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Section 802. County purchasing policies and practices.

The Chief Administrative Officer shall be the County Purchasing Agent and shall have the following purchasing functions which he or she may delegate to a Deputy Purchasing Agent in his or her office and under his or her supervision:

- (a) The making of all purchases, leases and contracts for all public works and services, and for all supplies, material and equipment for all offices, departments, institutions, boards, commissions and other agencies of the County government for which payment is to be made out of County funds.
- (b) If recommended by the Executive and approved by legislative act of the Council, the establishment and operation of a County warehouse for County supplies, material and equipment and the maintenance of a sufficient stock of stable commodities to meet the requirements of the County government.
- (c) The development and operation of a uniform and modern system of property accounting and stores control based upon perpetual inventory.
- (d) The establishment, after consultation with the appropriate County officials, of suitable specifications and standards for all supplies, materials and equipment to be purchased and the inspection of all deliveries to determine compliance with such specifications and standards.
- (e) The establishment and maintenance of a system of requisitions and receipts covering the furnishing of supplies, materials and equipment to the various offices, department, institutions, boards, commissions and other agencies of the County.
- (f) The establishment, with the approval of the Executive and by legislative act of the Council, of reasonable rules and regulations governing emergency purchases and contracts and those involving material, equipment or services of an unusual or noncompetitive nature which shall not be subject to competitive bidding.

ARTICLE VIII. CENTRALIZED PURCHASING

Section 801. Responsibility for purchasing.

The Chief Administrative Officer shall be responsible to the Executive for the execution of the County purchasing policies established in this Article.

Editor's note—An amendment to § 801 proposed by Res. No. 125, 1996 was approved at an election held Nov. 5, 1996, and became effective Dec. 5, 1996.

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- (g) The sale of surplus, old and waste supplies, materials and equipment of the County, or the transfer of the same between offices, departments or other agencies of the County government.
- (h) The making of purchases for a stores revolving fund, which the Council is hereby authorized to establish, and of making sales from the stores to using agencies of the County.

Editor's note—An amendment § 802 proposed by Res. Nos. 125 and 126, 1996 was approved by an election held Nov. 5, 1996, and became effective Dec. 5, 1996.

Section 803. Application of this article to departments and agencies under State law.

The provisions of this Article shall apply to the Department of Education and other departments and agencies created by or operating under State law to the extent requested by them or as permitted by law. In the interests, however, of promoting uniformity and of effecting maximum savings for all purchases out of County funds, the purchasing facilities of the County government shall always be available to such departments and agencies, and their use shall be encouraged.

Section 804. Competitive bidding.

The Purchasing Agent shall employ competitive bidding in accordance with policies established by the Council.

Section 805. Conformity with budget limitations and allotments.

No deliveries of supplies, materials or equipment shall be made to any officer, department, board, institution, commission or agency of the County government in excess of the available appropriation or allotment therefor, and except for small purchases in an amount to be established from time to time by ordinance, no payment shall be made out of County funds for the purchase of supplies, materials or equipment, unless the Director of Finance shall first certify that the funds for the designated purpose are available.

Editor's note—An amendment to § 805 proposed by Res. No. 123, 1988 was approved at an election held Nov. 8, 1988, and became effective Dec. 8, 1988.

Section 806. Contract execution.

All contract bid forms and all contracts shall be approved by the County Solicitor as to form and legality. Following such approval, all contracts shall be signed in behalf of the County by the Executive or his or her designee. A complete file of all contract bid forms and all contracts shall be maintained in the office of the County Purchasing Agent. A copy of each signed contract shall be forwarded promptly to the Director of Finance.

Editor's note—An amendment to § 806 proposed by Res. No. 126, 1996 was approved at an election held Nov. 5, 1996, and became effective Dec. 5, 1996.

Section 807. Cooperative purchasing.

As appropriate, the Purchasing Agent may undertake programs involving joint or cooperative purchases with other public jurisdictions within the State, or with the State of Maryland, and with other public entities.

Editor's note—An amendment to § 807 proposed by Res. No. 121, 1996 was approved at an election held Nov. 5, 1996, and became effective Dec. 5, 1996.

Section 808. Furthering legislation.

The Council, upon recommendations received from the Executive, or if he or she fails to do so, shall enact furthering legislation, not inconsistent with the provisions of this Charter or with the public general laws of this State, to implement the purchasing policies herein established. Such legislation shall provide for regulating the practices of the County Purchasing Agent and other officers, agents and employees of the County in regard to the issuance of inquiries, the receipt of bids; the placement of orders and other matters relating to the making of purchases and the award of contracts. Such legislation shall also prescribe procedures and establish minimum dollar amounts for competitive bidding.

Editor's note—An amendment to § 808 proposed by Res. No. 135, 1982 was approved at an election held Nov. 2, 1982, and became effective Dec. 2, 1982. An amendment proposed by Res. No. 126, 1996 was approved at an election held Nov. 5, 1996, and became effective Dec. 5, 1996.

ARTICLE IX. GENERAL PROVISIONS

Section 901. Conflict of interest.

(a) *Prohibitions.* No officer or employee of the County, whether elected or appointed, shall in any manner whatsoever be interested in or r

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ceive any benefit of the profits or emoluments of any contract, job, work, or service for the County. No such officer or employee shall accept any service or thing of more than nominal value, directly or indirectly, from any person, firm or corporation having dealings with the County, upon more favorable terms than those granted to the public generally, nor shall he or she receive, directly or indirectly, any part of any fee, commission or other compensation paid or payable by the County, or by any person in connection with any dealings with the County, or by any person in connection with any dealings with or proceedings before any branch, office, department, board, commission or other agency of the County. No such officer or employee shall directly or indirectly be the broker or agent who procures or receives any compensation in connection with the procurement of any type of bonds for County officers, employees or persons or firms doing business with the County. No such officer or employee shall solicit or accept any compensation or gratuity in the form of money or otherwise for any act or omission in the course of his or her public work; provided, however, that the head of any department or board of the County may permit an employee to receive a reward publicly offered and paid for, for the accomplishment of a particular task.

(b) *Rules of construction; exceptions by Council.* The provisions of this Section shall be broadly construed and strictly enforced for the purpose of preventing officers and employees from securing any pecuniary advantages, however indirect, from their public associations, other than their compensation provided by law.

In order, however, to guard against injustice, the Council may, by resolution, specifically authorize any County officer or employee to own stock in any corporation or to maintain a business in connection with any person, firm or corporation dealing with the County, if on full public disclosure of all pertinent facts to the County Council by such officer or employee, the Council shall determine that such stock ownership or connection does not violate the public interest.

The County Council may, by ordinance, delegate to the Howard County Ethics Commission the

power to make such determinations and to authorize the ownership or connection. Any ordinance which delegates this power shall provide for procedures including a public hearing, and shall establish criteria for determining when the ownership or connection does not violate the public interest.

(c) *Penalties.* Any officer or employee of the County who willfully violates any of the provisions of this Section shall forfeit his or her office, or shall suffer such other penalty as provided by law. If any person shall offer, pay, refund or rebate any part of any fee, commission, or other form of compensation to any officer or employee of the County in connection with any County business or proceeding, he or she shall, on conviction, be punishable by imprisonment for not less than one or more than six months or a fine of not less than \$100.00 or more than \$1,000.00, or both. Any contract made in violation of this Section may be declared void by the Executive or by resolution of the Council. The penalties in this Section shall be in addition to all other penalties provided by law.

Editor's note—An amendment to § 901(b) proposed by Res. No. 16, 1990 was approved at an election held Nov. 6, 1990, and became effective Dec. 6, 1990. Amendments proposed by Res. Nos. 122, 123, and 126, 1996 were approved at an election held Nov. 5, 1996, and became effective Dec. 5, 1996.

SUBTITLE 1. PURCHASING*

Sec. 4.100. Short title.

This subtitle shall be known and may be cited as the "purchasing code" of Howard County. (C.B. 1, 1983; C.B. 39, 1994)

Sec. 4.101. Purpose.

The purpose of this subtitle is:

- (a) To implement and make effective the purchasing policies provided by article VIII of the Howard County Charter;
- (b) To promote uniformity in purchasing procedures in various user agencies to effect maximum savings for all purchases out of county funds;
- (c) To encourage public confidence in public procurement procedures;
- (d) To foster effective broad-based competition within the free enterprise system;
- (e) To make purchases out of county funds from firms and individuals who do not engage in unlawful discriminatory employment practices;
- (f) To foster equal business opportunity for businesses owned by minority individuals, women and individuals with disabilities;
- (g) To promote the purchase of supplies, materials, equipment and services best suited for the needs of each user agency.

Except as otherwise provided by law, this subtitle shall be applicable to all purchases and contracts for supplies, materials, equipment and contractual services for any county department or agency, and for any state agency authorized by law to utilize the county procurement system. (C.B. 1, 1983; C.B. 78, 1993, § 1; C.B. 39, 1994; C.B. 78, 1995)

*Editor's note—Section 1 of C.B. 1, 1983, repealed former subtitle 1, §§ 4.100—4.118, derived from C.B. 24, 1969, and C.B. 51, 1977; and § 2 enacted a new subtitle 1, §§ 4.100—4.111

Sec. 4.102. Definitions.

For purposes of this subtitle, the following definitions shall apply:

(a) *Capital Project*: Any physical public betterment or improvement and any preliminary studies and surveys relative to it.

(b) *Construction*: The process of building, altering, repairing, improving or demolishing any public structure or building, or other public improvements of any kind to any public real property. It does not include the routine operation, routine repair or routine maintenance of existing structures, buildings or real property.

(c) *Contract*: Any type of county agreement for the purchase or disposal of supplies, services or construction, including supplemental agreements to original contracts.

(d) *Contract Modification*: Any written alteration in the price or any other provision of an existing contract whether initiated unilaterally by the county or by mutual action of the parties to the contract. It includes change orders, contract amendments and supplemental agreements. Contract modification does not include a contract amendment required by law.

(e) *Contract review committee (CRC)*: A standing executive committee established to review purchasing actions.

(f) *Contractual Services*: Services required by the county, but not furnished by its own employees.

(g) *Cooperative Purchasing*: Procurement conducted by, or on behalf of, more than one public procurement agency.

(h) *County*: Howard County, Maryland, including the county council and any department, commission, council, board, bureau, committee, institution, authority, agency, government corporation or official of the Howard County government.

(i) *County Purchasing Agent*: The Chief Administrative Officer as set forth in Article VIII of the Howard County Charter.

(j) *Debarment*: The disqualification of a person from the award of a contract by the county for a specified period of time of a year or more. See Section 4.117 "Vendors and Purchasers".

(k) *Disabled Individual; Individual With Disabilities*: An individual who has a physical or mental impairment that substantially limits one or more major life activities or has a record of such an impairment.

(l) *Disabled Business Enterprise (DBE)*: A business enterprise:

- (1) Which is:
 - (i) At least 51% owned by one or more individuals with disabilities; or,
 - (ii) In the case of any publicly owned corporation, at least 51% of the stock of which is owned by one or more individuals with disabilities; and
- (2) Whose general management and daily business affairs and essential productive operations are controlled by one or more individuals with disabilities; and
- (3) Which has been certified by the equal business opportunity commission as a disability business enterprise.

(m) *Emergency*:

- (1) The development of a dangerous condition caused by a breakdown in machinery or a threatened termination of essential services; or
- (2) Any unforeseen circumstance causing curtailment or diminution of an essential service or which presents an imminent threat to public safety, welfare or the environment.

(n) *Formal Bidding*: A process pursuant to Section 4.107 of this subtitle for procuring supplies or services costing \$30,000 or more or for disposing of surplus supplies valued at \$30,000 or more.

(o) *Gratuity*: A payment, loan, subscription, advance, deposit of money, service or anything of any present or future monetary value with more

favorable terms than those granted to the public generally, unless consideration of equal or greater value is received.

(p) *Informal Bidding*: A process pursuant to Section 4.109 of this subtitle for the procurement of supplies or services costing less than \$30,000 or for disposing of surplus supplies valued at less than \$30,000.

(q) *Joint Venture*: An association of two or more individuals, partnerships, corporations, or combinations thereof, founded to carry on a simple business activity.

(r) *Minority Business Enterprise (MBE)*: A business enterprise:

- (1) Which is:
 - (i) At least 51% owned by one or more minority individuals; or
 - (ii) In the case of any publicly owned corporation, at least 51% of the stock of which is owned by one or more minority individuals; and
- (2) Whose general management and daily business affairs and essential productive operations are controlled by one or more minority individuals; and
- (3) Which has been certified by the equal business opportunity commission as a minority business enterprise.

(s) *Minority individual*:

An individual who is:

- (1) African American;
- (2) American Indian;
- (3) Asian American;
- (4) Eskimo or Aleutian;
- (5) Far Eastern;
- (6) Female, regardless of race or ethnicity;
- (7) Hispanic American;
- (8) Near Eastern; or
- (9) Physically or mentally disabled.

(t) *Person*: An individual or a business.

(u) *Procurement*: The buying, purchasing, renting, leasing or otherwise obtaining of any supplies, services or construction, including such component functions as description of requirements, solicitation and selection of sources, preparation and award of contract.

(v) *Professional Services*: The services of attorneys, physicians, architects, engineers, or other individuals or organizations providing services of a similar professional nature which require specialized knowledge and skills and involve the application of specialized knowledge and intellectual skills in the performance of the services.

(w) *Purchasing*: Providing all the materials and services required by the county, beginning with a determination of needs and requirements and usually ending with disposal.

(x) *Request for Proposal*: All documents, including those attached or incorporated by reference, utilized for soliciting proposals.

(y) *Responsive Bidder*: A person who has submitted a written offer for the furnishing of supplies and/or services in conformity with the specifications and conditions included in the solicitation.

(z) *Responsible Bidder*: A person who has the capability in all respects to fully perform the contract requirements and who has the integrity and reliability to assure good-faith performance.

(aa) *Services*: The furnishing of labor, time or effort by a contractor, not involving the delivery of specific end products other than reports which are incidental to the required performance. This term includes "professional services" but does not include employment agreements.

(ab) *Specifications*: Any description of the physical or functional characteristics, or of the nature of, a supply or service.

(ac) *Supplies*: All property, including but not limited to equipment, parts, material, printing, insurance and leases on real and personal property, excluding acquisition of a permanent interest in real property for a public use.

(ad) *Surplus Supplies*: Any supplies no longer having any use to the holding agency. This includes obsolete supplies, scrap materials and nonexpendable supplies that have completed their useful life cycle.

(ae) *Suspension*: The disqualification of a person from the award of a contract by the County for a temporary period of time, less than 1 year, pending the completion of an investigation or during any legal proceedings. See Section 4.117 "Vendors and Purchasers".

(af) *User Agency*: Any agency of the county, including the county council, and any department, commission, council, board, bureau, committee, institution, authority, agency, government corporation or other establishment or official of the Howard County government. "User agency" also means any entity which, by state law, is authorized and elects to follow local purchasing laws or which, by state law, is required to follow local purchasing laws.

(ag) *Woman Business Enterprise (WBE)*: A business enterprise:

- (1) Which is:
 - (i) At least 51% owned by one or more women; or,
 - (ii) In the case of any publicly owned corporation, at least 51% of the stock of which is owned by one or more women; and
- (2) Whose general management and daily business affairs and essential productive operations are controlled by one or more women; and
- (3) Which has been certified by the equal business opportunity commission as a women business enterprise.

(C.B. 1, 1983; C.B. 62, 1988; C.B. 5, 1989; C.B. 77, 1993; C.B. 78, 1993; C.B. 38, 1994; C.B. 39, 1994; C.B. 6, 2003, §§ 2, 3)

Sec. 4.103. Authority and duties of the county purchasing agent.

In addition to those functions and responsibilities listed in Title VIII of the Howard County Charter or indicated elsewhere in this subtitle, the Howard County Purchasing Agent:

- (a) Shall have the powers, duties and authority relating to the procurement of supplies, services and construction and the management, control, sale and disposal of supplies;
- (b) Shall develop and distribute the procurement policy of the county, subject to the approval of the County Executive;
- (c) Shall serve as the principal contracting officer of the county;
- (d) Shall develop and implement an equal business opportunity program, subject to the approval of the County Executive and the County Council and incorporating the provisions of Section 4.122 of this Subtitle, which is designed to assure the participation of minority business enterprises, woman business enterprises and disabled business enterprises in the purchasing activities of the County;
- (e) Shall prepare a purchasing manual governing the operating procedures of the county purchasing system;
- (f) Shall distribute and enforce this subtitle and the purchasing manual and the equal business opportunity program.
- (g) Shall sell, trade, exchange or otherwise dispose of surplus supplies belonging to the county.
- (h) Shall maintain a bulletin board in the approximate area of the main purchasing office;
- (i) Shall submit to the County Executive and the County Council an annual report of the work of the purchasing office which shall include a summary of the progress and efforts made by the County in achieving the goals and measures set forth in this Subtitle;
- (j) Shall debar bidders declared irresponsible pursuant to Section 4.117 "Vendors and Purchasers" of this subtitle;
- (k) Shall submit to the County Executive and the County Council a monthly report of all emergency purchases of \$1,000 or more, indicating the amount of such purchases and an explanation of the circumstances;
- (l) May delegate authority to designees;
- (m) May prescribe forms to be used in the requisitioning and ordering of supplies, services and construction;
- (n) May require statistical data from using agencies;
- (o) May cancel invitations to bid, requests for proposal or other solicitations, or reject all bids, parts of bids, or bids for any one or more supplies or services included in a proposed contract when, in the judgment of the purchasing agent, the public interest would be served;
- (p) May waive the competitive bidding requirements for small purchases and sales involving less than \$5,000;
- (q) May authorize the awarding of a single-source contract;
- (r) May establish and maintain programs for inspection, testing and acceptance of supplies and services, including a compliance monitoring program;
- (s) May suspend bidders pending investigation of possible debarment;
- (t) May undertake programs involving joint or cooperative purchases with other public jurisdictions at all levels of government.
- (u) Shall carry out the procurement policies set forth in subtitle 5 "Purchasing of products made from recycled materials" of this title.
- (v) Shall submit to the County Council a semi-annual report of all purchases awarded through formal bidding procedures. The report shall list the contracts awarded during the reporting period, the

contract amounts, the lowest bid price, the name of the successful contractor and subcontractors, and the contracts awarded in which security requirements have been waived.

- (w) Shall include in the report required under section 4.103(i) of this subtitle a listing of all contract modifications, change orders or adjustment in prices described in section 4.118(b)(4) of this subtitle.
 - (x) Shall be responsible for the final decisions on bid protests.
- (C.B. 1, 1983; C.B. 5, 1989; C.B. 77, 1993; C.B. 78, 1993; C.B. 38, 1994; C.B. 39, 1994; C.B. 6, 2003, § 2)

Sec. 4.104. Rules and procedures; purchasing manual.

(a) *Preparation:* The county purchasing agent shall prepare a purchasing manual containing the necessary rules, regulations and procedures to implement:

- (1) This subtitle;
- (2) Subtitle 5 "Purchasing of products made from recycled materials" of this title;
- (3) Subtitle 6 "Equal business opportunity" of this title;
- (4) Article VIII of the Howard County Charter; and
- (5) Applicable laws of Maryland regarding purchasing.

The county purchasing agent shall revise the purchasing manual at least once every 3 years.

(b) *Approval by County Council:* The purchasing manual shall be submitted with the approval of the County Executive to the County Council for its approval by resolution. Amendments to the purchasing manual shall also be subject to such approval before they take effect. Obvious errors, forms, and instructions for use of such forms contained in the purchasing manual shall not be considered a part of the purchasing manual.

(c) *Enforcement:* After approval of the purchasing manual by the County Council (or any amendments), the county purchasing agent shall distrib-

ute it to all county user agencies. The county purchasing agent shall enforce the provisions of the purchasing manual.
(C.B. 1, 1983; C.B. 33, 1992; C.B. 39, 1994; C.B. 6, 2003, § 2)

Sec. 4.105. Advisory committee on standardization.

There shall be an advisory committee on standardization to develop county-wide standards for supplies and services used by more than one agency of county government. The advisory board shall be composed of the county purchasing agent and the directors of each department or the directors' designees. The county purchasing agent shall be the chairperson of the committee.

Editor's note—C.B. 39, § 1, effective Sep. 9, 1994, added § 4.105 and renumbered and amended § 4.105 as § 4.106, and also renumbered and amended § 4.106 as § 4.109. Prior to adoption of said bill, § 4.105 pertained to competitive bidding; purchases and sales over \$15,000 and derived from C.B. 1, 1993; C.B. 118, 1989; C.B. 77, 1993; C.B. 38, 1994; § 4.106 pertained to exemptions from formal competitive bidding and derived from C.B. 1, 1983; C.B. 5, 1989; C.B. 77, 1993; C.B. 37, 1994 and C.B. 38, 1994.

Sec. 4.106. Procurement methods; multi-step process; waivers.

(a) *Formal bidding exceptions:* All county procurement contracts shall be awarded by formal bidding pursuant to section 4.107, except as otherwise provided in the following sections:

- (1) Section 4.108 "Competitive sealed proposals";
- (2) Section 4.109 "Informal bidding";
- (3) Section 4.110 "Sole source purchases";
- (4) Section 4.111 "Emergency purchases";
- (5) Section 4.112 "Expedited procurement";
- (6) Section 4.113 "Professional services";
- (7) Section 4.114 "Purchases requiring confidentiality";
- (8) Section 4.115 "Contracts with other government agencies";
- (9) Section 4.116 "Procurement card transactions".

(b) *Purchasing manual*: The purchasing manual shall include detailed procedures regarding the bidding process and all alternate procurement methods, authorized pursuant to this subtitle.

(c) *Multi-step purchasing methods*:

- (1) Multi-step purchasing is a method of purchasing which progresses in increments from informational requests to final solicitation approval/purchasing.
- (2) Step 1 involves a formal solicitation requesting information, technical data, or samples. The purchasing office and the user agency evaluate the respondents' data to determine acceptable vendors. In step 2 the acceptable vendors are requested to provide price quotations, proposals or bids.
- (3) A method may be used under which both price and technical proposals are submitted at the same time in separate sealed envelopes. However, the price information may not be reviewed until the technical evaluation is complete and the vendor found acceptable by the purchasing office and the user agency. The sealed pricing and bid information from vendors found unacceptable during the technical evaluation shall be returned unopened to the vendors.
- (4) In all other respects, multi-step sealed purchasing methods shall be treated in the same ways as other purchasing methods.

(d) *Waiver Provisions*: At the sole discretion of the county purchasing agent, the informal competitive bidding requirements may be waived for purchases or sales involving less than \$5,000.

- (1) The county purchasing agent, with the approval of the county executive, may waive formalities in competitive bidding as the interest of the county may require.
- (2) The County Council may, by resolution, authorize the county purchasing agent to waive the formal competitive bidding requirements of this subtitle for any single

purchase or sale if, in the judgment of the County Council, the waiver will best serve the interest of the county.

(C.B. 6, 2003, § 2)

Note—See editor's note following § 4.105.

Sec. 4.106A. Contract review committee.

(a) *Composition*. The Contract Review Committee (CRC) shall be composed of:

- (1) The county chief administrative officer or designee;
- (2) The county auditor or designee; and
- (3) The director of the Department of Finance or designee.

(b) *Rules of Procedure*. The CRC is authorized to adopt rules of procedure in considering matters within its authority.

(c) *Authority*. CRC approval by majority vote is required for the following:

- (1) A sole-source contract greater than \$100,000; and
- (2) A procurement contract which receives less than three responsive bids and exceeds \$1,000,000.

(C.B. 6, 2003, § 2; C.B. 32, 2003, § 1)

Sec. 4.107. Formal bidding; purchases and sales of \$30,000 or more.

(a) Except as provided otherwise by this subtitle, the purchase of supplies or services involving an expenditure of \$30,000 or more shall be accomplished through a formal bid procedure, with the contract being awarded to the lowest responsive, responsible bidder.

(b) Except as provided otherwise by this subtitle, the sale of surplus supplies with an estimated value of \$30,000 or more shall be accom-

plished through a formal bid procedure, with the contract being awarded to the highest responsive, responsible bidder.

(c) No contract, sale or purchase shall be subdivided to avoid the requirements of this section.

(d) Procurement of services and supplies related to management of the Howard County Police and Fire Employees Retirement Plan and the Howard County Retirement Plan shall be exempt from the bidding requirements of the Howard County Purchasing Code.

(C.B. 21, 1995; C.B. 6, 2003, § 2)

Editor's note—C.B. 39, § 1, effective Sep 9, 1994, amended former § 4 105 subsection (a) to be renumbered as § 4 107 entitled "formal bidding; purchases and sales of \$15,000 or more". Said former subsection (a) of § 4 105 pertained to competitive bidding required and derived from C.B. 1, 1983; C.B. 118, 1989; C.B. 77, 1993.

Sec. 4.108. Competitive sealed proposals.

(a) When the county purchasing agent determines that competitive sealed bidding is not practical or not advantageous to the county, a contract may be awarded based upon competitive sealed proposals.

(b) Public notice of the requests for proposals shall be given in the same manner as public notice for competitive sealed bids.

(c) The request for proposals may 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.

(d) Each competitive sealed proposal may be negotiated to obtain the best offer from the supplier.

(C.B. 39, 1994; C.B. 6, 2003, § 2)

Sec. 4.109. Informal bidding.

(a) All purchases of supplies or services involving less than \$30,000 are considered small purchases.

(b) All sales of surplus supplies with an estimated value of less than \$30,000 are considered small sales.

(c) All small purchases and small sales from \$1,000 up to \$30,000 are subject to informal competitive bidding. A small purchase contract shall be awarded to the lowest responsive, responsible bidder. A small sale contract shall be awarded to the highest responsive, responsible bidder. In conducting the informal competitive bidding the county purchasing agent shall use procedures set forth in the purchasing manual.

(d) No contract, purchase or sale shall be subdivided to avoid the requirements of this subsection.

(C.B. 28, 1998; C.B. 6, 2003, § 2)

Note—See editor's note following § 4 105.

Sec. 4.110. Sole-source purchase.

(a) When the county requires supplies or services which are only available through one source, the county purchasing agent may award a contract for such supplies and services without competition.

(b) Before authorizing a sole-source purchase, the county purchasing agent shall have a written justification prepared explaining that the specifications for supplies or services are not overly restrictive for the county's needs, that only one supplier of the particular supplies or services exists and that the sole source purchase serves the best interests of the county.

(c) Sole source purchases may be obtained by seeking the supplier's best offer through negotiation.

(d) Any sole source contract between the county and any person which contains an option or options to renew which would have the effect of extending the term of the contract beyond 3 years shall be sent to the county council for approval by a resolution prior to the beginning of the fourth year of the contract and each subsequent renewal option, if any, thereafter.

Editor's note—C.B. 39, § 1, effective Sep 9, 1994, amended former § 4 105 subsections (b) and (c) to be renumbered as § 4 110 entitled "sole-source purchase" and § 4 111 entitled "emergency purchases". Said former subsections (b) and (c) pertained to same subject matter and derived from C.B. 1, 1983; C.B. 118, 1989; C.B. 77, 1993.

Sec. 4.111. Emergency purchases.

(a) If an emergency occurs during regular business hours, the user agency shall immediately notify the county purchasing agent, who shall either purchase the required supplies or services from a responsible vendor or authorize the agency to do so.

(b) If an emergency occurs at times other than regular business hours, the user agency may purchase the required supplies or services directly. Whenever practical, the user agency shall first secure competitive telephone bids from responsible bidders and purchase the required supplies or services from the lowest responsible bidder meeting specifications.

(c) If a purchase is made at times other than regular business hours, the user agency shall provide written backup material to the county purchasing agent on the next regular county business day following the purchase.

Note—See editor's note following § 4.110

Sec. 4.112. Expedited procurement.

(a) *When Used*: An expedited procurement may be used in a situation which is not an emergency but where prompt action best serves the public interest, including but not limited to avoiding potential loss of federal or state revenues to the county if rapid procurement actions are not taken, or to situations that, if prompt action were not taken, would have an adverse impact on the economic welfare of the county or important economic development in the county.

(b) *Advance Approval by County Purchasing Agent*: Expedited procurements require the prior written approval of the county purchasing agent.

(c) *Use of Competitive Process When Practicable*: To the extent practicable, the competitive process of this subtitle shall be utilized when making an expedited procurement, except that the county purchasing agent may:

- (1) Waive the public notice requirements of newspaper advertising; or
- (2) Justify in writing a noncompetitive selection by explaining how the expedited pro-

curement would be in the best interests of the county and explaining why a competitive solicitation cannot be made:

- (i) Due to insufficient time between the county's first knowledge of the need to make the procurement and the date when the contract must be performed; or
- (ii) For such other reasons that preclude the use of competition.

(C.B. 39, 1994)

Sec. 4.113. Professional services.

(a) *Use of Competitive Process Where Practicable*: Except as provided in subsection (b) below of this section, the purchase of professional services shall be made through a competitive bidding process pursuant to the provisions of this subtitle, whenever practical. When it is not practical to purchase professional services using one of the methods authorized in this subtitle, then the user agency shall consult with the county purchasing agent to select a provider of professional services by using another method which will provide as much competition as is practical, given the nature of the services and the circumstances under which the services are needed.

(b) *Selection of Architects and Engineers*: Architectural and engineering professional services shall be procured on the basis of qualifications and competitive negotiations in accordance with the procedures set forth in the purchasing manual governing architectural and engineering services.

(c) *Exemption for County Council*: The county council is exempt from the competitive bidding provisions of this subtitle when awarding professional service contracts. The awarding of contracts by the council for professional services shall be the responsibility of the executive secretary to the council at the direction and with the approval of the council.

(C.B. 1, 1983; C.B. 5, 1989; C.B. 77, 1993; C.B. 38, 1994; C.B. 39, 1994)

Sec. 4.114. Purchases requiring confidentiality.

(a) *When Used:* This process may be used for the procurement of services that are confidential in nature, such as, but not limited to:

- (1) Legal services needed in conjunction with threatened or pending litigation;
- (2) Appraisal of property to be acquired; and
- (3) Collective bargaining.

(b) *Use of Competitive Process Where Practicable:* Whenever practical, the purchase of services requiring confidentiality shall be made through a competitive bidding process pursuant to the provisions of this subtitle. However, if confidentiality is required, the advertising and public notice provisions of this subtitle may be waived. If there is only one respondent, or a single source, the county purchasing agent may authorize the user agency to negotiate the best offer.
(C.B. 39, 1994)

Sec. 4.115. Contracts with other government agencies.

When used: This process is used:

- (a) When a pricing advantage may be obtained by purchasing goods or services through contracts or surplus lists established by other governmental purchasing/supply agencies, including federal, state, and local government agencies; or
- (b) When it is to the county's advantage to contract with a state or federal agency created to assist local governments with particular types of projects.
(C.B. 39, 1994; C.B. 6, 2003, § 2)

Sec. 4.116. Procurement card transactions.

Designated county employees shall be authorized to use a procurement card (similar to a credit card) for minor purchases of a designated amount. Procurement cards shall not be used as a means of avoiding standard purchasing procedures (i.e., dividing a transaction into several smaller transactions). Requisitions for procure-

ment card transactions are not required. Card usage shall be in compliance with Howard County policy and procedure.
(C.B. 6, 2003, § 2)

Editor's note—Section 1 of Council Bill 6, 2003, adopted April 7, 2003, renumbered former §§ 4.116—4.122 as §§ 4.117—4.123, as set forth below. Section 2 of that bill added a new § 4.116, as set forth above.

Sec. 4.117. Vendors and purchasers.

(a) *Bidders' List:* The county purchasing agent shall maintain a list of prospective vendors for supplies and services. Prospective vendors shall complete an application form supplied by the county purchasing agent before their names are added to the bidders' list.

(b) *Criteria To Be Considered in Determining "Lowest Responsible Bidder" and "Highest Responsive, Responsible Bidder."*

- (1) The ability, capacity, organization, facilities and skill of the bidder to perform the contract or provide the service required;
- (2) The ability of the bidder to perform the contract or provide the service promptly, within the time specified and 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 bidder's previous compliance with laws and regulations relating to the contract or service;
- (6) Whether or not the bidder is in arrears to the county on debt or contract;
- (7) Whether or not the bidder is a defaulter on surety to the county;
- (8) Whether or not the bidder is delinquent in county taxes or assessments;
- (9) Whether or not the bidder has violated or attempted to violate the fair employment practices described in section 4.119, "Ethics and Fair Employment Practices";

- (10) The resale value and life cycle costs of a proposed purchase;
- (11) The net cost to the county of the goods and services;
- (12) The ability of the bidder to provide future maintenance and service for the use of the supplies;
- (13) The sufficiency of the financial resources of the bidder to perform the contract;
- (14) Other information the county purchasing agent believes to have a bearing on the decision to award the contract.

(c) *Suspension*: The county purchasing agent may suspend a person from:

- (1) Receiving invitations for bids, or requests for proposals; and
- (2) Receiving the award of a contract;

for up to 1 year pending the completion of an investigation, or during any legal proceedings concerning conduct that might lead to debarment.

(d) *Reasons for Declaring a Bidder Irresponsible*: The county purchasing agent may declare a bidder irresponsible if the bidder:

- (1) Fails, upon written request, to provide proof of his/her responsibility; or
- (2) Has, as a vendor to or contractor with the county, repeatedly made slow or unsatisfactory delivery of supplies or services; or
- (3) Has violated any provisions of this subtitle or other subtitles of this title; or
- (4) Has, within the previous 12 months, been found by a court of competent jurisdiction to have engaged in an unlawful employment practice as described in Section 4.119 "Ethics and Fair Employment Practices" of this subtitle; or
- (5) Has offered a gratuity to an official or employee of the county.

(e) *Debarment*: If the county purchasing agent determines a bidder is irresponsible, the county purchasing agent shall debar the person from bidding on county contracts for at least 1 year. A

determination to debar may be based on the debarment list of another governmental entity. The county purchasing agent shall give the debarred bidder a written statement detailing the reasons for debarment. He/she shall also advise the debarred bidder of the right to appeal.

(f) *Appeal of Debarment*: A person debarred from bidding may, within 30 days of debarment, appeal the debarment to the Howard County Board of Appeals. The board of appeals shall hear the appeal according to its rules of procedure. (C.B. 1, 1983; C.B. 38, 1994; C.B. 39, 1994; C.B. 6, 2003, §§ 1, 2)

Sec. 4.118. Administration.

(a) *Certification of Availability of Funds*: No order in excess of \$1,000 for the purchase of supplies or services shall be issued unless and until the Director of Finance has first certified that funds for the designated purpose are available.

(b) *Contracts*:

(1) *Prohibition*. Cost-plus-a-percentage-of-cost contracts are 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-a-percentage-of-cost contracts.

(2) *Preferences*. Subject to the limitations of this section, any type of contract that will promote the best interests of the county may be used. However, preference shall be given to types of contracts as follows:

- (i) Fixed-price;
- (ii) Cost-reimbursement;
- (iii) Lump sum.

(3) *Accounting*. Except for a firm fixed-price contract, a contract type may not be used unless the county purchasing agent determines that the contractor's accounting system:

- (i) Will permit timely development of all necessary cost data in the form required by the specific type of contract contemplated; and

- (ii) Is adequate to allocate costs in accordance with generally accepted accounting principles.
 - (4) *Contract modifications.* Every contract modification, change order, or adjustment in contract price initiated by a government agency relating to contracts for services, supplies or construction projects shall be subject to the prior written approval of the county purchasing agent. If the modification, change or adjustment initiated by a government agency increases the contract price by 15% or more of the contract award amount, the county purchasing agent shall not execute the modification, change or adjustment unless all of the following conditions are met:
 - (i) The purchasing office has a written plan that sets forth internal control procedures;
 - (ii) Certification by the director of finance that sufficient funds are available;
 - (iii) The purchasing office files with the county auditor the contract in which the price has been increased along with written justification supporting the need for the modification, change or adjustment; and
 - (iv) The purchasing office retains for audit purposes documents relating to the modification, change or adjustment.
 - (5) All contract forms shall be approved by the office of law as to form and legal sufficiency and by the director of finance for sufficiency of funds.
 - (6) All contracts shall be signed on behalf of the county by the county executive or his designee. A copy of each contract shall be sent to the director of finance immediately after it is signed.
 - (7) All contracts shall contain a clause, to be signed by the contractor, stating that the person has read and understands the provisions of the Howard County Charter and Howard County law dealing with conflicts of interest.
 - (8) All contracts shall be accompanied by the following statements to be signed under oath by the vendor or purchaser:
 - (i) A statement that he/she has not been a party to an agreement to bid a fixed or uniform price.
 - (ii) A statement that he/she has not offered nor will offer any gratuity to any county official or employee.
 - (iii) A statement that he/she has not violated any of the fair employment provisions of Section 4.119 "Ethics and Fair Employment Practices" of this subtitle.
- (c) *Public Access to Bidding Materials:* Documents which are open to inspection pursuant to subtitle 6, title 10 of the state government article of the Annotated Code of Maryland are subject to the following:
- (1) Proposals submitted in response to requests for proposals and other specialized procurement methods shall be open for public inspection after award has been made or a decision has been made to cancel the procurement.
 - (2) Other documents shall be available for public inspection upon written request during normal business hours.
- (d) *Capital Projects:*
- (1) The director of public works shall determine whether a proposed capital improvement project is to be constructed by a contractor or by the county's employees.
 - (2) If the director of public works determines that a capital project will be constructed by a contractor, the county purchasing agent shall secure competitive bids pursuant to this subtitle.
 - (3) No award of a capital contract shall be made without the written approval of the director of public works, the director of finance, and the county executive.

(4) If plans and specifications are changed during construction necessitating the county's spending more than the amount appropriated for the project, the county council shall first approve the changed or additional construction by means of a supplementary appropriation ordinance of an interproject transfer of appropriation ordinance.

(e) *Security on Procurement Contracts:*

(1) *Bid deposit:*

(i) *Construction contracts.* For construction contracts with an estimated value exceeding \$50,000 but not exceeding \$100,000, the county purchasing agent may require a bid deposit in an amount equal to 2% of the contract value. For construction contracts exceeding \$100,000, the county purchasing agent may require a bid deposit in an amount equal to 5% of the contract value.

(ii) *Supply and service contracts.* No bid deposit shall be required by the county purchasing agent when contracting for the purchase of supplies or services. However, the county purchasing agent may require a bid deposit in an amount deemed adequate when contracting for supplies that are unique or customized to county specifications, or when contracting for services of a noncompetitive nature.

(2) *Performance and payment security:*

(i) *Construction contracts.* When contracting for construction work, the following shall apply:

a. *Performance security.* For every construction contract with an estimated value exceeding \$50,000, the county purchasing agent may require performance security in an amount deemed adequate.

b. *Payment security.* For every construction contract with an esti-

mated value exceeding \$50,000, the county purchasing agent shall require payment security in an amount equal to 100% of the contract amount.

c. *Release of security.* When 70% of a construction project has been completed, the purchasing agent may reduce the amount of the performance and payment security required to 50% of the contract amount and retain the remaining 50% of the security to ensure completion of the project and payment of subcontractors.

(ii) *Supply contracts.* When contracting for supplies which are unique or customized to county specifications, the purchasing agent may require a performance or payment security, or both, in an amount deemed adequate by the purchasing agent.

(iii) *Service contracts.* When contracting for services of a noncompetitive nature, the purchasing agent may require a performance or payment security, or both, in an amount deemed adequate by the purchasing agent.

(f) *Inspections:*

(1) The county purchasing agent may require tests of samples and deliveries in order to determine quality in relation to specifications. These tests may be performed in the facilities of a user agency or in an outside laboratory.

(2) User agencies shall inspect deliveries of supplies or furnishing of services to assure conformance with the specifications of the purchase order or contract.

(3) The county executive, upon the recommendation of the county purchasing agent, may authorize any user agency with the necessary facilities and staff to inspect deliveries to other agencies.

(g) *Property Accounting:* The county purchasing agent shall control and supervise all property accounting.

(h) *Surplus Supplies.*

- (1) All user agencies shall submit to the county purchasing agent reports showing stocks of all surplus supplies.
- (2) The county purchasing agent may transfer surplus supplies to other using agencies in lieu of filling requisitions for new supplies.
- (3) If the county purchasing agent determines that the surplus supplies cannot be used by any agency of the county, the county purchasing agent may dispose of the surplus supplies and seek to gain the maximum value for the county in the disposition by:
 - (i) Trading in the surplus supplies;
 - (ii) Selling the surplus supplies (other than vehicles) to county employees;
 - (iii) Auctioning or selling surplus supplies, including selling them for scrap value or dismantling them for recovery of valuable parts;
 - (iv) With the approval of the county executive and county council, donating the surplus supplies to charitable or non-profit organizations that have tax exempt status; or
 - (v) If no value can be realized from the surplus supplies, by destroying them.

(i) *Multiyear Contracts:*

- (1) If the nature of such transactions reasonably requires the making of a multiyear contract, the county may contract to purchase supplies or services for periods of more than 1 year if funds for the total cost of the contract are available at the time the contract is executed and committed for the purposes of the contract.
- (2) Any contract requiring the payment of funds from appropriations of subsequent

fiscal years shall be made or approved by ordinance, pursuant to section 612 of the Howard County Charter.

(j) *Conflicts:* In the event that state or federal assistance requirements conflict with the provisions of this subtitle, the county is authorized to comply with the terms and conditions of the state or federal assistance requirements. (C.B. 1, 1983; C.B. 5, 1989; C.B. 77, 1993; C.B. 38, 1994; C.B. 39, 1994; C.B. 28, 1998; C.B. 6, 2003, §§ 1, 2)

Sec. 4.119. Ethics and fair employment practices.

(a) *Conflict of Interest:* Bidders, vendors, purchasers and county employees involved in the purchasing process shall be governed by the provisions of the Howard County Charter and Howard County law regarding conflict of interest. No vendor shall offer a gratuity to an official or employee of the county. No official or employee shall accept or solicit a gratuity.

(b) *Discouragement of Uniform Bidding.*

- (1) It is the policy of the county to discourage uniform bidding by every possible means and to endeavor to obtain full and open competition on all purchases and sales.
- (2) No bidder may be a party with other bidders to an agreement to bid a fixed or uniform price.
- (3) No person may disclose to another bidder, nor may a bidder acquire, prior to the opening of bids, the terms or conditions of a bid submitted by a competitor.

(c) *Fair Employment Practices.*

- (1) Bidders, vendors and purchasers may not engage in unlawful employment practices as set forth in Subtitle 2 "Human Rights" of Title 12 of the Howard County Code, Section 14 of Article 49B of the Annotated Code of Maryland or Sections 703 and 704 of Title VII of the Civil Rights Act of 1964 as amended. Should any bidders, vendors or purchasers engage in such unlawful employment practices, they shall be sub-

ject to being declared irresponsible or being debarred pursuant to the provisions of this subtitle.

- (2) The Howard County Office of Human Rights shall notify the county purchasing agent when any bidder is found, by a court of competent jurisdiction, to have engaged in any high unlawful employment practices.
- (3) If any bidder has been declared to be an irresponsible bidder for having engaged in an unlawful employment practice and has been debarred from bidding pursuant to this subtitle, the Howard County Office of Human Rights shall review the employment practices of such bidder after the period of debarment has expired to determine if violations have been corrected and shall, within 30 days, file a report with the county purchasing agent informing the agent of such corrections before such bidder can be declared to be a responsible bidder by the county purchasing agent.
- (4) Payment of subcontractors. All contractors shall certify in writing that timely payments have been made to all subcontractors supplying labor and materials in accordance with the contractual arrangements made between the contractor and the subcontractors. No contractor will be paid a second or subsequent progress payment or final payment until such written certification is presented to the county purchasing agent.

(C.B. 1, 1983; C.B. 38, 1994; C.B. 39, 1994; C.B. 6, 2003, §§ 1, 2)

Sec. 4.120. Rainforest wood products purchasing prohibition.

(a) *Short title:* This section shall be known as the Rain Forest Protection Act of 1991.

(b) *Prohibitions:* Except as provided in subsection (c), Howard County, or a contractor pursuant to a contract with Howard County, shall not purchase any of the following wood products:

<i>Scientific Name</i>	<i>Common Name</i>
<i>Vouacapoua americana</i>	acapu
<i>Pericopsis elata</i>	afromosia
<i>Shorea almon</i>	almon
<i>Peltogyne spp</i>	amaranth
<i>Guibourtia</i>	amazaque
<i>Aningeria spp.</i>	aningeria
<i>Dipterocarpus grandiflorus</i>	apitong
<i>Ochroma lagopus</i>	balsa
<i>Viorla spp.</i>	banak
<i>Anisoptera thurifera</i>	bella rosa
<i>Guibourtia arnoldiana</i>	benge
<i>Detarium senegalese</i>	boire
<i>Guibourtia demeusii</i>	hubinga
<i>Prioria copaifera</i>	cativo
<i>Antiaris africana</i>	chenchen
<i>Dalbergia retusa</i>	concobolo
<i>Cordia spp.</i>	cordia
<i>Diospyros spp.</i>	ebony
<i>Aucoumea klaineana</i>	gaboon
<i>Chlorophora excelsa</i>	iroko
<i>Acacia koa</i>	koa
<i>Pterygota macrocaro</i>	koto
<i>Shorea negrosensis</i>	red lauan
<i>Pentacme contorta</i>	white lauan
<i>Shorea polysperma</i>	tanguile
<i>Terminalia supurba</i>	limba
<i>Aniba duckei</i>	louro
<i>Khaya ivorensis</i>	African mahogany
<i>Swietenia macrophylla</i>	American mahogany
<i>Tieghemella heckelii</i>	makore
<i>Distemonanthus benthamianus</i>	movingui
<i>Pterocarpus soyauxii</i>	African paduak
<i>Pterocarpus angolensis</i>	angola paduak
<i>Aspidosperma spp.</i>	peroba
<i>Peltogyne spp.</i>	purpleheart
<i>Gonystylus spp.</i>	ramin
<i>Dalbergia spp.</i>	rosewood
<i>Entandrophragma cylindricum</i>	sapele
<i>Shorea philippinensis</i>	sonora
<i>Tectona grandis</i>	teak
<i>Louoa trichilioides</i>	tiger wood
<i>Milletia laurentii</i>	wenge
<i>Microberlinia brazzavillensis</i>	zebrawood

All contracts for the purchase of wood products entered into after the effective date of this subtitle [August 1, 1991] shall comply with the provisions of this section. For purposes of this subtitle, wood products are those exposed wood areas which are visible to the eye.

(c) *Exemptions:* The county purchasing agent shall only exempt an item or type of wood product from the requirements of this subtitle upon:

- (1) Written evidence showing the use of tropical wood or wood products is deemed

necessary for historical restoration or to repair existing facilities, that such item has no acceptable nontropical wood equivalent and that imposing the requirements on that item or type would cause undue hardship; or

- (2) Written evidence showing that the tropical wood item or type has been harvested from a preexisting plantation, managed to maintain environmental functions, including watershed stability and erosion control practices, sustained yield production, and positive impact on the well-being of local communities; or
 - (3) Written evidence showing that the use of a tropical wood item would be an environmentally superior alternative to a native or imported wood type presently in use in Howard County; or
 - (4) Written evidence showing that the wood products were required to be purchased under a contract entered into prior to the effective date of this subtitle. The provisions of this subtitle shall not apply to any procurement that is under \$2,000. The provisions of this subtitle shall not apply to any joint or cooperative purchasing program authorized in accordance with section 4.103(t). Notwithstanding any exemptions provided by this section, the county purchasing agent shall make every effort to purchase only those items not containing tropical wood or wood products.
- (d) *Enforcement:*
- (1) Any person submitting a bid shall certify, to the best of the person's knowledge and belief, in writing to the county purchasing agent that any wood or wood products to be supplied pursuant to a contract with Howard County complies with this subtitle.
 - (2) The county purchasing agent may not accept a bid from a person who does not provide the certification required by this subsection, unless an exemption pursuant to subsection (c) is granted.

- (3) The county purchasing agent may promulgate regulations and take any necessary actions provided under Section 4.121 "Violations" of this subtitle to enforce this subtitle.

(C.B. 65, 1991; C.B. 38, 1994; C.B. 39, 1994; C.B. 6, 2003, §§ 1, 2)

Sec. 4.121. Violations.

(a) *Price Fixing:* The county purchasing agent shall void the bid of a bidder who has been found to be a party to a fixed-price bid agreement.

(b) *Disclosure of Terms of Bid:* The county purchasing agent shall void the bid of a bidder who has disclosed the terms or conditions of his bid to another bidder prior to the opening of bids.

(c) *Acquiring Terms of Bid:* The county purchasing agent shall void the bid of a bidder who has acquired the terms and conditions of a competitor's bid prior to the opening of bids.

(d) *Violation of Section 4.106 "Procurement methods" and Section 4.107 "Competitive bidding; purchases and sales over \$30,000":* Any violation of Section 4.106 "Procurement methods" and Section 4.107 "Competitive bidding; purchases and sales over \$30,000" shall constitute an offense punishable upon conviction by imprisonment for a period not to exceed 6 months or a fine not to exceed \$1,000 or both.

(e) *Unlawful Purchases and Sales:* It shall be unlawful for any county officer or employee to order the purchase of any supplies or contractual services or to sell supplies except pursuant to this subtitle. Any purchase order, sale or contract made contrary to the provisions of this subtitle shall be void.

(f) *Violations of Subtitle:* Any county officer, agent or employee knowingly violating any provision of this subtitle is subject to removal from office.

(C.B. 1, 1983; C.B. 65, 1991; C.B. 39, 1994; C.B. 6, 2003, §§ 1, 2)

Sec. 4.122. Equal business opportunity program.

(a) *Purpose:* The purpose of these provisions is to foster overall equity and fairness to all citizens in relation to business enterprises conducting business with the county.

(b) *Adoption of Equal Opportunity Business Program.* Pursuant to Section 4.103 (d) and (e) of this Subtitle, the County Purchasing Agent shall develop and implement an equal business opportunity program, subject to the approval of the County Executive and of the County Council, by resolution. The County Purchasing Agent shall seek the input of the Equal Business Opportunity Commission in the development of the program.

(c) *Elements of the Equal Business Opportunity Program:* The equal business opportunity program shall include, but is not limited to, the following elements:

- (1) *Goals:* Reasonable equal business opportunity participation goals for each category of certified business firms to include provisions for periodic review and update of such goals.
- (2) *Methods for providing equal business opportunity.* Structuring of the procurement process so that business opportunities are provided to minority business enterprises, woman business enterprises and disabled business enterprises through the mechanisms of subcontracting, direct award of contracts and fostering of joint ventures.
- (3) *Notification of county's equal business opportunity goals:* Procedures for notifying the public and respondents to county solicitations of the county's equal business opportunity goals. Such procedures will also require the use of area minority-owned newspapers.
- (4) *Certification:* Certification of minority business enterprises, woman business enterprises and disabled business enterprises. The program shall provide for the equal business opportunity commission, established under the provisions of subtitle 6 of this title, to undertake the certification process on behalf of the county, pursuant to criteria and procedures set forth in the program.
- (5) *Monitoring contract execution:* Procedures for monitoring contract execution of firms awarded contracts under these provisions.

(6) *Data:* Procedures for collecting and maintaining statistical data which can be used to measure the effectiveness of the equal business opportunity program.

(7) *Waiver of subcontracting goals:* Procedures for approving a waiver of a portion of or all of the subcontracting goals established for minority business enterprises, woman business enterprises or disabled business enterprises in any contract where a participation goal exists.

(8) *Enforcement:* Adequate measures for enforcement of equal business opportunity program provisions.

(C.B. 78, 1993; C.B. 39, 1994; C.B. 6, 2003, §§ 1, 2)

Sec. 4.123. Severability.

If any provision of this subtitle or its application to any person or circumstance is held invalid for any person, such invalidity shall not affect the other provisions or any other application of this subtitle which can be given effect without the invalid provisions or application; and to this end, all provisions of this subtitle are hereby declared to be severable.

(C.B. 1, 1983; C.B. 65, 1991; C.B. 39, 1994; C.B. 6, 2003, § 1)