

Rockland County, NY
Wednesday, October 29, 2014

Chapter 140. PROCUREMENT POLICY

[HISTORY: Adopted by the Rockland County Legislature 12-16-1998 by Res. No. 623-1998; amended in its entirety 7-5-2006 by Res. No. 380-2006. Subsequent amendments noted where applicable.]

GENERAL REFERENCES

Purchasing agent — See Ch. **142**.

Division of Purchasing — See Ch. **5**, Art. **VIII**.

§ 140-1. ARTICLE I, General Provisions

§ 140-1.1. Purpose.

The purpose of this policy is to provide for the fair and equitable treatment of all persons involved in public purchasing by the County of Rockland, to maximize the purchasing value of public funds in procurement, and to provide safeguards for maintaining a procurement system of quality and integrity.

§ 140-1.2. Applicability.

This policy applies to contracts for the procurement of all supplies, services, materials and equipment, as well as public works projects less than \$100,000, entered into by the County of Rockland after the effective date of this policy. It shall apply to every expenditure of public funds by a public agency for public purchasing irrespective of the source of the funds. When the procurement involves the expenditure of federal assistance or contract funds, the procurement shall be conducted in accordance with any mandatory applicable federal law and regulations. Nothing in this policy shall prevent any public agency from complying with the terms and conditions of any grant, gift, or bequest that is otherwise consistent with law.

§ 140-1.3. Exemptions.

Unless otherwise ordered by regulation the following commodities, supplies or services need not be procured through the Purchasing Division in accordance with the County's Procurement Policy; and shall be procured by the appropriate agency, department or committee:

- A. Works of art for public display.

§ 140-1.4. Special procurements.

Notwithstanding any other provision of this policy, the County Executive or County Legislature may, with prior public notice, initiate a procurement of professional services above the small purchase amount specified in § 140-3.6 where the County Executive or County Legislature determines that an unusual or unique situation exists that makes the application of all requirements of competitive sealed proposals contrary to the public interest. Any special procurement under this section shall be made with such competition as is practicable under the circumstances. A written determination of the basis for the procurement and for the selection of the particular contractor shall be included by the County Executive or County Legislature in the contract file, and a report shall be made publicly available at least annually describing all such determinations made subsequent to the prior report.

§ 140-1.5. Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

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 the laws of the State of New York.

BRAND NAME OR EQUAL SPECIFICATION

A specification limited to one or more items by manufacturers' names or catalog numbers to describe the standard of quality, performance, and other salient characteristics needed to meet County requirements, and which provides for the submission of equivalent products.

BRAND NAME SPECIFICATION

A specification limited to one or more items by manufacturers' names or catalog numbers.

BUSINESS

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

CHANGE ORDER

A written order signed and issued by the Director of Purchasing, directing the contractor to make changes in relation to a specific purchase order or County contract.

CONFIDENTIAL INFORMATION

Any information which is available to an employee only because of the employee's status as an employee of the County and is not a matter of public knowledge or available to the public on request.

CONSTRUCTION

The process of building, altering, repairing, improving, or demolishing any public structure, building, road, highway, bridge or other public improvements of any kind to any public real

property. It does not include the routine operation, routine repair, or routine maintenance of existing structures, buildings, or real property.

CONTRACT

All types of County agreements, regardless of what they may be called, for the procurement of supplies, services or construction.

CONTRACT MODIFICATION (BILATERAL CHANGE)

Any written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of any contract accomplished by mutual action of the parties to the contract.

CONTRACTOR

Any person having a contract with the County or a using agency thereof.

COST ANALYSIS

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

COST DATA

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

COST-REIMBURSEMENT CONTRACT

A contract under which a contractor is reimbursed for costs which are allowable and allocable in accordance with the contract terms and the provisions of this policy, and a fee for profit, if any.

DIRECT OR INDIRECT PARTICIPATION

Involvement through decision, approval, disapproval, recommendation, preparation of any part of a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity.

EMPLOYEE

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

FINANCIAL INTEREST

- A. Ownership of any interest or involvement 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 \$100 per year, or its equivalent;
- B. Ownership of 25% of any property or business; or

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

GRATUITY

A payment, loan, subscription, advance, deposit of money, service, or anything else with a nominal value of \$25 or more.

IMMEDIATE FAMILY

A spouse, children, parents, brothers, and sisters.

INVITATION FOR BIDS

All documents, whether attached or incorporated by reference, utilized for soliciting sealed bids.

PERSON

Any business, individual, union, committee, club, other organization, or group of individuals.

PRICE ANALYSIS

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

PRICING DATA

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

PROCUREMENT

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

PUBLIC AGENCY

A public entity subject to or created by the County.

REQUEST FOR PROPOSALS

All documents, whether attached or incorporated by reference, utilized for soliciting proposals.

RESPONSIBLE BIDDER OR OFFEROR

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

RESPONSIVE BIDDER

A person who has submitted a bid that conforms in all material respects to the requirements set forth in the invitation for bids.

SERVICES

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

SPECIFICATION

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

SUPPLIES

All property, including but not limited to equipment, materials, and printing, excluding land or a permanent interest in land.

USING AGENCY

Any department, commission, board, or public agency requiring supplies, services, equipment, or construction procured pursuant to this policy.

§ 140-1.6. Public access to procurement information.

Procurement information shall be a public record to the extent provided in the New York State Freedom of Information Law (Public Officers Law §§ 84 to 90), and shall be available to the public as provided in such statute.

§ 140-2. ARTICLE II, Office of the Director of Purchasing

§ 140-2.1. Authority and duties.

- A. Principal public purchasing official. Except as otherwise provided herein, Paul J. Brennan, CPPO, the Director of Purchasing, shall serve as the principal public purchasing official for the County, and shall be responsible for the procurement of supplies, services, equipment, and public works projects in accordance with this policy, as well as the management and disposal of supplies, services, and equipment.
[Amended 12-7-2010 by Res. No. 612-2010]
- B. Duties. In accordance with this policy the Director of Purchasing shall:
 - (1) Procure or supervise the procurement of all supplies, services, materials and equipment, as well as public works projects under \$100,000 needed by the County;
 - (2) Exercise direct supervision over the County's central stores and general supervision over all other inventories of supplies belonging to the County;
 - (3) Sell, trade, or otherwise dispose of surplus supplies belonging to the County; and

- (4) Establish and maintain programs for specification development, contract administration and inspection and acceptance, in cooperation with the public agencies using the supplies, services, and construction.
- C. Operational procedures. Consistent with this policy, the Director of Purchasing may adopt operational procedures relating to the execution of its duties.

§ 140-2.2. Delegation to other County officials.

With the approval of the County Executive, the Director of Purchasing may delegate authority to purchase certain supplies, services, equipment, or construction items to other County officials, if such delegation is deemed necessary for the effective procurement of those items.

§ 140-2.3. Procurement card program.

- A. With the approval of the County Executive, the Director of Purchasing, under the authority provided in § 140-2.1 of this policy, may establish a procurement card program to improve efficiency and streamline the purchasing process of small dollar items, thereby eliminating the need for many petty cash accounts, and also reducing the volume of individual purchase orders and payments processed by the County to suppliers. Audits shall be required to ensure that the cardholders and their respective department head or Commissioner are adhering to proper policies and procedures.
- B. Conditions for use. The Director of Purchasing and the Commissioner of Finance shall develop procurement card policies and procedures that detail the regulations which will govern the program. The Procurement Card Policy shall be reviewed annually by the County Legislature in conjunction with its annual review of the County's Procurement Policy. The Procurement Card Policy shall include:
- (1) Purpose of the procurement card program.
 - (2) Scope of the program.
 - (3) Detailed listing of all card holders, card limits, and approved uses.
 - (4) Applicability of the policies and procedures.
 - (5) Responsibilities.
 - (6) Assignment and control of the procurement cards.
 - (7) Card holder use of the procurement card.
 - (8) Prohibited use of the procurement card.
 - (9) Procedures for making and paying for purchases.
 - (10) Procedures for disputes.

- (11) Review of purchases by departments.
- (12) Use of Peoplesoft eProcurement to reconcile purchases.
- (13) Audit requirements.

§ 140-3. ARTICLE III, Source Selection, Bidder Qualifications, Contract Formation and Administration

§ 140-3.1. Competitive sealed bidding.

- A. Conditions for use. All contracts of the County of Rockland shall be awarded by competitive sealed bidding except as otherwise provided in §§ **140-3.2** (Competitive sealed proposals), 140-3.4 (Contracting for designated professional services), 140-3.6 (small purchases), 140-3.8 (Sole source procurement), 140-3.9 (Emergency procurements), and 140-5.6 (public announcement and selection process) of this policy.
- B. Invitation for bids. An invitation for bids shall be issued and shall include specifications and all contractual terms and conditions applicable to the procurement.
- C. Public notice. Adequate public notice of the invitation for bids shall be given, not less than 30 calendar days prior to the date set forth therein for the opening of bids, unless it is determined by the Director of Purchasing, in writing, that a public notice of less than 30 days is adequate. In no instance shall the public notice be less than five business days. Such notice shall include publication in the newspaper(s) of general circulation as designated by the County Legislature. The public notice shall state the place, date, and time of the bid opening.
- D. Bid opening. Bids shall be opened publicly in the presence of one or more witnesses at the time and place designated in the invitation for bids. The amount of each bid, and such other relevant information as the Director of Purchasing deems appropriate, together with the name of each bidder, shall be recorded; the record and each bid shall be open to public inspection in accordance with § **140-1.6** (Public access to procurement information).
- E. Bid acceptance and bid evaluation. Bids shall be unconditionally accepted without alteration or correction, except as authorized in this policy. Bids shall be evaluated based on the requirements set forth in the invitation for bids, which may include criteria to determine acceptability such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose. Those criteria that will affect the bid price and be considered in evaluation for award shall be objectively measurable, such as discounts, transportation costs, and total or life cycle costs. The invitation for bids shall set forth the evaluation criteria to be used. No criteria that are not set forth in the invitation for bids may be used in bid evaluations.
- F. Correction or withdrawal of bids; cancellation of awards. Correction or withdrawal of inadvertently erroneous bids before or after bid opening, or cancellation of awards or contracts based on such bid mistakes, may be permitted where appropriate. Mistakes discovered before bid opening may be modified or withdrawn by written notice received in

the office designated in the invitation for bids prior to the time set for bid opening. After bid opening, correction of bids shall not be permitted. After bid opening, no changes in bid prices or other provisions of bids prejudicial to the interest of the County or fair competition shall be permitted. In lieu of bid correction, a bidder alleging a material mistake of fact may be permitted to withdraw his bid if:

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

G. Award. The contract shall be awarded with reasonable promptness by appropriate written notice to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the invitation for bids.

H. Multi-step sealed bidding. When it is considered impractical to prepare initially a purchase description to support an award based on price, an invitation for bids may be issued requesting submission of unpriced offers to be followed by an invitation for bids based on the product information received from the first solicitation.

I. Receipt of bids.

[Added 4-15-2008 by Res. No. 208-2008; amended 8-6-2013 by Res. No. 446-2013]

- (1) Bids are to be packaged, sealed and submitted to the location stated in the bid specifications. Bidders are solely responsible for timely delivery of their bids to the location set forth in the bid specification prior to the stated bid opening date/time; or
- (2) If authorized by the bid specification, bids may be submitted in an electronic format. Submission in an electronic format may not, however, be required as the sole method for the submission of bids and proposals, with the exception of bids and proposals for technology contracts only.

- (a) The receiving device designated by the County of Rockland will be the Empire State Purchasing Group's e-Procurement software from BidNet or the PeopleSoft Strategic Sourcing Module and will be identified in the bid specification. Both receiving devices will:

[1] Document the time and date of each bid received electronically;

[2] Authenticate the identity of the sender;

[3] Ensure the security of the information transmitted; and

[4] Ensure confidentiality of the bid until the time and date established for opening of the bids.

- (b)

The timely submission of an electronic bid in compliance with instructions provided for such submission in the advertisement for bids and/or specifications shall be the responsibility solely of each bidder or prospective bidder. The County shall not incur any liability from delays of or interruptions in the receiving device designated for the submission and receipt of electronic bids.

- (3) For purposes of this policy, "sealed bids," "sealed proposals" and "sealed offers," as those terms apply to purchase contracts (including contracts for service work, but excluding any purchase contracts necessary for the completion of a public works contract pursuant to Article 8 of the Labor Law), shall include bids, proposals and offers submitted in an electronic format, including submission of the statement of noncollusion required by § 103-d of the General Municipal Law.

§ 140-3.2. Competitive sealed proposals.

- A. Conditions for use. When the Director of Purchasing determines in writing that the use of competitive sealed bidding is either not practicable or not advantageous to the County, a contract may be entered into by the use of the competitive sealed proposal method.
- B. Request for proposals. Proposals shall be solicited through a request for proposals.
- C. Public notice. Adequate public notice of the request for proposal shall be given in the same manner as provided in § **140-3.1C** (Competitive sealed bidding); provided the minimum time shall be 30 calendar days.
- D. Receipt of proposals. No proposals shall be handled so as to permit disclosure of the identity of any offeror or the contents of any proposal to competing offerors during the process of negotiation. A register of proposals shall be prepared containing the name of each offeror, the number of modifications received, if any, and a description sufficient to identify the item offered. The register of proposals shall be open for public inspection only after contract award.
- E. Evaluation factors. The request for proposals shall state the importance of price and other evaluation factors.
- F. Discussion with responsible offerors and revisions to proposals. As provided in the request for proposals, discussions may be conducted with responsible offerors who submit proposals determined to be reasonably susceptible of being selected for award for the purpose of clarification to assure full understanding of, and conformance to, the solicitation requirements. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals, and such revisions may be permitted after submissions and prior to award for the purpose of obtaining best and final offerors. In conducting discussions, there shall be no disclosure of the identity of competing offerors or of any information derived from proposals submitted by competing offerors.
- G. Award. Award shall be made to the responsible offeror whose proposal is determined in writing to offer the best value to the County, taking into consideration price and the

evaluation factors set forth in the request for proposals. No other factors or criteria shall be used in the evaluation. The contract file shall contain the basis on which the award was made.

§ 140-3.3. Contracting for professional services with predetermined rates.

- A. Authority. For the purpose of procuring certain professional services where the payment rates are established by the federal or state government, or when the County contracts with all qualified providers, any using agency may procure them without the requirement of issuing a request for proposal as per § 140-3.2 in accordance with the selection procedures specified in this section.
- B. Selection procedure.
 - (1) Conditions for use. This section shall only apply to professional service contracts where the rates to be paid by the County are set by the federal or state government, and where all qualified firms are considered for contracts.
 - (2) Statement of qualifications. Persons or firms engaged in providing the designated types of professional services may submit statements of qualifications or expressions of interest in providing such services to the appropriate department head or Commissioner. An agency using such professional services may specify a uniform format for statements of qualifications. Persons may amend these statements at any time by filing a new statement.
 - (3) Public notice. Adequate public notice of contracting opportunities covered by this section shall be given annually by each County department, through the Purchasing Division, at least 90 days prior to the expiration of the current contract period.

§ 140-3.4. Contracting for designated professional services.

- A. Authority. For the purpose of procuring the services of a) accountants, b) clergy, c) physicians, d) lawyers, e) dentists, f) registered nurses, and g) dieticians as defined by the laws of the State of New York, any using agency requiring such services may procure them on its own behalf, in accordance with the selection procedures specified in this section. No contract for the services of legal counsel may be awarded without the approval of the County Executive and the County Attorney, other than the County Legislature which may approve its own such procurements, which shall be approved by the Chairperson of the Legislature and the County Attorney.
- B. Selection procedure.
 - (1) Conditions for use. Except as provided under § 140-3.8 (Sole source procurement) or § 140-3.9 (Emergency procurements), the professional services designated in Subsection A of this section shall be procured in accordance with this subsection.

- (2) Statement of qualifications. Persons engaged in providing the designated types of professional services may submit statements of qualifications or expressions of interest in providing such professional services. A using agency using such professional services may specify a uniform format for statements of qualifications. Persons may amend these statements at any time by filing a new statement.
- (3) Discussions. The head of a using agency procuring the required professional services or a designee of such officer may conduct discussions with any offeror who has submitted a statement of qualifications to determine such offeror's qualifications for further consideration. Discussions shall not disclose any information derived from statements of qualifications submitted by other offerors.
- (4) Award. Award shall be made to the offeror determined in writing by the head of the using agency procuring the required professional services, or a designee of such officer, to be best qualified based on the agency's evaluation of the statement of qualifications, and negotiation of compensation determined to be fair and reasonable. If compensation cannot be agreed upon with the best-qualified offeror, the negotiations will be formally terminated with the selected offeror. If statements of qualifications were submitted by one or more other offerors determined to be qualified, negotiations may be conducted with such other offeror or offerors, in the order of their respective qualification ranking, and the contract may be awarded to the offeror then ranked best qualified if the amount of compensation is determined to be fair and reasonable.

§ 140-3.5. Contracting for professional services with grant-approved organizations.

- A. Authority. For the purpose of procuring certain professional services where the contractor has been identified in an approved grant application as the contractor to perform services covered by the grant, any using agency may procure them without the requirement of issuing a request for proposal as per § 140-3.2, in accordance with the selection procedures specified in this section.
- B. Selection procedure.
 - (1) Conditions for use. This section shall only apply to professional service contracts where the contractor has been identified in an approved grant application as the contractor to perform services covered by the grant.
 - (2) Statement of qualifications. Prior to submitting a grant application, the County department shall obtain a minimum of three statements of qualifications and cost estimates for the services to be performed. Additional cost quotations shall be obtained if required under the terms and conditions of the grant.

§ 140-3.6. Purchases not subject to competitive bidding.

- A. The following purchases are not subject to competitive bidding:

- (1) Purchases of \$20,000 or less for commodities, equipment, materials, supplies and services.
[Amended 12-7-2010 by Res. No. 612-2010]
 - (2) Purchases of \$35,000 or less for public works projects.
[Amended 4-20-2010 by Res. No. 221-2010]
- B. Section 104-b of New York State General Municipal Law requires that procedures for purchasing goods and services that fall below the monetary bid limits be established and approved by the governing board. The following shall constitute Rockland County policy:
- (1) Cumulative purchases.
 - (a) Purchases shall be evaluated with attention given to cumulative dollar amounts expected in a given fiscal year. The Director of Purchasing shall canvas using agencies to determine yearly value of a commodity or service. Past history can be taken into consideration when evaluating yearly costs associated with the purchase of a commodity or service. If the bid limit is suspected to be exceeded, competitive bidding shall be used. This decision shall rest with the Director of Purchasing.
 - (b) If there are several comparable separate public works projects for the same or various locations, in a foreseeable time frame, whose expected cumulative total is more than \$10,000, written quotes must be obtained from a minimum of three suppliers.
 - (2) Methods of procurement not covered by competitive bidding.
 - (a) Purchases for commodities, equipment, supplies, materials and services in the amount of \$5,000 or less shall be awarded at the discretion of the Director of Purchasing; purchases more than \$5,000 up to and including \$20,000 shall require a minimum of three written or electronic quotes. All purchases more than \$20,000 shall be competitively bid.
[Amended 12-7-2010 by Res. No. 612-2010]

[1] In lieu of obtaining written quotes for purchases of commodities more than \$5,000 up to and including \$20,000, the Director of Purchasing is authorized to make such purchases using established national and regional cooperative purchasing contracts, including, but not limited to, the contracts issued by the following entities: the U.S. General Services Administration (GSA) Schedule 70 Information Technology, Minnesota Multistate Contracting Alliance for Pharmacy (MMCAP), U.S. Communities Government Purchasing Cooperative, Western States Contracting Alliance (WSCA), National Joint Powers Alliance (NJPA) or the HGACBuy Cooperative Purchasing Program.
 - (b) Purchases that are defined as public works projects in the amount of \$10,000 or less shall be awarded at the discretion of the Director of Purchasing; purchases more than \$10,000 up to and including \$35,000 shall require minimum of three

written or electronic quotes. All purchases more than \$35,000 shall be competitively bid.

[Amended 4-20-2010 by Res. No. 221-2010]

- (c) Purchases and contracts defined as professional services in the amount of \$35,000 or less shall be awarded at the discretion of the County Executive, Director of Purchasing and the Commissioner or Director of the using agency. Purchases and contracts more than \$35,000 up to and including \$100,000 shall require the issuing of a formal request for proposal and the approval of the County Executive; purchases and contracts of more than \$100,000 shall require the issuing of a formal request for proposal, approval of the County Executive and approval of the County Legislature.

[Amended 4-20-2010 by Res. No. 221-2010]

- (d) It shall be the responsibility of the Director of Purchasing of the County of Rockland, or his agent, with regard to all procurements not covered by competitive bidding, as provided herein, to prioritize purchasing goods and/or services whenever possible from businesses or commercial entities located physically within the geographic borders of the County of Rockland.

[1] The Director of Purchasing shall develop and implement procedures for the execution and/or waiver of this section.

[2] Any decision by the Director of Purchasing or his agent to waive this section pursuant to Subsection **B(2)(d)[1]** shall be documented and filed in the Purchasing Department.

[3] A report of waivers of this section for each calendar year shall be submitted no later than February 1 to the County Executive and Chairman of the Legislature by the Director of Purchasing.

[4] Section **140-3.6B(2)(d)** shall be referenced as the "policy to prioritize Rockland businesses."

- (3) Award. All awards from telephone, facsimile, e-mail or written quotes shall be made to the supplier offering the best value to the County. In determining the best value for the County, the purchase price and whether the goods or services meet specifications are the most important considerations. However, the Director of Purchasing may consider other relevant factors, including:

- (a) Installation costs;
- (b) Life cycle costs;
- (c) The quality and reliability of the goods and services;
- (d) The delivery terms;
- (e)

Indicators of probable supplier performance under the contract such as past supplier performance, the supplier's financial resources and ability to perform, the supplier's experience or demonstrated capability and responsibility, and the supplier's ability to provide reliable maintenance agreements and support;

- (f) The cost of any employee training associated with a purchase;
 - (g) The effect of a purchase on agency productivity; and
 - (h) Other factors relevant to determining the best value for the County in the context of a particular purchase, including the status of the vendor as a Rockland County based small business.
- (4) Documentation. All quotes (written or telephone) shall be documented in the procurement record and shall be filed in the respective year's quote files or attached to the Purchasing Division's copy of the purchase order. All purchases resulting from a written, electronic or telephone quote shall have the quote number referenced on the electronic purchase order or voucher, thus creating an audit trail.

§ 140-3.7. Certificate regarding business dealings in Northern Ireland.

- A. Except as otherwise provided herein, with respect to any contracts for goods or services subject to this policy not required by law to be made pursuant to competitive bidding requirements with a dollar value in excess of \$2,500, the County of Rockland Director of Purchasing shall not award or recommend award of a contract to a contractor which does not agree to execute a certification in substantially the following form:
- CERTIFICATE REGARDING BUSINESS DEALINGS WITH NORTHERN IRELAND
- The contractor and any individual or legal entity in which the contractor holds a ten-percent or greater ownership interest and any individual or legal entity that holds a ten-percent or greater ownership interest in the contract (a) has no business operations in Northern Ireland, or (b) shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Principles.
- B. For purposes of this section, "MacBride Principles" shall mean those principles relating to nondiscrimination in employment and freedom of workplace opportunity, which require employers doing business in Northern Ireland to:
- (1) Increase the representation of individuals from underrepresented religious groups in the work force, including managerial, supervisory, administrative, clerical and technical jobs;
 - (2) Take steps to promote adequate security for the protection of employees from underrepresented religious groups both at the workplace and while traveling to and from work;
 - (3) Ban provocative religious or political emblems from the workplace;

- (4) Publicly advertise all job openings and make special recruitment efforts to attract applicants from underrepresented religious groups;
 - (5) Establish layoff, recall and termination procedures which do not in practice favor a particular religious group;
 - (6) Abolish all job reservations, apprenticeship restrictions and differential employment criteria which discriminate on the basis of religion;
 - (7) Develop training programs that will prepare substantial numbers of current employees from underrepresented religious groups for skilled jobs, including the expansion of existing programs and the creation of new programs to train, upgrade and improve the skills of workers from underrepresented religious groups;
 - (8) Establish procedures to assess, identify and actively recruit employees from underrepresented religious groups with potential for further advancement;
 - (9) Appoint a senior management staff member to oversee affirmative action efforts and develop a timetable to ensure their full implementation.
- C. For purposes of this chapter, "Northern Ireland" shall be understood to be the six counties partitioned from the Irish Province of Ulster, and administered from London and/or from Stormont; and
- D. The contractor shall agree that the warranties and representations in Subsection **A** above are material conditions of the contractor's contract with the County of Rockland. If the County of Rockland Director of Purchasing receives information that the contractor is in violation of § **140-3.7A** above, the County of Rockland Director of Purchasing shall review such information and give the contractor opportunity to respond. If the County of Rockland Director of Purchasing finds that such a violation has occurred, the County may declare the contractor in default and/or terminate this agreement. In the event of any such termination, the County may procure the supplies, services or work from another source in accordance with applicable law. The contractor shall pay to the County the difference between the contract price for the uncompleted portion of this agreement and the cost to the County of completing performance of this agreement either by itself or by engaging another contractor. If this is a contract other than a construction contract, the contractor shall be liable for the difference in price if the cost of procurement from another source is greater than what the County would have paid the contractor plus any reasonable costs the County incurs in any new procurement, and if this is a construction contract, the County shall also have the right to hold the contractor in partial or total default in accordance with the default provisions of this agreement. In addition, the contractor may be declared not to be a responsible bidder or proposer for up to three years following written notice to the contractor, giving the contractor the opportunity for a hearing at which the contractor may be represented by counsel. The rights and remedies of the County hereunder shall be in addition to, and not in lieu of, any rights and remedies the County has pursuant to this agreement or by operation of law or in equity.
- E.

The County of Rockland Director of Purchasing may waive the provision of this section if he or she determines that the goods, services or construction to be contracted for are necessary for the performance of the functions of the department that the procurement officer represents and that there is no other responsible contractor capable of supplying comparable goods, services or construction at a comparable price. Such determination shall be made in writing and maintained in the procurement file.

- F. Upon receiving information that a contractor that has executed the stipulation required herein is in violation thereof, the County of Rockland Director of Purchasing shall review such information and offer the contractor an opportunity to respond. If the procurement officer finds that a violation has occurred, that officer shall take such action as may be appropriate and provided for by law, rule or contract, including, but not limited to, imposing sanctions, seeking compliance, recovering damages, declaring the contractor in default and/or seeking debarment or suspension of the contractor.

§ 140-3.8. Sole source procurement.

[Amended 8-6-2013 by Res. No. 447-2013]

- A. A contract may be awarded without competition when the Director of Purchasing determines, in writing, after conducting a good faith review of available resources and publicly advertising the County's intention to make a purchase on a sole-source basis 14 days prior to issuance of the award, that there is only one source for the required commodity, supply, service or construction item. The Director of Purchasing shall conduct negotiations, as appropriate, as to price, delivery and terms. A record of sole-source procurements shall be maintained as a public record and shall list each supplier's name, the amount and type of each contract, a listing of the item(s) procured under each contract, and the identification number of each contract file. Sole-source purchases of software maintenance are exempt from this section.
- B. In determining whether procurement qualifies as a sole source, the Purchasing Division and the agency requesting the procurement shall show, at a minimum:
- (1) The unique benefits to the County of the item as compared to other products available in the marketplace;
 - (2) That no other product provides substantially equivalent or similar benefits;
 - (3) That, considering the benefits received, the cost of the item is reasonable in comparison to other products in the marketplace; and
 - (4) That there is no possibility of competition, as from competing dealers or distributors.
- C. If an agency intends to request a sole-source purchase, it shall consider the following factors and submit the following documentation to the Director of Purchasing:
- (1)

An agency should consider the additional time that will be required to process a sole-source transaction due to the public advertising requirement, which is publication 14 days prior to issuance of the award;

- (2) An agency should be aware that the public advertising requirement provides increased exposure to a challenge by other suppliers;
- (3) An agency should be aware that if a challenge to the requested sole-source procurement is found to be warranted, the purchase request shall be withdrawn, and the request will be converted to either a competitive bid or request for proposal, which may result in a further delay in completing the transaction;
- (4) An agency must submit to the Director of Purchasing a justification letter providing the information required in Subsection **B** of this section, The required sole-source justification shall be detailed and sufficient enough to withstand a challenge by another supplier. A difference in price between potential suppliers is not, in and of itself, a proper justification for a sole-source purchase. Additionally, a sole-source letter provided by a supplier does not qualify as a proper justification for a sole-source purchase; and
- (5) If there is a question as to whether or not a sole-source purchase is warranted, the agency should contact the Director of Purchasing before submitting the sole-source purchase request.

§ 140-3.9. Emergency procurements.

Notwithstanding any other provisions of this policy, the Director of Purchasing, with the approval of the County Executive and the Chairman of the Legislature, may make or authorize others to make emergency procurements of commodities, supplies, services, or construction items when there exists a threat to public health, welfare, or safety; or County property; provided that such emergency procurements shall be made with such competition as is practicable under the circumstances. A written determination of the basis for the emergency and for the selection of the particular supplier shall be included in the contract file. As soon as practicable, a record of each emergency procurement shall be made and shall set forth the supplier's name, the amount and type of contract, a listing of the item(s) procured under the contract, and the identification number of the contract file.

§ 140-3.10. Cancellation of invitations for bids or request for proposals.

An invitation for bids, a request for proposal, or other solicitation may be cancelled, or any or all proposals may be rejected in whole or in part as may be specified in the solicitation, when it is for good cause and in the best interests of the County. The reasons therefor shall be made part of the contract file. Each solicitation issued by the County shall state that the solicitation may be cancelled and that any bid or proposal may be rejected in whole or in part for good cause when in the best interests of the County. Notice of cancellation shall be sent to all businesses solicited.

The notice shall identify the solicitation, explain the reason for cancellation and, where appropriate, explain that an opportunity will be given to compete on any resolicitation or any future procurement of similar items. Reasons for rejection shall be provided upon request by unsuccessful bidders or offerors.

§ 140-3.11. Responsibility of bidders and offerors.

- A. Determination of nonresponsibility. If a bidder or offeror who otherwise would have been awarded a contract is found nonresponsible, a written determination of nonresponsibility, setting forth the basis of the finding, shall be prepared by the Director of Purchasing. The unreasonable failure of a bidder or offeror promptly to supply information in connection with an inquiry with respect to responsibility may be grounds for a determination of nonresponsibility with respect to such bidder or offeror. The final determination shall be made part of the contract file and be made a public record.
- B. Right of nondisclosure. To the extent possible under the New York State Freedom of Information Law (FOIL), information furnished by a bidder or offeror pursuant to this section shall not be disclosed by the County outside of the office of the Director of Purchasing, or using agency, without prior written consent of the bidder or offeror.

§ 140-3.12. Cost or pricing data.

- A. Required submissions relating to the award of contracts. A prospective contractor shall submit cost or pricing data when the contract is expected to exceed \$100,000 and is to be awarded by competitive sealed proposals (§ 140-3.2, Competitive sealed proposals), or by sole source procurement authority (§ 140-3.8, Sole source procurement).
- B. Exceptions. The submission of cost or pricing data relating to the award of a contract is not required when:
 - (1) The contract price is based on adequate price competition;
 - (2) The contract price is based on established catalog prices or market prices;
 - (3) The contract price is set by law or regulation; or
 - (4) It is determined in writing by the Director of Purchasing that the requirements of § 140-3.12A (Cost or pricing data, Required submissions relating to the award of contracts) may be waived, and the determination states the reasons for such a waiver.
- C. Required submissions relating to change orders or contract modifications. A contractor shall submit cost or pricing data prior to the pricing of any change order or contract modification, including adjustments to contracts awarded by competitive sealed bidding, whether or not cost or pricing data was required in connection with the initial pricing of the contract, when the change or modification involves aggregate increases or aggregate decreases in costs plus applicable profits that are expected to exceed 10% of the original contract amount.

- D. Exceptions. The submission of cost or pricing data relating to the pricing of a change order or contract modification is not required when unrelated and separately priced adjustments for which cost or pricing data would not be required are consolidated for administrative convenience.
- E. Certification required. A contractor, actual or prospective, required to submit cost or pricing data in accordance with this section, shall certify that, to the best of its knowledge and belief, the cost or pricing data submitted was accurate, complete, and current as of a mutually specified date prior to the award of the contract or the pricing of the change order or contract modification.
- F. Price adjustment provision required. Any contract award, change order, or contract modification under which the submission and certification of cost or pricing data are required shall contain a provision stating that the price to the County of Rockland, including profit or fee, shall be adjusted to exclude any significant sums by which the County of Rockland finds that such price was increased because the contractor-furnished cost or pricing data that was inaccurate, incomplete, or not current as of the date agreed upon between the County of Rockland and the contractor.

§ 140-3.13. Cost or price analysis.

A cost analysis or a price analysis, as appropriate, shall be conducted prior to award of the contract other than one awarded under § 140-3.1 (Competitive sealed bidding). A written record of such cost analysis or price analysis shall be made a part of the contract file.

§ 140-3.14. Bid and performance bonds on supply or service contracts.

- A. Bid and performance bonds or other security may be requested for supply contracts or service contracts as the Director of Purchasing or head of a using agency deems advisable to protect the County of Rockland's interests. Any such bonding requirements shall be set forth in the solicitation. Bid or performance bonds shall not be used as a substitute for a determination of a bidder's or offeror's responsibility.
- B. The County reserves its right to approve the form, sufficiency, or manner of execution of surety bonds and contracts of insurance furnished by the surety company selected by the bidder to underwrite such bonds or contracts. In addition, all surety companies shall be licensed by the State of New York and have a Best's rating on bonds and contracts of insurance of an A - or better.
- C. In addition, the County reserves the right to approve or reject the contractor's proposed surety company. The County shall notify potential bidders, as part of the bid solicitation, of any surety company that has been deemed unacceptable to the County.

§ 140-3.15. Types of contracts.

- A. General authority. Subject to the limitations of this section, any type of contract which is appropriate to the procurement and which will promote the best interests of the County of Rockland may be used. A cost reimbursement contract may be used only when a determination is made in writing that such contract is likely to be less costly to the County of Rockland than any other type or that it is impracticable to obtain the supply, service, or construction item required under such a contract.
- B. Multiterm contracts.
 - (1) Specified period. Unless otherwise provided by law, a contract for supplies or services may be entered into for any period of time deemed to be in the best interests of the County of Rockland, provided the term of the contract and conditions of renewal or extension, if any, are included in the solicitation and funds are available for the first fiscal period at the time of contracting. Payment and performance obligations for succeeding fiscal periods shall be subject to the availability and appropriations of funds thereafter.
 - (2) Determination prior to use. Prior to the utilization of a multiterm contract, it shall be determined in writing that:
 - (a) Estimated requirements cover the period of the contract and are reasonably firm and continuing; and
 - (b) Such a contract will serve the best interests of the County of Rockland by encouraging effective competition or otherwise promoting economies in County of Rockland procurements.
 - (3) Cancellation due to unavailability of funds in succeeding fiscal periods. When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the contract shall be cancelled.
- C. Multiple source contracting.
 - (1) General. A multiple source award is an award of an indefinite quantity contract for one or more similar supplies or services to more than one bidder or offeror. The obligation to order the County of Rockland's actual requirements is limited by the provision of Uniform Commercial Code Section 2-306(1).
 - (2) Limitations on use. A multiple source award may be made when award to two or more bidders or offerors for similar products is necessary for adequate delivery, service, or product compatibility. Any multiple source award shall be made in accordance with the provisions of § 140-3.1 (Competitive sealed bidding), § 140-3.2 (Competitive sealed proposals), § 140-3.6 (small purchases), and § 140-3.9 (Emergency procurements), as applicable. Multiple source awards shall not be made when a single award will meet the County of Rockland's needs without sacrifice of economy or service. Awards shall not be made for the purpose of dividing the business, making available product or supplier

selection to allow for user preference unrelated to utility or economy, or avoiding the resolution of tie bids. Any such awards shall be limited to the least number of suppliers necessary to meet the actual requirements.

- (3) Contract and solicitation provisions. All eligible users of the contract shall be named in the solicitation, and it shall be mandatory that the actual requirements of such users that can be met under the contract be obtained in accordance with the contract, provided that:
 - (a) The County of Rockland shall reserve the right to take bids separately if a particular quantity requirement arises which exceeds its normal requirement or an amount specified in the contract; and
 - (b) The County of Rockland shall reserve the right to take bids separately if the Director of Purchasing approves a finding that the supply or service available under the contract will not meet a nonrecurring special need of the County of Rockland.
- (4) Intent to use. If a multiple source award is anticipated prior to issuing a solicitation, the County of Rockland shall reserve the right to make such an award, and the criteria for award shall be stated in the solicitation.
- (5) Determination required. The Director of Purchasing shall make a written determination setting forth the reasons for a multiple source award, which shall be made a part of the procurement file.

D. Multiple source contracting: purchase of office furnishings by percentage discount awards.

- (1) General. A multiple source award for office furnishings is an award of an indefinite quantity contract on one or more office furnishings manufacturer's product lines to more than one bidder or offeror. The obligation to order the County of Rockland's actual requirements is limited by the provisions of Uniform Commercial Code Section 2-306(1).
- (2) Limitations of use. A multiple source award may be made when award to two or more bidders or offerors for similar product lines is necessary for adequate delivery, service or product compatibility. All multiple source awards shall be made in accordance with the provisions of § **140-3.1** (Competitive sealed bidding), § **140-3.2** (Competitive sealed proposals), § **140-3.6** (small purchases), and § **140-3.9** (Emergency procurements), as applicable. Multiple source awards shall not be made when a single award will meet the County of Rockland's needs without sacrifice of economy or service. Awards shall not be made for the purpose of dividing the business, making available product or supplier selection to allow for user preference unrelated to utility or economy, or avoiding the resolution of tie bids. Any such awards shall be limited to the least number of suppliers necessary to meet actual requirements.
- (3)

Contract and solicitation provisions. Specifications shall be drafted to include and utilize a "mini-bid" system to ensure that the County receives the best value for dollars expended.

- (4) Mini-bid procurement process. The Purchasing Division shall issue bids for discounts off of manufacturers' product lines and suggested retail price list. Award will be made by product line to the bidder offering the highest discount. Departments may request a specific brand and item based on the bid awards made. The Purchasing Division shall review the requested requisition and obtain a minimum of three additional quotations from a minimum of three additional contract vendors for an "equivalent" item from other manufacturers. The Purchasing Division shall review all of the mini-bid quotations and select the vendor/manufacturer that meets the form, function, utility and quality of the requesting agency, and also offers the lowest price.
- (5) Waiver of mini-bid procurement process. The Director of Purchasing may waive the requirement of the mini-bid process for those procurements that are additions to and alterations of existing systems furniture groups. The reasons for such waiver shall be documented in writing and made part of the procurement record.

E. Design service contracts for office furnishings.

- (1) General. The Commissioner of General Services or his/her designee may enter into separate contracts for design services or space planning services as deemed necessary for a particular project.
- (2) Limitations on use. A design services or space planning services contract may be entered into in accordance with the provisions of § 140-3.2 (Competitive sealed proposals), § 140-3.6 (small purchases), and § 140-3.9 (Emergency procurements), as applicable.
- (3) Contract and solicitation provisions. All solicitations and contracts for design services and space planning services shall include the following requirements:
 - (a) All specifications prepared under this contract shall be drafted so as to promote overall economy for the purpose intended and encourage competition in satisfying the County's needs and shall not be unduly restrictive. Design service contractors are prohibited from recommending or specifying any manufacturer's products or brand names in their plans and specifications if the design services contractor currently holds a bid award for that product line/manufacturer with the County of Rockland.
 - (b) When brand names are used in the plans and specifications developed by the contractor, the contractor shall identify a minimum of three brand names that will satisfy the requirements of the plans and specifications.

§ 140-3.16. Contract clauses and their administration.

A.

Contract clauses. All County of Rockland contracts for supplies, services, materials and equipment, as well as public works projects, shall include provisions necessary to define the responsibilities and rights of the parties to the contract. The Director of Purchasing, after consultation with the County Attorney, may issue clauses appropriate for supply, service, or public works contracts, addressing, among others, the following subjects:

- (1) The unilateral right of the County of Rockland to order in writing the changes in the work within the scope of the contract;
- (2) The unilateral right of the County of Rockland to order in writing temporary stopping of the work or delaying performance that does not alter the scope of the contract;
- (3) Variations occurring between estimated quantities of work in contract and actual quantities;
- (4) Defective pricing;
- (5) Liquidated damages;
- (6) Specified excuses for delay or nonperformance;
- (7) Termination of the contract for default;
- (8) Termination of the contract in whole or in part for the convenience of the County of Rockland;
- (9) Suspensions of work on a construction project or by the County of Rockland; and
- (10) Site conditions differing from those indicated in the contract, or ordinarily encountered, except that a differing site conditions clause need not be included in a contract:
 - (a) When the contract is negotiated;
 - (b) When the contractor provides the site or design; or
 - (c) When the parties have otherwise agreed with respect to the risk of differing site conditions.

B. Price adjustments.

- (1) Adjustments in price resulting from the use of contract clauses required by Subsection **A** of this section shall be computed in one or more of the following ways:
 - (a) By agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;
 - (b) By unit prices specified in the contract or subsequently agreed upon;
 - (c)

By the costs attributable to the events or situations under such clauses with adjustment of profit or fee, all as specified in the contract or subsequently agreed upon;

- (d) In such other manner as the contracting parties may mutually agree.
- (2) A contractor shall be required to submit cost or pricing data if any adjustment in contract price is subject to the provisions of § 140-3.12 (Cost or pricing data).
- C. Standard clauses and their modification. The Director of Purchasing, after consultation with the County of Rockland County Attorney, may establish standard contract clauses for use in County of Rockland contracts. If the Director of Purchasing establishes any standard clauses addressing the subjects set forth in Subsection **A** of this section, such clauses may be varied, provided that any variations are supported by a written determination that states the circumstances justifying such variations, and provided that notice of any such material variation be stated in the invitation for bids or requests for proposals.

§ 140-3.17. Contract administration.

[Amended 11-18-2008 by Res. No. 565-2008]

A contract administration system designed to insure that a contractor is performing in accordance with the solicitation under which the contract was awarded, and the terms and conditions of the contract, shall be maintained. The Contract Administration Policy is prescribed in Article XII of this chapter.

§ 140-3.18. Approval of accounting system.

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

- A. The proposed contractor's accounting system will permit timely development of all necessary cost data in the form required by the specific contract type contemplated; and
- B. The proposed contractor's accounting system is adequate to allocate costs in accordance with generally accepted cost accounting principles.

§ 140-3.19. Right to inspect plant.

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

§ 140-3.20. Right to audit records.

- A.

Audit of cost or pricing data. The County of Rockland may at reasonable times and places, audit the books and records of any contractor who has submitted cost or pricing data pursuant to § 140-3.12 (Cost or pricing data) to the extent that such books, documents, papers, and records are pertinent to such cost or pricing data. Any person who receives a contract, change order, or contract modification for which cost or pricing data is required shall maintain such books, documents, papers, and records that are pertinent to such cost or pricing data for three years from the date of final payment under the contract.

- B. Contract audit. The County of Rockland shall be entitled to audit the books and records of a contractor or subcontractor at any tier under any negotiated contract or subcontract other than a form fixed-price contract to the extent that such books, documents, papers, and records are pertinent to the performance of such a contract or subcontract. Such books and records shall be maintained by the contractor for a period of three years from the date of final payment under the contract and by the subcontractor for a period of three years from the date of final payment under the subcontract.

§ 140-3.21. Reporting of anti-competitive practices.

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

§ 140-3.22. County of Rockland procurement records.

- A. Contract file. All determinations and other written records pertaining to the solicitation, award, or performance of a contract shall be maintained by the County of Rockland in a contract file by the Director of Purchasing.
- B. Retention of procurement records. All procurement records shall be retained and disposed of by the County of Rockland in accordance with record retention guidelines and schedules approved by the State of New York.

§ 140-4. ARTICLE IV, Specifications

§ 140-4.1. Maximum practicable competition.

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

§ 140-4.2. Brand name or equal specification.

- A. Use. Brand name or equal specifications may be used when the Director of Purchasing determines in writing that:
- (1) No other design or performance specification is available;
 - (2) Time does not permit the preparation of another form of purchase description, not including a brand name specification;
 - (3) The nature of the product or the nature of the County of Rockland's requirements makes use of a brand name or equal specification suitable for the procurement; or
 - (4) Use of a brand name or equal specification is in the County of Rockland's best interests.
- B. Designation of several brand names. Brand name or equal specifications shall seek to designate three, or as many different brands as are practicable, as "or equal" references and shall further state that substantially equivalent products to those designated will be considered for award.
- C. Required characteristics. Unless the Director of Purchasing determines in writing that the essential characteristics of the brand names included in the specifications are commonly known in the industry or trade, brand name or equal specifications shall include a description of the particular design, functional, or performance characteristics that are required.
- D. Nonrestrictive use of brand name or equal specifications. Where a brand name or equal specification is used in a solicitation, the solicitation shall contain explanatory language that the use of a brand name is for the purpose of describing the standard of quality, performance, and characteristics desired and is not intended to limit or restrict competition.

§ 140-4.3. Brand name specification.

- A. Use. Since use of a brand name specification is restrictive of product competition, it may be used only when the Director of Purchasing makes a written determination that only the identified brand name item or items will satisfy the County of Rockland's needs. After the Director of Purchasing prepares the written determination, a request shall be forwarded to the County Legislature to pass a standardization resolution. Under no circumstances shall any solicitation offered by the County contain only one brand name, without allowing for "or equal" products, unless a standardization resolution has been passed by the County Legislature.
- B. Competition. The Director of Purchasing shall seek to identify sources from which the designated brand name item or items can be obtained and shall solicit such sources to achieve whatever degree of price competition is practicable. If only one source can supply the requirement, the procurement shall be made under § 140-3.8 (Sole source procurement).

§ 140-5. ARTICLE V, Procurement of Construction, Architect-Engineer and Land Surveying Services

§ 140-5.1. Responsibility for selection of methods of construction contracting management.

The Commissioner of General Services, Highway Superintendent, Drainage Agency Chairman or his/her designee shall have discretion to select the appropriate method of construction contracting management for a particular project. In determining which method to use, the Commissioner of General Services, Highway Superintendent, Drainage Agency Chairman or his/her designee shall consider the County of Rockland's requirements, its resources, and the potential contractor's capabilities. The Commissioner of General Services, Highway Superintendent, Drainage Agency Chairman or his/her designee shall execute and include in the contract file a written statement setting forth the facts which led to the selection of a particular method of construction management for each project.

§ 140-5.2. Bid security.

- A. Requirement for bid security. Bid security shall be required for all competitive sealed bidding for public works contracts when the expenditure is estimated by the Director of Purchasing to exceed \$35,000. Bid security shall be a bond provided by a surety company authorized to do business in New York State, cashier's check, certified check or the equivalent in cash. Nothing herein shall prevent the requirement of such bonds on public works contracts \$35,000 or less when the circumstances warrant.
[Amended 12-7-2010 by Res. No. 612-2010]
- B. Amount of bid security. Bid security shall be in an amount equal to at least 5% of the amount of the bid.
- C. Rejection of bids for noncompliance with bid requirements. When the invitation for bids requires security, noncompliance requires that the bid be rejected unless it is determined that the bid fails to comply only in a nonsubstantial manner with the security requirements.
- D. Withdrawal of bids. If a bidder is permitted to withdraw its bid before awards as provided in § 140-3.1F (Competitive sealed bidding, correction or withdrawal of bids; cancellation of awards), no action shall be taken against the bidder or the bid security.

§ 140-5.3. Contract performance and payment bonds.

- A. When required; amounts. When a public works contract is awarded in excess of \$35,000, the following bonds or security shall be delivered to the County of Rockland and shall become binding on the parties upon the execution of the contract:
[Amended 12-7-2010 by Res. No. 612-2010]

- (1) A performance bond satisfactory to the County of Rockland, executed by a surety company authorized to do business in the State of New York or otherwise secured in a manner satisfactory to the County of Rockland, in an amount equal to 100% of the price specified in the contract; and
 - (2) A labor and materials payment bond satisfactory to the County of Rockland, executed by a surety company authorized to do business in the State of New York or otherwise secured in a manner satisfactory to the County of Rockland, for the protection of all persons supplying labor and material to the contractor or its subcontractors for the performance of the work provided in the contract. The bond shall be in an amount equal to 100% of the price specified in the contract.
- B. Authority to require additional bonds. Nothing in this section shall be construed to limit the authority of the County of Rockland to require a performance bond or other security in addition to those bonds, or in circumstances other than specified in Subsection **A** of this section.
- C. Suits on payment bonds: right to institute. Unless otherwise authorized by law, any person who has furnished labor or material to the contractor or subcontractors for the work provided in the contract, for which a payment bond is furnished in this section, and who has not been paid in full within 90 days from the date on which that person performed the last of the labor or supplied the material, shall have the right to sue on the payment bond for any amount unpaid at the time the suit is instituted and to prosecute the action for the amount due to that person. However, any person having a contract with a subcontractor of the contractor, but no express or implied contract with the contractor furnishing the payment bond, shall have a right of action upon the payment bond upon giving written notice to the contractor within 90 days from the date on which that person performed the last of the labor or supplied the material. That person shall state in the notice the amount claimed and the name of the party to whom the material was supplied or for whom the labor was performed. The notice shall be served personally or by registered or certified mail, postage prepaid, in an envelope addressed to the contractor at any place the contractor maintains an office or conducts business.
- D. Suits on payment bonds; where and when brought. Unless otherwise authorized by law, every suit instituted upon a payment bond shall be brought in a court of competent jurisdiction for the county in which the public works contract was to be performed.

§ 140-5.4. Copies of bond forms.

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

§ 140-5.5. Fiscal responsibility.

Every contract modification, change order, or contract price adjustment in excess of \$100,000 under a construction contract with the County of Rockland shall be subject to prior approval by the County Legislature after receiving a report from the Commissioner of General Services, Highway Superintendent, Drainage Agency Chairman or his/her designee as to the effect of the contract modification, change order, or contract price adjustment on the total project budget or the total contract budget.

§ 140-5.6. Public announcement and selection process for architect-engineer and land surveying services.

- A. Public announcement. It is the policy of the County of Rockland to announce publicly all requirements for architect-engineer and land surveying services and to negotiate such contracts on the basis of demonstrated competence and qualifications at fair and reasonable prices. In the procurement of the architect-engineer and land surveying services, the Commissioner of General Services, Highway Superintendent, Drainage Agency Chairman or his/her designee shall request firms to submit a statement of qualifications and performance data.
- B. Selection process. A selection committee composed of three members, including the Commissioner of General Services, or Highway Superintendent, or Drainage Agency Chairman, or their designee, and the head of a using agency in need of the architect-engineer or land surveying services shall conduct discussions with no less than three firms regarding the proposed contract and the relative utility of alternative methods of approach for furnishing the required services and shall select from among them one of the firms deemed most qualified to provide the required services. The selection shall be made in order of preference, based on criteria established and published by the selection committee.
- C. Negotiation. The Commissioner of General Services, Highway Superintendent, Drainage Agency Chairman or his/her designee shall negotiate a contract with the firm considered to be the most qualified for architect-engineer or land surveying services at compensation which the user agency determines in writing to be fair and reasonable to the County of Rockland. In making this decision, the Commissioner of General Services, Highway Superintendent, Drainage Agency Chairman or his/her designee shall take into account the estimated value, the scope, the complexity, and the professional nature of the services to be rendered. Should the Commissioner of General Services, Highway Superintendent, Drainage Agency Chairman or his/her designee be unable to negotiate a satisfactory contract with the firm considered to be the most qualified at a price that they or their designee determines to be fair and reasonable to the County of Rockland, negotiations with that firm shall be formally terminated. The Commissioner of General Services, Highway Superintendent, Drainage Agency Chairman or his/her designee shall then undertake negotiations with the second most qualified firm. Failing accord with the second most qualified firm, the Commissioner of General Services, Highway Superintendent, Drainage Agency Chairman or designee shall formally terminate negotiations. The Commissioner of General Services, Highway Superintendent, Drainage Agency Chairman or designee shall then undertake negotiations with the third most qualified firm. Should the County be unable to negotiate a contract at a fair and reasonable price with any of the selected firms, the selection

committee shall select additional firms in order of their competence and qualifications, and the Commissioner of General Services, Highway Superintendent, Drainage Agency Chairman or designee shall continue negotiations in accordance with this section until an agreement is reached.

§ 140-6. ARTICLE VI, Debarment or Suspension

§ 140-6.1. Authority to debar or suspend.

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

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

§ 140-6.2. Decision to debar or suspend.

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

§ 140-6.3. Notice of decision.

A copy of the decision required by § 140-6.2 (Decision to debar or suspend) shall be mailed or otherwise furnished immediately to the debarred or suspended person.

§ 140-6.4. Finality of decision.

A decision under § 140-6.2 (Decision to debar or suspend) shall be final and conclusive, unless fraudulent, or unless the debarred or suspended person, within 10 days after receipt of the decision, takes an appeal to the County Executive or commences a timely action in court in accordance with applicable law.

§ 140-7. ARTICLE VII, Appeals and Remedies

§ 140-7.1. Bid protests.

- A. Right to protest. Any actual or prospective bidder, offeror, or contractor who is aggrieved in connection with the solicitation or award of a contract may protest to the County Executive. Protestors are urged to seek resolution of their complaints initially with the Director of Purchasing. A protest with respect to an invitation for bids or request for proposals shall be submitted in writing prior to the opening of bids or the closing date of proposals, unless the aggrieved person did not know and should not have known of the facts giving rise to such protest prior to bid opening or the closing date for proposals. The protest shall be submitted within three calendar days after such aggrieved person knows or should have known of the facts giving rise thereto.
- B. Stay of procurements during protests. In the event of a timely protest under Subsection **A** of this section, the Director of Purchasing shall not proceed further with the solicitation or award of the contract until all administrative and judicial remedies have been exhausted or until the County Executive makes a determination on the record that the award of a contract without delay is necessary to protect substantial interests of the County of Rockland.

§ 140-7.2. Contract claims.

- A. Decision of the Director of Purchasing. All claims by a contractor against the County of Rockland relating to a contract, except bid protests, shall be submitted in writing to the Director of Purchasing for a decision. The contractor may request a conference with the

Director of Purchasing on the claim. Claims include, without limitation, disputes arising under a contract, and those based upon breach of a contract, mistake, misrepresentation, or other causes for contract modification or rescission.

- B. Notice to the contractor of the Director of Purchasing's decision. The decision of the Director of Purchasing shall be promptly issued in writing, and shall be immediately mailed or otherwise furnished to the contractor. The decision shall state the reasons for the decision reached, and shall inform the contractor of its appeal rights under Subsection **C** of this section.
- C. Finality of Director of Purchasing's decision; contractor's right to appeal. The Director of Purchasing's decision shall be final and conclusive unless, within five calendar days from the date of receipt of the decision, the contractor mails or otherwise delivers a written appeal to the County Executive or commences an action in a court of competent jurisdiction.
- D. Failure to render timely decision. If the Director of Purchasing does not issue a written decision regarding any contract controversy within 20 days after written request for a final decision, or within such longer period as may be agreed upon between parties, then the aggrieved party may proceed as if an adverse decision had been received.

§ 140-7.3. Access to administrative forums.

(Reserved)

§ 140-7.4. Authority of Director of Purchasing to settle bid protests and contract claims.

The Director of Purchasing is authorized to settle any protest regarding the solicitation or award of a County of Rockland contract, or any claim arising out of the performance of a County of Rockland contract, prior to an appeal to the County Executive or the commencement of an action in a court of competent jurisdiction.

§ 140-7.5. Remedies for solicitations or awards in violation of law.

- A. Prior to bid opening or closing date for receipt of proposals. If, prior to the bid opening or closing date for receipt of proposals, the Director of Purchasing, after consultation with the County Attorney, determines that a solicitation is in violation of federal, state, or municipal law, then the solicitation shall be cancelled or revised to comply with applicable law.
- B. Prior to award. If, after bid opening or the closing date for receipt of proposals, the Director of Purchasing, after consultation with the County Attorney, determines that a solicitation or a proposed award of a contract is in violation of federal, state, or municipal law, then the solicitation or proposed award shall be cancelled.

- C. After award. If, after an award, the Director of Purchasing, after consultation with the County Attorney, determines that a solicitation or award of a contract was in violation of applicable law, then:
- (1) If the person awarded the contract has not acted fraudulently or in bad faith:
 - (a) The contract may be ratified and affirmed, provided it is determined that doing so is in the best interests of the County of Rockland; or
 - (b) The contract may be terminated and the person awarded the contract shall be compensated for the actual costs reasonably incurred under the contract, plus a reasonable profit, prior to the termination; or
 - (2) If the person awarded the contract has acted fraudulently or in bad faith, the contract may be declared null and void or voidable, if such action is in the best interests of the County of Rockland.

§ 140-8. ARTICLE VIII, Ethics in Public Contracting

§ 140-8.1. Criminal penalties.

To the extent that violations of the ethical standards of conduct set forth in this article constitute violations of any New York State or Rockland County law, they shall be punishable as provided therein. Such penalties shall be in addition to the civil sanctions set forth in this article. Criminal, civil, and administrative sanctions against employees or nonemployees which are in existence on the effective date of this policy shall not be impaired.

§ 140-8.2. Employee conflict of interest.

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

- A. The County of Rockland employee or any member of the County employee's immediate family has a financial interest pertaining to the procurement contract; or
- B. Any other person, business, or organization with which the County employee or any member of a County employee's immediate family is negotiating or has an arrangement concerning prospective employment is involved in the procurement contract. A County of Rockland employee or any member of a County employee's immediate family who holds a financial interest in a disclosed blind trust shall not be deemed to have a conflict of interest with regard to matters pertaining to that financial interest.

§ 140-8.3. Gratuities and kickbacks.

- A.

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

- B. Kickbacks. It shall be unethical for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract or order.
- C. Contract clause. The prohibition against gratuities and kickbacks prescribed in this section shall be conspicuously set forth in every contract and solicitation therefor.

§ 140-8.4. Prohibition against contingent fees.

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

§ 140-8.5. Contemporaneous employment prohibited.

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

§ 140-8.6. Waivers for contemporaneous employment prohibition and other conflicts of interest.

The County Board of Ethics may grant a waiver from the employee conflict of interest provision (§ 140-8.2, Employee conflict of interest) or the contemporaneous employment provision (§ 140-8.5, Contemporaneous employment prohibited) upon making a written determination that:

- A. The contemporaneous employment or financial interest of the County employee has been publicly disclosed;
- B. The County employee will be able to perform his/her procurement functions without actual or apparent bias or favoritism; and

- C. The award will be in the best interests of the County of Rockland.

§ 140-8.7. Use of confidential information.

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

§ 140-8.8. Sanctions.

- A. Employees. Sanctions against employees shall be in accordance with Chapter **66** of the Laws of Rockland County (Code of Ethics).
- B. Nonemployees. The Director of Purchasing may impose any one or more of the following sanctions on a nonemployee for violations of ethical standards:
- (1) Written warnings or reprimands;
 - (2) Termination of contracts; or
 - (3) Debarment or suspension as provided in § **140-6.2** (Authority to debar or suspend).

§ 140-9. ARTICLE IX, Disposition of Surplus Personal Property

§ 140-9.1. Purpose.

No statute prescribes a procedure for the sale of unneeded County personal property, and therefore, there is no statutory mandate that such property be sold only after public advertisement for sealed bids or advertisement for public auction. The method chosen for sale is within the sound discretion of the Director of Purchasing, subject to the approval of the County Executive. However, in order to fill a fiduciary duty, the method of sale adopted should be one which is thought to bring the best price or maximum benefits and may include sale by either auction, private negotiation, or competitive bidding.

§ 140-9.2. Procedures for determining whether dispositions should be subject to sealed bidding or public auction.

The procedure for determining whether the disposition of unneeded personal property should be subject to competitive bidding or public auction is to obtain from a reputable, independent source the estimated dollar value of the item(s) to be disposed. If the independent estimate is more than \$10,000, the item(s) to be disposed of should be advertised for competitive bid sale or public auction. The estimate obtained, indicating the source, date and amount, will be documented as part of the disposition record.

§ 140-9.3. Methods of competition to be used for non-bid or auction dispositions.

- A. The methods of disposition to be used are as follows:
- (1) For dispositions with an estimated value greater than \$3,000 but less than or equal to \$10,000, there shall be required a written offer for sale and a written offer to purchase from three suppliers;
 - (2) For dispositions with an estimated value more than \$1,000 but less than or equal to \$3,000, there shall be required a verbal offer for sale and a verbal offer to purchase from three suppliers;
 - (3) For dispositions with an estimated value less than or equal to \$1,000, the decision will be left to the discretion of the Director of Purchasing.
- B. A good faith effort shall be made to obtain the required number of offers to purchase. If the County is unable to obtain the required number of offers to purchase, the attempts made shall be documented and become part of the disposition record. In no event will the inability to obtain the required number of offers to purchase be a bar to the disposition.
- C. The above notwithstanding, the Director of Purchasing, at his/her discretion, may require standards which exceed those presented in this policy.

§ 140-9.4. Adequate documentation.

Documentation of actions taken in connection with each method of disposition is required, as follows, and will be maintained as part of the disposition record:

- A. Where a written offer for sale is required or made, a copy of that written offer for sale, and any written offer for purchase submitted by suppliers in response to that request.
- B. Where a verbal offer for sale is required or made, a listing of the suppliers contacted and the response, if any, that each supplier made.
- C. Any memorandums, forms, notations, or other documentation used in establishing the basis of the disposition decision.
- D. No documentation, other than the independent estimate itself, is required when the disposition is left to the discretion of the Director of Purchasing.

§ 140-9.5. Awards to other than highest responsible dollar offerer.

Whenever any disposition is awarded to other than the highest responsible dollar offerer, the reasons such an award furthers the purpose of the County as set forth hereinabove shall be documented by the Director of Purchasing and be maintained as part of the disposition record.

§ 140-9.6. Items exempted from disposition policies and procedures.

The Legislature will set forth, by resolution, circumstances when, or types of dispositions for which, in the sole discretion of the governing body, the solicitation of alternative offers to purchase will not be in the best interest of the County. Such resolution will state the reasons for such conclusion, and will become an attachment to the disposition record.

§ 140-10. ARTICLE X, Additional Requirements for Federal Transit Administration Funded Contracts

§ 140-10.1. Disadvantaged Business Enterprise Program.

The County of Rockland's Department of Public Transportation has established a Disadvantaged Business Enterprise (DBE) Program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26. The County of Rockland's Department of Public Transportation has received federal financial assistance from the Department of Transportation, and as a condition of receiving this assistance, the County of Rockland's Department of Public Transportation acknowledges that the requirements of 49 CFR Part 26, as amended, shall be complied with. It is the policy of the County of Rockland and its Department of Public Transportation to ensure that DBEs, as defined in Part 26, have an equal opportunity to receive and participate in DOT-assisted contracts.

§ 140-10.2. Required contract clauses.

It is the policy of the County of Rockland and its Department of Public Transportation to ensure that most current FTA-required contract clauses will be used in all FTA-funded contracts and that the FTA Website shall be checked prior to each procurement.

§ 140-10.3. National and regional ITS architecture policy.

- A. Prior to authorization of mass transit funds from the Highway Trust Fund for acquisition or implementation of Intelligent Transportation Systems (ITS) projects, the County of Rockland, and its Department of Public Transportation, shall self-certify with Sections V and VI of the Federal Transit Administration National ITS Architecture Policy on Transit Projects.
- B. Compliance with the following FTA circulars shall also be certified:
 - (i) C5010.1C - Grant Management Guidelines.

- (2) C6100.1B - Application Instructions and Program Management Guidelines.

§ 140-11. ARTICLE XI, Small Business Stimulus Act

§ 140-11.1. Small business defined.

For purposes of the Procurement Policy of the County of Rockland, a "small business" shall refer to any commercial entity located physically within the geographic borders of the County of Rockland that employs from zero up to and including nine employees, including sole proprietorships, with a gross annual revenue of less than \$1,000,000.

§ 140-11.2. Small business registry.

The Department of Purchasing shall maintain a small business registry. All small businesses shall, at any time during the year, have the opportunity to be entered in the small business registry.

- A. The registry shall record the name, address, phone number, fax number, and e-mail address of the small business, as well as a contact person and a general description of goods and/or services available from each specific small business.
- B. Registrants will not be required to pay a registration fee.

§ 140-11.3. Notification of noncompetitive bidding opportunities.

The Director of Purchasing or his agent shall make reasonable efforts to inform registered small businesses of noncompetitive bidding procurement opportunities for a period not to exceed three business days from the beginning of the process to obtain the item or service.

- A. The Director of Purchasing or his agent need only make reasonable efforts to inform registrants whose goods and services description indicates appropriateness, as determined by the discretion of the Purchasing Department.
- B. This section shall be applied to procurements as follows in accordance and compliance with the other provisions of this Procurement Policy:
 - (1) Purchases for commodities, equipment, supplies, materials and services equal to or less than \$3,000.
 - (2) Purchases that are defined as public works projects, equal to or less than \$10,000.
 - (3) Purchases and contracts defined as professional services equal to or less than \$10,000.
- C. Application of Article XI may be waived upon a written declaration of necessity by the Director of Purchasing filed with the Purchasing Department.

§ 140-11.4. Procedures to implement provisions.

The Director of Purchasing shall develop and implement procedures for the execution of this article.

§ 140-12. ARTICLE XII, Contract Administration Policy

[Added 11-18-2008 by Res. No. 565-2008]

§ 140-12.1. Purpose.

The purpose of this procedure is to outline the contract administration process for contracts entered into by the County of Rockland.

§ 140-12.2. Definitions.

As used in this article, the following terms shall have the meanings indicated:

CONTRACT ADMINISTRATION

Management of all actions that must be taken to assure compliance with the terms of the contract after award of the contract.

CONTRACT ADMINISTRATOR

The employee designated by a department head and assigned to manage and administer the contract.

CONTRACT OWNER

The Commissioner or department head of the department that has requested the contract.

DEPARTMENT OF JURISDICTION FOR CONSTRUCTION CONTRACTS

The department of jurisdiction for construction contracts shall be the County department that issues and recommends the award of the bid in relation to Prevailing Wage Law requirements.

DEPARTMENT OF JURISDICTION FOR FACILITIES-RELATED SERVICE TERM CONTRACTS

The department of jurisdiction for facilities-related service term contracts shall be the County department utilizing such services under the term contract awarded by the Purchasing Division.

PROJECT MANAGER

The department head or his/her designee (employee or consultant project manager) that is responsible for the day-to-day management of the contract and contractor.

§ 140-12.3. Objectives.

The fundamental objectives of contract administration are to ensure the following post-award activities:

- A. Satisfying requirements:
 - (1) Quality.
 - (2) Quantity.
- B. Ensuring timely delivery.
- C. Protecting financial interests of the County:
 - (1) Reviewing costs.
 - (2) Monitoring payments.
- D. Ensuring proper process.
 - (1) The County Executive has the authority to approve any contract amendment that affects the County's contractual relationship with the contractor when the total contract value (original contract value, plus the value of amendments) is under \$100,000.
 - (2) The County Executive and County Legislature must approve any contract amendment to a contract's monetary amount that affects the County's contractual relationship with the contractor when the total contract value (original contract value, plus the value of amendments) is in excess of \$100,000.

§ 140-12.4. Contract; responsibilities of contract owner and project manager.

The contract contains the terms and conditions governing performance by contractor. The contract owner and project manager are each responsible for ensuring compliance with contract terms and conditions. The contract owner and project manager are also each responsible for ensuring that all obligations of the County are met as specified in the contract.

§ 140-12.5. Contract administration.

- A. The contract administration team.
 - (1) Depending upon the complexity of the contract, other staff members may need to be involved in contract administration activities. The team may consist of:
 - (a) Contract owner.

- (b) Project manager.
 - (c) Purchasing Division staff.
 - (d) Technical project staff (e.g., user department).
 - (e) Law Department staff.
 - (f) Finance and grant staff.
 - (g) County Auditor staff.
 - (h) Consultants.
- (2) The participation of the above will be in the form of team activity, with the project manager leading the team.

B. Responsibilities.

- (1) The Purchasing Division and Department of Law are responsible for managing the County's business relationship with a contractor. This involves the responsibility for negotiations, reviewing changes in the contractual obligations of both parties, recommending any new agreements during the performance of the contract, and assisting in settling disputes that arise during contract performance. The Purchasing Division shall support the project manager and staff to ensure that the contractor performs according to the technical requirements of the contract.
- (2) Contract owner. The contract owner (the commissioner or department head of the department that has requested the contract) is the primary owner of the contract. The contract owner may appoint a project manager or act as the project manager, depending on the complexity of the project.
- (3) Project manager. The project manager (the contract owner or representative of the contract owner) is primarily responsible for providing technical and physical management and monitoring of a contract. Said function shall be performed in accordance with the specific responsibilities enumerated below.
- (a) Responsibilities of project manager:
- [1] Understand the requirements of work statements and specifications;
 - [2] Have a general understanding of the contract terms and conditions and applicable clauses that may have a significant impact on the County and the contractor (e.g., limitation of cost, etc.);
 - [3] Serve as the focal point for all correspondence and directions concerning technical direction;
 - [4] Provide technical guidance to the contractor;
 - [5] Make sure all technical direction is recorded in writing;

- [6] Maintain a file of all technical instructions that are issued, as well as all deliverables received, and furnish copies of:
 - [a] Trip reports;
 - [b] Conference reports; and
 - [c] Correspondence which is sent to the contractor.
 - [7] Monitor methods being used on contract by contractor to ensure they are not inefficient or wasteful;
 - [8] Promptly notify contractor if inefficient methods cause a financial or nonfinancial impact to the County;
 - [9] Keep the Purchasing Division informed of significant events (e.g., quality of work, progress, status of deliverables, etc.) involving the contract; and
 - [10] Ensure that the goods or services received are in accordance with the contract.
- (b) Unauthorized acts of project manager. In accomplishing the tasks enumerated in § 140-12.5B(3)(a), however, it is important that the project manager be aware not to:
- [1] Modify the stated terms of the contract;
 - [2] Direct the contractor to start work unless the authorized contract has been fully executed and filed or to authorize any stop in work unless consultation and written authorization by the Purchasing Division and Department of Law has been obtained;
 - [3] Approve items of cost not authorized by the contract;
 - [4] Execute any supplemental agreements; or
 - [5] Render any decisions on contractual disputes or questions of fact.

§ 140-12.6. Post-award conference.

- A. The purpose of a post-award conference is to:
 - (1) Review the technical requirements of the contract.
 - (2) Review the rights and responsibilities of both parties.
- B. The contract owner/project manager is responsible for organizing and chairing the conference. The contract owner/project manager is required to:
 - (1) Review the contract thoroughly;

- (2) Ensure that the project management team is familiar with the specifications and statement of work;
 - (3) Identify anticipated administrative activities for the project;
 - (4) Clarify the administrative responsibilities of the County;
 - (5) Promote the importance of a disciplined, coordinated approach to working with the contractor; and
 - (6) Invite the project management team and contractor's representatives to the post-award conference(s).
- C. The contract owner/project manager shall develop an agenda for the conference. The agenda should, as a minimum, include the following:
- (1) Explanation of the County's mission and objective and how they relate to the contract;
 - (2) Discussion of the statement of work or specification;
 - (3) Discussion of contract terms and conditions that may have a significant impact on the contract;
 - (4) Any special contract provisions;
 - (5) The procedures the County will follow in monitoring the contractor's effort (including any quality control and testing requirements);
 - (6) Any approach to quality control that the contractor plans to use;
 - (7) Any incentive features included in the contract;
 - (8) The reporting requirements the contractor is expected to meet;
 - (9) Payment procedures;
 - (10) Any restrictions on subcontracting; and
 - (11) Delivery of products and deliverables.
- D. Following the conference, the contract owner and project manager shall prepare a formal report that summarizes major issues and identifies any issues that were not resolved or require additional action. This report will be distributed to everyone who attended the conference and to other staff as necessary.

§ 140-12.7. Recordkeeping.

- A. Contract files shall be organized so as to allow reviewers and auditors to reconstruct and understand the history of the contract.

- B. File contents. Contract files shall consist of the following items:
- (1) All correspondence with the contractor.
 - (2) All internal correspondences and minutes of meetings between the Purchasing Division and the project management team.
 - (3) Meeting summaries, related discussions and telephone conversations between the contractor and the County.
 - (4) All change orders, modifications, supplemental agreements, changes to the scope-of-work, or any other document that may substantively alter the contractual relationship with the contractor.
 - (5) Any deliverables submitted by the contractor.

§ 140-12.8. Payroll records.

If required by the Prevailing Wage Law (New York State Labor Law § 220), the following provisions shall apply:

- A. The respective department of jurisdiction shall collect and maintain payroll records for five years from the date of completion of the work.
- B. The respective department of jurisdiction shall designate, in writing to the County Executive and the Director of Purchasing, an employee to be responsible to collect certified payrolls and review for facial validity. This employee's name must be posted in a conspicuous location at the project site.

§ 140-12.9. Performance monitoring.

- A. The contract owner, together with the project manager, is responsible for monitoring contractor performance.
- B. Objectives of performance monitoring:
 - (1) Enforce the requirements of the contract;
 - (2) Be aware of potential problems;
 - (3) Resolve problems proactively;
 - (4) Ensure that there is an appropriate level of "quality control" built into the contract effort; and
 - (5) Ensure that adequate technical direction is given the contractor.

§ 140-12.10. Rejection of contractor's work.

If the project manager or contract owner rejects all or major portion of a contractor's work, the Purchasing Division and Department of Law shall be responsible for coordinating communication with the contractor:

- A. There shall be a formal written notice of rejection.
- B. The notice shall give specific reasons for the rejection.
- C. It shall state what corrective action is required and the time period for the corrective action.
- D. Time is of the essence in the issuance of the notice, as there is a possibility that by not acting promptly there could be "implied acceptance" of the work.

§ 140-12.11. Approval for payments.

- A. Approval shall be provided by the project manager, in accordance with the terms of a contract. The project manager shall be responsible for monitoring the performance of services/deliverables to ensure that payment is made only for services/deliverables received by the County. The contract owner/project manager shall make periodic reviews of progress payments made on cost-reimbursement contracts. On cost-reimbursement contracts, final payment shall not be made by the project manager without the approval of the contract owner. No advance payments are allowable.
- B. If payroll records are required, no payment shall be issued until such records are filed in accordance with § 140-12.8 herein.

§ 140-12.12. Contract time extensions; assessment of liquidated damages.

- A. Time extensions. Time extensions involve changes to the date of time of completion, as specified in the contract, with any contractor for the procurement of services, equipment or construction activities, for delays which are beyond a contractor's control.
- B. Contract requirements.
 - (1) The County will specify in all contracts a completion date or time of performance within which the contractor is (reasonably) required to provide the goods and services to be provided under the contract. This is a material condition of the contract.
 - (2) The completion date or time of performance may generally be extended by request of the contract owner or the Purchasing Division when the completion of the contract is delayed due to causes beyond the control and without fault or negligence of the Contractor, including but not limited to such causes as acts of God, acts of the County or acts of government in either its sovereign or contractual capacity, fires, floods,

epidemics, quarantine restrictions, freight embargoes, strikes and unusually severe weather, that would affect the work, or in cases where a contractor is delayed by the activities of the County or other contractor(s) engaged by County. The contract owner or the Purchasing Division may also extend the completion date or time of performance if it is determined to be in the best interest of the County to do so or when the competition of the contract does not adversely affect the County or its operations. If the Purchasing Division and Department of Law approve a change in a contract, consisting of additions, deletions or other revisions to the contract work, the completion date may be adjusted accordingly.

- (3) All time extension requests must be initiated and documented by the project manager, approved by the contract owner and forwarded to the Purchasing Division and the Department of Law in a timely fashion.

C. Enforcement.

- (1) In the event that it becomes apparent that a contract will not be completed within the time of performance specified in the contract, the project manager, in accordance with the specific terms of the contract, shall recommend and furnish appropriate justification, in writing to the Purchasing Division and Department of Law, requesting that either of the following be done:
 - (a) Extend the completion date of the contract, or
 - (b) Require that the contractor take action to comply with the completion date specified in the contract, and/or
 - (c) Impose liquidated damages in accordance with the specific terms of the contract.
- (2) The Purchasing Division and Department of Law shall document in writing any actions which a contractor is required to take in order to comply with the completion time specified in the contract.

D. Granting of time extensions. Establishing an event as a legitimate excusable delay does not, in and of itself, ensure the contractor of a time extension. In addition, the contractor must:

- (1) Establish causation. The contractor must demonstrate that the event caused the delay. The mere presence of an excusable delay condition and an actual performance delay is insufficient to establish causation.
- (2) Demonstrate the impact on overall completion. Even though an excusable delay exists and caused some loss of time, the contractor must still demonstrate that the lost time delayed overall completion of the job.
- (3) Measure time extension. Once it is established that an excusable delay has occurred, the Contractor must claim and support the length of the time of the extension to which he is entitled.
- (4) Notify the County, as required by the terms of the contract.

- E. Liquidated damages. When specified and unless waived for a valid and documented reason as approved by contract owner, Purchasing Division and Department of Law, liquidated damages shall be assessed on all contracts whose completion is delayed beyond the time(s) of performance specified in the contract as amended by change order or contract amendment.
- (1) The contract owner/project manager shall provide the Purchasing Division and Department of Law with supporting documentation and shall document in writing the reasons for assessing liquidated damages in cases where assessment appears warranted. If these reasons are approved, they shall be furnished by the project manager to the Department of Finance and Grants Manager.
 - (2) If the contract owner/project manager determines that liquidated damages should either be forgiven, or included as part of a larger settlement, then the project manager shall obtain the following sign-off prior to initiating such action:
 - (a) Approval of contract owner.
 - (b) Approval by Legal.
 - (3) If the contract owner/project manager, in accordance with the specific terms of the contract, assesses liquidated damages, the project manager shall take action to allow deduction of such liquidated damages from monies due or to become due to the contractor(s).

§ 140-13. Article XIII, Extension of County Contract Pricing for Commodities to Certain Nonprofit and Charitable Organizations.

[Added 2-17-2009 by Res. No. 60-2009]

§ 140-13.1. Eligible organizations.

Nonprofit and charitable organizations located within Rockland County that have applied for and have been approved for participation in the New York State Contract Extension Program as administered by the New York State Office of General Services, Procurement Services Group, are eligible organizations.

§ 140-13.2. Acceptance of extension as condition to award of contract.

All bidders shall be advised through the Purchasing Division's bid specifications that as a condition of the award of a County commodity contract, the successful bidder shall accept the award of a similar contract with nonprofit and charitable organizations within Rockland County that have been approved to participate in New York State's Contract Extension Program, if called upon to

do so. The County, however, will not be responsible for any debts incurred by the participants pursuant to this or any other agreement.

§ 140-13.3. Availability of contract information.

The County of Rockland shall make all contract award information available to nonprofit and charitable organizations through its website: www.rcpurchasing.com.

§ 140-13.4. Issuance of purchase orders.

Approved nonprofit and charitable organizations will issue purchase orders directly to vendors within the specified contract period, referencing the County's contract, and shall be liable for any payments due on such purchase orders; time specified in the contract.

§ 140-13.5. Deviations.

Necessary deviations from the County's specifications in the award of a participant contract, whether such deviations relate to quantities or delivery points, shall be resolved between the successful bidder and the nonprofit and charitable organizations.

§ 140-14. Article XIV, Sustainable Procurement Policy.

[Added 11-17-2009 by Res. No. 542-2009]

§ 140-14.1. General policy statement.

County employees will procure materials, products or services in a manner that integrates fiscal responsibility, and community and environmental stewardship.

§ 140-14.2. Sustainability factors.

- A. County employees will incorporate the following factors when writing specifications for, or procuring, materials, products, or services. Environmental factors to be considered include, but are not limited to, the life cycle assessment of:
- (1) Pollutant releases;
 - (2) Toxicity, especially the use of persistent, bioaccumulative, and toxic (PBT) chemicals;
 - (3) Waste generation;
 - (4) Greenhouse gas emissions;
 - (5) Energy consumption;

- (6) Depletion of natural resources; and
 - (7) Human health impacts.
- B. Fiscal factors to be considered in determining cost effectiveness include, but are not limited to:
- (1) Use reduction; buy only what you really need;
 - (2) Product performance and quality;
 - (3) Life-cycle cost assessment; lowest total cost;
 - (4) Leveraging buying power;
 - (5) Impact on staff time and labor; and
 - (6) Long-term financial/market changes.
- C. While not all factors will be incorporated into every purchase, it is the intent of this policy that County employees will make a good faith effort to incorporate and balance these factors to the maximum extent possible.

§ 140-14.3. Use of best practices.

County employees will utilize best practices in sustainable procurement as they evolve. As applied to this policy, best practices in sustainable procurement are those that utilize leading edge sustainability factors, standards, and procedures in an efficient and effective way that is successful and replicable.

§ 140-14.4. Toxics in products and services.

County employees will evaluate the comparative toxicity of products and services, and will consider the threat of harm to human health and the environment in their decision-making.

§ 140-14.5. Use of social and environmental product or service labels.

- A. County employees are encouraged to use independent, third-party social and/or environmental (eco) product or service label standards when writing specifications for, or procuring, materials, products, or services, so long as such labels:
- (1) Were developed and awarded by an impartial third party;
 - (2) Were developed in a public, transparent, and broad stakeholder process; and
 - (3)

Represent specific and meaningful leadership criteria for that product or service category.

- B. In addition, whenever possible, label standards used in product or service specifications should represent standards that take into account multiple attributes and life-cycle considerations, with claims verified by an independent third party.

§ 140-14.6. County procurement policy and other laws.

It is the intent of this policy to complement, and not supplant, County Procurement Policy as well as state and County laws.

§ 140-14.7. Implementation and responsibilities.

§ 140-14.7.1. Product and service standards.

- A. County department heads shall be responsible for:
 - (1) Ensuring department staff utilizes product and service standards and best practices that comply with this policy. Examples include, but are not limited to, standards for minimum recycled content, energy efficiency, and prohibited toxic ingredients;
 - (2) Ensuring that when the need for developing a County standard or best practice in sustainable procurement arises, department staff will participate and collaborate with other applicable departments so as to harmonize and continuously improve standards throughout the County;
 - (3) Encouraging pilot testing for environmentally preferable/sustainable products; and
 - (4) Ensuring internal policies and procedures reference this policy and incorporate the use of sustainable products and services that meet the intent of this policy.
- B. The Director of Purchasing shall be responsible for providing resources for assisting departments with standards and best practices in sustainable procurement.

§ 140-14.7.2. Specifications and contracts.

- A. County department heads shall be responsible for ensuring that specifications written by their department comply with this policy and incorporate sustainable procurement best practices.
- B. The Director of Purchasing shall be responsible for:
 - (1) Ensuring purchasing manuals and other internal procedures reference this policy and incorporate best practices for specifying products and services that meet the intent of this policy;

- (2) Ensuring that evaluation criteria for determining the responsibility of prospective contractors incorporate sustainability factors that meet the intent of this policy; and
- (3) Developing and integrating sustainable procurement boilerplate language into solicitation document templates.

§ 140-14.7.3. Education.

A. County department heads shall be responsible for:

- (1) Building awareness of this policy through information dissemination and incorporation into routine employee training;
- (2) Encouraging employee attendance at internal and external training related to sustainability; and
- (3) Encouraging the use of environmentally preferable/sustainable products and services through information dissemination, development of internal procedures, pilot testing, and leading by example.

B. The Director of Purchasing shall be responsible for:

- (1) Developing employee sustainable procurement resources such as, but not limited to, standards, specifications, tools, and best practices;
- (2) Developing buyer-specific training on sustainable procurement best practices that meet the intent of this policy;
- (3) Developing buyer competency in communicating to other County departments about this policy and opportunities for incorporating sustainable procurement best practices into solicitations and contracts;
- (4) Developing interagency communication among public procurement professionals about sustainable procurement best practices; and
- (5) Taking the lead in communicating to existing and potential contractors and the public about this policy and related County requirements.

§ 140-14.7.4. Data collection and performance reporting.

A. County department heads shall be responsible for:

- (1) Cooperating in gathering information for the purposes of tracking, reporting, and evaluating the County's sustainable procurement activities; and
- (2) Integrating department-specific sustainable procurement goals into department sustainability plans.

- B. The Director of Purchasing shall be responsible for incorporating a progress report on sustainable procurement activities and the effectiveness of this policy into the department's annual report.

§ 140-14.8. Resources.

The County shall commit to providing the appropriate dedicated staff levels and related funding to support the implementation and coordination of this policy. This includes activities such as, but not limited to, employee training and resources, professional services, product/service pilot tests, and educational materials.

§ 140-14.9. Policy review.

The Director of Purchasing shall be responsible for periodically bringing together internal stakeholders to review this policy for updates or to otherwise determine whether this policy is in alignment with other County sustainability efforts and policies. The policy review shall be completed at least every five years, but may be done on a more frequent basis as needed.

§ 140-14.10. Appendix A: Definitions.

As used in this Article XIV, the following terms shall have the meanings indicated:

ENVIRONMENTALLY PREFERABLE

Products or services that have a lesser or reduced adverse effect on human health and the environment when compared with competing products or services that serve the same purpose. This comparison may consider raw materials acquisition, production, manufacturing, packaging, distribution, reuse, operation, maintenance, or disposal of the product or service.

LIFECYCLE ASSESSMENT or LIFECYCLE ANALYSIS (LCA)

The comprehensive examination of a product's environmental and economic effects throughout its lifetime, including new material extraction, transportation, manufacturing, use, and disposal.

LIFECYCLE COST ASSESSMENT (LCCA)

The comprehensive accounting of the total cost of ownership, including initial costs, energy and operational costs, longevity and efficacy of service and disposal costs.

PERSISTENT, BIOACCUMULATIVE, AND TOXIC (PBT) CHEMICALS

Chemicals that are toxic, persist in the environment, and bioaccumulate in food chains.

SUSTAINABLE PROCUREMENT

Purchasing materials, products, and services in a manner that integrates fiscal responsibility, and community and environmental stewardship.

TOXICITY

The quality, relative degree, or specific degree of being toxic or poisonous.

§ 140-15. Article XV, Energy Advisory Group.

[Added 12-3-2009 by Res. No. 579-2009]

§ 140-15.1. Members.

The Energy Advisory Group shall consist of the Commissioner of Finance, the Director of Purchasing, and the Executive Director of Rockland County Sewer District No. 1.

§ 140-15.2. Purpose.

The function of the Energy Advisory Group will be to develop and review energy-related bids, act as the County's agent in awarding said bids, forward information regarding such awards to the County Legislature for ratification, and take advantage of mid-term contract decreases in energy costs behalf of the County.

§ 140-15.3. Reports.

The Energy Advisory Group will report to the Planning and Public Works Committee on a quarterly basis, or at the request of the Legislature, on what action the Energy Advisory Group has taken, what pricing it has been able to lock in and any other matters that the Legislature believes to be pertinent.