

GO COMMITTEE #2
March 17, 2016

Worksession

MEMORANDUM

March 15, 2016

TO: Government Operations and Fiscal Policy (GO) Committee

FROM: Linda Price,  Legislative Analyst

SUBJECT: Worksession: Report and recommendations of the Procurement Policies and Regulations Task Force

At this session, the GO Committee will continue its review of the recommendations from the Procurement Policies and Regulations Task Force. On October 13, 2015, PPR Task Force Chair David Robbins presented their report and recommendations to the GO Committee to identify and provide options for needed reform of the County procurement system.

I. Background

On October 28, 2014, the County Council established the Minority Owned and Local Small Business (MOLSB) Task Force and the Procurement Policies and Regulations Task Force (Task Force) in Resolutions 17-1253 and 17-1254, respectively. The Task Force transmitted their report on September 15, 2015. Attached at © 1-2 is the Executive Summary from the report¹.

The Office of Procurement has undergone a number of changes since the release of the Disparity Study and appointment of the Task Force. The Office of Procurement was reorganized into a standalone office and a new director was appointed. The Executive initiated the Procurement Innovation Project (PIP) to take a comprehensive look at procurement processes and make recommendations for improvement (see © 12-13 for the initial status update). Additionally, the Office of Legislative Oversight (OLO) issued Report 2015-11: *Procurement Performance Metrics*² on July 28, 2015. The report recommended a number of new procurement performance measurements that Councilmembers expressed interest in having tracked by CountyStat. As a

¹ See the Final Report of the Procurement Policies and Regulations Task Force at:
<http://www.montgomerycountymd.gov/council/Resources/Files/REPORTS/Procurement/PPRFinalReport.pdf>.

² See the October 13, 2015 packet at:
http://www.montgomerycountymd.gov/council/Resources/Files/agenda/cm/2015/151013/20151013_GO1.pdf.

result, the Office has already begun to implement many of the same changes and enhancements identified by the Task Force in its report.

II. Task Force recommendations

A. Short-Term

Recommendation #1: *Improve use of technology in the procurement process to improve workflow* (© 5).

The purpose of this recommendation was to ensure that the County has an efficient procurement process. The Task Force recommended an increase in the use of technology to move away from paper and toward digital procedures.

Council staff comments:

Procurement is working to implement a number of technology improvements to digitize some of their processes. The GO Committee recently discussed the PRISM system³, which will help streamline contract monitoring and compliance for MFD contract requirements. The PIP has recommended a Procurement Tech Surge Initiative, which closely aligns with the recommendations of the Task Force, to implement short-term support to enable a more efficient procurement system (see © 12). According to the PIP update, all other recommendations will be less effective if the current lack of IT support is not addressed. **The Committee may wish to discuss resource needs to implement some of the enhancements during FY17 Operating Budget discussions.**

Recommendation #2: *Utilize or enhance existing tools to increase opportunities for vendors* (© 5).

The Task Force recommended that the existing Central Vendor Registration System (CVRS) be enhanced to allow vendors to self-identify specific solicitation types in order to enable National Institute of Governmental Purchasing (NIGP) Commodity Services Codes (or other appropriate work category-driven) alerts to be published for relevant solicitation opportunities.

Council staff comments:

Vendors registering in the CVRS are given the opportunity to input their NIGP commodity codes and update the codes when needed. E-notices are sent to vendors when solicitation opportunities matching those codes are advertised. The issue occurs when vendors use generic email addresses that are infrequently checked or messages from Procurement are caught in spam filters. Council staff has recommended that the Office send messages periodically to all registered vendors to review their NIGP code and contact information. Procurement also utilizes e-newsletters to target LSBRP vendors and announce upcoming opportunities.

³ See the March 10, 2015 packet at:
http://www.montgomerycountymd.gov/council/Resources/Files/agenda/cm/2016/160310/20160310_GO3.pdf.

Recommendation #3: Address challenges in balancing compliance and enforcement, and the comparative impact on offerors (© 5).

The Task Force discussed the County policy of compliance checks on prospective awardees during contract formation and after award. They viewed this as a potential hindrance to competition because of the amount of labor involved or the perception of the amount of labor required of potential offerors. The Task Force discussed self-certification and empowering the County's audit function to track compliance. The Task Force did not make a specific recommendation, but did note the lack of audit and enforcement resources to "police" the current system.

Council staff comments:

On February 2, 2016, the Council enacted Bill 43-15, strengthening the Wage Requirements Law. The Bill ensures that contractors and subcontractors are paid a living wage. This legislation illustrates the Council's commitment to ensuring compliance with County contracting laws. It is in the County's best interest to take steps to ensure compliance. In the short term Council staff does not recommend any changes. However, this may warrant further study, which is suggested in Recommendation #15.

Recommendation # 4: Hold debriefings for unsuccessful bidders to address perceptions of lack of fairness in the process (© 6).

The Task Force recommended that the County increase and improve the debrief process for unsuccessful bidders in a process more closely aligned with the federal system and investigate new methods of outreach and training, including online tutorials and video training.

Council staff comments:

The Office of Procurement has undergone improvements to their debriefing process. New procedures for debriefings have been established⁴. A February training was held for contract administrators and guidance is also included on Procurement's intranet site with a debriefing agenda template, ground rules and samples.

Recommendation #5: Expand outreach and technical assistance to prospective vendors (© 6).

The Task Force recommended that the County expand overall outreach efforts, especially in categories that have low percentages of small, local minority and woman owned businesses or any other areas where underrepresented businesses may yield increased competition, decreased pricing, or enhanced quality to the County. The Task Force also recommended that the Division of Business Relations and Compliance (DBRC) conduct regular vendor outreach sessions.

⁴ See the following link for information on the County's debriefing process:
<http://www.montgomerycountymd.gov/PRO/Debrief.html>.

Council staff comments:

The Office of Procurement continues to expand their outreach programs, especially those geared towards minority, female, and disabled-owned (MFD) and local small businesses. These efforts include recent partnerships with the State Department of Transportation and African American Chamber of Commerce, “meet the prime” events and bi-annual workshops and trainings. Procurement has also received the small business manager position from the Department of Economic Development, which is helping to increase their outreach capacity. As discussed in review of the MOLSB report recommendations⁵, Procurement must work to increase awareness of their programs.

Recommendation #6: Create a more transparent process (© 6-7).

The Task Force believes that the County must address the culture of its procurement system, and communicate a sense of urgency in creating more transparent access to procurement opportunities for all. The Task Force stated, “culture drives outcomes, and a culture that is perceived (fairly or not) as being unfriendly to business, unwelcoming of new entrants, or requiring far too much advanced work before a contract is awarded, drives away potential bidders.” They found that the current process does not lend itself to expanding the pool of offerors or acquiring goods and services on economically beneficial terms. The Task Force recommended expanding internal stakeholders’ procurement training, engaging additional staff resources, and offering new vendor training sessions to provide an overview of vendor reporting requirements as ways to create a more transparent process.

Council staff comments:

Procurement is aware of this perception and continues efforts to address this issue. They are now holding ongoing customer service trainings in an effort to be more accessible and responsive as an Office. The Procurement website has been updated to a more user-friendly format. Also, outreach activities have increased to provide vendors with access to resources and information.

Recommendation #7: Clarify County procurement preferences (© 7).

The Task Force observed that it is difficult to reconcile competing preference programs in a given procurement, with competing preferences being reconciled on a contract-by-contract basis. This reinforces the perceptions illustrated in survey responses that County contracting is unfair and that the social preference programs may have overcome business considerations in County procurement. The Task Force recommended that a moratorium be placed on additional changes to the County procurement process. This would include additional preferences or social responsibility programs and provisions until metrics are established to determine if desired results are being achieved by the preferences currently in place.

⁵ See the March 10, 2015 packet at:
http://www.montgomerycountymd.gov/council/Resources/Files/agenda/cm/2016/160310/20160310_GO2.pdf.

Council staff comments:

In instances where multiple preferences could apply, Council staff recommends a hierarchy or matrix be established to order the local tie-breaker preference, reciprocal local preference, preference for small businesses certified as offering health insurance, and application of an evaluation factor for purchases from minority owned businesses. **Council staff recommends this review at a later time with Council and Executive staff.**

B. Medium-Term

Recommendation #8: Increase outreach and communication (© 7-8).

The purpose of this recommendation was to better engage the business community. Suggested activities include vendor outreach events, surveys, training and technical assistance. To learn the barriers that vendor's face when doing business with the County, the Task Force also suggested holding town hall meetings. The Task Force felt that outreach activities may help identify areas where businesses feel overburdened by regulations that the County could modify.

Council staff comments:

The Committee recently received an update on Procurement's outreach activities⁶, which address a number of the outreach enhancements suggested in this recommendation. The Task Force also suggested additional surveys or town hall meetings to hear from vendors on barriers to doing business with the County. **Council staff would advise on allowing time for implementation of adopted recommendations and enhancements before engaging vendors in a survey or town hall.** Procurement has a feedback survey on their website, which will help gather valuable comments from vendors.

Recommendation #9: Increase transparency (© 8).

The Task Force found that the County did not appear to have formal guidelines for debriefing unsuccessful bidders. They also found that debriefs do not always occur when requested. Therefore, the Task Force recommend that the County develop a more transparent and meaningful debrief process. Specifically, they recommended adoption of a debrief process similar to the process used by the federal government as outlined in the Federal Acquisition Regulations (FAR 15.505 Preaward Debriefing for Offerors and FAR 15.506 Postaward Debriefing for Offerors). A score card with non-confidential/non-sensitive of all bidders and the successful offeror would demonstrate that the evaluation process was conducted fairly. The Task Force believes this may help overcome the negative sentiment among offerors concerning some of the other weaknesses in the procurement process, as well as the lack of opportunity to address improper awards through protest.

⁶ See the March 10, 2015 packet at: http://www.montgomerycountymd.gov/council/Resources/Files/agenda/cm/2016/160310/20160310_GO3.pdf

Council staff comments:

The current process is not as standardized as what the Task Force has recommended and only applies post-award. It also does not provide comparison, scoring, or ranking of other offeror's proposals. **Council staff recommends that Procurement track information on debriefings requested by offerors and completed by using departments annually. Also, the Committee may wish to revisit this issue in the future to consider implementing legislative or regulatory guidance on this informal policy, should the need arise.**

Recommendation #10: *Develop a stronger protest process (© 8).*

The Task Force found that a perception exists that a fair process currently does not exist for bidders on County contracts. They added that bidders should have a fair opportunity to protest award actions if they believe they were not evaluated fairly. To remedy this, the Task Force recommended the County review and develop a protest process similar to that of the Federal government.

Council staff comments:

The Office of Procurement provided the following information in response to the Task Force recommendation to update the County protest process.

The County has a specific protest process under the Procurement Regulations, Section 14. The protest requirements are also stated in each solicitation for transparency to offerors. The FAR process is actually more involved and could place additional burdens on the offerors. The main components of the protest are similar in both the County and FAR. The FAR process involves an external independent arbiter, the GAO. It is unclear who would serve as an external arbiter in a similar county process.

The County has received four protests since FY13. The Annual Record of Procurement Report includes a status update on protests filed in the fiscal year. CountyStat will also be tracking the number of protests as a percent of total solicitations issued. **Council staff recommends no immediate action on this recommendation at this time. However, the Committee may wish to monitor the amount of protests annually to see if the process warrants any future changes.**

Recommendation #11: *Increase Opportunities for Small Purchases (© 8-9).*

The Task Force found that simplified 'foot in the door' opportunities are difficult for most new vendors to find. In order to increase opportunities for new vendors to do business with the County, the Task Force recommended that the County post small purchasing opportunities on the main Procurement website, or establish a webpage specifically for smaller purchases.

Council staff comments:

A number of actions are underway to address this issue. The Office of Procurement posts all informal solicitations on the Procurement website. PIP has recommended Enhanced Direct

Purchase Orders (DPO) Reporting and Analysis (see © 13). This measure will help prevent misuse of DPOs for purchases at or less than \$10,000. Additionally, Procurement is leveraging ERP to issue an alert notice in Oracle when using departments near or exceed the \$10,000 threshold for a vendor. They have developed guidance on this initiative for using departments and created a searchable database for locating MFD and local small firms. Procurement reports a start date of May 2016 for the new DPO violation process.

CountyStat's efforts to track the following performance measurements, as noted in OLO report 2015-11 will help the County understand if they are increasing opportunities for new vendors. The measures include: number and percent of awards to existing/repeat vendors vs. new vendors; number of first time vendor awarded contracts; and the percent of contracts awarded to first time vendors.

Recommendation #12: Publicize all solicitations (© 9).

The purpose of this recommendation is to clarify and ensure that all informal solicitations are publicized on the Office of Procurement's solicitation website. This will assist vendors in identifying opportunities in their service areas. To achieve this, the Task Force recommended that County Code §11B-17A be changed from "each using department must post each planned purchase of construction, goods, or professional and non-professional services,... on a County web site for 5 business days before making a purchase..." to read "...on the County Office of Procurement's solicitation web site page for 5 business days...."

Council staff comments:

Information solicitation documents are now linked as a file from the using department's website to the Office of Procurements website. **The Committee may wish to make a technical adjustment removing [County web site] and noting the County Office of Procurement's informal solicitation website.**

Recommendation #13: Train and re-train the procurement staff to improve vendor interactions (© 9).

The Task Force found that some County Procurement staff and using departments appear to need training or re-training concerning the County's procurement regulations and policies. The Task Force recommended increased training to provide an appropriate level of service to internal and external procurement stakeholders, which would improve County staff's ability to provide answers and valuable information to vendors seeking assistance.

Council staff comments:

The PIP has recommended enhanced guidance for departments (see © 12). This will create a web-based tool with checklists and procedures for departments to follow. Procurement has also revamped their Qualification and Selection Committee (QSC) evaluation criteria. Additionally, CountyStat plans to measure the compliance of contract administrators with procurement trainings.

Recommendation #14: Increase use of available data and technology and establish goals and priorities (© 9).

The Task Force recommended that the County take the following medium term actions:

- a. *Evaluate the procurement data to determine the impact that the use of technology and increased staffing have on efficient delivery of services.*
- b. *Measure the effects of training and events to educate internal and external stakeholders about incentive programs and contract provisions that reflect social policy.*
- c. *Establish a coordinated County-wide initiative to promote diversity and inclusion in the workforce and in procurement because reaching beyond the historical/traditional staffing model may result in new ideas and efficiencies.*
- d. *State, in business terms, success metrics for each point in the process or each new initiative, and consider changing or repealing procedural steps that do not have (or do not meet) appropriate goals.*

Council staff comments:

Procurement reports that the County is reviewing processes including metrics, strengthening enforcement in programs, and county-wide diversity and inclusion in the workforce. A number of the performance metrics that CountyStat will begin tracking will help to uncover bottlenecks and delays, as well as steps in the procurement process that are inefficient. These metrics include:

- Compliance of contract administrators with procurement trainings;
- Timeline data: length of steps that comprise the procurement process (measure will be the average number of days for each step, by user department; goal is also to compare the length of time between events to industry norms);
- Number and percent of procurement staff with specific certifications; and
- The total and average dollar value of contracts handled by each procurement specialist.

C. Long-Term

Recommendation #15: Review and streamline post-award compliance requirements for small businesses (© 10).

The Task Force recommended that the County consider an exemption of small businesses from some of the reporting requirements. The Task Force made this recommendation to address the view that the post-award compliance process can exceed the costs that small businesses are able to capture in their indirect rates. This increases the perception that working with the County may be unprofitable.

Council staff comments:

Compliance is important to the County, as demonstrated in Bill 43-15. Post-award requirements are needed to ensure compliance with MFD, wage and other laws. Technology

enhancements, like the PRISM system, will work to help streamline the process for small businesses.

The Task Force noted that the current County procurement processes lack cohesion and is neither viewed nor treated as a system. **The Committee may wish to have OLO follow-up on this recommendation with a study to compare County contract compliance laws, including wage requirements, prevailing wage requirements, and MFD subcontractor compliance requirements against other jurisdictions. The study should also determine if there are best practices.**

Technology Enhancements

The Task Force recommended that the County conduct a procurement process assessment to identify opportunities to deliver a process that is more efficient and focused on continuous improvement. Additionally, the following three recommendations would require significant investment of resources over time, but would aid in improving the overall procurement system for vendors as well as County Office of Procurement staff and contract administrators. The Task Force recommended increased staffing and training in the interim until process enhancements are implemented.

Recommendation #16: *Improve procurement technology* (© 11).

The Task Force recommended that the County invest in the development of procurement technology that will enhance the procurement process, workflows, and communication with county staff and offerors and contractors.

Recommendation #17: *Enhance the current Central Vendor Registration System* (© 11).

The purpose of this recommendation is to enhance the functionality of the CVRS as a complete portal for businesses. Functions of the portal would include, but not be limited to registration, certification, bid submittals, viewing of bid information, invoice submittal, and data tracking.

Recommendation #18: *The County should implement a task-centric system for services needs and a vendor rating/performance system for participants* (© 11).

Council staff comments:

Over time, PIP's Procurement Tech Surge Initiative will help deliver some of these improvement recommendations. Additionally, OLO's work plan includes a mapping procurement study. The project will review the procurement process function for all County Government departments and develop a set of process maps that show the sequence of activities to execute a new contract and to identify factors that contribute to variations in contract execution practices or processing times.

Attachments:

- © 1 PPR Final Report - Executive Summary
- © 5 PPR Final Report - Recommendations
- © 12 Procurement Innovation Project - January 2016 Status Update
- © 14 OLO Report 2015-11: Procurement Performance Metrics - GO Committee Memo
- © 17 FAR 15.505 - Preaward Debriefing of Offerors
- © 19 FAR 15.506 - Postaward Debriefing of Offerors

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EXECUTIVE SUMMARY

On October 28, 2014, the Council approved Resolution 17-1254 which established the Procurement Policies and Regulations Task Force. The membership includes members of the community with deep expertise in federal, state, and local procurement as business leaders, acquisition professionals, consultants, attorneys, and community leaders. The Council asked the Task Force to provide options for the needed reform of the County procurement system. Task Force meetings were held from mid-February through late-August of 2015.

Observations and Themes:

While the procurement system works well overall, the Task Force found that there are opportunities to improve competition, ease of use, effectiveness, efficiency, resourcing, technology, transparency, and the impact of volume on the process. These opportunities exist in the overall procurement process as well as in individual steps within the procurement process.

The Task Force observed two themes from internal interviews and observations of the County procurement process. First is a lack of assessment of the County's procurement process as a system, rather than as a series of siloed tasks and steps that may make sense individually, but do not operate optimally as a systemic whole. Secondly, there is a perception among prospective offerors that the County's procurement system is not fair, not transparent, and is overly complex. There is concern that it takes too long to secure a contract. The following subthemes also are present:

1. The procurement system can benefit from re-engineering with respect to staffing (number of people, level of skill) and processes. More help is needed for Using Departments and vendors to engage in the process.
2. The procurement system is too manual given the complexity and volume of contracts, the number of vendors and Using Departments, and the time it takes to complete a procurement. Technology can be used to improve procurement program usability and efficiency; mitigate procurement resource capacity and skills issues; produce metrics for data driven decisions; and aid in transparency.
3. Processes and rules need to be simplified, and more procurement help is needed for Using Departments and vendors to best engage in the process.
4. Greater utilization of businesses that qualify for preferences and other benefits due to, for example, economic status or demographics of owners, is desired by the County. However, the burden of the pre-award compliance work can result in fewer "target" companies competing, as many of these companies are small and often lack the staffing

or other resources necessary to comply with substantial, up-front pre-contract requirements.

5. There seem to be several programs and initiatives in place to attract the “target” companies that do not have a consistent benefit. This risks de-emphasizing the value of goods and services received by the County and risks the economic assessment of individual offers being overrun by combinations of preferences operating without appropriate business rules.
6. Ongoing engagement of the vendor community as well as transparency is needed.

Recommendations:

The Task Force has grouped recommendations into short-term, medium-term, and long-term sets, which represents an analysis of what might be easier and less budget-intensive versus what might take longer.

Short-Term

1. **Improve use of technology in the procurement process to improve workflow.** Use existing technology to move away from paper and toward digital procedures.
2. **Utilize or enhance existing tools to increase opportunities for vendors.** The Central Vendor Registration System should be enhanced to let vendors self-identify specific solicitation types.
3. **Address challenges in balancing compliance and enforcement, and the comparative impact on offerors.** Compliance is too front-loaded and deters some potential offerors from competing. Experiment with self-certification and then empower audit staff to track compliance. Also, resources should be increased for audit and enforcement.
4. **Hold de-briefings for unsuccessful bidders to address perceptions of lack of fairness in the process.**
5. **Expand outreach and technical assistance to prospective vendors.** Expand overall outreach efforts and specific outreach to categories that have low percentages of small, local-minority, and women-owned businesses. Partner with the Maryland Procurement Technical Assistance Program to provide help-desk type services. Vendor outreach sessions should include on-site registration in the Vendor Registration System.
6. **Create a more transparent process.** Fairly or not, there is a perception that the County is unwelcoming of new entrants and that too much advanced work before a contract award drives away potential offerors. The “closed ranks” culture which limit the ability of getting through a procurement with limited resources must be changed.

The County must clearly and fully develop and communicate the intent of the procurement process to internal and external stakeholders.

7. **Clarify County procurement preferences.** County staff and attorneys could not explain how competing preference programs are reconciled for a given procurement. Metrics must be developed to determine if results are being achieved in preference programs. A moratorium should be placed on additional preferences or social responsibility provisions until metrics are established and results are analyzed.

Medium-Term

8. **Increase outreach and communication.** Engage the business community through outreach events, surveys, training, and town hall meetings to learn more about barriers to doing business in Montgomery County.
9. **Increase transparency.** Develop formal guidelines for de-briefs. Ensure that de-briefs, when requested, always occur. Adopt a de-brief process similar to the one outlined in Federal Acquisition Regulations (FAR 15.505 and 15.506). Allow unsuccessful bidders to review an aggregated, non-confidential scorecard of all bidders. This will help to demonstrate the evaluation process was conducted fairly.
10. **Develop a stronger protest process.** Bidders should have a fair opportunity to protest awards they believe were not evaluated fairly. The first stated remedy in the County Code to a protest is to ratify the flawed award. The County should review and develop a protest process similar to that in the Federal Acquisition Regulations (FAR 33.1).
11. **Increase opportunities for small purchases.** The County should post all small purchasing opportunities on the Procurement website or a webpage specifically for small purchasing opportunities.
12. **Publicize all solicitations.** The County should ensure that all Formal and Informal Solicitations are publicized on the Procurement website. Change the current provision in 11B-17, which requires a Using Department to post on a County website, to instead specify that it must be on the Procurement website.
13. **Train and re-train the procurement staff to improve vendor interactions.**
14. **Increase use of available data and technology and establish goals and priorities.** Determine the impact that technology and increased staffing has on efficient delivery of services. Measure the effects of training and education about incentive programs and contract provisions that reflect social policy. Promote diversity to encourage new ideas and efficiencies. State success for each point in the process. Consider changing or repealing procedures that do not have, or do not meet, goals.

Long-Term

15. **Review and streamline post-award compliance requirements for small business.** Small businesses find that they are not able to capture the cost of post-award compliance requirements. The County should review whether small businesses should be exempt from some of the reporting requirements.
16. **Improve Procurement Technology.** The Task Force recommends seven specific requirements which are included in the Recommendations section on page 34 of the Report.
17. **Enhance the Current Vendor Registration System.** The Task Force recommends 12 specific requirements that are included in the Recommendations section on page 34 of the full Report.
18. **Implement a task-centric system for service needs and a vendor rating/performance system for participants.**

Survey:

The Task Force sought input from businesses by creating and distributing a survey to over 9,500 business in the Montgomery County Inter-Agency Central Vendor Registration System and through distribution by Task Force members to their business networks. A press release was also issued directing interested parties to complete the survey. There were more than 200 responses. About two-thirds of respondents currently have contracts with Montgomery County. Of the respondents without current contracts, 78% had participated in solicitations. Over half of respondents owned MFD businesses. Over half were registered in the LSBRP program. Survey results are included in the full report.

RECOMMENDATIONS

I. SHORT-TERM

With goals of increasing the number of offerors, decreasing costs to the County, and increasing the quality of goods and services provided, the Task Force encountered several recurring recommendations in considering the perceived shortcomings in the current system. For the short term, these included: increasing the use of technology to improve work flow; increasing the number of procurements that qualify for simplified processing; and, expanding outreach and training opportunities to increase vendor participation including through debriefings with unsuccessful offerors.

1. Improve use of technology in the procurement process to improve workflow.

The County seems to be overly dependent on the transfer of physical documents through the various stages of the procurement process. The Task Force recommends a significant increase in the use of existing information technology to move away from paper and toward digital procedures. When possible, new or reassigned resources should be provided to ensure that the procurement process is able to meet established goals.

2. Utilize or enhance existing tools to increase opportunities for vendors.

Responses to the Task Force's procurement survey revealed a perception of a lack of procurement opportunity for vendors. The Task Force recommends that the existing Central Vendor Registration System (CVRS) be enhanced to allow vendors to self-identify specific solicitation types in order to enable National Institute of Governmental Purchasing Commodity Services Codes (or other appropriate work category-driven) alerts to be published for relevant solicitation opportunities.

3. Address challenges in balancing compliance and enforcement, and the comparative impact on offerors.

Although not necessarily a short-term solution, the Task Force discussed at length the County policy of extensive compliance checks on prospective awardees during contract formation and after award. This is a potential hindrance to competition because of the amount of labor involved or, at a minimum, because of the perception of the amount of labor required of potential offerors. We discussed shifting the risk/effort balance by experimenting with self-certification during formation or with rolling requirements for qualification as of specific periods of time post-award and empowering the County's audit function to track compliance. However, the Task Force felt this substantial change would impact the procurement system substantially and require new resources for audit and (potentially) for enforcement that do not presently exist. However, we were unable to form a specific recommendation, other than to note the apparent lack of audit and enforcement resources to "police" the current system, perhaps as a result of the County's front-loaded compliance policy choice.

4. *Hold debriefings for unsuccessful bidders to address perceptions of lack of fairness in the process.*

Overall, the Task Force feels that the County's procurement process should be more mindful of the challenges faced by its vendors and suppliers when complying with the occasionally onerous County procurement requirements. But that would require fairly substantial adjustments to the process itself. Instead, for the short-term, the Task Force recommends that the County increase and improve the debrief process for unsuccessful bidders in a process more closely aligned with the federal system and investigate new methods of outreach and training, including online tutorials and video training.

5. *Expand outreach and technical assistance to prospective vendors.*

The Task Force recommends that the County expand overall outreach efforts, especially in categories that have low percentages of small, local minority and woman owned businesses or any other areas where underrepresented businesses may yield increased competition, decreased pricing, or enhanced quality to the County. To address the sometimes daunting bid process, we recommend that the County partner with the Maryland Procurement Technical Assistance Program to provide help-desk type services and assistance to vendors in responding to County solicitations and actively promote and refer new vendors to this service.

Based on survey feedback, the Task Force also recommends that the Division of Business Relations and Compliance (DBRC) conduct regular vendor outreach sessions. These sessions should include on-site registration in the Vendor Registration System with a goal of every attendee being registered at the end of the session. In addition, these DBRC sessions should include demonstrations on how to use the online contract database to determine whether suitable opportunities exist and when they will be competed. The County should consider co-sponsoring events with community strategic partners and business organizations with outreach to specific populations (e.g. Hispanic Chamber of Commerce Montgomery County, Asian American Chamber of Commerce, African American Chamber of Commerce, Montgomery County Chamber of Commerce, etc.). These partners might lead to an increased numbers of contractors bidding and help to make the procurement process easier to navigate by internal and external users with outreach, training and educational events, and technical assistance toward improving competition for procurement contracts.

6. *Create a more transparent process.*

The County must address the culture of its procurement system, and communicate a sense of urgency in creating more transparent access to procurement opportunities for all. Currently there appears to be a "closed ranks" culture of getting through a lengthy and resource-intensive procurement process with limited resources, and that does not lend itself to expanding the pool of offerors or acquiring goods and services on economically beneficial terms. The Task Force recognizes that the culture of the County and the resources allocated to procurement are critical to the ability of procurement stakeholders to achieve the desired

results, and this must be communicated throughout the County system. The County must clearly and fully develop the intent of the procurement process and communicate it to internal and external stakeholders, whenever possible. Internal stakeholders' procurement training must be expanded and additional staff resources engaged, while new vendor training sessions should be made available to offerors in order to provide an overview of vendor reporting requirements. Stated differently, culture drives outcomes, and a culture that is perceived (fairly or not) as being unfriendly to business, unwelcoming of new entrants, or requiring far too much advanced work before a contract is awarded, drives away potential bidders. A culture that is welcoming, and that is mindful of business realities (and, potentially, that appropriately balances risk tolerance with benefits to the County) will drive a process that is seen as functioning, welcoming, and achieving its goals.

7. Clarify County procurement preferences.

The Task Force observed that it is difficult to reconcile competing preference programs in a given procurement. Competing preferences would be reconciled on a contract-by-contract basis. Procurement currently administers four preference programs, which include a local tie-breaker preference, a reciprocal local preference, a preference for small businesses certified as offering health insurance; and an evaluation factor for purchases from minority owned businesses. This is one example that reinforces the perceptions illustrated in survey responses that County contracting is unfair and that the social preference programs may have overcome business considerations in County procurement. Accordingly, metrics must be developed to determine if desired results are being achieved in preference programs, social policies, process improvements, productivity and financial metrics. A moratorium should be placed on additional changes to County procurement process, to include additional preferences or social responsibility programs and provisions, until those metrics are established to determine if desired results are being achieved.

II. MEDIUM-TERM

The Task Force identified several actions that the County may undertake in the medium-term to improve the participation of businesses in the procurement process. With these recommendations we move from the, perhaps, easier-to-implement suggestions into others that attempt to address the more systemic challenges in County procurement.

To address the perception that the County's procurement process does not offer a fair opportunity to new entrants we recommend the following:

8. Increase outreach and communication.

We recommend engaging the business community through increased vendor outreach events, surveys, training and technical assistance. Additional communication channels may include surveys or town hall meetings to learn the barriers to doing business with the County. This will also provide an opportunity for County contracting professionals and policy makers to learn the true effect that mounting regulations have on businesses, both in terms of cost and

labor usage. Outreach activities may help identify areas where businesses feel overburdened by regulations that the County could modify and save money to get more contractors involved in the future. The only way to find out is to communicate.

9. *Increase transparency.*

Some businesses that have tried to participate in the process do not believe they were evaluated fairly. We recommend that the County strive to develop a more transparent debrief process that includes providing meaningful feedback to unsuccessful bidders and require that the information be provided. Currently, the County appears to have no formal guidelines for debriefs. Also, debriefs, when requested, do not always occur. We recommend adoption of a debrief process similar to the process used by the federal government as outlined in the Federal Acquisition Regulations (FAR 15.505 Preaward Debriefing for Offerors, see Appendix III and FAR 15.506 Postaward Debriefing for Offerors, see Appendix IV). This is a strongly emphasized recommendation because, standing alone, it may help overcome the negative sentiment among offerors concerning some of the other weaknesses in process and comparative lack of opportunity to address improper awards through protest.

Allowing unsuccessful bidders to view aggregate, non-confidential/non-sensitive Score Card scores of all bidders as well as the scores for the successful offeror(s) would also be useful to demonstrate that the evaluation process was conducted fairly.

10. *Develop a stronger protest process.*

Bidders who have expended the resources to bid on a contract should have a fair opportunity to protest award actions if they believe they were not evaluated fairly. A perception exists that a fair process currently does not exist for bidders on County contracts because (as noted above) a protesting bidder who should have been awarded a contract that was awarded to another may often be limited in its remedies to bid or proposal preparation costs. This results in perception challenges concerning the system, crowds out potential new offerors, and causes complaints to elected officials rather than channeling solicitation protests through administrative processes. We recommend the County review and develop a protest process similar to that of the federal government. This process may be found in FAR 33.1 (see Appendix V).

Montgomery County awarded contracts for goods, services and construction in FY14 totaling almost \$1B, yet many firms seeking opportunities to do business with the County aborted their efforts after being unable to identify contracting opportunities. The Task Force recommends the following be considered to address this issue to make available and publish contracting opportunities:

11. *Increase Opportunities for Small Purchases.*

Simplified procurements should offer a 'foot in the door' for businesses new to the County procurement system. The Task Force found that these opportunities are difficult, if not impossible, for most new vendors to find. The County should post small purchasing

opportunities on the main Procurement website, or establish a webpage specifically for smaller purchases.

12. *Publicize all solicitations.*

Many vendors do not do business with the County because they are unable to identify opportunities in their service areas. This is due to the multiple categories of contracts that do not require open competition. The County should ensure that all Formal and Informal Solicitations are publicized by posting on the Procurement Office's Solicitation Website. The regulations pertaining to web site posting are unclear. The Task Force recommends that 11B-17A be changed from "Each using department must post each planned purchase of construction, goods, or professional and non-professional services,... on a County web site for 5 business days before making a purchase..." to read "...on the County Office of Procurement's solicitation web site page for 5 business days...."

13. *Train and re-train the procurement staff to improve vendor interactions.*

The Task Force received input that some of the County's Procurement staff and Using Departments appear to need training or re-training concerning the County's procurement regulations and policies. This reported lack of knowledge (or, perhaps, willingness to assist) limits the staff's ability to provide useful answers and information to vendors seeking assistance and leaves vendors (including prospective offerors that may increase quality and drive down prices) feeling like they are "getting the run around" rather than an answer. The Task Force recommends increased training, the provision of technology, instruction and staffing to provide an appropriate level of service to internal and external procurement stakeholders.

14. *Increase use of available data and technology and establish goals and priorities:*

Medium term actions for consideration include:

- a) Evaluate the procurement data to determine the impact that the use of technology and increased staffing have on efficient delivery of services.
- b) Measure the effects of training and events to educate internal and external stakeholders about incentive programs and contract provisions that reflect social policy.
- c) Establish a coordinated County-wide initiative to promote diversity and inclusion in the workforce and in procurement because reaching beyond the historical/traditional staffing model may result in new ideas and efficiencies.
- d) State, in business terms, success metrics for each point in the process or each new initiative, and consider changing or repealing procedural steps that do not have (or do not meet) appropriate goals.

III. LONG-TERM

As stated frequently in this Report, the current County procurement processes lack cohesion; it is neither viewed nor treated as a single system. Rather, it is a piecemeal approach with each step in an overcomplicated process making sense standing alone, but not in the context of a system as a whole. This contributes to the perception of unfairness and burden that drives away potential bidders. For just one example, all the various preference programs do not exist within a system where there is a cap on ratings/ceiling on evaluation points that makes sense to Using Departments, Procurement, or vendors. A system approach seeks to answer the questions “how will my bid be evaluated?” and “how do you serve as effective stewards of tax dollars?” simply, without jargon, and effectively. The system, as it stands, does not lend itself well to provide these explanations. The County should study how to make the system make sense, and remove bottlenecks, while assessing whether the appropriate balance is in place between fiscal and social responsibility.

The County must create a business climate and organizational climate culture within Procurement that encourages a culture of innovation—thinking about new ways to do what they have been charged with doing—and continuous improvement that will enable the system to deliver a better result through the use of technology and infrastructure improvements. In order to reach this goal, the County must conduct a procurement process assessment to identify opportunities to deliver a process that is more efficient and focuses on continuous improvement. If persistent delays are the result of certain functions, or resources, these metrics will provide support for corrective measures that can be taken. We further recommend increased staffing and training for the procurement function until such time as technology and process improvements permit a reduction in staffing.

Additional long-term recommendations include:

15. Review and streamline post-award compliance requirements for small businesses.

The County has complex post-award compliance regulations that are viewed as being very burdensome, and it seems that additional regulations that impact small business continue to be added. In many cases, small business finds that the post-award compliance process of these regulations exceed the costs they are able to capture in their indirect rates, making working with the County appear to be unprofitable. The cost of these compliance regulations should be measured against the social benefit gained from their implementation. As part of its review of compliance regulations, the County should consider an exemption of small businesses from some of the reporting requirements.

16. *Improve procurement technology.*

The Task Force recommends that the County invest in the development of procurement technology that will let it:

- Have workflows, and event/time driven queues
- Support a paperless procurement process
- Support an (mostly) electronic compliance auditing function that enforces policies and vendors adherence to policies during contract execution
- Support on-line collaboration of QSC members (with business/submitters)
- Support task-centric model for service related needs
- Integrate with the business portal
- Publish/receive/comment on solicitations

17. *Enhance the current Central Vendor Registration System.*

The County's CVRS should be enhanced to provide a vendor portal for business to:

- Receive Solicitations
- Receive Tasks
- Allow Self-certification (1 time per year)
- Allow for Pre-certification
- Respond to solicitation/tasks (provide comments)
- Formally submit responses to solicitations/tasks (as a workflow)
- Receive responses to solicitation comments from the County (with comments from the County)
- Allow visibility of aggregate, non-confidential/non-sensitive Score Card scores of all bidders on a particular solicitation
- Allow visibility of winning bid for each solicitation
- Allow vendors to submit invoices
- Allow visibility of invoice payment information
- Make data for procurement solicitation, awards, spending, outcomes, and re-solicitation available per contract in one place. This market data might entice new business entrants/competition for County services

18. *The County should implement a task-centric system for services needs and a vendor rating/performance system for participants.*



OFFICES OF THE COUNTY EXECUTIVE

Isiah Leggett
County Executive

Timothy L. Firestine
Chief Administrative Officer

Procurement Innovation Project January 2016 Status Update

Montgomery County government spends nearly \$1 Billion annually to procure goods and services. Recognizing the impact of this spending on the community, County Executive Isiah Leggett has made procurement in Montgomery County a priority in his administration. He currently has two main priorities regarding procurement: increasing the speed of the procurement process and increasing the utilization of minority, female, and disabled-owned (MFD) businesses and the Local Small Business Reserve Program.

The County Executive created the Procurement Innovation Project (PIP) as an internal advisory group to develop recommendations with respect to the County Executive's Priorities. PIP's tasks were to:

- *Identify the Current State of Procurement Processes*
- *Pinpoint and Validate Key Issues and Root Causes*
- *Develop Recommendations*

The PIP work group consisted of representatives from the Office of Procurement (PRO), CountyStat, and using departments. Their work was supported by a consultant. This work group synthesized data collected from individual stakeholder interviews, PRO data, and external reports (e.g., Griffin and Strong). The recommendations reflect the input put of department representatives. PIP also met with the county council task force groups and frequently attended their meetings in order to ensure collaboration and collect additional context. At this time, we are pleased to provide information on recommendations that have been fully validated. Some recommendations are still under consideration but need further legal review and are not ready for a broader discussion at this time. The recommendations that we're currently working on implementing are:

1. **The Procurement Tech Surge Initiative:** The Procurement Tech Surge Initiative provides short term surge support to clear the backlog of new and existing IT needs. There is no shortage of either basic digitization or more sophisticated systems enhancements that need to occur in order to enable a faster, less labor intensive procurement process. Currently a backlog stretching into FY19 for system enhancements exists ranging from changes to meet new regulatory requirements or database changes to support new performance metrics. In this recommendation we are asserting that there is no one innovative "silver bullet" to address what in many cases are basic digitization and workflow needs for PRO. All other recommendations will be less effective if the current lack of IT support is not addressed. This recommendation is also supported by and aligns closely with the assertions of the procurement process task force convened by the County Council. PRO has developed a pipeline of enhancements and is working to get the needed support through the Department of Technology Services Local Small Business Reserve Program Consulting and Technical Services vehicle.
2. **Enhance PRO's Guidance for Departments:** PIP initially recommended more formal stage gates in the procurement process during which PRO would provide additional guidance and support for Departments. This need came directly from interviews with department representatives. Due to some concern that this would add time to procurement actions, PRO recommended an alternative. PRO will convert existing checklists and written procedures into a more dynamic web-based learning tool for departments who need additional guidance. This tool would be an enhancement developed via recommendation one and would

focus on departments who process procurement actions less frequently. Additionally, PRO will revamp existing boilerplate materials with an eye towards simplicity, a step-by-step guide for the QSC process, and additional training for the debriefing process.

3. **Enhanced Direct Purchase Orders Reporting and Analysis:** Direct Purchase Orders (DPOs) represent an opportunity to increase competition and improve MFD/LSBRP inclusion. Improved access to DPO data also represents an opportunity to avoid misuse of DPOs. Analytical tools that provide insights for PRO regarding DPO purchases as well as alerts when potential misuse occurs will reduce the level of effort put into DPO oversight. It would also create opportunities to establish pools of MFD/LSBRP vendors in similar categories and combine the purchasing power of using departments. PRO has developed a series of implementation steps for this recommendation. These recommendations involve improved data analysis and reporting for DPO transactions.
4. **Government Services Cohort Program (GSCP):** GSCP is a program designed to connect new/growing LSBRP/MFD businesses in key service categories to solicitations throughout the county. GSCP will foster partnerships between these businesses and the county, help talented entrepreneurs scale their businesses, and increase the profile of Montgomery County as a destination for MFD Small Businesses. PRO would actually not be the implementer of this recommendation. The recommendation involves an incubation/acceleration function for LSBRP/MFD businesses and would help them find opportunities and contract vehicles within County government. PRO has pointed out that some of these types of contract vehicles already exist (LCATS and JOC contracts). The Innovation Program is in talks with the Small Business Navigator about how this program could operate in practice. Coordination with the new economic development authority will also be required. For that reason, we do not feel that recommendation will be implemented until fall of 2016 at the earliest.

As mentioned earlier, some other recommendations are still under consideration and we look forward to sharing them with you at a later date. The County Executive and PRO will continue to proactively look at opportunities to continuously improve procurement. We attended and listened to the issues and concerns raised by the two Council task forces and found that context valuable. Although the perspective of PIP recommendations stems from county departments, we have attempted to enter into these recommendations with a balanced approach. Although some recommendations might not be feasible at this time, we are moving forward ambitiously.

MEMORANDUM

October 9, 2015

TO: Government Operations and Fiscal Policy Committee

FROM: Kristen Latham, Legislative Analyst
Office of Legislative Oversight

SUBJECT: Office of Legislative Oversight Report 2015-11: Procurement Performance Measures

The Montgomery County Office of Procurement is currently in a transition period including an office restructuring, policy and process reviews by two citizen task forces, and the County Executive's Procurement Innovation Project. In coordination with these ongoing efforts to improve County procurement functions, the Council requested that OLO review performance metrics for public-sector procurement agencies and to obtain feedback from Councilmembers on the type of performance metrics they would like to see tracked going forward. On October 13th, the GO Committee will hold a worksession on that OLO Report.

This memo briefly summarizes OLO Report 2015-11, including the County's current performance metrics for procurement and Councilmember suggestions for future metrics, along with best practices and the metrics used by other local jurisdictions. The full memorandum report is attached.

Summary of Council Recommendations for Procurement Performance Metrics

Performance metrics for the County's procurement function are currently tracked and monitored by two County offices:

- *CountyStat* is responsible for an annual review of numerous performance metrics, such as: percent of construction, IFB and RFP procurements meeting agreed-upon timeline; percentage of contract dollars awarded to local small or MFD businesses; and percentage of employees that have fulfilled mandatory training requirements.
- *Office of Procurement* tracks performance metrics through a variety of annual reports: the Record of Procurements, the Local Small Business Reserve Program Annual Report, the Minority, Female, and Disabled-Owned Businesses Annual Report, and the Recycled Report.

Councilmembers identified numerous potential performance metrics for the Office of Procurement to track and monitor in the future, summarized by overall topic area below. Further, Councilmembers expressed an interest in reviewing the "culture" surrounding procurement in the County, which cannot be quantified in performance metrics.

- *Process metrics*, such as the efficiency of the various steps of the procurement process, including analysis by size and type of contract, using department and by commodity purchased.
- *Vendor metrics*, including a review of new versus existing vendor bids and awards and repeat vendors, particularly among LSBRP and MFD solicitations.
- *Procurement staff metrics*, including a summary of the workload and training of procurement officials in both the Office of Procurement and using departments.

Summary of New Performance Metrics for Procurement

CountyStat reviewed the OLO report, best practices in procurement performance measures, and County priorities and are currently working on a new set of procurement measures to track going forward. CountyStat intends to implement these measures, in the final stages of development, by the end of the calendar year:

- Number and percent of awards to existing/repeat vendors vs. new vendors;
- Number of first time vendors awarded contracts;
- Percent of contracts awarded to first time vendors;
- Compliance of contract administrators with procurement trainings;
- Satisfaction survey ratings of contract administrators;
- Cost savings/avoidance as a percent of total contract dollars subject to cost and price;
- Timeline data: length of steps that comprise the procurement process (measure will be the average number of days for each step, by user department; goal is also to compare the length of time between events to industry norms);
- Number and percent of procurement staff with specific certifications;
- The total and average dollar value of contracts handled by each procurement specialist;
- Recycling data;
- Number of protests as a percent of total solicitations issued;
- Number and percent of MFD vendors and contracts (measured against County goals for each category);
- Number and percent of LSBRP vendors who apply and get selected and the number and percent who apply but do not get selected;
- Number and percent of local small businesses that are no longer eligible to be in the LSBRP program;
- Number of companies assessed with violations of living wage and prevailing wage laws;
- Dollars returned to workers as a result of enforcement actions taken by Procurement;
- Piggyback contracting data from annual report; and
- Green-related activities.

Further, CountyStat is discussing what other living wage data might be tracked and whether the number of contractors bidding is a good measure of competitiveness because there may only be a small number of companies who can provide a specific needed service.

Summary of Best Practices and Other Jurisdictions

Government procurement performance management should be transparent in policy and practice, while ensuring the protection of confidential information. OLO found the following resources for best practices in procurement. For full summaries of these resources, including specific metrics, see the attached report.

- **The Partnership for Public Procurement** released the *Principles and Practices of Public Procurement*, which is a comprehensive policy guide to establish common standards for public procurement practice and simplify access to information for businesses and the public. The guide summarizes metrics in the following areas: cost savings/cost avoidance; supplier and industry development; supplier performance; efficiency of internal procurement systems and processes; and procurement professional development and employee retention.
- **National Association of State Procurement Officials.** This Association developed a survey for states to report on which areas of the procurement process are being benchmarked with some consistency and found the following topics of performance measurement: efficiency of the procurement process; technical or system development; professional development; cost savings/cost avoidance; and economic growth and development.
- **International City/County Management Association (ICMA) Procurement Metrics.** ICMA released a list of performance metrics recommended to track and monitor the performance of the procurement function of government that included the types of spending (e.g. purchase orders); use of technology; working days during procurement processes; and contract protests.

Other Jurisdictions. OLO contacted several local jurisdictions about performance metrics used for their local procurement functions. Overall, OLO found that Fairfax has the most extensive array of performance measures (with metrics for agency management, contract management, and procurement support and oversight) while both Prince George's and Howard Counties are currently undertaking overhauls of their procurement metrics under new ERP systems.

Appendix III

15.505 – Preaward Debriefing of Offerors.

Offerors excluded from the competitive range or otherwise excluded from the competition before award may request a debriefing before award (10 U.S.C. 2305(b)(6)(A) and 41 U.S.C. 3705).

(a)

(1) The offeror may request a preaward debriefing by submitting a written request for debriefing to the contracting officer within 3 days after receipt of the notice of exclusion from the competition.

(2) At the offeror's request, this debriefing may be delayed until after award. If the debriefing is delayed until after award, it shall include all information normally provided in a postaward debriefing (see 15.506(d)). Debriefings delayed pursuant to this paragraph could affect the timeliness of any protest filed subsequent to the debriefing.

(3) If the offeror does not submit a timely request, the offeror need not be given either a preaward or a postaward debriefing. Offerors are entitled to no more than one debriefing for each proposal.

(b) The contracting officer shall make every effort to debrief the unsuccessful offeror as soon as practicable, but may refuse the request for a debriefing if, for compelling reasons, it is not in the best interests of the Government to conduct a debriefing at that time. The rationale for delaying the debriefing shall be documented in the contract file. If the contracting officer delays the debriefing, it shall be provided no later than the time postaward debriefings are provided under 15.506. In that event, the contracting officer shall include the information at 15.506(d) in the debriefing.

(c) Debriefings may be done orally, in writing, or by any other method acceptable to the contracting officer.

(d) The contracting officer should normally chair any debriefing session held. Individuals who conducted the evaluations shall provide support.

(e) At a minimum, preaward debriefings shall include --

(1) The agency's evaluation of significant elements in the offeror's proposal;

(2) A summary of the rationale for eliminating the offeror from the competition; and

(3) Reasonable responses to relevant questions about whether source selection procedures contained in the solicitation, applicable regulations, and other applicable authorities were followed in the process of eliminating the offeror from the competition.

(f) Preaward debriefings shall not disclose --

- (1) The number of offerors;
- (2) The identity of other offerors;
- (3) The content of other offerors proposals;
- (4) The ranking of other offerors;
- (5) The evaluation of other offerors; or
- (6) Any of the information prohibited in 15.506(e).

(g) An official summary of the debriefing shall be included in the contract file.

Appendix IV

15.506 – Postaward Debriefing of Offerors.

(a)

(1) An offeror, upon its written request received by the agency within 3 days after the date on which that offeror has received notification of contract award in accordance with 15.503(b), shall be debriefed and furnished the basis for the selection decision and contract award.

(2) To the maximum extent practicable, the debriefing should occur within 5 days after receipt of the written request. Offerors that requested a postaward debriefing in lieu of a preaward debriefing, or whose debriefing was delayed for compelling reasons beyond contract award, also should be debriefed within this time period.

(3) An offeror that was notified of exclusion from the competition (see 15.505(a)), but failed to submit a timely request, is not entitled to a debriefing.

(4)

(i) Untimely debriefing requests may be accommodated.

(ii) Government accommodation of a request for delayed debriefing pursuant to 15.505(a)(2), or any untimely debriefing request, does not automatically extend the deadlines for filing protests. Debriefings delayed pursuant to 15.505(a)(2) could affect the timeliness of any protest filed subsequent to the debriefing.

(b) Debriefings of successful and unsuccessful offerors may be done orally, in writing, or by any other method acceptable to the contracting officer.

(c) The contracting officer should normally chair any debriefing session held. Individuals who conducted the evaluations shall provide support.

(d) At a minimum, the debriefing information shall include --

(1) The Government's evaluation of the significant weaknesses or deficiencies in the offeror's proposal, if applicable;

- (2) The overall evaluated cost or price (including unit prices), and technical rating, if applicable, of the successful offeror and the debriefed offeror, and past performance information on the debriefed offeror;
- (3) The overall ranking of all offerors, when any ranking was developed by the agency during the source selection;
- (4) A summary of the rationale for award;
- (5) For acquisitions of commercial items, the make and model of the item to be delivered by the successful offeror; and
- (6) Reasonable responses to relevant questions about whether source selection procedures contained in the solicitation, applicable regulations, and other applicable authorities were followed.

(e) The debriefing shall not include point-by-point comparisons of the debriefed offeror's proposal with those of other offerors. Moreover, the debriefing shall not reveal any information prohibited from disclosure by 24.202 or exempt from release under the Freedom of Information Act (5 U.S.C. 552) including --

- (1) Trade secrets;
- (2) Privileged or confidential manufacturing processes and techniques;
- (3) Commercial and financial information that is privileged or confidential, including cost breakdowns, profit, indirect cost rates, and similar information; and
- (4) The names of individuals providing reference information about an offeror's past performance.

(f) An official summary of the debriefing shall be included in the contract file.