



**PUBLIC PURCHASING DEMYSTIFIED:
AN EXPLANATION OF THE SEEMINGLY
UNUSUAL PRACTICES OF
PROCUREMENT PEOPLE IN THE PUBLIC
SECTOR**

**A BEST PRACTICES TRAINING CD
BY JIM O'NEILL, FNIGP, CPPO**

RESOURCE GUIDE

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**Public Purchasing Demystified: An Explanation of the Seemingly Unusual
Practices of Procurement People in the Public Sector Resource Guide**

Table of Contents

Title	Page Number
CHAPTER ONE – USEFUL WEB SITES.....	3
CHAPTER TWO – LIST OF DO’S AND DON’TS IN DEVELOPING SCOPES OF WORK.....	7
CHAPTER THREE – BEST PRACTICES – PROCUREMENT PROCEDURES OF THE BALTIMORE PUBLIC SCHOOLS.....	11
CHAPTER FOUR – BEST PRACTICES – LOCAL PREFERENCE INFORMATION – CITY OF FORT COLLINS – DOING BUSINESS WITH LOCAL VENDORS	14



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CHAPTER 1 – USEFUL WEBSITES

MODEL PROCUREMENT CODE FOR STATE AND LOCAL GOVERNMENTS:

WWW.ABA.NET.ORG/ABASTORE

PROCUREMENT POLICIES AND PROCEDURES MANUAL:

Baltimore Public School

WWW.BCPS.K12.MD.USPROCUREMENT/PRODECDURES

State Of Texas Procurement Manual

WWW.TBPS.STATE.TX.US/STATEPUCH/TOC.HTML

BIDDING OPPORTUNITIES:

U.S. Federal Government

WWW.FBO.GOV

City Of Fort Collins

WWW.CITYDOC.COM

Fairfax County

WWW.FARIFAXCOUNTY.GOV/DPSM/CONTRACTS.HTM

SEARCH FOR SMALL DISADVANTAGED BUSINESSES:

WWW.FBO.GOV.DSBS.SBA.GOV/DSBS.COM

PROCUREMENT CARD PROCEDURES SITE:

Canada Treasury Office – Acquisition Cards Policy

[WWW.TBS-SCT.GC.CA/COMMON/POLICIES-POLITIQUES E.ASP](http://WWW.TBS-SCT.GC.CA/COMMON/POLICIES-POLITIQUES_E.ASP)

CODE OF ETHICS:

Universal Public Purchasing Certification Council

WWW.NIGP.ORG.CERT

National Governmental Purchasing Association

WWW.NIGP.ORG

Institute for Supply Management

WWW.ISMP.ORG

REFERENCE MATERIAL:

The Request for Proposal Handbook (www.rfpmentor.com)
pp. 99-100, Professional Procurement

How to Create an Effective Statement of Work (www.rfpmentor.com/sow.html)



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**CHAPTER TWO - LIST OF DO'S AND DON'TS
IN DEVELOPING SCOPES OF WORK**

Don't

- Include non-essential items
- Use phrases that are
- Ambiguous
- Have multiple meanings
- Include conflicting language
- Assume the contractor knows what you want/mean
- Sign documents and/or send them to purchasing for signature

Do Use: Work Words for SOWs

- Analyze – Solve by analysis
- Annotate – Provide comments
- Ascertain – Find out with certainty
- Attend – Be present at
- Audit – Officially examine
- Build – Make by putting together
- Calculate – Find out by computation
- Compare – Find out likeness or differences

Vague Words (Use Only if Defined by Context)

- | | | |
|--|---|--|
| <input checked="" type="checkbox"/> Adequate | <input checked="" type="checkbox"/> Guide | <input checked="" type="checkbox"/> Satisfactory |
| <input checked="" type="checkbox"/> Analyze | <input checked="" type="checkbox"/> Guidance | <input checked="" type="checkbox"/> Similar |
| <input checked="" type="checkbox"/> Augment | <input checked="" type="checkbox"/> High Quality | <input checked="" type="checkbox"/> Some |
| <input checked="" type="checkbox"/> Average | <input checked="" type="checkbox"/> Implement | <input checked="" type="checkbox"/> Standard |
| <input checked="" type="checkbox"/> Characteristic | <input checked="" type="checkbox"/> Industry Practice | <input checked="" type="checkbox"/> Strong |
| <input checked="" type="checkbox"/> Check | <input checked="" type="checkbox"/> Investigate | <input checked="" type="checkbox"/> Substantial |
| <input checked="" type="checkbox"/> Compatible | <input checked="" type="checkbox"/> Like | <input checked="" type="checkbox"/> Sufficient |
| <input checked="" type="checkbox"/> Concept | <input checked="" type="checkbox"/> Parameters | <input checked="" type="checkbox"/> Supply |
| <input checked="" type="checkbox"/> Current | <input checked="" type="checkbox"/> Pure | <input checked="" type="checkbox"/> Test |
| <input checked="" type="checkbox"/> Equal | <input checked="" type="checkbox"/> Reasonably | <input checked="" type="checkbox"/> Thresholds |
| <input checked="" type="checkbox"/> Excessive | <input checked="" type="checkbox"/> Review | <input checked="" type="checkbox"/> Type |
| <input checked="" type="checkbox"/> Functional | <input checked="" type="checkbox"/> Research | |

Phrases with Multiple Meanings (Use Only if Defined)

- To the satisfaction of the project manager
- As determined by the project manager
- In accordance with instructions of the project manager
- As directed by the project manager
- In the opinion of the project manager
- The finished product shall be practically free from dirt, etc.
- It is assumed that
- High rate data
- Reasonable period of time... but not limited to
- In accordance with best standard practice
- Test will be made unless waived
- Materials shall be of the highest grade, free from defects or imperfections
- Kinks and bends may be cause for rejection
- Carefully performed
- Neatly finished
- High quality



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**CHAPTER 3 – BEST PRACTICES
PROCUREMENT PROCEDURES OF
THE BALTIMORE PUBLIC SCHOOLS**

**BALTIMORE CITY BOARD OF SCHOOL COMMISSIONERS
BALTIMORE CITY PUBLIC SCHOOL SYSTEM
PROCUREMENT POLICIES AND PROCEDURES**

FORWARD

The New Baltimore City Board of School Commissioners (hereinafter “School Board”) is vested with the legal authority, pursuant to Section 4-303 (d) (2) of the Education Article of the Annotated Code of Maryland (hereinafter “Education Article”), to adopt rules and regulations and prescribe policies and procedures for the management, maintenance, operations and control of the Baltimore City Public School system. Section 4-310(a) of the Education Article provides that notwithstanding any provision of local law, the School Board shall adopt rules and regulations governing the procurement of goods and services by the Baltimore City Public School System in accordance with Section 5-112 of the Education Article. Section 4-310(b) of the Education Article provides that the School Board shall adopt the Minority Business Enterprise and Women Business Enterprise goals of Baltimore City relating to procurement.

The School Board, does hereby adopt these Procurement Policies and Procedures for contract administration, for obtaining bids for certain items, and to establish the responsibility and policies and procedures for obtaining equipment, supplies, and contractual services to be used by the Baltimore City Public School System.

**Adopted By The Baltimore City Official Custodian
Board of School Commissioners Judith Donaldson
Dr. Robert Booker, Secretary Board Executive
Date of Adoption: June 27, 2000 Date of Adoption: June 27, 2000
Effective Date: July 1, 2000**

**Please note that these procedures are available on the web at:
<http://www.bcps.k12.md.us/Procurement/Procedures/>**

ARTICLE 1- GENERAL PROVISIONS

Part A. - Purposes, Construction, and Application

1-101 Purposes, Rules of Construction

(1) *Interpretation.* These Policies and Procedures shall be construed and applied to promote the following underlying purposes.

(2) *Purposes.* The underlying purposes of these Policies and Procedures are:

- (a) to simplify, clarify, and modernize the Policies and Procedures governing procurement by the School Board;
- (b) to permit the continued development of procurement policies and practices;
- (c) to provide for increased public confidence in the Policies and Procedures followed in public procurement;
- (d) to ensure the fair and equitable treatment of all persons who transact business with the School Board;
- (e) to provide increased economy in the Baltimore City Public School System procurement activities and to maximize, to the fullest extent practicable, the purchasing value of public funds of the Baltimore City Public School System;
- (f) to foster broad-based competition within the free enterprise system;
- (g) to provide safeguards for the maintenance of a procurement system of quality and integrity;

(3) *Singular-Plural and Gender Rules.* Unless the context requires otherwise:

- (a) words in the singular number include the plural, and those in the plural include the singular, and
- (b) words of a particular gender include any gender and the neuter, and when the sense so indicates, words of the neuter gender may refer to any gender.

1-102 Supplementary General Principles of Law Applicable.

Unless displaced by a particular provision of these Policies and Procedures, the principles of law and equity, including the Uniform Commercial Code of the State of Maryland, the law merchant, and law relative to capacity to contract, agency, fraud, misrepresentation, duress, coercion, mistake, or bankruptcy shall supplement the provisions of these Policies and Procedures.

1-103 Requirement of Good Faith.

These Policies and Procedures require all parties involved in the negotiation, performance, or administration of contracts to act in good faith.

1-104 Application of these Policies and Procedures

(1) *General Application.* These Policies and Procedures apply only to contracts solicited or entered into after the effective date of these Policies and Procedures.

(2) *Application.* These Policies and Procedures shall apply to every expenditure of public funds, irrespective of their source, unless otherwise specified by the School Board. These Policies and Procedures shall not apply to either grants or contracts between the Federal government or the State of Maryland or its political subdivisions or other governments, except as provided in Article 10 (Intergovernmental Relations). Nothing in these Policies and Procedures or in regulations promulgated hereunder shall prevent any governmental body, political subdivision or the School Board from complying with the terms and conditions of any grant, gift, bequest, or cooperative agreement.

1-105 Severability

If any provision of these Policies and Procedures or any application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or application of these Policies and Procedures which can be given effect without the invalid provision or application, and to this end the provisions of these Policies and Procedures are declared to be severable.

1-106 Specific Repealer.

The following acts and all other acts and parts of acts inconsistent herewith are hereby repealed:

- (a) The emergency procurement rule adopted by the School Board on July 8, 1997 shall not apply to contracts solicited or awarded after the effective date of these Policies and Procedures.
- (b) Sections I(D) and VI of the Policy For Appeal Policies and Procedures adopted by the School Board on October 14, 1997.

1-107 Effective Date

These Policies and Procedures shall become effective at 12:01 a.m. on July 1, 2000.

1-108 Savings Clause

The policies and procedures in effect prior to the adoption of the new Policies and Procedures shall apply to contracts negotiated, solicited or entered into prior to the effective date of these new Policies and Procedures.

Part B - Determinations

1-201 Determinations

Written determinations required by these Policies and Procedures shall be in the appropriate official contract file of the Director.

Part C. - Definitions of Terms Used in these Policies and Procedures

1-301 Definitions

The words defined in this Section shall have the meanings set forth below whenever they appear in these Policies and Procedures, unless:

- (a) the context in which they are used clearly requires a different meaning; or
 - (b) a different definition is prescribed for a particular Article or provision.
- (1) *Business* means any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or any other private legal entity engaged in an activity for gain or livelihood.
 - (2) *Change Order* means a written order signed by the Director, directing the contractor to make changes which the changes clause of the contract authorizes the Director to order with or without the consent of the contractor. With regard to construction contracts, the provisions of the contract shall govern the processing of change orders.
 - (3) *Director of Procurement and Materials Management* ("Director") means the person holding the position referenced in Section 2-102, who heads the Central Procurement Office of the School Board.
 - (4) *Construction* means the process of building, altering, repairing, improving, or demolishing any public structure or building, or other public improvements of any kind to any public real property.
 - (5) *Contract* means all types of agreements, regardless of what they may be called, for the procurement of supplies, equipment, services, professional services, or construction.
 - (6) *Contract Modification* means any written alteration in specifications, delivery, period of performance, price, quantity, or other provisions of any contract accomplished by mutual action of the parties to the contract.
governmental body.
 - (7) *Contractor* means any person having a contract with the School Board or a
 - (8) *Data* means recorded information, regardless of form or characteristic.

(9) *Designee* means a duly authorized representative of a person holding a superior position.

(10) *Employee* means an individual drawing a salary from the School Board, whether elected or not, and any non-compensated individual performing personal services for the School Board.

(11) *Governmental Body* means any department, commission, council, board, bureau, committee, institution, legislative body, agency, government corporation, or other establishment or official of the executive, legislative, or judicial branch.

(12) *Grant* means the furnishing by the State of Maryland or Federal government or any other public or private entity of assistance, whether financial or otherwise, to the School Board to support a program. A contract resulting from such an award is not a grant but a procurement contract, unless otherwise determined by the School Board.

(13) *May* denotes permissive.

(14) *Person* means any business, individual, union, committee, club, or other organization, or group of individuals.

(15) *Procurement* means buying, purchasing, renting, leasing, or otherwise acquiring any supplies, services, including professional 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, an all phases of contract administration.

(16) *Procurement Officer* means any person duly authorized to enter into and administer contracts and make written determinations with respect thereto. The term also includes an authorized representative acting within the limits of authority.

(17) *Professional Services* means those services provided by an individual or entity which require advanced education and training and a high level of proficiency. This term also includes financial services and services provided by a licensed professional.

(18) *Purchasing Agency* means any governmental body other than the Director which is authorized by these Policies and Procedures or its implementing regulations, or by way of delegation from the Director, to enter into contracts. Such Purchasing Agency must abide by the requirements of these Policies and Procedures.

(19) *Regulation* means the School Board's or a governmental body's statement, having general or particular applicability and future effect, designed to implement, interpret, or prescribe law or policy, or describing organization, procedure, or practice requirements, which has been promulgated in accordance with the law or these Policies and Procedures.

(20) *School Board* means the New Baltimore City Board of School Commissioners.

(21) *Service* means the furnishing of labor, time, or effort by a contractor, not involving the delivery of a specific end product other than reports which may be part of the required performance. The term shall not include employment agreements or professional service agreements or collective bargaining agreements.

(22) *Shall* denotes the imperative.

(23) *Supplies* means all property, including but not limited to equipment, materials, including educational materials, printing, insurance, and leases of real property, excluding land or a permanent interest in land.

(24) *Using Agency* means any division or department of the School Board which utilizes any supplies, services, or construction procured under these Policies and Procedures.

Summary Definitional Cross-References

"Architect-Engineer and Land Surveying Services"	Section 5-101(1)
"Blind Trust"	Section 12-101(1)
"Confidential Information" Section	12- 101(2)
"Conspicuously" Section	12-101(3)
"Cooperative Purchasing"	Section 10-101(1)
"Cost-Reimbursement Contract"	Section 3-101(1)
"Direct or Indirect Participation" Section	12-101(4)
"Disadvantaged Business"	Section 11-101(1)
"Established Catalog Price"	Section 3-101(2)
"Excess Supplies"	Section 8-101(1)
"Expendable Supplies"	Section 8-101(2)
"External Procurement Activity" Section	10-101(2)
"Financial Interest"	Section 12-101(5)
"Gratuity" Section	12-101(6)
"Immediate Family"	Section 12-101(7)
"Invitation for Bids"	Section 3-101(3)
"Local Public Procurement Unit"	Section 10-101(3)
"Non-expendable Supplies"	Section 8-101(3)
"Official Responsibility" Section	12-101(8)
"Public Procurement Unit" Section	10-101(4)
"Purchase Description"	Section 3-101(4)
"Purchase Request"	Section 12-101(9)
"Request For Proposal"	Section 3-101(5)
"Responsible Bidder or Offeror"	Section 3-101(6)
"Responsive Bidder"	Section 3-101(7)
"Small Business"	Section 11-101(2)
"Specifications"	Section 4-101(1)
"State Public Procurement Unit"	Section 10-101(5)
"Surplus Supplies"	Section 8-101(5)

Part D - Public Access

1-401 Public Access to Procurement Information

Procurement information shall be available for public inspection to the extent provided in the Public Information Act of the State of Maryland and shall be available to the public as provided in such statute.

ARTICLE 2 - PROCUREMENT ORGANIZATION

2-101 Creation and Membership of the New Baltimore City Board of School Commissioners' Procurement Review Committee

- (1) There is hereby created the New Baltimore City Board of School Commissioners' Procurement Review Committee ("PRC").
- (2) The PRC shall consist of the Chief Executive Officer ("CEO"), Board Executive, the Chief Financial Officer ("CFO"), the Chief Academic Officer ("CAO"), and General Counsel. The CEO may designate other individuals to serve on the PRC.
- (3) The PRC shall have the authority and responsibility to recommend to the School Board for promulgation, Policies and Procedures governing the procurement management, control, and disposal of any and all supplies, equipment, services, and construction to be procured by the School Board. The PRC shall also consider Policies and Procedures governing the use of real or personal property of the School Board including, leases, easements, right-of-way, and insurance. The PRC shall consider and decide matters of policy within the provisions of these Policies and Procedures including those referred to it by any member of the PRC.
- (4) The PRC is vested with the authority to review proposed procurement items before such items are submitted to the School Board for its consideration.

2-102 Office of the Procurement and Materials Management

There is an Office of Procurement and Materials Management ("Office of Procurement"). The Office is headed by and is under the control of the Director. The Director shall provide support services to the PRC.

2-103 Authority of the Director

- (1) The Director shall serve as the central procurement officer of the School Board.
- (2) Consistent with the provisions of these Policies and Procedures, the Director shall adopt operational procedures governing the internal functions of the Office of Procurement.
- (3) Except as otherwise specifically provided in these Policies and Procedures, the Director shall, in accordance with regulations promulgated by the PRC:
 - (a) procure or supervise the procurement of all supplies, equipment, and services, needed by the Baltimore City Public School System (BCPSS);
 - (b) exercise general supervision and control over all inventories of supplies belonging to the BCPSS;
sell, trade, or otherwise dispose of surplus supplies belonging to the BCPSS; and
 - (c)

- (d) establish and maintain programs for the inspection, testing, and acceptance of supplies, and services; and
- (e) maintain a contract file on all matters regarding decisions made by the Office of Procurement under these Policies and Procedures.

2-104 Construction Procurement

The Director of Facilities Planning, Real Estate and School Construction, ("DOF") shall procure or supervise, in conjunction with the Director, the procurement of all construction, construction management services, real estate leases and related inspectional services. The DOF, with the written approval of the CEO, may delegate this authority to the Director.

2-105 Delegation of Authority by Procurement

Subject to the regulations of the PRC and, with the written approval of the CEO, the Director, may delegate authority to a designee.

2-106 Centralization of Procurement Authority

- (1) Non-Construction Activities Greater Than \$5,000: All rights, powers, duties, and authority relating to the procurement of supplies, equipment and services, including professional services, of more than \$5,000, are under the authority of the Director.
- (2) Non-Construction Activities Less Than \$5,000: All rights, powers, duties, and authority relating to the procurement of supplies, equipment, services, including professional services, of \$5,000 or less, are under the authority of the school-based Principal, central administration department head or Using Agency.
- (3) Warehousing and Disposal: All rights, powers, duties, and authority for the inventory, warehousing, sale and disposal of supplies, and equipment are under the authority of the Director.
- (4) Information Technology: All powers, duties and authority relating to the procurement of information technology services and equipment and the management of information technology are under the authority of the Director. The Director will coordinate the purchase of technology services or equipment with the Director of the Technology Office.
- (5) Construction Activities: All powers, duties and authority relating to the procurement of leases, architectural, engineering, construction, inspection related services and construction management services are under the authority of the DOF.

2-107 Authority to Contract for Supplies, Equipment, Construction, Services and Professional Services

- (1) Professional Service Contracts - \$5,000 to \$14,999: Must be approved by the CEO.

(2) Professional Service Contracts - \$15,000 or More: Professional Service Contracts in the amount of \$15,000.00 or more, must be approved, in writing, by the School Board. Once a contract has been approved by the School Board, any proposed changes to the approved contract must be submitted to the School Board for its approval.

(3) Other Contracts of \$15,000 or More: All contracts of \$15,000.00 or more, for supplies, equipment, services, architectural, engineering, inspection related services, construction or construction management services must be approved, in writing, by the School Board. Once a contract has been approved by the School Board, any proposed changes to the approved contract must be submitted to the Board for its approval. Change Orders to construction contracts will be governed by the procedures adopted by the PRC.

(4) Non-Construction Contracts less than \$15,000: Contracts for less than \$15,000 for supplies, equipment, services, and professional services for less than \$5,000.00, must be approved, in writing, by the Director.

(5) Construction Contracts Less Than \$15,000: Contracts for less than \$15,000.00 for architectural, engineering, construction and construction management services, must be approved, in writing, by the DOF.

(6) Real Estate Leases Regardless of Amount and Real Estate Transactions: All real estate leases, regardless of the amount of the lease, must be approved by the School Board. All real estate transactions involving the sale, purchase or the long-term use of real property, must be approved by the School Board.

(7) Acceptance of Grants for Cooperative Agreements, Business Opportunity or Internship Programs: All grants to BCPSS must be accepted by the School Board. The decision as to whether BCPSS should participate in a cooperative agreement, business opportunity or internship programs with another entity, must be approved by the School Board.

2-108 Board Procurement Policies and Procedures

(1) Regulations shall be promulgated by the PRC in accordance with the applicable provisions of the law and these Policies and Procedures.

(2) The PRC shall not delegate its authority to promulgate Policies and Procedures or regulations.

2-109 The Procurement Agenda — Offering Procurement Agenda Items After the Procurement Agenda is Prepared

(a) It is the responsibility of the Director to prepare, prior to a public meeting of the School Board, a written procurement agenda which briefly describes the particular procurement items which the School Board is being requested to review and approve.

- (b) In the event the School Board is requested to review a procurement item which does not appear on the printed procurement agenda, it is the responsibility of the Director or designee, to do the following:
 - 1. To present to the School Board, at its public meeting, a brief description of the agenda item. The presentation to the School Board should include the same information which would have been included in the printed procurement agenda.
 - 2. To prepare a written description of the procurement item added to the procurement agenda, at least three (3) business days after the public meeting of the School Board.
- (c) The PRC may adopt regulations regarding the required content of the procurement agenda.

2-110 Collection of Data Concerning Public Procurement

(1) The Director shall prepare statistical data concerning the procurement, usage, and disposition of all supplies, equipment, and services, and employ, in accordance with the budget, such trained personnel as may be necessary to carry out this function. All schools and using agencies shall furnish such reports as the Director may require concerning usage, needs, and stocks on hand, and the Director shall have authority to prescribe forms to be used by the schools and other using agencies in requisitioning, ordering, and reporting of supplies, equipment and services.

(2) The Director shall prepare statistical data concerning the procurement and management of construction, leases, architectural, engineering, construction, and construction management services and inspection related services, and employ, in accordance with the budget, such trained personnel as may be necessary to carry out this function. All schools and using agencies shall furnish such reports as the Director may require concerning usage and needs, and the Director shall have authority to prescribe forms to be used by the schools and using agencies in the procurement and management of construction, real estate leases, architectural and engineering services and related inspection services.

(3) The Director shall prepare statistical data concerning the management and procurement of information technology equipment and services, and employ, in accordance with the budget, such trained personnel as may be necessary to carry out this function. All schools and using agencies shall furnish such reports as the Director may require concerning usage and needs, and the Director shall have authority to prescribe forms to be used by the schools and using agencies in the procurement and management of information technology equipment and services.

2-111 Legal Counsel

The office of Legal Counsel shall provide necessary legal services to the PRC, the Director and DOF.

ARTICLE 3 - SOURCE SELECTION AND CONTRACT FORMATION

3-101 Definitions of Terms Used in this Article

- (1) "Cost-Reimbursement Contract" means 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 these Policies and Procedures, and a fee, if any.
- (2) "Established Catalogue Price" means the price included in a catalogue, price list, schedule or other form that:
 - (a) Is regularly maintained by a manufacturer or contractor:
 - (b) Is either published or otherwise available for inspection by customers; and
 - (c) States prices at which sales are currently or were last made to a significant number of any category of buyers or buyers constituting the general buying public for the supplies, equipment, services, or construction involved.
- (3) "Invitation for Bid" means all documents, whether attached or incorporated by reference, utilized for soliciting bids. An Invitation for Bid is utilized for contracts which must be competitively bid.
- (4) "Purchase Description" means the words used in a solicitation to describe the supplies, equipment, services, or construction to be purchased, and includes specifications attached to, or made part of the solicitation.
- (5) "Request for Proposal" means all documents, whether attached or incorporated by reference, utilized for soliciting proposals. A Request for Proposal is utilized for contracts which do not have to be competitively bid.
- (6) "Responsible Bidder or Offeror" means a person who has the capability in all respects to perform fully the contract requirements, and the integrity and reliability which will assure good faith performance.
- (7) "Responsive Bidder" means a person who has submitted a completed bid or response to an Invitation for Bid or a Request For Proposal which conforms in all material respects to the Invitation for Bid or Request for Proposal.

Part B — Methods of Source Selection

3-201 Methods of Source Selection

Unless otherwise authorized by these Policies and Procedures, all School Board contracts shall be awarded by competitive sealed bidding.

3-202 Invitation for Bid Competitive Sealed Bidding

- (1) Unless indicated otherwise, an Invitation for Bids shall be issued if the cost of any school building, improvements, supplies, or equipment is more than \$15,000.
- (2) Adequate public notice of the Invitation for Bids shall be given at least two (2) weeks before bids are to be filed, unless an emergency has been declared by the CEO. The bids are to be advertised in at least one newspaper of general circulation in the City of Baltimore.
- (2) A contract for the school building, improvements, supplies, or other equipment shall be awarded to the lowest responsible responsive bidder who conforms to specifications with consideration given to:
 - (i) The quantities involved;
 - (ii) The time required for delivery;
 - (iii) The purpose for which required;
 - (iv) The competency and responsibility of the bidder; and
 - (v) The ability of the bidder to perform satisfactory service.
- (4) The School Board may reject any and all bids and readvertise for other bids.
- (5) 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 may be specified in the Invitation for Bid, together with the name of each bidder shall be recorded: the record and the amount of each bid shall be open to public inspection.
- (6) Bids shall be unconditionally accepted without alteration or correction, except as authorized in these Policies and Procedures. Bids shall also 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 and compliance with the School Board's MBE/WBE requirements. Those criteria that will affect 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 may be used in bid evaluations that are not set forth in the Invitation for Bids.
- (7) Correction or withdrawal of inadvertently erroneous bids before or after award; or cancellation of awards or contracts based on such bid mistakes, shall be permitted in accordance with Policies and Procedures promulgated by the PRC. After bid opening, no changes in bid prices or other provisions of bids prejudicial to the interest of the School Board as determined by the Board shall be permitted. All decisions to permit the correction or withdrawal of bids, or to cancel awards or contracts based on bid mistakes, shall be supported by a written determination made by the Director in consultation with the Office of Legal Counsel.
- (8) Notice of the intention to award a contract will be provided with reasonable promptness by written notice from the Director or designee, to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the Invitation for Bids. Notice shall also be provided to unsuccessful bidders by the Director, or

designee. The actual and final award of the contract shall only be made by the School Board.

(9) In the event all bids for a construction project exceed available funds as certified by the CFO, and the low responsive and responsible bid does not exceed such funds by more than five percent, the CFO, or designee, is authorized in situations where time or economic considerations preclude re-solicitation of work, to negotiate an adjustment of the bid price, including changes in the bid requirements or a reduced scope with the low responsive and responsible bidder, in order to bring the bid within the amount of available funds.

3-203 Request For Proposal — Competitive Sealed Proposals

(1) If the cost of any supplies, equipment or service is more than \$5,000 but does not exceed the sum of \$15,000.00, the Director is encouraged to issue a Request For Proposal unless, the Director determines it is not practicable to seek proposals.

(2) If the cost of any school building improvements or construction is more than \$5,000 but not more than \$15,000, the DOF is encouraged to issue a Request For Proposal.

(3) If the cost of any service, other than professional services, is in excess of \$15,000.00, the Director shall issue a Request For Proposals, unless the Director states, in writing, that it is not practicable to seek proposals.

(4) Except as otherwise provided in these Policies and Procedures, if the cost of a professional service is in excess of \$25,000.00, the Director shall issue a Request For Proposals, unless the Director states, in writing, that it is not practicable to seek proposals.

(5) The Director may, but is not required, to issue a Request For Proposal for the purchase of books and other materials of instruction as defined in the State Department of Education Financial Reporting Manual.

(6) If a Request For Proposal is to be issued, it should be forwarded to at least three businesses and/or persons who have been determined by the Director to have the competency and ability to provide the needed school building improvements, construction, supplies, equipment, services, or professional services.

(7) Proposals shall be opened so as to avoid disclosure of contents to competing offerors during the process of negotiation. A record of the proposals shall be prepared by the Office of Procurement, and shall be open for public inspection after contract award.

(8) The Request For Proposal shall state the relative importance of price and evaluation Factors.

(9) 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 responsiveness to, the solicitation requirements. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals, and such revisions may be

permitted after submissions and prior to award for the purpose of obtaining best and final offers. In conducting discussions, there shall be no disclosure of any information derived from proposals submitted by competing offerors.

(10) Award shall be made to the responsible offeror whose proposal is determined in writing to be the most advantageous to the School Board taking into consideration price and the evaluation factors set forth in the Request For Proposal. The contract file shall contain the basis on which the award is made by the Director.

(11) Notice of the award of the contract will be provided with reasonable promptness by written notice by the Director to the selected bidder and to unsuccessful bidders.

- (a) With regard to professional service contracts for less than \$15,000.00, the actual and final award shall only be made by the CEO. The decision of the CEO is final and may not be appealed.
- (b) With regard to contracts for \$15,000.00 or more, which require the approval of the School Board, the actual and final award shall be made by the School Board. The decision of the School Board is final.

3-204 Comparison of Invitation For Bid vs. Request For Proposal

- (1) Under an Invitation for Bid, judgmental factors may be used only to determine if the supplies, equipment, or construction item bid meet the purchase description.
- (2) Under a Request For Proposal, judgmental factors may be used to determine not only if the items being offered meet the purchase description but may also be used to evaluate competing proposals.
- (3) The effect of this different use of judgmental evaluation is that under an Invitation for Bid, once the judgmental evaluation is completed, award is made on a purely objective basis to the lowest responsive and responsible bidder.
- (4) Under a Request For Proposal, the quality of competing products or services may be compared and trade-offs made between price and quality of the products or services offered, as set forth in the request for proposal. Award under Request For Proposal is then made to the responsible offeror whose proposal is most advantageous to the School Board.
- (5) Under an Invitation for Bid, no change in bids is allowed once they have been opened, except for correction of errors in limited circumstances.
- (6) The Request For Proposal method permits discussions after proposals have been opened to allow clarification and changes in proposals provided that adequate precautions are taken to treat each offeror fairly and to ensure that information gleaned from competing proposals is not disclosed to other offerors.
- (7) The Policies and Procedures to contest the award of an Invitation for Bid differ significantly from those to contest the award of a Request For Proposal.

3-205 Small Purchases

Any procurement not exceeding \$5,000 may be made in accordance with small purchase Policies and Procedures promulgated by the PRC, provided however, that procurement requirements shall not be divided so as to constitute a small purchase under this Section, without the written, approval of the Director. Contracts for procurements not exceeding \$5,000 may be awarded without competitive source selection to a sole vendor.

3-206 Sole Source Procurement

A contract may be awarded for a supply, equipment, school building construction or improvement, services, or certain professional services, without competitive sealed bidding when:

- (1) An emergency exists, as described in Part C of this Section.
- (2) The contract is for supplies, equipment, services or construction of \$5,000 or less, unless such supplies, equipment, services or construction may be procured under a system-wide contract.
- (3) The Director determines that an Invitation for Bid or a Request For Proposal cannot be used because there is only one available source for the subject of the contract.
- (4) The CFO determines it to be in the best interests of the School Board to negotiate the renewal of an existing real property lease without soliciting other proposals.
- (5) The CEO, in writing, determines it to be in the best interests of the School Board to award the contract without competitive source selection .
- (6) The School Board requires the professional services of a contractor in connection with actual or potential litigation, legal matters, appraisal of real property, collective bargaining, expert testimony or the services of an expert, or services related to administrative hearings.

3-207 Negotiation in Sole Source Procurement

- (1) For procurements under \$5,000, unit heads, principals, the DOF and the Director have sole discretion in entering into sole source procurements.
- (2) For procurements over \$5,000, the Director shall conduct negotiations, as appropriate, as to price, delivery, and terms.

3-208 Record of Sole Source Procurement

- (1) For procurements over \$5,000, the Director shall maintain a record of a sole source procurement that lists:
 - (a.) The contractor's name, address, telephone, and fax;

- (b.) The amount and type of the contract;
- (c.) The items procured under the contract; and
- (d.) The identification number of the contract file; and
- (e.) The basis and justification for the sole source procurement.

(2) Prior to award, all sole source procurements for more than \$15,000.00, must appear on a procurement agenda submitted to the School Board for approval at a public business meeting.

Part C — Emergency Procurement

3-301 Application for Emergency Procurement

Emergency procurements are permissible for procurement of supplies, services, maintenance, commodities, construction, or construction-related services, when an Invitation for Bid or a Request For Proposal cannot be used in awarding or modifying a contract because of an emergency. Emergency procurements are not permissible for field change orders incidental to construction contracts.

3-302 Emergency Procurements

- (1) **Scope:** An emergency procurement must be limited to the procurement of only the types of items and quantities of items necessary to avoid or to mitigate serious damage to public health, safety, and welfare or to procure needed supplies, equipment or services to prevent the disruption or interference with the education programs of the BCPSS.
- (2) **Authority:** The Director may award an emergency contract or make an emergency contract modification only with the written approval of the CEO.
- (3) **Source Selection:** The procedure used shall assure that the required items are procured in time to meet the emergency. Given this constraint, such competition as is possible and practicable shall be obtained.
- (4) **Record and Review of Emergency Procurement:** A record of each emergency procurement must be made as soon as practicable and shall include:
 - (a) the basis and justification for the emergency procurement, including the date the emergency first became known;
 - (b) a listing of supplies, services, maintenance, commodities, construction, or construction-related services procured;
 - (c) the names of all persons solicited and a justification if the solicitation was limited to one person;

- (d) the prices and times of performance proposed by the persons responding to the solicitation;
 - (e) the name of and basis for the selection of a particular contractor;
 - (f) the amount and type of the contract or contract modification;
 - (g) a listing of any prior or related emergency contracts, including all contract modifications, executed for purposes of avoiding or mitigating the particular emergency including the aggregate costs; and
 - (h) the identification number, if any, of the contract file.
- (5) Notice of Emergency Procurements

An action agenda item must be forwarded to the School Board within 30 days of contract award or contract modification.

Part D — Cancellation of Invitations for Bids or Request For Proposals

3-401 Cancellation of Invitations for Bids or Requests for Proposals

An Invitation for Bids, a Request For Proposal, or other solicitation may be canceled, or any or all bids or proposals may be rejected in whole or in part when it is in the best interests of the School Board. The reasons shall be made a part of the contract file maintained by the Director.

Part E — Qualifications and Duties

3-501 Responsibility of Bidders and Offerors

(1) A written determination of non-responsibility of a bidder or offeror shall be made by the Director. The unreasonable failure of a bidder or offeror to promptly supply information in connection with an inquiry with respect to responsibility may be grounds for a determination of non-responsibility with respect to such bidder or offeror.

(2) Information furnished by a bidder or offeror pursuant to this Section shall not be disclosed to outside sources without the prior written consent of the bidder or offeror if the bidder or offeror has specifically identified the information as Confidential Information. The release of information is also governed by Section 1-401 of these Policies and Procedures.

3-502 Pre-qualification of Suppliers

(1) Prospective suppliers may be pre-qualified for particular types of supplies, equipment, services, professional services or construction. Solicitation mailing lists of potential contractors shall include but shall not be limited to such pre-qualified suppliers.

(2) Pre-qualification is not a conclusive determination of responsibility.

- (3) A pre-qualified bidder or offeror may be rejected as non-responsible on the basis of subsequently discovered information and may be removed as a pre-qualified bidder without undergoing the debarment process.
- (4) A prior failure to pre-qualify will not bar a subsequent determination that a bidder or offeror is responsible with respect to any given procurement.
- (5) The PRC may establish criteria for the pre-qualification of suppliers.

3-503 Cost or Pricing Adjustment

Any contract, change order, or contract modification may contain a provision that the price to the School Board, including profit or fee, shall be adjusted to exclude any significant sums by which the School Board finds that such price was increased because the contractor furnished cost or pricing data was inaccurate, incomplete, or not current as of the date agreed upon between the parties.

Part F — Types of Contracts

3-601 Multi-Term Contracts

- (1) Unless otherwise provided, a contract for supplies, equipment, services, professional services or construction may be entered into for any period of time deemed to be in the best interests of the School Board 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 award. Payment and performance obligations for succeeding fiscal periods shall be subject to the availability and appropriation of funds therefor and approval of the School Board.
- (2) Prior to the utilization of a multi-term contract, it shall be determined 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 School Board by encouraging effective competition or otherwise promoting economies in procurement.
- (3) When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the contract shall be canceled at no cost or expense to the School Board.

Part G — Determinations and Reports

3-701 Finality of Determinations

The determinations made by the School Board, CEO, and CFO are final and conclusive unless they are clearly erroneous, arbitrary, capricious, or contrary to law.

3-702 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 School Board and the Office of Legal Counsel.

3-703 Retention of Procurement Records

- (a) All procurement records shall be retained for five (5) years after the termination date of the contract and shall be disposed of in accordance with regulations established by the PRC. All retained documents shall be made available to the Internal Auditor upon request.

- (b) A contractor and such contractor's subcontractors, shall retain and, upon the request of the School Board or the Internal Auditor, make available, all accounts, records or documents pertaining to any contracts awarded by the CEO or School Board for at least three (3) years after final payment is made or any pending matters are concluded. The School Board may audit and inspect all accounts, records or documents maintained by a contractor or by such contractor's subcontractors.

ARTICLE 4 - SPECIFICATIONS

4-101 Definitions

"Specification" means any description of the physical or functional characteristics, or of the nature of a supply, equipment, service, professional service, lease, construction, inspection related service, architectural/engineering service, or information technology equipment or service. It may include a description of any requirement for inspecting, testing, delivering or preparing a supply, equipment, service, professional, lease, construction, inspection related service, architecture/engineering service, or information technology equipment or service for delivery.

4-102 Duties of the Procurement Review Committee

The PRC may promulgate regulations governing the preparation, maintenance, and content of specifications required by the School Board.

4-103 Duties of the Director

- (1) The Director shall prepare, issue, revise, maintain, and monitor the use of specifications required by the School Board.
- (2) The Director shall obtain expert advice and assistance from personnel of the using agencies in the development of specifications and may delegate in writing to a using agency the authority to prepare and utilize its own specifications.

4-104 Maximum Practicable Competition

All specifications shall seek: to promote overall economy for the purposes intended and encourage competition in satisfying the School Board's needs, and shall not be unduly restrictive. Provided, however, that the School Board reserves the right to specify the quality or nature of the supplies, equipment, construction, construction services, services or professional services which it is seeking, to satisfy the BCPSS' needs.

4-105 Specifications Prepared by Design Professionals

The requirements of this section regarding the purposes of specifications shall apply to all specifications, including, but not limited to, those prepared by architects, engineers, designers, and draftsmen for public contracts.

ARTICLE 5 - PROCUREMENT OF CONSTRUCTION, ARCHITECT-ENGINEER AND LAND SURVEYING

5-101 Definition of Terms Used in this Article

(1) "Architect-Engineer and Land Surveying Services" are those professional services within the scope of the practice of architecture, professional engineering, or land surveying, as defined by the laws of the State of Maryland.

5-102 Responsibility for Selection of Methods of Construction Contracting and Construction Management

The School Board may contract with an external vendor the responsibility for construction contracting and construction management for the school system. The external vendor shall be bound by the requirements of these Policies and Procedures and the vendor's contract.

If the School Board retains the responsibility for construction contracting and construction management, the PRC shall promulgate Policies and Procedures providing for as many alternative methods of construction contracting and construction management as it may determine to be in the best interest of School Board. These Policies and Procedures shall:

- (a) set forth criteria to be used in determining which method of construction contracting and construction management is to be used for a particular project;
- (b) grant to the CFO, or designee, the discretion to select the appropriate method of construction contracting and construction management for a particular project; and
- (c) require the CFO to execute and include in the contract file a written statement setting forth the facts which led to the selection of a particular method of construction contracting management for each project.

5-103 Bid Security

(1) Bid security shall be required for all competitive sealed bidding for construction contracts when the price is estimated by the CFO to exceed \$100,000.00. Bid security shall be a bond provided by a surety company authorized to do business in this State, or the equivalent in cash, or otherwise supplied in a form satisfactory to the CFO. The CFO may require bid security on construction and construction management contracts under \$100,000.00 when the CFO determines that circumstances warrant the bid security.

(2) The bid security shall always be in an amount equal to 2 % of the bid.

(3) When the Invitation for Bids requires security, noncompliance requires that the bid be rejected unless the CFO determines that the bid fails to comply in a non-substantial manner with the bid security requirements.

(4) If the bidder is allowed to withdraw its bid, after the bid opening, but before the award, no action shall be taken against the bidder or the bid security.

- (1) When a construction contract is awarded in excess of \$100,000.00, the following bonds or security shall be delivered to the School Board and shall become binding on the parties upon the execution of the contract:
 - (a) a performance bond satisfactory to the School Board, executed by a surety company authorized to do business in this State or otherwise secured in a manner satisfactory to the School Board, in an amount equal to 100% of the price specified in the contract, and
 - (b) a payment bond satisfactory to the School Board, executed by a surety company authorized to do business in this State or otherwise secured in a manner satisfactory to the School Board, for the protection of all persons supplying labor and material to the contractor or its subcontractors for the performance of the work provided for in the contract. The bond shall be in an amount equal to 100% of the price specified in the contract.

- (2) When a construction contract is awarded and the contract price exceeds \$50,000.00, but is less than \$100,000.00, an acceptable performance and payment bond for fifty percent (50%) of the amount of the contract shall be delivered to the School Board and shall become binding on the parties upon the execution of the contract.

- (3) The CFO may reduce the amount of performance and payment bonds to a minimum of 50% of the contract price for each bond and with the School Board's approval may reduce the amount of the performance and payment bonds to below 50%.

- (4) Nothing in this section shall be construed to limit the authority of the School Board to require a performance bond or other security in addition to these bonds, or in circumstances other than specified in this section.

- (5) Every suit instituted upon a payment bond shall be brought in a court of competent jurisdiction where the contract was to be performed, but no such suit shall be commenced after the expiration of one year after the day on which the last of the labor was performed or material was supplied by the person bringing the suit. The obligee named in the bond need not be joined as a party in any such suit.

5-105 Bond Forms and Copies

- (1) The Director shall determine the form of the bonds required by these Policies and Procedures.

- (2) Any person may obtain a certified copy of the bond required by these Policies and Procedures, from the CFO, upon payment of \$50.00. A certified copy of a bond shall be prima facie evidence of the contents, execution, and delivery of the original.

5-106 Contract Clauses and Administration

- (1) The PRC may promulgate Policies and Procedures requiring the inclusion in

performance, or other contract provisions, as appropriate, and covering, at least some of the following subjects:

- (a) The unilateral right of the School Board to order in writing:
 - (i) Changes in the work within the scope of the contract; and
 - (ii) changes in the time of performance of the contract that do not alter the scope of the contract work;
 - (b) Variation occurring between estimated quantities of work in a contract and actual quantities;
 - (c) Suspension of work ordered by the School Board; and
 - (d) Site conditions differing from those indicated in the contract, or ordinarily encountered, except that differing site conditions clauses promulgated by the PRC need not be included in a contract:
 - (i) when the contract is negotiated;
 - (ii) when the contractor provides the site or design; or
 - (iii) when the parties have otherwise agreed with respect to the risk of differing site conditions.
- (2) Adjustments in price pursuant to clauses promulgated under these Policies and Procedures may be computed by one or more of the following methods:
- (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 clause with adjustment of profit or fee, all as specified in the contract or subsequently agreed upon;
 - (d) In the absence of agreement by the parties, by a unilateral determination by the School Board of the costs attributable to the events or situations under such clauses with adjustment of profit or fee, all as computed by the School Board in accordance with application sections of the regulations promulgated under Article 7 (Cost Principals) and subject to the provisions of Article 9 (Legal Remedies) of these Policies and Procedures.
 - (e) Such method as may be set forth in the contract approved by the School Board.
- (3) A contractor shall be required to submit cost or pricing data if any adjustment in contract price is subject to the provisions of section 3-503 (Cost or Pricing Data) of these Policies and Procedures.

(4) The PRC shall promulgate Policies and Procedures requiring the inclusion in School Board construction contracts of clauses providing for appropriate remedies and covering some of the following subjects:

- (a) Liquidated damages as appropriate;
- (b) Specified excuses for delay or nonperformance;
- (c) Termination of the contract for default; and
- (d) Termination of the contract in whole or in part for the convenience of the School Board.

(5) With the approval of the School Board, the CFO may vary the clauses promulgated by the PRC under this section for inclusion in any particular School Board construction contract, provided that any variations are supported by a written determination that states the circumstances justifying such variations, and provided that notice of any such material variation be stated in the Invitation for Bids or Request For Proposal.

5-107 Architect-Engineer and Land Surveying Services

(1) Architect-engineer and land surveying services, over \$5,000, shall be procured as provided in this Section subject to the sole source procurement or emergency procurement section.

(2) It is the policy of this School Board to publicly announce all requirements for architect-engineer and land surveying services and to negotiate contracts for architect-engineer and land surveying services on the basis of demonstrated competence and qualification for the type of services required, and at fair and reasonable prices.

(3) In the procurement of architect-engineer and land surveying services, the CFO, or designee, shall encourage persons licensed or lawfully practicing their profession to submit annually a statement of qualifications and performance data. The CFO, DOF, and Director, shall comprise the selection committee for each architect-engineer or land surveying contract over \$5,000. The CFO or designee, may also select a design professional, and such other individuals with knowledge of architecture and engineering services to serve on the selection committee. Such design professional shall not have a personal interest in which firm is selected to provide services to the School Board. The selection committee shall evaluate current statements of qualifications and performance data on file with the School Board, together with those that may be submitted by other firms regarding the proposed contract. The selection committee shall conduct discussions with no less than three firms regarding the contract and the relative utility of alternative methods of approach for furnishing the required services, and then shall select therefrom, in order of preference, based upon criteria established and reported by the selection committee, no less than three of the firms deemed to be the most highly qualified to provide the services required.

(4) and procedures governing the selection of architect-engineer and land surveying services.

The School Board may utilize the Mayor and City Council's established policies

(5) The CFO, or designee, shall negotiate a contract with the highest qualified firm for architect-engineer or land surveying services at compensation which is determined in writing to be fair and reasonable to the School Board. In making this decision, the CFO, or designee, shall take into account the estimated value, the scope, the complexity, and the professional nature of the services to be rendered. Should the CFO, or designee, be unable to negotiate a satisfactory contract with the firm considered to be the most qualified, at a fair and reasonable price, the negotiations with that firm shall be formally terminated and negotiations with the second, and if necessary, the third most qualified firm shall commence. Should the CFO, or designee, be unable to negotiate a contract at a fair and reasonable price with any of the selected firms, additional firms shall be selected and ranked and negotiations shall continue until an agreement with a firm, is reached or the procurement is withdrawn by the CFO.

ARTICLE 7 - COST PRINCIPLES

7-101 Cost Principles Regulations Required

The PRC may promulgate regulations setting forth direct and indirect cost principles which shall be used to determine the allowability of incurred costs for the purpose of reimbursing costs under contract provisions which provide for the reimbursement of costs.

ARTICLE 8 - SUPPLY MANAGEMENT

Part A — Definitions

8-101 Definitions of Terms used in this Article

(1) *Excess Supplies* means any supplies other than expendable supplies having a remaining useful life but which are no longer required by the Using Agency in possession of the supplies.

(2) *Expendable Supplies* means all tangible supplies other than non-expendable supplies.

(3) *Non-expendable Supplies* means all tangible supplies having an original acquisition cost of over (\$ 100) per unit and a probable useful life of more than one year.

(4) *Supplies* means, for purposes of this Article, supplies owned by BCPSS. (See Section 1-301 (23) (Supplies).

(5) *Surplus Supplies* means any supplies other than expendable supplies no longer having any use to the (BCPSS). This includes obsolete supplies, scrap materials, and non-expendable supplies that have completed their useful life cycle.

Part B - Policies and Procedures Required

8-201 Supply Management Regulations Required

The PRC may promulgate regulations governing:

- (a) The management of supplies during their entire life cycle;
- (b) The sale, lease, or disposal of surplus supplies by public auction, competitive sealed bidding, or other appropriate method designated by the requirements of the PRC, provided that no employee of the owning or disposing agency shall be entitled to purchase any such supplies; and
- (c) Transfer of excess supplies.

Part C - Proceeds

8-301 Allocation of Proceeds from Sale or Disposal of Surplus Supplies

Proceeds from the sale, lease, or disposal of surplus supplies will be revenue to BCPSS' general fund and will be allocated in accordance with standard budget procedures.

ARTICLE 9 - LEGAL AND CONTRACTUAL REMEDIES

9-101 Authority to Resolve Protested Solicitations and Awards

(1) Right to Protest

Any actual bidder, offeror, or contractor who is aggrieved in connection with the solicitation or notice of award of a contract may protest to the Director. The protest shall be submitted, in writing, to the Director within five (5) business days after the issuance of the solicitation or issuance of the notice of award by the Director.

(2) Form

The written protest shall include, at a minimum the following:

- (a) The name and address of the protester,
- (b) Appropriate identification of the procurement, and, if a contract has been awarded; its number if known;
- (c) A statement of reasons for the protest; and
- (d) Supporting exhibits, evidence, or documents to substantiate the reasons for the protest unless not available within the filing time, in which case, the expected availability dates shall be indicated.

(3) Notice to Counsel

The Director shall submit a copy of the protest to each of the representatives of the PRC, upon receipt of the protest.

(4) Request for Information

Any additional information requested by the Director of any person, to substantiate the protest shall be submitted within 5 business days after receipt of notification or such other reasonable time as the Director may specify in order to expedite consideration of the protest. Failure of any party to comply with a request for information from the Director may result in a resolution of the protest without consideration of any response to the request for additional information.

(5) Level I - Authority to Resolve — Informal Conference

The CFO, or a designee, shall have the authority to settle and resolve a protest of an actual aggrieved bidder, offeror, or contractor, concerning the solicitation or notice of award of a contract. Every effort should be made by the CFO or designee, to schedule the informal conference with five (5) business days after the filing of the protest.

(6) Level II — Informal Hearing — Chief Financial Officer or Designee

If the protest is not resolved by mutual agreement, the CFO, or designee, shall hear the case and shall promptly issue a decision in writing. The decision shall be issued within five (5) business days after the informal hearing. The proposed decision shall:

- (a) state the reasons for the action taken; and
- (b) inform the parties of their right to file administrative exceptions ("Exceptions") as provided in these Policies and Procedures.

(7) Notice of Decision

A copy of the decision under subsection (6) of this Article, shall be mailed by certified mail to the Protestant and other parties intervening. A copy of the decision should also be provided to each of the representatives of the PRC.

(8) Level III - Finality of Decision — Invitation For Bids Only

A decision under 9-101 (6) of this Article shall be final and conclusive unless the party adversely affected by the decision files an administrative appeal with the School Board in accordance with the following Policies and Procedures:

- (a) Exceptions to the decision of the CFO or a designee, must be filed within five (5) business days from the date of such decision with the Board Executive of the School Board, with a copy which must also be filed with the CEO, CFO, Director and General Counsel. A response to the exceptions must be filed within five (5) business days of the filing of the exceptions with the Board Executive.
- (b) The Board Executive must schedule an administrative hearing before an administrative hearing officer.
- (c) The administrative hearing shall be conducted in accordance with the School Board's Administrative Hearing Policies and Procedures.
- (d) The School Board shall consider the decision of the CFO or designee, any exceptions to that decision, any responses to the exceptions and the decision of the administrative hearing officer.
- (e) The School Board shall issue a final order in accordance with these Policies and Procedures. The decision of the School Board is final.

(9) Level III — Finality of Decision — Request For Proposals, Small Purchases, Sole Source Procurement

A decision under 9-101 (6) shall be final and conclusive unless the party adversely affected by the decision files exceptions to the decision with the School Board in accordance with the following requirements: 31

- (a) The written exceptions must be filed within five (5) business days from the date of the decision of the CFO or a designee, with the Board Executive of the School Board, with a copy which must be also filed with the CEO, CFO, Director and General Counsel.
- (b) Any party of interest may file a response to the exceptions within five (5) business days of the filing of the exceptions with the Board Executive.
- (c) The School Board shall consider the decision of the CFO or a designee, any exceptions to that decision and any response to such exceptions.
- (d) The School Board shall issue a final order in accordance with these Policies and Procedures. The decision of the School Board is final.

(10) Stay of Invitation for Bids Only

In the event of a timely protest, the School Board shall not proceed further with the solicitation or with the award of the contract involving an Invitation for Bids — Competitive Sealed Bids until:

- (a) a settlement agreement has been ratified;
- (b) a final decision has been approved by the School Board at a public board meeting, pursuant to an administrative appeal; or
- (c) the School Board has issued a written determination lifting the stay and awarding the contract without further delay because it is necessary to protect the substantial interest of the school system.

(11) Written Exceptions

Within 5 business days after receipt of the proposed decision from the CFO, or designee, the Protestant or the CEO may file written exceptions. If the matter is an emergency, the CFO may designate a lesser time period for the filing of exceptions, but in no case not less than 24 hours.

The proposed decision of the CFO, or designee, and any written exceptions filed and any responses thereto and if applicable, the hearing officer's decision, may be considered by the School Board at an executive session. The School Board shall accept, reject, remand or modify the proposed decision of the CFO or hearing officer at a public board meeting.

(12) Final Order

A written final order, confirming the action taken by the School Board shall be provided by the Board Executive to the Protestant, the CEO, CFO, Director and General Counsel. The final order shall include:

- (a) A brief description of the controversy;

- (b) A statement of the decision, which may make reference to supporting material; and
- (c) A statement that the decision is the final action of the School Board.

9-102 Authority to Debar or Suspend

- (1.) After reasonable notice to the person involved and reasonable opportunity for that person to be heard, but within 60 days of notice, the Director after consultation with the Using Agency and the Office of Legal Counsel, shall have the authority to debar a person for cause from consideration for award of contracts. The debarment shall not be for a period of more than three years unless the School Board agrees to a time period of more than three (3) years. The Director shall have authority to suspend a person from consideration for award of contracts if there is probable cause for debarment. The suspension shall not be for a period exceeding twelve months.
- (2) The causes for debarment or suspension include the following:
 - (a) conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract,
 - (b) conviction under State or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which currently, seriously, and directly affects responsibility as a contractor with the School Board,
 - (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 to be so serious as to justify debarment action or suspension;
 - (i) deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or
 - (ii) a recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts; provided that failure to perform or unsatisfactory performance was caused by acts beyond the control of the contractor shall not be considered to be a basis for debarment or suspension;
 - (e) any other cause the Director determines to be so serious and compelling as to affect responsibility as a contractor with the School Board and/or school system, including debarment by another governmental entity for any cause; and

- (f) for violation of the ethical standards set forth in these Policies and Procedures.
- (3) The Director shall issue a written decision to debar or suspend. The decision shall:
 - (a) state the reasons for the action taken, and
 - (b) inform the debarred or suspended person involved of its rights to administrative review as provided in these Policies and Procedures.
- (4) A copy of the decision under Subsection (3) of this Section shall be mailed by certified mail to the debarred or suspended person and any other party intervening.
- (5) A decision under Subsection (3) of this Section shall be final and conclusive, unless fraudulent, or the debarred or suspended person appeals administratively to the School Board. The School Board may refer the appeal to an administrative hearing officer to conduct an administrative hearing in accordance with the School Board's hearing procedures and these Policies and Procedures.
- (6) The Director, or designee, shall maintain a current record of all disbarments and suspensions, which shall include person/entity, disbarred or suspended, date of action, and date of possible reinstatement.

9-103 Remedies

- (1) The provisions of this Section apply where it is determined administratively or upon judicial review, that a solicitation or award of a contract is in violation of law.
- (2) If, prior to award, it is determined that a solicitation or proposed award of a contract is in violation of law, then the solicitation or proposed award shall be:
 - (a) revised to comply with the law, or
 - (b) canceled.
- (3) If after an award, it is determined that a solicitation or award of a contract is in violation of law, then:
 - (a) if the person awarded the contract has not acted fraudulently or in bad faith:
 - (i) the contract may be ratified and affirmed, provided it is determined that doing so is in the best interest of the school system; or
 - (ii) the contract may be terminated and the person awarded the contract shall be compensated for the actual expenses reasonably incurred under the contract, prior to the termination;
 - (b) if the person awarded the contract has acted fraudulently or in bad faith:

(ii) the contract may be ratified and affirmed if such action is in the best interests of the school system, without prejudice to the school system's rights to such damages as may be appropriate.

ARTICLE 10 - INTERGOVERNMENTAL RELATIONS

Part A - Definitions

10-101 Definitions of Terms Used in this Article

(1) *Cooperative Purchasing* means procurement conducted by, or on behalf of more than one Public Procurement Unit, or by a Public Procurement Unit with an External Procurement Activity.

(2) *External Procurement Entity* means any buying organization not located in this State which, if located in this State, would qualify as a Public Procurement Unit. An agency of the United States is an External Procurement Activity.

(3) *Local Public Procurement Unit* means any county, city, town, and any subdivision of the State or public agency of any such subdivision, public authority, educational, health, or other institution, and-to the extent provided by law, any other entity which expends public funds for the procurement of supplies, services, and construction, and any nonprofit corporation. This term includes the School Board.

(4) *Public Procurement Unit* means either a Local Public Procurement Unit or a State Public Procurement Unit.

(5) *State Public Procurement Unit* means the Office of the Chief Procurement Officer and any other Purchasing Agency of this State.

Part B - Cooperative Purchasing

10-201 Cooperative Purchasing Authorized

The School Board, under the direction of the Office of Procurement, may participate in, sponsor, conduct, utilize, or administer a cooperative purchasing agreement for the procurement of any supplies, equipment, construction services, services or professional services with one or more Public Procurement Units or External Procurement Entity in accordance with an agreement entered into between the participants. Such cooperative purchasing may include, but not be limited to, joint or multiparty contracts between Public Procurement Units and open-ended State Public Procurement Unit contracts, which are made available to Local Public Procurement Units. In instances where purchases are in excess of \$15,000, approval of the School Board is required.

10-202 Sale, Acquisition, or Use of Supplies by the Procurement Office

The Procurement Office may sell to, acquire, or use any supplies or equipment belonging to another Public Procurement Unit or External Procurement Activity independent of the requirements of Article 3 (Source Selection and Contract Formation) and Article 8 (Supply Management) of these Policies and Procedures.

10-203 Cooperative Use of Supplies or Services

The Office of Procurement may enter into an agreement, independent of the requirements of Article 3 (Source Selection and Contract Formation) and Article 8 (Supply Management) of these Policies and Procedures, with any other Public Procurement Unit or External Procurement Activity for the cooperative use of supplies, equipment, construction services, professional services or services under the terms agreed upon between the parties.

10-204 Joint Use of Facilities

The Office of Procurement may enter into agreements for the common use or lease of warehousing facilities, capital equipment, and other facilities with another Public Procurement Unit or an External Procurement Activity under the terms agreed upon between the parties. Any such agreement is subject to approval of the School Board.

10-205 Supply of Personnel, Information, and Technical Services

(1) *Supply of Personnel.* The Office of Procurement is authorized, subject to the approval of the CEO, upon written request from another Public Procurement Unit or External Procurement Activity, to provide personnel to the requesting Public Procurement Unit or External Procurement Activity. The Public Procurement Unit or External Activity making the request shall pay the Procurement Office the direct and indirect cost of furnishing the personnel, in accordance with an agreement between the parties.

(2) *Supply of Services.* The informational, technical, and other services of the Office of Procurement may be made available to any other Public Procurement Unit or External Procurement Unit provided that the requirements of the Public Procurement Unit tendering the services shall have precedence over the requesting Public Procurement Unit or External Procurement Activity. The requesting Public Procurement Unit or External Procurement Activity shall pay for the expenses of the services so provided, in accordance with an agreement between the parties.

10-206 Use of Payments Received by a Supplying Public Procurement Unit

All payments from any Public Procurement Unit or External Procurement Activity received by the Procurement Office for supplying personnel or services shall be credited to the Education fund, for reuse at the discretion of the School Board.

10-207 Public Procurement Units in Compliance with Code Requirements

Where the Public Procurement Unit or External Procurement Activity administering a cooperative purchase complies with the requirement of these Policies and Procedures, any Public Procurement Unit participating in such a purchase shall be deemed to have complied with these Policies and Procedures. Public Procurement Units may not enter into a cooperative purchasing agreement for the purpose of circumventing these Policies and Procedures.

10-208 Contract Controversies

(1) *Public Procurement Unit Subject to Article 9 (Legal and Contractual Remedies.)*

Under a cooperative purchasing agreement, controversies arising between an administering Public Procurement Unit and its bidders, offerors, or contractors shall be resolved in accordance with Article 9 (Legal and Contractual Remedies).

(2) *Local Public Procurement Unit Not Subject to Article 9 (Legal and Contractual Remedies).* Any Local Public Procurement Unit which is not subject to Article 9 (Legal and Contractual Remedies), (Procurement Appeals Board), is authorized to:

- (a) enter into an agreement with the School Board (or other State or local administrative agency designated to resolve disputes) to use such board (or agency) to resolve controversies between the Local Public Procurement Unit and its contractors, whether or not such controversy arose from a cooperative purchasing agreement; and
- (b) enter into an agreement with another Local Public Procurement Unit or External Procurement Activity to establish Policies and Procedures or use such unit's or activity's existing Policies and Procedures to resolve controversies with contractors, whether or not *such* controversy arose under a cooperative purchasing agreement.

ARTICLE 11 — ETHICS IN PUBLIC CONTRACTING

11-101 Definitions of Terms

- (1) *Blind Trust means* an independently managed trust in which the employee beneficiary has no management rights and in which the employee-beneficiary is not given notice of alterations in, or other dispositions of, the property subject to the trust.
- (2) *Confidential Information means* any information, which is available to an employee only because of the employee's status as an employee of the Baltimore City Public School System ("BCPSS") and is not a matter of public knowledge.
- (3) *Direct or Indirect Participation means* 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.
- (4) *Domestic Partner*, for purposes of this article, means any two people who have chosen to share the common necessities of life as indicated by the sharing of a common legal residence and the commingling of finances as evidenced by, but not limited to, joint accounts, powers of attorney and joint indebtedness.
- (5) *Financial Interest means:*
 - (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 \$1,000.00 per year, or its equivalent;
 - (b) Ownership of such interest in any property or business as may be specified by the School Board's Ethics Rule; or
 - (c) Holding a position in a business such as an officer, director, trustee, partner, employee, or the like, or holding any position of management.
- (6) *Gratuity means* a payment, loan, subscription, advance, deposit of money, services, or anything of more than nominal value, present, or promised, unless consideration of substantially equal or greater value is received.
- (7) *Immediate Family means* a spouse, children, parents, brothers and sisters, domestic partners, and such other relatives as may be designated by the School Board.

11-102 Employee Conflict of Interest

- (1) It is a breach of ethical standards for any employee to participate directly or indirectly in a procurement when the employee knows that:
 - (a) the employee or any member of the employee's immediate family has a financial interest pertaining to the procurement;

- (b) a business or organization in which the employee, or any member of the employee's immediate family, has a financial interest pertaining to the procurement; or
 - (c) any other person, business, or organization with which the employee or any member of the employee's immediate family is negotiating or has an arrangement concerning prospective employment is involved in the procurement.
- (2) If an employee or any member of the employee's immediate family holds a financial interest in a blind trust, the employee will not be deemed to have a conflict of interest with regard to matters pertaining to that financial interest, provided that disclosure of the existence of the blind trust has been made to the School Board.
- (3) If an actual or potential conflict of interest is discovered, an employee shall promptly file a written statement of disqualification and shall withdraw from further participation in the transaction involved. The employee may, at the same time, apply to the Board of Ethics for an advisory opinion as to what further participation, if any, the employee may have in the transaction.
- (4) Notice of this prohibition shall be provided by the Procurement Office.

11-103 Employee Disclosure Requirements

- (1) Any employee who has, or obtains any benefit from, any School Board contract with a business in which the employee has a financial interest shall report the benefit to the CEO, School Board and Board of Ethics. This provision does not apply to a contract with a business where the employee's interest in the business has been placed in a disclosed blind trust.
- (2) Any employee who knows or should have known of the benefit, and fails to report the benefit to the CEO, School Board and Board of Ethics, is in breach of the ethical standards of this Section.
- (3) Notice of this requirement must be provided by the Procurement Office.

11-104 Gratuities and Kickbacks

- (1) It is a breach of ethical standards for any person to offer, give, or agree to give any employee or former employee, or for any employee or former employee to solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment in connection with any:
- (a) decision, approval, disapproval, recommendation, preparation of any part of a program requirement or a purchase request; or
 - (b) influencing the content of any specification or procurement standard; or

(c) claim or controversy, or other particular matter, pertaining to any program requirement or a contract or subcontract, or to any solicitation or proposal.

(2) It is a breach of ethical standards 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 as an inducement for the award of a subcontract or order.

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

11-105 Prohibition Against Contingent Fees

(1) It is a breach of ethical standards for a person to be retained, or to retain a person, to solicit or secure a School Board 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.

(2) Each person, before being awarded a School Board contract, shall represent, in writing, that such person has not retained anyone in violation of subsection (a) of this section. Failure to do so constitutes a breach of ethical standards.

(3) The representation prescribed in subsection (b) of this section must be conspicuously set forth in each contract-and solicitation.

11-106 Use of Confidential Information

It is a breach of ethical standards for any employee or former employee to knowingly use confidential information for actual or anticipated personal gain, or for the actual or anticipated personal gain of any other person.

11-107 Civil and Administrative Remedies Against Employees Who Breach Ethical Standards

(1) Civil and administrative remedies against employees that are in existence on the effective date of these Policies and Procedures will not be impaired.

(2) In addition to existing remedies for breach of the ethical standards of these Policies and Procedures, the School Board may impose any one or more of the following:

(a) oral or written warnings or reprimands;

(b) suspension with or without pay for specified periods of time; and

(c) termination of employment.

11-108 Civil and Administrative Remedies Against Non-Employees Who Breach Ethical

(1) Civil and administrative remedies against non-employees that are in existence on the effective date of these Policies and Procedures will not be impaired.

(2) In addition to existing remedies for breach of ethical standards, the School

Board may impose any one or more of the following:

(a) Written warnings or reprimands;

(b) Termination of transactions; and

(c) Debarment or suspension from being a contractor or subcontractor under contracts.

(4) All Policies and Procedures under this section must be in accordance with due process requirements, including a right to notice and an opportunity for a hearing prior to imposition of any termination, debarment, or suspension from being a contractor or subcontractor under a School Board contract.

ARTICLE 12 — MINORITY AND WOMEN'S BUSINESS ENTERPRISES

12-101 Definitions Of Terms Used In This Article

As used in this article the following terms have the meanings indicated unless the context clearly requires a different meaning.

1. *Bidder*: one who submits a bid to the School Board in response to an Invitation to Bid or to a Request For A Proposal.
2. *Certification*: the process by which the Minority Business Standards Committee determines a firm to be a bona fide minority or women's business enterprise as set forth herein.
3. *Chief*: the Chief of the Equal Opportunity Compliance Office of the City of Baltimore (City).
4. *Contracting Agency*: the School Board or its authorized representative, which issues invitations to bid or requests for proposals.
5. *Contractor*: the person, firm, or legal entity with whom the School Board has entered into a contract.
6. *Control*: the primary power to direct the management and operations of a business enterprise.
7. *Joint Venture*: an association that provides for the sharing of economic interest and the equal proportionate control over management, interest in capital, and earnings. The Minority Business Enterprise/Women's Business Enterprise joint venture must have proportionate interest in the control, management, and operation of the affairs of the joint venture.
8. *Minority Business Enterprise (MBE)*: a sole proprietorship, partnership, or corporation owned, and controlled by minority group member(s) who have at least 51% ownership. The minority group member(s) must have operational and managerial control, interest in capital, and earnings commensurate with the percentage of ownership. To qualify as a minority business enterprise, the enterprise shall be doing business in locality or localities from which the School Board regularly solicits, or receives bids on or proposals for School Board contracts within the minority business enterprise's category of contracting.
 - (a) *Sole Proprietorship*: a legal entity that is 100% owned, operated and controlled by one minority group member.

- (b) interest in the control, operation, and management of the partnership affairs.
 - (c) *Minority Corporation*: a legal entity where 51% of each class of the share of stock or other equitable securities is owned by minority group member(s). The minority group member(s) must have operational and managerial control, interest in capital, and earnings commensurate with their percentage of ownership.
9. *Minority Group Member(s)*: Black Americans, Hispanic Americans, Asian Americans, and American Indians legally residing in the United States or its territories, as defined:
- (a) *American Indians*: persons having origins in any of the original peoples of North America and who are recognized as American Indian, by either a tribe, tribal organization, or a suitable authority in the community.
 - (b) *Asian Americans*: persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands.
 - (c) *Black Americans*: person having origins in any of the black racial groups of Africa as well as those identified as Jamaican, Trinidadian, or West Indian.
 - (d) *Hispanic Americans*: persons of Mexican, Puerto Rican, Cuban, Spanish, or Central or South American origin regardless of race.
10. *MBE/WBE Subcontractor(s)*: an MBE/WBE having a direct contract with the contractor for the performance of a part of the work at the site.
11. *MBE/WBE Supplier(s)*: An MBE/WBE that furnishes needed items to the contractor and performs a commercially useful function in the supply process. The supplier must be involved in the manufacture or distribution of the supplies or materials, or otherwise warehouse and ship the supplies.
- (a) MBE/WBE manufacture is a firm, which produces goods from raw materials, or substantially alters or fabricates them before resale, and the MBE/WBE assumes the actual and contractual responsibility for the materials and supplies.
12. *Public Works*: the construction, repair, renovation or maintenance, of any property owned by the City of Baltimore or the School Board or financed, in whole or in part, by the City of Baltimore, the School Board or any other governmental entity.
13. *Purchasing*: the buying, renting, leasing or otherwise obtaining or acquiring any supplies, materials, equipment, services or professional services.
14. *Segmentation*: the act of subdividing a contract to provide MBE/WBE's reasonable contracting opportunity. 44

15. *Subcontract*: an agreement between the contractor and another business entity for the performance of work.
16. *Women's Business Enterprise (WBE)*: a sole proprietorship, partnership, or corporation owned, operated, and controlled by women who have 51% ownership. The women must have operational and managerial control, interest in capital, and earnings commensurate with the percentage of women ownership. To qualify as a Women's Business Enterprise, the enterprise shall be doing business in a locality or localities from which the School Board regularly solicits, or receives bids on or proposals for School Board contracts within the women's business enterprise's category of contracting.

12-201 Statement of Policy and Goal

It is the policy of the School Board to increase the use of minority and women's business enterprises to provide goods and services to the School Board on a contractual basis. The provisions of this policy shall apply to certain contracts awarded by the School Board.

12-301 Duties of the Director

1. Where feasible, the Director shall designate a staff person to serve as MBE/WBE coordinator.
2. The Director, or designee, shall compile, maintain, and make available source lists of MBE/WBE for the purpose of encouraging procurement from MBE/WBE.
3. To the extent deemed to be appropriate and as may be required by regulation, the Director shall include MBE/WBE on solicitation mailing lists.

12-401 Contract Requirements

1. It is the policy of the New Board that maximum feasible opportunity be provided to certify Minority and Women Business Enterprises to participate in the performance of School Board contracts for good and services needed by the New Board.
2. Prior to the issuance of an Invitation for Bids or a Request For Proposals, the Director shall determine whether the proposal contract is subject to the requirements of this Article.
3. If the Director determines that the requirements of this Article apply to an Invitation for Bids or a Request For Proposals which is to be issued, the Director shall:
 - a. Determine whether a waiver of the requirements or goals of this Article should be granted.
Determine the goals to be established for the intended contract to be
 - b. awarded.

4. The general goal of the New Board is, that, in contracts valued at \$25,000 or more, the Award Bidder subcontract a given percentage to certified Minority Business Enterprises ("MBE") and a given percentage of the total contract price to Women Business Enterprises ("WBE").
 - (a) Unless otherwise provided by the Director, interested bidders must complete the MBE and WBE Information and Utilization Form accompanying the Invitation for Bid and submit it as directed.
 - (b) The Director or designee, will deliver the *MBE AND WBE Information and Utilization Form* to the Chief of the Equal Opportunity Compliance Office ("EOCO"). The EOCO will review the form on behalf of the New Board to determine whether the firms listed by the interested Bidder are certified MBE/WBE firms, the percentage of MBE/WBE participation, and whether the interested Bidder has attained the New Board's MBE/WBE goals. The EOCO will submit its findings and any recommendations to the New Board for its review and approval. The New Board may accept, reject, or modify any findings or recommendations of the EOCO.
 - (c) The New Board may grant such exceptions, waivers, and reduction in the MBE/WBE goals as it deems to be in the best interest of the City School System. The School Board, in its capacity as the contracting authority, may also grant exceptions and waivers with respect to the MBE/WBE requirements, as it deems appropriate.

12-501 Compliance with Federal/State Requirements

Where a procurement involves the expenditure of the State of Maryland or federal assistance or contract funds, the Director shall comply with such state and/or federal law and authorized regulations which are applicable.



**PUBLIC PURCHASING DEMYSTIFIED: AN EXPLANATION OF THE SEEMINGLY
UNUSUAL PRACTICES OF PROCUREMENT PEOPLE IN THE PUBLIC SECTOR
RESOURCE GUIDE**

A BEST PRACTICES TRAINING CD BY JIM O'NEILL, FNIGP, CPPO

CHAPTER FOUR – LOCAL PREFERENCE

Doing Business with Local Vendors: City of Fort Collins Purchasing Policies

What are the City's policies and practices with respect to local vendors?

The City is committed to doing business locally whenever possible. When local businesses provide the most cost-effective solutions to the City's needs, the citizens and taxpayers of Fort Collins benefit in two ways: They get the best value for their dollars, and more of those dollars are recycled within the community.

To encourage this, the City's overall policy is to ensure that local businesses are given full information about City needs, treated fairly at every step of the process, and given every opportunity for genuine competition on a level playing field.

How does this work on a day-to-day basis?

First, individual City departments have the authority to make purchases directly up to \$2,000. In most cases, local businesses are able to meet needs more quickly, more economically, and with better, more competent service than non-local businesses that are not as familiar with Fort Collins.

Second, for purchases ranging from \$2,000 to \$30,000, the City's Purchasing Division has the authority and flexibility to deal with local vendors to provide the best value for the citizens. Often, because of lower shipping and delivery costs, faster service, and local follow-up, local businesses can provide the most cost-effective transactions at this level as well.

Finally, for all goods and services over \$30,000, where the purchasing ordinance requires a formal competitive sealed bid or competitive sealed proposal process be used, the Purchasing Division ensures that local companies have every opportunity to compete and succeed. In a

formal bid process, local firms often can meet the required specifications and qualifications more easily and therefore can frequently provide the lowest price and best value.

What advantages do local firms have in competitive proposals?

There are six criteria commonly used for the evaluation and award of contracts through competitive sealed proposals (generally known as A Request for Proposals or an RFP). These criteria guarantee a level playing field in meeting the City's needs on a cost-effective basis that provides the best value for the taxpayer's dollar, and local firms often have a competitive edge:

- ☑ *Scope of the Proposal* includes the proposer's understanding of the project or scope of work. Local firms often have a depth of understanding and a history of involvement with the City that allows for high-quality proposal submittals.
- ☑ *Capability of the Firm* includes the technical and professional history and accomplishments of the company. Many local companies have demonstrated superb professional backgrounds and strong capabilities.
- ☑ *Assigned Personnel* includes the qualifications of the individuals who would actually perform the project. Local firms often provide superior service in this area because their principal professional staffs are here.
- ☑ *Availability* relates to how effectively the work can be scheduled and how well the contact can be maintained with the responsible City staff. Local firms typically have greater flexibility incorporating City projects into their work flow because of the ease of scheduling meetings, providing documents and drawings, and responding quickly to a project need.
- ☑ *Motivation* gives firms an ability to present their familiarity with the project, the location, and the City project management team, and an opportunity to express their level of desire to do the work. Local firms often have an advantage because of their knowledge of the City and of project-related conditions. In addition, because local firms reap the same advantages on their side that the City receives on its part; their motivation to compete for and perform City projects is excellent.
- ☑ *Cost and Work Hours* includes the cost-effectiveness and planning expertise that the proposer brings to the project. Because of their proximity, which reduces travel time and costs, local firms may be able to conduct the work more cost-effectively, and they may also have lower overhead costs than large national or regional firms.

What is a local preference?

Some jurisdictions have established a legally-binding preference in the bid and proposal system that gives a direct financial advantage to local companies. Generally, such a preference involves a percentage of cost (say, 5%) subtracted from the bid prices submitted by local firms, so that they have an advantage over a non-local firm. Another type of local preference is to limit the eligible bidders to the local area, so that non-local firms are not even permitted to compete.

What are the advantages of local preferences?

Jurisdictions that have implemented local preferences believe that there are two advantages.

First, they contend that the extra cost to the preference is outweighed by the need to support local businesses, and that the jurisdiction's commitment to the local business community will be repaid by the businesses commitment to the general community.

Second, they believe that spending money locally reaps benefits to the jurisdiction in tax-base maintenance or tax-receipt growth because a portion of the dollars spent locally is recycled locally. That is, a local business receiving a payment from a city, county, or school district will probably spend a portion of its profits with other local businesses, will pay its local employees who then shop in the local community, and so on. This recycling of dollars is called the multiplier effect by economists.

What are the disadvantages of local preferences?

There are several major issues affecting formal, legally-binding local preferences:

First, a preference costs the taxpayers more money.

Obviously, local preferences hurt the competitive process by reducing the incentive for local businesses to provide the best value for the dollar. In addition, preferences reduce competition because other companies may decide not to bid when they know they don't have the same chance to compete.

Preference programs can also lead to more serious problems, providing an unintentional incentive for bid collusion or bid rigging. For example, if only two local companies are eligible to bid for a certain commodity, or have a bid advantage because of a local preference, they may be tempted to coordinate their bidding to share the jurisdiction's business without any genuine competition.

Overall, studies have shown that a local preference directly results in jurisdictions paying more money for the goods and services that are subject to the preference. The decision to consider a local preference, therefore, becomes a judgment call as to whether the extra cost is worth it.

Second, who is local, and who is not?

The definition of local businesses is a significant problem in two ways: geography, and ownership and management.

In terms of geography, where do you draw the line? For example, if the jurisdiction is a city, is a business located just outside the city limits a local business? Is a post office box a local business? Should a local preference reach beyond the city limits to incorporate an Urban Growth Area, or the entire county? What about a business whose headquarters is in the city, but most of its business is actually conducted elsewhere? Or vice-versa: is a business located in a neighboring town, but doing a substantial amount of business locally, a local business? And should the number of employees who reside in the jurisdiction be a factor in whether or not the business is genuinely "local"?

Ownership and management are also complicated. Is the local branch of a national company a local business? If a local business is owned by someone living out of state, so that all the profits go out of state, should it be equally eligible for a preference as a business whose owner lives next door? And if a business is publicly held or has multiple owners, should a majority of the stockholders be required to live in the local area?

The geography and ownership/management problems overlap, and can be very difficult to resolve.

Third, how many dollars are actually recycled?

A similar problem relates to the true economic advantages of the multiplier effect described above: the multiplier effect is difficult to quantify and varies depending on the item purchased.

Some businesses (primarily service businesses) must pay out most of their receipts to their employees; these dollars are recycled when the employees spend them locally. Other businesses, however, are capital intensive, with relatively few employees and most of the receipts going into the cost of sales, distribution, or production of goods and products; those expenditures may or may not involve other local suppliers or manufacturers.

For example, when a car is purchased from a local dealer, a small portion of the cost goes to the dealer's employees and local profits -- but the majority of the funds go to the manufacturer, generally not a local firm. The issue of ownership also is part of this problem: Where do the profits go to be recycled?

Although dollars are always recycled, and the multiplier effect is a genuine economic factor, the net bottom line impact that a preference creates because of the multiplier effect is very difficult to measure. Ideally, the goal to a preference program would be to create a structure that guarantees enough of an actual economic advantage to the jurisdiction to financially offset the direct cost of the preference in higher bid prices or reduced competition. This is a complex and ambiguous calculation.

Fourth, a preference alienates other jurisdictions.

Other governmental jurisdictions do not like to see their local businesses placed at a financial disadvantage in competing with vendors in other localities. This reaction has led to the development of reciprocal preferences.

These laws (which might be better called negative preferences) require retribution against companies located in areas that have a local preference when these companies try to do business elsewhere. That is, the financial preference that a firm receives in its home jurisdiction becomes a financial penalty if it tries to compete for governmental business in a jurisdiction with a reciprocal preference. This is not a problem for a firm that doesn't want to do work or sell products anywhere else, but it can hurt firms that are competing for broader markets.

For example, the State of Wyoming provides a 5% bid preference for Wyoming-based companies. The State of Colorado has a reciprocal preference, so a Wyoming firm that bids on a Colorado project is penalized by 5%, and must therefore be at least 5% cheaper than the lowest bid from any other company to have a chance to win. Many bids are decided by a margin of 2%, 1%, or less; for many commodities, 5% may be more than the total profit margin -- making it literally impossible for a non-local firm to have any chance of winning (and thereby automatically raising the cost to the taxpayers).

A Fort Collins company that does business with other governmental jurisdictions could be hurt by a local preference in Fort Collins -- even if it is not doing business with the City of Fort Collins!

Finally, preferences complicate the administrative process.

Both financial preferences and reciprocal preferences add to the administrative cost of conducting bids and proposals. Many factors must always be considered to meet basic purchasing laws and regulations; every additional requirement simply adds to the time required and possibility for human error in bid evaluation, calculation, and award -- and therefore raises the ultimate costs to citizens of the jurisdiction.

In addition, some governmental jurisdictions simply prohibit local preferences from being applied to projects they are involved with. The Federal government prohibits the use of local preferences on any project for which it provides any part of the funding. This type of regulation further complicates the bid and award processes at a time when more and more projects require governments to work together and seek funding from multiple sources.

Have national organizations taken a position on local preferences?

Several major professional organizations that deal with governmental purchasing and procurement have analyzed the pros and cons of local preferences, and have taken the position that preferences are not cost-effective. These organizations include:

- The National Institute of Governmental Purchasing
- The International City and County Managers Association
- The Governmental Finance Officers Association
- The Council of State Governments

How does Purchasing communicate with the local business community?

In addition to the maintenance of an automated bidder's list, the Fort Collins Purchasing Division has also developed several other proactive means to aid local vendors. These include meetings to explain our processes; holding local trade shows for the departmental purchasing officials responsible for making small purchases and developing purchasing specifications and bidder lists; and attending local business community events so as to be familiar with the goods and services available. The City's weekly list of bids and proposals is also posted at the Purchasing office, televised regularly on the City television channel, posted on the Internet, and sent to the Chamber of Commerce, and this list is always available on request.

The Purchasing Division has periodically worked with the local Chamber of Commerce in the past to review our processes and procedures, and will continue to do so. This has resulted in the Chamber supporting the policies outlined above, ensuring that local vendors are given full information and opportunity for fair competition.

Overall, the City's commitment to the local business community remains a cornerstone of purchasing and procurement policy, and will continue to be implemented in the context of competition to guarantee the best, most cost-effective value for the citizens and taxpayers.

For assistance or more information, please visit, call, e-mail, or write to:

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