

SEC. 11B-4 EXEMPTIONS — REGULATIONS

COMCOR 11B.04.01 Electricity Procurement Regulations

11B.04.01.01 County Procurement System — General

1.1 Authority

1.1.1 Section 314 of the County Charter provides that the County Council "shall prescribe by law for competitive procurement for purchases by or contracts with the County in excess of an amount or amounts established by law."

1.1.2 Chapter 11B of the County Code implements Section 314 and applies to "every expenditure of public funds ... by the County ... to acquire goods, services, or other construction except as otherwise provided by the County, State or federal law."

1.1.3 Section 11B-4 of the County Code exempts certain procurements from the application of Chapter 11B. Section 11B-4(f) specifically provides that Chapter 11B does not apply to the process of "obtaining electricity, natural gas, and compressed natural gas under executive regulations developed by the Chief Administrative Officer and approved by the County Council."

1.1.4 These regulations are intended to apply only to the purchase of electricity, including clean renewable credits and other electricity-related products.

1.1.5 These regulations may be suspended or waived by the CAO with respect to any procurement action taken pursuant these regulations, upon a determination and finding setting forth the reasons why the best interests of the County would be served by the waiver. The CRC must review each proposed suspension or waiver, and forward its recommendation to the CAO, prior to the CAO suspending or waiving the regulations. The CAO must identify each suspension or waiver, in writing, and send it to the Director and the County Council within 7 days after the suspension or waiver; the Director must maintain a record of the suspension or waiver notification from the CAO.

1.1.6 These regulations are issued pursuant to the requirements of law under Chapter 11B of the County Code.

1.2 Applicability

1.2.1 These regulations are applicable to all County departments and agencies and other public entities subject to the purchasing laws of the County, including the County Council, the County Board of Supervisors of Elections, the State Attorney's Office, the Sheriff's Office, the County Board of License Commissioners, and the Circuit Court (not including the Office of the Clerk of the Court).

1.2.2 Where Montgomery County engages in a cooperative purchasing venture with or on behalf of another entity, these regulations may be applicable by agreement.

1.3 Administration - Legal Review of Contracts

The Office of the County Attorney is responsible for the review of contracts to the extent that such review is deemed appropriate by the County Attorney.

1.4 Procurement Authority; Delegation of Authority

1.4.1 Authority to procure electricity is vested in the Chief Administrative Officer, and, by these regulations, is delegated, subject to revision by the Chief Administrative Officer, to the Director, Department of Public Works and Transportation.

1.4.2 The Director, Department of Public Works and Transportation, may delegate, or redelegate, in writing, this authority, subject to limits stated in the delegation.

1.4.3 These contracting officers, and only these contracting officers, may delegate, or redelegate, in writing, this authority, subject to limits stated in the delegation. Contracts may be executed on behalf of the County by these contracting officers only, except as otherwise provided in these regulations.

1.4.4. No contract may be entered into unless the contracting officer ensures that all requirements of procurement laws, Executive Orders, regulations, and all other applicable procedures have been met.

1.4.5 The CAO delegates, subject to revision by the CAO, authority to the CRC to carry out all responsibilities assigned that committee pursuant to law or these regulations.

1.4.6 Unless expressly prohibited by law, any procurement authority may be delegated and subdelegated if the delegation is in writing. A delegation may be limited or made subject to conditions. Responsibility for a procurement action, however, may not be delegated.

1.5 Department Responsibilities

1.5.1 In general, the Department is responsible for compliance with applicable laws and regulations, including these regulations and obtaining any required approval.

1.5.2 The Department must provide information as requested by the County Attorney for appropriate investigation and remedial action.

1.6 Rules of Construction

1.6.1 Where there is a conflict between provisions of these regulations, the provisions of the more specific section control the provisions of the general section.

1.6.2 All contracts must be construed with the presumption that the contract complies fully with the provisions of these regulations and as if these regulations were incorporated into the contract.

1.6.3 Where these regulations conflict with provisions of a contract, County procurement procedures, directives, policies, or other matters pertaining to procurement, these regulations control. Otherwise, if a conflict can be resolved by interpretation, the provisions are to be interpreted in a way consistent with each other.

1.7 Appendices

1.7.1 These regulations may contain appendices which contain mandatory clauses. The appendices are not part of these regulations and may be updated from time to time by the Office of the County Attorney.

1.7.2 The Director must be notified by the Office of the County Attorney of any changes to the appendices.

1.8 Procurement Manual

The CAO may issue a Procurement Manual to provide internal procedures to County employees and

officials to follow in making a procurement. The manual is not part of these regulations. A violation of a procedure in the manual is not a basis for an applicant, offeror or contractor to challenge a procurement action by the County.

11B.04.01.02 Definitions

2.1 The words defined in this section have the meaning set forth below whenever they appear, unless:

2.1.1 The context in which they are used clearly requires a different meaning; or

2.1.2 A different definition is prescribed for a particular section of the regulations.

2.2 Any definition for words contained in this section is to be construed in a manner that is consistent with and supplementary to any definition contained in Chapter 11B, Montgomery County Code.

2.3 These definitions contain substantive material. These defined terms must be interpreted to include all the substantive provisions contained in the definition.

2.4 Definitions

2.4.1 **Acceptance of Goods or Services:** Acceptance constitutes a determination by an authorized government official that goods or services conforming to the requirements of a contract have been furnished by a contractor. With respect to goods, acceptance is deemed to occur once title to the goods has transferred to the participant.

2.4.2 **Acceptance of Offer:** The communication of acceptance of an offer must be made within the time specified for acceptance in the solicitation or authorized extension in order for the acceptance to be binding on the offeror; however, a communication of an acceptance of an offer made after the time specified in the solicitation may be accepted by an offeror. In order for acceptance to become binding on the County, a fully executed contract must be delivered.

2.4.3 **Applicant:** A person that submits a proposal, which does not include pricing, in response to a solicitation, when pricing is not requested.

2.4.4 **Assignment:** The transfer of a contract right or obligation by a contractor to another party. A payment assignment is the assignment of a right to payment under a contract to a party designated by the contractor who has a right to that payment. A performance assignment is the assignment by a prime contractor to a third party of the obligation to perform a prime contract in accordance with its terms and conditions. Assignments must be made through a contract modification and specifically accepted and approved by the contracting officer in order to be effective. An assignment, unless it specifically provides otherwise, does not relieve the prime contractor of its obligations to the County.

2.4.5 **Authorized Government Official:** A person granted specific authority to do a particular act by law, by delegation of authority, by official job description, by the law of agency or pursuant to contract provisions.

2.4.6 **Award:** The delivery of a fully executed contract to an offeror. This delivery may be accomplished by depositing the contract in the mail, with a common carrier, courier service, or delivering it by hand to the offeror, or notifying the offeror by phone, telegram or other means which communicates the award to the offeror and place for obtaining the contract.

2.4.7 **CAO:** The Chief Administrative Officer for Montgomery County.

2.4.8 **Certification of Funds:** A written or electronic certification by the Director of Finance that funds are available to pay the cost of a specific contract or the cost of the first period of a multi-term contract, as required by Chapter 11B, Montgomery County Code.

2.4.9 **Change Order:** A type of contract modification authorized by the contracting officer directing the contractor to make changes within the scope of the contract, pursuant to contract provisions for such changes, with or without the consent of the contractor.

2.4.10 **Claim:** A demand or request for payment for services or goods delivered, outside of an appropriately encumbered contract with the County, for which the contractor has a basis for payment, reimbursement, or compensation from the County under Chapter 11B, Montgomery County Code.

2.4.11 **Competition:** The process by which more than one valid source of supply for goods or services, is solicited.

2.4.12 **Competitive Negotiation:** A process by which the County and one or more prospective suppliers communicate successive respective positions with respect to price, specifications, and other relevant terms and conditions in order to arrive at a contract for procurement of goods or services.

2.4.13 **Confidential Information:** Any information that is not a matter of public knowledge or available to the public on request.

2.4.14 **Contract:** Any agreement to which the County is a party for the procurement of goods or services, including any contract modification. All contracts must be in writing unless otherwise authorized by these regulations. A contract must include mandatory clauses.

2.4.15 **Contract Administrator:** The person designated by the Director of the Department of Public Works and Transportation who is charged with responsibility for monitoring the contract and assuring contractor compliance with the scope and specifications of the contract.

2.4.16 **Contract Amendment:** A type of contract modification signed by the contractor and the contracting officer that provides for a change of contract provisions, including additional work outside the scope of the original contract.

2.4.17 **Contract Modification:** Any document alteration in the specifications, delivery, contract period, price, quantity, or other contract provisions of any existing contract, whether accomplished by unilateral action in accordance with a contract provision or by mutual action of the parties to the contract. It also includes administrative changes, notices of termination, and notices of exercise of a contract option and contract extensions. Unless expressly authorized by contract and these regulations, a contract modification must be written if the contract to be modified is written.

2.4.18 **Contract Review Committee (CRC):** A standing committee established for purposes specified in law or these regulations.

2.4.19 **Contracting Officer:** The Director of the Department of Public Works and Transportation, and each designee of the Director authorized to enter into contracts, contract amendments or contract modifications on behalf of the County.

2.4.20 **Contractor:** Any person obligated by contract under the County procurement law, to provide goods or services to the County.

- 2.4.21 **Cost Analysis:** The review and evaluation of the separate cost elements and proposed profit of an offeror's or contractor's cost or pricing data and an offeror's or contractor's assumptions and judgments in estimating costs.
- 2.4.22 **County:** Montgomery County, Maryland, a body corporate and politic and a local subdivision of the State of Maryland.
- 2.4.23 **County Department, Office, and/or Agency:** An officially designated unit of the County (including the County Council) subject to the procurement law and regulations of Montgomery County, and certain entities required or allowed to follow County procurement law; including the County Board of Supervisors of Elections, the State Attorney's Office, the Sheriff's Office, the County Board of License Commissioners, and the Circuit Court (not including the Office of Clerk of the Court).
- 2.4.24 **Debarment:** A disqualification of a potential applicant or offeror from participating in the procurement process, including being awarded contracts, during a pre-determined period of time.
- 2.4.25 **Department:** The Department of Public Works and Transportation.
- 2.4.26 **Determination and Finding:** A document prepared by an authorized government official that states the facts and reasons for a particular decision.
- 2.4.27 **Director:** The Director of the Department of Public Works and Transportation, or his designee.
- 2.4.28 **Dispute:** A timely complaint filed by a contractor disagreeing with a decision made by an authorized government official regarding a contract.
- 2.4.29 **Electricity Purchase Terms and Conditions of Contract Between the Participant and Contractor:** A document containing a set of terms and conditions that are unique to the acquisition of electricity by the Department. This document will be incorporated in all contracts. All wording contained in the Electricity Purchase Terms and Conditions of Contract has been pre-approved and may not be altered without prior County Attorney approval.
- 2.4.30 **Emergency:** Any dangerous condition or unforeseen curtailment, diminution or termination of an essential service which poses an immediate danger to health, life or property.
- 2.4.31 **Emergency Procurement:** An emergency procurement is an informal procurement of goods or services required as a result of an emergency.
- 2.4.32 **Encumbrance:** The recorded reservation of appropriated funds to provide for payment of County contract obligations, which reduces remaining spending authority under an appropriation by that amount. A certification of funds from the Department of Finance constitutes sufficient evidence that there is a sufficient unencumbered balance in an appropriation to cover the County's contract obligations, or the County's obligations under the first period of a multi-term contract, as required by Chapter 11B, Montgomery County Code.
- 2.4.33 **Evaluation Criteria:** Standards, factors, or elements set forth in a Solicitation that specifies the basis for evaluation of the solicitation.
- 2.4.34 **Fixed Price Contract:** A contract that provides for a firm price under which a contractor bears the full responsibility for profit or loss. This does not include a cost reimbursement contract.
- 2.4.35 **Goods:** Supplies, equipment, materials, and property, except real property.

- 2.4.36 **Government:** Government of Montgomery County, Maryland, unless the context indicates otherwise.
- 2.4.37 **Late Proposal:** A response to a solicitation received at the place designated in the solicitation after the deadline established by the solicitation.
- 2.4.38 **Mandatory Clauses:** Clauses prepared by the Office of the County Attorney that must be used in solicitations and contracts unless explicitly waived by the Office of the County Attorney.
- 2.4.39 **Minority Owned Business (MFD):** Minority owned business as defined in Chapter 11B of the County Code.
- 2.4.40 **Minority Person:** A member of a socially or economically disadvantaged group which includes African Americans, Hispanic Americans, Native Americans, Asian Americans, women, and persons with a disability as defined in Chapter 11B of the County Code.
- 2.4.41 **Multiple Award:** The award of separate contracts to two or more offerors for the same or related goods or services in situations where the award of a single contract would be impractical or would not meet the total County requirements.
- 2.4.42 **Notice to Proceed:** A written notice to the contractor issued by an authorized government official directing commencement of contract performance.
- 2.4.43 **Offer:** A response, which includes a price proposal, to a solicitation that is binding upon the offeror during the period of time in which the offer is to remain open under the solicitation. An offer is not binding on the County until the award of a contract.
- 2.4.44 **Offeror:** A person that makes an offer in response to a solicitation.
- 2.4.45 **Participant:** The County, a County agency, a governmental entity, or other entity that has joined with the County to cooperatively procure electricity or related services.
- 2.4.46 **Performance Bond:** A bond issued by a surety that guarantees full performance of a contract by a contractor.
- 2.4.47 **Person:** Means any individual, group of individuals, union, committee, club, organization, firm, association, business, corporation, limited liability company, partnership (of any kind), sole proprietorship, or other entity.
- 2.4.48 **Pre-Proposal Conference:** An optional meeting open to all prospective applicants or offerors prior to submittal of proposals to discuss matters germane to the Solicitation.
- 2.4.49 **Price Analysis:** An analysis used to determine that a price submitted by an offeror is fair and reasonable.
- 2.4.50 **Procurement:** Buying, purchasing, or otherwise acquiring any goods or services. It also includes all functions that pertain to the obtaining of any goods or services, including description of requirements, selection and solicitation of sources, evaluation of offers, preparation and award of contract, dispute and claim resolution and all phases of contract administration.
- 2.4.51 **Proposal:** A response to a solicitation by an applicant or offeror, which is binding on an offeror if

it contains a price proposal.

2.4.52 **Protest:** A challenge by an aggrieved applicant or offeror in connection with a decision regarding a solicitation as provided for in these regulations.

2.4.53 **Public Entity:** (1) the federal government; (2) a state government and any of its agencies; (3) any political subdivision of a state government and any of its agencies; (4) any board, commission, or committee established by federal, state, or local law; (5) any organization or association of the federal government, state governments, or political subdivisions of state governments; and (6) any other entity that is: (A) qualified as a non-taxable corporation under the United States Internal Revenue Code, as amended; and (B) incorporated by an entity under paragraphs (1) through (5) for the exclusive purpose of supporting or benefitting an entity under paragraphs (1) through (5).

2.4.54 **Public Notice:** Posting information for public inspection during regular business hours. In addition, public notice may, as determined by the Director, also include other means reasonably calculated to notify the public and promote adequate competition, such as advertisement, mailings, placing notices in newsletters, other electronic media determined by the Director.

2.4.55 **Solicitation:** A Request for Energy Proposals, consisting of a document describing the electricity to be purchased, the necessary qualifications of proposed vendors and/or suppliers, the evaluation and pricing criteria to be utilized in the selection process, and a description of the procurement process, which may be a two-stage process.

2.4.56 **Requirements Contract:** A contract for goods or services covering long-term requirements (usually twelve months or more), used when the total quantity required cannot be definitely fixed, but may be stated as an estimate or within maximum and minimum limits. A requirements contract will be non-exclusive, such that the contract is not the only source of goods or services covered by it. A requirements contract may be not used to unduly restrict competition and may not normally be used for large construction contracts.

2.4.57 **Responsibility:** A determination, based on characteristics of an applicant or offeror, that the applicant or offeror is capable of satisfying the County's needs and requirements for a specific contract.

2.4.58 **Responsible Applicant or Offeror:** A person the Director has determined to be capable of satisfying the County's needs and requirements for a specific contract.

2.4.59 **Selection Committee (SC):** A committee established by the Department for the purpose of evaluating responses submitted by applicants and offerors in connection with a Solicitation. Each member of the SC must be an employee or representative of a public entity, unless specific authorization is obtained from the Department for another person to serve on the committee.

2.4.60 **Services:** The performance of an identifiable task by furnishing 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.

2.4.61 **Shortlist:** A list of applicants who, through a pre-qualification process, are eligible to participate in a further process for award of one or more contracts.

2.4.62 **Sole Source:** A noncompetitive procurement in which goods or services necessary to meet minimum valid needs of the County are available from only one person.

2.4.63 Solicitation: A request for electricity proposals (RFEP).

2.4.64 Specifications: A set of requirements for goods or services that the County wishes to acquire. A specification must indicate, whenever appropriate, the procedure by which the County will determine the requirements satisfied. As far as practicable, it is desirable that the requirements be expressed in numerical or other objective terms, together with their ranges or limits. A specification may be a standard, a part of a standard, or independent of a standard. It may also be expressed as an end result. Specifications should be contained in solicitations as well as contracts. Specifications should not be overly restrictive or prejudicial to competition beyond that justified by minimum valid needs of the County.

2.4.65 Subcontract: An agreement entered into between a third party (known as a subcontractor) and a contractor who has a contract with the County (known as a prime contractor). Although the County is not a party to the subcontract, and the prime contractor is fully responsible for the subcontractor, the County may have certain control over the subcontract and subcontractor through the provisions of the prime contract.

2.4.66 Supplier: A potential contractor that is an entity providing electricity or ancillary services in connection with the sale or delivery of electricity to the County.

2.4.67 Termination for Default: A termination in whole or in part of a contract, at the option of the County, because of the contractor's failure to perform.

11B.04.01.03 Administration Process — Procurement

3.1 Contract Solicitations

3.1.1 A person working on a solicitation for the County must not release information concerning the solicitation to any unauthorized person until the solicitation is publicly issued.

3.1.2 Formal Solicitation of Proposals

Whenever the County issues a solicitation, there must be public notice. The public notice should ordinarily include the solicitation document number, a description of the goods or services required, the name and telephone number of the person an applicant or offeror can contact for copies or information, and the due date and time for submission of offers. The Director determines how public notice is accomplished, which may involve mailing to potential applicants and offerors.

3.1.3 Receipt, Custody, and Opening of Proposals

3.1.3.1 Receipt

(A) All applicants and offerors must submit their proposals by the time, in the manner, and at the place designated in the solicitation. A proposal is not submitted until and unless the Director receives it.

(B) After receipt and identification of a timely proposal, the Director should immediately time-stamp and deliver it, as soon as practicable, to a custodian designated by the Director.

(C) The Director must reject any late proposal and immediately return it to the person.

3.1.3.2 Custody of Proposals

(A) The custodian must keep proposals in a safe and secure place, and must deliver them at the time and to the place of opening specified in the solicitation. During the custodianship of the proposals, the

custodian must maintain exclusive control and custody, and must not permit any person access to, or release and information concerning, the proposals unless specifically authorized by the Director.

(B) An applicant or offeror may request to withdraw a proposal at any time prior to the time set for the receipt of the proposal for purposes of either resubmittal or complete withdrawal. The applicant or offeror must put the request in writing and submit it to the custodian before the deadline for receipt of proposals. Requests are not submitted until and unless received by the custodian. The custodian has discretionary authority to approve the request and release the appropriate proposal to the applicant or offeror.

3.1.3.3 Opening of Solicitations; Release of Information

(A) Proposals are not publicly opened. After the date and time proposals are due, the Director may open the proposals for evaluation and ranking. The Director should keep the envelope in which he receives the proposal (if delivered in that manner) with each proposal until he makes a final award, and all appeals, if any, are resolved.

(B) Until the Director posts a shortlist or list of award(s), all proposals are confidential information and the Director must not release them to the public.

(C) A request to inspect proposals and evaluations is subject to the Maryland Public Information Act. Proposals and evaluations of proposals are available for public inspection after the Director posts a shortlist or list of award(s). The County must not publicly disclose confidential commercial or financial information and other information not subject to disclosure. The County may require an applicant or offeror to designate which information is not subject to disclosure. As a condition of keeping the information confidential, the County may require an applicant or offeror to agree to defend and hold the County harmless if the County does not release the information at the request of the applicant or offeror. Information not expressly identified as confidential by the applicant or offeror may be released by the County.

3.1.4 Solicitation Cancellation

3.1.4.1 Before Time for Opening

The Director may cancel a solicitation in whole or in part before the opening or due date when it is determined that this action is in the best interest of the County.

3.1.4.2 After Time for Opening

The Director may cancel a solicitation in whole or in part after the opening or due date specified for opening when the Director determines that this action is in the best interest of the County. The Director may base his decision to cancel the solicitation upon the following list of factors, among others:

- (A) All proposals are unacceptable;
- (B) All proposals are so excessively low or high as to indicate a defective statement of specifications that requires correction and re-issuance of the solicitation;
- (C) Specification deficiencies are discovered;
- (D) None of the proposals meet the County's requirements in terms of price or funds available;
- (E) Responses received indicate a problem in dissemination or communication of the solicitation

(e.g., insufficient number received under the circumstances or inappropriate responses indicating misunderstanding of solicitation language);

(F) Procurement requirements have changed; or

(G) Other circumstances which indicate a failure of the solicitation process to promote full and fair competition.

3.1.4.3 Notice to Applicants and Offerors

The Director should communicate cancellation of a solicitation by a method determined in the Director's sole discretion to give appropriate notice to applicants and offers of the cancellation in the earliest possible manner. The Director should usually post notice of cancellation in the same manner as posting a shortlist or list of award(s). Applicants and offerors are not entitled to any compensation in connection with cancellation of a solicitation.

3.1.4.4 Cancellation Final

The decision to cancel a solicitation is final and is not subject to review.

3.2 Contract Awards

3.2.1 After consideration of the evaluations and recommendations of the selection committee, the Director may cancel the solicitation, in whole or in part, issue a shortlist, and/or make an award to one or more offeror(s). Until the Director issues a shortlist or makes an award(s), all information concerning evaluations and recommendations is confidential.

3.2.2 Upon issuance of a shortlist or a determination of an award(s) for a solicitation, the Director must place the number of the solicitation and the shortlist or the name of the contract awardee(s) on a public list. The Director must make the list available for inspection. The Director must also indicate on the list the date of each decision to issue a shortlist or make an award. It is the responsibility of applicants and offerors of the solicitation to keep informed of the current status of any solicitation. Placement of an entity on a shortlist or a list of awardee(s) constitutes notice to all applicants and offerors of the posted information. The Director may make such other communications with respect to a shortlist or list of award(s) given the particular circumstances of the solicitation.

3.3 Contract Documents

A written contract document is required to procure goods or services in Montgomery County.

3.3.1 County Attorney Approval

3.3.1.1 The Director must submit all contracts to the Office of the County Attorney for review and approval prior to signature by the contracting officer.

3.3.1.2 The Office of the County Attorney may approve, approve with conditions, or reject any contract submitted. If approved with conditions, all conditions must be satisfied prior to signature by the contracting officer. Any contract requiring County Attorney approval is voidable at the option of the County, at any time, if County Attorney approval has not been obtained.

3.3.2 Signatures

3.3.2.1 All contracts, unless otherwise determined by the Director, must contain the signature of the offeror and the signature of the contracting officer.

3.3.2.2 Signatures of applicants, offerors and contractors must be in their correct legal form and must not be abbreviated to common usage or trade name form. All signatures must be made by an authorized officer, partner, manager, member, or employee. The signing of a proposal or a contract is a representation by the person signing that the person signing is authorized to do so on behalf of the applicant, offeror, or contractor. Contracts that are not signed in compliance with these requirements are voidable at the option of the County.

3.3.2.3 Prior to the execution of the contract by the contracting officer, sufficient documentation of an encumbrance to cover the appropriate contract amount must be submitted to the contracting officer. Contracts may contain "subject to appropriation" conditions which authorize the contracting officer to execute the contract without encumbrance documentation, if approved by the Office of the County Attorney. The contracting officer must approve any reduction in an encumbrance after a contract is executed.

3.3.2.4 A contracting officer must not issue a notice to proceed under a contract until the contract is awarded.

3.3.2.5 Original contract signatures must be in ink, unless otherwise authorized by the Office of the County Attorney. When volume of signatures or time is a consideration, a facsimile signature may be authorized by the person whose signature is represented by the facsimile. Facsimile signatures may be used only under conditions authorized by the Director.

3.4 Records Retention

3.4.1 The Director must maintain all contract records created pursuant to these regulations.

3.4.2 The Director must maintain all contract records for a minimum of 5 years after the latest date of completion of a contract or date of final payment whichever is later.

3.4.3 The Director may develop and issue minimum standard formats and procedures for procurement and contract administration records.

11B.04.01.04 Source Selection Method, Contract Types, and Contract Formation

4.1 Description of a Request for Energy Proposals (RFEP)

4.1.1 General

An RFEP is a solicitation for a proposal for the supply of electricity in which price, and quality, if deemed appropriate, is balanced to meet the electricity needs set forth in the solicitation. The Director may use functional and/or performance specifications. The Director may evaluate proposals based on total overall electricity costs or savings to the participants. Final costs and other supply issues are subject to negotiations at any time after the Director receives proposals and before the Director makes any award(s). The Director does not publicly open proposals. The Director makes an award(s), if any, under a RFEP to the responsible vendor(s) whose proposal(s) are most advantageous to the participants.

4.1.2 Use

RFEPs are used for the purchase of electricity where cost and, if appropriate, technical and administrative considerations are valid criteria in the evaluation.

4.1.3 Contents

4.1.3.1 The Director should include in a solicitation the following information:

- (A) A dated solicitation transmittal that summarizes the central solicitation's requirements.
- (B) The date, time, and place where a pre-proposal conference, if any, will be held.
- (C) A notice of the date, time and place for submission of proposals and, if applicable and available, information regarding receipt of price proposals at a later date.
- (D) The identity, address, and telephone number of the County contact persons.
- (E) A description of the goods and services the County is purchasing, with sufficient specificity and detail to permit full and free competition.
- (F) An explanation of the method of award, which may be based on any or all of the following:
 - (1) Price alone, in the aggregate, by group, or by unit price;
 - (2) Price and quality of service factors as deemed appropriate; or
 - (3) Price including, if appropriate, total overall cost or savings to the agencies (i.e., actual electricity cost, administrative cost, additional equipment cost, etc.)
- (G) If the Director contemplates oral interviews then:
 - (1) The objective criteria for determining when, how many, and which applicants or offerors are eligible for the interview state; and
 - (2) An explanation of point scoring for screening and interview steps (e.g., an explanation of the relationship between written submissions and oral interview evaluations).
- (H) All mandatory contract clauses as approved by the Office of the County Attorney.
- (I) A listing of all required due dates, if available.
- (J) Optional provisions applicable to the particular procurement involved, as appropriate.
- (K) A statement of insurance and bond requirements, if applicable.
- (L) A provision that requires an acknowledgment of all amendments or addenda by applicants or offerors.
- (M) A statement regarding MFD practice.
- (N) A statement regarding acceptance time.
- (O) An appropriate space for signatures by a person authorized to bind the offeror to the offer, indicating agreement with all required terms and conditions.

4.1.3.2 If the Director determines that guidelines would assist the SC in evaluating an award criterion, the Director must develop, for use by the SC, scoring guidelines for that criterion. Normally the Director should develop guidelines for cost criteria. These guidelines are confidential until the posting of a

shortlist or list of award(s).

4.1.3.3 The solicitation may contain a minimum score which establishes a threshold that an applicant or offeror must achieve in order to be considered for a shortlist or an award under the procurement. In the alternative, the procurement may provide for a multi-stop process, each step constituting a pre-qualification process (e.g., top five rated offerors based on scoring of written evaluations proceed to a final evaluation state which may include cost competition or oral interviews).

4.1.3.4 Evaluation criteria may include:

- (A) General experience and technical competence.
- (B) Past performance record on other County contracts.
- (C) Related experience on similar contracts.
- (D) Compatibility of size of firm with size of proposed contract.
- (E) Knowledge of local conditions, codes and ordinances where such knowledge is essential to the proper performance of the contract.
- (F) Current total commitment of the applicant or offeror and the capacity to provide or supply the proposed goods and services in the required time.
- (G) Special familiarity with project or project site.
- (H) Special qualifications, experience, design approach, etc.
- (I) Adequacy of office facilities where services will be rendered.
- (J) Involvement of consultant's management and participation of key officials in the project.

4.1.3.5 Evaluation criteria must include appropriate cost factors. Points assigned to the cost criterion must be contained in the decisive selection step.

4.1.3.6 A solicitation may provide for a selection process that requires each offeror who meets a pre-established score or ranking to compete for designation as the top-ranked offeror on the basis of price alone. If required in the solicitation, the price offer must be binding on the offeror. The solicitation may require that an offeror submit the price proposal at any point during the evaluation process.

4.1.3.7 If appropriate, applicants and offerors must include in hourly rates all multipliers and overhead charges (e.g., General and Administrative overhead, profit, etc.) for personnel, cost data, and proposed costs.

4.1.3.8 As an alternative to including a cost criterion, the Director may utilize a pre-planned cost negotiation process. The pre-planned cost negotiation process allows the Director to negotiate with the top ranked offeror under a process which ensures a fair and reasonable cost for the contract. This process includes a written analysis, supported by appropriate documentation, of reasonable cost or ranges of cost for each category of goods or services and an estimated value of the entire contract work. The Director must perform this analysis prior to the opening of offers. When the Director negotiates the price of the contract with the top-ranked offeror, the agreed upon price should be within the amount estimated in the Director's analysis.

4.1.3.9 References may be used as an evaluation criterion.

4.1.4 Procedure

(a) The Director issues solicitations so as to promote free and open competition. The Director must issue solicitations with public notice.

(b) It is the policy of the County to be especially sensitive to the solicitation of MFD firms. Every effort should be exerted to identify and inform MFD firms of the solicitation. Each applicant's proposal should include a MFD plan or statement of MFD practices, which the County will review during the proposal evaluation.

(c) A solicitation may provide for a two-step selection process, whereby the County may use initial proposals to pre-qualify applicants and then use subsequent proposals (offers) from pre-qualified applicants to consider pricing information. If the County does not deem the prices submitted to be in its best interests, the County may request additional price proposals until it receives one that it deems to be in its best interest to accept, or until cancellation of the solicitation.

(d) The Director will receive timely proposals, without public opening.

(e) The SC will evaluate all proposals in accordance with the evaluation criteria set forth in the solicitation and reviews applicants and offerors for responsibility.

(1) The chair of the SC is responsible for assuring that the SC follows the proper evaluation procedures. The chair should refer questions regarding specific procedural issues to the Director. The SC must make its decisions by majority vote.

(2) Although each member of the SC must exercise independent and impartial judgment in evaluating a proposal, the SC must award to each applicant or offeror a single score for each criterion. The score should be issued on such information as a reasoning mind might accept as adequate to support the score. It is within the SC's province to resolve conflicting information regarding an applicant or offeror and, where inconsistent inferences can be drawn, it is for the SC to draw those inferences.

(3) The SC must base its evaluation solely on the material presented to the entire SC pursuant to the submission requirements for the solicitation. Accordingly, each member of the SC must be present during such evaluation procedures as site visits, demonstrations, and interviews.

(4) Each member of the SC must participate and vote in the scoring of each proposal. If a member of the SC does not complete the evaluation process, the Director must determine how the SC evaluation process must proceed. The Director may establish a process that will maintain a fair and competitive evaluation process including:

(A) Requiring the remaining members to proceed with the evaluation;

(B) Requiring the SC to adopt those scores already awarded;

(C) Appointing a new member to the SC;

(D) Requiring the SC to evaluate proposals anew; and

(E) Convening a new SC.

(5) An individual may not be a part of the SC if that individual cannot render an independent and impartial judgment. Each member of the SC must certify in writing that:

(A) the member has used independent and impartial judgment as a member of the SC;

(B) that the member has complied with the requirements of:

(i) Section 19A-11, Montgomery County Code, which prohibits participation in matters where there is a conflict of interest;

(ii) Sections 19A-12 and 11B-52, Montgomery County Code, which prohibit employment relationships between a County employee and an applicant or offeror;

(iii) Section 19A-15, Montgomery County Code, which prohibits the disclosure of confidential information;

(iv) Sections 19A-16 and 11B-51, Montgomery County Code, which prohibit the solicitation or acceptance of gifts from applicants or offerors; and,

(C) no relative or member of the SC's household (as defined in the Montgomery County Public Ethics Law) will be affected by any contract awarded under the solicitation.

(6) Unless the Director provides otherwise in writing, the formal meetings of a SC during which proposals are evaluated are closed to non-SC members.

(7) The SC may at any time meet with or obtain from County staff and consultants any necessary advice, analyses or information.

(f) During any portion of the evaluation process, the SC, or County staff and consultants assisting the SC, may (i) conduct discussions with applicants or offerors to clarify information, to modify a proposal to meet minimum requirements, or to assure full understanding of the solicitation requirements, or (ii) negotiate with applicants or offerors if and as specified in the solicitation.

(g) After the SC ranks the applicants and offerors, the SC must forward to the Director the recommended ranking, including a recommendation of the responsibility of the proposed shortlist or awardee(s). These recommendations must be accompanied by SC conflict of interest certifications and a score sheet summarizing the scores awarded by the SC to each applicant or offeror.

(h) In the case of a numerical tie score, unless the solicitation provides otherwise, the Director resolves the tie by application of the following, in the order stated:

(1) First preference to an applicant or offeror that has its principal place of business in Montgomery County;

(2) First preference to an applicant or offeror who is a certified MFD business prior to submitting a proposal;

(3) Drawing of lots with representatives of the firms involved invited to be present.

(i) The Director must approve, approve with conditions, or reject the recommendations and supporting documentation. If the Director agrees with the SC recommendation, then the Director may proceed to the next step. If the Director approves with conditions, the SC must satisfy the conditions and provide

appropriate documentation of compliance to the Director. If the Director rejects a recommendation for a shortlist or award, then the Director must return the solicitation package to the SC for further action as indicated by the Director.

(j) After completion of the evaluation process, the Director may make a shortlist or written award determination of the proposals that are most advantageous to the County. The Director must give public notice to any and all applicants on a shortlist or offerors awarded a contract(s).

(k) Then the Director may either proceed with the next stage of the solicitation, if any, or negotiate a contract(s) with the awarded offeror(s) in accordance with the solicitation.

(l) Once a contract has been negotiated to the Director's satisfaction, and the Director has ensured the encumbrance of required funds, the Director may execute the contract on behalf of the County and provide for distribution of copies of the contract to the contractor.

(m) If necessary pursuant to a contract, an authorized government official will issue a Notice to Proceed.

(n) If an awardee fails to comply with any requirements conditioned on an award (e.g., proof of insurance) in the time and manner specified in the solicitation, then the Director may immediately terminate the contract for default and proceed to an award with the next highest ranked offeror. In this event, the Director must designate the next highest ranked offer as an awardee and place the name of the awardee on a public list.

4.2 Contract Types

4.2.1 Fixed Price

A fixed price contract is a contract that provides for a firm price under which a contractor bears the full responsibility for profit or loss. This does not include a cost reimbursement contract. All costs involved have been firmly established, in writing, but may be subject to certain adjustments, objectively defined. Such adjustments may include escalator clauses, incentive clauses, and other adjustment mechanisms.

4.2.2 Cost Reimbursement Contracts

4.2.2.1 Cost reimbursement contracts are contracts that provide for reimbursement of a contractor's costs associated with performance of specified contract requirements and a fee, if any. These costs may include hourly rates associated with personnel, overhead, out-of-pocket costs, and other costs specified in the contract. For purposes of these regulations, a time and material contract is considered a cost reimbursement contract. The contract must provide a means for ensuring that the costs are fair and reasonable. These means may include a requirement that the contractor document competition. The County has the right to review and approve costs before authorizing reimbursement.

4.2.2.2 A contract must not provide for compensation to be based on cost plus a percentage of cost of the work performed. A contractor must not be financially rewarded for increased costs that are passed on to the County. A contract, however, may provide for reimbursement based upon a cost plus a fixed fee provision or on a compensation provision that rewards the contractor for efficiency by providing for incentive payments.

4.2.3 Requirements Contracts

4.2.3.1 A requirements contract is a contract for an indefinite quantity of goods or services to be

furnished at specific times, or as ordered, at fixed unit prices. During the term of a requirements contract, the County should use reasonable efforts to order all actual requirements of the Department (or of the entire County) during a specified period of time. Failure to utilize a specific requirements contract for a particular procurement must not be considered a breach of the contractual obligation unless the contract specifically provides that the contractor is the exclusive source for the requirements.

4.2.3.2 Requirements contracts are administered by the Director as a fixed price source of supply that may be utilized by the Department through a delivery order issued by the Director. The Director must ensure that the necessary funds are encumbered before issuing a delivery order.

4.2.3.1 Where practical, a requirements contract should include a maximum contract amount.

Editor's note—Regulation No. 5-04 numbered the above paragraph 4.2.3.1

4.2.4 Definite Quantity Contract

A definite quantity contract is a contract that provides delivery of a specified quantity of goods or services either at specified times or when ordered. Quantities ordered under a definite quantity contract are limited to the quantity stated in the contract, unless the contract contains an increased quantity option.

4.2.5 Multiple Award Contracts

A multiple award contract is one in which more than one contractor is awarded a contract for specified goods or services. It may take one of the following forms:

4.2.5.1 Multiple Source Contracting

(A) This is contracting where the primary source is one specified contractor and secondary, tertiary, etc., sources perform as backup contractors. In this type of contract, the primary contractor receives all orders for goods or services. The backup contractor (secondary, tertiary, etc.) receives orders only after the primary contractor either fails to deliver under specified conditions in the contract or the Director has ordered a specified quantity limit from the primary contractor, as specified in the contracts.

(B) Product Need/Compatibility Multiple Awards

These awards are made to several vendors to ensure availability of specific goods or services to meet the needs of the County.

4.2.6 Multi-Year or Term Contracts

The Director may use multi-year or term contracts when it is appropriate to obtain uninterrupted services extending over more than one year or contract term. These multi-year or term contracts take the following forms and the Director may use them under the following conditions:

4.2.6.1 Options to extend contracts

Contracts entered into with an original term subject to extension options must be funded with authorized appropriations, as certified by the Director of Finance, for the original term before execution. Thereafter, each option term must be similarly funded before the option may be exercised.

4.2.6.2 Original long term contracts

Original long term contracts are contracts involving a multi-year or term without need for renewal. A multi-year or term contract may be entered into only if sufficient funds are appropriated, and certified by the Director of Finance, sufficient to defray the amount of the first term of the contract. In addition, these contracts may be entered into only upon the following conditions:

(A) The Director finds that the requirements contained in the multi-year or term contract are reasonably firm and are continuing over the term of the contract, and that the contract is in the best interest of the County because it encourages effective competition or promotes economies in performance and operation.

(B) The contract includes a termination provision that provides that in the event funds for terms subsequent to the first term are not appropriated and available for encumbrances for the subsequent years of the contract, the County may terminate the contract without further County liability to the contractor.

4.2.7 Incentive Contracts

4.2.7.1 General

An incentive contract is appropriate when the required goods or services can be acquired at lower costs or with improved delivery or technical performance, by relating the amount payable under the contract to the contractor's performance. Incentive contracts are designed to obtain specific acquisition objectives by:

(A) establishing reasonable and attainable targets that are clearly communicated to the contractor; and

(B) including appropriate incentive arrangements designed to motivate contractor efforts that might not otherwise be emphasized and discourage contractor inefficiency and waste.

An incentive contract, however, should not operate to reward a contractor for performance results when the cost of those results outweighs their value to the County. Any amount paid as an incentive must be reasonably related to the additional costs of enhanced performance by the contractor or to the value of the enhanced performance received by the County.

4.2.7.2 Types of incentive contracts

(A) A cost reimbursement incentive contract is a contract that provides for reimbursement to the contractor for allowable costs incurred up to a ceiling amount and establishes a formula by which the contractor is rewarded for performing at less than an estimated target cost or exceeds specified performance standards such as time of delivery of contract performance; the contract may provide that the contractor is subject to reduced compensation or specified damages if it exceeds a target cost or fails to meet specified performance standards such as time of delivery of contract performance.

(B) A fixed-price incentive contract is a fixed-price contract in which the parties establish at the outset a target for performance and a formula by which the contractor is rewarded for exceeding performance and may be subject to reduced compensation or specified damages if the performance is not met.

4.3 Contract Formation and Requirements

All contracts must be in writing and include the following:

(a) a detailed description of the goods or services that the contractor must provide:

- (b) a statement of the contractor's price or fee for providing the goods or performing the services described in the contract and of the payment schedule;
- (c) a statement of the terms under which the contractor will provide the goods or perform the services;
- (d) the effective date of the contract;
- (e) a statement of the provisions, if any, under which the contract may be renewed or otherwise modified;
- (f) a statement that the Electricity Procurement Terms and Conditions of Contract, as approved by the County Attorney, and any other mandatory contract clauses are part of the contract;
- (g) a statement of any other requirements and conditions that must be fulfilled by the contractor and/or the County.

11B.04.01.05 Department Responsibilities

5.1 General

The Department is responsible for assuring that procurement actions are consistent with the policies of the County. These policies include Public Ethics (see Chapter 19A, Montgomery County Code and Ethics, 11B.04.01.17, in these regulations) and MFD Contracting (see 11B.04.01.07 of these regulations)

5.2 Specifications

The Department must write specifications in such a manner as to encourage competition and to avoid limitation of competition, balanced with the need to serve the public interest. Particular attention should be given by the Department to avoid the creation of artificial barriers to participation of MFD firms in the procurement process.

5.3 Payment Provisions

Payment provisions should provide for objective criteria or "benchmarks" for payment against certain performance events (e.g., payment after delivery and submittal of invoice). Partial payments may not exceed the reasonable value of the performance which entitles the contractor to that partial payment, unless an advance payment is approved.

5.4 Fiscal Responsibilities

5.4.1 The Department is responsible for ensuring that there is sufficient expenditure authority to cover the entire contract amount, or in the case of a multi-year or term contract, the amount of the first period of a multi-term contract, and each subsequent period of the contract as it occurs.

5.4.2 The Department is responsible for providing documents sufficient to enable the Director of Finance to certify to the Director that there is an unencumbered balance in the appropriation sufficient to defray the amount of the contract at the time of execution, and in the case of a multi-year or term contract, the amount of the first period and each subsequent period of the contract as it occurs.

5.4.3 The Department is responsible for all payment authorizations and any coordination required to obtain prompt payment for the contractor as required by the contract. In connection with these payment certifications, the Department is responsible for ascertaining and certifying that the contractor has performed in

accordance with the contract requirements and has earned all contract payments certified to the Department of Finance. The Department may not certify for payment invoices containing more hours than actually worked, payment provisions different than that contained in the contract, or charges against a contract different from that under which performance was rendered.

11B.04.01.06 Contractor Qualifications

6.1 Pre-qualifications

A solicitation may provide for a multi-step process, with one or more steps constituting a pre-qualification process (e.g., top five rated offerors based on scoring of written evaluations proceed to a final evaluation stage which may include cost competition or oral interviews).

6.2 Responsibility

6.2.1 The reputation, past performance, business and financial capability and other factors determine the responsibility of an applicant or offeror and the capability of the applicant or offeror to satisfy the County's needs and requirements for a specific contract. The applicant or offeror has the burden of demonstrating affirmatively its responsibility in connection with a particular solicitation. The Director must determine where an applicant or offeror is responsible for a particular prospective contract. The Director must automatically consider a debarred applicant or offeror as non-responsible in connection with any particular solicitation.

6.2.2 The factors that the Director may consider in connection with a determination of responsibility include:

6.2.2.1 The ability, capacity, organization, facilities, and skill of the applicant or offeror to perform the contract;

6.2.2.2 The ability of the applicant or offeror to perform the contract or provide the services within the time specified without delay, interruption or interference;

6.2.2.3 The integrity, reputation and experience of the applicant or offeror, and its key personnel;

6.2.2.4 The quality of performance of previous contracts or services for the County or other entities. Past unsatisfactory performance, for any reason, is sufficient to justify a finding of non-responsibility;

6.2.2.5 The previous and existing compliance by the applicant or offeror with laws and ordinances relating to the contract or services;

6.2.2.6 The sufficiency of financial resources of the applicant or offeror to perform the contract or provide the services;

6.2.2.7 The certification of an appropriate accounting system, if required by the contract type. Advice should be obtained from the Department of Finance as to the accounting system required for the particular solicitation; and,

6.2.2.8 The applicant's or offeror's evidence of ability to furnish a performance bond may be considered in an overall determination of responsibility.

6.2.3 The Director may eliminate an applicant from a shortlist or deny an award or modification of a contract to any offeror who is in default of payment of any money due the County.

6.2.4 Before awarding a contract, the Director must make a written finding with respect to the responsibility of the awardee, if not already included in previous stages of the procurement. The Director should specify in detail the factual basis for its finding of responsibility. In connection with this finding, the Director should ask the Office of Procurement to review its central performance file with respect to the performance of the prospective awardee in previous contracts with the County, investigate performance of the prospective awardee in other contracts with the County and other entities to the extent practical, and ensure that the recommended awardee is not on a current Montgomery County suspension or debarment list.

6.2.5 Prospective applicants and offerors have the burden to demonstrate affirmatively their responsibility. The Director may request, at any time, an applicant or offeror to provide additional information, references and other documentation and information that relate to the determination of responsibility. Failure to furnish requested information may constitute grounds for a finding of non-responsibility of the applicant or offeror.

11B.04.01.07 Minority Owned Business Contracting

7.1 Purpose

The purpose of 11B.04.01.07 is to establish procedures to facilitate the goal of the County to remedy the effects of discrimination by making efforts to contract with minority owned businesses (MFD owned business or MFD, as defined in Chapter 11B of the County Code) and encouraging contractors to subcontract with MFD businesses.

7.2 Policy

7.2.1 The Director, with the assistance of the Director, Office of Procurement, must actively and aggressively recruit certified MFD owned businesses to provide goods and services for the performance of governmental functions to facilitate the MFD goal of the County.

7.2.2 County Code Section 11B-60 and the implementing County Procurement Regulations apply to County certification, re-certification, and decertification of businesses.

7.3 Responsibilities

7.3.1 Director, Office of Procurement

7.3.1.1 The Director, Office of Procurement, is responsible for contacts with businesses to identify, encourage and coordinate participation of MFD owned businesses in the procurement process, including certification. This includes notification to MFD owned businesses of prospective procurement opportunities by telephone or mailings based on the most recent MFD owned business directory, encouragement of MFD owned business participation in procurement, as prime contractors or subcontractors, procurement system education and information for MFD owned businesses, and referrals to resources such as technical consultants, sureties and financing.

7.3.1.2 The Director, Office of Procurement, maintains up-to-date mailing lists, and other references of County certified MFD owned businesses for use by the Department, contractors, and for public information.

7.3.1.3 The Director, Office of Procurement, provides the Department with a list of certified MFD owned businesses who have stated an interest in providing electricity goods and services as required by

the Department.

7.3.1.4 The Director, Office of Procurement, cooperates with other governments and governmental agencies in exchanging information regarding certified MFD owned businesses.

7.3.1.5 The Director, Office of Procurement, distributes to non-minority prime contractors a current list of certified MFD owned businesses for use if the work is being subcontracted.

7.3.1.6 The Director, Office of Procurement, should ensure that the contract administrator receives appropriate guidance in implementing the provisions of these regulations.

7.3.2 Director, Department

7.3.2.1 The Director should cooperate with the Director, Office of Procurement, in efforts to encourage MFD contractor participation by developing and implementing techniques to encourage greater MFD owned business participation.

7.3.2.2 When the Director issues a solicitation, the Director must notify those vendors on the list of vendors maintained by the Office of Procurement, that are capable of providing the solicited goods or services, of the solicitation.

7.4 Reporting Requirements

The Director may require each contractor to provide the County with information concerning utilization by the contractor of MFD owned businesses in private and government contracts. The Director may also require each certified MFD owned business to provide the County with information concerning its utilization by non-MFD owned businesses in private and government contracts.

7.5 Monitoring Procedures

7.5.1 The contract administrator must monitor all contracts with an MFD plan to ensure compliance by contractors with the requirements of the contract. Monitoring may include site visits, audits of contractors' books and records relative to County contracts, the submission of copies of invoices from minority subcontractors to the prime contractor, submission of Contract Monitoring Reports at scheduled intervals during the life of the contract, and other procedures that the Director may require.

7.5.2 The Director must notify certified MFD owned businesses of their responsibility to report to the contract administrator in a timely manner any changes in status that affects the entity's eligibility for certification as an MFD owned business. The failure of the MFD owned business to report any relevant change in a timely manner constitutes sufficient grounds for de-certification.

11B.04.01.08 Contract Payments

8.1 General Payment Principles

8.1.1 All contracts must specifically provide for methods and timing of payments the County must make to the contractor. The Director should provide in these provisions as much detail as possible, specifying all conditions which must be met by the contractor in order to submit a request for payment and to determine whether a payment is due.

8.1.2 Except as otherwise authorized by these regulations, the County may make payment only after

contractor performance occurred to justify the payments under the contract (e.g., the contractor incurred a cost and submitted an invoice for an item for which the contractor appears entitled to cost reimbursement; the contractor appears to have performed services for which the parties specified a fair value as a part of the contract; the contractor appears entitled to a progress payment in accordance with the contract upon determination of that extent of performance; the contractor delivered goods that appear acceptable and submitted an invoice for payment in accordance with the contract).

8.1.3 Certifying whether payments are due to the contractor is the responsibility of the Department and must be done as expeditiously as possible.

8.2 Incentive Payments

Contracts may provide for incentive payments in exchange for enhanced contractor performance beyond contract specifications, terms and conditions.

8.3 Progress or Partial Payments

The approval and recommendation for payment by the Department of an invoice submitted by a contractor for progress payments or partial payments pursuant to the terms of a contract constitutes certification that a contractor performed in accordance with the contract and earned the payment approved, that the Department has performed all inspection necessary, to insure proper performance, and the Department accepts the contractor's performance as complying with the contract for purposes of earning the contract payment. Certification of approval for a progress or partial payment does not constitute waiver of any rights of the County against the contractor for failure to perform pursuant to any of the terms, conditions, or specifications of the contract.

8.4 Advance Payments

A contract may provide for advance payment if the advance payment is part of a commercially acceptable practice. In other cases, the Director may approve an advance payment if they determine that circumstances exist which indicate that an advance payment is in the best interest of the County.

Editor's note—Regulation No. 5-04 did not contain a paragraph numbered 8.5.

8.6 Payment of Interest

If interest is payable by the County under Section 11B-34 of the Code, the amount of the interest is calculated by using the interest rate paid by 5 year U.S. Treasury Bills as of the date interest first begins to accrue under Section 11B-34.

11B.04.01.09 Bonds and Insurance

9.1 Bonds

9.1.1 Director Review

9.1.1.1 The Director must review and approve the bond requirements required in a solicitation.

9.1.1.2 The Director, in reviewing bond requirements, should consider the impact on competition and costs, particularly impacts on MFD firms. The impacts must be balanced with the needs served by the bond requirements, which include appropriate security for performance and other assurances of responsibility.

9.1.2 Minimum Requirements

All bonds must meet the following minimum requirements:

- (a) The surety company issuing the bond must be qualified to do business in the State of Maryland.
- (b) The attorney-in-fact on the bond document must be properly authorized to bind the surety, which authorization may be documented by a power of attorney submitted with the bond, or the attorney-in-fact must be registered with the Circuit Court for Montgomery County, Maryland.
- (c) The obligee of the bond must be "Montgomery County, Maryland."

9.1.3 Substitutions

Substitutions for bonds are permitted and may include letters of credit, cash deposits and other forms of security. Personal sureties are generally not acceptable substitutes for bond requirements.

9.2 Insurance

General insurance requirements for contracts are specified by the Office of the County Attorney in the mandatory clauses. The Director may approve a variance from those requirements. The Director must consult the Division of Risk Management, Department of Finance, on all matters pertaining to insurance, particularly insurance amounts.

11B.04.01.10 Contract Cost and Pricing Principles

10.1 Fair and Reasonable Price Determination

Before executing a contract or contract modification, the Director must make a final determination that prices the County would pay are fair and reasonable. In making this determination, the Director should consider the Department's price analysis and, if obtained, cost or pricing data.

The Director has authority to require that contract cost or pricing principles be followed by the Department. In addition, the Director may require a price analysis by the Department, particularly in the certification of fair and reasonable prices as required by these regulations.

10.1.1 Price Analysis

Before making a recommendation for award, a SC must make a price analysis to determine that the prices are fair and reasonable. In making the price analysis, a SC should consider one or more of the following factors:

- 10.1.1.1 Prior award price for the goods or services being procured;
- 10.1.1.2 Prices contained in other offers responding to that solicitation;
- 10.1.1.3 Costs estimated for the procurement prior to the receipt of offers;
- 10.1.1.4 Commercial market prices and other commercial practices relating to costs;
- 10.1.1.5 Prices paid by other public entities for similar goods or services; or
- 10.1.1.6 Cost analysis which separates components of the offer and allocates costs among those

components.

10.1.2 The Director may issue additional factors to the SC for use in making a price analysis.

10.2 Requirements for Certified Cost or Pricing Data

10.2.1 Upon request of the Director, an offeror or contractor must submit cost or pricing data, or both, in a form prescribed by the Director.

10.2.2 When cost or pricing data is required:

10.2.2.1 Each contractor or offeror must submit, in a form required by the Director, a certificate showing the data for the proposed goods or services the Contractor must provide, including those by a subcontractor. The offeror or contractor must submit a certification that the data submitted are accurate, complete and current.

10.2.2.2 The Director may adjust the price to the County, including profit or fee, to exclude from the price any sums determined by the Director to be allocatable to inaccurate, incomplete or outdated cost or pricing data.

10.2.3 When a contractor is authorized to expend appropriated funds through subcontractors in the performance of a County contract, Subsections 10.2.1 and 10.2.2 are also applicable to subcontracts and subcontract modifications.

10.2.4 When the Director requests cost or pricing data, he must make a determination as to the reasonableness of the cost or pricing data. The contract cost principles and procedures in the Federal Acquisition Regulations may be used as general guidelines when developing price determinations, if they are not at variance with County laws and regulations.

11B.04.01.11 Contract Modifications

11.1 General

11.1.1 Authorization

Contract modifications may be initiated by the contractor, contracting officer, or the contract administrator. A contract modification is not effective, and a contractor must not proceed with performance under the modification, until and unless the contract modification is executed by the contracting officer.

11.1.2 Use - Special Circumstances

11.1.2.1 Under extraordinary circumstances, the Director may approve a contract modification:

- (A) for goods or services that a contractor already provided;
- (B) to a contract that expired; or
- (C) to a contract that is fully completed.

11.1.2.2 The Director may use a contract modification, among other things, to approve an equitable adjustment in the case of a unilateral change order. Subject to Chapter 20 of the County Code, a

contract modification may be used to approve the settlement of a potential or pending contract dispute.

11.1.3 Policy for Contract Modifications that Change the Scope of a Contract

11.1.3.1 Contract modifications may not provide for less than full performance by the contractor as provided in the contract unless the contractor gives full and fair consideration (discount on contract price, additional work, etc.) in exchange for the contract modification. The County must not pay any additional monies under a contract modification for work which was required to be performed under the contract.

11.1.3.2 A modification to a contract that was awarded by a competitive solicitation process may not materially depart from the scope of the original solicitation unless the goods, services, or construction being acquired by the modification could be acquired from the incumbent contractor by a separate non-competitive or emergency procurement.

In the absence of a non-competitive or emergency procurement justification, the modification must be of a kind that potential offers reasonably could have anticipated.

11.1.4 Review

11.1.4.1 The Director reviews the proposed contract modification, with attachments, if any. If the value of the proposed contract modification exceeds \$25,000, the Director must refer the contract modification to the CRC unless the Director determines that the change in compensation results from a mechanical application of an established cost indexing provision or other contract option which pre-determines price. Otherwise, the Director may approve the modification.

11.1.4.2 The CRC reviews contract modifications referred by the Director. The CRC may approve, approve with conditions or reject any contract modification.

11.2 Change Orders

11.2.1 The Director may initiate a change orders if and as provided for in a contract. Generally, the contract administrator initiates a change order. A change order is not effective, and a contractor may not proceed with performance of the change order, until and unless the contracting officer executes the change order.

11.2.2 The Director should not use a change order for changes that are outside the scope of the contract.

11.2.3 The Director reviews the proposed change order, with attachments, if any. If the net cost of all the changes in the proposed change order exceeds \$25,000, the Director must refer the change order to the CRC for review. Otherwise, the Director may approve the change order.

11.2.4 The CRC reviews change orders referred by the Director. The CRC may approve, approve with conditions, or reject any change order in whole or in part.

11.3 Field Orders

11.3.1 Field orders are used only in the following limited situations:

11.3.1.1 To director work when unforeseen and unanticipated conditions arise which require immediate action to mitigate costs or avoid delay claims, and there is insufficient time to process a change order;

11.3.1.2 To order a minor change in the work not involving an adjustment in the contract sum or an extension of the contract time, not inconsistent with the intent of the contract documents;

11.3.1.3 To provide a written interpretation, including drawings, necessary for the proper execution or progress of the work consistent with and reasonably inferable from the contract documents if the interpretation does not adjust the contract sum or the contract time.

11.3.2 A field order may be issued by a person specifically delegated the authority to issue a field order under the contract and who acts as a contracting officer for the purpose of issuing the field order. If the estimated value of the field order exceeds \$25,000, the Director must consent to the field order prior to its issuance.

11.3.3 Prohibited field orders

Field orders are not permitted if there is sufficient time to process a change order, a contract amendment, or, if appropriate, a new procurement to satisfy the County's needs.

11B.04.01.12 Contract Termination

12.1 Termination Methods

The Director may terminate a contract in the following ways:

12.1.1 The Director may terminate a contract for default. If the contractor materially breaches the contract, the County, at its option, may cancel in whole or in part work under the contract.

12.1.2 The parties may terminate a contract by mutual consent.

12.2 Authority to Terminate

Only the Director may terminate a contract. The County Attorney must approve each contract termination.

12.3 Process to Terminate

12.3.1 Termination for Default

12.3.1.1 If the Director finds that the contractor is in default, he must document the contractor's material breach of the contract.

12.3.1.2 Upon a finding of default, the Director must provide the contractor with a written notice to cure the default. If the Director determines that default contributes to the curtailment of an essential service or poses an immediate threat to life, health, or property, the Director may terminate the contract immediately by issuing an oral or written notice to the contractor without giving any prior notice or opportunity to cure.

12.3.1.3 The County Attorney must approve the issuance of the notice to cure and the issuance of a termination for default.

12.3.1.4 If the contractor disputes the issuance of a termination for default, the contractor must file a timely claim under Section 15.2. The contractor may not file a claim in response to a notice to cure.

12.3.2 Termination by Mutual Consent

12.3.2.1 If the Director finds that termination by mutual consent is in the best interests of the County, he must document the reasons justifying it.

12.3.2.2 Upon a finding by the Director that it is in the best interest of the County to terminate the contract by mutual consent, the Director may enter into a termination agreement.

12.3.2.3 The County Attorney must approve a termination agreement.

11B.04.01.13 Claims Outside a Contract

13.1 Defined

A claim outside a contract is a demand or request for payment from a person who, at the direction of a County employee, has furnished goods or services to the County outside a contract. This may occur when:

13.1.1 Goods or services were accepted without the award of a contract;

13.1.2 Performance was accepted under a contract without a timely certification of available funds;

13.1.3 Performance by a contractor was outside the scope of the contract and was accepted; or

13.1.4 The Contractor provided goods or services after the expiration of the contract, but otherwise in conformance with its terms and conditions.

13.2 Policy

Claims outside contracts are not encouraged and the Department must avoid them whenever possible. However, a procedure is necessary to provide for fair compensation to a person who has provided the County with a benefit outside a contract. This procedure is discretionary and does not create any rights to payment to the person unless the claim is approved by authorized County officials. The Department must not utilize this procedure to circumvent the requirements of these regulations.

13.3 Approval Requirements

13.3.1 If circumstances under 13.1.2 exist, then the Director, Office of Procurement, may approve a claim outside a contract after determining that sufficient funds have been encumbered to defray the cost of the performance under the contract. Once this determination has been made, the contract is valid and payment may be made, if otherwise due under the contract. The Director, Department of Public Works and Transportation, must submit a memorandum to the Director, Office of Procurement, (1) requesting approval; (2) explaining why funds had not been encumbered; and (3) describing what steps the Department has taken to avoid a similar claim in the future. The Director, Department of Public Works and Transportation, must execute this memorandum.

13.3.2 Before the Director, Office of Procurement, approves any other claims outside a contract is approved, the Director, Department of Public Works and Transportation, must submit the following to the Office of the County Attorney:

13.3.2.1 A statement of all facts demonstrating that the County directed the person to proceed with performance, including the identity of every employee who directed the person to proceed;

13.3.2.2 A statement of all facts demonstrating that the person relied upon the direction of a County employee;

13.3.2.3 An analysis of the work performed and the benefit received, which must include a certification that the claim represents a fair and reasonable value including all facts that support the certification;

13.3.2.4 An explanation of the reason why the goods, services, or construction was not provided under a contract and a statement of actions taken or a plan to assure that this type of claim will not occur in the future;

13.3.2.5 A statement of any additional facts that indicate why the person is entitled to payment of the claim;

13.3.2.6 A written invoice; and,

13.3.2.7 A proposed release, contract, or contract modification that makes the performance rendered by the person subject to all applicable mandatory clauses, and releases the County from any further claim.

13.4 Procedures for Approval

13.4.1 The Department must submit the information required in Section 13.3.2 to the County Attorney for review and action.

13.4.1.1 If the claim outside a contract is \$5,000 or less, the County Attorney may approve the claim outside a contract in writing and return it to the Department which is responsible for processing the claim outside a contract approval for payment.

13.4.1.2 If the claim outside a contract is in excess of \$5,000, the County Attorney may approve the claim outside a contract subject to approval of the CAO. If the County Attorney approves the claim, the County Attorney must submit a recommendation for approval to the CAO, in writing, together with documentation received from the Department.

13.4.1.3 If the County Attorney rejects a claim outside a contract, the County Attorney must state the reasons for the rejection in writing and return the documentation to the Department. The Department may resubmit the claim outside a contract to the County Attorney with additional information as requested or other information the Department may elect to submit.

13.4.1.4 If the County Attorney requests further information, the Department must furnish the requested information as expeditiously as possible.

13.4.2 After receipt of the claim outside a contract together with the County Attorney's approval, the CAO may approve or reject the claim in writing and return all documentation to the Office of the County Attorney. Upon receipt of the copy of the original memorandum (without attachments) from the Department, the CAO may take any appropriate action to avoid future claims.

13.4.3 If approved for payment, the Department is responsible for processing payment of the claim outside a contract subject to any conditions imposed by the County Attorney or the CAO.

13.5 CAO and County Attorneys' Approval Authority

Notwithstanding any provisions of this Section or these regulations, the determination of the validity of the claim outside a contract is made in the sole discretion of the County Attorney and the CAO, as provided in the Montgomery County Code.

11B.04.01.14 Solicitation Protests; Contract Disputes

14.1 Solicitation Protests

14.1.1 Definition

Aggrieved means that the applicant or offeror who is filing the protest or appeal would have been included on a shortlist or would have been awarded a contract but for the protested action or decision (e.g., a fourth ranked offeror is not aggrieved unless the grounds for a protest, if sustained, would disqualify the top three ranked offerors or would require that the Department reissue the solicitation).

14.1.2 Protest

Only an applicant or offeror who is aggrieved may file a protest. An applicant or offeror is aggrieved only if the applicant or offeror can demonstrate that should the protest be sustained, the applicant or offeror is eligible for the remedies allowed under section 14.1.4.

14.1.2.1 Any applicant or offeror who is aggrieved in connection with a solicitation must file and deliver a written protest to the Director:

(A) as soon as possible, but no later than within 10 days after the Director publicly posts the shortlist or list of award(s); except,

(B) if the applicant or offeror seeks as a remedy the cancellation or amendment of the solicitation, then the applicant or offeror must file its protests before the submission date for proposals.

The Director must dismiss any protest not timely received.

14.1.2.2 Each protest must contain the following:

(A) An identification of the solicitation from the County;

(B) The name, address and telephone number of the protesting applicant or offeror;

(C) A statement supporting that the applicant or offeror is aggrieved to file a protest;

(D) Specification of all grounds for the protest, including:

(1) A submission of detailed facts and all relevant documents;

(2) A citation to relevant language in the solicitation, regulations, or law relied upon; and,

(3) All other matters that the applicant or offeror contends supports the protest.

(E) Factual allegations regarding information not appearing on the face of the solicitation or offer must be supported by affidavit based on personal knowledge.

(F) A protest filing fee in the amount of \$500.00.

(G) If proposal preparation costs are sought, then the applicant or offeror must provide, by affidavit based on personal knowledge, evidence supporting the costs claimed.

14.1.2.3 If, before filing a timely protest, an aggrieved applicant or offeror has requested in connection with the protest public records under the Maryland Public Information Act, then the applicant or

offeror may amend the grounds for the protest within 10 days of the County's making available for inspection records that: (a) must be released under the Maryland Public Information Act at the time of the request for the records; and (b) demonstrate the applicant or offeror may have other grounds for the protest than the grounds specified in the protest.

14.1.2.4 After an applicant or offeror file a protest, the Director may give appropriate notice to other known applicants or offerors who may be affected by the protest. Other affected applicants or offerors may submit written comments or documents regarding the protest. All applicants and offerors are required to keep apprised of the current status of solicitations, decisions to shortlist or award, and protests; an applicant or offeror may not rely on notice of a protest from the Director. Notice by the Director is discretionary and need not be given. The burden of staying informed about the filing of a protest and the timely submission of comments by affected applicants and offerors is on the applicants and offerors.

14.1.2.5 The Director may hold a conference with all interested parties if the Director believes a conference would contribute to a resolution of the protest.

14.1.2.6 The burden of production of all relevant evidence, data and documents and the burden of persuasion to support the protest is on the applicant or offeror making the protest.

14.1.2.7 After considering the protest based on the record received, the Director must make a determination and finding regarding the protest. The Director's determination and finding are in the nature of a reconsideration. The Director must forward by certified mail the determination and finding to the protesting applicant or offeror and other applicants or offerors who have participated in the protest.

14.1.3 Appeal

14.1.3.1 An applicant or offeror may appeal to the CRC a protest decision of the Director that adversely affects the applicant or offeror within 10 days after the date the Director mails the decision. The applicant or offeror must be aggrieved to appeal.

14.1.3.2 The CRC must review the protest de novo, but the CRC must not consider any grounds except those presented to the Director under 14.2.2.

14.1.3.3 The appeal must be in writing and must include a copy of the protest and the decision of the Director. In addition, the appeal must contain all grounds for disagreement with the decision of the Director. The appealing applicant or offeror is confined to the grounds specified for the appeal and may not raise new grounds for the appeal after the initial appeal is filed with the CRC.

14.1.3.4 After the applicant or offeror files an appeal, the Director may submit to the CRC a response to the appeal. If the Director submits a response, then the Director must include in the response all documents in support of the response.

14.1.3.5 The CRC must review the appeal.

(A) If the CRC finds there is no genuine dispute as to a material fact and the appeal can be decided as a matter of law (which may include lack of aggrieved status or failure to comply with appeal procedures), the CRC must make proposed findings and a recommendation that decide the appeal.

(B) If the CRC finds there is a genuine dispute as to a material fact and that it cannot decide the

appeal as a matter of law, then it must notify the appealing applicant or offeror, any entity on a shortlist or receiving an award, and the Director and then it must conduct further proceedings. These proceedings may include a hearing. If a hearing officer is designated by the CRC, the hearing officer must conduct the hearing and make proposed findings and a recommendation to the CRC. After the hearing (if any) and based on the record, the CRC may accept, reject, or modify the hearing officer's proposed findings of fact and recommendation, and must then submit a recommended decision on the appeal to the CAO.

(C) The CAO may approve, revise, or remand the CRC's decision. If the CAO takes no action within five working days, then the decision of the CRC becomes the final decision of the CAO.

(D) The final decision must be mailed to the appealing applicant or offeror and other applicants or offerors who have participated in the appeal.

(E) The final decision of the CAO is subject to appeal to the Circuit Court under the Maryland Rules governing administrative appeals.

14.1.4 Remedies

14.1.4.1 Protest by an applicant of a decision or action made during a pre-qualification (shortlist) stage of a procurement

(A) If a protest or appeal is sustained before the Director proceeds to the next (award) stage of the procurement, then the Director must either:

- (1) re-issue the solicitation; or
- (2) add the applicant to the shortlist.

(B) If a protest or appeal is sustained after the Director proceeds to the next (award) stage of the procurement, then the Director must award the applicant's reasonably incurred actual costs of preparing the pre-qualification (shortlist) stage proposal.

14.1.4.2 Protest by an offeror of a decision or action made during an award stage of a procurement

(A) if a protest or appeal is sustained before the Director makes an award(s) pertaining to the offeror's protest or appeal, then the Director must either:

- (1) re-issue the solicitation; or
- (2) make an award consistent with the sustained decision.

(B) If a protest or appeal is sustained after the Director makes an award(s) pertaining to the offeror's protest or appeal, then the Director must award the offeror's reasonably incurred actual costs of preparing the award stage proposal.

(C) A monetary award in favor of a protesting applicant or offeror is limited to reasonably incurred actual preparation costs of the proposal associated with the protest. In no event may an award of costs exceed \$5,000 for any protest.

(D) The Director or CRC may return the filing fee to the protesting applicant or offeror, if the protest or appeal is sustained.

14.1.5 Standard of Review of SC Recommendations

If the evaluation of the proposals by the SC is challenged, the Director or, in the case of an appeal, the CRC, must give deference to the judgment of the SC. The SC's recommendation must be affirmed where a reasoning mind could arrive at the conclusion reached by the SC consistent with proper application of applicable procurement laws, regulations, and solicitation requirements.

14.1.6 Contract Awards

Generally, the Director will award contracts on the same day that awards are posted.

14.1.7 Solicitation Protest Hearing Procedures; Powers of Hearing Authority

14.1.7.1 The hearing authority will hold a hearing at a time and place designated in a written notice to the parties to the appeal. The hearing is on the record and must be open to the public, unless otherwise ordered by the hearing authority or as provided by law.

14.1.7.2 The hearing authority must arrange for a verbatim recordation of all testimony. The Department must pay the cost of the recordation. A party requesting a transcript must bear the expense of the transcript. The hearing authority must maintain a record of the proceedings, which consist of the verbatim recordation or transcript, exhibits, and the hearing authority's proposed findings of fact and recommendations.

14.1.7.3 A hearing authority must not consider an ex-parte communication except as provided in the Montgomery County Public Ethics Law.

14.1.7.4 Each party may:

- (A) be represented by counsel authorized to practice law in Maryland;
- (B) file motions;
- (C) present evidence, including testimony and exhibits;
- (D) cross-examine witnesses; and
- (E) argue in support of its respective position.

14.1.7.5 Subject to the direction of the hearing authority, proceedings are informal. Although the hearing authority has full discretion to proceed in an orderly fashion, the following is the usual order for presentation of the appeal:

- (A) Opening statement;
- (B) Presentation of witnesses and documents; and
- (C) Closing argument,

during which the usual order will be for the appealing applicant or offeror to go first, then other applicants or offerors made a party to the proceedings, and finally the Director.

14.1.7.6 The hearing authority may establish requirements with respect to discovery and other pre-hearing submissions and procedures.

14.1.7.7 The hearing authority may admit and give appropriate weight to evidence that possesses probative value commonly accepted by reasonable and prudent persons in the conduct of their affairs, including hearsay evidence that is reliable in nature. The hearing authority must give effect to the rules of privilege recognized by law. The hearing authority may exclude incompetent, unreliable, irrelevant or unduly repetitious evidence, or admit evidence at its own request. The hearing authority may question witnesses on any point.

14.1.7.8 The hearing authority may:

- (A) set any reasonable schedule for the hearing, motions, and presentation of evidence;
- (B) accept stipulations;
- (C) require the swearing of witnesses;
- (D) take official notice of commonly cognizable facts;
- (E) rule on motions and objections;
- (F) subpoena and examine witnesses;
- (G) accept exhibits into the record;
- (H) administer oaths and affirmations;
- (I) grant or deny a request for a subpoena, including a subpoena duces tecum;
- (J) impose sanctions for failing to provide required discovery;
- (K) for good cause shown, keep the record open for receipt of additional evidence or submissions by the parties after the close of the hearing; and
- (L) make any other ruling necessary to promote fairness or efficiency in the hearing process, including a recommended summary disposition of the appeal.

14.1.7.9 The burden of proof and the burden of persuasion with respect to the appeal is on the appealing applicant or offeror.

14.1.7.10 The hearing officer must prepare and submit to the CRC a written report containing proposed findings of fact and recommendations based on the record. A copy of the report must be forwarded to all parties.

14.1.7.11 The CRC may hear separate appeals from different applicants or offerors on the same proposed contract award in the same hearing or in separate hearings.

14.2 Contract Disputes

14.2.1 Definitions

14.2.1.1 In this section claim means:

- (A) a demand by a contractor that seeks the payment of money, an adjustment of time, an adjustment or interpretation of a contract provision, or other relief arising under or relating to a contract; or

(B) a disagreement arising from a decision by the Director regarding a contract termination under 11B.04.01.12.

14.2.1.2 In this section a dispute means an unresolved claim.

14.2.2 General

14.2.2.1 (A) A contractor must use the process set out in this section to resolve a contract claim or dispute.

(B) Except with respect to a claim arising from a decision of the Director terminating a contract, a contractor must notify in writing the contract administrator of the claim, and must attempt to resolve the claim with the contract administrator prior to filing a dispute with the Director. A contractor must file a dispute with the Director within 30 days of the event giving rise to the claim (unless the contract provides otherwise) whether or not the contract administrator has responded to the written notice of claim or resolved the claim. The contractor waives any dispute not timely filed. The Director and the CAO must dismiss a dispute that is not timely filed.

14.2.2.2 When first filing a dispute, a contractor must provide to the Director the following:

(A) the name and identification number of the contract with the County;

(B) The name, address and telephone number of the contractor;

(C) All grounds supporting the contractor's request relief, including:

(1) The detailed facts and all relevant documents;

(2) The relevant language in the contract, regulations, or laws relied upon;

(3) All other matters which the contractor contends supports the claim; and

(4) The relief requested.

(D) The factual allegations contained in the dispute must be supported by one or more affidavits based on personal knowledge.

14.2.2.3 (A) The Director must decide a dispute after receiving the dispute unless the contractor agrees to extend the time for a decision.

(B) If the Director denies a dispute, in whole or in part, the contractor may file a contract dispute appeal with the CAO. The contractor must file a dispute appeal within 30 days after receiving the decision of the Director or if no decision is rendered by the Director within 45 days, within 75 days after submitting the dispute.

(C) Unless the Director and the contractor agree, a dispute may not be resolved by mediation or binding arbitration.

14.2.2.4 The CAO may hold a conference with all interested parties if the CAO believes a conference would contribute to a resolution of the dispute.

14.2.2.5 The contractor bears the burden of proof and the burden of persuasion to support the relief requested.

14.2.2.6 Pending final resolution of a dispute, the contractor must proceed diligently with contract performance unless the County has terminated the contract.

14.2.2.7 The CAO may consolidate a contractor's disputes if the disputes have common questions of law or fact. The time limits in Section 14.2 for the last dispute filed apply to the consolidated dispute.

14.2.2.8 The CAO or the Director may order a contractor that is not a party to the appeal or the contract under which the dispute has been filed to become a party to the proceeding if the dispute on appeal may be based, in whole or in part, on the performance of the other contractor. The Director or CAO may order the other contractor to compensate another party to the dispute appeal, including the County, for damages incurred as a result of the other contractor's failure to perform a contract obligation.

14.2.2.9 Upon receipt of the contract dispute appeal, the CAO must review the dispute de novo, but the CAO must not consider any grounds except those presented to the Director under 14.2.2.2.

(A) The contractor must file a dispute appeal with the CAO. The dispute appeal must identify the relief sought by the contractor and all grounds and materials supporting the contractor's request for relief. The contractor must provide a copy of the dispute appeal to the Director and the County Attorney.

(1) At the time of filing a dispute appeal involving \$10,000 or more with the CAO, the appealing contractor must provide to the other parties to the dispute a written notice which contains:

(a) the name and, if known, the address and telephone number of each individual likely to have discoverable information regarding facts concerning the dispute;

(b) a computation of each category of damages or other specific relief sought; and

(c) the name, address, and telephone number of each individual from whom the contractor expects to obtain expert testimony. The notice must include a written statement that contains:

(i) a complete statement of each opinion to be expressed;

(ii) the basis and reason for each opinion;

(iii) the data or other information considered by the expert in forming each opinion;

(iv) the qualifications of the expert, including a list of all publications authored by the expert; and

(v) a list of each case in which the expert has testified as an expert within the preceding 4 years.

(d) the parties have a continuing obligation to promptly supplement any change in information contained in the written notice required in this subsection.

(2) The other parties must provide the notice required under paragraph (1) to appealing contractor and any other party:

(a) within 90 days after being served with the notice required under paragraph (1) if the dispute involves more than \$100,000; or

(b) within 60 days after being served with the notice required under paragraph (1) if the dispute involves \$100,000 or less.

(B) The Director must file with the CAO a response to the dispute appeal within 15 days after the dispute is filed. The Director must include a complete copy of the contract in the response unless the contractor has provided it in the dispute appeal. The Director must send a copy of the response to the contractor.

(C) The CAO may require the contractor and the Director to submit additional information.

(D) If the CAO finds, based on the record, that the Contractor failed to comply with the requirements of section 14.2.2, the CAO must summarily deny the appeal within 30 days after receiving the appeal. If the CAO finds, based on the record, that the contractor complied with the requirements of section 14.2.2, and there are no genuine disputes of material fact, the CAO must decide the appeal without a hearing within 30 days after receiving the appeal. The CAO must state in writing the reasons that support the decision.

(E) If the CAO determines that the appeal cannot be decided under section (d) above, the CAO must order a hearing. The CAO may designate a hearing officer to conduct the hearing, and may limit the issues to be heard. If a hearing officer is designated by the CAO, the hearing officer must conduct the hearing in accordance with section 14.2.4 and make proposed findings of fact and recommendation to the CAO. The hearing must be completed in conformance with the time requirements imposed by Chapter 11B of the Code. After the hearing and based on the record, the CAO must make a written decision on the appeal, including proposed findings of fact and recommendation within 30 days after receiving the hearing officer's report. The CAO may adopt, modify or reject the findings of fact and conclusions of law of the hearing officer's report.

(F) The final decision of the CAO is subject to judicial review under 11B-35D of the Code.

14.2.2.10 Unless the CAO and the contractor agree, a contract dispute appeal may not be resolved by mediation or binding arbitration.

14.2.3 Contract Dispute Procedures

14.2.3.1 Discovery

Whether or not a hearing has been ordered, each party to an appeal in a contract dispute is entitled to obtain the following discovery regarding any matter, not privileged, which is relevant to the appeal:

(A) Any time after a contract dispute appeal has been filed with the CAO, a party may serve another party with a request for production, inspection, and copying of documents or any tangible things. Within 30 calendar days after service, the party served must respond stating that inspection and copying will be permitted or stating the basis for any objection.

(B) If the value of the dispute exceeds \$250,000, any party may take depositions, upon oral examination, before an officer authorized to administer oaths at a place of examination, for the purpose of discovery or for use as evidence. The party desiring to take a deposition must serve a notice of deposition upon oral examination at least 7 calendar days before the date of the deposition. A party must not take more than 5 depositions without leave of the hearing authority or agreement of the parties.

14.2.3.2 Pre Hearing Report

Seven days prior to the commencement of the hearing, the contractor and the County must submit a pre-hearing report to the hearing authority, with a copy to the other parties. Each pre-hearing report must:

- (A) Explain each claim and defense relied upon by the party;
- (B) List all issues not in dispute, facts stipulated, and facts to which the other party is requesting stipulation;
- (C) List each witness (except for rebuttal witnesses) to be called by the party and a summary of the facts to which the witness is expected to testify;
- (D) List each expert witness to be called and attach a copy of any report prepared by the expert witness. Unless contained in the expert's, the party must provide:
 - (1) a complete statement of each opinion to be expressed;
 - (2) the basis and reason for each opinion;
 - (3) the data or other information considered by the expert in forming each opinion;
 - (4) the qualifications of the expert, including a list of all publications authored by the expert;

and

- (5) a list of each case in which the expert has testified as an expert within the preceding 4

years.

and:

- (E) List each exhibit to be introduced by the party.

14.2.4 Hearing Procedures; Powers of Hearing Authority

14.2.4.1 The CAO may designate a hearing officer to conduct a hearing and make proposed findings of fact and conclusions to the CAO. If the CAO designates a hearing officer, the hearing officer has all the authority granted in section 14.2.4 granted to the hearing authority except the authority to make a final agency decision.

14.2.4.2 The hearing authority must provide written notice to the parties designating a time and place for the hearing. The hearing must be on the record and be open to the public, unless otherwise ordered by the hearing authority or as provided by law.

14.2.4.3 The hearing authority must arrange for a verbatim recordation of all testimony. The Department must pay the cost of the recordation. A party requesting a transcript must bear the expense of the transcript. The hearing authority must maintain a record of the proceedings which consists of the verbatim recordation or transcript, exhibits, and the hearing authority's proposed findings of fact and recommendations.

14.2.4.4 A hearing authority must not consider an ex parte communication except as provided in the Montgomery County Public Ethics Law.

14.2.4.5 Editor's note—Regulation No. 5-04 contains two paragraphs numbered 14.2.4.5

Each party may:

- (A) be represented by counsel authorized to practice law in Maryland;
- (B) file motions;
- (C) present evidence, including testimony exhibits;
- (D) cross-examine witnesses; and
- (E) argue in support of its respective position.

14.2.4.5 Editor's note—Regulation No. 5-04 contains two paragraphs numbered 14.2.4.5

Subject to the direction of the hearing authority, proceedings are informal. Although the hearing authority has full discretion to proceed in an orderly fashion, the following is the usual order for presentation of the appeal:

- (A) Opening statements (appealing contractor first, County last);
- (B) Presentation of witnesses and documents (appealing contractor first, County last); and
- (C) Closing argument (appealing contractor first, County last).

14.2.4.6 The hearing authority may admit and give appropriate weight to evidence which possesses probative value commonly accepted by reasonable and prudent persons in the conduct of their affairs, including hearsay evidence that is reliable in nature. The hearing authority must give effect to the rules of privilege recognized by law. The hearing authority may exclude incompetent, unreliable, irrelevant or unduly repetitious evidence, or admit evidence at its own request. The hearing authority may question witnesses on any point.

14.2.4.7 The hearing authority may:

- (A) set any reasonable schedule for the hearing, motions, and presentation of evidence;
- (B) accept stipulations;
- (C) require the swearing of witnesses;
- (D) take official notice of commonly cognizable facts;
- (E) rule on motions and objections;
- (F) subpoena and examine witnesses;
- (G) accept exhibits into the record;
- (H) administer oaths and affirmations;
- (I) grant or deny a request for a subpoena, including a subpoena duces tecum;
- (J) impose sanctions for failing to provide required discovery;
- (K) for good cause shown, keep the record open for receipt of additional evidence or submissions by the parties after the close of the hearing; and

(L) make any other ruling necessary to promote fairness or efficiency in the hearing process, including a recommended summary disposition of the contract dispute appeal.

14.2.4.8 The burden of proof and the burden of persuasion with respect to the appeal is on the appealing contractor.

14.2.4.9 The hearing officer must prepare and submit to the CAO, a written report containing proposed findings of fact and recommendations based on the record. A copy of the report must be forwarded to all parties.

14.2.5 Alternative Dispute Resolution

14.2.5.1 If an election to mediate the dispute has been made, the parties must enter into a mediation agreement which:

- (1) states how a mutually acceptable mediator will be chosen;
- (2) defines the consequences for failing to resolve the dispute through mediation; and
- (3) provides that the cost of the mediation services will be borne equally by the parties.

14.2.5.2 (A) If an election to submit the dispute to binding arbitration is made, the parties must enter into an agreement which:

(1) states how a mutually acceptable arbitrator will be selected. The parties may agree to use an arbitration service such as the American Arbitration Association or the Federal Mediation and Conciliation Service. Unless the parties agree otherwise, or the arbitration service selected provides for another method of selection, the parties must alternatively strike the proposed arbitrators until one remains.

- (2) provides that the cost of the arbitration services will be borne equally by the parties; and
- (3) provides for mutual discovery and hearing procedures.

(B) An arbitrator has no authority to amend, add to, or subtract from applicable State and Montgomery County law, Montgomery County Procurement Regulations, and the terms of the contract under which the dispute arises. The arbitrator must make an award that is consistent with applicable law, regulations, and the terms of the contract.

(C) In arbitration, the contractor bears the burden of proof and the burden of persuasion to support the relief requested.

(D) Pending final resolution of the dispute by arbitration, the contractor must proceed diligently with contractor performance unless the County has terminated the contract.

11B.04.01.15 Contract Review Committee (CRC)

15.1 Purpose

The CRC is established for the purpose of reviewing and evaluating certain procurement actions, recommending resolution of solicitation protest appeals, advising the CAO and Director on matters pertaining to procurement in Montgomery County, and performing such other responsibilities as provided in these regulations or assigned by the CAO.

15.2 Composition

15.2.1 Voting Members. The CRC is composed of the following voting members.

15.2.1.1 The Chair or an alternate designated by the CAO.

15.2.1.2 The Director, Office of Procurement, or the Director's designee.

15.2.1.3 The Director of the Office of Management and Budget or that Director's designee.

15.2.1.4 The Director of the Staff of the County Council or that Director's designee, when a County Council procurement action is considered.

15.2.1.5 The County Attorney or designee becomes a voting member in the case of a disqualification or absence of a voting member.

15.2.2 Advisory Members (non-voting).

15.2.2.1 The County Attorney or designee is a non-voting member.

15.2.2.2 The CAO may designate a Department representative as a non-voting member.

15.3 Authority

15.3.1 The CRC derives its authority from these regulations and the CAO.

15.3.2 The CRC may request any information from the Department that it deems necessary in connection with the exercise of its authority and responsibilities. The Director, Office of Procurement, acting on behalf of the CRC, may request the Department to furnish certain documentation or take certain actions either for submittal to the CRC for review or in order to implement CRC decisions. The Department should respond to requests as expeditiously as possible.

15.3.3 The Director, Office of Procurement, must prepare the agenda of the CRC, subject to the direction of the Chair, and may issue guidelines to the Department with respect to required submissions, time deadlines and other matters pertaining to the orderly conduct of the agenda for the CRC. This may include coordinating the Department representative's attendance at CRC meetings.

15.3.4 The CRC may condition its approval of procurement actions. The conditions must be satisfied before the procurement may be consummated.

15.3.5 The CRC may hold hearings, call witnesses, receive documentation and correspondence and conduct investigations.\

15.4 Minutes and Records

15.4.1 The Director, Office of Procurement, is responsible for preparing meeting minutes in accordance with the requirements of the State Open Meetings Act.

15.4.2 The minutes reflect voting and actions on each agenda item.

15.4.3 The Chair must maintain CRC solicitation protest appeal records until the dispute is finally resolved. The Director, Office of Procurement, maintains all other records. After the solicitation protest appeal is finally resolved, the Chair must transmit the record to the Director.

15.5 Duties and Responsibilities

15.5.1 The CRC has the following responsibilities.

15.5.1.1 Approving sole source procurements valued above the threshold for procurements.

15.5.1.2 Approving all change orders or amendments to a contract valued above the threshold for procurements, unless the Director determines that the change in compensation results from a mechanical application of an established cost indexing provision or other contract option which pre-determines price.

15.5.1.3 Approving a contract extension beyond the original term, except:

(A) An extension authorized in the original contract; or

(B) A single extension of the original term by 12 months or less.

15.5.1.4 Considering procurement matters referred to the CRC by the CAO, the County Attorney, the Director, Office of Procurement, or the Director, Department of Public Works and Transportation.

15.5.1.5 Recommending resolution of solicitation protest appeals.

15.5.1.6 Considering other procurement matters as provided in these regulations.

15.5.2 The CRC may undertake special investigations or studies and render reports as directed by the CAO.

15.5.3 The CRC may coordinate its review of proposed procurement actions with the budgets, programs, and procurement actions of the Department.

11B.04.01.16 Ethics

All public and private participants in the procurement process are subject to County ethics laws under Chapters 11B and 19A of the Montgomery County Code and the applicable regulations for standards of conduct required in contracting. Questions regarding ethical issues should be directed to the Montgomery County Ethics Commission, the Office of the County Attorney, or the Director.

11B.04.01.17 Grants

17.1 General Authority

The Director, Office of Procurement, upon a recommendation from the Department, may enter into a non-competitive contract if the person was named or designated in:

17.1.1 a grant accepted by the County; or

17.1.2 a resolution or appropriation approved by the County Council.

17.2 Authority of the Director

The Director, Office of Procurement, upon a recommendation from the Department, may determine that the contract serves a public purpose and enter into the contract.

17.3 Other requirements

17.3.1 Contracts entered into under the grant authority contained in Chapter 11B of the Code must meet all requirements specified by the County Attorney and the Director, Office of Procurement. The contract must be in a form approved by the County Attorney. The contract should include specifications or conditions of performance under the contract, identification of payment schedules, and other mandatory provisions usually expected in County contracts.

17.3.2 The Department, prior to County Council approval of a grant award, must certify to the County Council, the Office of Management and Budget, and the Director that:

- (a) the proposed grantee would qualify as a responsible offeror under Section 6.3.
- (b) the grant amount is fair and reasonable after making a price analysis required under Section 10.1.1; and
- (c) the services, goods, and construction funded by the grant award are in the public interest.

11B.04.01.18 Debarment and Suspension

18.1 Debarment

18.1.1 After consulting with the Department and the County Attorney, the Director, Office of Procurement, may debar a person from consideration for award of contracts, for a length of time to be determined by the Director, Office of Procurement. The length of time should not be less than the time which would be expected to include one or more solicitations for the type of work being provided by the debarred person. The debarment time imposed by the Director, Office of Procurement, is not limited by the debarment time imposed by another public entity.

18.1.2 The Director, Office of Procurement, must maintain a list of debarred persons and corresponding dates of debarment.

18.1.3 The Director, Office of Procurement, may debar a person for any of the following reasons:

18.1.3.1 Conviction for commission of a criminal offense incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of the contract or subcontract;

18.1.3.2 Conviction of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, kickbacks or any other offense indicating a lack of business integrity;

18.1.3.3 Conviction under state or federal antitrust statutes arising out of the submission of bids or proposals;

18.1.3.4 Violation of County contract provisions of a character which is regarded by the Director, Office of Procurement, to be so serious as to justify debarment action, which may include:

(A) deliberate failure without good cause to perform under the specifications or within the time limits provided in the contract; or

(B) a record of failure to perform or of unsatisfactory performance under the provisions of one or more contracts; however, failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor are not a basis for debarment;

18.1.3.5 violation of the ethical standards set forth in Chapter 11B or Chapter 19A of the Code; or

18.1.3.6 any other serious cause the Director, Office of Procurement, determines to be so compelling as to affect the competency or integrity of a potential contractor, including debarment by another public entity.

18.1.4 The Director, Office of Procurement, must send a notice of proposed debarment to the person whom the Director, Office of Procurement, proposes to debar. The notice must inform the person of:

18.1.4.1 the factual basis constituting probable cause for debarment; and

18.1.4.2 the right, within 10 days, to provide written reasons why the person should not be debarred and, if desired, to request a hearing.

18.1.5 18.1.5.1 After reviewing the record, if the Director, Office of Procurement, determines there are no genuine disputes of material facts, the Director, Office of Procurement, must issue a decision on the debarment.

18.1.5.2 After reviewing the record, if the Director, Office of Procurement, determines there are no genuine disputes of material facts, the Director, Office of Procurement, must conduct a hearing and may designate a hearing officer to take evidence and to make proposed findings to the Director, Office of Procurement.

18.1.6 18.1.6.1 The Director, Office of Procurement, must send a copy of a recommended determination and finding to the CAO. The CAO may approve, revise, or remand the Director, Office of Procurement's recommended decision based on the record. If the CAO takes no action within 5 working days after receiving the Director, Office of Procurement's decision, the decision of the Director, Office of Procurement, becomes the final decision of the CAO.

18.1.6.2 The final decision must be mailed to the person who was subject to the debarment proceeding.

18.1.7 A determination by the Director, Office of Procurement, or the CAO not to debar a person does not preclude the Director, Office of Procurement, from finding the person not responsible in the context of a specific solicitation.

18.2 Suspension

18.2.1 If the Director, Office of Procurement, initiates debarment proceedings, the Director, Office of Procurement, may suspend a person from consideration for awards of contracts. The suspension may not exceed 6 months.

18.2.2 The Director, Office of Procurement, must send a notice of proposed suspension to the person whom the Director, Office of Procurement, proposes to suspend. The notice must inform the person of the right to provide written reasons why the person should not be suspended.

18.2.3 A person who receives a notice of proposed suspension must provide written reasons opposing the suspension within 10 days after the Director, Office of Procurement, issues the notice of proposed suspension.

18.2.4 After reviewing any material supplied by the person, the Director, Office of Procurement, must make a determination and finding regarding the suspension.

18.2.5 The Director, Office of Procurement, must send a copy of the recommended determination and finding to the CAO who may approve, revise, or remand the decision. If the CAO takes no action within 5 working days, the decision of the Director, Office of Procurement, becomes the final decision of the CAO.

18.2.6 The final decision must be mailed to the person who was the subject of the suspension proceedings.

18.3 Hearing Procedures

18.3.1 Discovery

18.3.1.1 Each party to a debarment proceeding is entitled to obtain the following discovery regarding any matter, not privileged, which is relevant to the debarment proceeding:

18.3.1.2 Any time after the Director, Office of Procurement, decides to conduct a hearing in the debarment proceeding, a party may serve another party with a request for production, inspection, and copying of documents or any tangible things. Within 30 calendar days after service, the party served must respond stating that inspection and copying will be permitted or stating the basis for any objection.

18.3.1.3 Any party may take depositions, upon oral examination, before an officer authorized to administer oaths at a place of examination, for the purpose of discovery or for use as evidence. The party desiring to take a deposition must serve a notice of deposition upon oral examination at least 7 days before the date of the deposition. A party must not take more than 5 depositions without leave of the hearing authority or agreement of the parties.

18.3.2 Pre-Hearing Report

Seven days prior to the commencement of the hearing, the parties to the debarment proceeding must submit a pre-hearing report to the hearing authority, with a copy to the other parties. Each pre-hearing report must:

18.3.2.1 Explain each ground or defense relied upon by the party;

18.3.2.2 List all issues not in dispute, facts stipulated, and facts to which the other party is requesting stipulation;

18.3.2.3 List each witness (except for rebuttal witnesses) to be called by the party and a summary of the facts to which the witness is expected to testify;

18.3.2.4 List each expert witness to be called and attach a copy of any report prepared by the expert witness. Unless contained in the expert's report, the party must provide:

(A) a complete statement of each opinion to be expressed;

(B) the basis and reason for each opinion;

(C) the data or other information considered by the expert in forming each opinion;

(D) the qualifications of the expert, including a list of all publications authored by the expert; and

(E) a list of each case in which the expert has testified as an expert within the preceding 4 years;

and

18.3.2.5 List each exhibit to be introduced by the party.

18.3.3 Hearing Procedures; Powers of Hearing Authority

18.3.3.1 If the Director, Office of Procurement, designates a hearing officer, the hearing officer has all the authority granted in these regulations except to make a final agency decision.

18.3.3.2 Hearings are held at a time and place designated by the hearing authority in a written notice to the parties to the debarment proceeding. The hearing authority must provide written notice to the parties designating a time and place for the hearing. The hearing must be on the record and be open to the public, unless otherwise ordered by the hearing authority or as provided by law.

18.3.3.3 The hearing authority must arrange for a verbatim recordation of all testimony. The Director, Office of Procurement, must pay for the recordation. A party requesting a transcript must bear the expense of the transcript. The hearing authority must maintain a record of the proceedings which consists of the verbatim recordation or transcript, exhibits, and the hearing authority's proposed findings of fact and recommendations.

18.3.3.4 A hearing authority must not consider an ex parte communication except as provided in the Montgomery County Public Ethics Law.

18.3.3.5 Each party may:

- (A) be represented by counsel authorized to practice law in Maryland;
- (B) file motions;
- (C) present evidence, including testimony and exhibits;
- (D) cross-examine witnesses; and
- (E) argue in support of its respective position.

18.3.3.6 Subject to the direction of the hearing authority, proceedings are informal. Although the hearing authority has full discretion to proceed in an orderly fashion, the following is the usual order for presentation of the debarment proceeding:

- (A) Opening statements (County first, person subject to debarment last);
 - (B) Presentation of witnesses and documents (County first, person subject to debarment last);
- and
- (C) Closing argument (County first, person subject to debarment last).

18.3.3.7 The hearing authority may admit and give appropriate weight to evidence which possesses probative value commonly accepted by reasonable and prudent persons in the conduct of their affairs, including hearsay evidence that is reliable in nature. The hearing authority must give effect to the rules of privilege recognized by law. The hearing authority may exclude incompetent, unreliable irrelevant or unduly repetitious evidence, or admit evidence at its own request. The hearing authority may question witnesses on any point.

18.3.3.8 The hearing authority may:

- (A) set any reasonable schedule for the hearing, motions, and presentation of evidence;

- (B) accept stipulations;
- (C) require the swearing of witnesses;
- (D) take official notice of commonly cognizable facts;
- (E) rule on motions;
- (F) subpoena and examine witnesses;
- (G) accept exhibits into the record;
- (H) administer oaths and affirmations;
- (I) grant or deny a request for a subpoena, including a subpoena duces tecum;
- (J) impose sanctions for failing to provide required discovery;
- (K) for good cause shown, keep the record open for receipt of additional evidence or submissions by the parties after the close of the hearing; and
- (L) make any other ruling necessary to promote fairness or efficiency in the hearing process, including a recommended summary disposition of the debarment proceeding.

18.3.3.9 The burden of proof and the burden of persuasion with respect to the debarment proceeding is on the County.

18.3.3.10 The Director, Office of Procurement, must prepare and submit to the CAO a written report containing proposed findings of fact and recommendations based on the record. A copy of the report must be forwarded to all parties.

(Administrative History: Reg. No. 5-04 (Method 2); Dept.: Chief Administrative Officer)