



FREMONT COUNTY

PROCUREMENT POLICY

2011

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1 GENERAL PROVISIONS

1.1 Purpose of Procurement Policies Manual

County government was created by its taxpayers and exists to serve its taxpayers.

The public must have confidence that public funds are spent prudently, on its behalf, and not for the personal benefit of County employees, officials, or their friends. The deliberate elements of actual or perceived conflict of interest, fraud and abuse can be destructive to the public trust. The policies incorporated within should:

- Provide a combined centralized and decentralized procurement program encompassing nationally approved principles and practices.
- Be reviewed, thoughtfully and regularly, to ensure the utility of procurement statutes and for periodic modifications for improvements that will enhance the efficiency and effectiveness of the procurement function.
- Promote and encourage ethical management and efficiency in County procurement procedures.

The purpose of this manual is to establish policies that will be used to:

- Simplify, clarify and modernize Fremont County's procurement practices.
- Establish consistent procurement procedures within all County departments.
- Bolster public confidence in public procurement procedures.
- Ensure the fair and equitable treatment of all persons dealing with the County procurement system.
- Foster effective broad-based competition within the free enterprise system.
- Provide increased economy in County procurement activities.
- Maximize the procurement value of County funds.
- Safeguard the high quality and integrity of the procurement system.
- Ensure that expenditure of public funds (including Federal and State funds) complies with the terms and conditions of the funding source. If Federal or State requirements conflict with the provisions of this Manual, nothing in the Manual shall prevent the County from complying with the terms and conditions of the Federal or State requirements.

The Fremont County Manager presents this manual to promote understanding by employees, vendors, contractors, and the public regarding the procurement of goods and/or services on behalf of the County. This manual covers the policies of the County. These policies are promulgated in accordance with resolutions approved by the Fremont County Board of County Commissioners (BOCC).

Because the County buys diverse services and commodities to support its operation, it uses a combined centralized and decentralized procurement system. These policies set forth the following elements of a centralized/decentralized procurement function:

Centralized: These policies are to be followed by anyone who has the authority to act as an agent of the County in the procurement of all goods and services regardless of the dollar value.

Decentralized: These policies are for the benefit of County personnel responsible for the Procurement of goods and services for their departments in an amount up to \$5,000, which amount was set by the Board of County Commissioners.

1.2 Public Procurement

Procurement in the public sector is the process through which a government acquires goods and services. The terms “Procurement” and “Purchasing” are often used interchangeably. However, strictly speaking, “Purchasing” is only one of three stages of the procurement cycle.

The three stages of procurement are:

1. ***Planning and scheduling:*** Procurement activities to meet program and budgetary objectives;
2. ***Source selection:*** (Purchasing), the process through which solicitations are issued, advertisements run, vendors selected, and goods or services received; and
3. ***Contract administration:*** Enforcement of the terms of the purchase agreement or contract and payment of invoices.

One of the most important rules of public procurement to remember is that each procurement action results in a legal contract between the County and the supplier. Each procurement action is a legal action. Public procurement activities are governed by common law, by the Uniform Commercial Code (UCC), by government procurement laws and ordinances and by case law. Thus, those persons making procurement decisions are subject to legal constraints (and exposure) well beyond what other County officials may routinely experience.

1.3 Conduct when dealing with vendors

When performing Procurement duties on behalf of the County, it is important to:

- Deal with suppliers fairly.
- Do not play the “meet or beat” game with pricing among bidders.
- Offer to give equal assistance to all suppliers and potential vendors.
- Be certain to make Procurement records open and available to anyone requesting information. This excludes information you receive marked “Proprietary Information” or “Confidential” (C.R.S. 24-72-203 and 72-204 Public Records).
- Make certain solicitation activities are truly competitive.
- State the award criteria in the terms of the solicitation and do not change those criteria without each bidder’s knowledge.
- No preference should be given, goods or services should not be called proprietary or sole source unless it is determined that they are and that determination can be documented.
- No subjective favoritism is permitted; for example, statements like “We have always bought from that vendor” are reasoning that does not encourage or allow for competition.

- Be certain to give the same kind of service to internal customers and external suppliers as you expect to receive from them.

Remember that the ability to make purchases on behalf of the County does not entitle the purchaser to any kind of special personal privileges from the vendor and no professional buying for the County should be, in any way, tied to any personal purchases at any time.

As a reminder, ***PERCEPTION IS EVERYTHING***. Even if a procurement decision is sound, the method of determination should be documented and will be open to public inspection. If your decision is perceived to be less than fair to all competitors, then the perception becomes the reality to the unsuccessful bidders. And, if the opinion is that you, as a purchaser for the County, have “favorite companies you always do business with,” your job is to set the record straight with all who may have this complaint. It is important that awards are made based on competition or the best value for the County, that the reason(s) for those awards is documented and defensible, and that your decision is based on fact and is made in the best interest of the County.

1.4 Procurement Records and Information

Public access to procurement information: Procurement information shall be a public record and shall be available to the public, as provided in C.R.S. 24-72-203 and 24-72-204 Public Records.

Copies of procurement information: Copies of procurement information, subject to public access, are available to the public upon written request.

Retention of procurement records: All procurement records shall be retained and disposed of in accordance with records retention guidelines and schedules. All original procurement records for the current year and two (2) prior years are kept in the Department.

1.5 Definitions

The terms defined below shall have the following meanings whenever they appear in this manual, unless the context in which they are used clearly requires a different meaning or a different definition is prescribed for a particular section thereof.

AWARD: The acceptance of a bid or proposal and may include the presentation of a proposed written agreement for performance of the contract.

AUTHORIZED SIGNATURES: Each County department head shall designate individuals in their department who are authorized to sign purchase documents, unless it is the department Director or Elected Official. The Finance Department maintains a listing of authorized signatures that it uses to control authorization for Procurement. All documents received in the Finance Department without the proper authorized signature will be returned to the County department for correction.

BEST VALUE AWARD: Purchase based on service and technical elements of a bid or proposal along with the cost/price element.

BOARD OF COUNTY COMMISSIONERS (BOCC): Board of elected officials representing the three (3) districts of Fremont County.

BUSINESS: Any corporation, limited liability company, partnership, individual, sole proprietorship, joint-stock company, joint venture, or other private legal entity.

BUYER: A County department employee who is authorized by their department head to perform purchasing duties on behalf of that department: (a) for purchases in the amount of \$5,000 or less; or (b) to obtain quotes from vendors for purchases greater than \$5,000 and up to \$25,000 which are submitted to the County Manager for approval and issuance of a Purchase Order.

CHANGE ORDER: A written order, signed by the County Manager, directing the vendor to make changes to the original purchase order and/or contract. A Change Order shall be prepared before the requested change is made and the change is not to be performed by the vendor until the Change Order is properly approved and the Purchase Order or Contract amended to reflect the requested change.

CONSTRUCTION: The process of building, altering, repairing, improving, or demolishing any County structure or building or any other County improvements of any kind to any County real property.

CONTRACT: Any type of agreement, regardless of what it may be called, for the procurement or disposal of supplies, services or construction.

CONTRACT AMENDMENT: Any written alteration of specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provision of a contract accomplished by mutual action of the parties of the contract.

CONTRACTOR: Any person having a contract with the County.

FREMONT COUNTY: A Subdivision of the State of Colorado.

INVITATION FOR BIDS (IFB): All documents, whether attached or incorporated by reference, utilized for soliciting price bids for a product/service requirement.

PROCUREMENT: Buying, purchasing, renting, leasing, or otherwise acquiring any supplies, services or construction. Procurement 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 contracts and all phases of contract administration.

PROFESSIONAL SERVICES: Services which are essentially intellectual in character and which include analysis, evaluation, prediction, planning, or recommendation. Professional services involve extended analysis, the exercise of discretion and independent judgment in their performance, and an advanced, specialized type of knowledge, expertise, or training customarily acquired either by a prolonged course of study or equivalent experience in the field. Professional services include, but are not limited to, services performed by accountants, auditors, analysts, consultants, lawyers, physicians, planners, artists, engineers, and architects. The preferred method of procurement of Professional Services is using an RFP.

PROPRIETARY INFORMATION: Subject to the Colorado Revised Statutes Open Records Act, information or data describing technical processes, mechanisms, or operational factors that a business wishes to keep confidential and restricted from public access.

PUBLIC EMPLOYEE: An individual drawing a salary from a governmental body or a non-compensated individual performing personal services for a governmental body.

PURCHASE ORDER: Legal authorization for a purchase of goods/services from a vendor. Acceptance of a purchase order by the vendor constitutes a contract.

PURCHASE REQUISITION: Request from a department that a contract be entered into for a specific need and includes the description of a requested item or service, delivery schedule, transportation data, suggested source of supply and information supplied for the making of a written determination.

REQUEST FOR PROPOSALS (RFP): All documents, whether attached or incorporated by reference, utilized for a formal solicitation for technical and pricing proposals for a product/service requirement that includes the evaluation of the proposals received and recommendation of an award by an evaluation committee.

REQUEST FOR INFORMATION (RFI): All documents, whether attached or incorporated by reference, utilized for soliciting technical or specific information (without pricing) based on a product/service requirement.

REQUEST FOR (STATEMENT OF) QUALIFICATIONS (RFQ): All documents, whether attached or incorporated by reference, utilized to solicit technical or specific information (without pricing) to ascertain the qualifications of vendors who may potentially be able to provide a product/service requirement.

REQUEST FOR QUOTE (RFQ): All documents, whether attached or incorporated by reference, utilized to solicit price quotes for a product/service requirement in a less formal procedure than the Request For Proposals.

SERVICES: The furnishing of labor, time or effort by a contractor not involving the delivery of a specific end product other than reports that are merely incidental to the required performance.

SPECIFICATIONS: A description of the physical characteristics, functional characteristics or the nature of supplies or services to be purchased. Specifications are created to fulfill the requirements of a department, to assure maximum practicable competition and to obtain the best performance at the lowest possible cost, consistent with the best quality.

SUPPLIES: All property including, but not limited to, equipment, materials and insurance. The term does not include land, water or mineral rights, workers' compensation insurance or benefit insurance for County employees.

2 ADMINISTRATIVE MATTERS

2.1 Applicability

Policies set forth in this manual shall apply to all publicly funded purchases entered into by the County. Contracts funded, in whole or in part, with federal assistance monies shall comply with C.R.S. 24-111-103. Compliance with Federal Requirements, which states:

When a purchase involves the expenditure of federal assistance or contract funds, the executive director of the department of personnel or the head of a Procurement department shall comply with the appropriate federal law and the rules and regulations promulgated pursuant to such law, which are mandatorily applicable.

Policies set forth in this manual shall apply to all employees acting as agents of the County for the purpose of procurement of goods and/or services. Any employee who expends County funds: (a) for personal use; (b) without the written approval of his/her manager; (c) without being authorized to act as an agent of the County; or (d) without following the procedures as set forth by the BOCC will be subject to disciplinary action(s).

2.2 Purchase order & contract signatory authorities & approval thresholds

Only the Board of County Commissioners (BOCC) has the authority, or may designate the authority, to commit funds. The Board of County Commissioners, by resolution, has authorized spending limits as follows:

INTERNAL COUNTY DEPARTMENTS:	\$.01 - ≤\$5,000
COUNTY MANAGER:	>\$5,000 - ≤\$25,000
BOARD OF COUNTY COMMISSIONERS APPROVAL	>\$25,000

The BOCC, the County Manager and other appropriate County officials shall be kept apprised of procurement activities. The BOCC may approve/reject recommendations made for approval at its discretion.

The County Manager has requested each County department designate a buyer for its area, unless it is the department Director or Elected Official. Authority has been granted for each designated department buyer or department Director / Elected Official to transact purchases up to \$5,000 for items that have been approved in the County Budget.

Further, the designated buyer or department Director / Elected Official has been granted the authority to obtain quotes for purchases of \$5,000 to \$25,000 on a purchase order for items that have been approved in the County Budget. Once the quotes have been received, a purchase order – along with copies of the quotes, must be sent to the County Manager for approval. A purchase order will be processed by the Finance Department authorizing the vendor to provide the goods and/or services requested.

Professional Services up to a limit of \$25,000 may be procured without benefit of competition.

The procurement of goods or services exceeding an annual requirement of \$25,000 must be competitively solicited with formal procurement methods.

Any department requiring assistance for any purchase, regardless of the estimated cost, should contact the County Manager or the Finance Department.

2.3 Changes to the manual

All policy changes shall be made by BOCC approved resolution(s) and incorporated herein. Grammar and/or punctuation changes made for clarification or easier interpretation may be made by the County Manager providing no policy(s) is affected by the change(s).

2.4 Requirement of good faith

It is the policy of the County that all parties involved in the negotiation, performance or administration of all County procurement actions be performed in good faith.

2.5 Supplementary general principles of law applicable

Unless otherwise stated within specific provisions of this manual, the principles of law and equity, including the Uniform Commercial Code (UCC), and any law relative to a contract, department fraud, misrepresentation, duress, coercion, mistake or bankruptcy shall supplement the provisions as stated.

2.6 Department representative for procurement & contract requirements

Department heads of each department shall appoint a responsible and qualified employee(s) who shall assume the duties of liaison between their department and the Finance Department. The person, hereinafter referred to as the procurement/contracts representative, shall be responsible for the proper initiation of all purchasing matters concerning their departments, for the supervision of all receiving procedures and handling inventory for their departments. All department heads shall make provisions to appoint an alternate in order to ensure that this program is maintained during the procurement/contracts representative's absence. The Finance Department shall be advised by each department head of the name of the individual(s) who is designated as its representative.

2.7 Minority business enterprises

No provision is made in these policies for preferences or set-asides for minority or women owned businesses. It is, however, the policy of the County to make a special effort to solicit and encourage small, minority or women owned business participation for County purchases or contracts.

2.8 Local business preference

No provision is made in these policies for dollar percentage or other types of preferential considerations for local vendors or contractors. It is, however, the policy of the County to

solicit bids from local suppliers whenever and wherever such competitive local sources exist, and where no sacrifice or loss in price or quality would result. In the event of a tie bid between a local vendor and an out of town vendor, award will be made to the local vendor if all factors, including price, quality, terms, and delivery are determined to be equal.

2.9 Equal opportunity

Each Department shall be responsible for ensuring the procurement of products, commodities, and services are in a manner that affords all responsible businesses a fair and equal opportunity to compete.

2.10 English only provision

All documentation must be in English for the submission of a bid or proposal; interviews or presentations that are required as part of the solicitation process; and presentations to the public, unless otherwise requested.

2.11 Conflict of interest (professional services)

Contracts or purchase orders will not be awarded to consultants, engineers, architects, or other professionals, for contract administration services if they were paid for actual design, or specification preparation of the subject project by the County, nor is a contractor or any affiliated firm of that contractor, allowed to bid on contracts in which they are being paid for contract oversight, without written consent or approval from the County Manager. In no event shall the consultant or contractor have full authority for approving change orders or obligating the County financially on the contract for which they are providing oversight.

2.12 Conflict of interest (employee owned business)

Fremont County shall not contract for goods or services for any department if the contract is with an employee of that department.

Furthermore, contracting for goods or services with an employee, administrative officer, member of the employee's immediate family, or a company which is owned in whole or part by an employee, administrative officer, or a member of his/her immediate family, or a company in which an employee, administrative officer, or a member of his/her immediate family has a financial interest (as defined below), is permitted providing strict adherence to the following requirements:

- The County Manager shall be notified immediately in writing of such an ownership interest or financial interest.
- No contract for goods or services shall be written to an employee owned business if it could be construed or there is an appearance that the County employee owned business has an advantage over other competitors.
- No solicitation of business by the employee shall take place during his/her normal duty hours.
- All purchases or contracts involving employee owned businesses, regardless of estimated cost, shall be competed by the County Manger.

DEFINITIONS: For the purpose of this provision,

- "owned in part" means having an ownership interest of more than 10% of the business.
- "Financial Interest" means any interest in the business by means of a loan or other evidence of indebtedness, in excess of 10% of said business's outstanding indebtedness.
- "Immediate family" is defined as a spouse, parent, child, or sibling.

2.13 Protests and claims

Fremont County recognizes two (2) types of grievances. These are Protests and Claims. The difference between the two is:

- A **protest** is filed *prior* to an award of a bid or proposal.
- A **claim** is filed *after* the award (or rejection) of a bid or contract.

When submitting a protest or a claim to the Department, the aggrieved party bears the burden of complying with all applicable procedures. An interested party may obtain a copy of the procedure upon request.

A protest or a claim must be received by the Department in writing within seven (7) business days from the day when the supplier knew *or should have known* of the facts giving rise to the aggrieved issue. Protests or claims received after the seven (7) business days will not be formally addressed.

Before a protest and/or claim is submitted, it is recommended that the aggrieved party contact the County Manager to discuss the issue and attempt to resolve it in an informal manner. Try to resolve all controversies by mutual agreement between the parties involved. However, if the issue cannot be resolved, the following constitute the applicable procedures to submit a protest or claim.

2.14 Protest procedure

A protest may be submitted on any phase of the solicitation of an Invitation For Bids (IFB) or Request for Proposals (RFP) up to and including the date/time of bid and/or proposal opening, and through the date of award. Protests consist of written objections by an interested party to a solicitation for bids/ proposals by the County or cancellation of the solicitation. Matters regarding County policies and procedures are not subject to this policy.

Reasons for protest *may* include, but may not be limited to:

- The preparation of the specifications
- Insufficient time to respond
- Restrictive bonding requirements
- Excessive or restrictive qualification requirements
- Evaluation criteria

When submitting a protest, the party *must*:

- Identify the IFB or RFP number and title
- Date the protest
- Describe the aggrieved issue

- Submit one (1) original and two (2) copies of the protest
- Deliver it to the County Manager

The County Manager will send a copy of the protest to the County Attorney and the Department affected by the protest. The County Manager will review the issue with the appropriate staff, which shall include the County Attorney. Within seven (7) business days, the County Manager will reply, in writing, to the aggrieved party. The County Manager is the only person authorized to respond to the protest. The reply shall state the reasons for the decision reached. Specific findings of fact are not required, but if made, shall not be binding in any subsequent proceeding. The decision of the County Manager is final.

2.15 Claims

A claim consists of a written objection by an interested party to a bid or contract awarded or rejected by the Board of County Commissioners as a result of an Invitation For Bids (IFB) or Request for Proposals (RFP).

When submitting a claim, the party *must*:

- Identify the IFB or RFP number and title
- Date the claim
- State the specific reason(s) for the claim
- Submit one (1) original and two (2) copies of the protest
- Deliver it to the County Manager

The County Manager will send the original to the County Attorney. The County Manager will retain one (1) copy and one (1) copy will be sent to the Department affected by the claim. The County Attorney will review the claim with the appropriate staff. Commencement of the bid or contract shall be halted until resolution of the claim. Within seven (7) business days, the County Attorney will reply, in writing, to the aggrieved party. The County Attorney is the only person authorized to respond to the claim. The decision of the County Attorney is final.

2.16 Reconsiderations

When an aggrieved party does not agree with the final decision of the County Manager (*in the case of a protest*) or the County Attorney (*in the case of a claim*), the party must submit, in writing within seven (7) business days from the date of the final decision, the specific reason(s) for the disagreement. The party must include all related information pertaining to the original protest or claim. An original and three (3) copies must be sent to the Board of County Commissioners (BOCC) *in care of the County Attorney*. The County Attorney will present the protest or claim to the BOCC for reconsideration.

The BOCC shall have fifteen (15) business days to send its response to the County Attorney.

The County Attorney shall have five (5) business days to mail the response to the aggrieved party on behalf of the BOCC. The decision of the BOCC is final.

3 METHODS OF SOURCE SELECTION

3.1 Procurement methods not requiring formal solicitation

All purchases and contracts shall be procured competitively if the aggregate total is more than \$5,000, with the exception of purchases or contracts made using the following exemptions. The applicable exceptions must be cited in a memo placed in the file for audit purposes.

Examples of these exceptions are:

- Purchases made from another contract or agreement written by another Federal, State, County, City government agency, or government cooperative for identical goods or services. The agreement or contract must have been formally competed or renewed within the last 12 months by the Federal, State, County or City Government Agency.
- Purchases directly from federal, state, county or other local government units.
- Subscriptions for magazines, books, or periodicals.
- Professional services up to \$25,000 annually with justification approved by the County Manager.

3.2 Small Purchases

Expenditures for the procurement of supplies, equipment, materials, or services having an estimated value of less than \$25,000 may be made on the open market by informal procurement methods, without public notice and without following formal procurement methods. Procurement requirements shall not be artificially divided so as to constitute a small purchase under this policy (C.R.S. 24-103-204).

The types of informal procurement methods are:

Single Quote. A single quote may be obtained to purchase goods in the amount of \$5,000 or less. The department should request that the vendor provides a written quote containing all details of the purchase, i.e., date of delivery, freight costs, discounts, warranty, etc. It is suggested that, when time allows, you obtain competitive quotes, either written or by telephone, to insure that you are getting the best value for the County.

Telephone Quotes. Telephone bids may be used to purchase goods/services, including those goods whose daily pricing fluctuates under changing market conditions, such as the purchase of petroleum fuels, or during a declared emergency. As a standard procedure (not an emergency), a “no bid” shall not meet the requirement of a responsible telephone bid to justify a single bid received. The caller should make every effort to obtain at least two (2) competitive bids.

Request for Quotes. A Request for Quotes should be used to purchase goods in excess of \$5,000 and up to and including the amount of \$25,000 with an attempt to send out to at least three (3) qualified vendors. The Request for Quotes should be sent out to at least three (3) qualified vendors. A “no bid” shall not meet the requirement of a responsive bid. The department will then receive and tabulate the vendor responses. Award shall be

made to the vendor offering the lowest responsive bid based upon the best value determination to the County.

The department shall then forward a copy of the original Request for Quotes and all original responses to the County Manager with a purchase requisition requesting approval of the purchase.

3.3 Technology, fleet and facilities procurements

All technology purchase requests, except for consumable items, must include the signature of the Finance Director and the Information Technology Administrator prior to being submitted to the County Manager. The Information Technology Department will review each request to determine the correctness of all the systems issues, including compatibility, support, architectural standards, implementation and integration capabilities. The Finance Department will insure the funds are available and will not allow any expenditures involving technology without the review and system approval of the Information Technology Department. Once reviewed by Finance and Information Technology Departments, the request will be processed through the County Manager according to the established purchasing guidelines.

The same process will be followed for all vehicle purchases where requests must be submitted to the DOT Fleet Supervisor prior to submitting the request to the County Manager.

Furthermore, all requests for purchases & professional services involving County facilities, i.e., leases and real estate transactions; utilities service; remodeling and changes to offices and work areas to include design and construction; repair & maintenance; and custodial services, must be submitted to the Facilities Department for approval prior to submitting the request to the County Manager.

3.4 Sole source procurement

A sole source (non-competitive) procurement is permissible if a requirement is available from only a single supplier. A requirement for a particular proprietary item does not justify sole source procurement if there is more than one potential bidder or offer or for that item or service.

Some circumstances that could necessitate a sole source procurement are:

- The purchase of technical equipment for which there is no competitive product and which is available only from one supplier.
- The purchase of professional services from a vendor who is uniquely qualified to provide such services.
- The purchase of a component or replacement part for which there is no commercially available product and which can be obtained only from the manufacturer.
- The purchase of an item where compatibility is the overriding consideration.
- The purchase of a used item which becomes immediately available and is subject to prior sale.
- The purchase of a particular product for trial or testing.

- The use of other than OEM (original equipment manufacturer) parts would void a still valid warranty.
- The purchase of a product/service from a vendor who has been awarded a contract by another governmental entity and who allows its product/service to be purchased by other governmental agencies from that contract.

Any request by a County department that a purchase be restricted to one (1) potential supplier shall be accompanied by a written explanation from the County department's head/official as to why no other supplier will be suitable or acceptable to meet the need. This written justification will be placed in the procurement file for audit purposes.

The County Manager, in writing, determines use of a sole source to be in the best interest of the County based on documented justification by the requesting department head, or designee.

Sole source refers to the supplier, not a product or service. Thus, the ability to meet a delivery date or to provide on-call repairs can create a sole source that is a single supplier condition.

Justification for a sole source purchase depends upon a needed item or service being available from only a single supplier under the prevailing conditions. If the item may be obtained from more than one source, price competition shall be solicited.

3.5 Emergency purchases

An emergency condition is a situation that creates a threat to public health, welfare, or safety such as may arise by reason of floods, epidemics, riots, equipment failures, or other such reason as may be proclaimed by a using department. The existence of such condition creates an immediate and serious need for supplies, equipment, materials, and services that cannot be met through normal procurement methods and the lack of which would threaten the function of County government, or the health, safety or welfare of County residents. County departments may make emergency procurements when an emergency condition arises and the need cannot be met through normal procurement methods. An emergency procurement shall be limited only to a quantity of those supplies, equipment, materials, or services necessary to meet the emergency. **There will be no delay for purposes of purchasing emergency goods and/or services.**

Emergency Purchases under Colorado Revised Statutes 29-1-114:

- In cases of emergency, the governing body of the local government may authorize the expenditure of funds in excess of the budget by ordinance or resolution duly adopted by a minimum two-thirds vote of such governing body.
- If the expense is \$5,000 or more and the emergency occurs during normal business hours (8:00 a.m. - 5:00 p.m., Monday through Friday), the County Manager shall be contacted (in person or by telephone) for guidance on the appropriate action needed to handle the purchasing emergency.

- If the emergency occurs outside of normal business hours, the only emergency purchases authorized are those related to the maintenance and repair of County facilities, to the emergency maintenance of County vehicles and emergency conditions related to the operation of any Sheriff's Office or Department of Transportation activity.

The individual authorizing the emergency purchase will inform the County department of any such purchase made no later than the first working day following the purchase.

If the follow-up review of an emergency purchase indicates that the purchase was not an emergency, the purchase may be disallowed for payment and a determination by the department's Elected Official/Department Head to take the appropriate disciplinary action.

Proper purchase requisition procedures and approval limits remain the same for the authorization of the expenditures; however, formal IFB/RFP procedures may not apply.

The County Manager may authorize a purchase if it is \$25,000 or above, however, the purchase order must be placed on the next scheduled formal agenda for approval by the Board of County Commissioners.

Emergency procurements shall be limited only to a quantity of those supplies, services or construction items necessary to meet the emergency.

NOTE: IN THE EVENT OF A DISASTER, THE OFFICE OF EMERGENCY MANAGEMENT (OEM) PROCEDURES FOR THE EMERGENCY OPERATIONS CENTER WILL BECOME EFFECTIVE.

By relieving the budget constraints, the BOCC allows the OEM the flexibility to obtain goods and services required to react to the emergency or disaster situation.

3.6 Equipment leases

A lease is a contract under which title to the equipment will not pass to the lessee. A lease with an option to purchase, however, allows title to pass if the purchase option is exercised. It has, or has the effect of, a conditional sales agreement. Leases and purchase options should never be used to circumvent the requirements for competition. The soundest and safest approach is that any leases of equipment be subject to the requirements for competition that apply to outright purchases. Leases with the option to purchase should not be considered unless there is written justification from the department head why it is beneficial to pursue the approval. The department head must submit the justification for approval by the County Manager.

All lease agreements for capital equipment shall be reviewed by the County Manager and by the County Attorney. Leases in the total amount, or with a value of \$25,000 or less shall be signed only by the County Manager, and approved as to form by the Office of the County Attorney, after appropriate review and negotiation of terms and conditions. Lease agreements signed by unauthorized parties may be voided and may result in personal

liability. Lease agreements with a value of greater than \$25,000 must be presented to the BOCC for approval and signature by the Board Chairperson.

3.7 Change Orders

Change orders shall be processed using the same dollar limit authorizations as outlined in Section 2.1 Purchase Order/Contract Signatory Authorities and Approval Thresholds.

All changes to a purchase order and/or contract shall be processed through the Finance Department.

Examples of changes that result in a price increase or decrease are:

- description of merchandise
- quantity
- scope of work/services
- delivery date

Documentation for the change must accompany the request to the Finance Department with the appropriate department/contract authorization.

Change orders shall not be used to circumvent the dollar limits as outlined in this policy manual. If a requirement for a product/service is estimated to eventually cost more than \$25,000, the solicitation procedure must be followed.

3.8 Use of State or other governmental entity awards

The County may purchase from State and other governmental entity contracts awarded for goods and/or services required when the award specifically states this is permissible.

The County may not, however, use the prices on a State or other governmental entity contract as a means of negotiation with other vendors. Typically, the prices under these contracts have been negotiated with the anticipation that the volume will be increased because other government agencies having similar requirements will use them. These contracts are already in place and utilizing them is a time-saving and normally cost-savings measure as they eliminate the requirement for formal solicitation. Also, there are usually tightly negotiated terms and conditions that prove to be beneficial for all governmental agencies.

When a particular commodity/service is available on a State or other governmental contract, you may purchase directly from the contract, referencing the contract or award number, at the price negotiated by the state or other governmental entity. You may be able to negotiate your specific requirements with the vendor under the terms and conditions of the original contract.

If you choose not to use these contracts to purchase the same goods or services, you must do a separate County solicitation. If this option is taken, it is advised that you have a good estimate that the prices resulting from your solicitation will be lower than what is on the award. If all prices bid/proposed are higher than the State or other governmental entity

award price, you may not cancel the solicitation on that basis, and you must purchase from your award.

3.9 Use of county-wide annual service agreements

The best use of the taxpayers' money is a key element in the procurement of goods and services for the County. When County departments have requirements for similar goods and/or services, and when it is in the best interest of all departments involved, cooperative procurement is a viable and useful tool. Quantity and delivery discounts may realize a considerable savings for all departments involved.

The County may establish an Annual County-wide Service Agreements for services each year. These agreements would be advertised and competed to insure the best overall price for the County. Since these agreements would have been competed in an open market, County departments may place orders against these agreements without having to obtain additional competitive quotes.

3.10 Procurement card (P-card) and Fuel card program

A procurement card and fuel card may be used for purchases in accordance with the rules and regulations set forth in the Procurement Card / Fuel Card Program Manual. County departments desiring to participate in this program should contact the Finance Department to request approval to participate.

3.11 Professional services

Professional Services means those services which are essentially intellectual in character and which include analysis, evaluation, prediction, planning, or recommendation. Professional Services include, but are not limited to, those specialized services performed by accountants, analysts, architects/engineers, consultants, lawyers, pharmacists, physicians, planners, and artists, when the exact scope and content of the services cannot be specified readily with certainty.

Professional services up to a limit of \$25,000 may be procured without benefit of competition. It is recommended that a documented quote process be conducted when appropriate. The person doing the acquisition shall use professional judgment to ensure that the County is receiving maximum value. The County Manager will make the determination as to whether or not the professional service is appropriate for a noncompetitive award.

In all circumstances where Professional Services are procured, a purchase order and/or contract must be awarded. All contracts for professional services must be reviewed and approved as to form by the County Attorney.

For services purchased up to a limit of \$25,000:

- No formal competitive solicitation will be required; however, it is recommended that a documented quote process be conducted when appropriate.

- A full documentation of the scope of services, qualifications and experience of key personnel, project approach, references, financial information and fee requirements must be in the file.
- A purchase order is required with the information as stated above.
- No formal approval by the Board of County Commissioners required. Approval will be required by the Director of the requesting department, or the designee of such person, and the County Manager.
- Where a contract by the County or by the provider is required, the County Attorney must review the contract and approve as to form.

The County Manager will have signature authority to enter into an agreement, purchase order and/or contract with the provider of professional services.

3.12 Procurement methods requiring formal solicitation

The procurement of goods or services exceeding an annual requirement of \$25,000 must be competitively solicited with formal procurement methods.

3.13 Preparation of specifications

User departments prepare specifications. The County Manager will work with user departments so that the specifications will be as accurate and complete as possible.

In the case of specifications for facilities related capital projects, the Facilities Department determines whether or not the specifications shall be prepared within the Department or by contract with an architect/engineering consultant.

Assistance by a vendor in writing specifications is not a common practice. It should be avoided whenever possible because it may inhibit competition. If a vendor is asked to write specifications, that vendor should be paid for its services and prohibited from submitting a bid/proposal in response to the solicitation. However, if the vendor assists in writing generic technical specifications that do not favor that vendor's product/service, he/she may be allowed to submit a bid/proposal and this information must be disclosed to the other vendors either in the specifications or at a pre-bid / pre-proposal conference / meeting.

3.14 Form of specification

Specifications shall be clear and accurate descriptions with sufficient detail to provide for suitable purchases and shall include:

- Functions and standards characteristics
- Materials and method description(s)
- Preparation for shipment, delivery point
- Quality assurance and acceptance tests (where applicable)
- Warranties and service support requirements

Using agencies shall issue product, supply, and service specifications that are not unduly restrictive. This may include the utilization of life cycle costing and/or value analysis in determining the lowest responsible bidder, provided the specifications indicate the

procedure and evaluative factors to be used. Performance specifications may be used provided they include the evaluation criteria to be used in making the recommendation for award.

3.15 Review

The department will review the specifications to ensure that all necessary information is included and that there are not requirements that unnecessarily restrict or limit competition.

3.16 Competitive sealed bidding – invitation for bids

An Invitation For Bids (IFB) is the formal procedure used by the department in accordance with proper procurement methods to solicit bids from vendors for merchandise and, in some cases, for services. The department will strive to attain economical commitments for Fremont County, keeping in mind not to sacrifice quality and service for price, and to consider all factors affecting expenditures. It shall continually seek to foster competition and obtain new sources of supply.

Bid procedures shall be open and unrestricted; however, the County shall not be obligated to solicit bids from every supplier for every requirement.

Upon receipt of authorization to proceed with a formal solicitation, the department will prepare the solicitation package.

3.17 Adequate competition

It is the responsibility of the department to insure that an adequate number of bidders are solicited for every requirement for achieving optimum competition. This responsibility includes selecting other advertising methods or vehicles when sources may be limited.

3.18 Basic considerations

The statement of work (SOW) or specifications of the IFB is critical for the success of the procurement. Basic considerations include the contractual terms and conditions which must be written to protect the interest of the County; openness of specifications; requirements for transportation and delivery; and instructions as to how the bidder is to submit the bid. A solicitation should seek full and open competition for all purchases and provide fair and equal opportunity for all qualified persons or firms to compete.

Once the solicitation has been opened to the public, all technical questions from vendors must be addressed through the department. It is important that information is given to all interested vendors to ensure fair and open competition. After proposals are submitted, all vendor contact shall continue to be made through the department.

3.19 Solicitation time

The minimum time for solicitation of bids shall be fourteen (14) calendar days from the date the advertisement is posted on the County's website. When special requirements exist, the department Director may lengthen or shorten the solicitation time, but in no case shall the time cycle be shortened if it will reduce competition. Complicated

procurements may have a time period that is longer than the standard fourteen (14) calendar days. Solicitation times of less than fourteen (14) calendar days shall be documented by the department as to why a reduced solicitation period was required.

Requests for Proposals (RFP's) for services must allow a minimum of 14 calendar days for response, unless a waiver for the response time is approved by the County Manager for requirements in excess of \$25,000.

3.20 Public notice - advertisement

IFBs and RFPs are advertised in a newspaper that has been formally solicited for legal advertisement. Bids/proposals must be advertised at least once weekly on two (2) occasions. The County Manager may waive the second weekly advertisement if time is of the essence for the product/service being solicited.

3.21 Invitation for bids - content

The IFB shall, at a minimum, include the following:

- Instructions and information to bidders concerning the bid submission requirements, including the time and closing date, the address of the office to which bids are to be delivered;
- The project description, basis of award, delivery or performance schedule and inspection and acceptance requirements;
- The contract terms and conditions, including warranty and bonding or security requirements as applicable.

3.22 Multiple or alternate bids

Bidders are encouraged to submit alternate (or substitute) bids in addition to the primary bid as long as it meets the full form, fit and function of the IFB specifications. The County shall be the sole judge of equivalence. The alternate bid must be clearly identified separate from the primary bid submitted.

If the solicitation prohibits multiple or alternate bids, the multiple or alternate bids shall be rejected, and a clearly indicated base bid will be considered for award as though it were the only bid or offer submitted by the bidder.

3.23 Receipt of bids

Upon receipt, each bid shall be date/time-stamped by machine or by hand and shall be stored in a secure place until bid opening time. Bids shall not be opened upon receipt, with the exception of bids that must be opened in order to identify those bids that cannot be visibly identified by the information on the envelope. If bids are opened for identification purposes only, they will be opened and resealed in the presence of witness (s) and documented as such on the front of the envelope.

3.24 Public bid opening

As bids are received in the department, they will be date/time stamped and placed in the bid file. The department shall retain bids in a secure place prior to opening.

Bid Opening: The bid opening shall be held on the date and at the time and place announced in the solicitation or at the date, time and place announced in any change. All bids received on or before the date and time specified in the IFB will be opened publicly and read aloud. Bid envelopes will be opened in the order in which they were received. The bids will be read aloud and results tabulated. Forms will be made available to all attendees to tabulate the bid results as they are being read. A bidder will not be allowed to complete a bid during a bid opening.

No Late Bids Accepted: Any bid received after the time and date stated in the IFB will be time/date stamped and returned to the vendor unopened. The County shall not be responsible for late bids received due problems with to the United State Postal Service or other delivery services, adverse weather conditions, parking problems, unforeseen problems of the vendor(s) or any other situation where a bid cannot be delivered by the time and date specified in the IFB. If the IFB number is not identified on the outside of the envelope/package, the department reserves the right to open the envelope/package, identify the bid, then reseal and return it to the vendor.

Type of Bid Formats Accepted/Not Accepted: Telephone bids will not be accepted in formal solicitations. Facsimile bid transmission will be accepted in the formal competitive sealed bid process, with the original documents provided to the department within 24 hours.

3.25 Tabulation of bids

Tabulation of Bids: After the bid opening, the department will verify all information received on the bid forms for accuracy. If a mathematical error is detected or any other information is not clear, the department shall contact the authorized representative of the vendor to advise him/her of the error and get authorization to make the correction. The department may also ask for clarification on any of the information submitted as part of the bid, including warranty and delivery, manufacturer/make/model or alternate bids. A vendor will not be allowed to change the submitted bid. Clarifications will be requested to allow for a fair evaluation of information received. The department will then tabulate the bid results listing bids from low responsive bid to highest bid, including alternate bids received.

Award Posting: After award, tabulation results will be posted on the department's bulletin board and /or on the County's website. All documents submitted with the bid become public information immediately after a decision or award relating to the bid has been made, except for those items identified as proprietary information, trade secrets or other information protected under the Open Records Act.

3.26 Confidential data

The department shall examine all bids to determine the validity of any requests for nondisclosure of trade secrets or other proprietary data identified in writing. If the parties do not agree as to the disclosure of data, the department shall inform the bidder in writing what portions of the bid will be disclosed. The department may confer with the County Attorney for validation of the confidentiality of the documents.

3.27 One bid received

If only one (1) responsive bid is received in response to the IFB, an award may be made to the single contractor if the department finds that (1) the price(s) submitted are fair and reasonable, (2) other prospective bidders had reasonable time to respond, or (3) there is not adequate time for re-solicitation.

Otherwise, the bid may be rejected and new bids may be solicited, (if new bids are solicited, the prices originally submitted shall not be released to the public in order to maintain the integrity of the procurement); the proposed procurement may be canceled; or if the County Manager and department Director determines that the price of the one bid is not fair and reasonable, and that re-solicitation would likely be futile, negotiations may be entered into with the lone bidder.

3.28 Extension of time for bid or proposal acceptance

Evaluation and acceptance of bids/proposals should be done in a timely and efficient manner. Vendors may have a time limit for prices quoted and delivery of the goods/services. If so, it must be stated in the bid/proposal. After opening the bids/proposals, the department may request an extension of time for the evaluation of the bids/proposals provided that no other change is permitted. The reasons for requesting such extensions shall be documented.

3.29 Bid evaluation

All products or services shall be evaluated against the requirements stated in the County's solicitation. In addition to price, the following factors may be considered in evaluating any bid response: delivery date after receipt of order, cash discounts, warranties (type/length), future availability, results of product testing, local service, cost of maintenance agreements, future trade-in value or availability of re-purchase agreement, availability of training courses, financial terms, space limitations, esthetics, adaptability to environment, cost of operation (if any), or safety and health features relating to regulatory codes or requirements.

3.30 Bid evaluation – product acceptability

The IFB may require the submission of bid samples, descriptive literature, technical data, or other material necessary to determine product acceptability. The acceptability evaluation is not conducted for the purpose of determining whether a bidder's item is superior to another, but only to determine whether a bidder's offering will meet the County's needs as set forth in the IFB. Any bidder's offering which does not meet acceptability requirements will be rejected as nonresponsive.

3.31 Award

A recommendation for award in the form of a purchase order/contract shall be to the lowest responsive and responsible bidder whose bid meets the requirements and the criterion set forth in the IFB and is determined to be in the best interest of the County. Evaluation of all the information submitted by the vendor must be documented.

The County Manager may determine to make whole or partial awards, or may reject all bids if prices are determined to be unreasonably high or unrealistically low. If insufficient funds are available to award a contract, the solicitation may be canceled or the department Director may choose to re-scope the project and re-solicit bids, as may be determined to be in the best interest of the County.

3.32 Lowest bid

A recommendation for award based on the lowest bid must be made if that bid meets all the specifications as outlined in the IFB, with no exceptions. If the lowest bidder takes exception(s) to the specifications, but is within tolerance and meets the form, fit and function of the merchandise required as well as delivery date required, warranty and all other IFB requirements, it is considered the low bid and should be recommended for award.

However, the lowest dollar bidder is not required to be recommended for award if it:

- Does not meet all the specifications as outlined in the IFB.
- Takes exception to any of the specifications that are not acceptable (as defined above). Cannot meet acceptable delivery requirements.
- Has shipping costs that make the overall total cost higher than the next low bid.
- Has an unacceptable warranty limitation(s).
- Has past documented history by the requesting department, by reference(s) or in the department files of poor quality, delivery or other information that would affect the operation of the requesting department.

3.33 Lowest responsive bid (best value)

Evaluation of all the bids received must indicate that the best value will be realized by the County upon award. When the low dollar bid has been eliminated due to one of the above referenced factors, the next low dollar bid will be evaluated in accordance with the same procedures. The bidder who submits a bid that, when all factors have been evaluated, may meet all the requirements, but is not the lowest dollar bid, may be recommended for award of the bid as the low responsive bid.

3.34 Award process

A department must submit a Recommendation for Award to the County Manager recommending the lowest responsive, responsible bidder.

If there is a tie bid, and quality and service are equal, the bid goes to the local bidder. If there is no local bidder, or more than one local bidder, the County Manager will draw lots to determine the award.

The County Manager issues an award notification to the successful bidder and may notify unsuccessful bidders. Upon award of the purchase order/contract, it will be publicized on the County's website.

The department returns bid deposits to all unsuccessful bidders within ten (10) calendar days following the award notification or within 65 calendar days following the public opening of the bid, whichever first occurs.

If the bid is not awarded to the lowest responsive, responsible bidder, the department secures well-documented and fully substantiated written reasons for this decision.

The department will work with the successful bidder and the County Attorney to get all contract or agreement documents in place before award is made and services or merchandise are provided to the County.

If the successful bidder fails to execute a contract within ten (10) business days of receiving the notification of award, the department may take any bid deposit and consider it as liquidated damages for failure to execute the contract, not as a penalty.

The County department will submit the signed Recommendation for Award with a purchase requisition to the County Manager. The department will prepare the purchase order. This may be issued with the award notification if a performance bond or insurance certificate is not required of the bidder. The purchase order will be held until any performance bond or insurance certificate is received from the bidder.

The County reserves the right to cancel the award of any contract at any time before all parties execute the contract, without any liability against the County.

3.35 Low tie bids

Tie bids are low responsive bids from responsible bidders that are identical in price and which meet all the requirements and criteria set forth in the IFB. If applicable, a tie bid must be awarded to the local vendor. At the discretion of the County Manager, award shall be made if possible by methods including split orders, rotations, or if not possible to make split or rotational awards, then drawing of lots will be used to determine the award.

3.36 Telephone bids

Telephone bids will not be accepted, in formal solicitations, unless the department Director shall make written determination that market conditions are of such a nature that it is in the best interest of the County to solicit telephone bids, such as the purchase of petroleum fuels on a daily basis, under changing market conditions, or under solicitations during a declared emergency.

3.37 Electronic and facsimile bids

Bids may be submitted by facsimile to the Department prior to the bid opening. These bids may be accepted under the following conditions: 1) the facsimile bid must refer specifically to the applicable IFB; 2) it must set forth the items, quantities, prices, and deliveries offered; and 3) it shall state that the bid complies with the terms and conditions of the IFB, and is being confirmed by submission of the original bid documents properly executed within 24 hours of the date/time of the bid opening.

3.38 Modification or withdrawal of bid

Bids may be modified or withdrawn by written correspondence or facsimile notice to the department prior to the date/time set for bid opening.

3.39 Withdrawal of bid prior to bid opening

The bidder, prior to the specified bid opening date/time, may withdraw a bid if the bidder's representative appears at the department, or the department Director receives a written request for withdrawal. At the bid opening, but prior to the actual opening of the bids, a bidder may withdraw a bid to correct a mathematical error, to sign a document or to correct clerical errors. The bidder must submit a written request stating the nature of the modification to the bid, must make the modification as quickly as possible without leaving the room where the bids are being opened, and will not be allowed to make any telephone calls to subcontractors.

3.40 Withdrawal of bid after opening but prior to award

No bid may be withdrawn or contract negated unless the bidder or contractor can establish that the bid or contract contains mistakes, despite the exercise by the bidder or contractor of reasonable care. The test of reasonable care shall be that:

- the mistake relates to a material feature of the contract;
- the mistake occurred despite the exercise of reasonable care; and
- withdrawal is deemed by the department Director to be in the best interest of the County.

3.41 Records

All documents relating to the modification or withdrawal of bids shall be made part of the appropriate procurement file.

3.42 Minor informalities and irregularities in bids

A minor informality or irregularity is one that is merely a matter of form and not of substance. It also pertains to some immaterial defect in a bid or variation of a bid from the exact requirements of the invitation that can be corrected or waived without being prejudicial to other bidders. The defect or variation is considered immaterial when the effect on price, quantity, quality, or delivery is negligible when contrasted with the total cost or scope of the services being acquired.

If the department Director determines that the bid submitted contains a minor informality or irregularity, then he/she either shall give the bidder an opportunity to cure any deficiency resulting from a minor informality or irregularity in a bid, or waive the deficiency, whichever is to the advantage of the County. In no event will the bidder be allowed to change the bid amount.

Examples of minor informalities or irregularities include, but are not limited to, the following:

- Bidder fails to return the number of copies of signed bids required by the IFB.
- Bidder fails to sign the bid, but only if the unsigned bid is accompanied by other material evidence that indicates the bidder's intention to be bound by the unsigned bid (such as bid bond or signed cover letter which references the bid number or title and amount of bid).
- Bidder fails to acknowledge an amendment - this may be considered a minor informality only if the amendment, which was not acknowledged, is insignificant

and involves only a matter of form or has either no effect or merely a negligible effect on price, quantity, quality or delivery of the item or services bid upon.

3.43 Mistakes in bids – confirmation of bid

When it appears from a review of the bid that a mistake has been made, the department Director shall be responsible for requesting the bidder to confirm the bid in writing. Situations in which the confirmation should be requested include obvious, apparent errors on the face of the bid or a bid unreasonably lower than the other bids submitted. If the bidder alleges mistake, the bid may be withdrawn.

Bidders may request in writing to department Director that they be allowed to correct a mistake in their bid; however, the mistake has to be apparent and substantiated by evidence provided by the bidder that the mistake was valid. The department Director will evaluate the request and make a determination in writing as to whether the correction of the mistake is allowed.

Further, bidders will not be allowed to make a correction(s) other than apparent typographical errors if the correction(s) would displace another bidder.

3.44 Mistakes where intended correct bid is evident

If the mistake and the intended correct bid are clearly evident to the department Director on the face of the bid document, the bid shall be corrected by the bidder to the intended correct bid and may not be withdrawn. Examples include typographical errors, errors in extending unit prices, or transposition errors.

3.45 Mistakes where intended correct bid is not evident to department Director.

A bidder may be permitted to withdraw a bid if the bidder submits proof of evidentiary value in accordance with provisions above.

3.46 Mistakes discovered before opening

A bidder may correct mistakes discovered before bid opening by withdrawing or correcting the bid as outlined above.

3.47 Determination required

Any decision to permit or deny correction or withdrawal of a bid under this section shall be supported by a written determination by the department Director or Director's designee.

3.48 Mistakes after award of contract

When a mistake in a contractor's bid is not discovered until after award of a contract, the mistake may be corrected by contract change order if correcting the mistake would be favorable to the County without changing the specifications. If the mistake is not in the favor of the County, the County Manager will have the following options:

- To rescind the contract via termination.
- Deny the Contractor's request to correct the mistake, or to reform the contract by the following actions:

- Delete the item (s) involved in the mistake.
- To increase the price of the contract by allowing the correction of the mistake, as long as the correction or increase in price does not exceed the price of the next lowest bidder.

Note: Partial corrections will not be allowed in order to stay below the next lowest bidder's price.

In all cases, the burden of proof rests with the vendor. The alleged mistake must be proven by clear and convincing evidence that a mistake was indeed made. The department Director shall request the contractor to support the alleged mistake by submission of written statements and pertinent evidence such as, but not limited to:

- Vendor's file copy of bid.
- Vendor's original worksheets, including supporting data used to prepare bid.
- Subcontractor or supplier quotes.
- Any other evidence that will serve to establish the mistake, the manner in which the mistake occurred and the bid actually intended.

If there is not clear and convincing evidence to support the alleged mistake, then no action will be taken.

3.49 Late bids

Any bid withdrawal or modification to bids received after the date/time set for opening shall be considered late and shall be rejected and returned unopened to the bidder, except as provided herein.

All sealed competitive bids shall be opened as soon as possible after the time designated by the IFB. Bids received after the bid opening time shall not be opened, but shall be rejected as a late bid. The responsibility to insure that bid solicitations are obtained and that bids are received prior to the opening date and time rests with the vendor. Situations such as "flat tires, accidents, or parking problems" shall not be cause for acceptance of late bids.

The department Director may permit the following exceptions:

- In the event of a public labor unrest (strike, work slow down, etc.), which may affect mail delivery, the department Director may develop and issue emergency procedures.
- There is conclusive evidence that the bid was submitted to the office designated in the IFB or RFP on time and was mishandled by the department personnel responsible for handling/receiving bids (i.e. lost or misplaced). Mishandling by other units or offices of the County does not constitute department personnel.
- It was the only bid received.

The department Director shall rule any other situation, which is beyond the control of both the County and the vendor, as to the acceptability of the bid.

3.50 Waiver of public notice –advertisement

The County Manager may authorize the waiver of public notice for requirements in excess of \$25,000, upon written determination that circumstances call for quick procurement action. Supplies or equipment may be needed promptly for backup to insure against downtime; a significant price increase on a needed item may be imminent; or the scope of an ongoing task may be unexpectedly expanded. In these kinds of situations, the department Director will make special effort to obtain written competition or sealed bids, but may waive the publication of notice in the newspaper.

3.51 Public availability

A copy of the IFB shall be made available for public inspection at the department or via the County's website.

3.52 Pre-bid conferences

Pre-bid conferences may be conducted for the purpose of explaining the procurement requirements. Notice of a pre-bid conference shall be stated in the IFB. The conference should be held long enough after the invitation has been issued and advertised to allow bidders to become familiar with it, but with adequate time before bid opening to allow consideration of the conference results in preparing the bid. The pre-bid conference may be mandatory if determined necessary to insure familiarity of the project prior to bidding by all bidders. Nothing stated at such conference shall change the IFB unless the change is made by written amendment.

3.53 Addenda or amendments to invitations for bids

Amendments to an IFB shall be identified as such and may require that the bidder acknowledge receipt of all amendments issued. The amendment shall reference the portions of the IFB it amends.

At any time after the initial mailing of the IFB, but not later than three (3) days prior to a public bid opening, addendums to the original IFB may be required for clarifications and/or changes to the original IFB.

Addendums shall be sent to the vendors who received the IFB.

If a mandatory pre-bid meeting was held, only those vendors who signed in as attending the meeting department responsible for the original IFB will sign the addendum form. The form shall be submitted with the vendor's response to the IFB, signed by the authorized representative of the vendor and will be made a part of the bid.

If the addendum alters the information required on the bid form, a revised bid form will be provided as a part of the addendum and will be required as the vendor's bid submission.

Failure to acknowledge the addendum with a bid may be a reason to reject the bid.

3.54 Public notice

Public notice includes a general description of the supplies or services to be purchased or sold, the source of bid blanks and specifications, any bid deposit, if required, and the time and place of bid opening. Additionally:

The department posts a notice on the bulletin board outside of its offices of each bid solicitation for purchase or supplies or services or sale of surplus supplies.

Each bid solicitation is advertised in the legal newspaper for the County for a minimum of two consecutive weekly publications, unless waived by the County Manager with written justification. The department sends a notice to each bidder on the appropriate bidders list.

If it becomes necessary to correct an inadequate, deficient or ambiguous IFB, then the invitation shall be canceled and a new invitation shall be issued.

When an IFB is canceled, bids that have been received shall be returned unopened to the bidders with a notice of cancellation.

Notice of cancellation shall be posted on the County's website.

3.55 Waiver of competition

The department Director with approval from the County Manager may elect to waive the competitive bidding process under certain conditions including:

- a needed product or service is available from only one supplier (sole source);
- a particular product is wanted for experiment or trial;
- additional products are required to complete an ongoing task;
- the amount of the purchase is too small to justify the expense of soliciting quotations;
- a purchase is made from another unit of government; or
- the purchase of a used item is advantageous and the item is available only on short notice and subject to prior sale.

The department Director shall require competition wherever practicable and, except for small purchases, the basis and reasons for each waiver shall be documented as public record.

3.56 Written justification

A written justification by the requesting department head, or designee, shall be included in the file for all procurements that exceed the competition threshold of \$5,000.00 that were awarded as "Sole Source". This justification shall completely explain the rationale used in determining "sole source", as well as the determination that the awarded price is "fair and reasonable", using an element of price analysis justifying the total cost.

3.57 Purchase of items separately from construction contract

The department Director is authorized to determine whether a supply item or group of supply items shall be included as a part of, or procured separately from, any contract for construction.

3.58 Procurement of services or construction by purchase order

If the department Director deems it to be in the best interest of the County, services or construction which are simple and which typically involve no more than one or two trades may be procured through the use of a purchase order approved by the County Manager, and shall be subject to the rules governing that method of procurement.

The normal rule for allowing such services to be ordered under a purchase order is as follows:

Less than 60 days performance with a defined completion date
Less than \$50,000 and competition was obtained to determine fair price
Vendor or contractor signs the purchase order acknowledging full acceptance of the terms

3.59 Two-step (multi-step) sealed bidding

Two-step (or multi-step) sealed bidding is a process consisting of a technical phase, composed of one or more steps in which offerors are required to submit unpriced technical offers to be evaluated by the County, and a pricing phase in which those bidders whose technical offers are determined to be acceptable during the technical phase have their price considered. It is designed to obtain the benefit of competitive sealed bidding by award of a contract to the lowest responsive, responsible offeror and at the same time obtain the benefits of the competitive sealed proposals procedure through the solicitation of technical offers and the conduct of discussions to determine the acceptability of technical offers.

3.60 Conditions for use of two-step (multi-step) sealed bidding

The two-step (or multi-step) sealed bidding method may be used when it is not practical to prepare initially a definitive purchase or contract description, which will be suitable to permit an award based on price.

3.61 Procedure for phase one or two-step (multi-step) sealed bidding

Two-step (or multi-step) sealed bidding shall be initiated by the issuance of an Invitation for Bid (IFB).

The solicitation shall state:

- That an unpriced technical offer is requested.
- Whether prices are to be submitted at the same time as unpriced technical offers; if they are, such prices shall be submitted in a separate sealed envelope.
- That it is a two-step (or multi-step) sealed bid procurement and prices will be considered only in the phase designated for pricing purposes and only from those offerors whose unpriced technical offers are found to be acceptable in the initial phase.

- The criteria to be used in evaluating the unpriced technical offer.
- That the County, to the extent the department finds necessary, may conduct oral or written discussions of the unpriced technical offers.
- That offerors may designate those portions of the unpriced technical offers, which contain trade secrets or other proprietary data, which are to remain confidential.
- That the item or contract being procured shall be furnished generally in accordance with the offeror's technical offer as found to be acceptable and shall meet the requirements set forth in the invitation for bids.

3.62 Addenda or amendments to the invitation

After receipt of unpriced technical offers, addenda to the IFB shall be distributed only to offerors who submitted unpriced technical offers or to amend those submitted. If, in the opinion of the department Director, a contemplated addendum will significantly change the nature of the procurement, the invitation shall be canceled and a new IFB issued.

3.63 Receipt of unpriced technical offers

Unpriced technical offers shall not be opened publicly, but shall be opened in front of two (2) or more members of the Procurement staff. Such offers shall not be disclosed to unauthorized persons. Offerors may request nondisclosure of trade secrets and other proprietary data identified in writing.

3.64 Evaluation of unpriced technical offers

The unpriced technical offers shall be evaluated solely in accordance with the criteria set forth in the IFB. The unpriced technical offers shall be categorized as: (a) acceptable; (b) potentially acceptable, that is, may be made acceptable; or unacceptable. The department shall record, in writing, the basis for finding an offer unacceptable and make it a part of the procurement file. The department may initiate phase two if it is determined that there are sufficient acceptable unpriced technical offers to assure effective price competition in the second phase without entering into technical discussions. If the department and using department find that such is not the case, the department shall issue an amendment to the invitation or engage in technical discussions, whatever is deemed appropriate.

3.65 Discussion of unpriced technical offers

Discussion of its unpriced technical offer may be conducted by the department with any offeror who submits an acceptable or potentially acceptable technical offer. During the course of such discussions, the department shall not disclose any information derived from one (1) unpriced technical offer to any other offeror. Once discussions have commenced, any offeror who has not been notified that its offer has been finally found unacceptable may submit supplemental information amending its technical offer at any time until the closing date established. Such submission may be made at the request of the department or upon the offeror's own initiative.

3.66 Notice of unacceptable unpriced technical offer

When the department determines an offeror's unpriced technical offer to be unacceptable, such offeror shall not be afforded additional opportunities to supplement technical offers.

3.67 Mistakes during two-step (multi-step) process

Mistakes may be corrected or proposals withdrawn during phase one: (a) before unpriced technical offers are considered; (b) after any discussions have commenced; or (c) when responding to any amendment of the IFB.

3.68 Procedure for continuing two-step (multi-step) process

Upon completion of phase one, the department shall (a) open prices submitted in phase one (if prices were required to be submitted) from offerors whose unpriced technical offers were found to be acceptable, or (b) if prices have not been submitted, technical discussions have been held, or amendments to the IFB have been issued, invite each acceptable offeror to submit a price proposal.

3.69 Conduct

The next phase shall be conducted as any other competitive sealed bid except that no public notice of the IFB to submit price proposals needs to be given because such notice was previously given. After award, the unpriced technical offer of the successful offeror shall be disclosed as follows:

- The department shall examine written requests of confidentiality for trade secrets and proprietary data in the technical offer of the offeror to determine the validity of such requests. If the parties do not agree as to the disclosure of data, the department shall inform the bidder in writing that portion of the unpriced technical offer that will be disclosed.
- Unpriced technical offers of offerors who are not awarded the contract shall not be open to public inspection unless the department determines in writing that public inspection of such offers is necessary to assure confidence in the integrity of the procurement process, provided, however, that the provisions of above shall apply with respect to the possible disclosure of trade secrets and proprietary data.

3.70 Request for proposals (RFP) – formal

The Request For Proposals (RFP) is an objective method of contracting for goods or services whereby proposals are solicited from qualified contractors. With the RFP, you are primarily soliciting an outcome; that is, your specifications describe the outcome you want and the vendors must propose how they will achieve it. Following submission of offers, changes in proposals and prices may be allowed and the offer deemed by the County to be most advantageous in terms of criteria as designated in the RFP as determined to be in the best interest of the County may then be accepted. An RFP should not be used when the service or equipment to be contracted is standard, routine or common “off the shelf” type items or if there is an industry standard associated with the service or commodity to be contracted. The RFP is a time consuming and costly method of procurement that should only be used when sealed bidding is not appropriate.

3.71 When requests for proposals are practical

Factors to be considered in determining whether the RFP methods are practical include:

- Estimated contract value is more than \$25,000.

- Requirement is highly technical, unusual, is not a standard “off the shelf” item, or there are little or no clear standards or specifications available to use in the solicitation. If the contract needs to be other than fixed-price type.
- If it may be necessary to conduct oral or written discussions with offerors concerning technical and price aspects of their proposals.
- If it may be necessary to afford offerors the opportunity to revise their proposals.
- If it may be necessary to base an award on a comparative evaluation as stated in the RFP of differing price, quality and contractual factors in order to determine the most advantageous offering to the County.
- If the primary consideration(s) in determining award may be factors other than price(s).

3.72 When requests for proposals are advantageous

A determination will be made to use the RFP method if it is determined to be advantageous to the County. Factors to be considered in determining whether the RFP methods are advantageous include:

- If prior procurements indicate that competitive sealed proposals may result in more beneficial contracts for the County.
- The requirement is highly technical or complex in nature and would be more advantageous to the County to use the RFP method of source selection.
- If the factors listed in this section are more desirable than necessary in conducting the procurement; if they are, then such factors may be used to support a determination that Requests for Proposals are advantageous.

3.73 Determinations

The department may make determinations by category of supply, service, or construction item(s) that it is either not practical or not advantageous to the County to procure specified types of supplies, services or construction by competitive sealed bidding. Procurements of the specified types may then be made by competitive sealed proposals based on this determination. The department may revoke such determination at any time, and all such determinations shall be reviewed from time to time for current applicability.

3.74 Dollar thresholds for RFP’s

Formal Requests for Proposals shall be issued by the department for requirements that are estimated to exceed \$25,000. Solicitations in the form of informal RFP’s may be issued for a requirement estimated to be less than \$25,000 if more than one vendor is known to exist that has the capabilities of providing the product or service. The County Manager may accept written justification from the using department for a sole source professional service contract, even though it may exceed \$25,000.

3.75 Evaluation process

The RFP evaluation process shall be conducted as a fair and objective process that requires the evaluation committee to evaluate all proposals on the specific criteria in the RFP.

Complete confidentiality is an ethical and legal requirement, and is vital to fair and equitable evaluation. During the entire RFP process, the department serves as the sole contact for vendors and provides all RFP procedures and communication. Technical issues will be addressed by the appropriate staff and relayed to vendors by the department. After proposals are submitted, all vendor contact shall be made through the department. Vendor information, number of proposals received, results and other evaluation proceedings should be kept confidential at all times. Requests for this information shall be made in writing and its release will be in accordance with the Colorado statute (C.R.S. 24-72-203 and 24-72-204) for access to Public Records and County administrative policy.

Evaluation Committee members will be selected by the using department. Committees should consist of a minimum one (1) member that is not part of the using department.. A BoCC member should recuse him/herself from the final approval of a contract award if the member is also an evaluator. Committee members shall score each proposal individually and independently. However, group discussions are encouraged to discuss technical views to arrive at a better understanding of technical proposals during the evaluation process. The results of the scoring by the evaluating committee shall be totaled to determine the overall highest rated proposal. The suggested method for totaling scores is by each evaluator's rankings of the proposals.

If interviews are part of the evaluation criteria, the RFP must contain language that allows for them. The Evaluation Committee, prior to entering into discussions with any offerors, will make competitive range determinations. Any and all offerors determined to be within the competitive range may be given an opportunity to interview.

Best and final offers may be requested at the conclusion of discussions if discussions are determined necessary.

All offerors are allowed to schedule a debriefing with the department to go over the weaknesses and strengths of their proposal. The strengths and weaknesses of other proposals will not be discussed outside the debriefing.

3.76 Competitive range determination

The Evaluation Committee, through the department, shall determine which proposals' scores are in the competitive range for the purpose of conducting written or oral discussions/interviews. The competitive range shall be determined on the basis of criteria stated in the RFP. The determination shall include all proposals that have a reasonable chance of being selected for award. When there is doubt as to whether a proposal is in fact within the competitive range, the proposal shall be included.

If the RFP initially solicits unpriced technical proposals, they shall be evaluated to determine which are acceptable to the County or could, after discussion, be made acceptable. After necessary discussion of these technical proposals is completed, the Evaluation Committee shall request the price proposals from all offerors who submitted an acceptable technical proposal and make the award to the lowest responsible offeror.

3.77 Written clarification of interviews

If a contract award cannot be made on initial offers as submitted, the Evaluation Committee, through the department, may request written clarifications or interviews with all responsible offerors within the competitive range.

The following guidelines may be used:

- Advise the offeror of deficiencies in its proposal so the offeror is given an opportunity to satisfy the County's requirements.
- Attempt to resolve or clarify any uncertainties concerning their proposal.
- Resolve any suspected mistakes.
- Provide each offeror a reasonable opportunity to submit revisions to both their technical proposals and price proposals as discussed by requiring submission of best and final offers by each offeror within the competitive range at the conclusion of discussions.

Note: Offerors should be reminded that Best and Final Offers are not mandatory. They are only an opportunity to revise if necessary.

- Provide the offeror a reasonable opportunity to discuss past performance information obtained from references. Names of individuals providing references information shall not be disclosed.

The purpose of discussions is not to engage in technical leveling (helping an offeror bring proposal up to the level of others) of proposals.

Do not use auction techniques such as indicating a cost or price an offeror must meet to be considered, advising an offeror of its price standing relative to the other offerors, or otherwise furnish information about other offeror's prices. It is permissible to inform an offeror that the proposed prices are unrealistic or too high.

3.78 Best and final offers

Upon completion of discussions, the evaluation selection committee may issue to all offerors still within the competitive range a request for best and final offers. Oral requests for best and final offers shall be confirmed in writing. The request shall include:

- Notice that discussions are concluded.
- Notice that this is an opportunity to submit a best and final offer.
- A due date for submission of the best and final offer.

Note that this is only an opportunity to revise their proposals. If they chose not to submit a best and final offer then their original proposal as submitted will be considered.

After receipt of best and final offers, the evaluation selection committee shall evaluate them accordingly and recommend award be made to the offeror whose best and final offer is most advantageous to Fremont County, considering price and the other factors included in the RFP.

3.79 Proposal preparation time

Proposal preparation time should be set to provide offerors 30 calendar days under normal circumstances to prepare and submit their proposals. The County Manager may modify this requirement to require less time on less complicated requirements

3.80 Public notice-advertisement

Public notice shall be given by advertising the RFP in the same manner provided for the IFB.

3.81 Pre-proposal conference

Pre-proposal conferences may be held. Any such conference should be held after the final advertisement date, and a minimum of ten (10) calendar days prior to the submission of initial proposals.

3.82 Amendments to RFP

Amendments to RFPs may be made in accordance with amendments to IFBs prior to submission of proposals. After submission of proposals, any amendments shall be distributed to all offerors who submitted proposals.

3.83 Modification or withdrawal of proposal

Proposals may be modified or withdrawn by any offeror prior to the established due date and time.

3.84 Receipt of proposals

The time and date for receipt of proposals will be included in the RFP and must state a specific time or “close of business” on a certain date. If a specific time is cited, then proposals must be received by the time or they are considered late and will not be accepted. If “close of business” is cited, then proposals may be accepted at any time during business hours on the date specified. Proposals will not be opened publicly. The list of the names of proposers or the number of proposals received shall not be released publicly until such time as the evaluation process is completed, or with the written authorization of the department Director.

3.85 Late proposals

Late proposals shall be handled in the same manner as “Late Bids” as described in the Competitive Sealed Bidding section of this manual.

3.86 Single proposal received

If only one (1) proposal is received in response to a RFP, the department has the following options:

- Determine if there was sufficient time allotted for offerors to submit a proposal (if not, the solicitation may be amended to extend the receipt of proposal date and the only proposal received shall be returned unopened to the only offeror.
- Proceed with the evaluation of the proposal from the single offeror; if the offer meets the requirements of the County as stated in the RFP, and the cost is

determined to be fair and reasonable through negotiations, an award may be made.

- If the evaluation determines that the only offeror does not meet County needs, or negotiations of the cost do not result in a fair and reasonable price, then the solicitation may be canceled and re-solicited at a later date.

Note: If the solicitation is canceled, the proposal shall be returned to the offeror and the canceled solicitation file shall be documented as to why it was canceled.

3.87 Evaluation of proposals

The RFP shall clearly define all evaluation criteria, including price. Numerical rating systems and/or weights may be used, but are not mandatory to be listed in the RFP. However, the criteria must be listed in the RFP and the weights or points must be assigned by the Evaluation Committee prior to evaluating proposals. The evaluators shall not consider criteria that are not specified in the RFP when evaluating proposals. Selection for the award shall be conclusive based on scoring criteria as specified in the RFP. The County reserves the right to enter into contractual negotiations with the highest ranked firm mutual contractual relationship cannot be established that will meet the County's needs, then the County reserves the right to enter into negotiations with the second highest ranked firm and so on.

3.88 Proposal discussions with individual offerors

Discussions are held to promote understanding of the County's requirements and the offeror's proposal, to facilitate arriving at a contract that will be most advantageous to the County taking into consideration price and the other evaluation factors set forth in the RFP. Offerors determined to be within the competitive range shall be accorded fair and equal treatment with respect to any opportunity for discussion and revisions of proposals, and prior to award, for the purpose of obtaining best and final offers. Auction techniques or disclosure of any information derived from competing proposals are prohibited. Any substantial oral clarification of a proposal shall be reduced to writing by the offeror.

3.89 Mistakes in proposals

When it appears from a review of the proposal before award that a mistake has been made, the offeror should be asked to confirm the proposal. If the offeror alleges mistake, the proposal may be corrected or withdrawn in accordance with rules governing mistakes in bids.

3.90 Award of contract

Award shall be made to the responsible offeror whose proposal is determined to be most advantageous to the County, and in the best interest of the County, based on the evaluation factors set forth in the RFP. No other factors or criteria shall be used in the evaluation.

3.91 Vendor debriefing

Vendors submitting an unsuccessful proposal may, within five (5) business days of mailing of the notice of intended contract award, request a meeting for debriefing and

discussion of their proposals. The request must be in writing addressed to the department. Debriefing will not include any comparisons of the vendor's unsuccessful proposal with any other vendor's proposal. The department will attempt to respond to questions and concerns in this debriefing.

3.92 Cancellation or rejection of bids or proposals

The provisions of this policy shall govern the cancellation of any solicitation issued by the department under competitive sealed bidding, competitive sealed proposals, small purchases, or any other source selection method, and rejection of bids or proposals in whole or in part, whether rejected for being non-responsive or non-responsible.

Solicitations should only be issued when there is a valid procurement need. Solicitations should not be issued to obtain estimates or to "test the water". A solicitation is to be canceled only when there are valid and compelling reasons to believe that the cancellation is in the County's best interest.

3.93 Cancellation or rejection of all bids or proposals prior to opening

Prior to opening of bids, a solicitation may be canceled in whole or in part when the department determine, in writing, that such action is in the County's best interest for reasons including:

- The County no longer requires the supplies, equipment, materials, or services.
- The County can no longer reasonably expect to fund the procurement.
- Proposed amendments to the solicitation would be of such magnitude that a new solicitation is desirable.

3.94 Notice of cancellation

When a solicitation is canceled prior to opening, notice of cancellation shall be sent to all businesses solicited and posted on the County's website. The notice of cancellation shall identify the solicitation, explain the reason for the cancellation, and where appropriate, explain that an opportunity will be given to compete on any re-solicitation.

3.95 After opening

After opening, but prior to award, any or all bids or proposals may be rejected in whole or in part when the department determines in writing that such action is in the County's best interest for reasons including:

- The supplies, equipment, materials, or services being procured are no longer needed.
- Ambiguous or otherwise inadequate specifications were part of the solicitation.
- The solicitation did not provide for consideration of all factors of significance to the County.
- Prices exceeded funds available and it would not be appropriate to adjust quantities or qualities to come within available funds.
- All otherwise acceptable bids or proposals received are at clearly unreasonable prices or terms.

- There is reason to believe that the bids or proposals may not have been independently arrived at in open competition, may have been collusive or may have been submitted in bad faith.

3.96 Documentation of cancellation

The reasons for cancellation or rejection shall be made a part of the procurement files and shall be available for public inspection.

3.97 Disposition of documents

When bids or proposals are rejected or a solicitation canceled after bids or proposals are received, the bids or proposals that have been opened shall be retained in the procurement files, or, if unopened, returned to the bidders or offerors upon request or otherwise disposed of.

3.98 Professional services over \$25,000

For the procurement of professional services over \$25,000, it is necessary to follow the procedure for Requests for Proposals (RFP).

Professional Services means those services which are essentially intellectual in character and which include analysis, evaluation, prediction, planning, or recommendation. A professional service incorporates extended analysis, the exercise of discretion and independent judgment in its performance. In addition, it requires an advanced, specialized type of knowledge, expertise, or training customarily acquired either by a prolonged course of study or equivalent experience in the field. Professional Services include, but are not limited to, those specialized services performed by accountants, analysts, consultants, lawyers, pharmacists, physicians, planners, and artists, when the exact scope and content of the services cannot be specified readily with certainty.

For services purchased over \$25,000:

- A formal RFP is required unless, in the opinion of the County Manager, the Director of the department requesting the service can justify the source as being special or uniquely qualified to provide the service. In these instances, written justification must accompany the request from the department signed by the Director of the department.
- A full documentation of the scope of services, qualifications and experience of key personnel, project approach, references, financial information and fee requirements must be in the file. This information is to be submitted by the contractor as a formal proposal whether as part of an RFP or a sole source justification.
- A contract between the County and the provider is required. The County Attorney, or the designee of such person, must review the contract and approve as to form.
- Approval of the contract with the provider of Professional Services must be approved and signed by the Board of County Commissioners.
- A purchase order is required as an appendix to the contract.

4 RESPONSIBILITY OF BIDDERS OR OFFERORS

4.1 Application

A determination of responsibility or non-responsibility shall be governed by this policy.

4.2 Standards of responsibility

Factors to be considered in determining whether the standard of responsibility has been met include whether a prospective contractor or vendor has:

- Available the appropriate financial, material, equipment, facility, and personnel resources and expertise, or the ability to obtain them necessary to indicate capability to meet all contractual requirements.
- A satisfactory record of past performance, including conduct, and cooperation.
- A satisfactory record of integrity.

4.3 Information pertaining to responsibility

The prospective contractor shall supply information requested by the department Director concerning the responsibility of such contractor. If the contractor fails to supply the requested information, the department Director shall base the determination of responsibility upon any available information or may find the prospective contractor non-responsible if such failure is unreasonable.

4.4 Ability to meet standards

The prospective contractor or vendor may demonstrate the availability of necessary financing, equipment, facilities, expertise and personnel by submitting upon request:

- Evidence that such contractor or vendor possesses such necessary items.
- Acceptable plans to subcontract for such necessary items.
- A documented commitment from, or explicit arrangement with, a satisfactory source to provide the necessary items.

4.5 Written determination of non-responsibility requires

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 department Director. 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 procurement files.

4.6 Pre-qualification

Certain County public improvement projects in excess of \$25,000 may require that the prospective contractor be pre-qualified. On such public improvement projects, prospective contractors may be asked to submit a financial statement in accordance with the general provisions of the public improvement documents. All prospective contractors shall fill out and return a pre-qualification questionnaire. Pre-qualification may be required for other County contracts and shall be determined on an individual basis by the County Manager.

4.7 Suspension or debarment

Suspension or debarment of a vendor is a consequence that should be addressed with serious consideration. The County Manager shall have the authority to suspend or debar any vendors or contractors for the following:

- Default on awarded contract (debarment).
- Routinely perform unsatisfactory work (suspension or debarment).
- Violated contract terms and conditions without cure or remedy (suspension or debarment depending on severity).
- Have pending litigation against the County (may only be suspended pending results of litigation).
- Default on the payment of any taxes, license fees or other monies due the County (suspension).
- Convicted of fraud or criminal acts while performing as a contractor on any contracts, even those not associated or written by the County (debarment).
- If documentation substantiates a consistent past performance record of habitually or continuous unsatisfactory performance, safety violations, repeated violations of contract provisions, or delinquent performance by a contractor (suspension).

County Manager may debar vendors from bidding, or performing as a subcontractor, on any County contracts for a minimum period of one (1) year up to a maximum of three (3) years. Vendors may be suspended from doing any business with the County for a minimum period of three (3) months, up to a maximum period of twelve (12) months. However, if a vendor under suspension fails to correct or cure the deficiency in which they have been suspended during the suspension period, the County Manager may convert the suspension into a debarment. Prior to formally suspending or debarring any vendor, the County Manager shall review and investigate all reasons and evidence supporting such a decision with the County Attorney's Office and shall inform the suspended or debarred vendor in writing of such decision.

The suspended or debarred vendor may, at the conclusion of the suspension or debarment period, submit a formal request to be removed from such status. Upon receipt of this request, the County Manager will be required to investigate current and past performance since the suspension or debarment by the suspended contractor to determine responsibility.

5 SPECIFICATIONS

5.1 General purpose and policy

The purpose of a specification is to serve as a basis for obtaining a supply item or service adequate and suitable for the County's needs in a cost effective manner, taking into account, to the extent practicable, the costs of ownership and operation as well as initial acquisition costs. It is the policy of the County that specifications permit maximum practicable competition consistent with this purpose.

5.2 Use of functional or performance descriptions

Specifications shall, to the extent practicable, emphasize functional or performance criteria while limiting design or other detailed physical descriptions to those necessary to meet the need of the using agency.

5.3 Preference for commercially available products

To the extent practicable, preference shall be given to the procurement of standard commercial products. In developing specifications, accepted commercial standards should be used and unique requirements should be avoided.

5.4 Brand name or equal specifications – conditions for use

Brand name or equal specifications may be prepared when it is in the best interest of the County and when the item to be procured is best described by the use of such a specification. Brand name or equal specifications shall seek to designate as many different brands as are practicable as "or equal" references, and shall further state those substantially equivalent products which will be considered for award.

5.5 Brand name specifications – conditions for use

Since use of a brand name specification is restrictive, it may be used only when the brand name or items will satisfy the using department's needs or the item is to be used for resale purposes. The department shall seek to identify sources from which the designated brand name or item can be obtained and shall solicit such sources to achieve whatever degree of competition is practicable. If only one source can supply the requirement, the procurement shall be made under provisions of the SOLE SOURCE policy.

5.6 Qualified products list – conditions for use

A qualified products list may be developed when testing or examination of the materials or equipment is required prior to the issuance of the solicitation.

5.7 Specifications prepared by other than county staff

All specifications prepared by other than County staff, including consultants, architects, engineers, and designers, shall not be restrictive, and shall, to the extent practicable, allow for maximum competition.

6 BONDS, INSURANCE & CONTRACTS

6.1 Types of contracts

The preferred type contract to use for all procurements is firm fixed price. It requires minimum administration and provides maximum incentive to the supplier. However, any type of contract that will promote the best interest of the County may be used.

A cost-reimbursement contract may be used only when the County Manager concludes that such a contract is likely to be less costly to the County than any other type or that it is impractical to obtain the supplies, services, or construction required except under a cost reimbursement contract.

The use of a cost-plus-a-percentage-of-cost contract is prohibited. Contracts based upon percentage discounts from or percentages added to prices listed in a manufacturer's published price list, in general distribution, are not considered to be cost-plus-percentage-of-cost contracts.

6.2 Contract administration

A County Representative(s) shall be identified on all contracts presented to the BOCC for award. The County Representative is responsible for ensuring that all the scope of work/services and the terms and conditions of the contract are met prior to making payment. Changes in and/or issues with the contract must be directed by the County Representative who will notify the County Manager. When necessary, more than one (1) County Representative may be named from different departments (as agreed to by the requesting department) in a cooperative effort to manage a project.

6.3 Bid security – general

Solicitations for construction, labor, and public improvement contracts in excess of \$50,000 shall require the submission of bid security in an amount equal to at least five percent (5%) of the bid or proposal cost at the time of the submission. The County Manager may set bid security requirements, in an amount of not more than 5% of the contract amount, for other types and dollar amounts of contracts if deemed necessary. The County Manager may determine it necessary to require bid security on projects less than \$50,000. If a bidder fails to accompany the offer with the required bid security, the offer shall be rejected as non-responsive.

6.4 Acceptable bid security

Acceptable bid security shall be limited to:

- A one-time bid bond underwritten by a company licensed to issue bonds in the State of Colorado.
- A bank cashier's check made payable to Fremont County.
- A bank certified check made payable to Fremont County.
- An irrevocable letter of credit in a form acceptable to the County.

The bid security is submitted as a guaranty that the offer will be maintained in full force and effect for a period of not less than sixty (60) days after opening of the offers or as specified in the solicitation.

6.5 Contract bonds

For contracts in excess of \$50,000, a separate Performance Bond, Labor and Materials Payment Bond, and Maintenance Bond or other legally acceptable surety may be required for all construction, labor, and public improvement contracts each in the amount of 100% of the contract price. The contractor shall deliver these bond(s) to the County within ten (10) calendar days after receipt of the Notice of Award, or at the same time the contract is executed. If the contractor fails to deliver the required bond(s), the contractor's bid or contract may be rejected or terminated for default. The bond(s) must be submitted on bond form(s) executed by a surety company authorized to do business in the State of Colorado. Performance, Payments and Material, and Maintenance Bonds may be required on contracts less than \$50,000 if the County Manager determines it to be in the best interest of Fremont County.

Performance bonds may be waived and cash accepted, deposited to an escrow account with the County, for a designated period of time if the terms of the surety alternative are acceptable to both parties of the contract. A percentage of the total amount of the contract defined to cover all costs associated with a performance breach may be an acceptable condition of an alternate surety.

6.6 Legal review of bonds and insurance certificates

All contract bonds or other sureties shall be reviewed with the contract for legal sufficiency. Deletions or additions to the bond terms by contractors or sureties shall not be permitted.

6.7 Insurance requirements

The County Manager may require such insurance as may be deemed necessary for the protection of the County or as may be required by County Code or Regulation. When a contract requires contractor insurance, the insurance certificates shall be provided with the contract, including all exceptions and riders attached to the certificate. All County contracts shall include a requirement for General Liability insurance. All contractors shall carry Workers' Compensation insurance. At a minimum, this insurance coverage shall be in the statutory amount for Workers' Compensation and \$150,000/\$600,000 minimum limits for General Liability. Independent contractors shall carry Workers' Compensation insurance to cover themselves and any employees or agents working, or who may work, under the County contract. Workers and contractors who are not protected by Workers' Compensation insurance shall not participate in a County contract.

6.8 Additional bonding

If at any time during the continuance of a contract, a surety on the contractor's bond or bonds becomes irresponsible, the County shall have the right to require additional and sufficient sureties.

The contractor shall furnish within ten (10) calendar days after written notice to do so. Such surety bond shall cover the entire contract amount regardless of changes in total contract amount.

6.9 Exceptions

If it is deemed to be in the County's best interest, the County Manager may waive or reduce the dollar amounts of any Bonds or insurance, except Worker's Compensation Insurance, if the actual contract price is less than \$50,000.00. However, in the event that the price of any construction, labor, or public improvement contract for which the County Manager has reduced or waived bonds should reach a value of \$50,000.00 or more, through change orders or otherwise, then the contractor may be required to provide separate bonds each in the amount of 100% of the new contract price, and additional insurance, as determined by the County Manager.

6.10 Legal review of contracts

All County contracts and any other contracts determined necessary by the County Manager, shall be reviewed as to legal form by the County Attorney except as may otherwise be provided in these rules or by written agreement between the County Attorney and the County Manager. County contracts shall utilize only those contract terms and standard forms, including purchase orders, which have been approved for use by the County Manager, unless the County Attorney determines that an alternative term or form should be used.

APPENDIX A

GLOSSARY OF PUBLIC PURCHASING TERMS

ACKNOWLEDGMENT - A form used by a vendor to advise a purchaser that an order has been received, and usually implying acceptance of the order.

ACT OF GOD - A contingency or occurrence that cannot be avoided by human power; a cause of damage which is irresistible (e.g., hurricane, flood, lightning) and not attributable to negligence.

AGENCY - (1) Administrative division of a government. (2) A relationship between two parties by which one, the agent is authorized to perform or transact certain business for the other, the principal; also, the office of the agent.

AGENT - A person authorized by another, called a principal, to act for him.

AGREEMENT - see "Contract", "Purchase Order".

ALL-OR-NONE BID - A bid submitted for a number of different items, services, etc., in which the bidder states he will not accept a partial award, but will accept only an award for all the items, services, et., included in the Invitation for Bids. Such bids are acceptable only if provided for in the Invitation, or if the bidder quoted an individual price for each of the items, services, etc., as listed and is the low bidder on each item. Alternate Bid - (1) A response to a call for alternative bids. See "Alternative Bid, Call For". (2) A bid submitted in knowing variance from the specifications, terms, conditions, or provisions of the solicitation. Such a bid is acceptable only when the variance is deemed to be immaterial.

ALTERNATIVE BID, Call For - An Invitation for Bids for a need that can be filled by items of varying materials, dimensions, styles, or other characteristics; bidders are invited to submit one or more bids as specified, but only one award will be made based on an assessment of what is most advantageous for the County, taking price and other factors into consideration.

AUTHORIZED PRICE LIST - A price list of the products and/or services covered in a contract which contains minimum essential information needed by users for placing orders.

APPROPRIATION - Board authorization to expend public funds for a specific purpose. Money set apart for a specific use.

APPROVED BRANDS LIST - See "Qualified Products List".

ARBITRATION - A process in which a dispute between two contending parties is presented to one or more disinterested parties for a decision. Resolution of a disagreement by such a process.

Architect/Engineer and Land Surveying Services - Those professional services within the scope of the practice of architecture, professional engineering, or land surveying, as defined by law.

AS IS - A term indicating that goods offered for sale are without warranty or guarantee, and that the purchaser takes the goods at his own risk without recourse against the seller for the condition or performance of the goods.

AWARD - The acceptance of a bid or proposal; the presentation of a purchase agreement or contract to a bidder.

BACK DOOR BUYING - Making a purchase without going through the central purchasing authority.

BACK DOOR SELLING - Direct, undue marketing effort to induce preference on the part of program managers or using agencies for a particular product, service, or seller with intent to constrain

BACK ORDER - That portion of an order which a vendor does not deliver at the scheduled time and re-entered for shipment at a later date.

BEST INTERESTS OF THE COUNTY - A term frequently used in granting a purchasing official authority to use discretion to take action he feels is most advantageous to the County. The term is used when it is impossible to anticipate adequately the circumstances that may arise so that more specific directions could be delineated by the law of regulation. Case law affirms discretion for purchasing officials in these actions.

BID- An offer, as a price, whether for payment or acceptance. A tender given specifically to a prospective purchaser upon request, usually in competition with other bidders. Also, an offer by a buyer to a seller, as at an auction.

BID AWARD FILE - A file divided into commodity and item sections listing those solicited for individual bids, what each response was, and other information. The bid - award file is used to compare past bids for award patterns that might reveal collusive agreements or to make other comparisons of data.

BID BOND - An insurance agreement in which a third party agrees to be liable to pay a certain amount of money in the event that a specific bidder, if his bid is accepted, fails to accept the contract as bid. See "Bid Deposit", "Bid Security".

BID DEPOSIT - A sum of money or check, deposited with and as instructed by the prospective purchaser to guarantee the bidder (depositor) will, if selected, accept the

contract in accordance with the bid. If the bidder does not accept the contract, he forfeits the amount of the deposit. See

"BID BOND", "Bid Security", also "Forfeiture of Deposit of Bond".

Bid Opening - The process through which the contents of bids are revealed for the first time to the government, to other bidders, and usually to the public. See "Public Bid Opening".

BID SAMPLE - A sample required of a bidder for examination, comparison, testing, and evaluation by the prospective purchaser.

BID SECURITY - A guarantee, in the form of a bond or deposit, that the bidder, if awarded a contract, will accept the contract as bid, otherwise the bidder (in the case of a deposit) or the bidder or his guarantor (in the case of a bond) will be liable for the amount of the bond or deposit. See "Bid Bond", "Bid Deposit".

BIDDER - Any person submitting a competitive bid in response to a solicitation. See "Bid", "Proposal", "Proposer".

BIDDERS LIST - A list maintained by the purchasing office setting out the names and addresses of suppliers of various goods and services from whom bids, proposals, and quotations can be solicited. See "Prequalification of Bidders," "Qualified Bidder".

BILL - A list of charges or costs presented by a vendor to a purchaser, usually enumerating the items furnished, their unit and total costs, and a statement of the terms of sale; an invoice.

BILL OF MATERIALS - A list specifying the quantity and character of materials and parts required to produce or assemble to stated quantity of a particular product.

BLANKET ORDER - An arrangement under which a purchaser contracts with a vendor to provide the purchaser's requirements for an item(s) or a service, on an as-required and often over the counter basis. Properly prepared, such an arrangement sets a limit on the money which may be spent at one time or within a specified period. See "Open-end Contract", "Price Agreement, "Requirements Contract".

BLANKET PURCHASE - See "Blanket Order".

BOILER PLATE - Colloquial designation for standard terms and conditions, usually preprinted, incorporated in an Invitation for Bids, Request for Proposals, or a contract or Purchase Order. See "General Provisions".

BONA FIDE - in good faith.

BRAND NAME - A product name which serves to identify a product of a particular manufacturer. A trade name. **Brand Name Specification** - A specification that cites the

brand names, model numbers, or other identifications as representing quality and performance called for, and inviting bids on comparable items or products of any manufacturer. (Not recommended).

Breach of Contract - A failure without legal excuse to perform any promise which forms a whole or part of a contract. See "Forfeiture of Deposit or Bond".

BREACH OF WARRANTY - Infraction of an express or implied agreement as to the title, quality, content, or condition of a thing sold.

BULK PURCHASING - Purchasing in large quantities to seek a lower prices per unit; volume purchasing.

BUSINESS - Any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or other private legal entity.

BUYER - See "Procurement Specialist". See also "Uniform Commercial Code".

BUYER'S MARKET - Market conditions in which goods can easily be secured and economic forces of business tend to cause goods to be priced at the purchaser's estimate of value.

CASH DISCOUNT - A discount from the purchase price allowed by the seller to the purchaser when payment is made within a designated period.

CASH ON DELIVERY (COD)- Payment due and payable upon delivery of goods.

CATALOG - A listing of item identifications arranged systematically.

CAVEAT EMPTOR - "Let the buyer beware". A maxim stating the buyer should be careful in making a purchase because the burden of defective goods rests with him. In contravention, the seller can be held responsible for certain defects by means of suitable specifications, warranties, and contractual terms and conditions.

CENTRAL PURCHASING AUTHORITY - The administrative unit with the authority, responsibility, and control of purchasing activities.

CENTRALIZED PURCHASING - A system of purchasing in which the authority, responsibility, and control of purchasing activities is concentrated in one administrative unit.

CERTIFICATE OF COMPLIANCE - A supplier's certification that the supplies or services in question meet certain specified requirements.

CERTIFICATE OF NON-COLLUSION - A statement signed by a bidder and submitted with his bid affirming that his bid is made freely, independently and without consultation with any other bidder.

CHANGE ORDER - A written order directing the contractor to make changes which the changes clause of the contract authorizes the purchaser to order without consent of the contractor.

CLAIM - The aggregate of the operative facts which serve as a basis for a demand for payment, reimbursement, or compensation for injury or damage under law or contract; the assertion of such demand.

CLIENT SERVICES - Services contracted for by a government jurisdiction on behalf of citizens clients usually requiring pre-qualification or licensing by the government for the performance of social or welfare services. Examples of client services include day care, halfway houses, vocational rehabilitation, guidance counseling and employment services.

CODE OF ETHICS - A written set of guidelines within which judgments and considerations of professional ethics and behavior should be made. See "Purchasing Ethics".

COLLUSIVE BIDDING - The response to bid invitations by two or more vendors who have secretly agreed to circumvent laws and rules regarding independent and competitive bidding. See "Corrupt Combination, or Conspiracy in Restraint of Trade", "Price Fixing".

COMMERCIAL LAW - The branch of law that designates the rules that determine the rights and duties of persons engaged in trade and commerce. See "Uniform Commercial Code".

COMMODITY - An article of trade, a movable article of value, something that is bought or sold; any movable or tangible thing that is produced or used as the subject of barter or sale.

COMPETITION - The process by which two or more vendors vie to secure the business of a purchaser by offering the most favorable terms as to price, quality, delivery and or service.

COMPETITIVE NEGOTIATION - A method for contracting for goods and services, whereby proposals are solicited from qualified suppliers, following submission of which changes in proposals and prices be allowed, and the offer deemed by the awarding authority to be most advantageous in terms of criteria as designated in the Request for Proposals is accepted; a negotiated procurement.

COMPETITIVE QUOTATIONS - The customary, and usually prescribed, method for making purchases involving dollar amounts less than that for which competitive sealed bidding is required. Such competition is often called for by law, with the transactions designated as "informal bidding", or "small purchases".

CONFIDENTIAL INFORMATION - (1) Any information which is available to an employee only because of the employee's status as a public employee and is not a matter of public knowledge or available to the public on request. (2) Information, such as trade secrets and test data, which may be kept confidential in the purchasing process.

CONFIRMING ORDER - A purchase order issued to a vendor, listing goods or services and terms of an order placed verbally, or otherwise, in advance of the issuance of the usual purchase document.

CONFLICT OF INTEREST - A situation wherein an individual as part of his duties must make a decision or take action that will affect his personal interests. See "Code of Ethics", "Purchasing Ethics".

CONSIDERATION - Acts, promises, or things of value exchanged by two parties that validates a contract between them.

CONSTRUCTION WORK - The process of building, altering or repairing a public structure or building, or other improvements to any public real property. It does not include routing operation, routine repair or routine maintenance of existing structures, buildings or real property. A project usually requiring the professional services of an architect or engineer.

CONSULTANTS AND EXPERTS - Those persons who are exceptionally qualified, by education or by experience, in a particular field to perform some specialized service. See "Professional Services".

CONTINGENCY - A possible future event or condition arising from presently known or unknown causes, the outcome of which is indeterminate at the present time.

CONTRACT - A deliberate verbal or written agreement between two or more competent persons to perform or not to perform a specific act or acts, Also, an "Agreement".

CONTRACT ADMINISTRATION - The management of various facets of contracts to assure that the contractor's total performance is in accordance with the contractual commitments and obligations to the purchaser are fulfilled. In government, this management may include responsibility, delegated by the central purchasing authority to using agencies.

CONTRACT MODIFICATIONS - A written alteration in specifications, delivery point, rate of delivery, period of performance, price quantity, or other provision of a contract accomplished pursuant to contractual conditions and leaving the general purpose and effect of the contract intact. See "Change Order".

CONTRACT RECORD - A record providing particulars regarding the orders or releases placed for delivery of goods against a contract so the volume of contract purchases can be determined.

CONTRACTUAL SERVICES - Services furnished under a contract in which the nature and basis for charges and other pertinent contractual terms and conditions are defined. See "Services", "Client Services", Professional Services", Proprietary Services".

CONVENIENCE TERMINATION CLAUSE - A contract clause which permits the government to terminate at its own discretion, the performance of work in whole or in part, and to make settlement of the vendor's claims in accordance with appropriate regulations and applicable contractual conditions.

COOPERATIVE PURCHASING - The combining of requirements of two or more politic entities to obtain the advantages of volume purchases, reduction in administrative expenses, or other public benefits.

COST REIMBURSEMENT CONTRACT - A contract under which a contractor is reimbursed for costs which are allowable in accordance with the contract terms and the provisions of the purchasing law, plus a fee, if any.

DAMAGES - Compensation, usually in money for injury to goods, persons, or property.

DEBARMENT - A shutting out or exclusion for cause, as a bidder from a list of qualified prospective bidders.

DEBT - Any obligation to pay money. Ordinarily the term debt means a sum of money due by reason of a contract expressed or implied. Broadly, the work may include obligations other than to pay money, such as the duty to render services or deliver goods.

DEFAULT - Failure by a party to a contract to comply with contractual requirements; contractor failure to perform.

DEFECT - A non-conformance of an item with specified requirements.

DELIVERY SCHEDULE - The required or agreed time, or rate of delivery of goods or services.

DELIVERY TERMS - Conditions in a contract relating to freight charges, place of delivery, time of delivery, or method of transportation.

DESCRIPTIVE LITERATURE - Information, such as illustrations, charts, drawings, and technical data which shows the characteristics or construction of a particular product or explains its operations, furnished by a bidder as part of his bid to describe the item he offers. The term refers only to information required to evaluate a product, and need not include other information such as that related to the qualifications of a bidder or operating or maintaining equipment.

DESIGN SPECIFICATION - A type or manner of writing a purchase description characterized by detail as to how the product is to be manufactured or work is to be performed; generic specification. Appropriate for a unique product or custom work.

DESIGNEE - A duly authorized representative of a person holding a superior position. See "Purchasing Agent".

DISADVANTAGED BUSINESS - A small business owned or controlled by a majority of persons, not limited to members of minority groups, who have lacked opportunity to develop and maintain a competitive position in the economy because of social disadvantages.

DISCOUNT - An allowance or deduction from a normal or list price extended by a seller to a buyer to make the net price more competitive. See "Cash Discount", "Quantity Discount," Standard

PACKAGE DISCOUNT", "Trade Discount". Discount Schedule - A list of discounts applying to varying quantities of goods, or applicable to differing classifications of purchasers.

ECONOMIC ORDER QUANTITY (EOQ) - The stock level reorder point based on costs or acquisition, storage, handling, and inventory investment to determine the most cost effective time and quantity to reorder. See "Stock Control", "Reordering Level".

EMERGENCY PURCHASE - A purchase made without following the normal purchasing procedures in order to obtain goods or services quickly to meet an urgent and unexpected requirement.

EQUIPMENT - Personal property of a durable nature which retains its identity throughout its useful life. See "Uniform Commercial Code".

ESCALATION CLAUSE -See "Price Adjustment Provision"

ESTABLISHED CATALOGUE PRICE - The price included in a catalogue, price list, price schedule or other form that:

- (a.) is regularly maintained by a manufacturer or contractor.
- (b.) is either published or otherwise available for inspection by customers; and
- (c.) states prices at which sales are currently or were last made to a significant number or any category of buyers, or to the general buying public, for the supplies or services involved.

ETHICS - See "Code of Ethics", "Purchasing Ethics".

EVALUATION OF BID - The process of examining a bid after opening to determine the bidder's responsibility, responsiveness to requirements, and to ascertain other characteristics of the bid that relate to determination of the successful bidder.

EXCESS PROPERTY - Inventory not required by the owning agency, but of potential utility to one or more agencies of the jurisdiction or to others eligible to receive it by transfer,

EXHAUSTION OF ADMINISTRATIVE REMEDIES - A legal doctrine to the effect that where an administrative remedy is provided by statute or governing rule or regulation, relief must be first sought from the administrative body, and all attempts to obtain such administrative relief must be expended before the complaining party may look to the courts for relief.

EXPEDITE - Effort to assure delivery of goods purchased in accordance with a time schedule, or to accelerate delivery, usually by contact of the purchaser with the vendor.

EXPENDABLE SUPPLIES - Tangible supplies other than those treated as nonexpendable.

EXPRESS WARRANTY - Any affirmation of fact or promise made by a seller to a buyer which relates to the goods and becomes part of the basis of the bargain.

EXTEND OPTION - To a provision, or exercise of a provision of a contract which allows a continuance of the contract for an additional time according to permissible contractual conditions. See "Option to Renew".

FAIR MARKET VALUE - A price that would induce a willing purchaser to purchase or a willing seller to sell in an open market transaction; the price a property would bring at a fair sale between parties dealing on equal terms.

FIDELITY BOND - A bond which secures an employer up to an amount stated in the bond for losses caused by dishonesty or infidelity on the part of the employee.

FIELD PURCHASE ORDER - A specific purchase document or order issued to a vendor in accordance with authority to make the purchase as delegated to using agencies by a central purchasing office.

FINANCIAL INTEREST -

- (a) ownership of any interest or involvements in any relationship from which, or as a result of which, a person within the past (year) has received, or is presently or in the future entitled to receive, more than (\$ N/A) per year, or its equivalent;
- (b) ownership of such interest in any property or any business as may be specified by a (Ethics Commissioner); or
- (c) holding a position in a business such as an officer, director, trustee, partner, employee, or the like, or holding any position of management.

FIRM BID - A bid that binds the bidder until a stipulated time of expiration.

FISCAL YEAR - A period of 12 consecutive months selected as a basis of annual financial reporting, planning, or budgeting.

FIXED PRICE CONTRACT - A contract which provides for a firm price, subject to any contractual conditions allowing price adjustment, under which the contractor bears the full responsibility for profit or loss.

FIXED PRICE SALE - An offering at a price established by the seller and not subject to negotiation.

FORMAL ADVERTISING - The placement of a notice in a newspaper or other publication according to legal requirements to inform the public that the government is requesting bids on a specific purchase it intends to make.

FORMAL BID OR OFFER - A bid which must be submitted in a sealed envelope and in conformance with a prescribed format, to be opened at a specified time. See "Sealed Bid".

FRAUD - A positive act resulting from a willful intent to deceive another with the purpose of depriving that person of their rights or property.

GENERAL PROVISIONS - Governing clauses for all contracts by type of purchase or contract. Clauses devised especially for a given purchase are called special provisions. See "Boiler Plate".

GENERIC NAME - Related to or characteristic of whole group or class; not protected by trademark registration.

GENERIC SPECIFICATION - See "Design Specification".

GOODS - Anything purchased other than services or real property. See "Uniform Commercial Code".

GOVERNMENTAL BODY - Any department, commission, council, board, bureau, committee, institution, legislative body, agency, government corporation, or other establishment of executive, legislative, or judicial branch of government jurisdiction.

GRANT - The furnishing by a grantor of assistance, whether financial or otherwise, to a person or unit of government to support a program authorized by law.

GRATUITY - A payment, loan, subscription, advance, deposit of money, services, or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is received. See "Code of Ethics", "Procurement Ethics".

GRATUITIES OFFER - An uninvited condition or provision submitted by a bidder or offer or; an unnecessary or unwarranted submission.

GROSS NEGLIGENCE - The degree of lack of care that shows a reckless disregard of life or safety, or that indicates a conscious indifference to the rights of others.

GUARANTEE - To warrant, stand behind, or insure performance or quality, as a supplier in relation to his product; a warranty.

IDENTICAL BID - A bid that is the same in all salient respects with another bid.

IMPREST FUNDS - Funds set aside as a cash reserve for expenditures made in accordance with established policies and controls; petty cash.

INELIGIBLE BIDDER - A supplier or prospective supplier who, by reason of financial instability, unsatisfactory reputation, poor history of performance, or other deficiency, does not meet the qualifications for placement on the bidders list or for award; also non-responsible bidder.

INFORMAL BID - An unsealed competitive offer conveyed by letter, telephone, telegram, or other means and under conditions different from those required from formal bidding.

INITIAL PRICE - Outlay of money necessary to buy something. Initial price is a proper determinate for award only when the products or services offered, and to be furnished, are essentially identical irrespective of which bidder or offeror receives the award.

INSPECTION - Critical examination and/or testing of items to determine whether they have been received in the proper quantity and condition and conform to the applicable specifications.

INSPECTION REPORT - A report to inform the purchasing authority of the quality or condition of the items delivered.

IN-STATE PREFERENCE - See "Preference".

INVITATION FOR BIDS (IFB) - All documents, whether attached or incorporated by reference, utilized in soliciting bids.

ITEM - A product, material or service.

LATE BID OR PROPOSAL - A bid or proposal received at the place specified in the solicitation after the time designated for all bids or proposals to be received.

LATENT DEFECT - A defect not apparent by ordinary and reasonable inspection at time of receipt or beginning use of a product.

LEAD TIME - The period of time from date of ordering to date of delivery during which the buyer must reasonably allow the vendor to prepare goods for shipment; period of time needed by central purchasing to process agency purchase requisitions for bidding and award of a contract.

LEASE - A contract conveying from one person or firm (lessor) to another (lessee) for use of real estate or personal property for a designated period of time in return for rental payment or other compensation.

LEASE PURCHASE AGREEMENT - A lease contract containing a purchase option in which the lessee's periodic payments or parts thereof may be applied to serve both as the rental obligation and as installments for acquiring ownership of the property upon lessee exercising the purchase option; a conditional sales contract.

LEGAL NOTICE - Notice of a proposed purchase as required by law. Depending upon the legal requirement, notice may be satisfied by posting an announcement of the purchase in a public place, notification of the appropriate bidders, from the bidders list, formal advertisement in a newspaper or newspapers, or a combination of these methods. See "Formal Advertising".

LICENSE - A non-transferable permission granted by a government or other authority to perform an act or to engage in an enterprise that is restricted or regulated by law.

LIFE-CYCLE COSTING - (L.C.C.) - A procurement technique which takes into account operating, maintenance, and money costs, other costs of ownership and usage, and determining the award of contracts on the basis of lowest total cost over the period the item will be used.

LINE ITEM - A procurement item specified in an Invitation for Bids for which the bidder asked to tender an individual price and which, under the terms of the invitation, is usually susceptible to a separate contract award.

LIQUIDATED DAMAGES - An amount of money, designated in a solicitation and as part of a contract, to be calculated on a per diem or other basis and paid upon default of a contract.

LIST PRICE - The published price at which a seller offers an item for sale.

LOCAL PREFERENCE - See "Preference".

LOCAL PURCHASE - A purchase made directly by an agency, apart from the central purchasing office, for its own use or for the use of another agency logistically supported by it on a minor P.O.

LOWEST AND BEST BID - See "Lowest Responsible Bidder".

LOWEST RESPONSIBLE BIDDER - Originally, the bidder submitting the lowest initial price and capable of performing the proposed contract. Under modern purchasing concepts, often construed as generally the same as the lowest responsive and responsible bidder" or the bidder who submits the "lowest and best bid" or the "most advantageous bid, price and other factors considered. "For clarity and accuracy, the recommended provision for determining award is the "responsive and responsible bidder whose bid is most economical for the purpose intended, according to criteria set forth in the solicitation." See also "Responsive Bidder".

LUMP SUM - A single price as requested or offered on a solicitation for a group of items, without or in addition to individual item prices; a lot price.

MANUAL - See "Purchasing Manual".

MANUFACTURER - One who (1) controls the design and production of an item, or (2) produces an item from crude or fabricated materials, or (3) assembles materials or components, with or without modification, into more complex items.

MARKET (noun) - The aggregate of forces that determine the availability prices, and amount of trade in the exchange of goods.

MARKET (verb) - To carry out all activities intended to sell a product or service. Includes advertising, packaging, surveying the potential market, etc.

MATERIAL(S) - Items required to perform a function or used in a manufacturing process, particularly those incorporated into an end product or consumed in its manufacture. May - Denotes the permissive.

MISREPRESENTATION - A manifestation by words or other conduct that, under the circumstances, amounts to an assertion not in accordance with the facts.

MISTAKE IN BID - A miscalculation in composing a bid resulting in an incorrect price or other term, especially in affecting the bidder's eligibility to be awarded a contract.

MOCK UP - A model, usually full size and constructed of inexpensive material, made for the purpose of studying the construction and use of an article or mechanical device. See "Pilot

MODEL", "Prototype".

MODIFICATION - Any formal revision of the terms of contract.

MONOPOLY - (1) An exclusive right or power to carry on a particular activity; (2) Ownership or control of the supply of or market for a product or service sufficient to allow stifling competition, controlling prices; or otherwise restricting trade.

MULTIPLE AWARD - The award of contracts to two or more bidders for the same essentially similar items. Appropriate only in situations where the award of a single contract would be impossible or impractical and awards are limited to the least number of suppliers necessary for a workable contract.

MULTI-STEP BIDDING - Source selection usually involving two competitive steps, the first constituting a technical proposal for furnishing the product or service described in the solicitation, and the second a submission of prices. Combining elements of competitive sealed bidding and competitive negotiation, multi-step bidding can be effective for complex procurements.

MUTUAL ASSENT - The state where the parties to a contract agree to all the terms and conditions in the same sense and with the same meaning.

NEGLIGENCE - The failure to do that which an ordinary reasonable, prudent person would do, or the doing of some act which an ordinary, prudent person would not do. Reference must always be made to the situation, the circumstances, and the knowledge of the parties.

NEGOTIATED AWARD - See "Competitive Negotiation".

NEGOTIATED SALE - An offering without a set price with the purchaser retaining the right to reject any or all tenders.

NET PRICE - Price after all discounts, rebates, etc., have been computed or allowed.

NET TERMS - See "Discount".

NO BID - A response to an Invitation for Bids stating that the respondent does not wish to submit a bid. In addition to serving as the courtesy of a reply, it can operate to prevent removal from the bidders list for failure to show active interest.

NONEXPENDABLE SUPPLIES - All tangible supplies having an original acquisition cost of over (\$500) per unit and a probable useful life of more than (one year).

NON-RESPONSIVE BID - A bid that does not conform to the essential requirements of the Invitation for Bids; nonconforming bid; unresponsive bid.

OBSOLESCE - Becoming obsolete, due usually to technological development.

OBSOLETE - Out of date; no longer in use or effectively usable.

OBSOLETE PROPERTY - Inventory without utility, due usually to technological development and/or normal wear-and-tear. Obsolete property may be "scrap" with no value except for its basic material content, or "salvage" with some value because parts can be recovered and reused.

OFFER - The act of one person that gives another person the legal power to create a contract to which both of them are parties; to perform such an act.

OLIGOPOLY - A market situation in which a few companies control or dominate the market for a product or service.

OPEN END CONTRACT - A contract in which quantity, duration, or both are not specified. See "Price Agreements". "Blanket Orders", "Requirements Contracts," and "Term Contracts" should specify either quantity or duration.

OPEN MARKET PURCHASE - A purchase made other than under a schedule or term contract, or made by negotiation following rejection of all bids when satisfactory bids cannot be obtained.

OPTION - The right, acquired for consideration, to buy or sell something at a fixed price within a specified time.

OPTION TO EXTEND - See "Extend, Option To".

OPTION TO RENEW - A contract clause that allows a party to elect to reinstitute the contract for an additional term; in public contracting, where competitive bidding is a required exercise the option must rest solely with the purchaser.

OR EQUAL - See "Equal, Or Equal".

ORDER - A request or command issued to a supplier for goods or services at a specified price or agreed basis for payment. See "Uniform Commercial Code".

ORDER FORM - A form by which a supplier is issued or informed of an order. See "Purchase Order".

ORDER LEVEL - The level of stock of any item at which an order is initiated for more supplies of that item. See "Economic Order Quantity".

ORDER RECORD - A central register of orders issued.

PACKING LIST - A document which itemizes in detail the contents of a particular package or shipment.

PARTNERSHIP - An agreement under which two or more persons agree to carry on a business, sharing in the profits and losses by an agreed to proportion, but each being liable for losses to the extent of all of his personal assets.

PATENT - A grant made by a government to an inventor, which gives the inventor the exclusives right to make, use, license, and sell the invention for a period of time.

PATENT CLEARANCE - A letter or other formal communication stating that the reporting requirements of the patent rights clause contained in a contract have been complied with by the contract.

PENALTY CLAUSE - A clause in a contract specifying the sum of money to be paid if the contractor defaults on the terms of the contract, particularly in respect to time.

PERFORMANCE BOND - A contract of guaranty executed subsequent to award by a successful bidder to protect the government from loss due to contractor inability to complete the contract as agreed. See "Forfeiture of Deposit or Bond".

PERFORMANCE RECORD - Record to indicate a supplier's ability to keep delivery promises and reliability, together with consistency of quality and performance of the products and services furnished.

PERFORMANCE PURCHASING - A results-directed approach characterized by writing purchase descriptions or specifications with emphasis on what an item is to do rather than how it is to be made, and by evaluating bids in terms of how well an item serves the intended purpose and the costs involved; developing bid evaluation criteria which result in greater economy and value.

PERFORMANCE SPECIFICATIONS - A specification describing the performance characteristics sought in a product or service; a purchase description accenting performance over design; a functional rather than a generic or physical specification.

PERISHABLE GOODS - Goods which are subject to spoilage within a relatively short time.

PERSONAL SERVICES - Infrequent, technical, or unique functions performed by an independent entrepreneur. Personal services contracts almost always run to individuals rather than partnerships, firms or corporations, and the services performed frequently are not the full time occupation of the contractor. Examples of personal services contracts include translation, technical editing, technical appraisal.

PETTY CASH - See "Imprest Funds".

PILOT MODEL - A model, perhaps handmade, used in production planning or to submit for approval of the purchaser as representative of the product that will be supplied against a contract. See "Prototype".

PREFERENCE - An advantage in consideration for award of a contract granted to a bidder by reason of the bidder's precedence, business location, origin of product offered, business classification (e.g., small business), or other reasons; generally inconsistent with impartiality in awarding public contracts.

PRE-PAID - A term denoting that transportation charges have been or are to be paid at the point of shipment.

PRE-QUALIFICATION OF BIDDERS - The screening of potential suppliers in which a purchaser considers such factors as financial capability, reputation, management, etc., in order to develop a list of prospective bidders qualified to be sent Invitation for Bid. See "Bidders List", Qualified Bidder".

PRICE ADJUSTMENT PROVISION - A condition in a solicitation and resultant contract that allows the price under the contract to decrease or increase under defined conditions; the condition should provide for the purchaser to cancel any individual item affected, or the contract, if a request for increase is not acceptable.

PRICE - The amount of money that will purchase a definite quantity, weight, or other measure of a commodity or service.

PRICE AGREEMENT - An agreement in which a purchaser negotiates with a vendor to furnish items at a predetermined price. Usually it is a informal arrangement involving a minimum number of units, orders place directly with the vendor by the purchaser, and a limited duration of time.

PRICE AT TIME OF DELIVERY - A term used in sales contracts when a seller will not give a firm price or agree to an escalator clause, but will only agree to invoice at the price charged to like customers on the day the goods in question are shipped or delivered.

PRICE COMPETITION - The basis for awarding a contract solely on the consideration of price as submitted on competitive bids or as negotiated under competitive proposals.

PRICE CONTROL - The fixing or restricting of prices, especially by a governmental agency.

PRICE ESCALATION CLAUSE - See "Escalation Clause".

PRICE FIXING - Agreements between competitors to sell at the same prices, to adopt formulas for the computation of selling prices, to maintain specified discounts, to maintain predetermined price differentials between different quantities, types, or sizes of products, or other means of setting prices charged to purchasers. See "Collusive Bidding", "Corrupt Combination", "Collusion", or Conspiracy in Restraint of Trade".

PRICE LIST - See "Price Schedule".

PRICE MAINTENANCE - The establishment by a manufacturer or secondary seller of a price for an item below which he will not sell or permit the product to be sold.

PRICE PROTECTION - An understanding or agreement between a purchaser and seller, or extended by a seller to a purchaser, to maintain a price against increase, or to grant the

purchaser any reduction in price the vendor may establish on the goods in question, prior to shipment of the purchaser's order.

PRICE REBATE - A refund or allowance on price, given usually after the completion of a contract and frequently based on some relationship with the business volume.

PRICE SCHEDULE - A list of prices applying to varying quantities or kinds of goods.

PRINCIPAL - One who employs an agent; a person who has authorized another to act on his account and subject to his control. See "Agent", "Purchasing Agent".

PRIORITY - A degree of precedence given to a requisition, order or contract to obtain completion, delivery, or performance on a particular date at the expense if necessary, of competing demands upon the same supplier or production facility.

PROCUREMENT - The procedures for obtaining goods or services, including all activities from the planning steps and preparation and processing of a requisition, through receipt and acceptance of delivery and processing of a final invoice for payment. The acts of preparing specifications, evaluating bids or proposals, making awards, and administering contracts are involved; in some contexts property management is implied. See "Purchasing Cycle".

PROFESSIONAL BEHAVIOR - See "Code of Ethics", "Purchasing Ethics".

PROFESSIONAL SERVICES - Infrequent, technical, and/or unique functions performed by independent contractors whose occupation is the rendering of such services. While not limited to licensed services, the services are considered "professional", and the contract may run to partnerships, firms, or corporations as well as individuals. Examples of professional services include medicine and the medical arts, architectural and engineering services, management and systems consultation, research, and the performing arts.

PROPRIETARY ARTICLE - An item made and marketed by a person or persons having exclusive right to manufacture or sell it.

PROPRIETARY INFORMATION - Information or data describing technical processes, mechanisms, or operational factors that a business wishes to keep from general public view in order to maintain competitive capabilities in the market. See "Trade Secret".

PROPRIETARY SERVICES - Work by independent contractors where the process is more important than the product, if any. Proprietary service contracts usually run to partnerships, firms, or corporations rather than individuals and are usually awarded through competition. Examples of proprietary service contracts include janitorial and custodial, protection and security, maintenance and repair, data processing service bureau.

PROPOSAL - An offer made one party to another as a basis for negotiations for entering into a contract. See "Competitive Negotiation".

PROPOSAL EVALUATION CRITERIA - Factors, usually weighted, relating to management capability, technical capability, manner of meeting performance requirements, price and other important considerations used to evaluate which proposer in a competitive negotiation has made the most advantageous offer.

PROPOSER - A person submitting a proposal in response to a Request for Proposal. (RFP)

PROTEST - A complaint about a governmental action or decision brought by a prospective bidder, a bidder, a contractor, or other interested party to the appropriate administrative section with the intention of achieving a remedial result.

PROTOTYPE - A model suitable for evaluation as to design, construction, workmanship, performance, and compliance with specifications. See "Pilot Model".

PUBLIC BID OPENING - The process of opening and reading bids. Conducted at the time and place specified in the Invitations for Bids and or the advertisement, and in the presence of anyone who wishes to attend. See "Bid Opening".

PUBLIC POLICY - That which is deemed by administrators to represent the public interest, or by courts to be general and well settled public opinion relating to the duties of men and government.

PUBLIC RECORD - Information about government activities that is available for public inspection.

PURCHASE DESCRIPTION - The words used in a solicitation to describe the supplies, services, or construction to be purchased, including any performance, physical, or technical requirements. Unless the context requires otherwise, the terms "purchase description," "purchase specification", and "specification" may be used interchangeably.

PURCHASE ORDER - A purchaser's document to formalize a purchase transaction with a vendor. The purchase order should contain statements as to the quantity, description, and price of the goods or services ordered; applicable terms as to payment, discounts, date of performances, and transportation; and other factors or suitable references pertinent to the purchase and its execution by the vendor. Acceptance of a purchase order constitutes a contract.

PURCHASE REQUEST - Information transmitted by a using agency requesting the central purchasing office to effect a contract for a particular need or group of needs. The request may include, but is not limited to, a performance or technical description of the requested item, delivery schedule, transportation mode, criteria for evaluation, suggested sources of supply, and information related to the making of any written determination required by policy or procedure. See "Requisition", "Request for Purchasing Authority". Procurement

Specialist - An administrator whose job includes reviewing appropriateness of purchase requests, preparing solicitations, obtaining quotations, bid or proposals for purchases, and evaluating responses of bidders and offerors for award of contracts; buyer. See "Agent".

PURCHASING CYCLE -The full cycle of activities carried out by a purchasing department in the acquisition of goods and services. See "Procurement".

PURCHASING ETHICS - Moral concepts and practices based on the principle that the public interest is paramount, applicable to the personnel of the purchasing department and all other persons involved in the purchasing process; particularly with respect to the expenditure of government funds and relationships between public employees and sellers. See "Code of Ethics".

PURCHASING MANUALS - A formal collection of information and instructions relative to practices and procedures of the procurement authority and using agencies.

PURCHASING MANAGER - The head of a purchasing activity or senior purchasing agent in the central purchasing office with authority to sign contracts on behalf of the jurisdiction. See "Agent", "Principal," "Purchasing Agent".

PURCHASING OFFICIAL - An administrative officer who directly oversees the activities of purchasing agents and other aspect of property management that are joined as separate or subordinate sections under individual administrative control.

PURCHASING - PUBLIC - The process of obtaining goods and services for public purposes in accordance with law and procedures intended to provide for the economical expenditure of public funds.

QUALIFIED BIDDER - A bidder determined by the government to meet standards of business competence, reputation, financial ability, and product quality for placement on a list of prospective bidders. See "Bidders List", "Prequalification of Bidders".

QUALIFIED PRODUCTS LIST - A specification developed by evaluating brands and models of various manufacturers of an item and listing those determined to be acceptable as eligible to be offered on the next Invitation for Bids; on approved brands list.

QUALITY ASSURANCE - A planned and systematic series of actions designed to provide adequate confidence that a product purchased or to be purchased will perform satisfactorily in service.

QUALITY CONTROL - Practices and procedures necessary to ensure appropriate quality and performance of goods produced or received.

QUANTITY DISCOUNT - An allowance determined by the quantity or value of a purchase. See "Discount".

QUOTATION - A statement of price, terms of sale, and description of goods or services offered by a prospective seller to a prospective purchaser, usually for purchases below the amount requiring formal bidding; stating of the current price of a commodity, or the price so stated.

RECEIVING REPORT - A form used by a receiving unit to inform others, such as the purchasing and accounting departments, of the receipt of goods purchased.

REGULATION - A statement by a governmental body, having general or particular applicability and future effect, designed to implement statute law and prescribe policy, or to describe organization, procedure, or practice, often promulgated in accordance with an Administrative Procedure Act. See "Rule".

RE-NEGOTIATION - Deliberation, discussion, or conference to change or amend the terms of an existing agreement.

RENEW, Option To - See "Option to Renew".

REORDERING LEVEL - The stock level at which a requisition for the replenishment of the stock should be initiated. See "Economic Order Quantity (EOQ)".

REQUEST FOR PROPOSALS (RFP) - All documents, whether attached or incorporated by reference, utilized for soliciting competitive proposals; the RFP procedure permits negotiation of proposals and prices as distinguished from competitive bidding and an Invitation for Bids.

REQUIREMENTS CONTRACT - An indefinite quantity contract in which a purchaser is obligated to order and a contractor is obligated to supply all of the purchaser's normal requirements that arise for an item or items within the specified period of the contract. See "Blanket Order", "Term Contracting".

REQUISITIONS - An internal document by which a using agency requests the purchasing department to initiate a procurement. May also be a form used for obtaining supplies from a storeroom or warehouse. See "Purchase Request".

RESPONSIBLE BIDDER OR OFFEROR - A person who has the capability in all respects to perform in full the contract requirements, and the integrity and reliability that will assure good faith performance.

RESPONSIVE BIDDER - A person whose bid conforms in all material respects to and terms set out by the government in the Invitation for Bids.

RESTRAINT OF TRADE - The effect of an act, contract, combination or conspiracy which eliminates or stifles competition, effects a monopoly, artificially maintains prices, or otherwise hampers or obstructs the course of trade and commerce as it would be carried on if left to the flow of natural and economic forces.

RESTRICTIVE SPECIFICATIONS - A specification or purchase description that unnecessarily limits competition by precluding items that would be capable of satisfying the intended need.

RULE - A regulation, standard, statement of policy or order of general application having the effect of law, issued by a government agency to implement, interpret or make statute law specific. See "Administrative Law", "Regulation".

RULES AND REGULATIONS - Governing precepts and procedures made by an administrative body or agency under legislative authority that usually have the force and effort of law.

SALVAGE - Property that is no longer useful as a unit in its present condition but has some value in addition to its value as scrap, usually because parts from it may be recovered and reused.

SAMPLE - See "Bid Sample".

SCRAP - Property that has no value except for its basic material content.

SEALED BIDS - A bid which has been submitted in a sealed envelope to prevent its contents being revealed or known before the deadline for the submission of all bids; usually required by law or rule on major procurements, to enhance fair competition.

SEASONAL - Depending upon the seasons, either climatic or economic, and usually cyclical on an annual basis.

SEASONAL RATE - Price or price basis applicable to some articles or commodities and effective only during certain periods of the year.

SERVICE - Work performed to meet a demand, especially work that is not connected with a manufacturing process.

SERVICE CONTRACT - A contract that calls for a contractor's time and effort rather than for a concrete end product. The term as defined here does not include employment agreements or collective bargaining agreements.

SERVICES - See "Client Services", "Personal Services", "Professional Services", and "Proprietary Services".

SHALL - Denotes the imperative.

SHIPPING LIST - A memorandum listing all items included in one shipment or shipped at one time.

SINGLE SOURCE PROCUREMENT - See "Sole Source Procurement".

SMALL BUSINESS - A designation referring to a firm, corporation, or establishment that has a small number of employees, low volume of sales, small amount of assets, or limited impact on the market, and is independent, i.e., is not an affiliate or subsidiary of a business dominant in its field of operations.

SOLE SOURCE PROCUREMENT - An award for a commodity or service to the only known capable supplier, occasioned by the unique nature of the requirement, the supplier, or market conditions.

SOLICITATION - The process of notifying prospective bidders or offerors that the jurisdiction wishes to receive bids for furnishing goods or services. The process may consist of public advertising, mailing Invitations for bids, posting notices, telephone or telegraph messages to prospective bidders, or all of these.

SPECIFICATION - A description of what the purchaser seeks to buy and consequently, what a bidder must be responsive to in order to be considered for award of a contract. A specification may be a description of the physical or functional characteristics, or the nature of, a supply or service. It may include a description of any requirements for inspecting, testing, or preparing as supply or service item for delivery. A purchase description.

SPECIFICATION COMMITTEE - A committee which advises and assists the central purchasing authority in establishing specifications. Often such a committee includes representatives with expertise from using agencies and specializes in a particular product area. A committee may also contribute, advise and assist in the development of standards.

SPOT PURCHASE - A one-time purchase occasioned by a small requirement, an unusual circumstance, or to take advantage of a favorable market condition.

STANDARD - A characteristic or set of characteristics for an item that, for reasons of performance level, compatibility or inter-changeability with other products, etc., is generally accepted by producers and by users of the item as a required characteristic of all items for the designated purpose.

STANDARD COMMERCIAL SUPPLIES - Articles which in the normal course of business are maintained in stock by a manufacturer or dealer, distributor, or other commercial outlet for the marketing of such articles.

STANDARD PACKAGE DISCOUNT - A price allowance applied to goods supplied in the vendor's regular quantity packaging. See "Discount".

STANDARD SPECIFICATION - A specification established through a prescribed process and used for all or most purchases of the item involved.

STANDARDIZATION (OF SPECIFICATIONS) - The process of examining characteristics and needs for items of similar end usage and developing a single specification that will satisfy the need for most or all purchases for that purpose.

STANDARDS COMMITTEE - A committee usually composed of policy level officials whose purpose is to advise and assist the central purchasing authority in establishing product and use standards and, in some cases, standard specifications.

STOCK - A supply of goods maintained on hand in a supply system to meet anticipated demands.

STOCK CONTROL - Control of the level of stock by control over the movement of goods into and out of stores. See "Economic Order Quantity (EOQ)".

STOCK RECORD - A record kept of items or materials in stock, usually located at a central point and showing stock level position.

STORAGE - The holding of goods in a designated place for safekeeping; a space or a place for the safekeeping of goods.

SUPPLEMENTAL AGREEMENT - A contract addendum accomplished by mutual action of the parties, permissible under emergency purchases, construction work, sole source procurement and otherwise where competition is not required.

SUPPLIER - An actual or potential contractor; a vendor.

SUPPLIES - Customarily, items that are consumed or expended in the course of being used, as distinguished from equipment and materials; but in some purchasing terminology all items except construction and services.

SUPPORT SERVICES - See "Proprietary Services".

SURPLUS PROPERTY - Inventory not needed by the owning agency or by other agencies at the present time or in the foreseeable future.

TABULATION OF BIDS - A recording of bidders and abstract of their bids listing items offered, prices, deliveries, etc., the response to a specific solicitation, made for purposes of comparison and record keeping; an abstract.

TERM CONTRACTING - A technique by which a source of supply is established for a specific period of time. Term contracts characteristically are established through competitive sealed bidding and usually are based on indefinite quantities to be ordered "as needed", although such contracts can specify definite quantities with deliveries extended over the contract period. See "Blanket Order", "Open-end Contract", "Price Agreement", "Requirements Contract".

TERMS AND CONDITIONS - A general reference applied to the provisions which bids must be submitted and which are applicable to most purchase contracts. See "Boiler Plate".

TERMS OF PAYMENT - Purchase transactions require payment for the goods or services received, and with exception of an unusual exchange or barter agreement there are three (3) basic payment terms, cash, open account, and secured account.

TESTING - Determination of the physical, chemical or performance standards. Testing may be conducted in connection with developing specification and standards, make comparative evaluations of product offered on bids, and ascertaining compliance with specification before or after a contract award.

TITLE - The means whereby a person's ownership of property is established.

TOKEN BID - A perfunctory offer by a bidder with no serious intent of being the successful bidder; usually submitted to maintain eligibility for the bidders list or as an act of collusion.

TOTAL SUPPLY - A concept of purchasing with the objective of advanced planning which provides for the broadest scope of purchasing and purchasing related activities to reduce cost, improve effectiveness, and increase operational efficiency. Total supply is concerned not only with acquisition, but with requirements planning, logistics, and property management.

TRADE DISCOUNT - A deduction from an established price for items or services that is offered or allowed by the seller and not conditioned upon prompt payment. "See Discount".

TRADE NAME - See "Brand Name".

Trade Secret - Any aspect of the business or its operation not made available to competitors. See "Proprietary Information".

TRADEMARK - A distinguishing sign, symbol, mark work, or arrangement of words in the form of a label or other indication that is adopted and used by a manufacturer or distributor to designate his particular goods, and which no other person has the legal right to use.

UNIFORM COMMERCIAL CODE - Uniform statute law adopted by states for consistency and modernity in law governing commercial transactions.

UNIT PRICE - The price for a given unit of a good or service, e.g., price per ton, labor hour, foot.

UNIT PRICE EXTENSION - The calculation of the total price of an item by multiplying the price per unit by the number of units requested or purchased.

UNRESPONSIVE BID - See "Non-responsive Bid".

UNSUCCESSFUL BIDDER OR OFFEROR - One whose bid or proposal is not accepted and award is made to another.

USING AGENCY - A unit of government that requisitions items through central purchasing.

VALUE - The amount of money for which goods or services can be exchanged. "Uniform Commercial Code".

VALUE ANALYSIS - An organized effort to analyze the function(s) of products, system specifications and standards, and practices and procedures, intended to satisfy the required function(s) in the most economical manner.

VENDOR - A supplier.

VENDOR FILE - The accumulated record maintained by the central purchasing authority of information relevant to a bidder's or contractor's business relationship with the jurisdiction, including application for inclusion on the bidders list, record of performance under contracts, pertinent correspondence, and the results of any inquiries or analyses made for specific purposes.

VOID - Without legal effect, unenforceable.

VOLUME PURCHASING - See "Bulk Purchasing".

VOLUNTARY CONSENSUS STANDARDS - Standards, especially for procurement purposes, developed through voluntary participation of interested parties including producers, users and consumers, and representatives variously from government and education. Development and use of such standards is voluntary.

WAIVER OF BID(S) - A process authorized by law or rule whereby a government purchasing office may procure items without competitive bidding procedures because of unique circumstances related to a particular need or procurement; also "Waiver of Competition".

WAIVER OF MISTAKE OR INFORMALITY - The act of disregarding errors or technical nonconformities in the bid which do not go to the substance of the bid and will not adversely affect the competition between bidders.