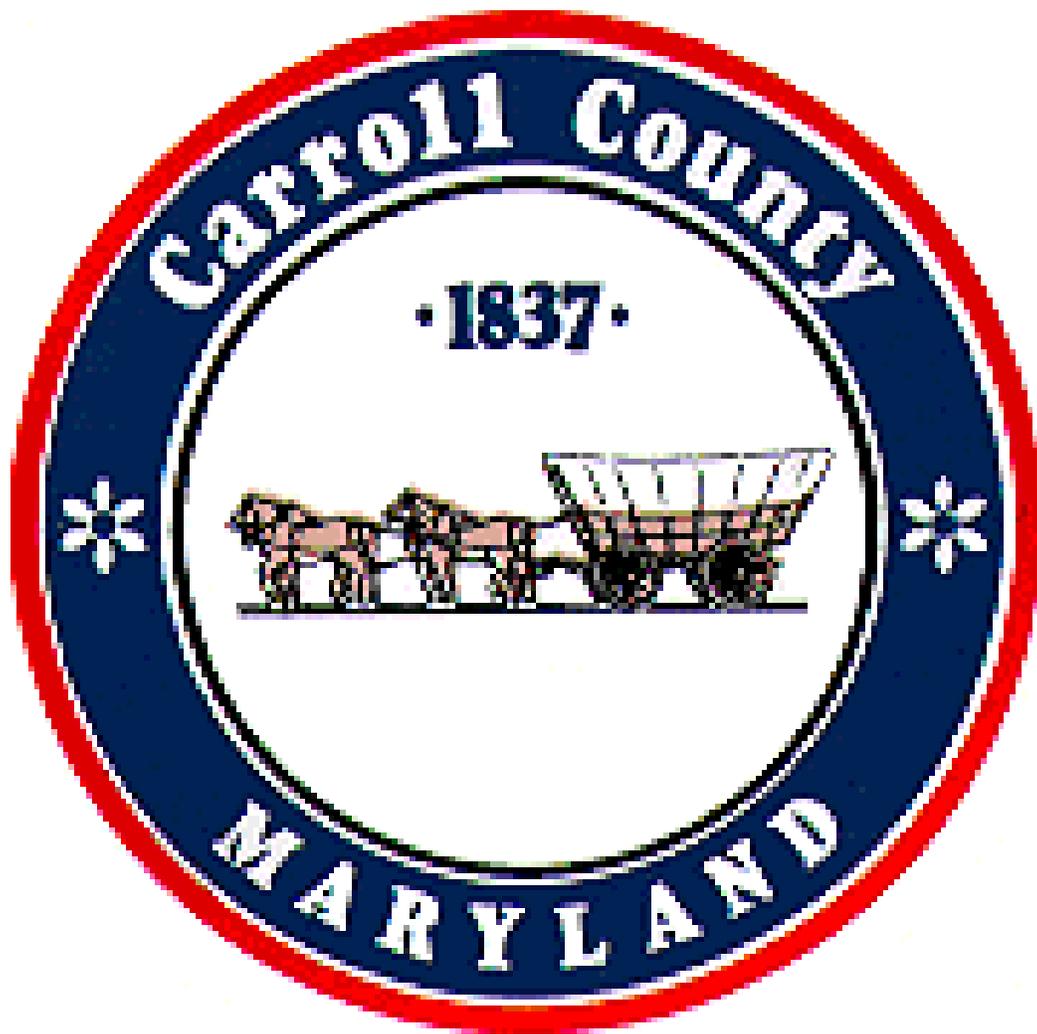


CARROLL COUNTY MARYLAND

PURCHASING POLICY

2012-2013



OFFICE OF THE COMPTROLLER

BUREAU OF PURCHASING

RESOLUTION NO. 258-92

WHEREAS, the County Commissioners of Carroll County desire to adopt a Purchasing Policy in order to provide for the fair and equitable treatment of all persons involved in public purchasing by the County, to maximize the purchasing value of public funds in procurement, and to provide safeguards for maintaining a procurement system of quality and integrity.

09-09-92 9:00 A
REC FEE
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NOW, THEREFORE, BE IT RESOLVED, that the County Commissioners adopt the Carroll County Maryland Purchasing Policy.

ADOPTED this 3rd day of September, 1992.

THE COUNTY COMMISSIONERS OF
CARROLL COUNTY, MARYLAND,
a body corporate and politic
of the State of Maryland

ATTEST:

Robert A. Bair
Robert A. Bair, Clerk

Donald I. Dell (SEAL)
Donald I. Dell, President

Elmer Lippy (SEAL)
Elmer Lippy, Vice President

Julia W. Gouge (SEAL)
Julia W. Gouge, Secretary

Approved for legal sufficiency:

George A. Lahey
George A. Lahey
Deputy County Attorney

Our File No. 901
GAL\wmm\J:\text\ord\purchase.ord
September 2, 1992

SEP 8 1992
RECEIVED
CLERK OF THE COUNTY COMMISSIONERS
CARROLL COUNTY, MARYLAND

ARTICLE 1 – GENERAL PROVISIONS

Part A – Purpose and Application

1-101 PURPOSE

The purpose of this Policy is to provide for the fair and equitable treatment of all persons involved in public purchasing by the County, to maximize the purchasing value of public funds in procurement, and to provide safeguards for maintaining a procurement system of quality and integrity.

1-102 APPLICATION

This Policy applies to contracts for the procurement of supplies, services, equipment and construction entered into by the County after the effective date of this Policy, unless the parties agree to its application to contracts entered into before the effective date. It shall apply to every expenditure of public funds by a public agency for public purchasing irrespective of the source of the funds. When the procurement involves the expenditure of federal or state assistance or contract funds, the procurement shall be conducted in accordance with any mandatory applicable federal or state law, regulations, or procurement requirements. Nothing in this Policy shall prevent any public agency from complying with the terms and conditions of any grant, gift, or bequest that is otherwise consistent with law.

Part B – Definitions

1-201 DEFINITIONS

- (1) Architect-Engineer and Land Surveying Services. Those professional services within the scope of the practice of architecture, professional engineering, or land surveying, as defined by the laws of the State of Maryland.
- (2) Brand Name or Equal Specification. A specification limited to one or more items by manufacturers' names or catalogue numbers to describe the standard quality, performance, and other salient characteristics needed to meet County requirements, and which provides for the submission of equivalent products.
- (3) Brand Name Specification. A specification limited to one or more items by manufacturers' names or catalogue numbers.
- (4) Business. Any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or any other private legal entity.
- (5) Capital Construction. Any construction project which is funded under the Capital Improvement Program.
- (6) Change Order. Any written alteration in specifications, delivery point, delivery date, period of performance, price, quantity or other provision of any contract accomplished by mutual action of the parties of the contract.
- (7) Chief. The Chief of the Bureau of Purchasing.

- (8) Contract Modification (bilateral change). Any written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity or other provision of any contract accomplished by mutual action of the parties of the contract.
- (9) Construction. The process of building, altering, repairing, improving, or demolishing any public structure or building, or other public improvements of any kind to any public real property.
- (10) Construction Management Contract. A contract in which a party is retained by the County to coordinate and administer contracts for construction services and may also include, if provided in the contract, the furnishing of construction services to the County.
- (11) Contract. All types of County agreements, regardless of what they may be called, for the procurement of supplies, equipment, services, or construction.
- (12) Contractor. Any person or organization having a contract with the County or a using agency thereof.
- (13) Cooperative Purchasing. Joint purchasing of common or similar commodities and services by two or more governmental jurisdictions.
- (14) Cost Analysis. The evaluation of cost data for the purpose of arriving at cost actually incurred or estimates of costs to be incurred, prices to be paid, and costs to be reimbursed.
- (15) Cost Data. Factual information concerning the cost of labor, material, overhead, and other cost elements which are expected to be incurred or which have been actually incurred by the contractor in performing the contract.
- (16) Cost-Reimbursement Agreement. Agreement that provides for reimbursement of allowable cost incurred during performance, in accordance with the contract terms and the provisions of this policy, and a fee or profit, if any.
- (17) Invitation for Bids. All documents, whether attached or incorporated by reference, utilized for soliciting sealed bids.
- (18) Legal Bid Limit. That dollar value above which competitive bidding is required within the Code of Public Laws of Maryland, Article 7, Section 3-17 as it may be amended.
- (19) Person. Any business, individual, union, committee, club, other organization, or group of individuals.
- (20) Price Analysis. The evaluation of price 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.
- (21) Price Data. Factual information concerning prices for items substantially similar to those being procured. Prices in this definition refer to offered or proposed selling prices, historical selling prices, and current selling prices. The definition refers to data relevant to both prime and subcontract prices.

- (22) Procurement. The buying, purchasing, renting, leasing, or otherwise acquiring of any supplies, equipment, services, or construction. It also includes all functions that pertain to the obtaining of any supply, equipment, service, or construction, including description of requirements, selection, and solicitation of sources, preparation and award of contract, and all phases of contract administration.
- (23) Professional Services. Work performed by an independent contractor within the scope of the practice of accounting, architecture, land surveying, landscape architecture, law, medicine, optometry, engineering, planning, or other generally recognized profession.
- (24) Public Agency. A public entity created by the County or by the State of Maryland and subject to the Purchasing Policies of the County.
- (25) Qualified Products List. An approved list of supplies, equipment, services, or construction items described by model or catalogue numbers, which, before competitive solicitation, the County has determined will meet the applicable specification requirements.
- (26) Request for Proposals. All documents, whether attached or incorporated by reference, used to solicit proposals.
- (27) Responsible Bidder or Offeror. A person who has the capability in all respects to perform fully the contract requirements, and the tenacity, perseverance, experience, integrity, reliability, capacity, facilities, equipment, and credit which will assure good faith performance.
- (28) Responsive Bidder. A person who has submitted a bid which conforms in all material respects to the requirements set forth in the invitation for bids.
- (29) Services. The furnishing of labor, time, or effort by a contractor, not involving the delivery of a specific end product other than reports which are merely incidental to the required performance. This term shall not include employment agreements.
- (30) Specifications. Any description of the physical or functional characteristics, or of 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.
- (31) Using Agency. Any department, commission, board, or public agency requiring supplies or services to be procured pursuant to this Policy, including the Carroll County Board of Elections Supervisors, State's Attorney, Sheriff, Board of Liquor License Commissioners, and the Circuit Court.

ARTICLE 2 – OFFICE OF THE CHIEF, BUREAU OF PURCHASING

2-101 ESTABLISHMENT, APPOINTMENT AND TENURE

- (1) Establishment of the Position of Chief, Bureau of Purchasing. There is hereby created the position of Chief, Bureau of Purchasing, who shall be the County's principal public purchasing official.

2-102 AUTHORITY AND DUTIES

- (1) Principal Public Purchasing Official. Except as otherwise provided herein, the Chief shall be responsible for the procurement of supplies, services, equipment and construction in accordance with this Policy, as well as the management and disposal of supplies.
- (2) Duties. In accordance with this Policy, and subject to the supervision of the County Commissioners as delegated, the Chief shall implement the provisions of this Policy.
- (3) Operational Procedures. Consistent with this Policy, and with the County Commissioners' approval, the Chief may adopt operational procedures relating to the operation of the Bureau of Purchasing, said procedures to be followed by all using agencies. These procedures may be set forth in a County Procurement Handbook, subject to approval by the County Commissioners.

2-103 DELEGATIONS TO OTHER COUNTY OFFICIALS

With the County Commissioners' approval, the Chief may further delegate authority to purchase certain supplies, services, equipment, or construction to other County officials, if delegation is deemed necessary of the effective procurement of those items. Notwithstanding the provisions of Section 2-102 (Authority and Duties), procurement authority with respect to certain supplies, services, equipment or construction may be delegated to other County officials by the County Commissioners when such delegation is deemed necessary for the effective procurement of these supplies, services, equipment or construction when requested by the Chief and upon a specific written determination that such delegation is necessary.

ARTICLE 3 -- SOURCE SELECTION AND CONTRACT FORMATION

Part A – Methods of Source Selection

3-101 COMPETITIVE SEALED BIDDING

- (1) Conditions for Use. All County contracts for the purchase of supplies, service, equipment, or construction shall be awarded by competitive sealed bidding except as otherwise provided in Sections 3-102 (Competitive Sealed Proposals), 3-103 (Contracting for Designated Professional Services), 3-106 (Emergency Procurements), and 5-401 (Public Announcement and Selection Process) of this Policy.
- (2) Invitation for Bids. An invitation for bids shall be issued and shall include specifications, and all contractual terms and conditions applicable to the procurement.
- (3) Public Notices. Adequate public notice of the invitation for bids shall be given a reasonable time, but not less than fifteen (15) calendar days before the date set forth therein for the opening of bids. Notice shall include publication in the newspaper of general circulation within Carroll County. Notice shall include the final date and time for the filing of bids and the place, date and time of bid opening.
- (4) Bid Opening. Bids shall be opened publicly in the presence of one or more witnesses at the time and place designated in the invitation for bids. The name of each bidder and the amount of each bid, and other relevant information the Chief deems appropriate shall be recorded. The bid list shall be open for public inspection only after final tabulation of bids.

- (5) Bid Acceptance and Bid Evaluation. Bids may not be altered or corrected except as authorized in this Policy. Bids shall be evaluated based on the requirements set forth in the invitation for bids, 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 evaluating the award shall be objectively measurable, such as discounts, transportation costs, and total or life cycle costs.
- (6) Correction or Withdrawal of Bids; Cancellation of Awards. Correction or withdrawal of inadvertently erroneous bids before or after bid opening, or cancellation of awards or contracts based on such bid mistakes, may be permitted by the Chief under the following conditions:
- (a) Mistakes discovered before bid opening may be modified or withdrawn by written or telegraphic notice received in the County Commissioners' office before the time set for bid opening.
 - (b) After bid opening, corrections in bids shall be permitted only to the extent that the bidder can show that a mistake clearly evident on the face of the bid document and of a nonjudgmental character was made, the nature of the mistake, and the bid price actually intended.
 - (c) After bid opening, no changes in bid prices or other provisions of bids prejudicial to County's interest or to fair competition shall be permitted.
 - (d) In lieu of bid correction, a low bidder alleging a material mistake of fact may be permitted to withdraw its bid if:
 - (1) The mistake is clearly evident on the face of the bid document, but the intended correct bid is not similarly evident; or
 - (2) The bidder submits evidence which clearly and convincingly demonstrates that a mistake of fact was made.
 - (e) All decisions to permit bids to be corrected or withdrawn, or to cancel awards or contracts based on bid mistakes, shall be supported by a written determination made by the Chief.
- (7) Award. The contract shall be awarded with reasonable promptness by appropriate written notice to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the invitation for bids.
- (a) Negotiated Adjustment.
 - (1) If the low responsive and responsible bid exceeds the available funds as certified by the Director of the Department of Management and Budget, the Chief is authorized to negotiate an adjustment of the bid price of the lowest responsive and responsible bidder in order to bring the bid within the amount of the available funds when:
 - (a) the bid does not exceed such funds by more than five (5) percent; and
 - (b) when time or economic considerations preclude resolicitation of work of a reduced scope.
 - (2) Any such negotiated adjustment shall be based only upon eliminating independent deductive items specified in the invitation for bids.
 - (3) Regardless of the amount by which the bid exceeds available funds, the Chief, after consultation with the Department Director of the using Agency, the Director of the Department of Management and Budget, and the County Attorney, may reduce the scope of the project during the budget year and allow for completion of the project in the next budget year.
- (8) Multi-Step Sealed Bidding. When it is considered impractical initially to prepare a purchase description to support an award based on price, an invitation for bids may be issued requesting the

submission of unpriced offers to be followed by an invitation for bids limited to those bidders whose offers have been determined to be technically acceptable under the criteria set forth in the first solicitation.

3-102 COMPETITIVE SEALED PROPOSALS

- (1) Conditions for Use. When the Chief determines in writing that the use of competitive sealed bidding is either not practicable or not advantageous to the County, a contract may be entered into by use of the competitive request for proposal.
- (2) Request for Proposals. Proposals shall be solicited through a Request for Proposals. (“RFP”).
- (3) Public Notice. Adequate public notice of the request for proposals shall be given in the same manner as provided in Section 3-101 (3) (Competitive Sealed Bidding, Public Notice); provided, the minimum time shall be fifteen (15) days.
- (4) Receipt of Proposals. No proposals shall be handled so as to permit disclosure of the contents of any proposal to competing offerors during the process of negotiation. A bid list shall be prepared containing the name of each offeror, the number of modifications received, if any, and a description sufficient to identify the item offered. The bid list shall be open for public inspection only after final tabulation of bids.
- (5) Evaluation Factors. The request for proposals shall state the relative importance of price and other evaluation factors.
- (6) 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 conformance to, the solicitation requirements. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision in proposals and such revisions may be permitted after submissions and before 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.
- (7) Award. Award shall be made to the responsible offeror whose proposal is determined 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 a written statement specifically identifying the basis on which the award is made.

3-103 CONTRACTING FOR DESIGNATED PROFESSIONAL SERVICES

- (1) Authority. For the purpose of procuring professional services, the using agency requiring such services may procure them on its own behalf, as authorized from time to time by the County Commissioners. In any event, the using agency shall do so in accordance with the procedure set forth in this policy.

3-104 PURCHASES UNDER LEGAL BID LIMIT

- (1) General. Notwithstanding any other provision of his Policy, any contract for supplies, services, or construction not exceeding legal bid limit may be made in accordance with the purchasing procedures authorized in this section. Contract requirements shall not be artificially divided so as to constitute a small purchase under this section.
- (2) Purchases over \$2,500.00. Insofar as it is practical for purchases in excess of \$2,500.00, but less than the legal bid limit, no less than three businesses ought to be solicited to submit quotations. Award ought to be made to the business offering the lowest acceptable quotation. The names of the businesses submitting quotations, and the date and amount of each quotation, shall be recorded and maintained as a public record.
- (3) Purchases Under \$2,500.00. The Chief shall adopt with the County Commissioners' approval, operational procedures for making purchases of \$2,500.00 or less.

3-105 SOLE SOURCE PROCUREMENTS

A contract may be awarded without competition when the Chief determines in writing, after conducting a good faith review of available sources, that there is only one source for the required supplies, equipment, service, or construction. The Chief shall conduct negotiations as appropriate, as to price, delivery, and terms. A record of sole source procurements shall be maintained as a public record and shall list each contractor's name, the amount and type of each contract, a listing of the item(s) procured under each contract, and the identification number of each contract file.

3-106 EMERGENCY PROCUREMENTS

Notwithstanding any other provisions of this Policy, the using Agency may make emergency procurements of supplies, equipment, services, or construction when there exists a threat to public health, welfare, or safety; provided that emergency procurements shall be made with such competition as is practicable under the circumstances. As soon as practicable after the emergency, the using Agency shall make a written statement of the basis for the emergency and for the selection of the particular contractor to be included in the contract file. As soon as practicable, a record of each emergency procurement shall be made and shall set forth the contractor's name, the amount and type of the contract, a listing of the item(s) procured under the contract, and the identification number of the contract file.

3-107 CANCELLATION OF INVITATIONS FOR BIDS OR REQUESTS FOR PROPOSALS

An invitation for bids, a request for proposals, or other solicitation may be canceled, or any or all bids or proposals may be rejected in whole or in part as may be specified in the solicitation, at the County's sole discretion. The reasons for the cancellation or rejection need not be stated. Each solicitation issued by the County shall state that the solicitation may be canceled and that any bid or proposal may be rejected in whole or in part in County's sole discretion. Notice of cancellation shall be sent to all businesses solicited. The notice shall identify the solicitation and where appropriate, note the reason for cancellation and explain that an opportunity will be given to compete on any resolicitation or any future procurements of similar items. Reasons for rejection shall be provided upon request by unsuccessful bidders or offerors. A using Agency shall provide the documentation required by this section within ten (10) days of being requested to do so by the Chief.

3-201 RESPONSIBILITY OF BIDDERS AND OFFERORS

- (1) Determination of Nonresponsibility or Non-Responsiveness. If a bidder or offeror who otherwise would have been awarded a contract is found nonresponsible or nonresponsive, the Chief shall prepare a written determination of nonresponsibility or nonresponsiveness, setting forth the basis of the finding. Bidder's or Offeror's unreasonable failure to supply information promptly with respect to responsibility or responsiveness may be grounds for a determination of nonresponsibility or nonresponsiveness with respect to such bidder or offeror. A copy of the determination shall be sent promptly to the nonresponsible or nonresponsive bidder or offeror. The final determination shall be made part of the contract file and be made a public record.
- (2) Right of Nondisclosure. Information furnished by a bidder or offeror pursuant to this Section shall not be disclosed by the County outside of the Chief's office, or using agency, without the bidder's or offeror's prior written consent except for use in litigation.

3-202 BID, PERFORMANCE, PAYMENT AND MATERIALMEN'S BONDS ON SUPPLY OR SERVICE CONTRACTS

Bid and performance bonds or other security may be requested for supplies, equipment, service, or construction contracts as the Chief or head of a using Agency deems advisable to protect the County's interests but in every event bonding shall be required in accordance with Article 25, Section 29, Annotate Code of Maryland or amendments of that section. Any such bonding requirements shall be set forth in the solicitation. Bid or performance bonds shall not be used as a substitute for a determination of a bidder or offeror's responsibility; however, a bidder who is unable to obtain a bid or performance bond shall be determined not responsible.

Part C – Types of Contracts and Contract Administration

3-301 TYPES OF CONTRACTS

- (1) General Authority. Subject to the limitations of this Section, any type of contract which is appropriate to the procurement, and which will promote the County's best interest may be used, provided that the use of a cost-plus-a-percentage-of-cost contract is prohibited. A cost reimbursement contract may be used only when a determination is made in writing that it is likely to be less costly to the County than any other type or that it is impracticable to obtain the supply, equipment or service required except under such a contract.

3-302 CONTRACT ADMINISTRATION

A contract administration system designed to insure that a contractor is performing in accordance with the solicitation under which the contract was awarded, and the terms and conditions of the contract, shall be maintained.

- (a) The Director of Public Works shall be responsible for the administration of all construction contracts unless delegated otherwise by the County Commissioners.

- (b) Unless otherwise assigned in the contract, the Chief shall be responsible for the administration of supply, equipment, service and building improvements and renovation contracts in cooperation with all departments.

3-303 REPORTING OF ANTICOMPETITIVE PRACTICES

When for any reason collusion or other anticompetitive practices are suspected among any bidders or offerors, a notice of the relevant facts shall be transmitted to the County Attorney.

3-304 COUNTY PROCUREMENT RECORDS

- (1) Contract File. The Chief shall maintain all determinations and other written records pertaining to solicitation or performance of a contract in a contract file.
- (2) Retention of Procurement Records. All procurement records shall be retained and disposed of by the County in accordance with records retention guidelines and schedules adopted by the Chief and approved by the County Attorney and the Board of County Commissioners.

ARTICLE 4 – SPECIFICATIONS

4-101 MAXIMUM PRACTICABLE COMPETITION

All specifications shall be drafted so as to promote overall economy for the purposes intended and encourage competition in satisfying the County's needs, and shall not be unduly restrictive.

4-102 BRAND NAME OR EQUAL SPECIFICATION

- (1) Use. Brand name or equal specifications may be used in specifications when the using Agency determines and certifies to the Chief in writing that:
 - (a) no other design or performance specification or Qualified Products List is available;
 - (b) time does not permit the preparation of another form of purchase description, not including a brand name specification;
 - (c) the nature of the product or the nature of the County's requirements makes use of a brand name or equal specification suitable for the procurement; or
 - (d) use of a brand name or equal specification is in the County's best interests.
- (2) Designation of Several Brand Names. Brand name or equal specifications shall seek to designate as many different brands as are practicable, as "or equal" references and shall further state that substantially equivalent products to those designated will be considered for award.
- (3) Required Characteristics. Unless the Chief determines in writing that the essential characteristics of the brand names included in the specifications are commonly known in the industry or trade, brand name or equal specifications shall include a description of the particular design, functional, or performance characteristics which are required.
- (4) Nonrestrictive Use of Brand Name or Equal Specifications. Where a brand name or equal specification is used in a solicitation, the solicitation shall contain explanatory language that the use of a brand name is for the purpose of describing the standard of quality, performance, or characteristics desired and is not intended to limit or restrict competition.

4-103 BRAND NAME SPECIFICATIONS

- (1) Use. Because use of a brand name specification is restrictive of product competition, it may be used only when requested by the using Agency and the Chief makes a written determination that only the identified brand name item or items will satisfy the County's needs.
- (2) Competition. The Chief shall seek to identify sources from which the designated brand name or items can be obtained and shall solicit those sources to achieve whatever degree of price competition is practicable. If only one source can supply the requirement, the procurement shall be made under Section 3-105 (Sole Source Procurement).

ARTICLE 5 – PROCUREMENT OF CONSTRUCTION, ARCHITECT-ENGINEER AND LAND SURVEYING SERVICES

Part A – Management of Construction Contracting

5-101 RESPONSIBILITY FOR SELECTION OF METHODS OF CONSTRUCTION CONTRACTING MANAGEMENT

In consultation with the Chief, the Directors responsible for construction projects shall have the discretion to select the appropriate method of construction contracting management for a particular project. In determining which method to use, the Directors shall consider the County's requirements, its resources, and the potential contractor's capabilities. The Directors shall execute, and include in the contract file, a written statement setting forth the facts which led to the selection of a particular method of construction contracting management for each project.

ARTICLE 6 – DEBARMENT OR SUSPENSION

6-101 AUTHORITY TO DEBAR OR SUSPEND

- (1) After a reasonable notice to the person involved and reasonable opportunity for that person to be heard, the Chief, after consulting with the County Attorney, is authorized to debar a person for cause from consideration for award of contracts. The debarment shall be for a period of not more than three years. After consultation with the County Attorney, the Chief is authorized to suspend a person from consideration for award of contracts if there is probable cause to believe that the person has engaged in any activity which might lead to debarment. The suspension shall be for a period not to exceed three months. The causes for debarment include:
 - (a) 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 a contract or subcontract;
 - (b) 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;
 - (c) conviction under state or federal antitrust statutes arising out of the submission of bids or proposals;
 - (d) violation of contract provisions, as set forth below, of a character which is regarded by the Chief to be so serious as to justify debarment action:

- (1) deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or
- (2) 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 contractor's control shall not be considered to be a basis for debarment;
- (e) any other cause the Chief 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 this Policy; and
- (f) for violation of the ethical standards set forth in Carroll County Ordinance Number 37 (Ethics Ordinance) as amended.

6-102 DECISION TO DEBAR OR SUSPEND

The Chief 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 person involved of its rights concerning judicial or administrative review.

6-103 NOTICE OF DECISION

A copy of the decision required by Section 6-102 (Decision to Debar or Suspend) shall be mailed or otherwise furnished immediately to the debarred or suspended person.

6-104 FINALITY OF DECISION

A decision under Section 6-102 (Decision to Debar or Suspend) shall be final and conclusive, unless fraudulent, or unless, pursuant to Article 7, the debarred or suspended person within ten (10) days after receipt of the decision takes an appeal to the Board of County Commissioners, whose decision is not appealable.

ARTICLE 7 – APPEALS AND REMEDIES

7-101 BID PROTESTS

- (1) 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 by filing said protest in writing initially with the Chief and, if desired, may request a hearing with the Chief regarding the protest. The protest shall be submitted within ten (10) calendar days after such aggrieved person knows or should have known of the facts giving rise thereto, but in any event a protest must be submitted prior to award.
- (2) Stay of Procurements During Protests. A bidder may appeal the decision of the Chief to the County Commissioners within seven (7) calendar days of receipt of the decision of the Chief. The Board of County Commissioners shall render a final and binding decision on the protest within twenty (20) calendar days after receipt of the protest within twenty (20) calendar days after receipt of the record of the hearing before the Chief, or if in its discretion, the Board of County Commissioners decides to hold further hearings within twenty (20) days after the close of such hearing. The Board of County Commissioners may issue its decision based solely on the record of the hearing before the Chief, or may hold a further hearing to determine such facts as it may in its discretion deem necessary. In any

contract for Ten Thousand Dollars (\$10,000) or less, the decision of the County Commissioners shall be final. In any dispute involving a contract in excess of Ten Thousand Dollars (\$10,000), the decision of the Commissioners may be appealed to the Circuit Court for Carroll County providing such appeal is taken within ten (10) days and provided further that the appeal shall be on the record.

- (3) Entitlement to Costs. When a protest is sustained and the County Commissioners determine that the protesting bidder or offeror should have been awarded the contract but was not, then the protesting bidder or offeror shall be entitled to the reasonable cost incurred in connection with the solicitation, including bid preparation costs or other damages but not attorney's fees unless specifically provided otherwise in the contract.

7-102 CONTRACT CLAIMS

- (1) Decision of the Chief. Unless specifically provided otherwise in the contract, all claims by a contractor against the County relating to a contract, except bid protests or contracts granted pursuant to Article 6 of this policy, shall be submitted in writing to the Chief for a decision. The contractor may request a conference with the Chief on the claim. Claims include without limitation, disputes arising under a contract, and those based upon breach of contract, mistake, misrepresentation, or other cause for contract modification or decision.
- (2) Notice to the Contractor of the Chief's Decision. The Chief's decision shall be issued promptly in writing, and shall immediately be mailed or otherwise furnished to the contractor. The decision shall state the reasons for the decision reached, and shall inform the contractor of its appeal rights under Subsection (3) of this Section.
- (3) Finality of Chief's Decision; Contractor's Right to Appeal. The Chief's decision shall be final and conclusive unless, within ten (10) calendar days from the date of receipt of the decision, the contractor mails or otherwise delivers a written appeal to the Board of County Commissioners.
- (4) Failure to Render Timely Decision. If the Chief does not issue a written decision regarding any contract controversy within ten (10) days after written request for a final decision, or within such longer period as may be agreed upon between the parties, then the aggrieved party may proceed as if an adverse decision had been received.

7-103 REMEDIES FOR SOLICITATIONS OR AWARD IN VIOLATION OF LAW

- (1) Before Bid Opening or Closing Date for Receipt of Proposals. If before the bid opening or closing date for receipt of proposals, the Chief, after consultation with the County Attorney, determines that a solicitation is in violation of federal, state, or county, or municipal law, then the solicitation shall be canceled or revised to comply with applicable law.
- (2) Before Award. If after bid opening or the closing date for receipt of proposals, the Chief, after consultation with the County Attorney, determines that a solicitation or a proposed award of a contract is in violation of federal, state, county, or municipal law, then the solicitation or proposed award shall be canceled.
- (3) After Award. If, after an award, the Chief, after consultation with the County Attorney, determines that solicitation or award of a contract was in violation of applicable law, then:
 - (a) if the person awarded the contract has not acted fraudulently or in bad faith:

- (1) the contract may be ratified and affirmed, provided it is determined that doing so is in the County's best interests; or
 - (2) the contract may be terminated and the person awarded the contract shall be compensated for the actual costs reasonably incurred under the contract, plus a reasonable profit, before the termination; or
- (b) if the person awarded the contract has acted fraudulently or in bad faith the contract may be declared null and void or voidable, if in the County's best interests.

ATTACHMENT A

HEARING PROCEDURE: PROTESTS BEFORE THE BOARD OF COUNTY COMMISSIONERS FILED UNDER THE COUNTY'S PROCUREMENT POLICY

1. Prior to the hearing date, Purchasing (or the Comptroller) shall submit to the County Attorney fifteen copies of an administrative statement containing a clear and concise statement of the background and history of the procurement including copies of the pertinent bid, request for proposals, etc. The statement shall also include a complete and thorough review of the protest to date including any written documentation, exhibits, statements, and evidence presented and all written decisions.
2. Prior to the hearing date and after receipt of the administrative statement from Purchasing, the protestant and any other bidders or County/allied agencies, which participated in the procurement ("responders"), shall submit fifteen copies of a written response to the County Attorney including a clear and concise statement of their response, supporting arguments, supporting evidence, and a statement of the precise relief sought.
3. All written documents and exhibits not already included in the administrative statement or responses to be presented at the hearing shall be submitted at least 3 days in advance of the hearing date to the County Attorney. Parties shall submit fifteen copies of all documents.
4. All documents submitted shall become part of the official record of the hearing, which record shall be available for public inspection.
5. At the hearing, Purchasing, the protestant, and any other responders shall have 30 minutes to present oral argument or testimony to the County Commissioners. Any party who believes that additional time is necessary for adequate presentation of oral argument or testimony may request by letter, addressed to the Commissioners and submitted to the County Attorney, the additional time deemed necessary. Requests shall be received at least 3 days prior to the hearing.
6. The hearing shall be recorded.
7. At the hearing, the Commissioners shall first hear from Purchasing, then the protestant, and then any other responders.
8. During the hearing, the Commissioners or their counsel may ask questions. No other questions or cross-examination will be permitted.
9. The hearing will be open to the public for observation only. Public in attendance will not be allowed to present questions or comments.

10. The Commissioners will render a decision in writing within 20 days after the close of the hearing.
11. Deadlines for submission of all documents unless otherwise herein specified shall be established by the County Attorney in writing to the parties after a hearing date is set. No extension of deadlines will be permitted without written consent of the County Attorney.

ARTICLE 8 – COOPERATIVE PURCHASING

The Chief shall be responsible for the procurement participation with other jurisdictions for common or similar commodities and services. The basic methods by which this can be done are: (1) a special administrative agency composed of representatives from the participating jurisdictions can be established and can solicit bids and award the purchase contract; (2) two or more jurisdictions may jointly request bids from suppliers for certain items and place their purchase contracts either jointly or independently with the lowest responsible bidder.

The Chief may make piggy-back purchases on other state, local and municipal contracts when it is most advantageous to the County. The soliciting jurisdictions stipulates in its bid invitation that participating jurisdictions will have the option to purchase materials at the same price available to the soliciting jurisdiction issuing the invitation.