and the evaluation factors set forth in the Request for Proposals. No other factors or criteria shall be used in the evaluation. The contract file shall contain the basis on which the award is made. Written notice of the award of a contract to the successful offeror shall be promptly given to all offerors.

(i) *Modification or Withdrawal of Proposals.* Proposals may be modified or withdrawn prior to the established due date. For the purposes of this Section the established due date is either the time and date announced for receipt of proposals or receipt of modifications to proposals, if any; or if discussions have begun, it is the time and date by which best and final offers must be submitted, provided that only offerors who submitted proposals by the time announced for receipt of proposals may submit best and final offers.

(j) *One Proposal Received.* If only one proposal is received in response to a Request for Proposals, the Request for Proposal should be resolicited, if time permits, or award made in accordance with this Article if the Chief Operating Officer/Chief Clerk or Chief Financial Officer finds that the price submitted is fair and reasonable, and that other prospective offerors had reasonable opportunity to respond.

12. Small Purchases.

(a) *Conditions for Use.* Any procurement not exceeding \$18,500 may be made in accordance with small purchase procedures, provided, however, procurement requirements shall not be artificially divided so as to constitute a small purchase under this Section.

(b) *Procedure.* Insofar as it is practical for small purchases of supplies or services between \$4,000 and \$18,500, no less than three businesses shall be solicited to submit written, electronic, or oral quotations that are recorded and placed in the procurement file. Award shall be made to the business offering the lowest acceptable quotation.

(c) *Small Purchases of \$4,000 or Less.* The Chief Operating Officer/Chief Clerk or Chief Financial Officer shall adopt operational procedures for making small purchases of less than \$4,000. Such operational procedures shall provide for obtaining adequate and reasonable competition and for making records to properly account for funds and to facilitate auditing of the Purchasing Department.

13. Sole Source Procurement.

(a) *Conditions for Use.* A contract may be awarded without competition when the Chief Operating Officer/Chief Clerk or Chief Financial Officer determines in writing, that the procurement is exempt from competitive sealed bidding, and (a) there is only one source for the required supply, service, or construction item, or (b) when the County's need for the supplies or services is of such an unusual and compelling urgency that the County would be seriously injured unless the County is permitted to limit the number of sources from which it solicits bids or proposals.

(b) *Negotiation in Sole Source Procurement.* The County shall conduct negotiations, as appropriate, as to price, delivery, and terms.

(c) *Record of Sole Source Procurement.* A record of sole source procurements shall be maintained that lists: (a) each contractor's name; (b) the amount and type of each contract; (c) a listing of the supplies, services, or construction procured under each contract; and (d) the identification number of each contract file. Sole Source awards shall be published on the County's website.

14. Emergency Procurements.

Notwithstanding any other provision of this Policy, the County may make emergency procurements when there exists a threat to public health, welfare, or safety under emergency conditions as declared by the County Commissioners; provided that such emergency procurements shall be made with such competition as is practicable under the circumstances. A written determination of the basis for the emergency and for the selection of the particular contractor shall be included in the contract file. Emergency awards shall be published on the County's website.

15. Electronic Solicitations and Bid/Offer Submissions.

The County shall establish an online portal for distribution of solicitations and submission of bids and proposals. The Chief Operating Officer/Chief Clerk or Chief Financial Officer shall develop policies and procedures for the County to implement receipt of electronic submissions to ensure that the confidentiality of bids/proposals received electronically shall be maintained.

16. Multiple Awards.

Contracts awarded using any of the source selection methods authorized by this Policy may be entered into on a multiple award basis. The Invitation for Bids or Request for Proposals shall set forth the number of awards anticipated.

17. Cooperative Purchasing.

(a) *Policy.* In order to save significant time and money in contract production as well as lower contract prices through the power of aggregation the County shall procure supplies and services from cooperative purchasing agreements established by the Commonwealth, other states, local governments, or the federal government, including General Services Administration (GSA) schedule contracts, whenever it is feasible and beneficial to the County to do so, provided:

- (1) The cooperative purchasing agreement or GSA schedule contract allows states or state agencies from another state to utilize the contract.
- (2) The contracting federal, state, or local government agency entered into the cooperative purchasing agreement complied with its statutory and regulatory requirements in awarding the agreement to the contractor.

(b) *Prohibition.* The County shall not enter into cooperative purchasing agreements for the purpose of circumventing applicable law or this Procurement Policy.

18. Protests

(a) *Right to Protest.* Any actual or prospective bidder, offeror, or contractor who is aggrieved in connection with the solicitation or award of a contract may protest to the Chief Operating Officer/Chief Clerk or Chief Financial Officer. Protests relating to cancellation of invitations for bids or requests for proposals and protests relating to the rejection of all bids or proposals are not permitted.

(b) *Time for Filing.* If a protest is submitted by a prospective bidder or prospective offeror, the protest must be filed before bid opening time or proposal receipt date. If a protest is filed by a bidder or offeror or a prospective contractor, the protest must be filed within seven days after the protesting bidder or offeror or prospective contractor knew or should have known of the facts giving rise to the protest except that in no event may a protest be filed later than seven days after the date the contract was awarded. Date of filing is the date of receipt of protest. Untimely filed protests must be disregarded by the County.

(c) *Authority to Resolve Protests.* The County Commissioners, or designee, shall have the authority to settle and resolve a protest of an aggrieved bidder, offeror, or contractor, actual or prospective, concerning the solicitation or award of a contract.

(d) *Decision.* If the protest is not resolved by mutual agreement, the County Commissioners shall promptly issue a decision in writing. The decision shall state the reasons for

the action taken. A copy of the decision shall be mailed or otherwise furnished immediately to the protestor.

19. Bonding.

(a) Bid bonds or other security may be required for contracts as deemed advisable to protect the interest of the County. Any such requirements must be set forth in the solicitation. In the event any bidder or offeror shall, upon award of the contract to him, fail to comply with the requirements hereinafter stated as to security guaranteeing the performance of the contract, or fail or refuse to enter into a contract, or otherwise fail or refuse to render the required services, the security furnished under this subsection shall be forfeited to the county as liquidated damages, and the contract subsequently may be awarded to the next lowest bidder, who shall manifest his acceptance of such contract by giving a good faith deposit in the amount and manner set forth in this subsection on or before the third day after the award of the contract to such bidder and otherwise comply with the provisions of this section.²³

(b) The successful bidder, when a formal bid is required herein, shall be required to furnish a bond or irrevocable letter of credit or other security in an amount sufficient to the commissioners guaranteeing performance of the contract within thirty (30) days after the contract has been awarded, unless the commissioners shall prescribe a shorter period or unless the commissioners shall waive the bond requirement in the bid specification.²⁴ The successful bidder for a contract which involves the construction, erection, installation, completion, alteration, repair of or addition to any public work or improvement of any kind shall furnish security as provided in 16 P.S. § 5518.

20. Ethics in Public Contracting

(a) *Statement of Policy.* Public employment is a public trust. It is the policy of the County to promote government integrity. Such policy is implemented by prescribing essential standards of ethical conduct in the procurement process. Public employees must discharge their duties impartially so as to assure fair competitive access to governmental procurement by responsible contractors. Moreover, they should conduct themselves in such a manner as to foster public confidence in the integrity of the County procurement organization. To achieve the purpose of this Policy, it is essential that those doing business with the County also observe the ethical standards prescribed herein. When a person has reason to believe that any breach of ethical standards has occurred, that person should report all relevant facts to the Ombudsman for any appropriate action.

(b) *General Ethical Standards for Employees.* Any attempt to realize personal gain through public employment by conduct inconsistent with the proper discharge of the employee's duties is a breach of a public trust. Pursuant to the Public Official and Employee Ethics Act ("Ethics Act"), 65 Pa.C.S. §1101 et seq., subject to certain statutory exceptions, "public officials" or "public employees" as defined by the Ethics Act, 65 Pa.C.S. §1102, are prohibited from using

²³ 16 P.S. § 5001(b.1).

²⁴ 16 P.S. § 5001(c).

the authority of their public positions to obtain a private pecuniary benefit (financial gain that is not authorized in law) for themselves, member(s) of immediate family, or businesses with which they or member(s) of immediate family are associated. 65 Pa.C.S. § 1103(a). In carrying out their purchasing responsibilities, County personnel shall:

- (1) Comply with the County's Ethics Policy/Code of Conduct.
- (2) Know and observe fair, ethical, and legal trade practices and remain alert to the legal ramifications of purchasing decisions.
- (3) Encourage competition through open, equitable and fair practices.
- (4) Conduct business with potential and current suppliers openly, fairly, equitably, and in an atmosphere of good faith.
- (5) Avoid restrictive specifications.
- (6) Avoid the intent and appearance of unethical or compromising practices.
- (7) Promote positive supplier relationships through courtesy and impartiality in all phases of the purchasing cycle.

(c) *General Ethical Standards for Non-Employees.* Any effort to influence any public employee to breach the standards of ethical conduct set forth in this Policy is also a breach of ethical standards.

(d) *Conflict of Interest.* It shall be a breach of ethical standards for any employee to participate directly or indirectly in a procurement when the employee knows that:

- (1) the employee or any member of the employee's immediate family has a financial interest pertaining to the procurement;
- (2) a business or organization in which the employee, or any member of the employee's immediate family, has a financial interest pertaining to the procurement; or
- (3) any other person, business, or organization with whom the employee or any member of the employee's immediate family is negotiating or has an arrangement concerning prospective employment is involved in the procurement.

Similarly, it shall be a breach of ethical standards for any contractor to participate directly or indirectly in a procurement when the contractor knows that a its organizational, financial, contractual or other interests are such that award of the contract may result in an unfair competitive advantage; or the Contractor's objectivity in performing the contract work may be impaired.

(e) *Gratuities and Kickbacks.* Sections 1103(b) and 1103(c) of the Ethics Act, 65 Pa.C.S. §§ 1103(b)-(c), pertaining to improper influence, provide in part that no person shall offer or give to a public official/public employee anything of monetary value and no public official/public employee shall solicit or accept anything of monetary value based upon the

understanding that the vote, official action, or judgment of the public official/public employee would be influenced thereby.

- (1) *Gratuities.* It shall be a breach of ethical standards for any person to offer, give, or agree to give any employee or former employee, or for any employee or former employee to solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter, pertaining to any program requirement or a contract or subcontract, or to any solicitation or proposal therefor.
- (2) *Kickbacks.* It shall be a breach of ethical standards for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract or order.
- (3) *Contract Clause.* The prohibition against gratuities and kickbacks prescribed in this Section shall be conspicuously set forth in every contract and solicitation therefor.

(f) *Use of Confidential Information.* "Public officials" or "public employees" as defined by the Ethics Act, 65 Pa.C.S. § 1102, are prohibited from using any confidential information received from their public positions to obtain a private pecuniary benefit (financial gain that is not authorized in law) for themselves, member(s) of immediate family, or businesses with which they or member(s) of immediate family are associated.²⁵

(g) *Political Contributions.* Firms awarded contracts through methods other than competitive sealed bidding ("non-bid contracts") are required to file as required by Section 1641 of the Pennsylvania Election Code a report with the Secretary of the Commonwealth, by February 15 of each year, of all political contributions made by:

- (1) Any officer, director, associate, partner, limited partner or individual owner or members of their immediate family whose political contribution exceeded one thousand dollars (\$1,000) by any individual during the preceding year; or
- (2) Any employee of the supplier or members of his immediate family whose political contribution exceeded one thousand dollars (\$1,000) during the preceding year.

²⁵ 65 Pa.C.S. § 1103(a).

Reports required to be filed under Section 1641 of the Pennsylvania Election Code shall also be filed, by February 15 of each year, with the County Board of Elections.

(h) *Contractor Integrity.* Contractors shall certify as part of each bid or proposal that they will maintain the highest standards of integrity in the performance of County contracts and shall take no action in violation of this Policy, federal, state or local laws, regulations, or other requirements that govern contracting with the County. The Chief Operating Officer/Chief Clerk or Chief Financial Officer shall develop standard contractor representations and certifications to effectuate the policies of this Article.

21. Appointment of Ombudsman.

(a) The County shall appoint an ombudsman to hear and facilitate resolution of concerns from prospective contractors, bidders and offerors, contractors and others. When requested, the ombudsman will maintain strict confidentiality as to the source of the concern. The existence of the ombudsman does not affect the authority of the County Commissioners or Chief Operating Officer/Chief Clerk or Chief Financial Officer, and the ombudsman has no authority to render a decision that binds the agency. Further, the ombudsman does not participate in the evaluation of bids or proposals, the source selection process, or the adjudication of protests or formal contract disputes. The ombudsman may refer the party to another official who can resolve the concern.

(b) Before consulting with an ombudsman, interested parties must first address their concerns, issues, disagreements, and/or recommendations to the Chief Operating Officer/Chief Clerk or Chief Financial Officer for resolution. Consulting an ombudsman does not alter or postpone the timelines for any other processes (e.g. bid protests).

22. Severability.

If any provision of this Policy or any application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or application of this Policy which can be given effect without the invalid provision or application, and to this end the provisions of this Policy are declared to be severable.