

Resolution No.: 16-1295
Introduced: March 23, 2010
Adopted: March 23, 2010

**COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND**

By County Council

SUBJECT: Executive Regulation 19-09AM, Procurement Regulations

Background

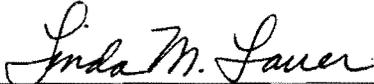
1. The Council enacted Expedited Bill 45-09, Contracts and Procurement – Amendments on March 16, 2010, effective April 1, 2010.
2. Executive Regulation 19-09AM would amend the Procurement Regulations to implement changes to the Procurement Law made by Expedited Bill 45-09 and to generally amend the policies and procedures regulating the County procurement process.
3. On January 22, 2010, the County Council received Executive Regulation 19-09, Procurement Regulations from the Executive. The Executive submitted to the Council a revised Executive Regulation 19-09AM on March 2, 2010.
4. Notice of the proposed regulation was published in the October 2009 Montgomery County Register and no comments were received.
5. Under Method (1), a regulation is not adopted until the Council approves it. If approved, the resolution takes effect the day it is approved or a later date specified in the regulation.
6. The Transportation, Infrastructure, Energy & Environment Committee reviewed Executive Regulation 19-09 on February 4, 2010. The Committee recommended approval of the revised Executive Regulation 19-09AM.

Action

The County Council for Montgomery County, Maryland, approves the following resolution:

Executive Regulation 19-09AM, Procurement Regulations, is approved and takes effect on April 1, 2010.

This is a correct copy of Council action.



Linda M. Lauer, Clerk of the Council



MONTGOMERY COUNTY EXECUTIVE REGULATION

Offices of the County Executive • 101 Monroe Street • Rockville, Maryland 20850

Subject PROCUREMENT REGULATIONS	Number 19-09 AM
Originating Department Office of the County Executive	Effective Date April 1, 2010

Montgomery County regulation on:

MONTGOMERY COUNTY PROCUREMENT REGULATIONS

Issued by: County Executive

Regulation No. 19-09 AM

Authority: Chapter 11B, Montgomery County Code
Amends: Regulations 27-03AM and 3-06
Council Review: Method (1) under Code Section 2A-15
Register Vol. 26, Issue 10

Comment deadline: October 31, 2009

Sunset Date: None, except regulations concerning minority-owned business purchasing program, which sunset on 12/31/2012.

Summary: This regulation amends the policies and procedures for regulating the County procurement process. These regulations include rules regarding the solicitation process, source selection, contract types, using department responsibilities, contractor qualifications, payments, claims, solicitation protests, contract disputes, ethics in public contracting, and the minority-owned business purchasing program.

Address for comments: Karen L. Federman Henry
Executive Office Building
Third Floor
101 Monroe Street
Rockville, Maryland 20850

Staff contact: Karen L. Federman Henry
(240) 777-6700

Background Information: This regulation implements Chapter 11B, Montgomery County Code.



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1. County Procurement System — General

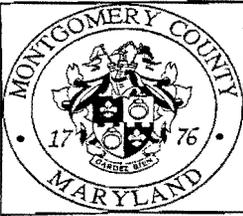
1.6 Rules of Construction

- 1.6.4 Where these regulations refer to "11B-#", the reference is to Chapter 11B of the Montgomery County Code. References to these regulations will include decimal-style numbers and not the hyphenated 11B-style reference used in the Code.

2. Definitions

2.4 Terms and Definitions

- 2.4.6 Bid: ***
- 2.4.7 Bid Bond: ***
- 2.4.8 Bid Security: ***
- 2.4.9 Bidder: ***
- 2.4.10 Bidder's List: ***
- 2.4.11 CAO: ***
- 2.4.12 Certification of Funds: ***
- 2.4.13 Change Order: ***



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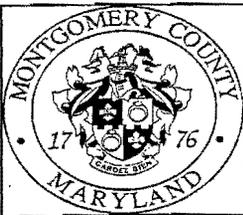
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- 2.4.14 Competition: * * *
- 2.4.15 Competitive Negotiation: * * *
- 2.4.16 Confidential Information: * * *
- 2.4.17 Construction: * * *
- 2.4.18 Contract: * * *
- 2.4.19 Contract Award: The delivery by the County of a fully executed contract to an offeror.
- * * *
- 2.4.37 Director: Director of the Department of General Services or the Director's designee.
- * * *
- 2.4.75 Proposed Award: A decision of the Director that a specific offeror is the successful offeror after the evaluation of offers and the completion of any negotiations. This decision must be made in accordance with these regulations and initiates the process by which a contract award may be made to the offeror. A proposed award is not binding on the County.
- * * *
- 2.4.79 Qualification and Selection Committee (QSC): A committee established by a Using Department for the purpose of evaluating responses submitted by offerors in connection with an RFP or an REOI.
- * * *

3. Administrative Process — Procurement

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3.2 Contract Awards

3.2.1 Upon receipt of responses to a formal solicitation and the Using Department's evaluation of the recommendations regarding the offers, the Director may independently review and evaluate the solicitation responses. After consideration of the evaluation and recommendation of the Using Department, the Director may authorize negotiations simultaneously or successively with one or more offerors prior to making a proposed award to a specific offeror. Until a proposed award is posted by the Director, all information concerning the evaluation and recommendation is confidential.

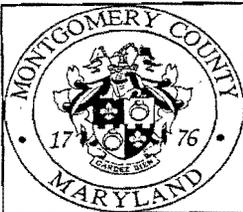
3.2.2 After the Director's approval of a recommendation of proposed award, the Using Department or the Director conducts appropriate negotiations as provided by these regulations. Upon completion of the negotiations and determination of a proposed contract awardee resulting from a formal solicitation, the Director must post a public notice showing the number of the solicitation and the name of the proposed contract awardee. The notice must be available for inspection by any offeror. The date of each award decision must also be indicated on the public notice. It is the responsibility of offerors to keep informed of the current status of the solicitation process. Public posting of a proposed award constitutes notice to all offerors of the proposed award. The Director may make such other communications with respect to a proposed award given the particular circumstances of the solicitation.

3.2.3 After the posting of a proposed award, the Director initiates the process which leads to the execution of a contract for the solicited services, goods, or construction. After all necessary approvals and clearances have been obtained, the contracting officer may execute the contract with a signature on behalf of the County. The intentional release of the fully executed contract constitutes a contract award.

* * *

4. Source Selection Methods and Contract Types

4.1 Description of Source Selection Methods



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4.1.1 Formal Solicitations — Invitation for Bid (IFB)

4.1.1.2 Use

IFBs are normally used when the procurement is for construction, goods, or non-professional services. An IFB is used for procurements valued at \$100,000 or more. An IFB may be used for professional services if the Director determines that:

4.1.1.4 Procedure

- (e) In the case of tie bids, the Director resolves a tie by application of the following criteria in the order stated:

- (g) The name of the proposed contract awardee or notice of IFB cancellation is posted on a public notice by the Director.

4.1.2 Formal Solicitation — Best Value Procurement — Request for Proposals (RFP)

4.1.2.2 Use

- (a) An RFP is used for the procurement of professional services.
- (b) An RFP is utilized when (1) a Using Department can generally formulate the scope of work or specifications for the services or system to be acquired; (2) there are known sources of supply; (3) competition is anticipated; and (4) the procurement is valued at



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\$100,000 or more.

- (c) An RFP is used when other considerations as well as cost are valid criteria in the evaluation of offers.
- (d) An RFP may also be used for the procurement of construction, goods, or nonprofessional services when the County determines that the use of evaluation criteria authorized for use in an RFP would promote the best interests of the County. Approval to use an RFP instead of an IFB for the procurement of construction, goods, or nonprofessional services must be obtained from the Director.

4.1.2.3 Contents

An RFP should include the following information:

* * *

- (c) The identity and telephone number of a contact person within the Using Department for technical information pertaining to the solicitation. The identity and telephone number of a contact person in the Department of General Services, Office of Procurement, for administrative information relating to the solicitation.

* * *

- (e) A concise explanation of the method of award that includes identification of all criteria and relative weights for each criterion.

* * *

- (3) If the Using Department determines that guidelines would assist the QSC in evaluating an award criterion, the Using Department must develop scoring guidelines for that criterion for use by the QSC. Normally the Using Department should develop guidelines for a cost criterion.



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If the Director requests, the Using Department must send the Director a copy of the scoring guidelines with the QSC evaluation. These guidelines are confidential until a proposed award is posted.

* * *

4.1.2.4 Procedure

- (a) RFPs are issued and public notice given under the direction of the Director.
- (b) Without public opening, the Director forwards timely received proposals to the Using Department for evaluation.
- (c) The Using Department establishes the QSC members, with the written approval of the Director. Each member of the QSC must be an employee of a public entity, unless specific authorization is obtained from the CAO for another to serve on the QSC. Unless otherwise provided in these regulations, the committee must be composed of an odd number of members and must have at least three members.
- (d) The Director may add members to the QSC when appropriate to enhance the ability of the QSC to fairly and objectively evaluate the proposals. When the Director adds members to the QSC, the composition of the QSC does not need to remain an odd number.
- (e) The QSC evaluates all proposals received from the Director, in accordance with the evaluation criteria, and reviews offerors for responsibility.

* * *

- (f) In the case of a tie in the numerical QSC scores, the Director resolves the tie by application of the following criteria in the order stated:



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- (1) the offeror who has its principal place of business in Montgomery County;
- (2) the offeror who is a certified MFD business prior to submitting a proposal;
- (3) Drawing of lots with representatives of the firms involved invited to be present.

(g) After the QSC ranks the offerors, the QSC must forward the recommended ranking to the Using Department Head, including a recommendation of the responsibility of the recommended proposed awardee.

(h) The Using Department Head reviews and forwards the QSC recommendation with concurrence, objection, or amendment to the Director. The Using Department Head may also recommend cancellation of the procurement. These recommendations must be accompanied by QSC conflict of interest certifications and a score sheet summarizing the scores awarded by the QSC to each offeror.

(i) The Director approves, approves with conditions, or rejects the recommendations and supporting documentation. If the Director agrees with the recommendation of the Using Department Head, the Director may proceed immediately to authorize negotiations. If the Director approves the Using Department Head's recommendation for proposed award with conditions, the Using Department must satisfy the conditions and provide appropriate documentation of compliance to the Director, prior to commencing contract negotiations. If the Director rejects the Using Department Head's recommendation for proposed award, the RFP package is returned to the Using Department Head for further action as indicated by the Director.

(j) After the Director's approval of a recommendation for proposed award, the Director or the Using Department negotiates the contract with the proposed awardee prior to making a proposed award. The Using Department is responsible for coordination of



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MFD compliance review with the Director. If a contract cannot be successfully negotiated with the proposed awardee, the Using Department will proceed to negotiate with the next highest ranked offeror after obtaining approval from the Director.

- (k) If the Director approves, negotiations may be held simultaneously or successively with one or more offerors prior to making an award.
- (l) The Director must post public notice of the name(s) of the proposed awardee(s). Public notice also is required in the event of solicitation cancellation.
- (m) After the Director has posted the proposed award and has ensured the encumbrance of required funds, the Director may execute the contract on behalf of the County. The Director provides for distribution of copies of the contract to the Using Department and the contractor.
- (n) A Notice to Proceed, if necessary, is issued by the authorized government official, pursuant to provisions of the contract.

4.1.3 Abbreviated Formal Solicitations.

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4.1.3.2 Use

An abbreviated formal solicitation may be used if the Director finds:

- (a) the estimated value of the procurement, including any extension, is \$200,000 or less; and
- (b) the abbreviated formal solicitation process is in the best interest of the County.

4.1.3.3 Procedure



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- (a) If the solicitation would normally be accomplished under an IFB, the following changes are made to the IFB process:
- (1) The Department of General Services, Office of Procurement, issues notice of the IFB to at least 25 randomly selected potential bidders on the bidder's list or all of those on the bidders list, whichever is smaller. The Department of General Services, Office of Procurement, may also issue notice to additional potential bidders. At least 20%, if available, of those who are sent notice of the IFB should be minority owned businesses. The previous supplier of the goods, services, or construction being acquired should also receive notice of the IFB.
 - (2) The IFB should allow a bidder a minimum of 10 days in which to submit a bid.
- (b) If the procurement would normally be accomplished under an RFP, the following changes are made to the RFP process:
- (1) The Department of General Services, Office of Procurement, issues notice of the RFP to at least 25 randomly selected potential offerors on the bidder's list or all potential offerors on the bidder's list, whichever is smaller. The Department of General Services, Office of Procurement, may also issue notice to additional potential offerors. At least 20%, if available, of those who are sent notice of the RFP should be minority owned businesses. The previous contractor who supplied the goods, services, or construction being purchased should receive notice of the RFP.

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4.1.4 Formal Solicitations — Request for Expressions of Interest (REOI)

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4.1.4.3 Contents

* * *

- (c) The identity and telephone number of a contact person within the Using Department for technical information pertaining to the solicitation. The identity and telephone number of a contact person in the Department of General Services, Office of Procurement, for administrative information relating to the solicitation.

* * *

4.1.7 Informal Solicitation — Mini-Contract

4.1.7.1 General

A mini-contract is a contract for professional and, under special circumstances, non-professional services valued above \$10,000 and under \$100,000 which is the result of an informal solicitation process. Each informal solicitation notice must be posted on a County website in accordance with §11B-17A. The solicitation process requires, at a minimum, documented oral or written contact with prospective offerors, documentation of MFD efforts, and documentation of the results of that contact. A mini-contract is not subject to renewal or amendment for the purpose of increasing its value beyond the maximum limit.

4.1.7.2 Use

- (a) A professional services mini-contract is used for the procurement of professional services.
- (b) A mini-contract may be used for non-professional services, goods, or construction valued above \$10,000 and under \$100,000 if the Director determines that the use of evaluation criteria other than price would promote the best interests of the County.
- (c) This source selection method may not be used when the total



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expenditure (including all extensions) for the project or services to be procured is expected to equal or exceed \$100,000. Using Departments may not divide contracts (splitting) for the purpose of avoiding the \$100,000 limit.

* * *

4.1.8 Informal Solicitation — Small Purchases

4.1.8.1 General

A small purchase is an informal solicitation for goods, construction or services valued above \$10,000 but under \$100,000. The small purchase is a solicitation initiated by the Using Department, which is responsible for ensuring appropriate informal competition and appropriate documentation. This source selection method should preserve competition on an informal basis and an award must be based on price, responsiveness, and responsibility. The Using Department must contact at least 5 randomly selected potential offerors selected from the bidder's list or all potential offerors from the bidder's list whichever is smaller. At least one of the potential offerors to be selected should be a minority owned business. The Using Department should include among those contacted the previous supplier of the goods, construction or services being acquired. Each informal solicitation notice must be posted on a County website in accordance with §11B-17A. This source selection method may not be used when the total expenditure (including all extensions) for the goods, construction, or services to be procured is expected to exceed \$100,000. Using Departments may not divide contracts (splitting) for the purpose of avoiding the \$100,000 limit.

* * *

4.1.9 Direct Purchases

4.1.9.1 General

A direct purchase is an informal procurement of construction, goods or services with a total value of no more than \$10,000. Competition should



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be preserved with this method to the extent practicable. Procurements with MFD and LSBRP firms are encouraged. Subject to revision by the CAO, the direct purchase is handled pursuant to the direct authority of a Using Department Head who is solely responsible for making a proper purchase under these procedures. The Using Department Head must seek fair and reasonable prices for all construction, goods and services obtained under this method.

4.1.9.2

Use

Direct purchases are used to secure goods, construction, or services, when the value of the purchase is not greater than \$10,000. Direct purchase procedures may be used even if the construction, goods and services to be obtained are covered by any existing requirements contract with the County. The Using Department should consult with the Director to ascertain the existence of relevant alternative sources. Purchases which in the aggregate would exceed the limit on this type of procurement may not be subdivided or split to procure within the direct purchase limitations. When the need for a particular product or service occurs within a reasonable time frame and can be consolidated, the purchase must be consolidated and not subdivided.

* * *

4.1.12 Non-Competitive Procurements

4.1.12.1 General

A non-competitive procurement is the acquisition by contract of a valid County requirement without prior public notice and without competition.

4.1.12.2 Authority

- (a) The Director may make a non-competitive award unless the non-competitive award is based on a sole source justification and the estimated value of the award is above \$100,000. If the estimated value of the non-competitive award based on a sole source justification exceeds the threshold for an IFB or RFP, the CRC



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may approve a non-competitive award after considering the justification from the Using Department. A non-competitive award must be based on a determination and finding.

- (b) The Director may make a non-competitive award for maintenance or support of software during the useful life of the software originally purchased, if there is only one source for the required maintenance or support for the software. The one source must meet the minimum valid needs of the County.

* * *

6. Contractor Qualifications

* * *

6.3 Responsibility

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- 6.3.4 Solicitations in which Using Departments make recommendations for awards to the Director must include a written recommendation with respect to the responsibility of the potential awardee. The Using Department should specify in detail the factual basis for its recommending a finding of responsibility of the potential awardee. In connection with this recommendation, the Using Department should review its files and the central performance file of the Department of General Services, Office of Procurement, with respect to the performance of the prospective awardee in previous contracts in the Using Department and the County, investigate performance of the prospective awardee in other contracts with the County and other entities to the extent practical, and ensure that the recommended awardee is not on a current Montgomery County suspension or debarment list.

* * *

7. Minority Owned Business Contracting

7.1 Purpose



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The purpose of Section 7 is to establish procedures to facilitate the goal of the County Government to remedy the effects of discrimination by awarding a percentage of County contracts, including contract modifications and renewals, with a dollar value of \$10,000 or more to minority owned businesses (MFD owned business or MFD), as defined in Chapter 11B of the County Code, in proportion to the availability of MFD owned businesses to perform work under County contracts.

7.2 Policy

7.2.1 The Director, with the assistance of Using Departments and employees involved in contracting and purchasing, must actively and aggressively recruit certified MFD owned businesses for which a goal has been set to provide goods, construction, and services, including professional services, for the performance of governmental functions to facilitate the MFD goal of the County. Procurements less than or equal to \$10,000, grants that are appropriated by the County Council to specific grantees, utilities, intragovernmental procurements, and certain intergovernmental procurements including certain bridge contracts identified by the Director are excluded from the base against which the goal is measured.

* * *

7.4 Certification of MFD Owned Businesses

7.4.1 The Director may certify an entity as an MFD owned business if the business is certified as a minority business enterprise under Federal or State procurement law, or other non-self-certifying public entity certification program, as determined to be acceptable by the Director.

7.4.2 If the business is a not-for-profit entity organized to promote the interests of physically and mentally disabled individuals, the Director must determine whether:

7.4.2.1 the not for profit entity is certified as a minority business enterprise under Federal or State procurement law, or other non-self-certifying public entity certification program that the Director has determined to be acceptable; and



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7.4.2.2 at least 51% of the individuals used by the not for profit entity to perform the work or manufacture the goods contracted for by the County are individuals with a physical or mental disability.

7.4.3 The Director must conduct a review to determine whether a business may be certified as an MFD owned business. This review must include an evaluation of the documentation submitted by the business on an MFD Application form. The Director may also include a site visit to the offices of a not for profit entity. The Director may review any of the following:

7.4.3.1 Certifications issued by the Federal or State governments, or by another public entity, provided that the public entity's program is not based on vendor self-certification.

7.4.3.2 Employment records, health records, and/or educational records of the employees of a not for profit entity seeking MFD certification.

7.4.3.3 Other relevant information concerning the operation of a not for profit entity.

7.4.4 A request for certification or recertification as an MFD business may be denied by the Director for any of the following reasons:

7.4.4.1 Failure to demonstrate that the business is a certified minority business enterprise under Federal or State procurement law, or through another non-self-certifying public entity certification program determined to be acceptable by the Director.

7.4.4.2 Failure to provide sufficient and timely information for the Director to make a certification or recertification determination.

7.4.4.3 Refusal to permit an on-site inspection by the Director.

7.4.4.4 Failure to comply with a request by the Director for information or access to records.

7.4.4.5 Graduation of the MFD owned business.



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- 7.4.5 Certification as an MFD owned business by the County may be revoked for any one of the following reasons:
- 7.4.5.1 Fraud, deceit or misrepresentation in obtaining certification.
 - 7.4.5.2 Failure to report in writing to the Director within 30 days of the date of the occurrence of any changes in the status of the certified MFD owned business that are relevant to its certification.
 - 7.4.5.3 Failure to demonstrate at the request of the Director that the entity continues to be an MFD owned business.
- 7.4.6 Certification is subject to the graduation provisions of this Section. The Director must not certify an entity as a MFD owned business for a period of time that exceeds 5 years. The Director, however, may certify a business as an MFD owned business for 8 years if during the first 5 years of certification, the MFD owned business:
- 7.4.6.1 * * *
 - 7.4.6.2 * * *
- * * *

9. Bonds and Insurance

9.1 Bonds

* * *

9.1.2 Director Review

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- 9.1.2.2 In reviewing bonds and bond requirements, the Director must consider the impacts on competition and costs, particularly impacts on MFD firms. The impacts must be balanced with the needs served by the bond



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requirements, which include appropriate security for performance and other assurances of responsibility.

9.1.2.3 The Director has the right to approve, disapprove, or require changes to any instrument offered as a bond.

9.1.3 Minimum Requirements

9.1.3.1 All bonds must meet the following minimum requirements:

- (a) The surety company issuing the bond must be qualified and licensed to do business in the State of Maryland.
- (b) The attorney-in-fact on the bond document must be properly authorized to bind the surety, which authorization may be documented by a power of attorney submitted with the bond, or the attorney-in-fact must be registered with the Circuit Court for Montgomery County, Maryland.
- (c) The obligee of the bond must be "Montgomery County, Maryland", or any additional or other obligee required by the County.
- (d) Any surety or insurance company that issues a bond in favor of the County consents to personal jurisdiction in the State of Maryland and, in the event that any legal action is filed upon the bond, venue shall lie exclusively in the Circuit Court for Montgomery County, Maryland.
- (e) The bond must be governed by, and construed in accordance with, the laws of the State of Maryland.

9.1.3.2 Under State law, a construction contract that exceeds \$100,000 must require the contractor to provide payment security in an amount equal to at least 50 percent of the total amount payable under the contract and for performance security in an appropriate amount. For construction contracts that do not exceed \$100,000, the Director may require payment security or performance security.



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9.1.4 Substitutions

Substitutions for bonds may be permitted only with permission of the County Attorney or pursuant to guidelines issued by the County Attorney. Substitutions may include letters of credit, cash deposits and other forms of security. Personal sureties are not acceptable substitutes for bond requirements. Any letter of credit accepted by the County Attorney must contain at least the following terms:

- 9.1.4.1 The letter of credit must be presentable to an institution located within the State of Maryland;
- 9.1.4.2 The issuer of the letter of credit must consent to the letter of credit being governed by, and construed in accordance with, the laws of the State of Maryland;
- 9.1.4.3 The issuer of the letter of credit must consent to personal jurisdiction in the State of Maryland; and
- 9.1.4.4 In the event that any legal action is filed upon the bond, venue shall lie exclusively in the Circuit Court for Montgomery County, Maryland.

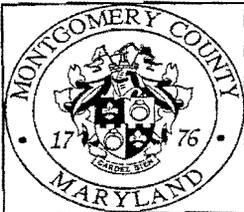
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10. Contract Cost and Pricing Principles

* * *

10.2 Requirements for Certified Cost or Pricing Data

- 10.2.1 An offeror or contractor must submit cost or pricing data, or both, in a form prescribed by the Director prior to approval of:
 - 10.2.1.1 A competitively negotiated contract valued at more than \$100,000;
 - 10.2.1.2 A non-competitively negotiated contract valued at more than \$50,000;
 - 10.2.1.3 Any contract modification for which the price adjustment is expected to

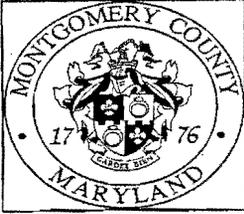


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	exceed \$50,000 except contract modifications that are fully in accordance with the terms and conditions of the contract; or
10.2.1.4	Any other contract or contract modification, as may be required by the CAO or Director.
10.2.2	When Cost or Pricing Data is required:
10.2.2.1	Each contractor or offeror must at the request of the Director submit, in a form required by the Director, a certificate showing the data for the proposed work to be done, including work to be done by a subcontractor. The offeror or contractor must submit a certification that the data submitted are accurate, complete and current.
10.2.2.2	The contract or contract modification document must state that the price to the County, including profit or fee, may be adjusted by the Director to exclude from the price any sums determined by the Director to be allocable to inaccurate, incomplete or outdated cost or pricing data.
10.2.3	When a prime contractor is authorized to expend appropriated funds through subcontractors in the performance of a County contract, Subsections 10.2.1 and 10.2.2 are also applicable to subcontracts and subcontract modifications.
10.2.4	Before executing a contract or contract modification, the Director must make a determination as to the reasonableness of the cost or pricing data. The contract cost principles and procedures in the Federal Acquisition Regulations may be used as general guidelines when developing price determinations, if they are not at variance with County laws and regulations.
10.2.5	The requirements of section 10.2 do not apply to a contract or contract modification that is based on:
10.2.5.1	Adequate competition as determined by the Director;
10.2.5.2	Established catalog or market prices of commercial items sold in substantial quantities to the general public;
10.2.5.3	Prices set by laws or regulations;



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10.2.5.4 A noncompetitive contract awarded under a resolution or appropriation approved by the County Council, if the Using Department has made the certification required by Section 17.3.2.; or

10.2.5.5 The Contractor has been specifically identified in a grant accepted by the County.

10.2.6 In exceptional cases, or for contracts or contract modifications with public entities, the Director may waive the requirement for cost or pricing data by making a written determination that explains why the waiver is in the best interest of the County.

* * *

13. Claims

* * *

13.4 Procedures for Approval

13.4.1 A Using Department must submit the information required in Section 13.3.2 to the County Attorney for review and action.

13.4.1.1 If the claim outside a contract is \$10,000 or less, the County Attorney may approve the claim outside a contract in writing and return it to the Using Department which is responsible for processing the claim outside a contract approval for payment.

13.4.1.2 If the claim outside a contract is in excess of \$10,000, the County Attorney may approve the claim outside a contract subject to approval of the CAO. If the County Attorney approves the claim, the County Attorney must submit a recommendation for approval to the CAO, in writing, together with documentation received from the Using Department.

13.4.1.3 If the County Attorney rejects a claim outside a contract, the County Attorney must state the reasons for the rejection in writing and return the documentation to the Using Department. The Using Department may



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resubmit the claim outside a contract to the County Attorney with additional information as requested or other information the Using Department may elect to submit.

13.4.1.4 If the County Attorney requests further information, the Using Department must furnish the requested information as expeditiously as possible.

14. Solicitation Protests; Contract Disputes

14.1 Solicitation Protests

14.1.2 Protest

Only an offeror who is aggrieved may file a protest. An offeror is aggrieved only if the offeror can demonstrate that, if the protest is sustained, the offeror may be eligible for the remedies allowed under Section 14.1.3.6 (a) or (c).

14.1.2.1 Any offeror who is aggrieved in connection with a formal solicitation must file and deliver a written protest to the Director as follows:

- (a) If the bidder or offeror seeks as a remedy the award of the contract or costs under Section 11B-36(h) and Section 14.1.3.6(c), then the bidder or offeror must file and deliver a written protest within 10 days after the Director publicly posts the proposed award.
- (b) If the bidder or offeror seeks as a remedy the cancellation or amendment of the solicitation under Section 14.1.3.6(a), then the bidder or offeror must file and deliver a written protest before the submission date and time for bids or proposals.
- (c) If the bidder or offeror files and delivers a written protest under subsection (b) of this Section, but does not submit a bid or proposal by the submission date, and the solicitation is not cancelled or amended, the bidder or offeror will not be eligible for



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the remedies allowed under subsection (a) of this Section.

The Director must dismiss any protest not timely received.

* * *

14.1.2.4 After a protest is filed, the Director may give appropriate notice to other known offerors who may be affected by the protest. Other affected offerors may submit written comments or documents regarding the protest. All offerors are required to keep apprised of the current status of solicitations, proposed awards, and protests; an offeror may not rely on notice of a protest from the Director. Notice by the Director is discretionary and need not be given. The burden of staying informed about the filing of a protest and the timely submission of comments by affected offerors is on the offerors.

* * *

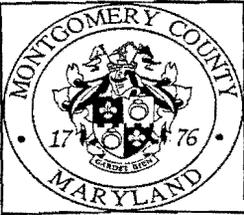
14.1.3 Appeal

* * *

14.1.3.5 The CRC (with the Director not participating) must review the appeal.

* * *

(b) If the CRC finds there is a genuine dispute as to a material fact and the appeal cannot be decided as a matter of law, it must notify the appealing offeror, the proposed awardee, the Director, and the Using Department, and the CRC must conduct further proceedings, which may include a hearing. If a hearing officer is designated by the CRC, the hearing officer must conduct the hearing and make proposed findings and a recommendation to the CRC. After the hearing (if any) and based on the record, the CRC may accept, reject, or modify the hearing officer's proposed findings of fact and recommendation, and must, in turn, submit a recommended decision on the appeal to the CAO.



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14.1.5 Contract Awards

14.1.5.1 Generally, performance under a contract does not commence until the later of 10 days from the date of posting of the proposed awardee or, in the case of a protest, the final administrative decision has been made by the County.

14.1.5.2 The Director may award a contract and authorize performance under a contract before the 10 days has elapsed or a final administrative decision made with regard to a protest after making a determination and finding that awarding the contract without delay is necessary to protect the interests of the County. The Director should consider the following:

* * *

(d) The unwillingness of the proposed awardee to delay performance under the contract or to extend its offer; or

* * *

14.2 Contract Disputes

14.2.1 Definitions

14.2.1.1 In this section claim means:

- (a) a demand by a contractor or the County that seeks the payment of money, an adjustment of time, an adjustment or interpretation of a contract provision, or other relief arising under or relating to a contract; or
- (b) a disagreement arising from a decision by the Director regarding a contract termination under Section 12 of these regulations.

14.2.1.2 In this section a dispute means an unresolved claim.



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14.2.2 General

14.2.2.1 Administrative Process.

- (a) A contractor must use the process set out in this section to file and resolve a claim or dispute under a contract.
- (b) The County may use the process set forth in this section to resolve an affirmative claim or dispute under a Contract.

14.2.2.2 Procedure.

- (a) Contractor: Except with respect to a claim arising from a decision of the Director terminating a contract, a contractor must notify the contract administrator in writing of the claim, and must attempt to resolve the claim with the contract administrator prior to filing a dispute with the Director. A contractor must file a dispute with the Director within 30 days of the event giving rise to the claim (unless the contract provides otherwise), whether or not the contract administrator has responded to the written notice of claim or resolved the claim. The contractor waives any dispute not timely filed. The Director and the CAO must dismiss a dispute that is not timely filed. If the dispute arises from a decision of the Director terminating a contract, the Director must treat the dispute as a request for reconsideration.
- (b) County/Using Department: In addition to any other remedies the County may have, the Using Department may use the administrative process established by these regulations. To use this process, the Using Department may notify the contractor or contractor's agent of the claim in writing within 30 days of the event giving rise to the claim and may attempt to resolve the claim with the contractor prior to filing a dispute with the Director. The Using Department may file a dispute regarding a setoff or payment with the Director at any time before final payment occurs. The Using Department may file a dispute regarding a latent defect within 60 days of discovery of the defect.



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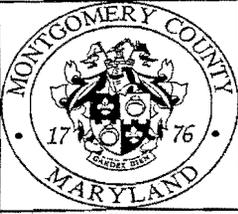
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(c) When the Director has delegated the authority to consider a dispute to the Using Department, the party filing the dispute must file it with the Director of the Using Department, followed by an appeal to the CAO.

14.2.2.3 When first filing a dispute, the party that files a dispute (a contractor or the Using Department, whichever initiates the dispute) must provide the following information to the Director as part of the filing:

- (a) The name and identification number of the contract with the County;
- (b) The name, address and telephone number of the contractor, if the contractor files the dispute. If the Using Department files the dispute, the name, address and telephone number of the contract administrator of the Using Department must be provided;
- (c) All grounds supporting the contractor's or Using Department's requested relief, including:
 - (1) The detailed facts and all relevant documents;
 - (2) The relevant language in the contract, regulations, or law relied upon;
 - (3) All other matters which the contractor or Using Department contends support the claim; and
 - (4) The relief requested.
- (d) The factual allegations contained in the dispute must be supported by one or more affidavits based on personal knowledge.
- (e) The non-filing or responding party may submit a response to the allegations contained in the dispute within 30 days after the filing of the dispute. The response must include any documented information that addresses the information supplied with the dispute in the manner described in subsection (c) of this Section.



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- 14.2.2.4 (a) The Director, after consulting with or obtaining written information from the non-filing party, must decide a dispute within 45 days after receiving the documents and information specified in Section 14.2.2.3 unless the filing party agrees to extend the time for a decision.
- (b) If the Director denies a dispute, in whole or in part, the contractor or Using Department may file a contract dispute appeal with the CAO. The dispute appeal must be filed within 30 days after the party receives the Director's decision. If no decision is rendered by the Director within 45 days of the Director's receipt of the documents and information specified in Section 14.2.2.3, then the dispute appeal must be filed within 75 days after the party filed the dispute.
- (c) Unless the Director and the filing party agree, a dispute may not be resolved by mediation or binding arbitration.
- 14.2.2.5 The CAO may hold a conference with all interested parties if the CAO believes a conference would contribute to a resolution of the dispute.
- 14.2.2.6 The filing party bears the burden of proof and the burden of persuasion to support the relief requested.
- 14.2.2.7 Pending final resolution of a dispute, the contractor must proceed diligently with contract performance unless the County has terminated the contract.
- 14.2.2.8 The CAO may consolidate disputes if the disputes have common questions of law or fact. The time limits in Section 14.2 for the last dispute filed apply to the consolidated dispute.
- 14.2.2.9 The CAO or the Director may order a contractor that is not a party to the appeal or the contract under which the dispute has been filed to become a party to the proceeding if the dispute on appeal may be based, in whole or in part, on the performance of the other contractor. The Director or CAO may order the other contractor to compensate another party to the dispute



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appeal, including the County, for damages incurred as a result of the other contractor's failure to perform a contract obligation.

14.2.2.10

Upon receipt of the contract dispute appeal, the CAO must review the dispute de novo, but the CAO must not consider any grounds except those presented by the filing party under 14.2.2.3.

(a) The appealing party must file a dispute appeal with the CAO. The dispute appeal must identify the relief sought and all grounds and materials supporting the request for relief. The appealing party must provide a copy of the dispute appeal to the opposing party, the Director, and the County Attorney.

(1) At the time of filing a dispute appeal involving \$25,000 or more with the CAO, the appealing party must provide to the other parties to the dispute a written notice which contains:

(A) the name and, if known, the address and telephone number of each individual likely to have discoverable information regarding facts concerning the dispute;

(B) a computation of each category of damages or other specific relief sought; and

(C) the name, address, and telephone number of each individual from whom the contractor expects to obtain expert testimony. The notice must include a written statement that contains:

(i) a complete statement of each opinion to be expressed;

(ii) the basis and reason for each opinion;

(iii) the data or other information considered by the expert in forming each opinion;



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(iv) the qualifications of the expert, including a list of all publications authored by the expert; and

(v) a list of each case in which the expert has testified as an expert within the preceding 4 years.

(D) the parties have a continuing obligation to promptly supplement any change in information contained in the written notice required in this subsection.

(2) The other parties must provide the notice required under paragraph (1) to the appealing contractor and any other party:

(A) within 90 days after being served with the notice required under paragraph (1) if the dispute involves more than \$100,000; or

(B) within 60 days after being served with the notice required under paragraph (1) if the dispute involves \$100,000 or less.

(b) The Director must file a response with the CAO to the dispute appeal within 15 days after the dispute is filed. The Director must include a complete copy of the contract in the response unless the appealing party has provided it in the dispute appeal. The Director must send a copy of the response to the parties.

(c) The CAO may require the contractor or the Using Department and the Director to submit additional information.

(d) Summary disposition. If the CAO finds, based on the record, that the appealing party failed to comply with the requirements of section 14.2.2, the CAO must summarily deny the appeal within 30 days after receiving the appeal. If the CAO finds, based on the



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record, that the appealing party complied with the requirements of section 14.2.2, and there are no genuine disputes of material fact, the CAO must decide the appeal without a hearing within 30 days after receiving the appeal. The CAO must state in writing the reasons that support the decision. The CAO may request supplemental memoranda from the parties and extend the time for issuing a decision, with the parties' consent.

- (e) If the CAO determines that the appeal cannot be decided under section (d) above, the CAO must order a hearing. The CAO may designate a hearing officer to conduct the hearing, and may limit the issues to be heard. If a hearing officer is designated by the CAO, the hearing officer must conduct the hearing in accordance with section 14.2.4 and make proposed findings of fact and recommendation to the CAO. The hearing must be completed in conformance with the time requirements imposed by Chapter 11B of the Code. After the hearing and based on the record, the CAO must make a written decision on the appeal, including proposed findings of fact and recommendation within 30 days after receiving the hearing officer's report. The CAO may adopt, modify or reject the findings of fact and recommendation of the hearing officer's report.
- (f) The County/Using Department may file a contract dispute appeal under this Section. When filing a dispute appeal, the same filing requirements and timelines delineated in Section 14.2.2.10 (a) through (e) apply to the appeal.
- (g) The contractor may appeal the final decision of the CAO to the Circuit Court pursuant to the Maryland Rules governing judicial review and as provided under § 11B-35 (d) of the Code. Either the contractor or the County may appeal the Circuit Court's decision to the appellate courts of Maryland.

14.2.2.11 Unless the CAO and the appealing party agree, a contract dispute appeal may not be resolved by mediation or binding arbitration.



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15. Contract Review Committee (CRC)

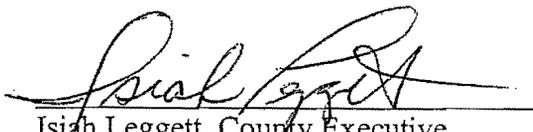
15.5 Duties and Responsibilities.

15.5.1 The CRC has the following responsibilities.

- 15.5.1.1 Approving sole source procurements valued above the threshold for an IFB or RFP. This provision does not apply to software maintenance or support approved by the Director in accordance with § 4.1.12.2(b) as a non-competitive procurement.

Effective Date.

This Executive Regulation takes effect on April 1, 2010, upon enactment of Bill No. 45-09. Section 7, Minority Owned Business Contracting, sunsets on December 31, 2012.


Isiah Leggett, County Executive

Approved as to form and legality by the
Office of the County Attorney:

Karen L. Federman Henry 2/22/10
Date