

MONTGOMERY COUNTY EXECUTIVE REGULATION

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

Subject Adding definitions in the Procurement Regulations	Number 2-15
Originating Department Department of General Services	Effective Date July 28, 2015

Montgomery County Regulation on

Contracts and Procurement

Department of General Services

Issued by: County Executive

Regulation No. 2-15

COMCOR Sec. 11B. 00.01.02.4

Authority: Montgomery County Code (2004, as amended) Sec. 11B.00.01.02.4

Supersedes: Executive Regulation 27-03AM

Council Review: Method (1) under Code Section 2A-15

Register Vol. 32 No. 2

Effective Date: July 28, 2015

Comment Deadline: 03/03/2015

Summary: This regulation adds definitions for "Principal Place of Business" and "Regular Course of Business Commerce" in the Procurement Regulations.

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Section 11B.00.01.02 Definitions is amended as follows:

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2.4.72 Principal Place of Business in the County: A regular course of business commerce in the County by a business, along with any of the following:

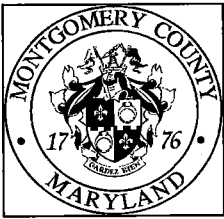
- (1) The business has its physical business location(s) only in the County; or
- (2) The business has physical business locations both in and outside of the County, and the County-based location(s) account for over 50% of the business's total number of employees, or over 50% of the business's gross sales.

2.4.73 Procurement: Buying, purchasing, leasing, or otherwise acquiring any goods, services, or construction. It also includes all functions that pertain to the obtaining of any goods, service, or construction, including description of requirements, selection and solicitation of sources, evaluation of offers, preparation and award of contract, dispute and claim resolution and all phases of contract administration.

2.4.74 Professional Services: The services of attorneys, physicians, architects, engineers, consultants, and other recognized professional individuals, associations, corporations, and groups whose services are customarily negotiated because of the individuality of those services and level of expertise involved.

2.4.75 Proposal: An offer binding on the offeror in response to an RFP and non-binding in response to an REOI.

2.4.76 Proposed Award: A decision of the Director that a specific offeror is the successful offeror after the



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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.

2.4.77 Protest: A timely-filed challenge by an aggrieved offeror in connection with a decision regarding a formal solicitation in accordance with Section 11B-36 of the Montgomery County Code and these regulations. A protest must be filed, in writing, with the Director.

2.4.78 Public Entity: (1) the federal government; (2) a state government and any of its agencies; (3) any political subdivision of a state government and any of its agencies; (4) any board, commission, or committee established by federal, state, or local law; (5) any organization or association of the federal government, state governments, or political subdivisions of state governments; and (6) any other entity that is: (A) qualified as a non-taxable corporation under the United States Internal Revenue Code, as amended; and (B) incorporated by an entity under paragraphs (1) through (5) for the exclusive purpose of supporting or benefitting an entity under paragraphs (1) through (5).

2.4.79 Public Notice: Posting information for public inspection during regular business hours. In addition, public notice may, as determined by the Director, also include other means reasonably calculated to notify the public and promote adequate competition, such as advertisement, mailings, placing notices in newsletters, and inclusion of public notice on the RAPID system or other electronic media determined by the Director.

2.4.80 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.



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2.4.81 Regular Course of Business Commerce: The on-going and continuous exchange of goods or services for money between two or more businesses or between a business and consumers.

2.4.82 Request for Expressions of Interest (REOI): A solicitation to prospective offerors, the response to which is to be analyzed in accordance with evaluation criteria set forth in the solicitation. The REOI is used to develop a shortlist of prospective offerors who are eligible to receive a subsequent solicitation such as an RFP or an IFB. Requests for Expressions of Interest are generally made where specifications cannot be prepared or the availability of vendors for the goods, services, or construction involved is uncertain or unknown.

2.4.83 Request for Proposals (RFP) - Best Value Procurement: A solicitation to prospective offerors, the response to which is analyzed in accordance with evaluation criteria set forth in the solicitation for the purpose of ranking the proposals received in order to obtain the best value for the County.

2.4.84 Requirements Contract: A contract for goods, services, or construction covering long-term requirements (usually twelve months or more), used when the total quantity required cannot be definitely fixed, but may be stated as an estimate or within maximum and minimum limits. Delivery of goods, services, or construction are made upon issuance of a delivery order. A requirements contract may be exclusive, in which case all orders of goods, services, or construction covered by the contract must be made pursuant to it. In the alternative, a requirements contract may be non-exclusive, in which case the contract is not the only source of goods, services, or construction covered by it. Unless a requirements contract, and the solicitation for it, states that it is an exclusive contract, it is a non-exclusive contract. A requirements contract may not be used to unduly restrict competition and may not normally be used for large construction contracts.



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2.4.85 Responsibility: A determination, based on characteristics of an offeror, that demonstrate that the offeror is capable of satisfying the County's needs and requirements for a specific contract.

2.4.86 Responsible Offeror: A person the Director has determined under section 6.3 to be capable of satisfying the County's needs and requirements for a specific contract.

2.4.87 Responsive Offeror: An offeror who has submitted a bid that conforms in all material respects to the requirements of an IFB or a small purchase.

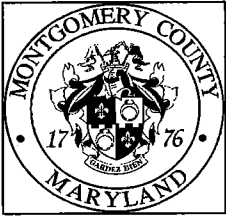
2.4.88 Responsiveness: A determination that a bid complies with the material requirements of an IFB or a small purchase. The Director determines if a bid is responsive. See Responsive Offeror.

2.4.89 Retention (Retainage): The withholding of a part of the payment due to the contractor until the time of final acceptance according to the terms of the contract. The amount retained (also known as retainage), as well as the period of retention, is determined by the terms of the contract. Retention, as a method of payment administration, is usually associated with construction contracts.

2.4.90 Services: The performance of an identifiable task by furnishing labor, time or effort by a contractor, not involving the delivery of a specific end product other than reports which are merely incidental to the required performance.

2.4.91 Shortlist: A list of offerors who, through a pre-qualification process, are eligible (usually through an REOI) to participate in a further process for award of one or more contracts.

2.4.92 Small Purchase: An informal solicitation of goods, construction or non- professional services valued below a certain monetary threshold.



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2.4.93 Sole Source: A noncompetitive procurement in which goods, services, or construction necessary to meet minimum valid needs of the County are available from only one person as provided in Chapter 11B of the County Code including those having the exclusive right to manufacture, sell or otherwise market certain goods or services.

2.4.94 Solicitation: A request for offers through either a formal communication or an informal communication, with potential offerors in accordance with these regulations. A solicitation may only be made by a contracting officer or an authorized government official.

2.4.95 Specification: A set of requirements for goods, services, or construction that the County wishes to acquire. A specification must indicate, whenever appropriate, the procedure by which requirements are determined to be satisfied. As far as practicable, it is desirable that the requirements be expressed in numerical or other objective terms, together with their ranges or limits. A specification may be a standard, a part of a standard, or independent of a standard. It may also be expressed as an end result. Specifications should be contained in solicitations as well as contracts. Specifications should not be overly restrictive or prejudicial to competition beyond that justified by minimum valid needs of the County.

2.4.96 Standardized Procurements: A standardized procurement is a purchase of equipment or parts for which the CRC determines standardization and interchangeability of parts is necessary or is in the public interest. A standardized procurement should include competition when reasonably available. Standardization approval must be for a stated period which bears a reasonable relationship to the life of the equipment and the specialized training or specialized equipment necessary to maintain the standardized item. A standardization decision



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includes the decision to procure compatible parts, equipment, services, and training.

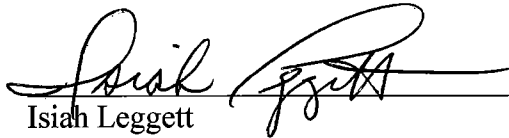
2.4.97 Termination for Convenience: A termination of all or part of a contract by a contracting officer if the contracting officer determines that termination is in the best interest of the County.

2.4.98 Termination for Default: A termination in whole or in part of a contract, at the option of the County, because of the contractor's failure to perform.

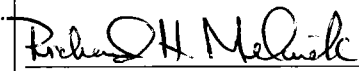
2.4.99 Unsolicited Proposal: A proposal to render services or construction or deliver goods to the County outside of a solicitation by the County. Unsolicited proposals should be evaluated by an appropriate Using Department in terms of need, price, and funds available. If funds are available and need is present, the Using Department may initiate an appropriate solicitation as provided by these regulations, based upon the unsolicited proposal.

2.4.100 Using Department: Any department, office, agency, or other person subject to the procurement requirements imposed under Chapter 11B, Montgomery County Code.

* * *


Isiah Leggett
County Executive

Approved as to form and legality:

 1/15/15
Office of the County Attorney/Date