Purchasing Policy

Garrett County Government

Adopted by the
Board of County Commissioners
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ARTICLE I-GENERAL PROVISIONS

Part A-Purpose and Application

§1-101 Purpose.

The purpose of this Policy is to provide for the fair and equitable treatment of all persons involved in public purchasing by Garrett County Government (hereinafter referred to as the County), to maximize the purchasing value of public funds in purchasing, and to provide safeguards for maintaining a purchasing system of quality and integrity. This policy is subject to the provisions of the Code of Public Laws of Garrett County, Maryland (the "Garrett County Code"), as well as the provisions of Article 25, §3, of the Annotated Code of Maryland.

§1-102 Application.

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

Part B-Definitions

§1-201 Definitions.

(1) Architectural-Engineering and Land Surveying Services. Those professional services within the scope of the practice of architecture, professional engineering, or land surveying, as defined by the laws of the State of Maryland.

(2) Blind Trust. An independently managed trust in which the employee-beneficiary has no management rights and in which the employee-beneficiary is not given notice of alterations in, or other dispositions of, the property subject to the trust.

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

(4) Brand Name Specification. A specification limited to one or more items by manufacturers' names or catalogue numbers.

(5) Business. Any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or any other private legal entity.

(6) Change Order. A written order signed and issued by the Purchasing Agent, directing the contractor to make changes which the "Changes" clause of the contract authorizes the Purchasing Agent to order without the consent of the contractor.

(7) Contract Modification **(bilateral change).** Any written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of any contract accomplished by mutual action of the parties to the contract.

(8) Confidential Information. Any information which is available to an employee only because of the employees status as an employee of the County and is not a matter of public knowledge or available to the public on request.

(9) Construction. The process of building, altering, repairing, improving, or demolishing any public structure or building or other public improvements of any kind to any public real property. It does not include the routine operation, routine repair, or routine maintenance of existing structures, buildings, or real property.

(10) Contract. All types of County agreements, regardless of what they may be called, for the purchase of supplies, services, or construction.

(11) Contractor. Any person having a contract with the County or a using department thereof.

(12) Cost Analysis. The evaluation of cost data for the purpose of arriving at costs actually incurred or estimates of costs to be incurred, prices to be paid, and costs to be reimbursed.

(13) Cost Data. Factual information concerning the cost of labor, material, overhead, and other cost elements which are expected to be incurred or which have been actually incurred by the contractor in performing the contract.

(14) Cost-Reimbursement Contract. A contract under which a contractor is reimbursed for costs which are allowable and allocable in accordance with the contract terms and the provisions of this Policy and a fee or profit, if any.

(15) Direct or Indirect Participation. Involvement through decision, approval, disapproval, recommendation, preparation of any part of a purchase request, influencing the content of any specification or purchasing standard, rendering of advice, investigation, auditing, or in any other advisory capacity.

(16) Disadvantaged Business. A small business which is owned or controlled by a majority of persons, not limited to members of minority groups, who have been deprived of the opportunity to develop and maintain a competitive position in the economy because of social disadvantages.

(17) Employee. An individual drawing a salary or wages from the County, whether elected or not; any non-compensated individual performing personal services for the County or any department, agency, commission, council, board, or any other entity established by the executive or legislative branch of the County; and any non-compensated individual serving as an elected official of the County.

(18) Financial Interest.

(a) Ownership of three percent (3%) of any property or business; or

(b) Holding a position in a business such as officer, director, trustee, partner, employee, or the like, or holding any position of management.

(19) Gratuity. A payment, loan, subscription, advance, deposit of money, service, or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is received.

(20) Immediate Family. Spouse, child(ren), parents, brothers, and sisters.

(21) Invitation for Bids. All documents, whether attached or incorporated by reference, utilized for soliciting sealed bids.

(22) Local Preference. A bid preference given to vendors doing business in a specified jurisdiction

(23) Person. Any business, individual, union, committee, club, other organization, or group of individuals.

(24) Price Analysis. The evaluation of price data, without analysis of the separate cost components and profit as in cost analysis, which may assist in arriving at prices to be paid and costs to be reimbursed.

(25) Pricing Data. Factual information concerning prices for items substantially similar to those being procured. Prices in this definition refer to offered or proposed selling prices, historical selling prices and current selling prices. The definition refers to data relevant to both prime and subcontract prices.

(26) Purchasing. The buying, purchasing, renting, leasing, or otherwise acquiring of any supplies, services, or construction. It also includes all functions that pertain to the obtaining of any supply, service, or construction, including description of requirements, selection, and solicitation of sources, preparation and award of contract, and all phases of contract administration.

(27) Public Agency. A public entity subject to or created by the County.

(28) Qualified Products List. An approved list of supplies, services, or construction items described by model or catalogue numbers, which, prior to competitive solicitation, the County has determined will meet the applicable specification requirements.

(29) Request for Proposals. All documents, whether attached or incorporated by reference, utilized for soliciting sealed proposals.

(30) Responsible Bidder or Offeror. A person who has the capability in all respects to perform fully the contract requirements, and the tenacity, perseverance, experience, integrity, reliability, capacity, facilities, equipment, and credit which will assure good faith performance.

(31) Responsive Bidder. A person who has submitted a bid which conforms in all material respects to the requirements set forth in the invitation for bids.

(32) Services. The furnishing of labor, time, or effort by a contractor, not involving the delivery of a specific end product other than reports which are merely incidental to the required performance. This term shall not include employment agreements or collective bargaining agreements.

(33) Small Business. A United States business which is independently owned and which is not dominant in its field of operation or an affiliate or subsidiary of a business dominant in its field of operation.

(34) Specification. Any description of the physical or functional characteristics or of the nature of a supply, service, or construction item. It may include a description of any requirement for inspecting, testing, or preparing a supply, service, or construction item for delivery.

(35) Supplies. All property, including but not limited to equipment, materials, printing, insurance, and leases of real property, excluding land or a permanent interest in land.

(36) Using Department. Any department, commission, board, or public agency requiring supplies, services, or construction procured pursuant to this Policy.

Part C-Public Access to Purchasing Information

§1-301 Public Access to Purchasing Information.

Purchasing information shall be of public record to the extent provided in the State of Maryland Freedom of Information Act. Information requests under the Freedom of Information Act shall be made to the County Administrator. The Purchasing Department provides current bid opportunities, bid tabulations and contract information to the public via the County Website.

ARTICLE 2-PURCHASING DEPARTMENT STAFF

§2-101 Establishment and Experience/Position Requirements

(1) Establishment of the Positions. The Purchasing Agent, Buyer and Administrative Assistant II are classified employee positions of the County.

(2) Experience/Position Requirements. A detailed job description, approved by the County Administrator, will list the experience, education and position responsibilities for the Purchasing Department staff positions.

§2-102 Authority and Duties.

(1) Principal Public Purchasing Official. Except as otherwise provided herein, the Purchasing Agent shall serve as the principal public purchasing official for the County, and shall be responsible for and supervise the purchase of supplies, services, and construction in accordance with this policy, as well as the management and disposal of County property. The Buyer and Administrative Assistant II assist the Purchasing Agent in carrying out these duties and in the daily operations of the Purchasing Department.

(2) Duties. In accordance with this Policy, and subject to guidance received from his/her supervisor, the Purchasing Agent shall:

(a) procure or supervise the purchase of supplies, services, and construction needed by the County;
(b) authorize the trade-in, reassignment, recycle, disposition or sale of supplies, materials, equipment, or sale of supplies, materials, and equipment that are surplus, obsolete, or unused;
(c) establish and maintain programs for specifications development, contract administration and inspection and acceptance, in cooperation with the County agencies using the supplies, services, and construction.

(3) Operational Procedures. Consistent with this Policy, and with the approval of the Board of Garrett County Commissioners, the Purchasing Agent may adopt operational procedures relating to the execution of the Purchasing Department's duties.

§2-103 Delegations to Other County Officials.

With the approval of the Board of Garrett County Commissioners, the Purchasing Agent may delegate authority to purchase certain supplies, services, or construction items to other County officials, if such delegation is deemed necessary for the effective purchase of those items. Notwithstanding the provisions of Section 2-102 (Authority and Duties), purchasing authority with respect to certain supplies, services, or construction may be delegated to other County officials by the Board of Garrett County Commissioners, when such delegation is deemed necessary for the effective purchase of these supplies, services, or construction.

ARTICLE 3-SOURCE SELECTION AND CONTRACT FORMATION

Part A-Methods of Source Selection

§3-101 Competitive Sealed Bidding. (Dollar Value of $15,000 or More)

(1) Conditions for Use. All purchases valued at $15,000 or more (§30.21 A of the Garrett County Code) by the County shall be made by competitive sealed bidding except as otherwise provided in Sections 3-102 (Competitive Sealed Proposals), 3-103 (Competitive Price Quotes), 3-104 (Competitve Price Quotes), 3-105 (Small Purchases), 3-106 (Sole Source Purchases), 3-107 (Emergency Purchases), 3-109 (Purchasing of Used Equipment), 5-401 (Public Announcement and Selection Process) and Article 10 (Cooperative Purchasing) of this Policy.

(2) Invitation for Bids. An invitation for bids shall be issued and shall include specifications, and all contractual terms and conditions applicable to purchasing.

(3) Public Notice. Adequate public notice of the invitation for bids shall be given a reasonable

time, not less than thirteen (13) calendar days prior to the date set forth therein for the opening of bids. Such notice shall include publication in a newspaper of general circulation for a minimum period of two (2) weeks from the scheduled bid opening. The public notice shall state the place, date, and time of bid opening.

*(4) **Bid Opening**.* Bids shall be opened publicly in the presence of one or more witnesses at the time and place designated in the invitation for bids. The amount of each bid, and such other relevant information as the Purchasing Department deems appropriate, together with the name of each bidder, shall be recorded and tabulated. Each bid tabulation shall be open to public inspection in accordance with Section 1-301 (Public Access to Purchasing Information).

*(5) **Bid Acceptance and Bid Evaluation.*** Bids shall be unconditionally accepted without alteration or correction, except as authorized in this Policy. Bids shall be evaluated based on the requirements set forth in the invitation for bids, which may include criteria to determine acceptability such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose. Those criteria that will affect the bid price and be considered in evaluation for award shall be objectively measurable, such as discounts, transportation costs, and total or life cycle costs.

*(6) **Correction or Withdrawal of Bids; Cancellation of Awards**.* Correction or withdrawal of inadvertently erroneous bids before or after bid opening, or cancellation of awards or contracts based on such bid mistakes, may be permitted where appropriate. Mistakes discovered before bid opening may be modified or withdrawn by written notice received by the Purchasing Department prior to the time set for bid opening. After bid opening, corrections in bids shall be permitted only to the extent that the bidder can show by clear and convincing evidence that a mistake was made, the nature of the mistake, and the bid price actually intended. After bid opening, no changes in bid prices or other provisions of bids prejudicial to the interest of the County or fair competition shall be permitted. In lieu of bid correction, a low bidder alleging a material mistake of fact may be permitted to withdraw its bid if:

(a) the mistake is clearly evident on the face of the bid document but the intended correct bid is not similarly evident; or
(b) the bidder submits evidence which clearly and convincingly demonstrates that a mistake was made. All decisions to permit the correction or withdrawal of bids, or to cancel awards or contracts based on bid mistakes, shall be supported by a written determination made by the Purchasing Department.

*(7) **Award**.* The Board of County Commissioners will offically act on the recommendation for bid award presented by the Purchasing Department during their weekly public session. The contract shall be awarded with reasonable promptness by appropriate written notice to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the invitation for bids. No contract shall be awarded to a bidder that is in arrears to the County on any debt, contract, or is in default on surety to the County. All contractors, insofar as legal and practical, will be required to have a Garrett County Trader's License or any other applicable state or local licenses. In the event the low responsive and responsible bid for a construction project exceeds available funds as certified by the Director of Finance, and such bid does not exceed such funds by more than five percent (5%), the Purchasing Department is authorized, when time or economic considerations preclude re-solicitation of work of a reduced scope, to negotiate an adjustment of the bid price with the low responsive and responsible bidder, in order to bring the bid within the amount of available funds. Any such negotiated

adjustment shall be based only upon eliminating independent deductive items specified in the invitation for bids.

*(8) **Multi-Step Sealed Bidding**.* When it is considered impractical to initially prepare a purchase description to support an award based on price, an invitation for bids may be issued requesting the submission of unpriced offers to be followed by an invitation for bids limited to those bidders whose offers have been determined to be technically acceptable under the criteria set forth in the first solicitation.

§3-102 Competitive Sealed Proposals. (Dollar Value of $15,000 or More)

*(1) **Conditions for Use.*** When the Purchasing Department determines that the use of competitive sealed bidding is either not practicable or not advantageous to the County for purchases valued at $15,000 or more (§30.21 A of the Garrett County Code), a contract may be entered into by use of the competitive sealed proposals method.

*(2) **Request for Proposals**.* Proposals shall be solicited through a request for proposals.

*(3) **Public Notice**.* Adequate public notice of the request for proposals shall be given in the same manner as provided in Section 3-101(3) (Competitive Sealed Bidding, Public Notice); provided, the minimum time shall be thirty [30] calendar days. Such notice shall include publication in a newspaper of general circulation for a minimum period of two (2) weeks.

*(4) **Receipt of Proposals**.* No proposals shall be handled so as to permit disclosure of the identity of any offeror or the contents of any proposal to competing offerors during the process of negotiation. A register of proposals shall be prepared containing the name of each offeror, the number of modifications received, if any, and a description sufficient to identify the item offered. The register of proposals shall be open for public inspection only after contract award.

*(5) **Evaluation Factors.*** The request for proposals shall state the relative importance of price and other evaluation factors.

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

*(7) **Award**.* Award shall be made to the responsible offeror whose proposal is determined in writing to be the most advantageous to the County, taking into consideration price and the evaluation factors set forth in the request for proposals. No contract shall be awarded to any bidder that is in arrears to the County on any debt, contract, or is default on surety to the County. The proposal file shall contain the basis on which the award is made.

The Board of County Commissioners will officially act on the recommendation for contract award by the Purchasing Department and the review committee during their weekly public session.

§3-103 Competitive Price Quotes (Dollar Value of Less than $15,000 but more than $2,000)

(1) Conditions for Use. For purchases less than $15,000 but more than $2,000, no less than three (3) businesses shall be solicited to submit written price quotations. Award shall be made to the business offering the lowest acceptable quotation. No contract shall be awarded to any bidder that is in arrears to the County on any debt, contract, or is in default on surety to the County. All contractors, insofar as legal and practical, will be required to have a Garrett County Trader's License or any other applicable state or local licenses. The names of the businesses submitting quotations, the date and the amount of each quotation shall be recorded and maintained as public record in accordance with Section 1-301 (Public Access to Purchasing Information).

§3-104 Competitive Price Quotes (Dollar Value of Less than $2,000 but more than $500)

(1) Conditions of Use. For purchases less than $2,000 but more than $500, no less than three (3) businesses shall be solicited via telephone, fax, email or over the Internet to submit quotations. Award shall be made to the business offering the lowest acceptable quotation. No contract shall be awarded to any bidder that is in arrears to the County on any debt, contract, or is in default on surety to the County. All contractors, insofar as legal and practical, will be required to have a Garrett County Trader's License or any other applicable state or local licenses. The names of the businesses submitting quotations, and the date and amount of each quotation, shall be recorded and maintained as a public record in accordance with Section 1-301 (Public Access to Purchasing Information)

§3-105 Small Purchases.

(1) General. Any purchase not exceeding $500 may be made by the using department in accordance with the small purchase procedures authorized in this Section. Contract requirements shall not be purposely divided so as to constitute a small purchase under this Section.

(2) Small Purchases Under $500. Each using department is authorized by the Purchasing Department to make purchases valued less than $500 within the following guidelines. The using department shall verify that the commodity being purchased is not available through an existing contract with the County. If the commodity required by the using department is not available under an existing contract, the using department may purchase the commodity in the open market obtaining adequate and reasonable competition for the commodity.

§3-106 Sole Source Purchases.

A contract may be awarded without competition when the Purchasing Department determines in writing, after conducting a good faith review of available sources, that there is only one (1) source for the required supply, service, or construction item. The Purchasing Department shall conduct negotiations, as appropriate, as to price, delivery, and terms. A record of sole source purchases shall be maintained as a public record.

§3-107 Emergency Purchases.

Notwithstanding any other provisions of this Policy, the Purchasing Department may make or authorizes others to make emergency purchases of supplies, services, or construction items when there exists a threat to public health, welfare, or safety; provided that such emergency purchases shall be made with such competition as is practicable under the circumstances. After emergency purchases have been made by others, a written determination of the basis for the emergency and for the selection of the

particular contractor shall be forwarded to the Purchasing Agent to be included in the contract file. This information should also include the contractor's name, the amount and type of the contract and a listing of the item(s) purchased under the contract.

The provisions set forth in §30.21 of the County Code shall not apply to necessary repairs made in the case of emergency.

§3-108 Purchasing Used Equipment

Whenever the County Commissioners consider it in the best interest of the County to purchase or acquire used personal property, such acquisitions by the County Commissioners are specifically subject to those provisions set forth in §30.21 of the County Code and this §3-109. Under those circumstances, the County Commissioners may:

(a) Acquire used personal property at an auction or at a public or private sale;
(b) Lease used personal property; and
(c) Enter into financing and lease agreement for used personal property that the County Commissioners could enter had the personal property been acquired or leased new.
(d) Unless acquired at a public auction, the County Commissioners may not acquire used personal property if the price exceeds $5,000 unless the County Commissioners first obtain two independent appraisals of the property. The independent appraisals shall be solicited by the County Facilities and Equipment Supervisor of the Garrett County General Services Department. However, if by resolution the County Commissioners declare that two (2) independent appraisals are not reasonably available, the County Commissioners may acquire the used personal property at a price not exceeding a documented published book value that generally would be accepted within the appropriate industry. The Resolution shall be adopted at a regular public session of the County Commissioners and shall indicate the efforts the County made to obtain independent appraisals and the source of the book value relied on in lieu of the independent appraisals.

The Purchasing Department shall be notified of a department's request to purchase used equipment and shall process the request in accordance with the guidelines outlined above.

§3-109 Purchase or Sale of Real Property

(1) Purchase of Real Property. Real property purchased for an essential or non-essential government function may be purchased only after two (2) independent appraisals are obtained for the property.

(2) Sale of Real Property. Real property purchased for use by an essential government function (i.e. Health Department, Roads Department, and Governmental Administration) must be disposed of in a competitive manner (i.e. Public Auction, Sealed Bids, etc.)

Real property purchased for non-essential government purposes (i.e. Economic Development) may be disposed of as prescribed by the Board of County Commissioners.

§3-110 Electronic Commerce

[Reserved]

§3-111 Cancellation of Invitations for Bids or Requests for Proposals.

An invitation for bids, request for proposals, or other solicitation may be cancelled, or any or all bids or proposals may be rejected in whole or in part as may be specified in the solicitation, when it is for good cause and in the best interests of the County. The reasons therefore shall be made part of the contract file. Each solicitation issued by the County shall state that the solicitation may be cancelled and that any bid or proposal may be rejected in whole or in part for good cause when in the best interests of the County. Notice of cancellation shall be sent to all businesses solicited. The notice shall identify the solicitation, explain the reason for cancellation and, where appropriate, explain that an opportunity will be given to compete on any re-solicitation or any future purchase of similar items.

Part B-Qualifications and Duties

§3-201 Responsibility of Bidders and Offerors.

(1) Determination of Non-responsibility. If a bidder or offeror who otherwise would have been awarded a contract is found non-responsible, a written determination of non-responsibility, setting forth the basis of the finding, shall be prepared by the Purchasing Department. The unreasonable failure of a bidder or offeror to promptly supply information in connection with an inquiry with respect to responsibility may be grounds for a determination of non-responsibility with respect to such bidder or offeror. A copy of the determination shall be sent promptly to the non-responsible bidder or offeror. The final determination shall be made part of the contract file and be made a public record in accordance with Section 1-301 (Public Access to Purchasing Information)

(2) Right of Nondisclosure. Information furnished by a bidder or offeror pursuant to this Section shall not be disclosed by the County outside of the Purchasing Department, without prior written consent by the bidder or offeror.

§3-202 Cost or Pricing Data.

(1) Required Submissions Relating to the Award of Contracts. A prospective contractor shall submit cost or pricing data when the contract is expected to exceed $15,000 and is to be awarded by competitive sealed proposals (Section 3-102; Competitive Sealed Proposals), or by sole source purchasing authority (Section 3-106; Sole Source Purchases).

(2) Exceptions. The submission of cost or pricing data relating to the award of a contract is not required when:

(a) the contract price is based on adequate price competition;
(b) the contract price is based on established catalogue prices or market prices;
(c) the contract price is set by law or regulation; or
(d) it is determined in writing by the Purchasing Department that the requirements of Section 3-202(l) (Cost or Pricing Data; Required Submissions Relating to the Award of Contracts) may be waived, and the determination states the reasons for such waiver.

(3) Required Submissions Relating to Change Orders or Contract Modifications. A contractor shall submit cost or pricing data prior to the pricing of any change order or contract modification, including adjustments to contracts awarded by competitive sealed bidding, whether or not cost or

pricing data was required in connection with the initial pricing of the contract, when the change or modification involves aggregate increases or aggregate decreases in costs plus applicable profits.

(4) Exceptions. The submission of cost or pricing data relating to the pricing of a change order or contract modification is not required when:

(a) unrelated and separately priced adjustments for which cost or pricing data would not be required are consolidated for administrative convenience; or
(b) it is determined in writing by the Purchasing Department that the requirements of Section 3-202(3) (Cost or Pricing Data; Required Submissions Relating to Change Orders or Contract Modifications) may be waived, and the determination states the reasons for such waiver.

(5) Certification Required. A contractor, actual or prospective, required to submit cost or pricing data in accordance with this Section, shall certify that, to the best of its knowledge and belief, the cost or pricing data submitted was accurate, complete, and current as of a mutually specified date prior to the award of the contract or the pricing of the change order or contract modification.

(6) ***Price Adjustment Provision Required.*** Any contract award, change order, or contract modification under which the submission and certification of cost or pricing data are required shall contain a provision stating that the price to the County, including profit or fee, shall be adjusted to exclude any significant sums by which the County finds that such price was increased because the contractor-furnished cost or pricing data was inaccurate, incomplete, or not current as of the date agreed upon between the County and the contractor.

§3-203 Cost or Price Analysis.

A cost analysis or a price analysis, as appropriate, shall be conducted prior to award of the contract other than one awarded under Section 3-101 (Competitive Sealed Bidding). A written record of such cost analysis or price analysis shall be made a part of the contract file.

§3-204 Bid and Performance Bonds on Supply or Service Contracts.

Bid and performance bonds or other security may be requested for supply contracts or service contracts as the Purchasing Department or head of a using department deems advisable to protect the County's interests. Any such bonding requirements shall be set forth in the solicitation. Bid or performance bonds shall not be used as a substitute for a determination of a bidder or offerors responsibility.

Part C-Types of Contracts and Contract Administration

§3-301 Types of Contracts.

(1) General Authority. Subject to the limitations of this Section, any type of contract that is appropriate to the purchase and which will promote the best interests of the County may be used, provided that the use of a cost-plus-a-percentage-of-cost contract is prohibited. This contract is not allowed to be used by the U.S. Government and state and local jurisdictions according to the National Institute of Government Purchasing. A cost reimbursement contract may be used if such contract is

likely to be less costly to the County than any other type or that it is impracticable to obtain the supply, service, or construction item required except under such a contract.

(2) Multi-Term Contracts.

(a) ***Specified Period.*** Unless otherwise provided by law, a contract for supplies or services may be entered into for any period of time deemed to be in the best interests of the County, provided the term of the contract and conditions of renewal or extension, if any, are included in the solicitation and funds are available for the first fiscal period at the time of contracting. Payment and performance obligations for succeeding fiscal periods shall be subject to the availability and appropriation of funds therefore.

(b) ***Determination Prior to Use.*** Prior to the utilization of a multi-term contract, it shall be determined in writing:

(i) that estimated requirements cover the period of the contract and are reasonably firm and continuing; and

(ii) that such a contract will serve the best interests of the County by encouraging effective competition or otherwise promoting economies in County purchasing.

(c) ***Cancellation Due to Unavailability of Funds in Succeeding Fiscal Periods.*** When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the contract may be cancelled and the contractor shall be reimbursed for the reasonable value of any nonrecurring costs incurred but not amortized in the price of the supplies or services delivered under the contract. The cost of cancellation may be paid from any appropriations available for such purposes.

(3) Multiple Source Contracting.

(a) ***General.*** A multiple source award is an award of an indefinite quantity contract for one or more similar supplies or services to more than one bidder or offeror. The obligation to order the County's actual requirements is limited by the provision of the Uniform Commercial Code Section 2-306(1).

(b) ***Limitations on Use.*** A multiple source award may be made when award to two or more bidders or offerors for similar products is necessary for adequate delivery, service, or product comparability. Any multiple source award shall be made in accordance with the provisions of Section 3-101 (Competitive Sealed Bidding), Section 3-102 (Competitive Sealed Proposals), Section 3-103 (Competitive Price Quotes), Section 3-104 (Small Purchases), and Section 3-106 (Emergency Purchases), as applicable. Multiple source awards shall not be made when a single award will meet the County's needs without sacrifice of the economy or service. Awards shall not be made for the purpose of dividing the business, making available product or supplier selection to allow for user preference unrelated to utility or economy, or avoiding the resolution of tie bids. Any such awards shall be limited to the least number of suppliers necessary to meet the valid requirements.

(c) ***Contract and Solicitation Provisions.*** To the extent possible, all eligible users of the contract shall be named in the solicitation, and it shall be mandatory that the actual

requirements of such users that can be met under the contract be obtained in accordance with the contract, provided that:

(i) the County shall reserve the right to take bids separately if a particular quantity requirement arises which exceeds its normal requirement or an amount specified in the contract; and
(ii) the County shall reserve the right to take bids separately if the Purchasing Department approves a finding that the supply or service available under the contract will not meet a nonrecurring special need of the County.

(d) ***Intent to Use.*** If a multiple source award is anticipated prior to issuing a solicitation, the County shall reserve the right to make such an award and the criteria for award shall be stated in the solicitation.

(e) ***Determination Required.*** The Purchasing Department shall make a written determination setting forth the reasons for a multiple source award, which shall be made a part of the purchasing file.

§3-302 Contract Clauses and Their Administration.

(1) Contract Clauses. All County contracts for supplies, services, and construction shall include provisions necessary to define the responsibilities and rights of the parties to the contract. The Purchasing Department, after consultation with the County Attorney, may issue clauses appropriate for supply, service, or construction contracts, addressing among others the following subjects:

(a) the unilateral right of the County to order in writing changes in the work within the scope of the contract;
(b) the unilateral right of the County to order in writing temporary stopping of the work or delaying performance that does not alter the scope of the contract;
(c) variations occurring between estimated quantities of work in contract and actual quantities;
(d) defective pricing;
(e) liquidated damages;
(f) specified excuses for delay or nonperformance;
(g) termination of the contract for default;
(h) termination of the contract in whole or in part for the convenience of the County;
(i) suspension of work on a construction project ordered by the County; and
(j) site conditions differing from those indicated in the contract, or ordinarily encountered, except that a differing site conditions clause need not be included in a contract:
    (i) when the contract is negotiated;
    (ii) when the contractor provides the site or design; or
    (iii) when the parties have otherwise agreed with respect to the risk of differing site conditions.

(2) Price Adjustments.

(a) Adjustments in price resulting from the use of contract clauses required by Subsection (1) of this Section shall be computed in one or more of the following ways:

(i) by agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;
(ii) by unit prices specified in the contract or subsequently agreed upon;
(iii) by the costs attributable to the events or situations under such clauses with adjustment of profit or fee, all as specified in the contract or subsequently agreed upon;
(iv) in such other manner as the contracting parties may mutually agree; or
(v) in the absence of agreement by the parties, by a unilateral determination by the County of the costs attributable to the events or situations under such clauses with adjustment of profit or fee as computed by the County, as accounted for in accordance with cost principles and subject to the provisions of Article 9 (Appeals and Remedies).

(b) A contractor shall be required to submit cost or pricing data if any adjustment in contract price is subject to the provisions of Section 3-202 (Cost or Pricing Data).

(3) Standard Clauses and Their Modification. The Purchasing Department, after consultation with the County Attorney, may establish standard contract clauses for use in County contracts. If the Purchasing Agent establishes any standard clauses addressing the subjects set forth in Subsection (1) of this Section, such clauses may be varied provided that any variations are supported by a written determination that states the circumstances justifying such variations, and provided that notice of any such material variation be stated in the invitation for bids or request for proposals.

§3-303 Contract Administration.

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

§3-304 Cost Reimbursement Provisions.

[Reserved]

§3-305 Approval of Accounting System.

Except with respect to firm fixed-price contracts, no contract type shall be used unless it has been determined in writing by the Purchasing Department that:

(a) the proposed contractors accounting system will permit timely development of all necessary cost data in the form required by the specific contract type contemplated; and

(b) the proposed contractor's accounting system is adequate to allocate costs in accordance with generally accepted cost accounting principles.

§3-306 Right to Inspect Plant.

The County may, at reasonable times, inspect the part of the plant, place of business, or worksite of a contractor or subcontractor at any tier which is pertinent to the performance of any contract awarded or to be awarded by the County.

§3-307 Right to Audit Records.

(1) Audit of Cost or Pricing Data. The County may at reasonable times and places, audit the books and records of any contractor who has submitted cost or pricing data pursuant to Section 3-202 (Cost or Pricing Data) to the extent that such books, documents, papers, and records are pertinent to such cost or pricing data. Any person who receives a contract, change order, or contract modification for which cost or pricing data is required, shall maintain such books, documents, papers, and records that are pertinent to such cost or pricing data for one (1) year from the date of final payment under the contract.

(2) Contract Audit. The County shall be entitled to audit the books and records of a contractor or a subcontractor at any tier under any negotiated contract or subcontract other than a firm fixed price contract to the extent that such books, documents, papers, and records are pertinent to the performance of such contract or subcontract. Such books and records shall be maintained by the contractor for a period of one year from the date of final payment under the prime contract and by the subcontractor for a period of one (1) year from the date of final payment under the subcontract.

§3-308 Reporting of Anti-competitive Practices.

When for any reason collusion or other anti-competitive practices are suspected among any bidders or offerors, a notice of the relevant facts shall be transmitted to the State Attorney General.

§3-309 County Purchasing Records.

(1) Contract File. All determinations and other written records pertaining to the solicitation, award, or performance of a contract shall be maintained for the County in a contract file by the Purchasing Department.

(2) Retention of Purchasing Records. All purchasing records shall be retained and disposed of by the County in accordance with records retention guidelines and schedules approved by the Board of Garrett County Commissioners.

§3-310 Contractor Records.

If a contract is being funded in whole or in part by assistance from a federal agency, then the contract shall include provisions:

(a) requiring the contractor and subcontractors at any tier to maintain for three (3) years or as amended from the date of final payment under the contract all books, documents, papers, and records pertinent to the contract; and
(b) requiring the contractor and subcontractor at any tier to provide to the County, the federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives access to such books, documents, papers, and records for the purposes of examining, auditing, and copying them.

§3-311 Patents.

If a contract involving research and development, experimental, or demonstration work is being funded in whole or in part by assistance from a federal agency, then the contract shall include provisions:

(a) giving notice to the contractor of the applicable grantor agency requirements and regulations concerning reporting of, and rights to any discovery or invention arising out of the contract; and
(b) requiring a contractor to include a similar provision in all subcontracts involving research and development, experimental, or demonstration work.

§3-312 Copyrights and Rights in Data.

If a contract is being funded in whole or in part by assistance from a federal agency, then the contract shall include a provision giving the contractor notice of the applicable regulations concerning the rights of the United States to any plans, drawings, specifications, computer programs, technical reports, operating manuals, and similar work products developed and paid for under the contract.

§3-313 Notice of Federal Public Policy Requirements.

If the contract is being funded in whole or in part by assistance from a federal agency, and the contract is subject to one or more federal public policy requirements, such as:

(a) equal employment opportunity;
(b) fair labor standards;
(c) energy conservation;
(d) environmental protection; or
(e) other similar socioeconomic programs, then, the Purchasing Department shall include contract provisions giving the contractor notice of these requirements, and where appropriate, including in those contract provisions the requirement that the contractor give a similar notice to all of its subcontractors.

ARTICLE 4-SPECIFICATIONS

§4-101 Maximum Practicable Competition.

All specifications shall be drafted so as to promote overall economy for the purposes intended and encourage competition in satisfying the County's needs, and shall not be unduly restrictive. The Policy enunciated in this Section applies to all specifications including but not limited to, those prepared for the County by architects, engineers, designers, and draftsmen.

§4-102 Qualified Products List

(1) Use. Qualified products lists are an approved list of supplies, services or construction items, described by model or catalogue numbers, which prior to competitive solicitation, the jurisdiction has determined will meet the applicable specification requirements.

§4-103 Brand Name or Equal Specification.

(1) Use. Brand name or equal specifications may be used when the Purchasing Deaprtment determines in writing that:

(a) no other design or performance specification or qualified products list is available;
(b) time does not permit the preparation of another form of purchase description, not including a brand name specification;
(c) the nature of the product or the nature of the County's requirements makes use of a brand name or equal specification suitable for purchasing; or
(d) use of a brand name or equal specification is in the County's best interests.

*(2) **Designation of Several Brand Names.*** Brand name or equal specifications shall seek to designate as many different brands as are practicable, as "or equal" references and shall further state that substantially equivalent products to those designated will be considered for award.

*(3) **Required Characteristics.*** Unless the Purchasing Department determines in writing that the essential characteristics of the brand names included in the specifications are commonly known in the industry or trade, brand name or equal specifications shall include a description of the particular design, functional, or performance characteristics which are required.

*(4) **Nonrestrictive Use of Brand Name or Equal Specifications.*** Where a brand name or equal specification is used in a solicitation, the solicitation shall contain explanatory language that the use of a brand name is for the purpose of describing the standard of quality, performance, and characteristics desired and is not intended to limit or restrict competition.

§4-104 Brand Name Specification.

(1) Use. Since use of a brand name specification is restrictive of product competition, it may be used only when the Purchasing Department makes a written determination that only the identified brand name item or items will satisfy the County's needs.

(2) Competition. The Purchasing Department shall seek to identify sources from which the designated brand name item or items can be obtained and shall solicit such sources to achieve whatever degree of price competition is practicable. If only one source can supply the requirement, the purchase shall be made under Section 3-107 (Sole Source Purchases).

§4-105 Buy American

If a contract is being funded in whole or in part by assistance from a federal agency, then the County shall adhere to the appropriate "Buy American" requirements of the federal agency providing the assistance.

§4-106 Energy Conservation.

If a contract is being *funded* in whole or in part by assistance from a federal agency, then the County's solicitation shall seek to promote energy conservation and shall comply with any mandatory standards and policies which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Public Law 94-163).

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

Part A-Management of Construction Contracting

§5-101 Responsibility for Selection of Methods of Construction and Contracting Management.

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

Part B-Bid Security and Performance Bonds

§5-201 Bid Security

(1) Requirement for Bid Security. Bid security may be required for all competitive sealed bidding for construction contracts when the price is estimated by the Purchasing Department to exceed $25,000. Bid security shall be a bond provided by a surety company authorized to do business in the State of Maryland, or the equivalent in cash, or otherwise supplied in a form satisfactory to the County. Nothing herein shall prevent the requirement of such bonds on construction contracts under $25,000 when the circumstances warrant.

(2) Bid Security Waiver. The Board of County Commissioners acting through the Purchasing Department reserves the right to waive bid security if it is in the County's best interests to do so.

(3) Amount of Bid Security. Bid security shall be in an amount equal to at least 5% of the amount of the bid.

(4) Rejection of Bids for Noncompliance with Bid Security Requirements. When an invitation for bids requires security, noncompliance requires that the bid be rejected unless it is determined that the bid fails to comply only in a non-substantial manner with the security requirements.

(5) Withdrawal of Bids. If a bidder is permitted to withdraw its bid before award as provided in Section 3-101(6) (Competitive Sealed Bidding; Correction or Withdrawal of Bids; Cancellation of Awards), no action shall be had against the bidder or the bid security.

§5-202 Contract Performance and Payment Bonds.

(1) When Required-Amounts. When a construction contract is awarded in excess of $25,000, the

following bonds or security may be required by the County and shall become binding on the parties upon the execution of the contract:

(a) a performance bond satisfactory to the County, executed by a surety company authorized to do business in the State of Maryland or otherwise secured in a manner satisfactory to the County, in an amount equal to one hundred percent (100%) of the price specified in the contract; and

(b) a payment bond satisfactory to the County, executed by a surety company authorized to do business in the State of Maryland or otherwise secured in a manner satisfactory to the County, for the protection of all persons supplying labor and material to the contractor or its subcontractors for the performance of the work provided for in the contract. The bond shall be in an amount equal to one hundred percent (100%) of the price specified in the contract.

*(2) **Bond Waiver.*** The Board of County Commissioners acting through the Purchasing Department reserves the right to waive bonding requirements if it is in the County's best interests to do so.

*(3) **Reduction of Bond Amounts.*** After notice to the Board of Garrett County Commissioners, the Purchasing Department is authorized to reduce the amount of performance and payment bonds to fifty percent (50%) of the contract price for each bond when a written determination is made that it is in the best interests of the County to do so.

*(4) **Authority to Require Additional Bonds.*** Nothing in this Section shall be construed to limit the authority of the County to require a performance bond or other security in addition to those bonds, or in circumstances other than specified in Subsection (1) of this Section.

*(5) **Suits on Payment Bonds-Right to Institute.*** Unless otherwise authorized by law, any person who has furnished labor or material to the contractor or subcontractors for the work provided in the contract, for which a payment bond is furnished under this Section, and who has not been paid in full within ninety (90) days from the date on which that person performed the last of the labor or supplied the material, shall have the right to sue on the payment bond for any amount unpaid at the time the suit is instituted and to prosecute the action for the amount due that person. However, any person having a contract with a subcontractor of the contractor, but no express or implied contract with the contractor furnishing the payment bond, shall have a right of action upon the payment bond upon giving written notice to the contractor within ninety (90) days from the date on which that person performed the last of the labor or supplied the material. That person shall state in the notice the amount claimed and the name of the party to whom the material was supplied or for whom the labor was performed. The notice shall be served personally or by registered or certified mail, postage prepaid, in an envelope addressed to the contractor at any place the contractor maintains an office or conducts business.

*(6) **Suits on Payment Bonds-Where and When Brought.*** Unless otherwise authorized by law, every suit instituted upon a payment bond shall be brought in a court of competent jurisdiction for the county or district in which the construction contract was to be performed.

§5-203 Copies of Bond Forms.

Any person may request and obtain from the County a certified copy of a bond upon payment of the cost of reproduction of the bond and postage, if any. A certified copy of a bond shall be prima facie evidence of the contents, execution, and delivery of the original.

Part C-Fiscal Responsibility

§5-301 Fiscal Responsibility.

Every contract modification, change order, or contract price adjustment under a construction contract with the County shall be subject to approval by the Board of County Commissioners. If funding is provided by a Federal or State funding source additional approval may be required by that source.

Part D-Architectural-Engineering and Land Surveying Services

§5-401 Public Announcement and Selection Process.

*(1) **Public Announcement.*** It is the policy of the County to announce publicly all requirements for architectural-engineering and land surveying services contracts estimated at $15,000 or more and to negotiate such contracts on the basis of demonstrated competence and qualifications at fair and reasonable prices. Adequate public notice of the request shall be given a reasonable notice, not less than fifteen (15) calendar days from the receipt of the proposals. Such notice shall include publication in a newspaper of general circulation for a minimum period of two (2) weeks. In the purchase of architectural-engineering and land surveying services, the Purchasing Department shall request firms to submit a request for proposal including a statement of qualifications and other pertinent information.

*(2) **Selection Process.*** A Selection Committee assembled by the Purchasing Department and the using department will individually read, review and evaluate proposals received based on the evaluation criteria listed in the request for proposals. Once individual evaluations are complete, a short list is generated from the individual evaluations. The Selection Committee may choose to interview any or all of the shortlisted firms as part of the selections process.

*(3) **Negotiation.*** The Selection Committee shall negotiate a contract with the firm considered to be the most qualified for architectural-engineering or land surveying services at compensation which the Selection Committee determines in writing to be fair and reasonable to the County. In making this decision, the Selection Committee shall take into account the estimated value, the scope, the complexity, and the professional nature of the services to be rendered. Should the Selection Committee be unable to negotiate a satisfactory contract with the firm considered to be the most qualified at a price the Selection Committee determines to be fair and reasonable to the County, negotiations with that firm shall be formally terminated. The Selection Committee shall then undertake negotiations with the next most qualified firm and so on until a contract can be negotiated at a fair and reasonable price.

*(4) **Award.*** The Selection Committee will make a recommendation for contract award to the Purchasing Department. The Purchasing Department will review the recommendation of the Selections Committee ad present it to the Board of County Commissioners during its weekly Public Session for final approval.

ARTICLE 6-DEBARMENT OR SUSPENSION

§6-101 Authority to Debar or Suspend.

After reasonable notice to the person involved and reasonable opportunity for that person to be heard, the Purchasing Department, after consulting with the County Attorney and the Board of County Commissioners, is authorized to debar a person for cause from consideration for award of contracts. The debarment shall be for a period of not more than three (3) years. After consultation with the County Attorney, the Purchasing Department is authorized to suspend a person from consideration for award of contracts if there is probable cause to believe that the person has engaged in any activity which might lead to debarment. The causes for debarment include:

(a) conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract;
(b) conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which currently, seriously, and directly affects responsibility as a County contractor;
(c) conviction under state or federal antitrust statutes arising out of the submission of bids or proposals;
(d) violation of contract provisions, as set forth below, of a character which is regarded by the Purchasing Department to be so serious as to justify debarment action:
    (i) deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or
    (ii) a recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts; provided that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be a basis for debarment;
(e) any other cause the Purchasing Department determines to be so serious and compelling as to affect responsibility as a County contractor, including debarment by another governmental entity for any cause listed in this Policy; and
(f) for violation of the ethical standards set forth in Article 12 (Ethics in Public Contracting).

§6-102 Decision to Debar or Suspend.

The Purchasing Department shall issue a written decision to debar or suspend. The decision shall state the reasons for the action taken and inform the debarred or suspended person involved of its rights concerning judicial or administrative review.

§6-103 Notice of Decision.

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

§6-104 Finality of Decision.

A decision under Section 6-102 (Decision to Debar or Suspend) shall be final and conclusive, unless fraudulent, or the debarred or suspended person within 10 days after receipt of the decision takes an appeal to the Board of Garrett County Commissioners or commences a timely action in court in accordance with applicable law.

ARTICLE 7-COST PRINCIPLES

[Reserved]

ARTICLE 8-SUPPLY OR ASSET MANAGEMENT

§ 8-101 Non-Consumable Items.

1) Notification of Surplus Items. If a surplus item is identified by a using department, the department should notify the Purchasing Department. The Purchasing Department will maintain a list of surplus items and can provide the list of surplus items to County departments periodically as they become available. The Purchasing Department will dispose of surplus items in accordance with Section 8-105.

§ 8-102 Vehicles & Mobile Equipment

Each using department purchasing or disposing of new or used vehicles or mobile equipment must notify the County Facilities and Equipment Supervisor.

1) Purchase of New or Used Vehicles and Mobile Equipment. Each using department purchasing new or used vehicles or mobile equipment must notify the County Facilities and Equipment Supervisor and Risk Manager by completing and submitting the Vehicle/Mobile Equipment Asset Management Form. The following items should be completed on the form:

- Process: Addition
- Type: Vehicle/Mobile Equipment/ Trailer/Attachment
- County Department Item Assigned to
- Unit #
- Year
- Make
- Model
- Serial #/VIN#
- License#/Tag#
- Title#
- Manufacturer
- Date Received/Transferred/Sold
- Purchase From/Sold To
- Full Purchase Price

In addition to the completion of the Vehicle/Mobile Equipment Asset Management Form, the using department must also submit the Certificate of Origin or original Title and a copy of the invoice.

2) Disposal of Vehicles or Mobile Equipment. A using department selling or trading in a vehicle or piece of mobile equipment must notify the County Facilities and Equipment Supervisor and Risk Manager by completing and submitting a Vehicle/Mobile Equipment Asset Management Form. The following items should be completed on the form:

- Process: Deletion
- Type: Vehicle/Mobile Equipment/ Trailer/Attachment
- County Department Item Assigned to
- Unit #
- Year
- Make
- Model
- Serial #/VIN#
- License#/Tag#
- Title#
- Manufacturer
- Date Received/Transferred/Sold
- Purchase From/Sold To
- Full Purchase Price
- Current Value

§ 8-103 Real Property

Each using department purchasing or selling real property must notify the County Risk Manager.

1) Purchase of Real Property. Each using department purchasing real property must notify the County Risk Manager by providing the following information:

- Settlement Sheet
- Deed
- Property Address
- Property Intended Use

2) Sale of Real Property. Each using department selling real property must notify the County Risk Manager by providing the following information:

- Purchaser's Name
- Purchase Date
- Acreage
- Purchase Amount

§ 8-104 Capitalization of Fixed Assets

1) The Department of Financial Services capitalizes fixed assets with a value greater than or equal to $5,000.00 based upon Garrett County Government Fixed Asset Procedures.

§ 8-105 Disposition of Surplus Property

Prior to the disposition of any surplus property by the Purchasing Department, the Board of County Commissioners must declare the items as surplus property.

1) Sealed Bids for Surplus Property. The Purchasing Department may dispose of surplus property through the acceptance of sealed bids in accordance with Section 3-101 (Competitive Sealed Bidding). Award will be made to the bidder offering the highest responsive and responsible bid for the surplus property.

2) Public Auction. The Purchasing Department shall be responsible for the disposal of surplus property utilizing an auctioning service for a public auction. Prior to holding a public auction, the Board or County Commissioners shall declare the list of auction items as surplus property. Adequate public notice of the auction should be provided in a newspaper of general circulation outlining the date and time of the auction.

3) Damaged Surplus Property. The Purchasing Department may dispose or authorize other departments to dispose of any damaged surplus property by sending it to Garrett County Department of Solid Waste & Recycling for disposal in the County Landfill.

4) Other Means for Disposal of Surplus Property. The Purchasing Department may dispose of surplus property by recycling or trade-in on new property as authorized by §30.27 A of the County Code.

ARTICLE 9-APPEALS AND REMEDIES

§ 9-101 Bid Protests.

For the purpose of this Section, the following words have the meanings indicated:

1. Interested party means an actual or prospective Bidder, Offeror, or Contractor that may be aggrieved by the solicitation or Award of a Contract, or by the protest.
2. Protestor means any actual or prospective Bidder, Offeror, or Contractor who is aggrieved in connection with the solicitation or the Award of a Contract and who files the protest.
3. Filed means received by the Purchasing Department.

An interested party may protest to Garrett County the award or the proposed award of a contract for supplies, services or construction. The protest shall be in writing and addressed to the Purchasing Department. Protests based upon alleged improprieties of any type in solicitations which are apparent before Bid opening or the closing date for receipt of initial proposals shall be filed prior to said closing date, all other cases Bid protests shall be filed no later than seven (7) calendar days after the basis for protest is known or should have been known, whichever is earlier. Any protest filed after the time limit prescribed above shall not be considered.

a.) The written protest shall include as a minimum the following:

1. The name and address of the Protestor.

2. Appropriate identification of the purchase, and if Contract had been awarded, its number, if known.
3. A statement of reasons for the protest.
4. Supporting exhibits, evidence, or documents to substantiate any claims unless not available within the filing time in which case the expected availability date shall be indicated.

The Purchasing Agent shall submit a copy of the protest to the County Attorney upon receipt of the protest.

b.) Any additional information requested of the Protestor by the County shall be submitted within five (5) days after receipt of notification in order to expedite consideration of the protest. Failure to comply with the request for information by the County may result in a resolution of the protest without consideration of any information which is untimely filed pursuant to such request.

Upon written request, the County, shall make available to any interested party information submitted that bears on the substance of the protest except when information is proprietary or otherwise permitted or required to be withheld by law or regulation.

A decision on a protest shall be made by the County Attorney in writing as expeditiously as possible after receiving all relevant, requested information.

c.) Should the department head of the County Agency originating the Bid or the protestor disapprove of the County Attorney's decision, they may appeal the decision to the County Commissioners with seven (7) days after receipt of the decision. All information used to support the protest and the decision of the County shall be made available to the County Commissioners.

A written decision on the protest shall be made expeditiously by the County Commissioners and deemed the final action on the protest.

§9-102 Contract Claims.

(1) Submission to the Purchasing Department. All claims by a contractor against the County relating to a contract shall be submitted in writing to the Purchasing Department. The contractor may request a conference with the Purchasing Department on the claim. Claims include, without limitation, disputes arising under a contract, and those based upon breach of contract, mistake, misrepresentation, or other cause for contract modification or recision. The Purchasing Department will review the claim, consult with the County Attorney if needed, and advise the Board of County Commissioners of the claim as appropriate.

(2) Notice to the Contractor of the Purchasing Department's or County Attorney's Decision. The decision of the Purchasing Department and/or County Attorney shall be promptly issued in writing, and shall be immediately mailed or otherwise furnished to the contractor. The decision shall state the reasons for the decision reached, and shall inform the contractor of its appeal rights under Subsection (3) of this Section.

(3) Finality of Purchasing Department's or County Attorney's Decision; Contractor's Right to

Appeal. The Purchasing Department's and /or County Attorney's decision shall be final and conclusive unless, within seven (7) calendar days from the date of receipt of the decision, the contractor mails or otherwise delivers a written appeal to the Board of County Commissioners or commences an action in a court of competent jurisdiction.

(4) Failure to Render Timely Decision. If the Purchasing Department and/or County Attorney does not issue a written decision regarding any contract controversy within seven (7) calendar days after written request for a final decision, or within such longer period as may be agreed upon between the parties, then the aggrieved party may proceed as if an adverse decision had been received.

§9-103 Remedies for Solicitations or Awards in Violation of Law.

(1) Prior to Bid Opening or Closing Date for Receipt of Proposals. If prior to the bid opening or the closing date for receipt of proposals, the Purchasing Department, after consultation with the County Attorney, determines that a solicitation is in violation of federal, state, or municipal law, then the solicitation shall be cancelled or revised to comply with applicable law.

***(2) Prior to* Award.** If after bid opening or the closing date for receipt of proposals, the Purchasing Department, after consultation with the County Attorney, determines that a solicitation or a proposed award of a contract is in violation of federal, state, or municipal law, then the solicitation or proposed award shall be cancelled.

(3) After Award. If, after an award, the Purchasing Department, after consultation with the County Attorney, determines that a solicitation or award of a contract was in violation of applicable law, then:

(a) if the person awarded the contract has not acted fraudulently or in bad faith:

(i) the contract may be ratified and affirmed, provided it is determined that doing so is in the best interests of the County; or

(ii) the contract may be terminated and the person awarded the contract shall be compensated for the actual costs reasonably incurred under the contract, plus a reasonable profit, prior to the termination; or

(b) if the person awarded the contract has acted fraudulently or in bad faith, the contract may be declared null and void or voidable, if such action is in the best interests of the County.

ARTICLE 10-COOPERATIVE PURCHASING

§10-101 Authorization to Purchase from State Contracts

The Board of County Commissioners for Garrett County, Maryland retains the right, whenever desirable, to provide for the purchase of materials, supplies, and equipment through the Purchasing Bureau of the Department of General Services in accordance with the provisions of Article 25, §3A, of the Annotated Code of Maryland.

§10-102 Authorization to Purchase from Western Maryland Cooperative Purchasing Agreement

On June 1, 1990, the Board of Garrett County Commissioners entered into a cooperative purchasing agreement with Allegany, Frederick and Washington Counties to form the Western Maryland Regional Cooperative Purchasing Agreement. The Western Maryland Cooperative Purchasing Agreement establishes a committee of purchasing organizations (representatives) in Western Maryland who have agreed to join and adhere to a standard set of procedures. The objective of this Agreement is to allow one organization to issue solicitations for a particular requirement, the specifications of which would represent the needs of all participating organizations. Each participant would then make its own individual award to the successful bidder or offeror. This objective has the effect of lowering administrative costs by participating organizations, avoiding duplication of effort, obtaining better prices through economies of scale, allowing for the exchange of information and expertise, and providing a forum to evaluate the quality of goods and services. It has further benefits of encouraging product improvement and standardization, promoting exchange of technical information and management techniques, and providing a forum for common problem solving. Participation within the WMCPA is voluntary and each participating organization determines for itself whether or not to take part in any cooperative purchasing initiative. The authority to engage in cooperative purchase programs and this agreement is found in each organization's, law, code, ordinance or policy, plus the State Laws of Maryland.

§10-103 Authorization to Assemble a Local Cooperative Purchasing Agreement

The Purchasing Department shall have the power to establish a Garrett County Cooperative Purchasing Committee as authorized by the Board of County Commissioners.

§10-104 Authorization to Purchasing from other Government Contracts

The Board of County Commissioners of Garrett County, Maryland retains the right, whenever desirable, to purchase from awarded contracts by other government organizations as authorized by §30.27 C of the County Code.

ARTICLE 11-ASSISTANCE TO SMALL AND DISADVANTAGED BUSINESSES

§11-101 Local Preference Program

The Board of County Commissioners of Garrett County have implemented a local preference program as authorized by §30.22 of the Garrett County Code. If the State or political subdivision in which a nonresident firm is located gives an advantage to its resident businesses, the County Commissioners may give an identical advantage to the lowest responsive and responsible bid from a local firm over that of the nonresident firm. An advantage may include a percentage preference, an employee residency requirement, or any other provision that favors a local firm over a nonresident firm. The local preference program shall be available to a local firm meaning a business entity that has its principal office in Garrett County or maintains an active business in Garrett County as evidenced by an existing tax account standing in the name of the business and a business license appropriate to the particular business or undertaking of the business. The Board reserves the right to provide in a

solicitation for competitive bids that a local percentage preference is not available under that particular contract. A local preference is not available under any contract if the Board determines that the preference would be inconsistent with the provisions of any applicable Federal or State grant or program.

ARTICLE 12
ETHICS IN PUBLIC CONTRACTING

§12-101 Criminal Penalties.

To the extent that violations of the ethical standards of conduct set forth in this Article constitute violations of the State of Maryland they shall be punishable as provided therein. Such penalties shall be in addition to the civil sanctions set forth in this part. Criminal, civil, and administrative sanctions against employees or non-employees which are in existence on the effective date of this Policy shall not be impaired.

§ 12-102 Employee Conflict of Interest.

It shall be unethical for any County employee to participate directly or indirectly in a purchasing contract when the County employee knows that:

(a) the County employee or any member of the County employee's immediate family has a financial interest pertaining to the purchasing contract; or
(b) any other person, business, or organization whom the County employee or any member of a County employee's immediate family is negotiating or has an arrangement concerning prospective employment is involved in the purchasing contract.

A County employee or any member of a County employee's immediate family who holds a financial interest in a disclosed blind trust shall not be deemed to have a conflict of interest with regard to matters pertaining to that financial interest.

§12-103 Gratuities and Kickbacks.

(1) Gratuities. It shall be unethical for any person to offer, give, or agree to give any County employee or former county employee, or for any County employee or former County employee to solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, or preparation of any part of a program requirement or a purchase request, influencing the content of any specification or purchasing standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter, pertaining to any program requirement or a contract or subcontract, or to any solicitation or proposal therefor.

(2) Kickbacks. It shall be unethical for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract or order.

(3) Contract Clause. The prohibition against gratuities and kickbacks prescribed in this Section shall be conspicuously set forth in every contract and solicitation therefore.

§12-104 Prohibition Against Contingent Fees.

It shall be unethical for a person to be retained, or to retain a person, to solicit or secure a County contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies for the purpose of securing business.

§12-105 Contemporaneous Employment Prohibited.

It shall be unethical for any County employee who is participating directly or indirectly in the purchasing process to become or to be, while such a County employee, the employee of any person contracting with the governmental body by whom the employee is employed.

§12-106 Waivers from Contemporaneous Employment Prohibition and Other Conflicts of Interest.

The Board of County Commissioners may grant a waiver from the employee conflict of interest provision (Section 12-102; Employee Conflict of Interest) or the contemporaneous employment provision (Section 12-105; Contemporaneous Employment Prohibited) upon making a written determination that:

(a) the contemporaneous employment or financial interest of the County employee has been publicly disclosed;
(b) the County employee will be able to perform its purchasing functions without actual or apparent bias or favoritism; and
(c) the waiver will be in the best interests of the County.

§12-107 Use of Confidential Information.

It shall be unethical for any employee or former employee knowingly to use confidential information for actual or anticipated personal gain, or for the actual or anticipated personal gain of any other person.

§12-108 Sanctions.

(1) Employees. The Board of County Commissioners may impose any one (1) or more of the following sanctions on a County employee for violations of the ethical standards in this Article:

(a) oral or written warnings or reprimands;
(b) suspension with or without pay for specified periods of time; or
(c) termination of employment.

(2) Non-employees. The Board of County Commissioners may impose any one or more of the following sanctions on a non-employee for violations of the ethical standards:

(a) written warnings or reprimands;

(b) termination of contracts; or
(c) debarment or suspension as provided in Section 6-101 (Authority to Debar or Suspend).

§12-109 Recovery of Value Transferred or Received in Breach of Ethical Standards.

(1) General Provisions. The value of anything transferred or received in breach of the ethical standards of this Policy by a County employee or a non-employee may be recovered from both employee and non-employee.

(2) Recovery of Kickbacks by the County. Upon a showing that a subcontractor made a kickback to a prime contractor or a higher tier subcontractor in connection with the award of a subcontract or order thereunder, it shall be conclusively presumed that the amount thereof was included in the price of the subcontract or order and ultimately borne by the County and will be recoverable hereunder from the recipient. In addition, that amount may also be recovered from the subcontractor making such kickbacks. Recovery from one offending party shall not preclude recovery from other offending parties.

ARTICLE 13
POLICY ADOPTION

§13-101 Adoption and Implementation of this Policy.

This Policy is adopted and implemented this the 18TH day of SEPT., 2001 by the Board of Garrett County Commissioners.

Attest:

R. Lamont Pagenhardt, County Administrator

Board of Garrett County Commissioners

Frederick A. Holliday, Chairman

Wendell R. Beitzel, Commissioner

Ernest J. Gregg, Jr., Commissioner