

FINAL

AMENDED
March 6, 2017

COUNTY COUNCIL OF ANNE ARUNDEL COUNTY, MARYLAND

Legislative Session 2017, Legislative Day No. 2

Bill No. 8-17

Introduced by Mr. Grasso, Chairman
(by request of the County Executive)

By the County Council, January 17, 2017

Introduced and first read on January 17, 2017
Public Hearing set for and held on February 21, 2017
Bill AMENDED on March 6, 2017
Public Hearing on AMENDED BILL set for and held on March 20, 2017
Bill Expires April 22, 2017

By Order: Elizabeth E. Jones, Administrative Officer

A BILL ENTITLED

1 AN ORDINANCE concerning: Article 8 – Purchasing
2

3 FOR the purpose of defining and amending certain terms; clarifying the applicability and
4 purposes of the Article; modifying ~~the rules of construction~~ and the duties of the
5 Purchasing Agent; making persons violating provisions of the Article personally
6 responsible for costs incurred for an unauthorized purchase; adding and relocating
7 provisions relating to procurement contracts; changing the name of the “Purchasing
8 Manual” to “Purchasing Regulations” and modifying who may approve amendments;
9 amending and adding cooperative and piggyback procurement provisions; modifying
10 advertising requirements for competitive procurements; discouraging collusive
11 bidding; modifying bid bond requirements; requiring posting of a summary of certain
12 information read at bid opening; modifying when and how a final bid tabulation shall
13 be posted; modifying how tie bids will be resolved; removing requirement to award
14 within seven days of bid opening; modifying method of evaluation of certain bids;
15 modifying grounds for waiving formalities and curing defects in bids; adding a
16 provision relating to mistakes in bids; removing reference to a list of potential
17 offerors no longer maintained by Purchasing Agent; adding provisions for
18 demonstrations or testing as part of competitive sealed proposal process; modifying
19 provisions relating to small procurements; modifying certain provisions relating to
20 sole source procurements; modifying provisions relating to emergency purchases
21 outside business hours; modifying the definition of “expedited procurement”;

EXPLANATION: CAPITALS indicate new matter added to existing law.
[Brackets] indicate matter stricken from existing law.
Underlining indicates amendments to bill.
~~Strikeover~~ indicates matter stricken from bill by amendment.

1 providing that the Purchasing Agent may approve expedited procurements with
2 approval of Central Services Officer and Chief Administrative Officer; clarifying how
3 expedited procurements may be awarded; providing that providers of professional
4 services shall be licensed as otherwise required; modifying amounts paid to vendors
5 when contracts are terminated; clarifying when cost-plus-percentage-of-cost contracts
6 may be used; modifying who may approve award of capital improvement contracts;
7 requiring all contracts to provide for County access to contractor records for audit and
8 verification; modifying applicability of, required language of, and remedies for
9 violation of non-discrimination clauses in contracts; modifying requirements for
10 bonding of construction contracts; modifying when a County employee can acquire
11 surplus goods; adding information regarding bids or offers to be posted on the County
12 website; repealing the recycled paper requirement, eliminating the Advisory
13 Committee on Standardization; modifying County, State and federal law references;
14 making certain stylistic changes; and generally relating to purchasing.

15
16 BY repealing and reenacting, with amendments: §§ 8-1-101; 8-1-102(b); 8-1-103; ~~8-1-~~
17 ~~104~~; 8-1-105; and 8-2-101

18 Anne Arundel County Code (2005, as amended)

19
20 BY repealing: §§ 8-1-106; 8-2-102; 8-2-117; and 8-2-118

21 Anne Arundel County Code (2005, as amended)

22
23 BY renumbering and repealing and reenacting, with amendments: §§ 8-1-107 and 8-1-
24 108 to be §§ 8-1-106 and 8-1-107, respectively; §§ 8-2-103 through 8-2-116 to be §§
25 8-2-102 through 8-2-115, respectively; and §§ 8-2-119 and 8-2-120 to be §§ 8-2-116
26 and 8-2-117, respectively

27 Anne Arundel County Code (2005, as amended)

28
29 BY adding: § 8-1-108

30 Anne Arundel County Code (2005, as amended)

31
32 SECTION 1. *Be it enacted by the County Council of Anne Arundel County,*
33 *Maryland, That §§ 8-1-106, 8-2-102, 8-2-117, and 8-2-118 of the Anne Arundel County*
34 *Code (2005, as amended) are hereby repealed.*

35
36 SECTION 2. *And be it further enacted, That Section(s) of the Anne Arundel County*
37 *Code (2005, as amended) read as follows:*

38
39 **ARTICLE 8. PURCHASING**

40
41 **TITLE 1. DEFINITIONS; GENERAL PROVISIONS**

42
43 **8-1-101. Definitions.**

44
45 In this article, the following words have the meanings indicated.

46
47 (1) "Capital improvement" means any public improvement undertaken by the
48 County, including the construction or reconstruction in whole or in part of any road,
49 bridge, street, building, WATERWAY or water, sewer, or stormwater facility, or any

1 similar physical structure or facility necessary in carrying out the activities of the County
2 government.

3
4 (2) "COOPERATIVE PROCUREMENT" MEANS A PROCUREMENT CONDUCTED BY OR
5 ON BEHALF OF TWO OR MORE GOVERNMENT ENTITIES TO OBTAIN THE BENEFITS OF
6 VOLUME PURCHASES AND TO REDUCE ADMININSTRATIVE TIME AND EXPENSES.
7

8 [(2)] (3) "Evaluated bid price" means the dollar amount of a bid after bid price
9 adjustments are made under objective measurable criteria, set forth in the invitation for
10 bids, that affect the economy and effectiveness in the operation or use of the product,
11 such as reliability, maintainability, operating costs, useful life, and residual value.
12

13 [(3)] (4) "Goods" means all tangible things that are or may be produced for or
14 furnished to the County.
15

16 (5) "INTERGOVERNMENTAL AGREEMENT" MEANS AN AGREEMENT BETWEEN OR
17 AMONG TWO OR MORE GOVERNMENTAL ENTITIES TO PROCURE OR PROVIDE GOODS AND
18 SERVICES.
19

20 [(4)] "Local bidder" means:
21

22 (i) a bidder whose principal office is located in the County or whose principal
23 business is conducted in the County as compared with a bidder whose principal office or
24 principal business is not so located; and
25

26 (ii) if there is no County bidder, a bidder whose principal office is located in
27 the State or whose principal business is conducted in the State as compared with a bidder
28 whose principal office or principal business is not so located.]
29

30 (6) "PIGGYBACK PROCUREMENT" MEANS A PROCUREMENT IN WHICH A VENDOR
31 PROVIDES THE SAME GOODS OR SERVICES AT THE SAME PRICE AND UNDER THE SAME
32 MATERIAL TERMS AND CONDITIONS OF THE UNDERLYING CONTRACT BETWEEN THE
33 VENDOR AND ANOTHER GOVERNMENT ENTITY.
34

35 [(5)] (7) "Professional services" means the services of [attorneys, physicians,
36 architects, engineers, consultants, or other] individuals or organizations possessing a high
37 degree of professional or technical skill AND THE APPROPRIATE LICENSING,
38 CERTIFICATION, ACCREDITATION, OR TRAINING TO PROVIDE THE SERVICES.
39

40 (8) "RESPONSIBLE" MEANS THAT, IN THE JUDGMENT OF THE PURCHASING AGENT, A
41 VENDOR IS CAPABLE OF PROVIDING THE GOODS OR SERVICES THAT ARE SOUGHT BY THE
42 COUNTY AND HAS THE LEGAL CAPACITY TO OFFER THE GOODS OR SERVICES AND ENTER
43 INTO A CONTRACT AT THE TIME OF AN AWARD.
44

45 (9) "RESPONSIVE" MEANS THAT, IN THE JUDGMENT OF THE PURCHASING AGENT,
46 THE REPOSE TO A PROCUREMENT SOLICITATION MEETS ALL OF THE REQUIREMENTS
47 SET FORTH IN THE PROCUREMENT SOLICITATION.
48

49 [(6)] (10) "Services" means all types of services required by the County that are
50 not furnished by County employees. "Services" includes professional services.
51

52 (11) "UNDERLYING CONTRACT" MEANS A CONTRACT ENTERED INTO BY A

1 VENDOR AND A GOVERNMENT ENTITY OTHER THAN THE COUNTY THAT IS USED FOR A
2 PIGGYBACK PROCUREMENT BY THE COUNTY.

3
4 [(7)] (12) "Using agency" means any department, DIVISION, OFFICE, agency,
5 BOARD, commission, bureau, or other unit in the County government, or other agency
6 using goods or services paid for in whole or in part by County funds, including the
7 Department of Health and departments and agencies created by or operating under the
8 public general laws of the State to the extent that the provisions of this article may apply
9 to them by law or to the extent that such departments and agencies request that the
10 provisions of this article apply to them.

11
12 **8-1-102. Scope.**

13
14 (b) **Additional applicability of article.** This article also applies to the disposition of
15 surplus, excess, OBSOLETE, and waste [personal property and surplus real property of the
16 County, to leasing of County real property] GOODS, and to contracts for the acquisition of
17 revenue-producing services [where] EVEN IF there is no expenditure of funds
18 contemplated.

19
20 **8-1-103. Purposes.**

21
22 The purposes of this article are to [simplify, clarify, and modernize the law governing
23 County procurement; to] provide for [increased] public confidence in the procedures
24 followed in public procurement; to ensure the fair and equitable treatment of all persons
25 who deal with the procurement system; to provide [increased] economy in procurement
26 activities and to maximize, to the fullest extent practicable, the purchasing value of public
27 funds; to foster effective broad-based competition within the free enterprise system; to
28 provide safeguards for the maintenance of a procurement system of quality and integrity;
29 and to provide effective response to user groups.

30
31 ~~**8-1-104. Rules of construction.**~~

32
33 ~~This article shall be construed BROADLY and applied to promote its purposes as set
34 forth in this article. Unless displaced by the particular provisions of this article, the
35 principles of law and equity, including the State Uniform Commercial Code, the law
36 merchant, and law relative to capacity to contract, agency, fraud, misrepresentation,
37 duress, coercion, mistake, and bankruptcy, shall supplement the provisions of this article.~~

38
39 **8-1-105. Powers and duties of Purchasing Agent.**

40
41 (a) **Duties.** The Purchasing Agent shall:

42
43 (1) supervise and control all County warehouses and storerooms, except
44 storerooms as may be set up to meet the needs of individual using agencies, direct the
45 activities of personnel assigned, and control and account for the goods stocked;

46
47 (2) [inspect or supervise the inspection of deliveries of goods or services to
48 determine their conformance with the specifications set forth in the order or contract;

1 (3)] on or before [March] OCTOBER 1 of each year, submit to the Council, through
2 the [offices of the] Central Services Officer, the Chief Administrative Officer, and the
3 County Executive, a report summarizing the County's purchasing activities for the
4 previous [calendar] FISCAL year and the progress in carrying out this title;

5
6 [(4)] (3) cause using agencies to report in advance as to their requirements in order
7 to secure quantity discounts by the grouping of requisitions and bulk buying whenever
8 practicable; and

9
10 [(5)] (4) perform the additional purchasing duties assigned by the Central Services
11 Officer.

12
13 (b) **Using agencies.** [The Purchasing Agent may authorize using] USING agencies [to]
14 SHALL inspect and certify delivery of goods [or to] AND SUPERVISE AND determine
15 proper performance of services in accordance with the Purchasing [Manual]
16 REGULATIONS.

17
18 **[8-1-107] 8-1-106. Unauthorized purchases.**

19
20 (a) **Prohibition.** A County officer or employee may not order the purchase of any
21 goods or services except under the requirements and conditions of this article. Any
22 purchase order or contract made contrary to the provisions of this article is voidable by
23 the Purchasing Agent with the approval of the County Executive, and the County shall
24 not be bound thereby.

25
26 (b) **Violation.** If any officer, agent, or employee of the County knowingly violates or
27 assists in the violation of any provision of this article, such officer, agent, or employee
28 may be subject to disciplinary actions as prescribed in the Charter, this Code, and
29 personnel regulations, AND MAY BE DEEMED PERSONALLY RESPONSIBLE FOR ANY COSTS
30 INCURRED AS A RESULT OF AN UNAUTHORIZED PURCHASE.

31
32 **[8-1-108] 8-1-107. Cooperative purchasing.**

33
34 (a) **[Board of Education.** The Purchasing Agent shall develop, to the maximum
35 extent possible, a program for the joint or cooperative purchase with the County Board of
36 Education of goods or services that are common to the Board of Education and the
37 County government. The Purchasing Agent also shall endeavor to arrange with the Board
38 of Education officials for the development of a program of standardization of goods or
39 services whereby the number of the same type or kind of goods and services to be used
40 by the two agencies may be correspondingly increased.

41
42 (b) **Other public jurisdictions.** As appropriate, the Purchasing Agent may undertake
43 and participate in similar programs involving joint or cooperative purchases with other
44 public jurisdictions.] **Cooperative procurements.** THE PURCHASING AGENT MAY
45 UNDERTAKE OR PARTICIPATE IN COOPERATIVE PROCUREMENTS. ANY RESULTING
46 CONTRACT MUST BE PROCURED IN A MANNER CONSISTENT WITH THIS ARTICLE AND THE
47 PURCHASING REGULATIONS.

48
49 (B) **Piggyback procurements.**

1 (1) The Purchasing Agent may [utilize the contracts or supply schedules
2 established by other public jurisdictions] PROCURE THROUGH A PIGGYBACK
3 PROCUREMENT if the UNDERLYING contract [or supply schedule] was established in a
4 manner consistent with the purposes of this article and the vendor extends in writing to
5 the Purchasing Agent an agreement to sell based on the terms of the [particular]
6 UNDERLYING contract [or supply schedule] or the UNDERLYING contract [or schedule]
7 expressly extends its terms to other public jurisdictions.
8

9 (2) THE PURCHASING AGENT MAY ALLOW PROCUREMENT FROM A FEDERAL
10 SUPPLY SCHEDULE IF THE VENDOR UNDER THE SCHEDULE HAS A CONTRACT WITH THE
11 COUNTY FOR OTHER RELATED GOODS OR SERVICES.
12

13 **8-1-108. Contracts.**

14
15 (A) **Contracts.** ALL PROCUREMENT CONTRACTS SHALL BE SIGNED ON BEHALF OF
16 THE COUNTY BY THE COUNTY EXECUTIVE, THE CHIEF ADMINISTRATIVE OFFICER, OR
17 THE COUNTY EXECUTIVE'S DESIGNEE, UNLESS OTHERWISE PROVIDED BY COUNTY LAW.
18 ALL CONTRACT FORMS AND CONTRACTS SHALL BE APPROVED BY THE COUNTY
19 ATTORNEY OR THE COUNTY ATTORNEY'S DESIGNEE FOR FORM AND LEGAL
20 SUFFICIENCY.
21

22 (B) **Availability of funds.** A CONTRACT OR PURCHASE ORDER IN EXCESS OF \$2,500
23 MAY NOT BE ISSUED UNLESS THE CONTROLLER FIRST CERTIFIES THAT FUNDS FOR THE
24 DESIGNATED PURCHASE ARE AVAILABLE.
25

26 (C) **Terms and conditions.** IF A VENDOR ACCEPTS THE COUNTY'S ESTABLISHED
27 TERMS AND CONDITIONS, A SEPARATE CONTRACT MAY NOT BE REQUIRED.
28

29 (D) **Scope of Work.** THE SCOPE OF WORK IN A CONTRACT SHALL DESCRIBE FULLY
30 ANY MILESTONES, REPORTING REQUIREMENTS, DELIVERABLES, AND GOODS AND
31 SERVICES THAT ARE EXPECTED TO BE PROVIDED BY THE CONTRACTING PARTY. IF THE
32 COUNTY REQUIRES A CHANGE IN THE SCOPE OF WORK, AND IT IS IN THE BEST INTERESTS
33 OF THE COUNTY, THE PURCHASING AGENT, WITH WRITTEN JUSTIFICATION, MAY ALLOW
34 CHANGES TO THE SCOPE OF WORK SO LONG AS THE CHANGE IS ONLY AN INCREASE TO
35 OR DECREASE OF THE ORIGINAL SCOPE OF WORK AND THE CHANGE IS AGREED TO IN
36 WRITING BY THE PARTIES.
37

38 **TITLE 2. PROCUREMENT**

39 40 **8-2-101. Purchasing regulations.**

41
42 (a) **Preparation.** The Central Services Officer [or the Central Services Officer's
43 designee] shall prepare rules and regulations governing the operations of the County
44 procurement system. The rules and regulations shall be referred to as the "Purchasing
45 [Manual] REGULATIONS" and shall represent a complete statement of all [procedures]
46 RULES AND REGULATIONS under the County's purchasing system.
47

48 (b) **Adoption by County Council.** The [rules and regulations] PURCHASING
49 REGULATIONS shall be submitted, with the approval of the COUNTY EXECUTIVE AND THE
50 Chief Administrative Officer [and the County Executive], for approval and adoption by
51 ordinance of the County Council. After adoption of the [rules and regulations]
52 PURCHASING REGULATIONS by the County Council, the Central Services Officer shall
53 issue the [rules and regulations] PURCHASING REGULATIONS to using agencies and shall

1 secure compliance with the [rules and regulations] PURCHASING REGULATIONS by the
2 using agencies.

3
4 **(c) Amendments.**

5
6 (1) Amendments to the [rules and] PURCHASING regulations governing
7 emergency purchases, emergency contracts, and those involving goods or services of an
8 unusual or noncompetitive nature and that are not inconsistent with the basic purchasing
9 policy of the County as contained in the Charter and the ordinance enacted by the County
10 Council may be made by the Central Services Officer with the written approval of the
11 County Executive OR THE CHIEF ADMINISTRATIVE OFFICER. The amendments shall be
12 effective until the next annual legislative session of the County Council when they shall
13 be cumulatively submitted to the County Council for approval by ordinance.

14
15 (2) Amendments to the [rules and] PURCHASING regulations not governing
16 emergency purchases, emergency contracts, and those not involving goods or services of
17 an unusual or noncompetitive nature and that are not inconsistent with the basic
18 purchasing policy of the County as contained in the Charter and the ordinances enacted
19 by the County Council may be made by the Central Services Officer with the written
20 approval of the County Executive OR CHIEF ADMINISTRATIVE OFFICER. The amendments
21 shall be effective on approval of the County Attorney.

22
23 **(d) Contents.** The rules and regulations shall include provisions to govern:

24
25 (1) the handling of bids and proposals, including their advertising, custody and
26 safeguarding, opening and tabulation, and rejection;

27
28 (2) [the procedure] PROCEDURES for determining the lowest responsive and
29 responsible bidder or the best offer; procedures for resolving protests and disputes; and
30 procedures governing the use of contract clauses;

31
32 (3) [the procedure] PROCEDURES for securing from bidders or offerors and
33 prospective bidders or offerors the data necessary to determine whether they are
34 responsible bidders or offerors;

35
36 (4) the conditions under which informalities and defects in bids may be waived or
37 cured and the conditions under which mistakes in bids may be corrected or the
38 withdrawal of bids permitted;

39
40 (5) the conditions and criteria under which competitive sealed bidding may be
41 determined impractical, or otherwise not advantageous, for purposes of using the
42 competitive sealed proposal / competitive negotiation method;

43
44 (6) [the procedure] PROCEDURES for reporting receipt of goods and services;

45
46 (7) [the procedure] PROCEDURES for submission, examination, and approval of
47 invoices for goods and services delivered or rendered to using agencies;

48
49 (8) [the procedure followed in adopting and maintaining a vendors' catalog file

1 containing descriptions of vendors' commodities, prices, and discounts;

2
3 (9) the procedure] PROCEDURES to be observed by using agencies and the
4 Purchasing Agent in the development of a program for bulk purchases, including
5 requiring using agencies to file with the Purchasing Agent detailed estimates of future
6 needs for such periods as the Purchasing Agent may prescribe;

7
8 [(10)] (9) procedures facilitating reduction, to the maximum extent possible, in the
9 number of purchase transactions by combining into bulk orders and contracts the
10 requirements of using agencies for common-use goods and services [repetitively]
11 purchased REPEATEDLY;

12
13 [(11)] (10) procedures involving the development and use of those types of
14 contracts and purchase orders that will reduce to the minimum the accompanying paper
15 work and that, in other respects, will be most advantageous to the County;

16
17 [(12)] (11) the terms and conditions under which using agencies may submit
18 requisitions to the Purchasing Agent for goods or services available under contracts made
19 by the Purchasing Agent;

20
21 [(13) the procedure] (12) PROCEDURES to be observed by using agencies and the
22 Purchasing Agent in obtaining full and open competition wherever possible, on all
23 purchases and sales;

24
25 [(14) the procedure] (13) PROCEDURES under which, by express authorization in
26 writing of the Purchasing Agent, a using agency may be exempted from the rules and
27 regulations for specified goods or services;

28
29 [(15) the] (14) procedures to be observed by using agencies and by warehouse
30 personnel in accounting for the receipt and disbursement of goods, including:

31
32 (i) the classification of inventory items and their positive identification by
33 means of standard nomenclature or code or part numbers;

34
35 (ii) provision of adequate storage facilities and supervision;

36
37 (iii) maintenance of an accurate perpetual inventory record, showing receipts,
38 allotments, disbursements and available balances in stores, supported by periodic
39 physical inventory counting or stock-taking;

40
41 (iv) following an established cost system and accounting procedure to
42 interpret the physical or unit quantity records into financial terms, including periodic
43 reconciliation of inventory with books and records maintained by the Controller; and

44
45 (v) analysis of inactive goods to determine their disposition and to avoid the
46 accumulation of surplus, old, and obsolete goods;

47
48 [(16)] (15) procedures for procurement of revenue-producing services;

1 [(17)] (16) procedures for use of e-commerce, online sales, and other procurement
2 tools and methods;

3
4 [(18)] (17) procedures for small procurements; and

5
6 [(19)] (18) any other matters necessary to give effect to the rules and regulations
7 and the provisions of Article IX of the Charter.

8
9 **[8-2-103] 8-2-102. Procurement methods.**

10
11 (a) **Competitive sealed bidding required; exceptions.** All County procurement
12 contracts shall be awarded by competitive sealed bidding, except as otherwise provided
13 in:

14
15 (1) § 8-1-107(A), "COOPERATIVE PROCUREMENTS";

16
17 (2) § 8-1-107(B), "PIGGYBACK PROCUREMENTS";

18
19 [(1) § 8-2-105] (3) §8-2-104, "Competitive Sealed Proposals";

20
21 [(2) § 8-2-106] (4) §8-2-105, "Small Procurements";

22
23 [(3) § 8-2-107] (5) §8-2-106, "Sole Source Procurements";

24
25 [(4) § 8-2-108] (6) §8-2-107, "Emergency Procurements";

26
27 [(5) § 8-2-109] (7) §8-2-108, "Expedited Procurements"; and

28
29 [(6) § 8-2-110] (8) §8-2-109, "Professional Services Procurements".

30
31 (b) **Certain multiple contracts.** Multiple contracts for the same goods or services
32 may be awarded to responsive and responsible vendors under any LAWFUL procurement
33 method [established in the Purchasing Manual] if it is in the County's best interests, such
34 as when awards to two or more vendors are needed for adequate delivery, service, or
35 availability, or for product compatibility.

36
37 **[8-2-104] 8-2-103. Competitive sealed bidding.**

38
39 (a) **Contracts over \$25,000.** Except as otherwise provided in [§ 8-2-103] § 8-2-102,
40 contracts estimated to be over \$25,000 shall be awarded by competitive sealed bidding.

41
42 (b) **Invitation for bids.** An invitation for bids shall be issued and shall include a
43 purchase description and all contractual terms and conditions applicable to the
44 procurement.

45
46 (c) **Notice.** Adequate public notice of the invitation for bids shall be given at a
47 reasonable time before the date set forth in the notice for the opening of bids in
48 accordance with the Purchasing [Manual] Regulations. Notice shall include PRINT AND
49 ONLINE publication in a newspaper of general circulation in the County for a reasonable

1 time prior to bid opening. Additionally, the Purchasing Agent shall solicit sealed bids
2 from among prospective bidders identified with the assistance of the using agency by
3 sending them a copy of a bid notice. The bid notice shall also be posted on the Purchasing
4 Division website and [may be posted on bid boards located at the Purchasing Agent's
5 offices] ADVERTISED DIGITALLY ON A WEBSITE OR WEB-BASED PLATFORM GENERALLY
6 ACCEPTED IN THE INDUSTRY FROM WHICH THE GOODS OR SERVICES ARE SOUGHT. THE
7 DATE OF ADVERTISING SHALL BE THE DATE ON WHICH THE BID NOTICE IS POSTED ON
8 THE PURCHASING DIVISION WEBSITE.

9
10 (d) **Uniform bidding; statement under oath.** The Purchasing Agent shall discourage
11 uniform AND COLLUSIVE bidding by every possible means and endeavor to obtain
12 competition on purchases and sales that is as full and open as possible. The Purchasing
13 Agent shall require each bidder to accompany a bid with a statement made under oath
14 that the bidder has not been a party with other bidders to an agreement to bid a fixed or
15 uniform price or to share price bid information.

16
17 (e) **Bid rendered void; violation of this section.** A bid is rendered void if a bidder
18 violates the statement submitted with the bid or discloses or acquires the terms or
19 conditions of the bid submitted by another bidder before the opening of the bids.

20
21 (f) **Sealed; [deposits] bonds.**

22
23 (1) Bids shall be submitted sealed to the Purchasing Agent and identified as bids
24 on the envelope.

25
26 (2) When considered necessary by the Purchasing Agent, BID deposits [bid bonds]
27 shall be prescribed in the public notice inviting bids in [accordance with § 8-2-117] THE
28 AMOUNTS SET FORTH IN § 8-2-115(D).

29
30 (3) Unsuccessful bidders are entitled to a return of their bid deposits WITHIN 10
31 DAYS OF THE OPENING OF BIDS. [In any case, if]

32
33 (4) IF a successful bidder fails to execute a contract within 10 days after the award,
34 the bid deposit may be [taken and] RETAINED BY THE COUNTY AND considered as
35 liquidated damages, and not as a penalty, for failure of the bidder to execute the contract.
36 On proper execution of a contract by a successful bidder, the bid deposit shall be returned
37 to the SUCCESSFUL bidder.

38
39 (g) **Summary and tabulation.** A SUMMARY OF THE INFORMATION READ AT THE BID
40 OPENING SHALL BE POSTED ON THE COUNTY WEBSITE WITHIN 24 HOURS OF THE BID
41 OPENING. A FINAL tabulation of all bids received shall be posted on the [Purchasing
42 Division] COUNTY website [until] AFTER the award is made. [The bid tabulation may also
43 be posted on the bulletin board maintained in the main offices of the Purchasing Agent
44 until the award is made. Thereafter, the bid tabulation shall be filed with the papers
45 relating to the transaction.]

46
47 (h) **Rejection.** The Purchasing Agent may reject all bids, parts of all bids, or all bids
48 for any one or more goods or services included in the proposed contract when, in the
49 Purchasing Agent's judgment, the public interest will be served thereby.

1 (i) **Tie bids.** If two or more bidders are tied for the lowest bid, [quality and service
2 being equal, the contract may be awarded to a local bidder. The Purchasing Agent may
3 also award the contract to a minority bidder when tied with a non-minority bidder or to a
4 small business when tied with a non-small business. The Purchasing Agent may consider
5 the amount of minority business participation in a contract in deciding the award of a tie
6 bid. If a tie bid award is not decided in one of these manners,] the Purchasing Agent shall
7 award the contract to one of the tie bidders by drawing lots in public.
8

9 (j) [**Preferences in other jurisdictions.** If one or more competitive bids are received
10 from businesses based in localities having preferences favoring the resident bidders when
11 competing with non-resident bidders, and it is known by the Purchasing Agent that the
12 preferences exist in those jurisdictions, the Purchasing Agent shall apply the same
13 percentage, formula, or amount of the preference afforded by those jurisdictions against
14 the businesses located there.
15

16 (k) **One bid or no responsive bids.** In the event that only one or no responsive bids
17 are received and re-issuance of the invitation for bids is not practicable or in the best
18 interest of the County, the Purchasing Agent may award the bid to the single bidder or
19 negotiate a sole source contract in accordance with [§ 8-2-107] § 8-2-106.
20

21 [(l)] (K) **Bids exceed allocated funds.** If responsive bids are received from two or
22 more responsible bidders and all prices received exceed allocated funds, the Purchasing
23 Agent may reduce or otherwise modify the scope of work and may either solicit revised
24 bids from those responsive and responsible firms responding to the original solicitations
25 or the Purchasing Agent may re-advertise for new bids.
26

27 [(m)] (L) **Responsive and responsible bidder.** The Purchasing Agent shall award all
28 contracts to the responsive and responsible bidder having the lowest bid price or lowest
29 evaluated bid [price not earlier than seven calendar days following the public opening of
30 bids. In determining the lowest evaluated bid, the Purchasing Agent may only consider
31 objective measurable criteria specified in the invitation for bids that may, as an example,
32 include life cycle costs].
33

34 [(n)] (M) **Considerations.** In determining a bidder's responsibility, the Purchasing
35 Agent may consider all information that may be secured by the Purchasing Agent having
36 a bearing on the decision to award. The Purchasing Agent shall consider:
37

38 (1) the ability, capacity, and skill of the bidder to perform the contract or provide
39 the service required;
40

41 (2) whether the bidder can perform the contract or provide the service promptly or
42 within the time specified, without delay or interference;
43

44 (3) the character, integrity, reputation, judgment, experience, and efficiency of the
45 bidder;
46

47 (4) the quality of performance under previous contracts;

1 (5) the previous and existing compliance by the bidder with laws and ordinances
2 relating to the contract or service; and
3

4 (6) whether the bidder is in arrears to the County on debt or a contract, is a
5 defaulter on security to the County, or is delinquent in Federal, State, or County taxes or
6 assessments.
7

8 [(o)] (N) **Contract not awarded to lowest bidder.** If the contract is not awarded to
9 the lowest bidder in price, the Purchasing Agent shall make a written statement of
10 reasons for the award and maintain a copy of the statement in the contract or bid file.
11

12 [(p)] (O) **Specifications.** Specifications shall be developed in accordance with the
13 following.
14

15 (1) The Purchasing Agent shall obtain expert advice and assistance from
16 personnel of using agencies in the development of specifications and may delegate to the
17 using agency the authority to prepare its own specifications.
18

19 (2) Any unresolved disagreements between the Purchasing Agent and the using
20 agency with regard to adequacy of specifications shall be referred to the Central Services
21 Officer for resolution.
22

23 (3) All specifications shall seek to promote overall economy for the purposes
24 intended, [and] SHALL encourage competition in satisfying the County's needs to the
25 maximum extent practicable, and shall not be unduly restrictive. Performance or
26 functional specifications shall be the preferred type.
27

28 (4) When the County requires goods that are produced by only one manufacturer,
29 the Purchasing Agent shall specify the manufacturer's make or brand in the invitations to
30 bid and shall obtain competitive bids from authorized dealers or distributors of the
31 manufacturer. If the manufacturer is the sole bidder and the sole source of supply, the
32 Purchasing Agent may negotiate a sole source procurement with the manufacturer at
33 prices and on terms most advantageous to the County.
34

35 (5) When the County requires goods that are patented or proprietary and that are
36 obtainable in two or more equally satisfactory and competitive makes, brands, or types,
37 the Purchasing Agent shall list the acceptable and competitive makes, brands, or types in
38 the invitations to bid. The lists shall also include the phrase "or approved equal" or a
39 similar phrase to permit bidders to bid on alternate or additional makes, brands, or types.
40 It is incumbent on each bidder to prove to the satisfaction of the County that the alternate
41 or additional make, brand, or type is equal in quality or performance to those listed in the
42 invitation to bid.
43

44 [(q)] (P) **Multi-step bidding.**
45

46 (1) Multi-step sealed bidding may be conducted in which bidders submit unpriced
47 technical offers or samples or both in the first step of the process and price bids in the
48 second step. Once bidders have been evaluated for responsibility and technical offers or
49 samples or both have been evaluated for responsiveness, price bids shall be solicited only

1 from those bidders who have been deemed responsible and whose technical offers or
2 samples or both have been deemed responsive.

3
4 (2) A multi-step sealed bidding method under which both technical proposals and
5 sealed price bids are submitted separately but simultaneously may be used[; however,
6 the]. THE sealed price bids may not be opened until the evaluation for responsibility of
7 bidders and responsiveness of technical proposals is complete. Sealed price bids of
8 bidders deemed not responsible or whose technical offers or samples are deemed not
9 responsive shall not be opened and shall be returned sealed to the bidders.

10
11 [(r) **Contracts.** All contracts shall be signed on behalf of the County by the County
12 Executive or the County Executive's designee, unless otherwise provided by County law.
13 A copy of each signed contract shall be forwarded promptly to the Controller. All
14 contract forms shall be approved by the County Attorney as to form and legal sufficiency.

15
16 (s) (Q) **Waiver; cure.** In accordance with the Purchasing [Manual] REGULATIONS,
17 the Purchasing Agent, with the approval of the Central Services Officer, may waive
18 formalities or permit the cure of defects in bids THAT DO NOT AFFECT THE INTEGRITY OF
19 THE BID [and may permit correction of mistakes in bids, as the interests of the County
20 may require].

21
22 (R) **Mistakes in bids.** IF, AFTER BIDS ARE OPENED, THE BIDDER ALLEGES A MISTAKE
23 IN THE BID, THE BID MAY BE WITHDRAWN OR CORRECTED ONLY WITH THE APPROVAL
24 OF THE PURCHASING AGENT AND THE CENTRAL SERVICES OFFICER AND ONLY IF THE
25 MISTAKE IS CLEARLY EVIDENT FROM THE BID, SUCH AS A TYPOGRAPHICAL ERROR, AN
26 ERROR IN EXTENDING UNIT PRICING, A TRANSPOSITION ERROR, OR AN ARITHMETICAL
27 ERROR. THE PURCHASING AGENT SHALL DOCUMENT IN WRITING ALL GRANTS OR
28 DENIALS OF BID CORRECTIONS OR WITHDRAWALS BASED ON CLAIMS OF MISTAKE,
29 INCLUDING THE REASONS FOR THE GRANT OR DENIAL, AND THE DOCUMENT SHALL BE
30 MAINTAINED AS PART OF THE FILE RELATED TO THE PROCUREMENT.

31
32 **[8-2-105] 8-2-104. Competitive sealed proposals.**

33
34 (a) **When allowed.** When the Purchasing Agent determines, in accordance with the
35 Purchasing [Manual] REGULATIONS, that competitive sealed bidding is not practical or
36 not advantageous to the County, a contract may be entered into by competitive sealed
37 proposals.

38
39 (b) **[Firms on list.** Request for proposals shall be solicited from those firms appearing
40 on the lists maintained by the Purchasing Agent.

41
42 (c) **Notice.** Adequate public notice of the request for proposals shall be given in the
43 manner provided in [§ 8-2-104(c)] § 8-2-103(C).

44
45 [(d) (C) **Contents of request; evaluation.** The request for proposals shall state the
46 relative importance of price and other evaluation factors. Price may not be the sole
47 evaluation factor. Numerical ratings may be used at the discretion of the Purchasing
48 Agent.

49
50 [(e) (D) **Uniform bidding; statement under oath.** The Purchasing Agent shall

1 discourage uniform AND COLLUSIVE bidding by every possible means and endeavor to
2 obtain competition on purchases and sales that is as full and open as possible. The
3 Purchasing Agent shall require each bidder to accompany a bid with a statement made
4 under oath that the bidder has not been a party with other bidders to an agreement to bid a
5 fixed or uniform price or to share price bid information.

6
7 **[(f)] (E) Opening of proposals; register.** Proposals shall be opened so as to avoid
8 disclosure of contents to competing offerors during the process of negotiation. A register
9 of proposals shall be prepared showing the names of offerors who have submitted
10 proposals and shall be open for public inspection.

11
12 **[(g)] (F) Negotiation.** As provided in the request for proposals, discussions may be
13 conducted with responsible offerors who submit proposals determined by the Purchasing
14 Agent to [be reasonably susceptible of being selected for] HAVE A REASONABLE
15 POSSIBILITY OF award. Discussions may be held for purposes of clarification to ensure
16 full understanding of and responsiveness to the solicitation requirements. Offerors shall
17 be accorded fair and equal treatment with respect to any opportunity for discussion and
18 revisions of proposals, and revisions may be permitted after submissions and before
19 award for the purpose of obtaining best and final offers. In conducting discussions, there
20 shall be no disclosure of any information derived from proposals submitted by competing
21 offerors.

22
23 **[(h)] (G) Multi-step method.** A multi-step method may be used in the evaluation
24 process with qualifications and technical and price proposals being obtained and
25 evaluated either separately or concurrently.

26
27 **(H) Demonstration or testing.** IF THE PURCHASING AGENT DETERMINES THAT USE
28 OF PROPOSED GOODS OR SERVICES IS REQUIRED BEFORE TECHNICAL EVALUATION OF
29 THE PROPOSED GOODS OR SERVICES, EACH RESPONSIVE, RESPONSIBLE OFFEROR SHALL
30 BE PROVIDED WITH AN OPPORTUNITY TO PROVIDE GOODS OR SERVICES FOR A TIME
31 PERIOD DETERMINED BY THE PURCHASING AGENT BEFORE TECHNICAL EVALUATION OF
32 THE PROPOSALS AND BEFORE OPENING OF COST PROPOSALS.

33
34 **[8-2-106] 8-2-105. Small procurements.**

35
36 **[(a)Generally.]** All procurements initially estimated not to exceed \$25,000 FOR A
37 SINGLE PURCHASE OR FOR THE LESSER OF EACH TERM OR YEAR OF A CONTRACT shall be
38 considered a small procurement and are not subject to the requirements of [§§ 8-2-104
39 and 8-2-105] §§ 8-2-103 AND 8-2-104. [However, the] THE Purchasing Agent, wherever
40 practical when the amount exceeds \$5,000, shall attempt to secure at least three
41 quotations on all small procurements. Oral quotations may be solicited [but, if the amount
42 of the quotation exceeds \$5,000, the Purchasing Agent shall seek to have it] AND SHALL
43 BE confirmed in writing by the bidders or offerors IN PAPER OR ELECTRONIC FORMAT.
44 THE PURCHASING AGENT SHALL INCLUDE, IN WRITING, CONSIDERATION AND
45 COMPARISON OF PRICES FROM SELLERS ON THE INTERNET.

46
47 **[(b)Certification of funds.** A contract or purchase order in excess of \$2,500 may not
48 be issued unless the Controller first certifies that funds for the designated purchase are
49 available.

1 (c) **Purchasing manual.** The Purchasing Manual shall prescribe in detail the
2 procedures to be observed in giving notice to prospective bidders or offerors; in opening,
3 tabulating, and recording quotations and, in awarding contracts to the lowest responsive
4 and responsible bidder or the offeror with the best quotation under standards set forth in
5 [§§ 8-2-104 and 8-2-105] §§ 8-2-103 AND 8-2-104; and in making available for public
6 inspection all small procurement purchase orders, contracts, and quotations submitted.]
7

8 **[8-2-107] 8-2-106. Sole source procurements.**
9

10 (A) **With written justification.** A sole source procurement may be used when, in the
11 manner prescribed by the Purchasing [Manual] REGULATIONS, the Purchasing Agent
12 determines in writing that there is only one source for the required goods or services. A
13 sole source procurement may be used when:
14

15 (1) only one source exists meeting the County's requirements;
16

17 (2) compatibility of equipment, accessories, or replacement parts is a paramount
18 consideration;
19

20 (3) a sole vendor's item is needed for trial use or testing;
21

22 (4) the item is for resale BY THE COUNTY AT THE SAME PRICE;
23

24 (5) {the item is a public utility;
25

26 (6)} the service is a professional service IN ACCORDANCE WITH § 8-2-109;
27

28 {(7)} (6) it is impossible to determine the scope or extent of services required until
29 the work commences, such as when internal engine damage or underground conditions
30 cannot be ascertained until the engine is dismantled or excavation is made;
31

32 {(8) [when] (7) competitive bids or proposals have been solicited under [§ 8-2-104
33 and § 8-2-105] §§ 8-2-103 AND 8-2-104 and only one or no responsive bids or offers have
34 been received from a responsible bidder or offeror;
35

36 {(9) [when] (8) competition is precluded due to patents, copyrights, or similar
37 circumstances; or
38

39 {(10)} (9) the purchase is made [from another governmental entity] BY USE OF AN
40 INTERGOVERNMENTAL AGREEMENT.
41

42 (B) **Without written justification.** A SOLE SOURCE PROCUREMENT MAY BE USED
43 WITHOUT A WRITTEN DETERMINATION BY THE PURCHASING AGENT FOR:
44

45 (1) PUBLIC UTILITIES UTILITY CONTRACTS NOT SUBJECT TO COMPETITIVE
46 PROCUREMENT; AND
47

48 (2) RENEWALS OF SOFTWARE LICENSES PREVIOUSLY PROCURED.
49

50 **[8-2-108] 8-2-107. Emergency procurements.**

1 (a) **Definition.** In this section, “emergency” means a breakdown in machinery, a
2 threatened termination of essential services, [the development of] a dangerous condition,
3 or any unforeseen circumstance that causes curtailment or diminution of an essential
4 service.

5
6 (b) **Purchasing [Manual] Regulations.** The Purchasing [Manual] REGULATIONS
7 shall provide for the specific terms and conditions under which emergency purchases
8 may be made.

9
10 (c) **Emergency during business hours.** If an emergency occurs during regular
11 County business hours, the using agency shall immediately notify the Purchasing Agent,
12 who shall either purchase the required goods or services or authorize the USING agency to
13 do so.

14
15 (d) **Emergency outside business hours.** If an emergency occurs at a time other than
16 regular business hours, the using agency may purchase directly the required goods or
17 services. Whenever practicable, the using agency shall secure competitive telephone
18 quotations, WHICH SHALL BE CONFIRMED IN WRITING BY VENDORS IN PAPER OR
19 ELECTRONIC FORMAT, and order delivery to be made by the lowest responsible [bidder]
20 VENDOR. Not later than the next regular County business day thereafter, the using agency
21 shall submit to the Purchasing Agent a requisition, a tabulation of quotations received, a
22 copy of the delivery record, and a written explanation of the circumstances of the
23 emergency.

24
25 (e) **Records.** A complete, current file record shall be maintained by the Purchasing
26 Agent explaining or otherwise supporting the particular basis on which each emergency
27 purchase was made. Records shall be available for public inspection during regular
28 County business hours in the Purchasing Agent’s main offices.

29
30 (f) **Report to County Council.** The Purchasing Agent shall submit monthly to the
31 County Council, through the [offices of the] Central Services Officer, the Chief
32 Administrative Officer, and the County Executive, a report covering a tabulation of all
33 emergency purchases in excess of \$5,000 [together] with an explanation of the
34 circumstances of the purchases.

35
36 (g) **[Elimination of] Limits on emergency orders.** The Purchasing Agent shall
37 [eliminate] SEEK TO LIMIT emergency orders by [proper] use of EXISTING COUNTY
38 CONTRACTS, INCLUDING blanket purchase orders, [and other similar types of orders]
39 whenever it is determined to be in the best interest of the County.

40
41 **[8-2-109] 8-2-108. Expedited procurements.**

42
43 (a) **Definition.** In this section, “expedited procurement” means a procurement [action]
44 involving an amount over \$25,000 made with the advance written approval of the
45 [County Executive or the County Executive’s designee] PURCHASING AGENT, APPROVED
46 BY THE CENTRAL SERVICES OFFICER AND THE CHIEF ADMINISTRATIVE OFFICER, in
47 which prompt action best serves the public interest, and the procurement is not an
48 emergency but [one in which] an expedited procurement process outweighs the benefits

1 of either competitive sealed bidding under [§ 8-2-104] § 8-2-103 or competitive sealed
2 proposals under [§ 8-2-105] § 8-2-104. An expedited procurement may include situations
3 in which federal or State revenues to the County may be lost if rapid procurement actions
4 are not taken or situations that would have an adverse impact on the economic welfare of
5 the County or important economic development in the County.

6
7 **(b) Approval by County Executive.** The [County Executive or the County
8 Executive's designee] PURCHASING AGENT may approve expedited procurements either
9 on a contract-by-contract or a project-by-project basis.

10
11 **(c) Procedure.** To the extent practicable, the procedures prescribed in [§§ 8-2-104
12 and 8-2-105] §§ 8-2-103 AND 8-2-104, as applicable, shall be utilized when making an
13 expedited procurement, except that the Purchasing Agent may waive the public notice OR
14 ADVERTISING requirements [of newspaper advertising, or]. THE PURCHASING AGENT
15 MAY SHALL justify in writing a [noncompetitive] selection BASED ON THREE PRICE
16 QUOTES if competitive solicitations AS PRESCRIBED IN §§ 8-2-103 AND 8-2-104 cannot be
17 made due to insufficient time between when the need to make an expedited procurement
18 first became known and when the contract must be performed or for such other reasons
19 that preclude the use of competition.

20
21 **(d) Report to County Council.** Each expedited procurement shall be reported
22 monthly in the same manner as prescribed for reporting emergency procurements under
23 [§ 8-2-108] § 8-2-107.

24
25 **[8-2-110] 8-2-109. Professional services procurements.**

26
27 **(A) Professional service procurement.** THE PURCHASING AGENT MAY PROCURE
28 PROFESSIONAL SERVICES IN ACCORDANCE WITH THIS ARTICLE AND THE PURCHASING
29 REGULATIONS WHENEVER HE DETERMINES THAT SUCH SERVICES ARE REQUIRED. IF A
30 PROFESSIONAL SERVICE IS REQUIRED TO BE LICENSED BY THE STATE OF MARYLAND,
31 THOSE SERVICES SHALL BE PROCURED FROM A PROFESSIONAL WHO IS LICENSED AND
32 WHOSE LICENSE IS IN GOOD STANDING WITH THE APPLICABLE LICENSING AUTHORITY.

33
34 **[(a)] (B) Prequalified professional services providers.** The Purchasing Agent may
35 maintain lists of prequalified professional services providers. The Purchasing Agent shall
36 enter into professional services procurements in accordance with the Purchasing
37 [Manual] REGULATIONS.

38
39 **[(b)] (C) Architect and engineer professional services.** Services of architects and
40 engineers shall be procured using one of the following methods in accordance with the
41 procedures set forth in the Purchasing [Manual] REGULATIONS: (1) open-end agreements;
42 (2) technical- and price-based evaluation; or (3) qualification-based selection.

43
44 **[(c)] (D) Information technology professional services.** Services of information
45 technology professionals may be procured in accordance with the procedures set forth in
46 the Purchasing [Manual] REGULATIONS for technical- and price-based evaluation.

47
48 **[(d)] (E) Independent auditor.** The independent firm of certified public accountants
49 retained to perform the financial audit of County agencies for the preceding fiscal year
50 under § 311 of the County Charter shall be selected by resolution of the County Council

1 after receiving the recommendation of an Evaluation Committee appointed by the
2 Chairman of the County Council.

3
4 **[8-2-111] 8-2-110. Group Health Plan contracts.**

5
6 The Personnel Officer shall solicit competitive sealed proposals or invite competitive
7 sealed bids for health insurance plans for the provision of benefits pursuant to [§ 6-1-
8 308(b)] § 6-1-308 of this Code at least every six years. Any qualified bid or proposal shall,
9 at a minimum, provide for an essential health benefits package as required by the Patient
10 Protection and Affordable Care Act.

11
12 **[8-2-112] 8-2-111. Multi-term contracts.**

13
14 (a) **When allowed.** Unless otherwise provided by law, a contract for goods or
15 services may be entered into for any period of time considered to be in the best interests
16 of the County if the term of the contract and conditions of renewal or extension, including
17 prices or an objective means of determining prices for the periods of extension, are
18 included in the solicitation and funds are available for the first fiscal period at the time of
19 contracting. Payment and performance obligations for succeeding fiscal periods are
20 subject to the availability and appropriation of funds.

21
22 (b) **Funds unavailable in subsequent fiscal period.** When funds are not
23 appropriated or otherwise made available to support continuation of performance in a
24 subsequent fiscal period, the contract shall be canceled, and the contractor shall be
25 reimbursed for the reasonable value of any nonrecurring costs incurred AT THE
26 DIRECTION OF AN AUTHORIZED AGENT OF THE COUNTY but not amortized in the price of
27 the goods or services delivered under the contract PRIOR TO CANCELLATION OF THE
28 CONTRACT. The cost of cancellation may be paid from any appropriations available for
29 such purposes.

30
31 **[8-2-113] 8-2-112. Types of contracts.**

32
33 (a) **Generally.** Subject to the provisions of subsections (b) and (c), any type of
34 contract that will promote the best interests of the County may be used.

35
36 (b) **Cost-reimbursement contract.** A cost-reimbursement contract may be used only
37 when the Purchasing Agent concludes that such a contract is likely to be less costly to the
38 County than any other type or that it is impractical to obtain the goods or services
39 required except under a cost reimbursement contract.

40
41 (c) **Cost-plus-a-percentage-of-cost contract.** The use of a cost-plus-a-percentage-of-
42 cost contract is prohibited. A contract WITH PRICING based on percentage discounts from,
43 or percentages added to, prices listed in a manufacturer's published price list in general
44 distribution OR WITH PRICING INCLUDING A MARK-UP ON MATERIALS OR RENTED
45 EQUIPMENT USED FOR MAINTENANCE, REPAIRS, OR NEW INSTALLATIONS ON COUNTY
46 PROPERTY is not considered to be cost-plus-percentage-of-cost contract.

47
48 **[8-2-114] 8-2-113. Capital improvement contracts.**

1 (a) **Definitions.** In this section, the following words have the meanings indicated.

2

3 (1) “High performance building” means a building that meets or exceeds the
4 current version of the U.S. Green Building Council’s Leadership in Energy and
5 Environmental Design (“LEED”) Green Building Rating System Silver rating.

6

7 (2) “Major renovation” means the renovation of a building in which, at the time of
8 the initial planning of a capital improvement project, it is anticipated that:

9

10 (i) the building shell will be reused;

11

12 (ii) the electrical, plumbing, and heating, ventilating, and air conditioning
13 (HVAC) systems will be replaced; and

14

15 (iii) the scope of the renovation will be 10,000 square feet or greater.

16

17 (b) **Generally.** Whenever a capital improvement project is to be undertaken by the
18 County, the Director of Public Works shall cause plans, specifications, and estimates to
19 be prepared. The Chief Administrative Officer shall determine whether the capital
20 improvement project is to be constructed by contract or by the County’s force account
21 labor.

22

23 (c) **High performance buildings.** Except as provided in subsections (d) and (e), a
24 capital improvement project for construction of a County-owned building of 10,000
25 square feet or more or for a major renovation of a County-owned building shall be
26 constructed or renovated to be a high performance building.

27

28 (d) **Exempted buildings.** The following buildings are exempt from the requirements
29 of subsection (c):

30

31 (1) warehouses and storage facilities;

32

33 (2) garages;

34

35 (3) maintenance facilities;

36

37 (4) transmitter buildings;

38

39 (5) pumping stations;

40

41 (6) water and wastewater treatment facilities; and

42

43 (7) other similar types of buildings, as determined by the Director of Public
44 Works.

45

46 (e) **Waiver.**

47

48 (1) The Chief Administrative Officer may waive the requirements of subsection
49 (c) if the Director of Public Works recommends doing so because achieving a high

1 performance building in a proposed capital improvement project is not practicable.

2
3 (2) Any waiver granted under this subsection shall be in writing, state the reasons
4 for the waiver, and be included with the records for the capital improvement project.

5
6 (f) **Cost exceeds \$25,000.** If the capital improvement project is to be constructed by
7 contract and the estimated cost exceeds \$25,000, competitive bids or proposals shall be
8 secured and the contract shall be awarded in accordance with the provisions of [§ 8-2-104
9 or § 8-2-105] §§ 8-2-103 OR 8-2-104, as applicable, except that an award of any capital
10 improvement contract may not be made without the written approval of the Department
11 of Public Works, the Controller, and ONE OF THE FOLLOWING: the County Executive, THE
12 CHIEF ADMINISTRATIVE OFFICER, or the County Executive's designee. All contracts for
13 capital improvements shall be approved by the County Attorney as to form and legal
14 sufficiency and, following approval, shall be executed on behalf of the County by the
15 County Executive, THE CHIEF ADMINISTRATIVE OFFICER, or the County Executive's
16 designee.

17
18 (g) **Appropriation.** If bidding results in, or subsequent changes to the contract
19 require, additional expenditure in excess of the appropriation, the additional amount is
20 subject to approval by the County Council by supplementary or emergency appropriation
21 ordinance as provided for in § 712 of the Charter.

22
23 **[8-2-115] 8-2-114. Mandatory clauses.**

24
25 (a) **Scope.** The provisions of this section are not applicable to small procurements that
26 are within the provisions of [§ 8-2-106] § 8-2-105.

27
28 (b) **Clauses required by law or necessary to protect County's interests.** The
29 Purchasing Agent may include in any contract the clauses required by law or considered
30 necessary to protect the County's best interests in accordance with the Purchasing
31 [Manual] REGULATIONS.

32
33 (c) **Equal employment opportunity.** Contracts shall contain a provision requiring
34 compliance by the contractor or any subcontractor with Executive Order 11246, entitled
35 "Equal Employment Opportunity", as amended [by Executive Order 11375], and as
36 supplemented [in] BY U.S. Department of Labor Regulations 41 CFR Part 60.

37
38 (d) **Remedies and sanctions or penalties.** Contracts shall contain provisions or
39 conditions that allow for administrative, contractual, or legal remedies in instances where
40 contractors violate or breach contract terms and provide for such sanctions and penalties
41 as may be appropriate.

42
43 (e) **Grant funds.** Contracts that anticipate the expenditure of federal or State grant
44 funds shall contain either, or both as applicable, the mandatory requirements of Federal
45 Management Circular A-102, Attachment O, or such terms and conditions as prescribed
46 by the federal or State grantor agency.

47
48 (f) **Access to records.** [Negotiated contracts and negotiated contract amendments]
49 CONTRACTS shall include provisions allowing the County access to the records of the

1 contractor for purposes of auditing or verifying the contractor's costs in connection with
2 the contract.

3
4 **(g) Affidavit.** Pursuant to the State Finance and Procurement Article, § 16-311, of the
5 State Code, each business entity or person submitting a bid or otherwise applying for a
6 contract shall submit an affidavit stating to its best knowledge[,] whether it or any of its
7 officers, directors, or partners, or any of its employees who are directly involved in
8 obtaining contracts with the State or with any County or other subdivision of the State,
9 has been convicted of bribery, attempted bribery, or conspiring to bribe under the laws of
10 any state or the federal government. The affidavit is satisfactory if it incorporates by
11 reference the statements contained in an affidavit filed with the same procurement agency
12 within the previous 12 months pursuant to the requirements above and states that those
13 statements remain accurate.

14
15 **(h) Non-discrimination.**

16
17 [(1)] A contract [for any construction work subject to § 8-2-114] may not be
18 awarded to any contractor unless the contract contains provisions obligating the
19 contractor not to discriminate in any manner against any employee or applicant for
20 employment [because] ON THE BASIS of race, creed, color, or national origin OR ON ANY
21 OTHER BASIS THAT WOULD BE A VIOLATION OF FEDERAL OR STATE LAW, and obligating
22 the contractor to include a similar clause in all subcontracts[, except subcontracts for
23 standard commercial goods. In addition, the contractor and subcontractor].
24 CONTRACTORS AND SUBCONTRACTORS shall agree to post in conspicuous places,
25 available to employees and applicants for employment, notices setting forth the
26 provisions of the nondiscrimination clause.

27
28 [(2)] Failure to include such a contract provision renders any contract void ab
29 initio, but any party is entitled to the reasonable value of services performed and
30 materials supplied. The County may elect to compel the performance of any contract not
31 containing the nondiscrimination provisions, but recovery against the proper party shall
32 be limited to the reasonable value of services performed and materials supplied.

33
34 (3) If a contractor willfully fails to comply with the nondiscrimination provisions,
35 the County, where the contract is still executory in part, may compel continued
36 performance of the contract, but it is liable only for the reasonable value of services
37 performed and materials supplied from the date that the breach of contract was
38 discovered or should have been discovered, and any sums previously paid by the County
39 under the contract shall be set off against the sums to become due as the contract is
40 performed.

41
42 (4) If a subcontractor willfully fails to comply with the nondiscrimination
43 provisions, the contractor may avoid the contract note and shall be liable only for the
44 reasonable value of the services performed and materials supplied.

45
46 (5) For all contracts for goods, maintenance, services, or other procurements,
47 except building construction services, the contractor/vendor shall agree not to
48 discriminate in any manner against any employee or applicant for employment because of
49 race, creed, color, national origin, or sex. Any contract with the County requiring

1 subcontracts shall include similar requirements in each subcontract. The seller further
2 shall agree to comply with all applicable federal, State, and local laws and executive
3 orders relating to equal employment opportunity.]
4

5 (i) **Project labor agreements - prohibition.** No procurement contract may include a
6 clause that requires a party to participate in, or offers a bonus or preferential treatment to
7 a party who participates in, a project labor agreement in which a party must adhere to
8 obligations concerning union referral, union security, or collectively bargained
9 compensation or benefits.

10
11 **[8-2-116] 8-2-115. Bonding.**
12

13 (a) **Construction contract for less than \$50,000.** For every construction contract in
14 an amount [less than \$25,000] ~~OF \$50,000 OR LESS~~, the Purchasing Agent may require a
15 performance bond in an amount considered adequate to cover the completion of work in
16 the event of default for the protection of the County. The Purchasing Agent may not
17 require a payment bond protecting materialmen and subcontractors but may require the
18 contractor to furnish a waiver of mechanics' liens to the County before payment of a
19 progress or final payment.
20

21 (b) ~~{~~**Construction contract between \$25,000 and \$50,000.** For every construction
22 contract in an amount greater than or equal to \$25,000 and] less than or equal to \$50,000,
23 the Purchasing Agent may require bid, performance, and payment security in the amounts
24 and form as determined necessary to protect the County's interests and the interests of all
25 persons supplying labor and materials in the prosecution of the work provided for in the
26 contract. However, any such bid, performance, and payment security shall be in an
27 amount not to exceed 50% of the contract amount. The Purchasing Agent may require a
28 contractor to furnish a waiver of mechanics' liens to the County prior to payment of a
29 progress or final payment.
30

31 ~~[(c)]~~ ~~(B)~~ **Construction contract for more than \$50,000.** For every construction
32 contract in excess of \$50,000, the Purchasing Agent shall require a performance bond in
33 an amount adequate to cover the [complement] COMPLETION of work in the event of
34 default for the protection of the County. The Purchasing Agent also shall require a
35 payment bond for the protection of all persons supplying labor and materials in the
36 prosecution of the work provided for in the contract. The payment bond shall be in an
37 amount not less than 50% of the total amount payable by the terms of the contract. Any
38 contractor covered by a payment bond is not required to furnish a waiver of mechanics'
39 liens to the County. ~~[Any contractor prior]~~ PRIOR to receiving a progress or final payment
40 under a contract subject to this subsection, A CONTRACTOR shall certify in writing that the
41 contractor has made payment from proceeds of prior payments and that the contractor
42 will make timely payments from the proceeds of the progress or final payment then due
43 to the subcontractors and suppliers in accordance with [the] THEIR contractual
44 arrangements [between them].
45

46 ~~[(d)]~~ ~~(C)~~ **Other contracts.** Except as provided in subsections (a) [through (c)] AND
47 (B), the Purchasing Agent may require a performance bond or other form of security in
48 the amounts considered adequate to protect the County's interests in supply,
49 maintenance, service, or other procurements.

1 [(e)] (D) **Bid bonds.** A bid bond or other form of security acceptable to the Purchasing
2 Agent in an amount of at least 5% of the bid is required when [construction] CAPITAL
3 contract bids are estimated to exceed \$50,000, and may be required by the Purchasing
4 Agent in the amounts considered appropriate when bids or proposals are for other than
5 construction contracts that exceed \$50,000.

6
7 [(f)] (E) **Security other than a bond.** The Purchasing Agent may accept, in lieu of
8 bonds, other forms of security, such as irrevocable [letters] LETTER of credit, pledge of
9 securities backed by the full faith and credit of the federal government or State bonds,
10 MONEY ORDER, or bank, CERTIFIED, cashier's, or treasurer's [checks] CHECK.

11
12 (F) **Bid deposit return.**

13
14 (1) UNSUCCESSFUL BIDDERS OR OFFERORS ARE ENTITLED TO A RETURN OF THEIR
15 BID BONDS WITHIN 10 DAYS OF AWARD.

16
17 (2) IF A SUCCESSFUL BIDDER OR OFFEROR FAILS TO EXECUTE A CONTRACT
18 WITHIN 10 DAYS AFTER THE AWARD, THE BID DEPOSIT OR BOND MAY BE RETAINED BY
19 THE COUNTY AND CONSIDERED AS LIQUIDATED DAMAGES, AND NOT AS A PENALTY, FOR
20 FAILURE OF THE BIDDER OR OFFEROR TO EXECUTE THE CONTRACT. ON PROPER
21 EXECUTION OF A CONTRACT BY A SUCCESSFUL BIDDER OR OFFEROR, THE BID DEPOSIT
22 OR BOND SHALL BE RETURNED TO THE SUCCESSFUL BIDDER OR OFFEROR.

23
24 **[8-2-119] 8-2-116. Disposition of supplies.**

25
26 (a) **When allowed.** The Purchasing Agent may dispose of goods that cannot be used
27 by a using agency or that have become unsuitable for County use.

28
29 (b) **Methods.** In disposing of goods, the Purchasing Agent shall authorize any of the
30 following methods that the Purchasing Agent determines will result in the highest
31 monetary return to or otherwise be in the best interest of the County:

32
33 (1) competitive sealed bids;

34
35 (2) trade-in or exchange for new goods;

36
37 (3) spot bid sales;

38
39 (4) auction;

40
41 (5) sale or transfer to any department, office, or other unit of County government
42 or any agency of State government funded in whole or in part by County funds;

43
44 (6) donation to an organization, institution, association, society, or corporation
45 that is exempt from taxation under § 501(c)(3) or § 501(c)(4) of the Internal Revenue
46 Code;

47
48 (7) scrap, if the property is of minimal value or not appropriate for disposal by
49 other methods; and

1 (8) any other appropriate method designated in the Purchasing [Manual]
2 REGULATIONS.

3
4 (c) **When open market contract allowed.** When use of the methods set forth in
5 subsection (b) fails to result in a fair and reasonable monetary return, the Purchasing
6 Agent may negotiate an open market contract.

7
8 (d) **Notice if estimated value exceeds \$10,000.** Whenever the value of the surplus,
9 obsolete, and waste goods is estimated to exceed \$10,000, public notice shall be given
10 prior to the sale in the manner prescribed in [§ 8-2-104(c)] § 8-2-103(c).

11
12 (e) **When bid or offer by County employee prohibited.** A County employee of the
13 [owning or disposing] USING agency [that is directly involved in the sale] DISPOSING OF
14 THE GOODS may not submit bids or offers in competition with the general public for the
15 purchase of surplus, obsolete, and waste goods.

16
17 **[8-2-120] 8-2-117. Contract awards; public disclosure.**

18
19 (a) **Website requirements.** The County Purchasing Agent shall cause to be
20 published on the Anne Arundel County website all awards of contracts for capital
21 improvements, contractual services, professional services, or supplies of \$25,000 or
22 greater awarded by the County. The website shall provide the following information:

23
24 (1) the name and address of the entity receiving the award, and any affiliated
25 company providing goods or services under the agreement;

26
27 (2) the amount of the award;

28
29 (3) the method or type of procurement;

30
31 (4) the name of the department responsible for the contract;

32
33 (5) the budget funding source;

34
35 (6) the purpose of the award;

36
37 (7) any known affiliation that the entity receiving the award may have with a
38 County employee or official that is disclosed by the entity through the procurement
39 process; [and]

40
41 (8) for business entities, the names and titles of persons executing the contract on
42 behalf of the business entity[.]; AND

43
44 (9) A LIST OF THE BIDS OR OFFERS RECEIVED, THE NAME OF EACH BIDDER OR
45 OFFEROR, THE AMOUNT OF THE BID OR OFFER, AND REASONS FOR REJECTION OF BIDS
46 OR OFFERS.

47
48 (b) **Initialization, updates and duration.** The website shall list all applicable awards
49 [beginning with fiscal year 2009] and be updated on a monthly basis. The information

1 regarding each individual award shall be preserved on the website for a period of one
2 year.

3

4 (c) **Confidential information.** This section may not be used to require the disclosure
5 of information that is confidential under County, State or federal law.

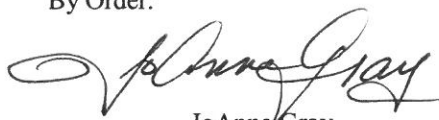
6

7 SECTION 3. *And be it further enacted,* That this Ordinance shall take effect 45 days
8 from the date it becomes law.

AMENDMENTS ADOPTED: March 6, 2017

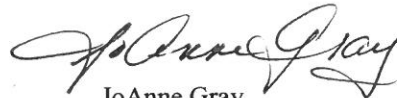
READ AND PASSED this 20th day of March, 2017

By Order:



JoAnne Gray
Administrative Officer

PRESENTED to the County Executive for his approval this 21st day of March, 2017



JoAnne Gray
Administrative Officer

APPROVED AND ENACTED this 24th day of March, 2017



Steven R. Schuh
County Executive

EFFECTIVE DATE: May 8, 2017

I HEREBY CERTIFY THAT THIS IS A TRUE AND CORRECT COPY OF BILL NO.
8-17 THE ORIGINAL OF WHICH IS RETAINED IN THE FILES
OF THE COUNTY COUNCIL.



JoAnne Gray
Administrative Officer