

**ANNE ARUNDEL COUNTY CODE (downloaded from Municode.com on Nov 14, 2005)**

**ARTICLE 10 PURCHASING**

**TITLE 2. PROCUREMENT**

**§ 2-101. Purchasing manual.**

(a) The Central Services Officer or the Central Services Officer's designee shall prepare rules and regulations governing the operations of the County procurement system.

(b) The rules and regulations shall be submitted, with the approval of the Director of Administration and the County Executive, for approval and adoption by ordinance of the County Council. After adoption of the rules and regulations by the County Council, the Central Services Officer shall issue the rules and regulations to using agencies and shall secure compliance with the rules and regulations by the using agencies.

(c) Amendments to the rules and regulations governing emergency purchases, emergency contracts, and those involving material, equipment, or services of an unusual or noncompetitive nature and that are not inconsistent with the basic purchasing policy of the County as contained in the Charter and the ordinance enacted by the County Council may be made by the Central Services Officer with the written approval of the County Executive. The amendments shall be effective until the next annual legislative session of the County Council when they shall be cumulatively submitted to the County Council for approval by ordinance.

(d) Amendments to the rules and regulations not governing emergency purchases, emergency contracts, and those not involving material, equipment, or services of an unusual or noncompetitive nature and that are not inconsistent with the basic purchasing policy of the County as contained in the Charter and the ordinances enacted by the County Council may be made by the Central Services Officer with the written approval of the County Executive. The amendments shall be effective on approval of the County Attorney.

(e) The rules and regulations shall include provisions to govern:

(1) the handling of bids and proposals, including their custody and safeguarding, opening and tabulation, rejection, and readvertising;

(2) the procedure for determining the lowest responsive and responsible bidder or the best offer, procedures for resolving protests and disputes, and procedures governing the use of contract clauses;

(3) the procedure for securing from bidders or offerors and prospective bidders or offerors, the data necessary to determine whether they are responsible bidders or offerors;

(4) the conditions under which informalities and defects in bids may be waived or cured and the conditions under which mistakes in bids may be corrected or the withdrawal of bids permitted;

(5) the conditions and criteria under which competitive sealed bidding may be determined impractical, or otherwise not advantageous, for purposes of using the competitive sealed proposal/competitive negotiation method;

(6) the procedure for reporting receipt of supplies, professional services, and contractual services;

(7) the procedure for submission, examination, and approval of invoices for supplies, professional services, and contractual services delivered or rendered to using agencies;

- (8) the procedure followed in adopting and maintaining a vendors' catalog file containing descriptions of vendors' commodities, prices, and discounts;
  - (9) the procedure to be observed by using agencies and the Purchasing Agent in the development of a program for bulk purchases, including those calling for the filing by using agencies, with the Purchasing Agent, of detailed estimates of future needs for such periods as the Purchasing Agent may prescribe;
  - (10) procedures facilitating reduction, to the maximum extent possible, in the number of purchase transactions by combining into bulk orders and contracts the requirements of using agencies for common-use items or items repetitively purchased;
  - (11) procedures involving the development and use of those types of contracts and purchase orders that will reduce to the minimum the accompanying paper work and that, in other respects, will be most advantageous to the County;
  - (12) the terms and conditions under which using agency heads may submit requisitions to the Purchasing Agent for supplies or contractual services available under price agreement contracts made by the Purchasing Agent;
  - (13) the procedure to be observed by using agencies and the Purchasing Agent in obtaining full and open competition wherever possible, on all purchases and sales;
  - (14) the procedure under which, by express authorization in writing of the Purchasing Agent, a using agency may be exempted from the rules and regulations for specified supplies or contractual services;
  - (15) the procedures to be observed by using agencies and by store or warehouse personnel in accounting for the receipt and disbursement of supplies, including:
    - (i) the classification of inventory items and their positive identification by means of standard nomenclature or code or part numbers;
    - (ii) provision of adequate storage facilities and supervision;
    - (iii) maintenance of an accurate perpetual inventory record, showing receipts, allotments, disbursements and available balances in stores, supported by periodic physical inventory counting or stock-taking;
    - (iv) following an established cost system and accounting procedure to interpret the physical or unit quantity records into financial terms, including periodic reconciliation of the stores controlling accounts with the ledger controls maintained by the Controller; and
    - (v) analysis of inactive stores items to determine their disposition and to avoid the accumulation of surplus, old, and obsolete stock; and
  - (16) any other matters necessary to give effect to the rules and regulations and the provisions of Article IX of the Charter.
- (f) The rules and regulations shall be referred to as the "Purchasing Manual" and shall represent a complete statement of all procedures under the County's purchasing system. (Code 1967, § 1-310; Bill No. 59-85, § 2; Bill No. 13-89, § 1)

### **§ 2-102. Exemption of using agencies.**

- (a) When a using agency is exempt from the rules and regulations for the purchase of specified and contractual services, the Purchasing Agent shall require: and (1) that the purchase be made in conformity with applicable provisions of this title;
  - (2) periodic reports from the using agency on purchases and contracts made under its written authorization.
- (b) The Purchasing Agent may withdraw the written authorization from the using agency at any time.
- (c) Notwithstanding the exemptions from the rules and regulations that may be approved by the Purchasing Agent, it is intended that exemptions shall be kept to a minimum, periodically reviewed, and approved by the Purchasing Agent only for good and sufficient reasons stated in writing and filed with the request of the using agency.

(Code 1967, § 1-310(e); Bill No. 59-85, § 2)

### **§ 2-103. Procurement methods.**

Unless otherwise authorized by ordinance, all County procurement contracts shall be awarded by competitive sealed bidding, except as otherwise provided in:

- (1) § 2-105 of this title, "Competitive Sealed Proposals";
- (2) § 2-106 of this title, "Small Procurements";
- (3) § 2-107 of this title, "Sole Source Procurements";
- (4) § 2-108 of this title, "Emergency Procurements";
- (5) § 2-109 of this title, "Expedited Procurements"; and
- (6) § 2-110 of this title, "Professional Services Procurements".

(Code 1967, § 1-312; Bill No. 59-85, § 2)

### **§ 2-104. Competitive sealed bidding.**

(a) Except as otherwise provided in § 2-103 of this title, contracts estimated to be over \$10,000 shall be awarded by competitive sealed bidding.

(b) An invitation for bids shall be issued and shall include a purchase description and all contractual terms and conditions applicable to the procurement.

(c) Requirements may not be artificially subdivided in order to avoid the requirements of this section.

(d) Adequate public notice of the invitation for bids shall be given at a reasonable time before the date set forth in the notice for the opening of bids in accordance with the Purchasing Manual. Notice shall include publication in a newspaper of general circulation in the County for a reasonable time prior to bid opening. Additionally, the Purchasing Agent shall solicit sealed bids from among prospective suppliers who have requested their names be added to a "bidders list" that the Purchasing Agent shall maintain, by sending them a copy of a solicitation notice, newspaper notice, or a bid invitation. The solicitation notice shall also be posted on bid boards located at the Purchasing Agent's offices.

(e) (1) The Purchasing Agent shall:

(i) discourage uniform bidding by every possible means and endeavor to obtain competition on purchases and sales that is as full and open as possible; and

(ii) require each bidder to accompany a bid with a statement made under oath that the bidder has not been a party with other bidders to an agreement to bid a fixed or uniform price or to share price bid information.

(2) A bid is rendered void if a bidder:

(i) violates the statement submitted with the bid; or

(ii) discloses or acquires the terms or conditions of the bid submitted by another bidder before the opening of the bids.

(3) A person who violates any provision of this subsection is guilty of a misdemeanor and on conviction is subject to a fine not exceeding \$1,000 or imprisonment not exceeding six months or both.

(f) Bids shall be submitted sealed to the Purchasing Agent and identified as bids on the envelope. When considered necessary by the Purchasing Agent, deposits shall be prescribed in the public notice inviting bids. Unsuccessful bidders are entitled to a return of their bid deposits. In any case, where a successful bidder fails to execute a contract within 10 days after the award, the bid deposit may be taken and considered as liquidated damages, and not as a penalty, for failure of the bidder to execute the contract. On the proper execution of the contract by a successful bidder, the bid deposit shall be returned to the bidder.

(g) A tabulation of all bids received shall be posted on the bulletin board maintained in the main offices of the Purchasing Agent until the award is made and thereafter shall be filed with the papers relating to the transaction.

(h) The Purchasing Agent may reject all bids, parts of all bids, or all bids for any one or more supplies or contractual services included in the proposed contract when, in the Purchasing Agent's judgment, the public interest will be served thereby.

(i) (1) If two or more bidders are tied for the lowest bid, quality and service being equal, the contract may be awarded to a local bidder. The Purchasing Agent may also award the contract to a minority bidder when tied with a non-minority bidder or to a small business when tied with a non-small business. The Purchasing Agent may consider the amount of minority business participation in a contract in deciding the award of a tie bid.

(2) If a tie bid award is not decided under the provisions of paragraph (1) of this subsection, the Purchasing Agent shall award the contract to one of the tie bidders by drawing lots in public.

(3) When awarding a contract by competitive bidding, if one or more competitive bids are received from businesses based in localities having preferences favoring the resident bidders when competing with non-resident bidders, and it is known by the Purchasing Agent that such preferences exist in the jurisdiction where such business or businesses are based, then the Purchasing Agent shall apply the same percentage, formula, or amount of the preference afforded by such other jurisdiction against the businesses located-in such jurisdiction.

(j) In the event that only one or no responsive bids are received and time does not permit a delay incidental to re-advertising, the Purchasing Agent may award the bid to the single bidder or negotiate a sole source contract in accordance with § 2-107 of this title.

(k) If responsive bids are received from two or more responsible bidders and all prices received exceed allocated funds, the Purchasing Agent may reduce or otherwise modify the scope of work and may either solicit revised bids from those responsive and responsible firms responding to the original solicitations or the Purchasing Agent may re-advertise for new bids.

(l) The Purchasing Agent shall award all contracts to the responsive and responsible bidder having the lowest bid price or lowest evaluated bid price not earlier than seven calendar days following the public opening of bids. In determining the lowest evaluated bid, the Purchasing Agent may only consider objective measurable criteria specified in the invitation for bids that may, as an example, include life cycle costs. In determining a bidder's responsibility, the Purchasing Agent shall consider:

(1) the ability, capacity, and skill of the bidder to perform the contract or provide the service required;

(2) whether the bidder can perform the contract or provide the service promptly, or within the time specified, without delay or interference;

(3) the character, integrity, reputation, judgment, experience, and efficiency of the bidder;

(4) the quality of performance of previous contracts or services;

(5) the previous and existing compliance by the bidder with laws and ordinances relating to the contract or service;

(6) whether the bidder is in arrears to the County on debt or contract, is a defaulter on surety to the County, or is delinquent in County taxes or assessments; and

(7) such other information as may be secured by the Purchasing Agent having a bearing on the decision to award the contract.

(m) If the contract is not awarded to the lowest bidder in price, the Purchasing Agent shall make a written statement of reasons therefor and maintain a copy of the statement in the contract or bid file.

- (n) (1) Specifications shall be developed as provided in this subsection.
- (2) The Purchasing Agent shall obtain expert advice and assistance from personnel of using agencies in the development of specifications and may delegate to the using agency the authority to prepare its own specifications.
- (3) Any unresolved disagreements between the Purchasing Agent and the using agency with regard to adequacy of specifications shall be referred to the Central Services Officer for resolution.
- (4) All specifications shall seek to promote overall economy for the purposes intended and encourage competition in satisfying the County's needs to the maximum practicable and shall not be unduly restrictive. Performance or functional specifications shall be the preferred type.
- (5) When the County requires supplies, materials, or equipment that are produced by only one manufacturer, the Purchasing Agent shall specify the manufacturer's make or brand in the invitations to bid and shall obtain competitive bids from authorized dealers or distributors of the manufacturer. If the manufacturer is the sole bidder and the sole source of supply, the Purchasing Agent may negotiate an open-market order or contract with the manufacturer at prices and on terms most advantageous to the County.
- (6) When the County requires supplies, materials, or equipment that are patented or proprietary and that are obtainable in two or more equally satisfactory and competitive makes, brands, or types, the Purchasing Agent shall list the acceptable and competitive makes, brands, or types in the invitations to bid. The lists shall also include the phrase "or approved equal", or similar phrase, to permit bidders to bid on alternate or additional makes, brands, or types. It is incumbent on each bidder to prove to the satisfaction of the County that the alternate or additional make, brand, or type is equal in quality or performance to those listed in the invitation to bid.
- (o) Multi-step sealed bidding may be conducted in which bidders submit unpriced technical offers or samples or both in the first step of the process and price bids in the second step. Once technical offers or samples or both have been evaluated, competitive bids shall be solicited only from those vendors whose technical offers or samples or both have been accepted. A two-step method under which both price and technical proposals are submitted separately but simultaneously may be used; however, the sealed envelopes containing price information may not be opened until the technical evaluation is complete. Envelopes containing the bids of firms found unacceptable during the technical evaluation may not be opened and shall be returned to the firms sealed.
- (p) All contracts shall be signed on behalf of the County by the County Executive or the County Executive's designee. A copy of each signed contract shall be forwarded promptly to the Controller. All contract forms shall be approved by the County Attorney as to form and legal sufficiency.
- (q) In accordance with the Purchasing Manual, the Purchasing Agent, with the approval of the Central Services Officer, may waive formalities or permit the cure of defects in bids and may permit correction of mistakes in bids, as the interests of the County may require.
- (Code 1967, § 1-313; Bill No. 59-85, § 2; Bill No. 8-03, § 3; Bill No. 23-04, § 2)

### **§ 2-105. Competitive sealed proposals.**

- (a) When the Purchasing Agent determines, in accordance with the Purchasing Manual, that competitive sealed bidding is not practical or not advantageous to the County, a contract may be entered into by competitive sealed proposals.
- (b) Request for proposals shall be solicited from those firms appearing on the lists maintained by the Purchasing Agent.

(c) Adequate public notice of the request for proposals shall be given in the manner provided in § 2-104(d) of this title.

(d) The request for proposals shall state the relative importance of price and other evaluation factors. Price may not be the sole evaluation factor. Numerical ratings may be used at the discretion of the Purchasing Agent.

(e) The Purchasing Agent shall:

(1) discourage uniform bidding by every possible means and endeavor to obtain competition on purchases and sales that is as full and open as possible; and

(2) require each bidder to accompany a bid with a statement made under oath that the bidder has not been a party with other bidders to an agreement to bid a fixed or uniform price or to share price bid information.

(f) Proposals shall be opened so as to avoid disclosure of contents to competing offerors during the process of negotiation. A register of proposals shall be prepared showing the names of offerors who have submitted proposals and shall be open for public inspection.

(g) As provided in the request for proposals, discussions may be conducted with responsible offerors who submit proposals determined by the Purchasing Agent to be reasonably susceptible of being selected for award. Discussions may be held for purposes of clarification to assure full understanding of, and responsiveness to, the solicitation requirements. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussion and revisions of proposals, and revisions may be permitted after submissions and before award for the purpose of obtaining best and final offers. In conducting discussion, there shall be no disclosure of any information derived from proposals submitted by competing offerors.

(h) A multi-step method may be used in the evaluation process with qualifications and technical and price proposals being obtained and evaluated either separately or concurrently.

(Code 1967, § 1-314; Bill No. 59-85, § 2; Bill No. 8-03, § 3)

### **§ 2-106. Small procurements.**

(a) All procurements initially estimated not to exceed \$10,000 shall be considered an open market transaction and are not subject to the requirements of §§ 2-104 and 2-105 of this title. However, the Purchasing Agent shall, wherever practical and whenever the amount exceeds \$1,000, attempt to secure at least three competitive bids or proposals on all open market transactions. Oral bids or proposals may be solicited. However, whenever the amount of the bid or proposal exceeds \$500, the Purchasing Agent shall seek to have it confirmed in writing by the bidders or offerors. A contract or purchase order in excess of \$500 may not be issued unless the Controller first certifies that funds for the designated purchase are available.

(b) The Purchasing Manual shall prescribe in detail the procedures to be observed in giving notice to prospective bidders or offerors, in opening, tabulating, and recording bids or proposals, and in awarding contracts to the lowest responsive and responsible bidder or the offeror with the best proposal under standards set forth in §§ 2-104 and 2-105 of this title, and in making available for public inspection all open-market purchase orders, contracts, and bids or offers submitted.

(Code 1967, § 1-315; Bill No. 59-85, § 2; Bill No. 23-04, § 2)

### **§ 2-107. Sole source procurements.**

A noncompetitive negotiated contract may be awarded when, under the Purchasing Manual, the Purchasing Agent determines in writing that there is only one

source for the required service, supply, or construction item. This method may be used when:

- (1) only one source exists meeting the County's requirements;
  - (2) compatibility of equipment, accessories, or replacement parts is a paramount consideration;
  - (3) a sole vendor's item is needed for trial use or testing;
  - (4) the item is for resale;
  - (5) the item is a public utility;
  - (6) the service is a professional service that is unique to the County's requirements, or otherwise is not subject to competition;
  - (7) it is impossible to determine the scope or extent of services required until the work commences, such as when internal engine damage or underground conditions cannot be ascertained until the engine is dismantled or excavation is made;
  - (8) when competitive bids or proposals have been solicited under § 2-104 or § 2-105 of this title and only one or no responsive bids or offers have been received from a responsible bidder or offeror;
  - (9) when competition is precluded due to patents, copyrights, or similar circumstances; or
  - (10) the purchase is made from another governmental entity.
- (Code 1967, § 1-316; Bill No. 59-85, § 2)

#### **§ 2-108. Emergency procurements.**

- (a) In this section "emergency" means a breakdown in machinery, a threatened termination of essential services, the development of a dangerous condition, or any unforeseen circumstance that causes curtailment or diminution of an essential service.
- (b) The Purchasing Manual shall provide for the specific terms and conditions under which emergency purchases may be made.
- (c) If an emergency occurs during regular County business hours, the using agency shall immediately notify the Purchasing Agent, who shall either purchase the required supplies or contractual services or authorize the agency to do so.
- (d) If an emergency occurs at a time other than regular business hours, the using agency may purchase directly the required supplies or contractual services. The agency shall:
  - (1) whenever practicable, secure competitive telephone bids and order delivery to be made by the lowest responsible bidder; and
  - (2) not later than the next regular County business day thereafter, submit to the Purchasing Agent a requisition, a tabulation of bids received, if any, a copy of the delivery record, and a written explanation of the circumstances of the emergency.
- (e) A complete, current file record shall be maintained by the Purchasing Agent explaining or otherwise supporting the particular basis on which each emergency purchase was made. Records shall be available for public inspection during regular County business hours in the Purchasing Agent's main offices.
- (f) The Purchasing Agent shall submit monthly to the County Council, through the offices of the Central Services Officer, the Chief Administrative Officer, and the County Executive, a report covering a tabulation of all emergency purchases in excess of \$500 together with an explanation of the circumstances of the purchases.
- (g) The Purchasing Agent shall eliminate emergency orders by proper use of the price agreement and other similar types of orders whenever it is determined to be in the best interest of the County.

(Code 1967, § 1-317; Bill No. 59-85, § 2; Bill No. 13-89, § 1)

### **§ 2-109. Expedited procurements.**

(a) In this section "expedited procurement" means a procurement action involving an amount over \$10,000 made with the advance written approval of the County Executive or the County Executive's designee in which prompt action best serves the public interest and the procurement is not an emergency but one in which an expedited procurement process outweighs the benefits of either competitive sealed bidding under § 2-104 or competitive sealed proposals under § 2-105 of this title. An expedited procurement may include situations in which federal or State revenues to the County may be lost if rapid procurement actions are not taken, or situations that would have an adverse impact on the economic welfare of the County or important economic development in the County.

(b) The County Executive or the County Executive's designee may approve expedited procurements either on a contract-by-contract or a project-by-project basis.

(c) To the extent practicable, the procedures prescribed in §§ 2-104 and 2-105 of this title, as applicable, shall be utilized when making an expedited procurement, except that the Purchasing Agent may waive the public notice requirements of newspaper advertising, or justify in writing a noncompetitive selection if competitive solicitations cannot be made due to insufficient time between when the need to make an expedited procurement first became known and when the contract must be performed or for such other reasons that preclude the use of competition.

(d) Each expedited procurement shall be reported monthly in the same manner as prescribed for reporting emergency procurements under § 2-108 of this title.

(Code 1967, § 1-318; Bill No. 59-85, § 2)

### **§ 2-110. Professional services procurements.**

(a) The Purchasing Agent may waive in writing the requirement for competitive sealed bidding or competitive sealed proposals when a need exists for a professional service provider whose services are unique to the County's requirements or otherwise are not subject to competition.

(b) The Purchasing Agent may waive the public notice requirements of §§ 2-104 and 2-105 of this title when lists of prequalified persons or organizations are maintained by the Purchasing Agent and contain sufficient names of qualified and responsible professional service providers to facilitate a competitive procurement being made under either § 2-104 or § 2-105 of this title.

(Code 1967, § 1-319; Bill No. 59-85, § 2)

### **§ 2-111. Multi-term contracts.**

(a) Unless otherwise provided by law, a contract for supplies or services may be entered into for any period of time considered to be in the best interests of the County provided the term of the contract and conditions of renewal or extension, including prices or an objective means of determining prices for the periods of extension, are included in the solicitation and funds are available for the first fiscal period at the time of contracting. Payment and performance obligations for succeeding fiscal periods are subject to the availability and appropriation of funds.

(b) When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the contract shall be canceled and the contractor shall be reimbursed for the reasonable value of any nonrecurring costs incurred but not amortized in the price of the supplies or services delivered under

the contract. The cost of cancellation may be paid from any appropriations available for such purposes.

(Code 1967, § 1-320; Bill No. 59-85, § 2)

### **§ 2-112. Types of contracts.**

(a) Subject to the limitations of this section, any type of contract that will promote the best interests of the County may be used.

(b) A cost-reimbursement contract may be used only when the Purchasing Agent concludes that such a contract is likely to be less costly to the County than any other type or that it is impractical to obtain the supplies, services, or construction required except under a cost reimbursement contract.

(c) The use of a cost-plus-a-percentage-of-cost contract is prohibited. Contracts based upon percentage discounts from, or percentages added to, prices listed in a manufacturer's published price list in general distribution are not considered to be cost-plus-percentage-of-cost contracts.

(Code 1967, § 1-321; Bill No. 59-85, § 2)

### **§ 2-113. Capital improvement contracts.**

(a) Whenever a capital improvement project is to be undertaken by the County, the Director of Public Works shall cause plans, specifications, and estimates to be prepared. The Chief Administrative Officer shall determine whether the capital improvement project is to be constructed by contract or by the County's force account labor.

(b) If the capital improvement project is to be constructed by contract and the estimated cost exceeds \$10,000, competitive bids or proposals shall be secured and the contract shall be awarded in accordance with the provisions of § 2-104 or § 2-105 of this title, as applicable, provided that an award of any capital improvement contract may not be made without the written approval of the Department of Public Works, the Controller, and the County Executive or the County Executive's designee. All contracts for capital improvements shall be approved by the County Attorney as to form and legal sufficiency and, following approval, shall be executed on behalf of the County by the County Executive or the County Executive's designee.

(c) If bidding results in, or subsequent changes to the contract require, additional expenditure in excess of the appropriation, the additional amount is subject to approval by the County Council by supplementary or emergency appropriation ordinance as provided for in Sec. 712 of the Charter.

(Code 1967, § 1-322; Bill No. 59-85, § 2; Bill No. 13-89, § 1; Bill No. 23-04, § 2)

### **§ 2-114. Mandatory clauses.**

(a) The provisions of this section are not applicable to small procurements that are within the provisions of § 2-106 of this title.

(b) The Purchasing Agent may include in any contract the clauses required by law or considered necessary to protect the County's best interests in accordance with the Purchasing Manual.

(c) Contracts shall contain a provision requiring compliance by the contractor or any subcontractor with Executive Order 11246, entitled "Equal Employment Opportunity" as amended by Executive Order 11375, and as supplemented in U.S. Department of Labor Regulations 41 CFR Part 60.

(d) Contracts shall contain provisions or conditions that allow for administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms and provide for such sanctions and penalties as may be appropriate.

(e) Contracts that anticipate the expenditure of federal or State grant funds shall contain either, or both as applicable, the mandatory requirements of Federal Management Circular A-102, Attachment O, or such terms and conditions as prescribed by the federal or State grantor agency.

(f) Negotiated contracts and negotiated contract amendments shall include provisions allowing the County access to the records of the contractor for purposes of auditing or verifying the contractor's costs in connection with the contract.

(g) Pursuant to the State Finance and Procurement Article, § 16-311 of the State Code, each business entity or person submitting a bid or otherwise applying for a contract shall submit an affidavit stating to its best knowledge, whether it or any of its officers, directors, or partners, or any of its employees who are directly involved in obtaining contracts with the State or with any County or other subdivision of the State, has been convicted of bribery, attempted bribery, or conspiring to bribe under the laws of any state or the federal government. The affidavit will be satisfactory if it:

(1) incorporates by reference the statements contained in an affidavit filed with the same procurement agency within the previous 12 months pursuant to the requirements above; and

(2) states that those statements remain accurate.

(h) (1) A contract for any construction work subject to § 2-113 of this title may not be awarded to any contractor unless the contract contains provisions obligating the contractor not to discriminate in any manner against any employee or applicant for employment because of race, creed, color, or national origin and obligating the contractor to include a similar clause in all subcontracts, except subcontracts for standard commercial supplies or raw materials. In addition, the contractor and subcontractor shall agree to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of the nondiscrimination clause.

(2) Failure to include such a contract provision renders any contract void *ab initio*, but any party is entitled to the reasonable value of services performed and materials supplied. The County may elect to compel the performance of any contract under this section not containing the nondiscrimination provisions, but recovery against the proper party shall be limited to the reasonable value of services performed and materials supplied.

(3) Where the contractor willfully fails to comply with the nondiscrimination provisions, the County may, where the contract is still executory in part, compel continued performance of the contract, but it is liable only for the reasonable value of services performed and materials supplied from the date that the breach of contract was discovered or should have been discovered, and any sums previously paid by the County under the contract shall be set off against the sums to become due as the contract is performed.

(4) If the subcontractor willfully fails to comply with the nondiscrimination provisions, the contractor may avoid the contract note and shall be liable only for the reasonable value of the services performed and materials supplied.

(5) As to all contracts for materials, supplies, maintenance, services, or other procurements, except building construction services, the contractor/vendor shall agree not to discriminate in any manner against any employee or applicant for employment because of race, creed, color, national origin, or sex. Any contract with the County requiring subcontracts shall include similar requirements in each subcontract. The seller further shall agree to comply with all applicable federal, State, and local laws and executive orders relating to equal employment opportunity.

(Code 1967, § 1-323; Bill No. 59-85, § 2; Bill No. 8-03, §§ 1, 2; Bill No. 23-04, § 2)

### **§ 2-115. Bonding.**

- (a) For every construction contract in an amount less than \$25,000:
- (1) The Purchasing Agent may require a performance bond in an amount considered adequate to cover the completion of work in the event of default for the protection of the County.
  - (2) The Purchasing Agent may not require a payment bond protecting materialmen and subcontractors. The Purchasing Agent may require a contractor to furnish a waiver of mechanics' liens to the County before payment of a progress or final payment.
- (b) For every construction contract in an amount between \$25,000 and \$50,000, the Purchasing Agent may require bid, performance, and payment security in the amounts and form as determined necessary to protect the County's interests and the interests of all persons supplying labor and materials in the prosecution of the work provided for in the contract. However, any such bid, performance, and payment security shall be in an amount not to exceed 50% of the contract amount. The Purchasing Agent may require a contractor to furnish a waiver of mechanics' liens to the County prior to payment of a progress or final payment.
- (c) For every construction contract in excess of \$50,000:
- (1) the Purchasing Agent shall require a performance bond in an amount adequate to cover the complement of work in the event of default for the protection of the County.
  - (2) The Purchasing Agent shall require a payment bond for the protection of all persons supplying labor and materials in the prosecution of the work provided for in the contract. The payment bond shall be in an amount not less than 50% of the total amount payable by the terms of the contract. Any contractor covered by a payment bond is not required to furnish a waiver of mechanics' liens to the County. Any contractor prior to receiving a progress or final payment under a contract subject to this subsection shall certify in writing that the contractor has made payment from proceeds of prior payments, and that the contractor will make timely payments from the proceeds of the progress or final payment then due, to the subcontractors and suppliers in accordance with the contractual arrangements between them.
- (d) Except as provided in subsections (a) through (c) of this section, the Purchasing Agent may require a performance bond or other form of security in the amounts considered adequate to protect the County's interests in supply, maintenance, service, or other procurements.
- (e) A bid bond or other form of security acceptable to the Purchasing Agent in an amount of at least 5% of the bid is required when construction contract bids are estimated to exceed \$50,000, and may be required by the Purchasing Agent in the amounts considered appropriate when bids or proposals are for other than construction contracts that exceed \$50,000.
- (f) The Purchasing Agent may accept, in lieu of bonds, other forms of security such as irrevocable letters of credit, pledge of securities backed by the full faith and credit of the federal government or State bonds or bank cashier's or treasurer's checks.
- (Code 1967, § 1-324; Bill No. 59-85, § 2)

### **§ 2-116. Purchase of supplies produced from recycled paper.**

- (a) (1) In this section, the following words have the meanings indicated.
- (2) "Recycled paper" means any paper product with at least 80% of its total weight consisting of secondary waste materials.
- (3) "Secondary waste materials" means fragments, products, or finished products of a manufacturing process that has converted a raw material into a commodity of real

economic value, and includes post-consumer waste of a total gross content of at least 80%.

(b) In purchasing cut paper for office and print shop use, the Purchasing Agent shall purchase recycled paper in volumes of at least 50% of all cut paper purchased in any fiscal year.

(c) In purchasing other paper products as supplies for the County, the Purchasing Agent shall, to the fullest extent practicably possible, purchase or approve for purchase only supplies that are manufactured or produced from recycled paper.

(Code 1967, § 1-328; Bill No. 59-85, § 2)

### **§ 2-117. Surplus, obsolete, and waste supplies.**

(a) At the times and in the form prescribed by the Purchasing Agent, using agencies shall submit reports to the Purchasing Agent showing stocks of all supplies that are no longer used or that have become obsolete, worn out, or scrapped.

(b) The Purchasing Agent may transfer the supplies to other using agencies instead of filling requisitions for the purchase of new and additional stock of the same or similar supplies.

(Code 1967, § 1-325; Bill No. 59-85, § 2)

### **§ 2-118. Disposition of supplies.**

(a) The Purchasing Agent may dispose of supplies that cannot be used by a using agency or that have become unsuitable for County use.

(b) In disposing of supplies, the Purchasing Agent shall authorize any of the following methods that the Purchasing Agent determines will result in the highest monetary return to or otherwise be in the best interest of the County:

- (1) competitive sealed bids;
- (2) trade-in or exchange for new supplies;
- (3) spot bid sales;
- (4) auction;
- (5) sale or transfer to any department, office, or other unit of County government or any agency of State government funded in whole or in part by County funds;
- (6) donation to an organization, institution, association, society, or corporation that is exempt from taxation under § 501(C)(3) or § 501(C)(4) of the Internal Revenue Code;
- (7) scrap, if the property is of minimal value or not appropriate for disposal by other methods; and
- (8) any other appropriate method designated in the Purchasing Manual.

(c) When use of the methods set forth in subsection (b) fails to result in a fair and reasonable monetary return, the Purchasing Agent may negotiate an open market contract.

Whenever the value of the surplus, obsolete, and waste supplies is estimated to exceed \$10,000, public notice shall be given prior to the sale in the manner prescribed in § 2-104(d).

(d) A County employee of the owning or disposing agency that is directly involved in the sale may not submit bids or offers in competition with the general public for the purchase of surplus, obsolete, and waste supplies.

(Code 1967, § 1-325; Bill No. 59-85, § 2; Bill No. 11-94, § 1)