

## **PROCUREMENT CODE**

### **ARTICLE 5—GOODS AND SERVICES**

#### **Part A – Methods of Source Selection**

##### **§5-101 Methods of Source Selection.**

Contracts for goods and services shall be awarded following one of the following procurement methods:

1. Small Procurements (up to Fifty Thousand Dollars);
2. Competitive sealed bidding;
3. Competitive fixed priced bidding;
4. Competitive best value bidding;
5. Competitive on-line bidding;
6. Competitive sealed proposals;
7. Sole source procurement;
8. Emergency procurement; and
9. Auction or bankruptcy procurement.

#### **Part B – Small Procurements**

##### **§5-201 Procurements Up to Fifty Thousand Dollars.**

1. For procurement up to fifty thousand dollars (\$50,000) in actual or potential value, the County may follow the procedures in this section; however, procurement requirements must not be artificially divided so as to qualify for a procurement under this section.
2. Competition and Price Reasonableness.
  - a. Purchases not exceeding two thousand five hundred dollars (\$2,500) may be accomplished without securing competitive quotations if the prices are considered reasonable. The Director must annotate the purchase requisition: “Price is fair and reasonable” and sign. The purchases must be distributed equitably among qualified suppliers. When practical, a quotation must be solicited from other than the previous supplier before placing a repeat order. The administrative cost of verifying the reasonableness of the price of purchase “not in excess of” may more than offset potential savings in detecting instances of overpricing. Action to verify the reasonableness of the price need be taken only when the suspects that the price may not be reasonable, comparison to previous price paid, or personal knowledge of the item involved.
  - b. Purchase over two thousand five hundred dollars (\$2,500) but not in excess of ten thousand dollars (\$10,000) may be accomplished using solicitation of written quotes from a minimum of three (3) qualified sources of supply and documentation of the quotes attached to the purchase requisition. The award must be made to the lowest responsive and responsible sources.
  - c. Purchases over ten thousand dollars (\$10,000) and up to fifty thousand dollars (\$50,000) may be accomplished using written solicitation of written quotes, bids, or proposals. Public notice applies to the procurement. A copy of the public notice and written quotes must be attached to the purchase requisition. The award must be

made to the lowest responsive and responsible source or, when a request for proposal process is used, the highest ranking vendor.

### **Part C – Procurements Over Fifty Thousand Dollars**

#### **§5-301 Competitive Sealed Bidding.**

1. *Conditions for Use.* Competitive sealed bidding may be used for contracts reasonably expected to be greater than fifty thousand dollars (\$50,000.00).
2. *Option.* If competitive sealed bidding is used, the Director may issue a request for qualifications and follow the associated procedure.
3. *Requirements.* The competitive sealed bidding process shall require the following:
  - a. An invitation for bids;
  - b. Public notice of the invitation for bids at a reasonable time before the date set for opening bids;
  - c. Secure, unopened storage of bids received prior to the time for opening bids;
  - d. Public bid opening and tabulation; and
  - e. Evaluation of bids in accordance with the solicitation documents, the Code, and the Regulations and Operating Policies.
4. *Award.* If the County decides to go forward with the procurement, the intent to award the contract shall follow completion of the requirements listed above.
5. *Notice.* The Director shall give notice of the intent to award.
6. *Discussion with Vendors.* As provided in the invitation for bids, discussions may be conducted with apparent responsive vendors for the purpose of clarification to assure full understanding of the requirements of the invitation for bids. All bids, in the Director's sole judgment, needing clarification must be accorded that opportunity. Clarification of a bidder's bid must be documented in writing by the Director and must be included with the bid. Documentation concerning the clarification is subject to disclosure upon request.
7. *Negotiations After Unsuccessful Competitive Sealed Bidding.* When bids received pursuant to this provision are unreasonable, or are not independently reached in open competition, or the low bid exceeds available funds as certified by the appropriate fiscal officer, and the Director makes a determination that time or other circumstances will not permit the delay required to re-solicit competitive sealed bids, a contract may be negotiated pursuant to this subsection provided that:
  - a. Each responsible vendor who submitted a responsive bid under the original solicitation is notified of the determination and is given reasonable opportunity to negotiate;
  - b. The negotiated price is lower than the lowest rejected bid received in response to the original solicitation; and
  - c. The negotiated price is the lowest negotiated price offered by any of the responsible vendors who submitted responsive bids to the original solicitation.

#### **§5-302 Competitive Fixed Price Bidding.**

1. *Conditions for Use.* In instances where competitive sealed bidding is not practical or advantageous to the County, the Director may determine in writing that competitive fixed price bidding will be used, and shall then proceed with competitive fixed price bidding.

2. *Competitive Fixed Price Bidding.* The purpose of competitive fixed price bidding is to provide multiple sources of specific goods or services based on a preset maximum price which the County will pay for such goods or services.
3. *Requirements.* Competitive fixed price bidding shall require the following:
  - a. An invitation to bid, including what the County has established as the maximum amount the County will pay for the goods or services desired;
  - b. Public notice of the invitation to bid; and
  - c. Evaluation of each response to determine whether the vendor is responsible and the bid is responsive
4. *Award.* If the County decides to go forward with the procurement, the award shall follow completion of the requirements listed above and shall be made to all responsible vendors with responsive bids. The contract shall include a provision that contains the basis of the award sufficient to satisfy external audit.
5. *Discussion with Vendors.* The Director may discuss the solicitation with apparent responsible vendors with responsive bids to assure the vendor understands fixed price bidding. All vendors whose bids, in the Director's sole judgment, need clarification shall be accorded such an opportunity.
6. *Bids Received After Award.* Vendors not responding to the initial fixed price bid may be added to the awarded vendors list provided the vendor furnishes evidence of responsibility and responsiveness to the County's original fixed price bid as authorized by the solicitation.
7. *Remedies.* The failure of a specific vendor to receive business, once it has been added to the awarded vendors list, shall not be grounds for a breach of contract action.

**§5-303 Competitive Best Value Bidding.**

1. *Conditions for Use.* In instances where competitive sealed bidding is not practical or advantageous to the County, the Director may determine in writing that competitive best value bidding will be used, and shall proceed with competitive best value bidding.
2. *Competitive Best Value Bidding.* The purpose of competitive best value bidding is to allow factors other than price to be considered in the determination of award for specific goods or services based on pre-determined criteria identified by the County.
3. *Requirements.* Competitive best value bidding shall require the following:
  - a. An invitation to bid, including a list of the evaluation factors to be used and the numerical weighting of each factor;
  - d. Public notice of the invitation to bid at a reasonable time before the date set for opening bids;
  - e. Secure, unopened storage of bids received prior to the time for opening bids;
  - b. Public bid opening and release of the names of participating vendors; and
  - c. Evaluation of bids in accordance with the solicitation documents, the Code, and the Regulations and Operating Policies.
4. *Award.* If the County decides to go forward with the procurement, the intent to award the contract shall follow completion of the requirements listed above and shall be to the responsible vendor with a responsive bid determined by Council to be most advantageous to the County, taking into consideration all evaluation factors set forth in the invitation to bid and the Director's rankings. The contract file shall contain the basis on which the award is made and must be sufficient to satisfy external audit.

5. *Notice.* The Director shall give notice of the intent to award.
6. In response to a request, the director shall provide cost information after issuance of the award.
7. *Evaluation.*
  - a. *Factors.* Cost must be a factor in evaluating and making an award and cannot be weighted at less than sixty percent (60%). Best value bid evaluation factors may include, but are not limited to, any of the following as the Director may determine:
    - i. Operational cost that the County would incur if the bid is accepted;
    - ii. Quality of the product or service, or its technical competency;
    - iii. Reliability of delivery and implementation schedules;
    - iv. Maximum facilitation of data exchanged and system integration;
    - v. Warranties, guarantees, and return policy;
    - vi. Vendor financial stability;
    - vii. Consistency of the proposed solution with the County's planning documents and announced strategic program direction;
    - viii. Quality and effectiveness of business solution and approach;
    - ix. Industry and program experience;
    - x. Prior record of vendor performance;
    - xi. Vendor expertise with engagement of similar scope and complexity;
    - xii. Extent and quality of the proposed participation and acceptance by all user groups;
    - xiii. Proven development methodologies and tools; and
    - xiv. Innovative use of current technologies and quality results.
  - b. *Selection and Ranking.* Bids shall be evaluated by using only the criteria stated in the best value bid and by adhering to the weightings assigned. All evaluation factors, other than cost, will be considered prior to determining the effect of cost on the score for each participating bidder. Once the evaluation is complete, the Director shall rank all responsible and responsive bidders from most advantageous to least advantageous to the County, considering only the evaluation factors stated in the best value bid.
8. *Discussion with Responsive Vendors.* Discussions may be conducted with apparent responsive vendors to assure understanding of the best value bid. All bidders whose bids, in the Director's sole judgment, need clarification shall be accorded such an opportunity.

### **§5-304 Competitive Sealed Proposals.**

1. *Condition for Use.* In instances where competitive sealed bidding is not practical or advantageous to the County, the Director may determine in writing that competitive sealed proposals will be used, and shall proceed with competitive sealed proposals.
2. *Request for Qualifications.*
  - a. Prior to soliciting proposals, the Director may issue a request for qualifications from prospective vendors. This request shall contain at a minimum a description of the scope of the work to be solicited and shall state the deadline for submission of information and how prospective vendors may apply for consideration. The request shall require information only on a vendor's qualifications, experience and ability to perform the requirements of the contract.
  - b. After receipt of the responses to the request for qualifications, the Director shall rank the vendors from most qualified to least qualified on the basis of the information provided.
  - c. The Director shall then solicit proposals from at least the top two (2) prospective vendors by means of a request for proposals.
3. *Requirements.* Competitive sealed proposals shall require the following:
  - a. An request for proposals, including a list of the evaluation factors to be used;
  - b. Public notice of the request for proposals at a reasonable time before the date set for opening the proposals;
  - c. Secure, unopened storage of proposals received prior to the time for opening proposals;
  - d. Public proposal opening and release of the names of participating vendors; and
  - e. Evaluation of bids in accordance with the solicitation documents, the Code, and the Regulations and Operating Policies
4. *Award.* If the County decides to go forward with the procurement, the intent to award the contract shall follow completion of the requirements listed above. Award shall be made to the vendor whose proposal the Council determines to be the most advantageous to the County taking into consideration the evaluation factors set forth in the request for proposals and the Director's rankings. This vendor shall be referred to as the highest ranked vendor. The contract file shall contain the basis on which the award is made and be sufficient to satisfy external audit.
5. *Notice.* The Director shall give notice of the intent to award.
6. In response to a request, the Director shall provide cost information after issuance of the award.
7. *Evaluation Factors.* The request for proposals shall state the factors and the relative importance of the factors to be considered in evaluating proposals, but shall not require a numerical weighting for each factor. Price may, but need not, be an evaluation factor.
8. *Discussion with Vendors.* As provided in the request for proposals, the Director may discuss with vendors who submit proposals determined to be reasonably susceptible of being selected for award to obtain clarification to assure full understanding of, and responsiveness to, the solicitation requirements. All vendors whose proposals, in the Director's sole judgment, need clarification must be accorded that opportunity.
9. *Selection and Ranking.* Proposals must be evaluated using only the criteria stated in the request for proposals. Once evaluation is complete, the Director shall rank all responsive

vendors from most advantageous to least advantageous to the County, considering only the evaluation factors stated in the request for proposals.

10. *Negotiations.* After Council selects the highest ranked vendor, the Director shall proceed to negotiate with the highest ranked vendor on price, on matters affecting the scope of work, so long as the changes are within the general scope of the request for proposals, or on both. If the Director cannot negotiate a satisfactory contract with the highest ranking vendor, the Director shall cause the matter to be re-submitted to Council for additional rankings. Under those circumstances, the Director may negotiate with the second, and then the third, and so on, ranked vendors to such level of ranking the Director determines would be advantageous to the County. During the negotiation process, if the Director is unsuccessful with all ranked vendors in the first round of negotiations, (a) the Director may reopen negotiations with any vendor with whom s/he previously negotiated; or (b) the Director may make changes within the general scope of the request for proposals and may provide all responsive vendors an opportunity to submit their best and final offers.

### **Part D – Other Methods**

#### **§5-401 Competitive On-Line Bidding.**

1. *Conditions for Use.* When the Director determines that on-line bidding is more advantageous to the County than other methods, the Director may use competitive on-line bidding for procurement.
2. *Bidding Process.* The solicitation must designate both an opening date and time and a closing date and time. The closing date and time need not be a fixed point in time, but may remain dependant on a variable specified in the solicitation. At the opening date and time, the Director must begin accepting real-time electronic bids. The solicitation must remain open until the closing date and time. The County may require vendors to register before the opening date and time and, as a part of that registration, to agree to any terms, conditions, or other requirements of the solicitation. Following receipt of the first bid after the opening date and time, the lowest bid price must be posted electronically to the internet and updated on a real- time basis. At any time before the closing date and time, a vendor may lower the price of its bid, except that after opening date and time, a vendor may not lower its price unless that price is below the then lowest bid. Bid prices may not be increased after opening date and time. Except for bid prices, bids may be modified or withdrawn only as otherwise allowed by this Code. If a bid is withdrawn, a later bid submitted by the same vendor may not be for a higher price. If the lowest responsive bid is withdrawn after the closing date and time, the Director may cancel the solicitation in accordance with this Code or reopen electronic bidding to all previously bidding vendors by giving them notice of the new opening and closing dates and times. Notice that electronic bidding will be reopened must be given as specified in the solicitation.

#### **§5-402 Sole Source Procurement.**

1. *Condition for Use.* Sole source procurement is permissible only if the item to be procured is available from a single supplier. An item to be procured for a particular proprietary item does not justify sole source procurement if there is more than one (1) potential vendor for that item.

2. *Requirements.* The Director shall make the initial determination as to whether a procurement should be pursued as a sole source and shall include in the determination an explanation as to why no other vendor is suitable or acceptable to meet the need. If the Director's determination is that sole source procurement should be pursued, the Director shall present the determination to the deputy administrator in the Director's chain of command. The deputy administrator shall accept or reject the Director's determination. If accepted, the deputy administrator and the Director shall present the determination to the Administrator for acceptance or rejection. If the Administrator accepts the determination, then the Director shall proceed with sole source procurement, including negotiations with the vendor as to price, delivery, and terms.

#### **§5-403 Emergency Procurement.**

1. *Emergency Procurement.* Notwithstanding any other provision of this Code, the Administrator may make or authorize others to make emergency purchases when there exists a threat to public health, welfare, or safety; provided that such emergency procurement shall be made with such competition as is practicable under the circumstances. A written determination of the basis for the emergency and for the selection of the particular contractor should be included in the contract file.
2. *Definition of Emergency Conditions.* An emergency condition is a situation, which creates a threat to public health, welfare, or safety such as floods, hurricanes, epidemics, riots, equipment failure, or such other reason as may be proclaimed by the Administrator or the Council. The existence of such condition creates an immediate and serious need for supplies, services, or construction that cannot be met through normal procurement methods and the lack of which would seriously threaten the functioning of the County, the preservation or protection of County property, or the health or safety of any person.

#### **§5-404 Participation in Auction or Sale of Supplies from Bankruptcy.**

The County may elect to participate in an auction or a sale of supplies from a bankruptcy. The Director shall (a) survey the needed items being offered to ascertain their condition and usefulness, (b) determine a fair market value for new like items through informal quotes, (c) determine the fair market value from similar items considering age and useful life, and (d) estimated repair cost and delivery cost, if any, of the desired items. Using this information, the Director shall recommend and obtain a maximum price that the County can pay for each item desired to the appropriate authority pursuant to §4-101. At the auction or sale, the Director shall not exceed the authorized maximum price.