



**NASSAU COUNTY
GUIDELINES
FOR
PROCUREMENTS FUNDED
WITH
FEDERAL TRANSIT ADMINISTRATION
FUNDS**

June 2012

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NASSAU COUNTY

**GUIDELINES FOR PROCUREMENTS FUNDED WITH
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1. Introduction

1.1. Purpose

The purpose of these Nassau County Federal Transit Procurement Guidelines is to set forth general procurement guidelines that will govern the conduct of the procurement activities of Nassau County personnel engaged in procuring goods and services with the assistance of Federal Transit Administration (“FTA”) funds.

1.2. Policy

All County procurements funded with FTA funds, shall be conducted in a manner that provides maximum open and free competition, and must be based on need and available funding, consistent with applicable regulations of the FTA, including but not limited to the "Third Party Contracting Guidelines" issued by the U.S. Department of Transportation in 49 C.F.R. Part 18; applicable state law, including but not limited to General Municipal Law Article 5-A, “Public Contracts; the Nassau County Procurement Policy/Procedure, Countywide Policy #CE-01 dated September 20, 2004; the Nassau County Procurement Internal Control Guidelines dated June 2006; the Nassau County Code of Ethics, Section 2218 of the Nassau County Charter as amended by Local Law No. 4-2007; and all other applicable federal, state and local laws, rules and regulations as well as all applicable County policies and guidelines.

For ease of reference, the Nassau County Procurement Policy/Procedure, Countywide Policy #CE-01 dated September 20, 2004 (hereafter this will be referred to as the “County Procurement Policy”) is annexed to these guidelines as Rider 1, and the Nassau County Procurement Internal Control Guidelines dated June 2006 (hereafter this will be referred to as the County Procurement Internal Control Guidelines”) is annexed to these guidelines as Rider 2.

If any of the referenced laws, rules, regulations, policies or guidelines are amended, updated or replaced, the most current version shall be applicable and must be applied by County personnel. In the event of a clear conflict among any applicable provisions, the more stringent provision shall apply.

1.3. Ethics/Code of Conduct for All Procurement Activities

The importance of demonstrating constant and attentive sensitivity to ethics cannot be overemphasized. All County employees must avoid any conduct that may give a reasonable basis for the impression that any person improperly can influence official acts or actions. The County

requires not only that employees avoid compromising or culpable acts, but they are also prohibited from giving the appearance of improper influence or conflict of interest.

All County employees shall comply with the Nassau County Code of Ethics, Section 2218 of the Nassau County Charter, as it may be amended from time to time, and applicable federal and state provisions. (The current Code of Ethics is annexed hereto as Addendum A.)

Additionally, all County personnel involved with procurement tasks for the County shall comply with the following summary of conduct requirements:

1.3.1. General Conduct

County employees having discretionary responsibility for procurement activities at all levels shall:

- i. Encourage competition, prevent favoritism, and obtain the best value in the interest of the County and the taxpayers;
- ii. Place professional responsibilities above personal interests;
- iii. Ensure fair competitive access to County procurement opportunities;
- iv. Deal with the public and with vendors with courtesy, consideration and even-handedness;
- v. Not engage in any communication regarding the procurement with employees, agents, consultants or lobbyists of a bidder or proposer after the official commencement of a competitive procurement process (by the publication of an Invitation to Bid or RFP or similar action), except in such manner as is specifically authorized by the Invitation to Bid, RFP or other written instructions issued to bidders or proposers;
- vi. Use information gained confidentially in the performance of County duties solely in the County's interest; and
- vii. Report corruption and unethical practices, wherever and whenever discovered, to the appropriate official, and/or take such other action as is warranted by the situation.

1.3.2. Campaign Contributions

In soliciting, awarding, or administering a procurement, under no circumstances may an official or employee take into consideration the fact that a vendor or associated individual(s) has or has not made or promised to make a campaign contribution.

1.3.3. Organizational Conflicts of Interest

Organizational conflicts of interest can cause at least two distinct problems: bias and unfair competitive advantage. An organizational conflict of interest exists where other activities, relationships, or contracts of a contractor inhibit, affect or prevent the contractor from rendering impartial assistance or advice to the County; where a contractor's objectivity in performing the contract work is or might be otherwise impaired (for example, a contractor assisting with a design might have a financial interest in a product or system that could be utilized in implementing that design); or where a contractor has an unfair competitive advantage which might be gained through its involvement in writing, or reviewing the solicitation and contract documents, including the scope or specification except as part of a general industry review. There are a variety of ways in which conflicts of interest can be prevented, or mitigated, one of the most important being disclosure. Contracts should include an organizational conflict of interest clause, requiring that all potential vendors disclose when they believe there may be a conflict. This allows the County the opportunity to make the determination and take the necessary action to avoid the conflict. Organizational conflicts of interest may be avoided by carefully reviewing all vendor disclosure documents, including but not limited to the business history forms, as well as independently researching potential vendors, employees and contractors. Any connections to the project should be investigated so as to prevent potential conflicts.

1.3.4. When Employees Are Unsure As To What Is Ethically Required

When an employee has doubt as to whether conduct is prohibited by applicable requirements, he or she should first consult with the County Attorney's Office. If he or she remains in doubt, then an opinion should be sought from the County Board of Ethics.

2. Procurement Standards

2.1. Authority

All Deputy County Executives are designated County Contracting Officers for FTA-funded procurements. The County Executive may also delegate contracting authority in whole or in part to other employees in the County so long as such employees possess the requisite knowledge, experience and background in FTA-funded procurements and all other applicable procurement laws, policies and procedures and in the administration of contracts for the scope of the delegation.

2.2. Full and Open Competition

It is the County's policy to ensure open and free competition wherever possible, to maximize competitive opportunities, to avoid arbitrary conduct in the procurement process and to

encourage a competitive environment for contractors and vendors competing for County contracts funded with FTA funds.

As part of these guidelines, placing unreasonable requirements on contractors and vendors in order for them to qualify to do business with the County shall not be advanced as a way to restrict fair and open competition. Such unreasonable requirements may include, but are not limited to, requiring unnecessary past experience, excessive bonding, or brand name preferences that do not comply with applicable law and these guidelines.

Procurement transactions shall be conducted in a manner that prohibits the use of in-state or local geographical preferences in the solicitation and evaluation of bids or proposals. This does not preempt state or local licensing laws. Geographic location may be a selection criterion in procurements for architectural and engineering (A&E) services, provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

2.3. File Documentation

The documentation to be retained in all FTA-funded contract solicitation files shall be maintained by, or on behalf of, the contracting department. The solicitation file shall contain records concerning pre-award actions taken and shall document the decisions made concerning the vendor selected and those rejected, including the rationale for such decisions. The file shall incorporate all official documents relating to the administration of the solicitation process, evaluation of bids and proposals, as well as appropriate internal documentation and analyses supporting the formal correspondence and official documents. At a minimum, the file shall include:

- i. The rationale for the method of procurement;
- ii. Selection of contract type;
- iii. Reasons for contractor selection or rejection; and
- iv. The basis for the contract price, demonstrating that the price is fair and reasonable.

2.4. Protest Procedures

The County shall maintain written procedures that are consistent with all applicable County policies to consider and resolve protests relating to solicitations and shall comply with all applicable FTA requirements regarding notice of protests and notification of a protestor's right to appeal to the FTA as set forth in FTA Circular 4220.1F. The County's protest procedures are delineated in County Procurement Internal Control Guideline, Part III (beginning at page 20 in Rider 2). Upon receipt of a protest for any FTA-funded procurements, the Project Manager shall immediately notify the County Attorney's Office. The County Attorney's Office shall notify the designated FTA Regional Administrator. The information to be provided to the FTA shall

include a brief description of the protest, the basis of disagreement, and if open, how far the protest has proceeded or if resolved, the agreement or decision reached. In addition, such notification shall also include a list of all other open protests involving FTA-funded contracts or solicitations that have a value exceeding \$100,000, or involve a controversial or highly publicized matter regardless of the value of the solicitation. The designated FTA grant manager for the County shall provide all required protest information to the FTA in the County's quarterly Milestone Progress Reports and at Project Management Oversight review meetings.

Applicable FTA regulations provide that a protestor may appeal the County's decision with the FTA only after exhausting its administrative remedies with the County, and that the protestor must file its appeal in writing with the FTA Regional Administrator within five working days of receipt of the County's decision. Applicable FTA regulations also provide that the FTA will only consider a protest if the County does not have protest procedures or has not complied with its protest procedures or if the issue involves violations of Federal law or regulations.

3. Procurement Planning

Procurement planning is required for every procurement action. Procurement planning for FTA-funded procurements must be a multi-departmental process, involving the issuing department, the Department of Public Works and the Office of Management and Budget, among other departments. Additionally, all FTA-funded capital procurements should be projected in the County's Capital Program with five year projections.

3.1. Needs determination

Proposed procurements must be carefully considered prior to initiation of any procurement activities in order to avoid duplicative or repetitive purchases to the greatest extent feasible and consistent with good procurement practices. If FTA funding is sought, the contracting department shall identify the County's needs in writing and in conjunction with the County's designated grants manager for that project, prioritize projects and develop a procurement schedule.

3.2. Prequalification

As of June 2012, the County does not maintain a prequalification system or list for FTA-funded procurements, and the prequalification of vendors is generally discouraged. If prequalification is desired for a particular procurement (and permitted in accordance with all applicable laws, including but not limited to Nassau County Resolution No. 928-1993), the County Attorney's office must be consulted prior to the initiation of any such prequalification process, and applicable federal requirements will apply, including but not limited to the requirement for using up-to-date lists of prequalified vendors in order to ensure the maximizing of full and open

competition, and all potential bidders may not be precluded from qualifying during the solicitation period, (which is from issuance of the solicitation to its closing date).

3.3. Specifications/Statements of Work

Specifications and statements of works should be drawn in a manner that will maximize competition, and therefore be as clear and precise as is reasonably practicable, consistent with the County's needs. When it is impractical or uneconomical to provide a clear and accurate description of the technical requirements of the product to be acquired, a "brand name or equal" description may be used so long as the salient characteristics are also included.

All advertised specifications for any County contracts for the construction, reconstruction, maintenance and/or repair of public work must comply with applicable provisions of N.Y. State Labor Law Section 220-h and all other applicable provisions of law.

3.4. Disadvantage Business Enterprise (DBE) Goals Determination

Upon completion of drafting the specifications or the statement of work, the contracting department shall forward such documentation to the County's designated DBE Liaison Officer (DBELO) for that project for review. The contracting department and the DBELO will jointly determine if there are subcontracting opportunities. If there are subcontracting opportunities the DBELO will determine the DBE goal if appropriate.

3.5. Cost and Price Analysis

3.5.1. Independent Cost Estimate

A cost or price analysis must be performed for every procurement action, including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation. Any cost or price analysis must be based on an independent estimate, which should be developed before a solicitation is issued, but in no event after the receipt of bids or proposals. For contract modifications, the independent estimate must be prepared without knowledge of the contractor's proposed pricing. The independent cost estimate may be completed in-house or by an external estimator independent of any offerors. The final independent cost estimate must be memorialized in writing, stating how it was derived and the basis of the estimate. The independent cost estimate must be maintained in the official solicitation file.

3.5.2. Cost Analysis

A cost analysis must be performed when proposers are required to break down the estimated cost elements, such as labor hours, overhead, or materials, for example. A cost analysis will be necessary when adequate price competition is lacking, including sole source procurements

(which include contract modifications, change orders, and exercise of options), unless price reasonableness can be established on the basis of a catalog or market price of a commercial product sold in substantial quantities to the general public or on the basis of prices set forth by law or regulation. Adequate price competition may be determined to exist when the perception of competition exists, even if only one bid or proposal is received; conversely, the receipt of multiple bids or proposals with widely differing prices may not constitute adequate price competition.

Profit is to be negotiated as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration should be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work. Costs or prices based on estimated costs for contracts will be allowable only to the extent that costs incurred or cost estimates included in negotiated prices are consistent with Federal cost principles contained in Part 31 of the Federal Acquisition Regulations. The cost plus a percentage of cost and percentage of construction cost methods of contracting shall not be used.

3.5.3. Price Analysis

A price analysis looks at the price as a whole without examination of its various components, and is usually performed by comparing prices to those from other comparable procurements. A price analysis may be used in all instances where a cost analysis is not required to determine the reasonableness of the proposed contract price.

3.6. Economic Purchasing

Consideration should be given to consolidating or breaking out procurements to obtain more economic pricing. Where appropriate, analysis will be made of leasing versus purchasing alternatives or any other appropriate methodology to determine the most economical approach.

3.7. Requisition Process

Part II of the County's Procurement Internal Control Guideline delineate the requisition process and shall be followed for all FTA-funded procurements.

4. Methods of Procurement

The County recognizes the following four basic contracting methods in procuring supplies, services, equipment, and construction funded with FTA funds:

- i. Competitive sealed bid;

- ii. Competitive negotiation;
- iii. Small purchases; and
- iv. Non-competitive negotiation.

4.1. Competitive Sealed Bidding

Contracts that exceed \$10,000 must be awarded by competitive sealed bidding whenever this method is practicable under the circumstances. Public notice of the invitation to bid will be given.

4.2. Competitive Negotiation (RFP)

Competitive negotiation is utilized when the County determines that the use of competitive sealed bidding is not practicable, i.e., when it is not possible to detail fully the scope or quantity of the services or goods sought by the County. Contracts may also be competitively negotiated when the County determines that the bid prices received by competitive sealed bidding either are unreasonable, or were not independently reached in open competition. Proposals or requests for qualifications leading to a negotiated procurement shall be publicly advertised and solicited in order to obtain the greatest possible competition. The criteria to be used in evaluating such proposals or requests for qualifications must be included in the solicitation document, and must include:

- a. Price
- b. Technical Experience
- c. Management Capability
- d. Personnel Qualifications
- e. Prior Experience
- f. Past Performance
- g. Ability to comply with the County's procurement schedule

Each category shall be assigned a relative weight for the purposes of evaluation. Proposals shall only be evaluated on the criteria included in the solicitation documents.

Proposals or requests seeking architectural, engineering and surveying services must also comply with DPW's Competitive Processes for Construction, Architectural, Engineering and Surveying Services (contained in County Procurement Policy Section V of Rider 1 annexed to these guidelines).

4.3. Small Purchases

Purchases not exceeding \$10,000 are considered "Small Purchases" and must be made in accordance with the procedures set forth in the "Delegated Small Purchase Authority Procedures" incorporated herein as Appendix B to these guidelines. Procurements which do not

exceed \$500 may be accomplished without securing competitive quotations if the prices are considered by the County to be fair and reasonable. All small purchases less than \$500 must be equitably distributed among qualified suppliers, and such purchases may not be divided up or split in order to avoid more stringent procurement requirements. Small purchases in excess of \$500 require obtaining written or oral quotations from a minimum of three (3) qualified vendors who are willing and able to compete effectively. Oral quotations may be utilized if they are documented in memo form and state the name of the supplier, the date contacted and the quoted price.

A determination must be made as to whether the price is fair and reasonable and it must be documented in writing with an explanation as how that determination was made.

4.4. Non-Competitive Negotiation (Sole Source)

When it is determined that there is only one source for the required supply, service, or construction (sole source procurement), or when there exists a threat to public health, welfare, or safety under emergency conditions (emergency conditions), contracts may be awarded by noncompetitive negotiation.

4.4.1. Contracts utilizing FTA funds may be awarded for a supply, service, or construction by noncompetitive negotiation when it is determined that there is only one source. Sole source procurement shall be allowed only on an extreme exception basis and must be documented and approved in writing by the County Attorney's office.

Examples of sole source exceptions include circumstances in which:

- i. There is only one responsible source and no other supplier--for example, a utility company;
- ii. The source demonstrates a unique and innovative concept not otherwise available to the County;
- iii. Unacceptable delays in fulfilling the County's requirements dealing with an unusual and compelling urgency that would have devastating effects on County operations, such as operational safety or security.

Each noncompetitive procurement over \$10,000 must be supported by documentation that justifies the selection of the specified vendor, including a statement of the relevant circumstances and detailed information to support that statement. A general conclusion that a certain source is uniquely qualified, has personal know-how or experience, or is the only source that can meet certain delivery requirements will not be sufficient justification.

Additionally, the following information must be provided if the procurement is greater than \$10,000:

- i. Cost and price analysis;
- ii. Legal opinion that the purchase will comply with federal, state and local laws, if deemed necessary;
- iii. Summary of the negotiations with contractor, including subjects discussed and agreements reached; and
- iv. Basis for determining that the price was fair and reasonable.

Categories of sole source procurements may include:

- i. Items of a unique nature which are unavailable from other sources due to patents or proprietary processes;
- ii. Books, maps, periodicals, and technical pamphlets, films, video and audio cassettes obtained from publishers;
- iii. Certain computer software;
- iv. Licensed computer software;
- v. Specialized replacement/repair parts or expansion parts necessary to maintain the integrity of system or function, e.g., scientific research;
- vi. Works of art for museum or public display;
- vii. Specialized services for which there is only one documented accepted source, such as transactions involving unique professional services and/or educational institutions, e.g., visiting speakers or professors, and performing artists, or warranty, repair/maintenance agreements with original equipment manufacturers;
- viii. Advertisements, public notices in magazines, trade journals, newspapers, television.

The availability of the sole source procurement exception from competitive bidding shall not be interpreted to diminish the responsibility of County employees to evaluate the market continuously to research product alternatives and develop additional vendor sources.

In attempting to achieve the goal of maximizing competition to the greatest extent possible, alternative vendors shall be pursued for sole source items by using compatible replacement parts as long as warranties and operational cost effectiveness are not affected by substitution.

4.5. Emergency Conditions Procurement

Notwithstanding any other provision in these guidelines, the County may make, or authorize others to make, emergency procurements when there exists a threat to public health, welfare or safety under emergency conditions; provided, that such emergency procurements shall be made with such competition as is practicable under the circumstances. A written determination of the basis for emergency and for the selection of the contractor shall be included in the contract file.

County employees shall be permitted to react quickly to critical situations whatever the cost for the remedy or repair is, and there is not sufficient time to undertake a public, formal or informal, bidding process.

An emergency shall mean a situation to which an urgent response is required because of immediate danger to health and safety, threats to property and necessary functions, or failures of critical equipment. Inadequate anticipation of need shall not be considered justification for "emergency" purchases.

Commitments which extend beyond the immediate response to the emergency conditions shall be prohibited, i.e. prevention of future problems by corrective measures other than the immediate restoration of function must be pursued through other contracting methods as delineated in these guidelines.

The County shall establish, through competitive bidding, a list of emergency response vendors and shall make such list available to all necessary agency and department heads. When possible, the required services, supplies, or construction shall be obtained from a list of vendors selected by competitive process to provide specialized trade in emergencies. If an emergency cannot be addressed by a designated vendor, the Purchasing Department shall assist in obtaining names and telephone numbers of responsible vendors. Upon determination of the existence of an emergency, the procuring department head shall consult with the Purchasing Department before committing to a particular vendor.

If the emergency occurs outside of the Purchasing Department's business hours, the Department head shall be authorized to proceed in accordance with the principles and policies of sound procurement practices as outlined in all applicable procurement policies. In such cases, a written report must be prepared and submitted to the Director of Purchasing on the next business day, fully describing the nature of the emergency, cost and the action(s) taken in compliance with the requirements of the applicable procurement policy. All emergency documentation shall be signed by either the Department head, or his/her designee.

4.6. Special Procurements

4.6.1. Architectural & Engineering Services

Except to the extent that applicable law permits otherwise, the County will use qualification-based competitive proposal procedures based on the Brooks Act, Chapter 11 of Title 40 of the United States Code, and 49 U.S.C. §5325(b)(1), when contracting for architectural and engineering (A&E) services, which include program management, construction management, feasibility studies, preliminary engineering, design, architectural, engineering, surveying, mapping, and related services that are directly in support of, directly connected to, directly related to or lead to construction, alteration, or repair of real property for all contracts funded with FTA funds.

The Brooks Act requires that:

- i. An offeror's technical qualifications be evaluated;
- ii. Price be excluded as an evaluation factor;
- iii. A pricing proposal be requested from, and negotiations be conducted only with the most qualified offeror; and
- iv. Failing agreement on price, the proposal must be rejected and negotiations conducted with the next most qualified offeror, until a contract award can be made to the most qualified offeror whose price is fair and reasonable; if the pool of qualified offerors is exhausted without an agreement, the solicitation must be canceled.

This qualifications-based procurement method can only be used for the procurement of A&E services where any amount of Federal funds is utilized. This method of procurement cannot be used to obtain other types of services even though a firm that provides A&E services is also a potential source to perform other types of services.

4.6.2. Design-Bid-Build Procurements

The design-bid-build procurement method requires separate contracts for the design phase and for the construction phase. In such a procurement, the County shall use qualifications-based procurement procedures (such as the Brooks Act if applicable) for the required design phase, in compliance with all applicable federal, state, and local laws, rules and regulations. The County shall use applicable competitive procurement methods for the required construction phase.

4.6.3. Design-Build Procurements

Design-build refers to the procurement method used for a design and construction contract award

going to a single contractor, consortium, joint venture, team or partnership that will be responsible for both the project's design and construction phases. The contracting department shall separate the various contracting activities to be undertaken and classify them as design or construction, and then calculate the estimated total value of each. The County shall then choose the procurement method appropriate for the services having the greatest cost. The County shall, unless otherwise required by applicable law, procure design-build services through means of qualifications-based competitive proposal procedures based on the Brooks Act, when the preponderance of the work to be performed is considered to be for A&E services. Qualifications-based competitive proposal procedures shall not be used to procure design-build services when the preponderance of the work to be performed is not of an A&E nature.

4.6.4. Procurements for the Construction, Reconstruction or Alterations of Buildings

If the County contracts for the construction, reconstruction or alteration of a building, all such procurements shall comply with the applicable requirements of New York State General Municipal Law Section 101, (the "Wicks Law"), as well as all other applicable federal, state and local law requirements.

4.6.5. Rolling Stock Procurements

Notwithstanding any other provision herein which may be to the contrary, rolling stock procurements (as defined by applicable FTA regulations) must comply with the FTA's applicable Buy America requirements, including pre-award and post-delivery certifications and audits, applicable Federal Motor Vehicle Safety Standards certifications and applicable Purchaser's Requirements certifications. Rolling Stock procurements must also comply with applicable DBE requirements. The contracting department must ensure that the selected contractor is an approved Transit Vehicle Manufacturer (TVM) eligible to bid on FTA-funded contracts and obtain the DBE certification from the TVM.

4.6.6. Procurements Incorporating Options

Procurements seeking to incorporate options in the contract must be limited to quantities of goods and services that meet the current and reasonably anticipated needs of the County. Option periods must be clearly defined in the solicitation document; in the selected contractor's offer and must be evaluated as part of the initial award process. A price analysis must be performed prior to exercising any option to determine if the option price is better than prices available in the market, or that when the County intends to exercise the option, the option is more advantageous. Failure to evaluate options before award constitutes sole source procurement and must be justified as such.

4.6.7. Time and Material Contracts

A Time and Material contract or change order is one in which a clear scope cannot be defined, due to unknown conditions or circumstances affecting the work. Typically this will involve an emergency situation. Since such contracts provide no incentive for the contractor to work efficiently or in a cost-effective manner, their use is restricted to situations in which no other type of contract is suitable. Before entering into such a contract, the Project Manager must prepare a written determination that no other type of contract is feasible. Such contracts shall specify a Not-to-Exceed ceiling price (a limitation of funding) that the contractor shall not exceed except at its own risk, to control cost liability. The Project Manager is required to provide thorough oversight to verify the amount of work performed and materials used. The official contract file must also include documented price negotiations, which is to formalize the negotiated price, by change order to the time and material award. Every effort should be made to limit the scope of a Time and Materials contract or change order until another type of contract or change order can be established.

4.6.8. Revenue Contracts

A revenue contract is any contract whose primary purpose is to either generate revenues in connection with a transit-related activity or to create business opportunities utilizing an FTA-funded asset. The Project Manager must consult with the County Attorney's office in order to determine the necessity as well as feasibility of utilizing a competitive process suitable to the type and scope of the activity involved.

4.7. General Procurement Elements

4.7.1. Public Notification

All FTA-funded competitive procurements shall be publicly noticed. The contracting department shall follow the County Procurement Policy for the required publication procedures for such procurements.

4.7.2. Bidders List

The contracting department is responsible for maintaining a current bidders list of the potential vendors, including those pre-identified and those requesting the solicitation package. The DBE Liaison Office is responsible for maintaining a list of certified DBEs.

4.7.3. Solicitation amendments & cancellation

All solicitation amendments and cancellation of solicitations shall comply with the County Procurement Policy and the County Procurement Internal Control Guideline.

5. Bidder's Security and Bonding Requirements

Bidders' security is required for construction or facility improvement contracts of \$10,000 or more, if appropriate.

The County shall specify a bonding policy in compliance with FTA requirements for construction or facility improvement contracts, which adequately protects the County and any interests the FTA may have in such contracts, and is in compliance with all applicable laws, rules and regulations.

For non-construction contracts, bonding requirements are discouraged except where applicable law or regulations provides for such bonding or the County determines that such a requirement is necessary as part of the risk management plan for a project.

6. Receipt, Evaluation and Award of Bids and Proposals

6.1. Sealed Bids

Sealed bids shall be received, evaluated and awarded in compliance with the County Procurement Policy.

6.2. Competitive Proposals

Competitive proposals shall be received, evaluated and awarded in compliance with the County Procurement Policy.

6.3. Responsibility Determination

All final contract awards may only be made to vendors deemed responsible possessing the ability, willingness, and integrity to perform the specified work, in all respects. The contracting department shall ensure that a prospective contractor satisfies the minimum criteria set forth in the County Procurement Policy and the County Procurement Internal Control Guideline. The County shall consider such matters as contractor integrity, record of past performance, financial and technical capacity.

6.4. Responsiveness Determination

All bid awards may only be made to vendors deemed responsive at the time of submission. A vendor is deemed responsive if it conforms in all material aspects to the requirements of the solicitation at the scheduled time of submission and does not require further discussions with the bidder.

6.5. Approvals

All required procurement actions must be approved in accordance with the County Procurement Policy and the County Procurement Internal Control Guideline.

7. Contract Provisions

7.1. General Standards

All FTA-funded contracts shall be reviewed and approved by the County Attorney's office prior to issuance, incorporating the County's standard terms and conditions applicable to the type of contract and any other terms specified in a bid package or negotiated as part of an RFP process. The County shall not accept vendor contract forms for FTA-funded contracts, except under unusual conditions and with the prior approval of the County Attorney's office.

All contracts entered into by the County utilizing FTA funds shall include provisions to define a sound and complete agreement, appropriate to the type and complexity of the project. At a minimum these include a well-defined statement of work or specification, delivery schedule, a defined contract term, a clear statement of the price and payment terms, and all applicable clauses required by federal, state or local laws, rules and regulations as well as all applicable County policies and requirements.

7.2. Required Federal Clauses

All FTA-funded contracts shall include all federally-mandated clauses, including but not limited to those listed in the matrix contained in FTA Circular 4220.1F, Appendix D, (or the most current updated version of that circular), and in Appendix A to the FTA Best Practices Procurement Manual, ("BPPM"), as well as the most current FTA Master Agreement, all available on the Internet.

7.3. Prevailing Wage Requirements

All FTA-funded procurements must comply with applicable local, state and federal prevailing wage laws, rules and regulations, including but not limited to applicable provisions of the Davis Bacon Act, 40 U.S.C. 3141, *et seq.*, New York State Labor Law and Nassau County's Living Wage Law, codified at Title 57 of the Miscellaneous Laws of Nassau County.

7.4. Contract Term Lengths

The period of contract performance for rolling stock and replacement parts for rolling stock shall not exceed five years, inclusive of options, as defined in FTA Circular 4220.1F. The term length of all other contracts shall be based upon sound business judgment, including consideration of issues such as the nature of the item being purchased, the need to afford the contractor a reasonable opportunity to recapture any start-up costs, the need to afford competing vendors the opportunity to do business with the County, and the relative benefit to the County of a longer or shorter contract term.

7.5. Option Clause

FTA-funded contracts shall not incorporate options, except to the extent that options for additional or alternative goods or services were properly procured and are incorporated in the contract award. Clauses must be written into the contract providing for the County's specific right to exercise options for additional terms, including any pricing or other definitions of each such option.

7.6. Termination and Breach of Contract

All contracts in excess of the small purchase limit as discussed in Addendum B shall include contractual provisions that allow for administrative or legal remedies in instances where contractors violate or breach contract terms.

Termination for cause and for convenience provisions shall be included in all contracts in excess of \$10,000, including the manner by which termination will be effected and the basis on which the final payment will be due.

7.7. Liquidated Damages

The County shall determine whether to use or not to use a liquidated damages provision for a specific FTA-funded procurement, as part of an overall risk management program. The amount of liquidated damages must be reasonably calculated to reflect anticipated damages the County might suffer as the result of an inadequacy or delay in contract performance, and such damages would be difficult or impossible to determine. Liquidated damages may be imposed for an entire FTA-funded contract or for a readily identifiable milestone or deliverable, and the measurement period may be other than a day, where appropriate. If it is determined that a liquidated damages provision will be included, the solicitation shall identify with specificity the circumstances in which the liquidated damages will be imposed and the rate to be charged. The procurement file shall document the derivation of the rate of assessment and ensure it is reasonable, proper and not arbitrary or punitive.

8. Contracting with Disadvantage Business Enterprises

Disadvantaged Business Enterprises (DBEs), as defined by 49 C.F.R. Part 26, shall have an opportunity to participate in awards of FTA-funded contracts and subcontracts. The County shall take positive actions to ensure a level playing field for DBEs through its DBE Program. The DBE Liaison Officer shall be involved in the planning stages of the procurement process and in the identification of DBE subcontracting opportunities.

9. Eligible Costs

Property and services procured by the County with FTA funds must be eligible for federal participation under the applicable standards of the federal cost principles (see for example, OMB

Circular A-87 and 48 CFR Part 31.6, Cost Principles for State, Local, and Indian Tribal Governments) before the County may use FTA assistance to support its costs.

10. Payments

10.1. Advance Payments

The use of FTA funds for payments in advance of the incurrence of costs by the contractor is generally prohibited, without prior written approval from the FTA. The FTA does permit advance payments from FTA funds for those purchases where advance payment is customary in the commercial marketplace such as utility services and subscriptions. FTA approval of such advance payments is required when the amount exceeds \$100,000. The County should not make advance payments using other funds (including local match funds) except where (a) it is customary in the industry, or (b) there are sound business reasons (e.g. to enable a more cost-effective pricing structure) for doing so; in the latter case, the file shall be documented to fully justify the advance payment.

10.2. Progress Payments

Progress payments are to be made only for costs incurred in the performance of the contract. When progress payments are used, the County must obtain title to property or other adequate security for the amount of the progress payment. Progress payments for construction contracts may be made on a percentage of completion basis; this method may not be used for non-construction contracts.

11. Contract Administration

11.1. Post-Award Documentation

The documentation contained in all FTA-funded contract files shall be maintained by, or on behalf of the contracting department. The purpose is to record the post-award actions taken by the contracting parties in relation to the requirements of the contract and to document the material decisions made in the administration of the contract, and the rationale therefore. Each department involved in the performance of a contract shall maintain departmental files relating to the contract, reflecting its involvement with the administration of the contract. For matters relating to contract administration, the contracting department shall maintain the official file including all official correspondence and documents relating to the administration of the contract, as well as appropriate internal documentation supporting the formal correspondence and official documents. The contract file shall include reasonable and adequate documentation of administration of the contract. The contract file should tell the story of the contract from the time of the award through completion of all applicable warranty periods.

11.2. Modifying the Contract

All amendments or change orders to contracts affecting time or money must comply with the County's general procurement policies. Contract amendments shall be made pursuant to the County's procurement policies in the basic contract when it becomes necessary to change the contract cost and/or fee, statement of work, period of performance, or any other mutually agreeable change to the contract. All contract amendments must be executed in writing by the authorized representative of the contractor and the requisite level of authority within the County pursuant to the County's applicable law, rules, regulations, policies and guidelines.

Generally, additions and/or increases in the scope of work constitute a new procurement and, as such, should be processed in the same manner. All such additional requirements should be formalized by contract amendments.

"Tag-ons" are defined by FTA as additions to the scope of work or deliverable items that were not included in the original contract competition, and which must be treated as sole source additions to the contract. Tag-ons are not to be treated as changes within the scope of the contract.

The contracting department shall coordinate the requirements for a contract amendment as soon as the need is known and shall provide the necessary documentation to permit the proposed contract amendment to be processed in the most expeditious manner to prevent delays in the project schedule.

12. Contract Closeout

12.1. Closeout Procedures

The Project Manager shall determine whether and when the work under a contract has been completed and the contract is ready for closeout. The Project Manager shall develop a contract checklist showing all the contract deliverables and submittals, and indicating on the checklist that all submittals and deliverables have been reviewed, inspected and accepted. The Project Manager shall inform the designated grants manager for that project that the contract is complete and ready for closeout. The designated grants manager for that project shall ensure that all required administrative steps have been accomplished prior to final payment.

13. Document Retention

All FTA-funded contract documents shall be retained in accordance with all applicable local, state and federal laws, rules and regulations regarding the retention of such documents. All questions regarding such documentation shall be directed to the designated County Records Manager.

Addendum A - Nassau County Code of Ethics

Section 2218 of the Nassau County Charter as amended by Local Law No. 4-2007

1. Definitions.

“Agency” shall include any agency, Board, bureau, commission, department or other similar entity of the County.

“Appear” shall mean to make a communication in any form, personally or through another person, including, but not limited to, by letter, by telephone, by e-mail or by facsimile, on behalf of a person or entity from whom one receives income or compensation.

“Board” shall mean the Nassau County Board of Ethics.

“County officer or employee” shall include the officers and employees of any agency of the County, as defined herein, in addition to any officer who is appointed, pursuant to law, by the County to serve any other entity unless such person is subject to the Public Officers Law and the oversight of the State Ethics Commission or is otherwise exempt from the local ethics code.

“Financial Interest” shall mean (i) a foreseeable direct or indirect pecuniary or material benefit accruing to a County officer or employee as a result of a financial or business dealing with the County; (ii) an ownership interest in any entity, except a publicly-traded corporation of which the County officer or employee owns less than five percent of the outstanding stock; or (iii) a position as officer, director, trustee, or partner of an entity. For the purposes of this section, the financial interests of an officer or employee’s spouse, domestic partner, minor children and dependents shall be deemed financial interests of such officer or employee; provided, however, that a County officer or employee shall not be deemed to have a financial or other private interest in the employment, by the County, of his or her spouse, domestic partner, minor child or dependent.

“Ministerial act” shall mean an administrative act, including the issuance of a license, permit or other permission by the County, which is carried out in a prescribed manner and which does not involve substantial personal discretion.

“Relative” shall mean mother, father, son, daughter, sister, brother, stepmother, stepfather, stepson, stepdaughter, aunt, uncle, cousins in the first and second degree of consanguinity, domestic partner, mother-in-law, father-in-law, sister-in-law, brother-in-law and grandparents.

2. Conflicts of Interest Prohibited.

a. Except as provided in subdivision twelve of this section, no County officer or employee whether paid or unpaid, shall:

(1) Have a financial interest, except by operation of law, in any business or professional dealings with the County or any agency thereof or a financial interest in any entity which has

business or professional dealings with the County.

(2) Participate as attorney, agent, broker, representative or employee in a business or professional transaction with, or lawsuit against, the County or any agency thereof for any person or entity directly or indirectly in any manner whatsoever or fail to ensure that adequate measures are taken to prevent his or her participating in any manner in any such transaction where a law firm or other entity in which such person is an owner, member or employee becomes involved as attorney, agent, broker or representative in such a transaction with, or lawsuit against, the County.

(3) Accept or retain other employment, engage in any business transactions, make or retain any investments, have any financial interest, or engage in other activities that directly or indirectly create a conflict with his or her official duties.

b. A County officer or employee shall not appear before any agency or officer of the County except on behalf of the County, provided, however, that for County officers or employees serving in an unpaid capacity, this prohibition shall apply only to appearances before the agency served by such officer or employee.

c. No County officer or employee shall receive, or enter into any agreement, express or implied, for compensation for services to be rendered in relation to any matter that is before the agency served by such officer or employee, or any agency over which he or she has supervisory control or to which he or she has the power to appoint any member, officer or employee.

d. No legislator, during his or her term and for a period of two years from the expiration of the term to which he or she was elected, shall engage in any employment as a lobbyist on behalf of any person, firm, corporation or association doing business with the County.

3. Gifts and Favors.

No officer or employee of the County, whether paid or unpaid, shall accept gifts aggregating to seventy-five dollars or more during a twelve month period, nor solicit any gift of any value, whether in the form of services, loan, thing or promise of any other form, from any one person, firm or corporation which to his or her knowledge is interested directly or indirectly in any manner whatsoever in business or professional dealings with the County or any agency thereof. For purposes of this subdivision, the value of a gift of a ticket or comparable authorization entitling the holder to food, refreshments, entertainment, or any other benefit shall be the face value of the ticket or the cost of entrance to the general public, notwithstanding the fact that part of the cost of attending is a tax-deductible or political contribution.

4. Recusal and Disclosure of Interest.

a. A County officer or employee, whether paid or unpaid, shall promptly recuse himself or herself from acting on any matter before the County in which he or she has (i) any direct or indirect financial or (ii) any other private interest that a reasonable person would perceive to compromise his or her ability to make impartial judgments or take discretionary actions in the best interests of the County.

b. Any County officer or employee who recuses himself or herself pursuant to paragraph (a) of this subdivision shall be required to disclose such recusal in writing to the Board and the nature of his or her private interest. The Board shall file and retain such disclosure as a public record. The Board may issue an opinion in response to such disclosure, give advice by letter or informal communication, or file the disclosure with no response. Neither the disclosure nor any response by the Board shall be confidential.

5. Disclosure of Confidential Information.

No officer or employee of the County, whether paid or unpaid shall disclose confidential information concerning the property, government or affairs of the County or any other confidential information of an official character obtained as a result of County employment except when disclosure is required by law or when such information is otherwise available to the public, nor shall he or she use such information to advance the financial or other private interest of himself or herself or others.

6. Misuse of County resources.

No officer or employee of the County shall use the resources of the County in furtherance of his or her business, professional or political interests or activities, or in furtherance of the interests or activities of any outside entity other than pursuant to a County contract with such entity, without the approval of the head of his or her agency and the approval of the Board of Ethics upon a finding by the Board that such activity is in furtherance of the interests of the County.

7. Hiring and supervision of relatives.

No officer or employee of the County shall hire or induce others to hire a relative of such officer or employee nor shall any officer or employee of the County directly supervise or evaluate the work of any relative employed by the County except: a) as required by the Civil Service Law or rules promulgated thereunder; b) pursuant to a supervisory arrangement that began prior to the effective date of this subdivision; or c) with the written approval of the Board of Ethics. In determining whether to approve the request of an officer or employee to hire or supervise a relative, the Board shall consider, among other things, the nature of the relationship at issue and any steps that have been taken to ensure objectivity in any such hiring decision, salary determination, evaluations, recommendations for promotions and increases and other aspects of a supervisory relationship. Neither such request for Board approval nor the determination of the Board shall be confidential. Nothing in this subdivision, nor any approval issued by the Board pursuant to this subdivision, shall relieve an employee of the continuing requirement to exercise his job duties in the best interests of the County, without giving raises, promotions or other beneficial terms or conditions of employment based on private interests or personal relationships, and the Board may continue to enforce such requirement, as it deems appropriate, whether or not it has approved the hiring or supervision of a relative.

8. Post-employment restrictions.

a. No person who has served as a paid officer or employee of the County shall, within a

period of two years after the termination of such service or employment, appear before any Board, agency, officer or employee of the County, except on behalf of the State, or a political subdivision or instrumentality thereof, or in furtherance of the interests of the County with the approval of the Board upon application of a County agency. No person who has served as an unpaid officer or employee of the County shall, within a period of two years after the termination of such service or employment, appear before his or her former agency or the officers or employees thereof, except on behalf of the State, or a political subdivision or instrumentality thereof, or in furtherance of the interests of the County with the approval of the Board upon application of a County agency.

b. No person who has served as a paid or unpaid officer or employee of the County shall receive compensation or render any services in relation to any case, proceeding, application or particular matter which such person was directly concerned with, personally participated in, or actively considered during the period of his or her service or employment, except in furtherance of the interests of the County with the approval of the Board upon application of a County agency. A former officer or employee is also required to ensure that adequate measures are taken to prevent his or her participating in any manner in such particular case, proceeding, application or particular matter if a law firm or other entity in which such person is an owner, member or employee becomes involved with any aspect of such particular case, proceeding, application or particular matter

c. No former paid or unpaid officer or employee of the County shall disclose confidential information concerning the property, government or affairs of the County or any other confidential information of an official character obtained as a result of County employment except when disclosure is required by law or when such information is otherwise available to the public, nor shall he or she use such information to advance the financial or other private interest of himself or herself or others.

9. Pecuniary interest of officers, employees or agents in execution of contracts prohibited.

No officer, employee or agent of the County, whether he or she be such by election, appointment or contract shall directly or indirectly, either on his or her own behalf or for another person or corporation, make or participate in making, including the preparation of specifications or plans for, any contract or agreement in which said officer or employee or agent is interested directly or indirectly as principal or agent or as an officer of or owner of stock in a corporation, nor shall an officer, employee or agent in any way influence the action of any other officer or employee or agent in relation to the making, or fail to recuse him or herself from the discussion and approval process of any County contract or agreement in which he or she has such an interest. In addition to other penalties that may be imposed by the Board as set forth in this Code, if any such officer or employee or agent shall willfully violate the provision of this section, such contract or agreement shall be voidable, and such officer or employee or agent shall be guilty of a misdemeanor and upon conviction thereof shall forfeit his office or employment or agency and shall be further punished by a fine of not more than one thousand dollars or by both such fine and imprisonment. The provisions of this section shall not apply to the making of a contract with the County to serve as a foster parent or to act as a physician for any County department or agency or to any ministerial acts taken by a County officer, employee or agent. Further, the

provisions of this section shall not preclude a contractor or a contractor's officers and employees from advocating for or participating in the drafting of extensions, renewals or amendments of its own contract with the County nor preclude a contractor from assisting the County with the drafting of specifications upon request of a County agency.

10. Board of Ethics.

a. There shall be a Board of Ethics consisting of five members, three (3) of whom shall be appointed by the County Executive, subject to the confirmation of the County Legislature, all of whom shall reside in the County and who shall serve without compensation, and the County Attorney and another member who shall be appointed by the County Executive. A majority of such members shall not be officers or employees of the County or any municipality. The members of the Board shall elect a chairperson. Except for the County Attorney, each member shall serve for a term of five (5) years.

b. The Board shall have the authority to investigate complaints of actions in violation of this section. The results of any such investigation may be shared, in the discretion of the Board, with necessary and appropriate County officers and law enforcement officials. In furtherance of this investigatory function, the Board may request that the Commissioner of Investigations use the power and resources of his or her office to assist the Board.

c. The Board also shall render advisory opinions with respect to this section, such opinions to be rendered only to an officer or employee or former officer or employee requesting advice relative to himself or herself, or to the head of a County agency, to the County Executive or to a Legislator. All requests for opinions must be submitted to the Board in writing. The Board shall only disclose and distribute opinions to the person duly requesting it. However, where an advisory opinion is issued and the person who is the subject of the opinion fails to adhere to the guidance of an opinion that has been disclosed to him or her, such violation may, in the discretion of the Board, be disclosed to the head of such person's agency or the necessary and appropriate County officers or law enforcement officials, subject to the provisions in subdivision 11 herein. Notwithstanding the provisions of this paragraph, all such advisory opinions issued by the Board either prior to or subsequent to the effective date of this local law may be issued with the names and other identifying information redacted and such advisory opinions issued with appropriate redactions shall be made available to the public to the extent the Board determines that identities can be meaningfully protected. Opinions may also be issued and disclosed without the names redacted with the permission of any person who will be identified.

d. In lieu of a formal request for opinion, a County officer or employee may, at any time, submit to the Board an informational letter concerning his or her outside interests or activities whether or not such interests or activities appear to pose an explicit conflict of interest under this Code. Such an informational letter may also be submitted by an officer or employee concerning the outside interests or activities of someone to whom the officer or employee intends to make an offer of County employment or by a former County officer or employee. The Board shall file and retain such informational letter as a public record. The Board may issue an opinion in response to the informational letter, give advice by letter or informal communication, or file the informational letter with no response. Neither the informational letter nor any response by the

Board shall be confidential.

e. The Board shall promulgate its own rules and regulations concerning its forms and procedures and shall maintain appropriate records of its opinions and proceedings.

f. The Board shall administer and enforce the provisions of Section 22-4.3(c) of the Nassau County Administrative Code relating to the filing of financial disclosure forms and financial disclosure requirements by County officials, officers and employees. The Board may delegate to any County officer the duty to distribute, collect and review financial disclosure forms and otherwise administer and enforce section 22-4.3 of the Nassau County Administrative Code relating to financial disclosure; provided, however, that such officer may not impose penalties but may make recommendations to the Board regarding the imposition of penalties for violations of section 22-4.3.

11. Penalties.

A violation of any of the provisions of this section shall constitute cause for forfeiture of pay, suspension, imposition of fines of up to \$10,000 per violation or removal from office or employment, as may be imposed by the Board, after providing an opportunity to be heard in a proceeding conducted in accordance with due process. Any person found to have violated any such provision may file with the Board within seven days of such finding a written notice indicating his or her intent to commence a proceeding to review the determination pursuant to article seventy-eight of the civil practice laws and rules. Upon receipt of such notice, the Board shall stay the imposition of any penalty imposed pursuant to this subdivision until the commencement of the article seventy-eight proceeding. Resignation or dismissal from County employment shall not bar the imposition of penalties under this section for violations of the Code that occurred during the period of employment. Penalties may also be imposed under this section on a former employee for violations of the post-employment restrictions. The County Attorney shall provide for appropriate reporting and other services in relation to any such proceeding. Nothing in this section shall limit the imposition of any other penalties, fines and/or other sanctions which may be provided by law or prevent the County Executive or other appropriate supervisory officer from taking disciplinary action based on the findings of a separate inquiry or investigation.

12. Exemptions.

a. No employee may have any interests or take any action prohibited by subdivisions two through six of this section without the approval of the Board; provided that the provisions of this section shall not prohibit, or require recusal or transactional disclosure as a result of:

(1) An action specifically authorized by statute, rule, or regulation of the State of New York or of the United States.

(2) A ministerial act.

(3) Gifts:

(A) received by the County officer or employee from his or her parent, spouse or child; or

(B) accepted on behalf of the County and transferred to the County.

(4) Gifts or benefits having a reasonable value that are received by a County officer or employee listed in section 11 of the Domestic Relations Law for the solemnization of a marriage by that officer or employee at a place other than his or her normal public place of business or at a time other than his or her normal hours of business.

(5) Awards from charitable organizations.

(6) Receipt of County services or benefits, or use of County facilities, that are generally available on the same terms and conditions to residents or a class of residents in the County.

(7) County officers or employees appearing or practicing before the County or receiving compensation for working on a matter before the County after termination of their County service or employment where they performed only ministerial acts while working for the County or where they are appearing in an official capacity as an officer or employee of another governmental entity.

(8) Former County officers or employees appearing before the County where such appearances are a necessary incident of an otherwise permitted representation or employment in relation to an adjudicative proceeding before an agency or body, or a court other than an agency, Board or commission of the County.

b. Notwithstanding the foregoing provisions of this section, any textbook authored by a member of the faculty as Nassau Community College may be sold at the college and a royalty or other financial remuneration may be paid to such author, provided the sale of such a faculty authored textbook shall be made in accordance with the rules and regulations promulgated by the Board of Trustees of the college.

c. Notwithstanding the foregoing provisions of this section, a County officer or employee may be an officer, director or trustee of a membership corporation or other nonprofit corporation or association, public authority, or public benefit corporation, or hold a policy making position with such entity, and participate in all activities and transactions of such entity, provided he or she receives no financial remuneration either directly or indirectly from such entity other than expenses actually and necessarily incurred in the performance of his or her duties. Any officer or employee receiving such remuneration for expenses shall, for each year in which such remuneration is received, be required to complete and file the financial disclosure statement promulgated pursuant to the provisions of §22.4.3 of the Administrative Code. A County officer or employee serving a membership corporation or other nonprofit corporation or association pursuant to this paragraph, other than in an ex-officio capacity, shall recuse himself or herself from acting, in his or her capacity as County officer or employee, on any matters directly affecting such entity, shall not use any confidential County information nor, without the approval of the Board, communicate with any County Board, agency, officer or employee in furtherance of the interests of such corporation or entity nor work on any case, proceeding, application or

particular matter which such person has been directly concerned with, personally participated in, or actively considered as a County officer or employee.

d. Notwithstanding the foregoing provisions of this section, a person serving the County or any agency thereof without compensation shall not be subject to the prohibitions set forth in subparagraphs one and two of paragraph (a) of subdivision two of this section.

e. Nothing in this section shall be deemed to prohibit an officer or employee of the County from providing services to a local development corporation, public authority, public benefit corporation, or similar entity as may be determined by the Board, where such services are provided pursuant to law or contract between the County and such entity, and the officer or employee does not receive additional compensation for such services. Such service shall not be deemed to be a private interest of such officer or employee nor to create a conflict with official duties.

f. Notwithstanding the foregoing provisions of this section, an officer or employee of the County shall not be deemed to be in violation of paragraph (a) of subdivision two of this section for making a contract with the County to serve as a foster parent unless the making of such contract is in conflict with the proper discharge of his or her official duties.

g. Notwithstanding any other provision of law, an elected official or a deputy county executive may attend a function given by a civic association or non-profit organization of a charitable or community nature, when invited and paid for by the sponsoring organization, or attend a function of an association composed of representatives of business, labor, professions or the news media, when invited and paid for by the sponsoring organization. In addition, a staff member may be designated to attend any such functions as a representative of an elected official when specifically requested to do so by the elected official.

h. Notwithstanding any other provision of law, an elected official or a deputy county executive may be a guest at ceremonies or functions sponsored or encouraged by the County as a matter of County policy. In addition, a staff member may be designated to attend any such ceremonies or functions as a representative of an elected official when specifically requested to do so by the elected official.

i. Notwithstanding any other provision of law, an officer or employee may be a guest at any ceremony, function, conference or occasion where the attendance of the public servant is in furtherance of the interests of the County, where the attendance has been approved in writing, in advance where practicable or within a reasonable time thereafter, by the County Executive or a deputy county executive, or in the case of the Legislature by the Presiding Officer or the Minority Leader, in the case of all offices of elected officials by said elected official or their designated officer, in the case of the Office of Legislative Budget Review by the Director of said office and in the case of the Clerk of the Legislature by the Clerk of the Legislature.

Addendum B - Delegated Small Purchase Authority Procedures

A. Introduction

1. Procurements not to exceed an aggregate amount of ten thousand dollars (\$10,000) may be made in accordance with small purchase regulations promulgated by the Director of Purchasing. Requirements shall not be artificially divided so as to constitute a small purchase under this section. These procedures are meant to satisfy the requirements all applicable local, state and federal laws, rules and regulations.
2. The Director of Purchasing shall have the responsibility for issuing and maintaining all standard specifications for goods and services required by the County and to maintain lists of qualified vendors for such goods and services. Among its duties, it shall, to the greatest extent practicable: (a) prepare and issue standard specifications for goods and services commonly required by the County; (b) revise all standard specifications to conform to all technical and scientific advances pertaining to the goods or services described in those specifications, and to reflect changes in the County's requirements and user agencies; and (c) establish guidelines for drafting specifications. All specifications shall be drafted so as to maximize, to the extent practicable competition in fulfillment of the County's requirements.
3. Small purchases must be made for the lowest price quoted from a responsive and responsible bidder. If the Director of Purchasing awards a contract to other than the lowest bidder, the Director's bid record shall include a statement explaining the basis for the decision. Any such rationale must contain objective criteria, for example:
 - a. Item offered did not meet specifications or brand and model requirements
 - b. Item offered was not equivalent of what was requested or vendor has been suspended.

B. Purchases Under \$500

1. In accordance with the County's Procurement Policy, purchases under \$500.00 may be made by the Director of Purchasing without the receipt of any bid.
2. Such purchase shall be approved by the Director of Purchasing so long as the price to be paid is determined to be fair and reasonable. The Director of Purchasing shall retain documentation as to the selection made and the fairness and reasonability of the price to be paid.
3. Purchases under \$100 shall comply with the Nassau County Comptroller's Control Directive 1 relating to "Petty Cash Accounts."

C. Purchases \$500 and over but less than \$3,000

1. For purchases \$500 and over but less than \$3,000, the Director of Purchasing shall obtain three (3) verbal price quotes for the good or service, such quotes being from the Department of Purchasing's list of qualified vendors for such good or service and from vendors who have previously provided process quotes for such good or service.
2. If such list contains less than three vendors, the Director of Purchase shall obtain quotes from all vendors on the list and explain why there are no other vendors from which to reasonably obtain quotes.
3. The reason for the winning vendor's selection must be set forth in writing by the Director of Purchasing, along with a summary of the quotes solicited and received. Such documentation shall be retained by the Director of Purchasing.

D. Purchases \$3,000 and over but less than \$10,000

1. For purchases \$3,000 and over but less than \$10,000, the same procedures apply as in Section C above, with the following exceptions:
 - a. The solicitation must be made in writing by Request for Bid
 - b. All quotes must be made in writing to the Director of Purchasing
 - c. All Requests for Bid shall state a date and time by which written quotes are to be received.

E. Approval of Small Purchases

1. Small purchases shall require the same approvals as are required for all purchases made by the Department of Purchasing, regardless of price.
2. As such, small purchases shall follow the below approval path:
 - a. The Office of Management and Budget must certify that sufficient funds are available for the purchase
 - b. The Department of Information Technology must approve the purchase if the purchase involves computer-related equipment
 - c. The Department of Public Works Fleet Management Division must approve the purchase if it involves motor vehicles
 - d. The Department of Public Works Capital Funds Office must approve the purchase if it involves capital funds
 - e. The Director of Purchasing must approve the contract
 - f. The Comptroller must approve the contract and ensure that funds are encumbered for its payment.

Rider 1

**Nassau County Procurement Policy/Procedure, Countywide
Policy #CE-01**

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Nassau County Procurement Internal Control Guideline

NASSAU COUNTY



PROCUREMENT POLICY/PROCEDURE

COUNTYWIDE POLICY # CE-01

SEPTEMBER 20, 2004

THOMAS R. SUOZZI
COUNTY EXECUTIVE



OFFICE OF THE EXECUTIVE
ONE WEST STREET
MINEOLA, NY 11501-4895
516 571-3131

September 2004

VIA REGULAR AND ELECTRONIC MAIL

Department and Agency Heads
County of Nassau
Mineola, New York 11501

Re: *Countywide Procurement Policy and Procedure*

Dear Department/Agency Heads:

I am pleased to announce the issuance of Nassau County's first comprehensive Countywide Procurement Policy/Procedure. As you all know, procurement of goods and services is a significant portion of Nassau County's budget. We have a duty to the County's taxpayers to ensure that the County procures goods and services efficiently and effectively, and with absolute integrity. This new written Procurement Policy/Procedure will help us accomplish this objective by serving as a user-friendly reference for all individuals involved in the procurement process about what permissible methods of procurement exist and what the law and County policy require for a procurement to be completed. To this end, please ensure that all officers and employees in your organization who are involved in procurement are provided with a copy of this Policy/Procedure and become familiar with it. The publication of this policy is an important step in the right direction, but in order for it to be a real success, your full cooperation is imperative.

Procurement is a dynamic field and we expect that the laws and the County's policies governing procurement will not be static. Therefore, you are advised that this Policy/Procedure will be amended from time to time, as necessary. Any questions that you may have regarding the Policy/Procedure should be addressed to Deputy County Executive for Compliance, Helena E. Williams. Her office will be monitoring future compliance.

Sincerely,

Handwritten signature of Thomas R. Suozzi in black ink.

THOMAS R. SUOZZI
County Executive

cc: Anthony Cancellieri
Helena E. Williams

NASSAU COUNTY



PROCUREMENT POLICY/PROCEDURE

COUNTYWIDE POLICY # CE-01

SEPTEMBER 20, 2004

POLICY/PROCEDURE TITLE: County-wide Procurement No. CE-01	DATE ISSUED: September 20 , 2004
DEPARTMENT ISSUING: Executive – Compliance	AUTHORIZED and SIGNED BY: <i>Helena E. Williams</i>

POLICY: The Office of the Nassau County Executive recognizes the importance of publishing concise, comprehensible and accurate instructions regarding the proper methods for procuring different types of goods and services and the approvals that must be obtained in each case. It is the policy of the County Executive to ensure that all relevant personnel understand the appropriate methods of procuring any given good or service.

PURPOSE: To set forth clearly: (i) the different methods by which the County may procure goods and services, (ii) when each method may be used, and (iii) what approvals must be obtained to complete a procurement under each method. All County personnel involved in procurement are directed to familiarize themselves with this procedure and to follow its provisions. However, this Procedure does not create any legal rights or duties or causes of action. Rather, it summarizes existing state and local law and the policy and preferred practices of Nassau County. The Procedure shall be amended from time to time, as necessary, to reflect changes in the law and County policies.

SCOPE: All Nassau County Departments and Agencies

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LAWS AND REGULATIONS:

Gen. Mun. Law

- §99-h ("Participation in federal programs")
- §99-r ("Contracts for services" purchased from a state agency, public benefit corporation or public authority)
- §101 ("Separate specifications for certain public work") ("Wicks Law")
- §103 ("Advertising for bids; letting of contracts; criminal conspiracies")
- §103(3) (Purchases through other counties)
- §103-a ("Ground for cancellation of contract by municipal corporations and fire districts")
- §103-b ("Disqualification to contract with municipal corporations and fire districts")
- §104 ("Purchase through [State] office of general services")
- §104-b ("Procurement policies and procedures")
- §119-o (Intermunicipal Agreements)
- Article 18 ("Conflicts of Interest of Municipal Officers and Employees")

Labor Law

- §220 ("Hours, wages and supplements")

State Finance Law

- §161 ("Preferred Sources")

Nassau County Charter

- §103(8) ("Specific powers" of County Legislature)
- §300-A ("Paperwork Reduction Act of 1999")
- §402 ("Duties" of Comptroller)
- §702 (Office of Purchasing "Duties; competitive bids")
- §703, ("Stores Account")
- §704 ("Requisitions")
- §1102 (County Attorney "General powers and duties")
- §1209 (Contracting for engineers and technical services)
- §2151 ("Powers and duties" of Department of Information Technology")
- §2202 ("Pecuniary interest of officers, employees or agents in execution of contracts")
- §2206 ("Execution of contracts")

- §2208 (“Use of patented articles by County”)
- §2218 (“Code of Ethics”)

Nassau County Administrative Code

- §7-1.0 (“Purchases involving less than five hundred dollars”)
- §7-2.0 (“Filing of contracts of purchase”)
- §7-3.0 (“Defaulters to the county”)
- §22-4.2 (“Code of Ethics”)
- §22-17 (“Screening of personnel of service providers”)

Miscellaneous Laws of Nassau County

- Title 56 (“Collective Bargaining Activities of Unions in Nassau County”)

Resolution 928 of 1993

- Provisions relating to small purchases and procurement of architectural, engineering and surveying services

Executive Order No. 1 of 1993 – in relation to personal services contracts

- Written justification required for not taking lowest cost proposer or not obtaining at least 3 proposals

DEFINITIONS

ADDENDA OR ADDENDUM - Refers to documents issued by the County that modify the terms of a Solicitation.

ADPICS – The County’s Advance Purchasing Inventory Control System used by departments to place purchase orders with the Office of Purchasing.

ADVISEMENT/STAFF SUMMARY – The advisement/staff summary is the form attached to this Policy/Procedure as Form #16. This form summarizes the purpose, terms and conditions, and price of a proposed contract, the amount requested for encumbrance, and the procurement history, including which County officials and agencies have approved it

APPROPRIATION – Sum of money from public funds set aside for a specific purpose.

BACK DROP CONTRACTS – A contract used by State OGS through which political subdivisions, including the County, may purchase certain goods or services from a pool of qualified vendors who are eligible to participate in a secondary Mini-Bid Award Process or other specified selection process.

BEST AND FINAL OFFER – In procurement of personal services, where the County decides after receiving competing proposals to hold discussions with a group of finalists, it may solicit revised proposals from the finalists, which are known as “best and final offers”.

BEST VALUE – The proposal having the “best value” in a

procurement for personal services is the one that optimizes quality, cost and efficiency among responsive and responsible proposers. To the extent that it is practicable, a determination that a proposal has the best value should have an objective basis.

BID – An offer, which upon acceptance by the County, within the allotted time, becomes a binding contract.

BID BOND – A form of bid security in which a third party agrees to be liable to pay a certain amount of money in the event that a specific bidder, if the bid is accepted, fails to accept the contract as bid. See also “Bid Deposit”, “Bid Security”, and “Forfeiture of Deposit or Bond.”

BID DEPOSIT – A sum of money or check deposited with the County to guarantee the bidder will, if selected, accept the contract or forfeit the deposit. See “Bid Bond” and “Bid Security”.

BID NUMBER – The number assigned by the Office of Purchasing to a request to purchase goods or services after the Office of Purchasing receives a requisition from a department.

BID SECURITY – A guarantee, in the form of a bond or deposit, that the bidder, if awarded a contract will accept the contract as bid. Otherwise, the bidder (in the case of a deposit) or his/her guarantor (in the case of a bond) will be liable for the amount of the bond or deposit. In general, the purpose of bid security is to assure that if the lowest bidder refuses to accept or perform the contract, the County will be paid the difference between the lowest bid and the next lowest bid. This discourages bidders from making bids that are not serious. “Bid Bond”, “Bid Deposit”, and “Forfeiture of Deposit or Bond.”

BIDDERS’ LIST – A list maintained by the Office of Purchasing setting the names and addresses of suppliers of various goods and services from who bids, proposals and quotations can be solicited. The vendors on the list have previously expressed interest in doing business with the County, but are not prequalified.

BLANKET PURCHASE CONTRACT– A contract let by the Office of Purchasing under which a vendor agrees to provide goods or a service on a purchase-on-demand basis. The contract generally establishes prices, terms, conditions and the period covered. Shipments are to be made as required by the purchaser.

CATALOG CONTRACT – A Catalog Contract is a kind of Blanket Purchase Contract, but instead of the price being fixed for the term of the contract, there is a fixed discount from the vendor’s list price. . The list price may be changed (typically at the issuance of a new catalog-probably annually) but the discount cannot change.

CHANGE ORDER – A change order is an order directing the contractor to make changes that the contract between the County and the contractor authorizes the County to order without consent of the contractor. Change orders are not subject to competitive bidding

requirements because they are not viewed as new procurements, unless the change order “so varies from the original plan or is of such importance as to constitute a new undertaking.”

CLIENT SERVICES – Services that are provided directly to members of the public.

COMPETITIVE PROCESS – A process where two or more firms are able to compete for a contract.

COMPTROLLER – The Nassau County Comptroller.

COMPTROLLER APPROVAL FORM - The form that the Comptroller’s Office requests when a contract is presented to the Comptroller for approval. A copy is attached to this Policy as Form #10.

CONFIDENTIAL INFORMATION – Any information that is available to a County employee only because of the employee’s status as a public employee and is not a matter of public knowledge or available upon request pursuant to the New York Freedom of Information Law.

CONFLICT OF INTEREST – A clash between the personal interest of a contractor, public official or employee and the apparent or actual interests of the County. Prohibited conflicts of interest are defined by section 2202 and 2218(1) of the Nassau County Charter and Article 18 of the General Municipal Law.

CONSIDERATION – Something of value given or done as recompense that is exchanged by two parties and which makes a contract binding.

CONSTRUCTION PROJECT – The building, altering or repairing, of a public structure or building, or other improvements to any public real property. Construction projects are funded out of the County’s Capital Budget funds and meet the criteria for capital eligibility under section 10.00 of the New York Local Finance Law. Routine operation, routine repair and routine maintenance of existing structures, as well as furnish and install agreements are not considered “Construction Projects”.

CONTRACT - Any written instrument or electronic document containing the elements of offer, acceptance, and consideration.

CONTRACTOR – Any individual or firm that agrees to provide goods to or perform services for the County.

COST ESTIMATE – The amount that the County projects that it will cost a contractor to deliver a good or service.

COUNTY – Nassau County

COUNTY ATTORNEY – The County Attorney of Nassau County.

COUNTY EXECUTIVE – The County Executive of Nassau County.

DCE – A Deputy County Executive of Nassau County

DESIGN SPECIFICATION – A description of what the County seeks to purchase in terms of how physically the good is to be designed and manufactured or how the service is to be delivered. See also “Functional Specification” and “Performance Specification”.

DIRECT PURCHASE ORDER – An order placed by a department through the County’s ADPICS system to request goods that previously have been procured under a Blanket Purchase Contract.

DISCLOSURE STATEMENT– A statement that discloses the names, business addresses and telephone numbers of the principals of a firm which must be submitted by bidders and proposers for any contract which requires the approval of the Legislature or Rules Committee, except that publicly traded corporations may submit instead a copy of their Securities and Exchange Commission disclosure.

DPW – The Nassau County Department of Public Works.

EMERGENCY PROCUREMENT – A purchase made without following normal competitive procedures in order to obtain goods or services to meet an urgent and unexpected requirement where health and public safety or the conservation of public resources is at risk.

ENCUMBRANCE – A reservation or commitment of budgeted funds related to unfulfilled contracts for goods or services. The purpose of encumbrance accounting is to prevent further expenditure of funds in light of commitments already made.

FIDELITY BOND – A bond that secures the County up to an amount stated in the bond for losses caused by dishonesty or infidelity on the part of a Contractor or a Contractor’s employees

FORMAL SEALED BID – A bid submitted to the County in a sealed envelope in conformance with the requirements set forth in an Invitation to Bid.

FUNCTIONAL SPECIFICATION - A description of what the County seeks to purchase in terms of what results are required. A detailed functional specification that specifies what level of performance is desired for various characteristics can also be called a “Performance Specification”.

GOODS – All types of personal property, including supplies, materials, equipment and machinery, but not including investment securities and currency.

INVITATION TO BID – A document containing Specifications for Goods and Services which the County is seeking which invites any vendors that may be able to supply the Goods or Services to submit a Formal Sealed Bid.

IT – The Department of Information Technology.

LEGISLATURE – The Nassau County Legislature.

LOWEST RESPONSIBLE BIDDER – The responsible bidder that submits the bid that is lower in its aggregate cost to the County than any other bid submitted by a responsible bidder.

MINI-BID AWARD PROCESS – An abbreviated bid and selection process sometimes required by State OGS when purchasing goods or services through OGS from its list of prequalified vendors on a Back Drop Contract.

MODEL BASE CONTRACT FOR PERSONAL SERVICES - The Model Base Form attached to this Policy as Form #14 and which has been approved by the County Attorney's Office.

MULTIPLE AWARD – The award of a contract to two or more bidders for the same or essentially similar items. This is appropriate only in situations where the award of a single contract would be impossible or impractical and awards are limited to the least number of suppliers necessary for a workable contract.

OFFICE OF PURCHASING – The Nassau County Office of Purchasing.

OGS – The New York State Office of General Services.

OMB - The Office of Management and Budget of Nassau County.

PERFORMANCE BOND – A performance bond is a contract of guaranty executed subsequent to award by a successful bidder or proposer to protect the County from loss due to contractor inability or failure to complete the contract as agreed.

PERFORMANCE SPECIFICATION – A specification describing the performance characteristics that the County seeks in a good or service.

PERSONAL SERVICES – Services provided by independent contractors that require the consistent exercise of judgment or specialized skills. Examples of Personal Services include medicine and the medical arts, architecture, engineering, surveying, accounting, law, financial advisory and underwriting services, management consulting services, feasibility studies of a scientific or technical nature, and other services that require advanced education or professional licensing or certification.

PREFERRED SOURCE – An entity listed by the Commissioner of OGS as a vendor of one of the goods or services on its list of services and commodities provided by Preferred Sources. Pursuant to section 162 of the State Finance Law, when a good or service that is sought by the County is provided by a Preferred Source, the County must purchase it from the Preferred Source if the Preferred Source can meet the County's requirements.

PROCUREMENT – The procedures for obtaining goods or services (but not real property), including all activities from the planning steps and preparation and processing of a requisition through receipt and

acceptance of delivery and processing of a final invoice for payment. The acts of preparing specifications, evaluating bids or proposals, making awards and administering contracts are involved.

PROPOSER - A person submitting a proposal in response to an RFP or other solicitation for proposals

QUOTATION – A statement of price, terms of sale and description of goods or services offered by a vendor to the County that is supplied in response to an RFQ.

REQUEST FOR PROPOSALS (“RFP”) – A Request for Proposal or RFP is a document that can be issued by the County to solicit proposals for the performance of Personal Services. Unlike the Formal Sealed Bidding process, the RFP process allows for negotiation of prices and proposals after proposals have been submitted.

REQUEST TO INITIATE – The Request to Initiate is the document used by a department to initiate a personal services procurement and which also is used by DPW to initiate a construction procurement. A copy of this form is attached hereto as Form #14.

REQUIREMENTS CONTRACT – A contract that provides for filling all purchase requirements of the purchasing County department for specified goods or services during a specified contract period, with deliveries to be scheduled by placing orders with the vendor. DPW uses this type of contract to secure contractors to perform its smaller repair and maintenance jobs that occur during the course of a year.

REQUISITION – A request for the acquisition of goods or services that a department submits to the Office of Purchasing through the ADPICS system.

RESPONSIBLE BIDDER – A bidder that has the capability to perform in full the contract requirements as evidenced by its financial, organizational and material resources, technical qualifications, experience, satisfactory record of past performance for the County and other entities, and its satisfactory record of business integrity.

RESPONSIVE BIDDER – A bidder whose bid meets the minimum specifications and requirements set forth in an Invitation to Bid.

RULES COMMITTEE – The Rules Committee of the Nassau County Legislature.

SELECTION COMMITTEE – A committee selected to evaluate competing proposals in the RFP process. The committee may appoint both technical and price advisors to assist it.

SERVICES – The furnishing of labor, time or effort by a contractor, not involving the delivery of a specific end product other than reports that are merely incidental to the required performance.

SMALL PURCHASE – Any purchase of goods and services that costs \$10,000 or less.

SOLICITATION – The process of notifying prospective bidders or

proposers that the County is seeking bids or proposals for furnishing goods or services. The process may consist of public advertising, mailing, Invitations for Bids, Requests for Proposals, posting notices on web sites, or telephone calls, faxes or emails to prospective bidders or proposers.

SOLE SOURCE PROCUREMENT – An award to a vendor of a contract for goods or services without any competitive process based upon the reasonable belief that the vendor is being the only supplier capable of delivering the good or service.

SPECIFICATION - A description of what the County seeks to purchase, and consequently, what a bidder must be responsive to in order to be considered for an award of a contract. A specification may be a description of the physical or functional characteristics, or the nature of a good or service. It may include a description of any requirements for inspecting, testing or preparing a supply or service item for delivery.

STREAMLINED COMPETITIVE PROPOSAL - A less formal, more flexible method of soliciting proposals for personal services than the RFP process.

I. INTRODUCTION

This policy and procedure covers County procurement of goods, services, personal services and construction. This includes County purchases of supplies, materials, equipment and both professional and non-professional services. The procedure sets forth guidelines that apply to each of the procurement methods that the County may use to purchase goods, services and personal services. These methods include:

- Formal sealed bidding
- Request For Proposals (“RFP”)
- Streamlined Competitive Proposal Process
- Department of Public Works Purchase Process
- Small Purchases and Direct Purchase Orders
- Emergency Procurement
- Sole Source
- Intergovernmental Procurement
- Preferred Source

In cases where contracts are to be funded in whole or in part by the federal or state government, additional or different federal or state laws or regulations may apply. In all such cases, the department seeking to procure goods or services should consult with the County Attorney's Office regarding such potential additional or different requirements.

In some cases, the County may acquire goods or services offered directly by other governmental entities without going through a competitive procurement (*see* Section IX below). Further, the acquisition or lease of real property, and the sale or disposition of goods, services, real or personal property by the County are not covered by this policy and procedure.

Certain requirements apply only to a single agency. For example, Nassau County Charter §§ 1006, 1007 and 1008 set forth requirements for contracts by the Department of Social Services respectively for social services information, child care services and foster care and adoptive services. These types of requirements that apply to the contracts of a single agency only are not covered by this County-wide policy and procedure. Moreover, this procedure does not apply to cases where there are existing contracts between departments in the health and human services vertical and not-for-profit organizations which may be renewed or extended.

The last section of this procedure sets forth procurement ethics guidelines. This section is a synopsis; it does not purport to be a comprehensive guide to ethical considerations. Any employee that feels uncertain how to resolve an ethical problem should consult with the County Attorney's office or Board of Ethics.

Nothing in this procedure shall be deemed to create, expand, modify or otherwise affect any legal right or duty or cause of action.

II. FORMAL SEALED BIDDING

Formal sealed bidding is the most commonly used procurement method for goods and services. Whenever a department wants to purchase more than \$10,000 worth of goods or non-personal services, and the goods or non-personal services are not available from a “preferred source” (see below, Section X), purchasing personnel must first consider formal sealed bidding before proceeding to any other method of procurement. The County’s formal sealed bidding process, except with respect to public works contracts, is coordinated by the Office of Purchasing. The chart below sets forth the County’s general guidelines for using formal sealed bidding. The Department of Public Works (“DPW”) manages the formal sealed bidding process for public works contracts. Special provisions that apply to formal sealed bidding on public works contracts are set forth below in Section V.

<p>WHAT IS FORMAL SEALED BIDDING?</p>	<p>Formal sealed bidding is the method of procuring goods and services over \$10,000 whereby a contract is awarded to the lowest responsible bidder meeting the specifications of an Invitation to Bid. The award is based exclusively on price and price-related factors. A form Invitation to Bid is attached as Form #1.</p>
<p>WHEN IS FORMAL SEALED BIDDING USED?</p>	<p>Formal sealed bidding must be used whenever the County is acquiring over \$10,000 of goods or services unless one of the other methods of procurement listed in this procedure is permissible.</p>
<p>HOW DO YOU BEGIN AN INDIVIDUAL PROCUREMENT USING FORMAL SEALED BIDDING?</p>	<ul style="list-style-type: none"> • A department seeking to procure goods or services by formal sealed bidding must first obtain authorization of the Deputy County Executive (“DCE”) overseeing the Department. This approval may be verbal, by email or written. Email is recommended. The approval is not recorded in the ADPICS system and does not have to be verified by the Office of Purchasing before proceeding with a formal sealed bid. • The department then should enter a “<i>requisition</i>” or purchase request into the on-line system maintained by the Office of Purchasing for making purchase requests. This system is currently known as ADPICS. The requisition must include proposed specifications, a

	<p>justification for the purchase and a realistic proposed delivery date for the good or service. In addition, departments are encouraged to include names and addresses of potential vendors, a reasonable cost estimate, whether in-house alternatives were investigated, and whether there are possible buying and leasing alternatives. Whenever reasonably practical, departments are encouraged to request standard commercially available products rather than specially designed items.</p> <ul style="list-style-type: none"> • After a department submits a requisition, all further processing of the purchase is handled by the Office of Purchasing. • The ADPICS system sends the requisition first to OMB which verifies that there are adequate funds in the department's budget for the requested purchase before it is sent to the Office of Purchasing. • When the Office of Purchasing receives a request, it assigns a "Bid Number" which is used to identify the procurement at all ensuing stages of the procurement process.
<p>HOW DO YOU BEGIN A "BLANKET PURCHASE" PROCUREMENT USING FORMAL SEALED BIDDING</p>	<ul style="list-style-type: none"> • On such dates as are specified by the Director of Purchasing, each department will enter into ADPICS requisitions for "blanket purchases" for supplies and materials that the department anticipates needing during the ensuing quarter. • A department may obtain items previously procured under a blanket purchase order by submitting a "direct purchase order" through the ADPICS system to the Office of Purchasing. A form blanket purchase order and a form direct purchase order are attached hereto as Forms #2 and #3.
<p>WHAT PUBLIC NOTICE IS REQUIRED FOR FORMAL SEALED BIDDING?</p>	<ul style="list-style-type: none"> • The Office of Purchasing shall have a synopsis of the Invitation to Bid published in Newsday or another official newspaper of the County at least five days before bids are scheduled to be opened. In addition, if appropriate, the notice may be published in a relevant trade publication or an electronic version thereof. A copy of a form request to publish a legal advertisement of the Invitation to Bid is attached hereto as Form #4. • The notice shall set forth the time and place where bids will be publicly opened, as well as the amount of any security that must be deposited with the bid. • If the full Invitation to Bid is not published, the notice

	<p>shall state where a full copy may be obtained.</p> <ul style="list-style-type: none"> • The Office of Purchasing also will send the Invitation to Bid or a notice as to where the Invitation to Bid may be obtained to all vendors who have registered with the Office of Purchasing as vendors of the good or service in question. The Office of Purchasing has a “vendor/bid list request form” and a vendor “Application for Registration as a Bidder” that any interested vendor may submit to become registered with the County. A copy of these forms is attached as Forms #5 and 6. • The Office of Purchasing also will send the notice to the Clerk of the Legislature and to IT which publishes the Invitation to Bid on the official County web site at http://www.co.nassau.ny.us/Purchasing/index.html. The Office of Purchasing also must forward the Invitation to Bid to the Clerk of the Legislature. • The Office of Purchasing also sends the Invitation to Bid to the Office of Minority Affairs which will initiate, as appropriate, outreach to minority and women’s business enterprises.
<p>PREPARATION AND DISTRIBUTION OF SOLICITATIONS (INVITATION TO BIDS)</p>	<ul style="list-style-type: none"> • The Office of Purchasing will prepare the Invitation to Bid for a formal sealed bidding procurement, upon receiving from the procuring agency recommended specifications to include in the Invitation to Bid. • The specifications shall set forth the technical requirements for a material, product or service, as well as the criteria for determining whether these requirements are met. • Specifications can be in the form of a detailed description of the required supplies, equipment or services, including, if appropriate, descriptions of raw materials and construction methods. These are known as “design” specifications. • Specifications also can be set forth in terms of the tasks that the good or services are intended to perform or in terms of standards of performance. These are known as “functional” or “performance” specifications. • Specifications should be drawn in a manner that will maximize competition, and therefore be as clear and precise as is reasonably practicable, consistent with the County’s needs. • The Invitation to Bid shall include a notice that a contract award is subject to applicable provisions of federal, State and local laws and executive orders,

	<p>including, for example, those requiring equal employment opportunity.</p> <ul style="list-style-type: none"> • The Invitation to Bid should state that the County reserves the right to reject all bids, to reject any bid that is not responsive and to reject any bidder that it deems not responsible.
<p>AMENDMENTS TO INVITATION TO BID</p>	<ul style="list-style-type: none"> • A reasonable period prior to the deadline for submitting bids, the County may amend the Invitation to Bid, and this includes amendments that extend the deadline where it is in the County's interest to do so. • Any amendment shall be published on the County's web site. • The Invitation to Bid shall be advise all potential bidders to regularly check the County's web site for possible amendments to the Invitation to Bid.
<p>WHEN AND HOW ARE BIDS OPENED?</p>	<ul style="list-style-type: none"> • Bids generally shall be submitted on a "Formal Sealed Bid Proposal" form. A copy of this form is attached as Form #8. • Bids received are not opened until the time set for the bid opening in the notice for bids. • An official from the Office of Purchasing designated as the "Public Bid Officer" opens each bid and records it on the "Summary of Bids" worksheet, a copy of which is attached as Form #9. • Copies of the bids are available for public viewing.
<p>RECEIPT AND HANDLING OF BIDS</p>	<ul style="list-style-type: none"> • Late bids, regardless of the circumstances, cannot be accepted. • A bidder may withdraw or modify a bid by giving written notice received in the office designated to receive bids prior to the opening of bids. If a bid is withdrawn prior to the opening of bids, any bid bond or bid deposit shall be returned to the bidder. However, a bid bond or bid deposit shall be forfeited by a bidder that withdraws its bid after the opening of bids if that bidder otherwise would have been the lowest bidder. The department shall retain all documents relating to a withdrawn or modified bid. • A minor, technical and non-substantive mistake in a bid can be corrected after bids are opened provided that such correction would not materially prejudice other bidders, subject to approval by the Director of Purchasing. A copy of the form for an amendment to a Formal Sealed Bid is attached hereto as Form #8.

EVALUATION OF BIDS

- The Office of Purchasing's evaluation and recommendation is recorded on the Formal Bid Recommendation form which is attached hereto as Form #10.
- Only evaluation factors and formulas stated in the Invitation to Bid can be considered in determining the lowest responsible bidder.
- The Director of Purchasing or his or her designee determines the "lowest responsible bidder" or in a case where there is a "multiple award", the "lowest responsible bidders".
- The "lowest bidder" is the bidder offering the lowest aggregate cost.
- The Director of Purchasing or his or her designee also must determine if a bid is "responsive" in that it satisfies all specifications and conforms to all material requirements of the Invitation to Bid.
- For example, the Director of Purchasing shall determine that a bid is non-responsive if:
 - The bidder's signature is missing.
 - The bidder failed to post the required bid security.
 - The bidder failed to initial in ink any alteration of price.
 - The bidder failed to submit any required certificates or licenses, as stated in the Invitation to Bid.
- Examples of when the Director of Purchasing may, depending upon the specific circumstances, determine that a bid is non-responsive include:
 - The bidder failed to respond fully to all the literal terms of the specifications.
 - The bidder failed to attend a "mandatory" bidders' pre-bid conference.
 - The bid is qualified or conditional.

If the Director of Purchasing determines that the low bid is still not a fair and reasonable price in light of prices bid in previous procurements, current market prices or other relevant considerations, he or she may try to negotiate a lower price with the lowest responsible and responsive bidder (and with that bidder only) or may reject all bids and begin a new procurement. The Director of Purchasing also may try to negotiate with the lowest responsible and responsive bidder (and only that bidder) for terms and conditions that are more

	<p>favorable to the County, provided that there is no increase in the price.</p>
<p>CANCELING INVITATION TO BID AFTER OPENING</p>	<p>There may be reasons why an Invitation to Bid may be cancelled after bids are opened, as follows:</p> <ul style="list-style-type: none"> ➤ The specifications turned out to be inadequate or ambiguous. ➤ All responsive bids are at unreasonable prices. ➤ Only one bid was received and the County cannot determine if the bid price is reasonable. ➤ No bid meeting specifications was received from a responsible bidder. ➤ Bids were collusive or submitted in bad faith. ➤ Cancellation is in the County's best interest for other reasons. <p>The Director of Purchasing shall document the reason for canceling an Invitation to Bid after bids have been opened. A Cancellation of Bid form is attached hereto as Form #11.</p>
<p>BIDDER RESPONSIBILITY</p>	<p>A "responsible" bidder is one that is capable of performing the full contract requirements based upon its:</p> <ul style="list-style-type: none"> ➤ Financial resources ➤ Technical qualifications ➤ Experience ➤ Having the necessary organization, material, equipment, facilities, and equipment ➤ Satisfactory record of past performance for the County and for other clients and customers ➤ Satisfactory record of business integrity <p>For example, a bidder shall be found non-responsible if:</p> <ul style="list-style-type: none"> ➤ The bidder is in arrears to the County on tax payments, a debt or contract. ➤ The bidder has defaulted as surety or otherwise upon a contract or obligation to the County ➤ The bidder has been convicted of a crime that is relevant to determining the bidder's business integrity. ➤ The bidder refuses to cooperate in an investigation by the County. <p>Examples of when a bidder, depending upon individual circumstances, may be found non-responsible include:</p> <ul style="list-style-type: none"> ➤ The bidder lacks a satisfactory record of past performance with the County or other clients or customers on projects of similar scope and complexity

	<ul style="list-style-type: none"> ➤ The bidder lacks proof that it has the necessary resources to perform the contract. ➤ The bidder has failed to disclose requested information. <p>If a bidder is found to be non-responsible, the Director of Purchasing or his or her designee should document the reason for such finding. The Director of Purchasing or his or her designee also must make an affirmative finding that the winning bidder is responsible.</p>
<p>GENERAL APPROVAL PATH</p>	<p>All formal sealed bidding contracts are subject to the following approvals:</p> <ul style="list-style-type: none"> • OMB must certify that sufficient funds are available in the department’s budget; • IT must approve any purchase that involves computer-related equipment; • The Office of Fleet Management must approve any purchase or lease that relates to motor vehicles; • DPW must approve any purchase that involves the expenditure of capital budget funds even if it is not for a “public works” project; • The <i>Director of Purchasing or his or her designee</i> must approve the contract unless it is a public works contract in which case DPW approves it; and • The <i>Comptroller</i> must approve the contract and certify that funds will be encumbered for its execution. <p>All contracts in this general approval path are executed by the Director of Purchasing or his or her designee.</p>
<p>COUNTY EXECUTIVE/COUNTY ATTORNEY APPROVAL</p>	<p>Pursuant to Section 2206 of the Nassau County Charter, the County Attorney and the County Executive or a Deputy County Executive to whom such power has been delegated must authorize the issuance of purchase orders or contracts related to <i>construction and maintenance applicable to the Department of Public Works and any contracts that are not for the purchase of supplies, materials, equipment and services in connection with the operation, renovation or maintenance of County facilities or equipment.</i> The range of competitive sealed bid contracts in this latter category of contracts is fairly narrow. It includes certain types of service contracts for which formal sealed bidding is an appropriate procurement method, such as:</p> <ul style="list-style-type: none"> • Translation services • Bus transportation services • Microfilming services.

	<ul style="list-style-type: none"> • Installation of software <p>All contracts and purchase orders in this special approval path are executed by the County Executive or a designated Deputy County Executive (“DCE”) and must be filed with the Clerk of the Legislature after they are executed.</p>
<p>LEGISLATIVE APPROVAL</p>	<ul style="list-style-type: none"> • Where the award to a single bidder exceeds \$100,000, both direct purchase orders and formal sealed bidding contracts for goods and non-personal services procured pursuant to section 103 of the General Municipal Law must be approved by the <i>Rules Committee of the County Legislature</i>. • Where approval of the Legislature is required, the selected contractor must disclose on the cover sheet to the proposed resolution for approval of the contract a statement disclosing the principals of the contractor or, if the contractor is a publicly traded corporation, provide the same disclosure as was provided to the Securities and Exchange Commission. • All such contracts and purchases must be transmitted to the Legal Counsel Bureau of the County Attorney’s Office with a Staff Summary form completed by the Office of Purchasing (or in the case of DPW public works contracts, by DPW). A copy of the Staff Summary form is attached hereto as Form #12. The Legal Counsel Bureau shall forward the contract with a Rules Committee Resolution Form to the County Executive’s Director of Legislative Affairs who shall submit it to the Legislature. A copy of the Rules Committee Resolution Form is attached as Form #13

III. REQUEST FOR PROPOSALS (“RFP”)

Personal services, like non-personal services, may be procured by formal sealed bidding, but personal services also may be procured by using the alternative method known as Request for Proposals, and more commonly referred to as “RFP”. The RFP process should be used for procuring personal services unless another method is permissible pursuant to this Procedure. The RFP process is competitive, like the formal sealed bidding process. However, unlike formal sealed bidding, price and responsibility are not the only two factors on which competing vendors are evaluated. In the RFP process, other factors, such as past performance, technical excellence

and ability to comply with the County's time schedule, may be weighed to determine which vendor will provide the County with the best value. The RFP process also is distinguished from the formal sealed bidding process in that it requires the procurement officials to exercise substantial discretion and judgment both in formulating the RFP and in evaluating proposals.

<p>WHAT ARE THE “PERSONAL SERVICES” THAT ARE PROCURED BY RFP</p>	<p>Personal services are those that require a service provider's <i>specialized skills, expertise and judgment</i>. This generally includes procurement of human, social, cultural, educational, legal, accounting, financial, computer, and other <i>professional services</i>. Architectural, engineering and surveying services are treated separately in Part V of this Policy.</p>
<p>MIXED PURCHASES OF TECHNOLOGY AND PERSONAL SERVICES</p>	<p>Sometimes, a purchase of equipment may also involve the purchase of expert services to design the equipment. As set forth in 1988 Op. State Compt. No. 88-35, such a purchase contract will be considered one for personal services if:</p> <ul style="list-style-type: none"> • the personal services component is the <i>primary or predominant</i> part of the acquisition, and • there is “<i>inextricable integration</i>” of the personal services and “physical components”. For example, purchase of computer hardware and software may fall under this exception depending on: <ul style="list-style-type: none"> ➤ the amount of time and effort involved in <i>tailoring</i> the prepackaged hardware or software; ➤ the degree of <i>customizing</i> necessary; ➤ the amount of time and effort involved in any <i>personnel training</i> services provided by the vendor; and ➤ the <i>relative cost</i> of the prepackaged hardware or software and services. • Although an RFP may be used under the above-described conditions, in any mixed purchase, a department may elect instead to use formal sealed bidding for the equipment portion or for the entire procurement. • Any <i>questions</i> regarding whether a particular contract qualifies as a “personal services contract” should be directed to the County Attorney's Office.

<p>HOW IS AN RFP PROCESS INITIATED?</p>	<ul style="list-style-type: none"> • To begin a procurement for personal services, a department must submit the “Request to Initiate, Part I” form to the Vertical DCE for approval and signature. This is attached (Form #14). • The department head, Vertical DCE and the DCE for Operations must approve and sign this form. A copy must be filed with the Office of Compliance. • In certain circumstances, such as where an RFP is being released on behalf of more than one agency, the DCE for Operations may designate the head of one of the departments as the official responsible for preparing the RFP and may designate that person or the Director of Purchasing as the official responsible for publishing the RFP and accepting proposals. • The department approved by the DCE for Operations to prepare the RFP, then prepares the RFP. • The department must then notify the Office of Purchasing of the RFP title, due date and location for submission of proposals, and a department contact name and telephone number.
<p>WHAT INFORMATION DOES AN RFP INCLUDE?</p>	<p>As stated above, procurement officials exercise substantial discretion in determining how to formulate an RFP. However, in general, an RFP should include each of the following sections:</p> <ul style="list-style-type: none"> • <i>Purpose/General Information</i> – Normally, this section shall include: <ul style="list-style-type: none"> ➤ a general description of the service that the County seeks; ➤ the name of the person in the County to contact for further information; ➤ the number of copies required; ➤ a timetable of dates relevant to proposal submission; ➤ a notice that the contract award is subject to the applicable provisions of federal, State, and local laws and executive orders, including, for example, those requiring equal employment opportunity; and ➤ a notice that proposers shall identify any portions of their proposals that they deem to be confidential, proprietary information or trade secrets and provide any justification why such

materials, upon request, pursuant to the New York Public Officers Law, Article 6 (the "Freedom of Information Law"), may not be disclosed by the County. Such information must be easily separable from the non-confidential sections of the proposal.

In addition, this section may include:

- the required format;
 - the required contents;
 - a page limitation;
 - a notice that proposals may be withdrawn or modified prior to the deadline for submitting proposals, but that following the deadline, submitted proposals shall be irrevocable for such period as is specified in the RFP; and
 - a notice that although discussions may be conducted with the highest ranked proposers submitting responsive proposals, an award may be made without any discussion.
- *Specifications* – The RFP shall include specifications of the service to be performed. Among other things, the specifications may include:
 - a detailed statement of the scope of the services to be performed;
 - a description of the materials, equipment and methods that are to be used to deliver the services;
 - a timetable of dates for tasks to be completed;
 - the goal sought to be accomplished;
 - the performance standards that are to be met and the tests that are to be applied to determine if the standards are met;
 - the required qualifications of proposers;
 - the number and type of required references; and
 - financial and other information needed from proposers.
 - If the specifications include the proposed contract, the department must use the applicable Model Base Form or obtain approval from the County Attorney's Office for any changes to the Model Base Form. The Model Base Form for personal services

	<p>contracts and instructions are attached as Form #15.</p> <ul style="list-style-type: none"> • <i>Evaluation Criteria</i> – This section shall explain the criteria that will be used to evaluate proposals and the relative weight that will be assigned to the respective criteria. Factors that may be considered include: <ul style="list-style-type: none"> ➤ Price ➤ Technical excellence ➤ Management capability ➤ Personnel qualifications ➤ Prior experience ➤ Past performance ➤ Ability to comply with the department’s schedule
<p>PUBLIC NOTICE</p>	<ul style="list-style-type: none"> • A reasonable period of time before proposals are due to be submitted, a synopsis of the RFP must be published in Newsday or in a trade or professional journal or the web site of a trade or professional association that is likely to reach potential vendors. In addition, the RFP may be distributed to qualified vendors known to the department. • The notice shall set forth: <ul style="list-style-type: none"> ➤ The name of the procuring department; ➤ The RFP Number; ➤ A description of what is being purchased ➤ How the full RFP can be obtained ➤ The name and contact information for the person at the department to whom questions about the RFP may be addressed; ➤ Any eligibility requirements for submitting proposals; and ➤ The deadline and place for submitting proposals; • The department issuing the RFP also will transmit the RFP to the Office of Purchasing which in turn will forward the RFP to IT (“IT”). IT will publish the RFP on the County web site at: http://www.co.nassau.ny.us/Purchasing/index.html. • IT also will forward a copy of the RFP to the Clerk of the Legislature. • IT will forward the RFP to the Office of Minority Affairs. The Office of Minority Affairs will, as

	appropriate, initiate outreach to minority and women's business enterprises.
AMENDMENTS TO RFP	<ul style="list-style-type: none"> • An RFP may be amended at any time prior to the deadline for submitting proposals. • Any party that has requested the RFP shall promptly be notified in writing or by email about any amendment to the RFP. In addition, all such amendments or addenda shall be published in the same manner as the original RFP. Parties receiving an amendment shall be required to send a written acknowledgment of receipt.
ESTABLISHMENT OF SELECTION COMMITTEES	<ul style="list-style-type: none"> • Before responses on the RFP are due, the department should establish a Selection Committee to review the proposals. • The Selection Committee may appoint one or more persons to serve as advisors or as a panel of advisors to the Committee with regard to technical matters. • The Selection Committee also may appoint one or more persons with appropriate expertise, skills or experience to serve as advisors or as a panel of advisors to the Committee with regard to price proposals. • The department shall ensure that no member of the Selection Committee or any of its advisors have any "conflict of interest", as set forth in Section 2218(a) of the Nassau County Charter. • In general, the Selection Committee should be composed of no fewer than three persons.
PRE-DEADLINE DISCUSSIONS WITH PROPOSERS	<ul style="list-style-type: none"> • Parties that intend to respond to the RFP shall address any questions regarding the meaning of provisions of the RFP <u>only</u> to the person designated in the RFP as the department's contact person. • The department may hold a proposers' conference at which it addresses questions regarding the RFP. • Except at the proposers' conference, all questions must be in writing and will be answered, if appropriate, as promptly as is practical. The department may set a deadline for accepting written questions. • If the answer to a question requires a clarification of the RFP, such clarification will be sent to all parties known to have requested the RFP.
PRE-DEADLINE HANDLING OF PROPOSALS	<ul style="list-style-type: none"> • A proposer may withdraw or modify a proposal at any time prior to the deadline for submitting proposals by submitting a written notice to the soliciting department.

	<ul style="list-style-type: none"> • The department shall return any security bond or deposit to a proposer that withdraws its bid prior to the deadline, but shall retain all documents relating to the withdrawn proposal for its records.
POST-DEADLINE HANDLING OF PROPOSALS	<ul style="list-style-type: none"> • Proposals submitted after the published deadline shall not be accepted, but the deadline for submitting proposals may be extended by an amendment to the RFP made in accordance with this Policy/Procedure. • Proposals are not required to be opened in public, but shall be either date and time-stamped or opened in the presence of two or more County employees. • The names and addresses for all parties that request an RFP shall be recorded in the Response Summary on the Request to Initiate Form. • Prior to evaluation, all proposals should be reviewed for completeness and compliance with the form and content requirements of the RFP. However, the Committee may waive certain irregularities, such as minor deviations from form requirements.
POST-DEADLINE MODIFICATION OF PROPOSALS	<p>After the deadline for submitting proposals, but prior to the time for submitting a revised or a Best and Final Offer”(“BAFO”), if the County has decided to enter into discussions with a proposer, the proposer may correct mistakes in its proposal. In addition, a proposer always may modify its proposal when requested to do so by the County.</p>
SUFFICIENCY OF NUMBER OF PROPOSALS FROM RESPONSIBLE PROPOSERS.	<ul style="list-style-type: none"> • The soliciting department shall eliminate proposals from any individuals or entities that are not “responsible”, as defined in the above section with regard to formal sealed bids. • The soliciting department must then determine whether it has received a sufficient number of proposals to ensure that the procurement process will be competitive. If the department receives less than three such proposals, when it makes a contract award recommendation, it will have to justify in writing to the DCE for the department’s vertical why it was not possible to attract more qualified proposers.
EVALUATION OF PROPOSALS	<ul style="list-style-type: none"> • The Selection Committee, either on its own or based upon the advice of its technical advisors, shall rate proposals in terms of their technical merit. • A rating or scoring worksheet shall be used by the Committee and/or its technical advisors, if any, to score

	<p>each proposal on each of the technical criteria set forth in the RFP.</p> <ul style="list-style-type: none"> • The Selection Committee and/or its technical advisors shall prepare an evaluation report. The evaluation report shall show the scores assigned to each proposer on each evaluation criterion. It also shall identify which proposals are technically responsive (or are capable of being made responsive) in that they meet specifications. • Technically responsive proposals should be scored and evaluated in comparison to one another and the best proposals should be identified. Price proposals for those highly ranked technical proposals should then be considered. • In general, the number of these best qualified proposals should be three, but there may be cases where less or more proposals may be considered. • The Committee may decide to consider price only for the proposals receiving the highest-ranking technical evaluations and may eliminate from further consideration lower-ranking technical proposals. • The Selection Committee shall determine which of the remaining proposers has submitted a “reasonable” price proposal based upon the historical price paid for the same or similar services, published price lists, and the County’s estimate of the proposer’s costs. • The Selection Committee must record their price evaluations in the Committee’s evaluation report. • One method for comparing proposals, but not the only method, is to score them in terms of price per technical evaluation point and to select the proposals that have the lowest cost per technical evaluation point. However, a high quality proposal that has the lowest cost per technical evaluation point may still properly be rejected if there are other appropriate reasons that favor awarding the contract to another proposer. For example, the Committee properly could reject a proposal from the proposer with the lowest cost per technical evaluation point if the price bid by that proposer exceeds the County’s budget constraint for the project. Similarly, if quick completion of the project is important, the County properly might choose a bidder who could complete the project more rapidly. • The Committee must record in writing on the rating sheet or elsewhere the combined rating for each
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	<p>remaining proposer. See <i>Sample Rating Sheets attached hereto</i>.</p>
<p>DECIDE WHETHER OR NOT TO HAVE DISCUSSIONS</p>	<ul style="list-style-type: none"> • After the highest scoring proposals have been identified, the Selection Committee shall determine whether to enter discussions with these proposers or to recommend awarding the contract to the top proposer(s). • Advantages of discussions include: <ul style="list-style-type: none"> ➤ Ensuring that proposers understand the County’s requirements; ➤ Maximizing the opportunity to negotiate advantageous contract terms; and ➤ Providing an opportunity to obtain the best price.
<p>FRAMEWORK FOR DISCUSSIONS</p>	<ul style="list-style-type: none"> • If the Selection Committee elects to hold discussions with the finalists, it should hold such discussions itself, but if there are technical questions that may need to be discussed, the Committee’s technical advisors, if there are any, may also participate. • The Selection Committee should : <ul style="list-style-type: none"> ➤ Establish an agenda and schedule for all discussions. ➤ Accord fair and equal treatment to all finalist proposers with respect to their opportunity for discussion and revision of proposals. ➤ Resolve any ambiguities or uncertainties in the proposals. ➤ Keep records of discussions and their results. • The Committee members and its advisors may not: <ul style="list-style-type: none"> ➤ Give one of the proposers an advantage by providing information about the other proposers’ technical or price proposals. ➤ Disclose technical information to an individual proposer that will improve its proposal. This does not preclude advising a proposer that it needs to improve its technical proposal by using a phrase like, “sharpen your pencil”. It also does not preclude clarifying any aspects of the specifications that the proposer may have misunderstood. ➤ Disclose to a proposer what price target it will need to meet to compete successfully. This does not preclude informing a proposer that the County will not consider any bid that exceeds a specified

	<p>“competitive price range”, so long as all bidders are so informed.</p> <ul style="list-style-type: none"> • If the Selection Committee decides to recommend awarding the contract to one or more of the proposers without soliciting best and final offers from a group of finalists, the Committee still may hold discussions with the winning proposer(s) and attempt to negotiate more favorable terms for the County. • At the conclusion of discussions, the Committee may decide to recommend awarding the contract to one or more of the proposers based on their existing proposals. However, it often will be useful to request some or all the finalist proposers to submit a “best and final offer” (“BAFO”). • This request shall be made in writing and shall state the deadline for submitting BAFOs and to whom they must be submitted. • The notice also shall specify any additional form or content requirements for BAFOs. • BAFOs shall be evaluated in the same manner as the original proposals. • Proposers shall be informed that if they do not submit a notice of withdrawal or another best and final offer, their immediate previous offer will be construed as their best and final offer. • In certain situations, the Committee may determine that it is appropriate to reopen discussions with a new round of BAFOs, but efforts must be made to avoid multiple rounds.
<p>SELECTING OTHER THAN THE LOWEST PRICE PROPOSER</p>	<ul style="list-style-type: none"> • If the Committee decides to award the contract to other than the lowest cost proposer, it will have to provide a written justification for doing so to the County Executive or DCE designated to oversee the soliciting department. • The justification could include: <ul style="list-style-type: none"> ➤ That the winning proposer, while not offering the best aggregate price, did offer the best value in that its price per technical quality point was lower than all other bidders. ➤ The winning proposer had unique experience or expertise. ➤ The technical quality of the winning proposal was superior to all other proposals and technical

	<p>quality is a high priority for the procurement.</p> <ul style="list-style-type: none"> ➤ Other special circumstances justified awarding the contract to the recommended proposer, such as the ability of the proposer to meet the time and deliverability requirements of department.
<p>REQUEST TO INITIATE CONTRACT WITH RECOMMENDED VENDOR</p>	<ul style="list-style-type: none"> • After a vendor has been selected by the Selection Committee, the soliciting department must submit to the DCE for Operations Part II of the “Request to Initiate” form and forward a copy of this form to the Director of Legislative Affairs. • If the DCE for Operations decides to authorize the department to award the contract to the recommended vendor, he or she completes Part III of the Request to Initiate and returns the form to the department.
<p>CONTRACT PREPARATION</p>	<ul style="list-style-type: none"> • For personal services contracts, the department shall use the “Model Base Form” for personal services contracts. <u>See Form #15.</u> • If the department wants to include language in the contract that differs from the Model Base Form, it must first consult with and obtain the approval of the County Attorney’s Office. • The contract shall be signed by the vendor and then be entered in the NIFS computer database. • The Department head shall then approve the contract in the NIFS database and sign the Contract Advisement, Contract Summary and Routing Slip (the “Routing Slip”). A blank copy of a Contract Routing Slip is attached as Form #16.
<p>CONTRACT APPROVAL</p>	<p>The contract approval process is governed by the County Executive’s previously issued “Contract Development Procedure” which is not superseded or modified by this Procedure. However, in summary, all personal services contracts are subject to approval by:</p> <ul style="list-style-type: none"> • OMB • The Department head • The DCE overseeing the department • The DCE for Operations • The County Attorney • The Legislature • The Comptroller (Comptroller Approval Form is attached hereto as Form #17).

	<p>All these parties, except the Legislature, must sign the Routing Slip and enter their approval in the NIFS database. The contract ultimately will be executed by the DCE overseeing the department.</p>
<p>LEGISLATIVE APPROVAL</p>	<ul style="list-style-type: none"> • The Rules Committee of the County Legislature must approve personal service contracts that exceed \$25,000, are for a term of more than one year, or result in aggregate expenditures with a single entity of \$50,000 per year. This requirement applies equally if the personal services are procured by a means other than RFP, including procurement by formal sealed bidding. • This requirement does not apply in certain limited circumstances, including: <ul style="list-style-type: none"> ➤ Contracts for services of expert witnesses for use in, or in anticipation of, a specific adjudicatory proceeding or litigation. ➤ Contracts for services of attorneys to provide legal counsel to the County Executive or the Presiding Officer of the Legislature in any case in which either is named as a defendant or respondent or to provide either with specialized legal counsel in “certain sensitive governmental areas” requiring outside counsel. ➤ Certain contracts involving the expenditure of federal or State aid where federal or State law or regulations require otherwise. ➤ Contracts to provide services to public assistance recipients or senior citizens. ➤ Contracts for solid waste management, collection and disposal. ➤ Contracts for services performed and articles manufactured in correctional facilities. ➤ Purchase orders for services under previously adopted blanket resolutions of the Legislature. ➤ Purchases through the State Office of General Services.
<p>EXIGENT CIRCUMSTANCES</p>	<p>If the County Executive or Deputy County Executive determines that the “exigencies of the circumstances warrant”, he or she can authorize a contract for up to \$10,000 without approval of the Rules Committee regardless of the fact that the aggregate amount of expenditures for the year to the selected vendor exceeds \$50,000.</p>

IV. STREAMLINED COMPETITIVE PROPOSAL PROCESS

In some cases, it is impractical and inefficient to utilize the formal RFP process to procure personal services. In these cases, departments may use a “Streamlined Competitive Proposal Process”.

<p>WHEN MAY THE STREAMLINED PROCESS BE USED?</p>	<p>The streamlined process is appropriate when procuring personal services under the formal RFP process would be impractical or inefficient. This may include, but is not limited to, the following circumstances:</p> <ul style="list-style-type: none"> • There is a “time-sensitive” situation where a service provider must be retained quickly. • There are a limited number of providers available and able to perform the work. • There is a need to procure legal services or consulting services in support of current or anticipated litigation, investigative or confidential services. • The contract is let by a department in the health and human services vertical and is for the purpose of delivering client services. • The anticipated response from responders is not technical in nature. • The cost of the services that the department seeks to procure does not exceed \$100,000. <p>While the presence of any of these factors can weigh in favor of a streamlined process, the absence of a factor does not count against using the process. For example, in a time-sensitive situation where there are a limited number of providers available to perform the work in a timely manner, the streamlined process would be appropriate even if the matter did not involve litigation and the cost of services exceeded \$100,000.</p>
<p>EXAMPLES OF “TIME-SENSITIVE” SITUATIONS</p>	<p>Examples of “time-sensitive” situations where the streamline process may be appropriate include:</p> <ul style="list-style-type: none"> • The department needs to respond to a court order, stipulation or consent decree. • Funds available from a source outside the County will be lost to the County. • An existing service provider has been terminated, has defaulted, has withdrawn from, or has repudiated a contract, or has otherwise become unavailable, or the department has decided not to renew or extend an existing

	<p>contract in the best interests of the County, and the department requires a substitute or successor provider.</p> <ul style="list-style-type: none"> • A compelling need for services exists that cannot be timely met through the RFP process. <p>Depending upon the severity of the situation, any of these circumstances could also constitute an emergency that qualified for procurement under the “emergency” procurement procedure set forth below.</p>
INITIATION OF STREAMLINED PROCESS	<p>Before commencing a streamlined competitive procurement of personal services, all departments, except the County Attorney’s Office, must prepare a Request to Initiate and have it approved by the department head, the Vertical’s DCE, and the DCE for Operations.</p>
SOLICITATION OF PROPOSALS	<ul style="list-style-type: none"> • In general, a department using this method should seek proposals from a minimum of three qualified vendors, unless it can demonstrate that fewer than three qualified vendors are available to provide the services sought. • The department shall issue verbal or written instructions to the solicited firms which set forth : <ul style="list-style-type: none"> ➤ The required form and contents of proposals. ➤ The deadline for submitting proposals. ➤ A description of the nature and scope of the personal services sought by the department. ➤ The criteria that will be used to evaluate proposals.
ESTABLISHMENT OF SELECTION COMMITTEE OR DESIGNATION OF EVALUATOR	<ul style="list-style-type: none"> • In general, proposals should be evaluated by a Selection Committee. The department head shall designate as members of this committee employees of the department who have appropriate expertise, skills and experience. • In certain circumstances, it may be impractical to establish a Selection Committee and, in such circumstances, a department head may designate a single Evaluator with appropriate expertise, skills and experience.
EVALUATION OF PROPOSALS	<ul style="list-style-type: none"> • Similar to the RFP process, proposals shall be evaluated in terms of their quality and price, and other relevant factors. • The ability of firms to meet the timing and deliverability requirements of the department also shall be considered. • The Selection Committee or Evaluator shall score each proposal and maintain a written record of the results of

	<p>such scoring.</p> <ul style="list-style-type: none"> • The Selection Committee or Evaluator shall combine the technical and price evaluations and determine which firm provides the best value to the County, within the budget constraint of the County.
POST-EVALUATION PROCESS	<ul style="list-style-type: none"> • The same post-evaluation process as applies to RFP proposals also applies to streamlined proposals. The Committee or Evaluator must determine whether or not to engage in discussions with proposers and/or to request “best and final offers”. • The same rules regarding the holding of discussions and solicitation of best and final offers apply to the streamlined process. • The department must also provide to its vertical’s DCE a written justification for recommending award of the contract to other than the lowest cost proposer.
CONTRACT PREPARATION AND APPROVAL	<ul style="list-style-type: none"> • The same requirements and approvals as are required for personal services contracts formed pursuant to the RFP process apply to personal services contracts formed pursuant to the streamlined process.

V. DPW’s COMPETITIVE PROCESSES FOR CONSTRUCTION, ARCHITECTURAL, ENGINEERING AND SURVEYING SERVICES

The Department of Public Works (“DPW”) is the County department primarily responsible for procuring contracts for public works, and architectural, engineering and surveying services. DPW will procure all construction work to be done for the County. In addition, any department that wants to procure architectural, engineering and surveying services for its own programs or activities must first obtain the concurrence of the Commissioner of Public Works or his or her designee. The requesting department must forward to the Commissioner a project description and scope of work including, if applicable, any technical specifications for the project. The Commissioner or his or her designee shall respond to the requesting department within five business days of receiving the request. The Commissioner

may authorize the requesting department to proceed with the procurement on its own. If the DPW Commissioner declines permission to the requesting department to proceed on its own, the department may then elect either to have DPW handle the procurement or may request a review by the Deputy County Executive for Operations. A request should be made to the Deputy County Executive for Operations only where the requesting department has a good faith belief that there are compelling reasons why it should be permitted to proceed with handling the procurement on its own.

Many of the above provisions relating to formal sealed bidding apply to public works contracts, except that DPW rather than the Office of Purchasing administers the procurement process. Similarly many of the procedures outlined above that apply to other personal services also apply to architectural, engineering and surveying services. However, there are also special provisions that apply only to the procurement of these services. These special provisions are set forth in the chart below.

A) CONSTRUCTION

<p>INITIATION AND PROCESSING OF CONSTRUCTION CONTRACTS</p>	<ul style="list-style-type: none"> • Construction contracts are initiated when the Commissioner of DPW or his or her designee sends a Request to Initiate Form to the DCE overseeing DPW. As with RFPs, the Vertical DCE and the DCE for Operations must approve the Request to Initiate before DPW proceeds with the procurement. • The Commissioner or his or her designee then follows the same steps that the Director of Purchasing would follow for other formal sealed bids. That is, the Commissioner prepares a Notice to Bid (analogous to the Invitation to Bid prepared by the Office of Purchasing) which includes adequately detailed specifications and has the Notice published in Newsday or another official newspaper of the County. The Notice also may be published in a relevant trade journal. Following publication of the Notice and at least five days prior to
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	<p>the date that bids will be opened, DPW shall have the plans and specifications available for review and inspection at the DPW Office of Purchase and Contracts. DPW also sends the notice to the Office of Purchasing which forwards it to Department of Information Technology for posting on the County web site.</p> <ul style="list-style-type: none"> • Like the Blanket Purchase Contracts that the Office of Purchasing has with vendors of various goods and services, DPW has Requirements Contracts with various contractors. DPW utilizes these contractors during the year to handle various smaller repair and maintenance jobs. • The provisions regarding the handling, modification, cancellation and evaluation of bids set forth above for other formal sealed bids handled by the Office of Purchasing apply equally to competitive sealed bids for construction contracts handled by DPW. • After a winning bidder is selected, construction contracts are subject to the same approval path as other competitively bid contracts that are executed by the County Executive or a designated DCE.
<p>WICKS LAW</p>	<p>Under the Wicks Law (Gen. Mun. Law §101), when the County contracts for the construction, reconstruction or alteration of buildings with an entire cost of more than \$50,000, the County, in addition to awarding a contract to a general contractor if it wants one, also must separately bid and award contracts for:</p> <ul style="list-style-type: none"> • Plumbing and gas fitting; • Steam heating, hot water heating, ventilating and air conditioning (“HVAC”); and • Electric wiring. <p>The Wicks Law does not apply to construction contracts procured under emergency circumstances where formal sealed bidding is not required.</p>
<p>SPECIAL PREVAILING WAGE PROVISION</p>	<ul style="list-style-type: none"> • For public works contracts, the Invitation to Bid must include a notice that the contract award is subject to applicable provisions of the New York State Labor Law regarding the payment of prevailing wages and supplements to laborers, workers and mechanics, and that proposers shall be required to submit with their proposals a completed “Request for Wage and Supplement Information” form.
<p>CHANGE ORDERS</p>	<ul style="list-style-type: none"> • All changes to existing contracts shall be approved by

	<p>the Commissioner of DPW or his or her designee and shall be reflected in a change order, which, once authorized shall become a part of the original contract. A copy of the change order shall be sent to the contractor within 10 days after authorization of the change.</p> <ul style="list-style-type: none"> • DPW may include in any Notice to Bid a provision for determining the cost of expected changes so that these costs can be competitively determined before award. • Changes <i>may include</i> any one or more of the following: <ul style="list-style-type: none"> ➤ Specification changes to account for design errors or omissions; ➤ Changes in contract amount due to authorized additional or omitted work. Any such changes require appropriate price and cost analysis to determine reasonableness. All changes that cumulatively exceed ten percent of the original contract amount shall be approved by the Vertical DCE; ➤ Extensions of a contract term for good and sufficient cause for a cumulative period not to exceed one year from the date of expiration of the current contract; ➤ Changes in delivery location; and ➤ Changes in shipment method. • Changes are permitted only for work necessary to complete the work included in the original scope of the contract and for non-material changes to the scope of the contract. Changes are not permitted for material alterations in the scope of work or for the insertion of a renewal clause to the contract. Material alterations to the scope of the work may be made only by a new procurement. • For each procurement, DPW shall maintain a log of all executed change orders that shall include: <ul style="list-style-type: none"> ➤ the name of the contractor and the original contract amount; ➤ the reason(s) for and the dollar amount of the change order; and ➤ a running total of the value of the changes and the resulting revised contract amount.
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B) ARCHITECTECTURAL, ENGINEERING AND SURVEYING SERVICES

<p>INITIATION OF ARCHITECTURAL, ENGINEERING AND SURVEYING CONTRACTS</p>	<p>As with other personal services contracts, DPW must first submit a Request to Initiate and have it approved and signed by the DCE overseeing DPW and the DCE of Operations.</p>
<p>PROCUREMENTS OF \$50,000 OR UNDER</p>	<ul style="list-style-type: none"> • DPW has compiled Vendors Lists from architectural, engineering and surveying firms that have submitted a form to it known as the "Statement of Qualifications and Performance Data". • For procurements of \$50,000 or under, DPW solicits proposals from no less than three firms on the relevant Vendor List.
<p>PROCUREMENTS OVER \$50,000</p>	<p>RFPs for over \$50,000 worth of services shall have the same form, content and public notice requirements as are applicable to RFPs for other personal services contracts.</p>
<p>HANDLING OF PROPOSALS AND DISCUSSIONS WITH PROPOSERS</p>	<ul style="list-style-type: none"> • The same guidelines that apply to streamlined proposals apply to proposals of up to \$50,000 worth of architectural, engineering and surveying services. • The same guidelines that apply to other RFP proposals apply to RFPs for architectural, engineering and surveying services.
<p>ESTABLISHMENT OF SELECTION COMMITTEE AND EVALUATION PROCESS</p>	<ul style="list-style-type: none"> • The same guidelines that apply to the establishment of a selection committee for other personal services contracts apply to procurements of architectural, engineering and surveying services. • The same guidelines that apply to the evaluation process for other personal services contracts apply to procurements of architectural, engineering and surveying services by, except as described in the boxes below.
<p>SPECIAL EVALUATION CRITERIA</p>	<p>Pursuant to Resolution 928 of 1993, the following criteria must be applied to evaluate architectural, engineering or surveying services proposals:</p> <ul style="list-style-type: none"> • the magnitude, scope and complexity of the services to be rendered; • the experience of the firm in assignments of similar size, scope and complexity; • the size, staffing, resources, and financial capability of

	<p>the firm vs. the size of the assignment;</p> <ul style="list-style-type: none"> • the knowledge and experience with the Nassau County facilities and programs involved in the assignment; • the past performance with the department; • the time constraints and deliverability of services; and • the firm's workload with the department. <p>The Selection Committee also may apply any other criteria that it reasonably deems to be relevant.</p>
<p>MINIMUM OF THREE TECHNICALLY QUALIFIED FIRMS</p>	<p>DPW shall make its best effort to obtain proposals from a minimum of three technically qualified firms. If DPW does not obtain bids from at least three qualified firms, DPW shall prepare a memorandum explaining why less than three qualified proposals were obtained which shall be attached to the Comptroller's Approval form that is attached to this memorandum as Form # 17.</p>
<p>NEGOTIATION WITH FIRMS</p>	<ul style="list-style-type: none"> • The Selection Committee shall initiate negotiations with the firm determined to be most highly qualified to provide the needed services. • The Selection Committee shall negotiate with the firm to provide such services at a compensation which the Committee determines, in writing, to be fair and reasonable to the County based upon the estimated value of the services to be rendered and the scope and complexity of the project. • If a satisfactory, fair and reasonable agreement cannot be negotiated with the firm considered the most qualified, then the Selection Committee shall terminate negotiations with that firm and similarly negotiate with the second most qualified firm. • Failing accord with the second most qualified firm, negotiations shall terminate with it and then be undertaken with the third most qualified firm and this process shall continue until a satisfactory, fair and reasonable contract has been negotiated. • The procurement may be terminated if the Selection Committee determines that no satisfactory, fair and reasonable contract can be negotiated with any available vendor or if the Committee determines for any other reason that it is in the County's interest to terminate the process.

POST-SELECTION APPROVAL PROCESS	The same post-selection approval process that applies to other personal services contracts applies to approval of contracts for architectural, engineering or surveying services.
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VI. SMALL PURCHASES AND DIRECT PURCHASE ORDERS

Small purchases” are purchases of greater than \$100, but under \$10,000. Purchases of \$100 or less are subject to the Comptroller’s Control Directive 1 relating to “Petty Cash Accounts”. Unlike petty cash purchases, “small purchases” can be made only through the Office of Purchasing which will assign a “Purchase Number” to all small purchases. The Office may make small purchases directly on the open market. However, purchases may not be divided artificially into separate lots in order to fall under this exception.

Small purchase procedures are intended to be less formal and simpler than the procedures relating to FORMAL SEALED BIDDING and RFP procurements. For example, there is no need to submit a Request to Initiate form prior to commencing a small purchase. Rules applying to small purchases are set forth in the chart below.

PURCHASES OF LESS THAN \$500	No informal bids need be solicited, but purchase price shall be determined to be fair and reasonable.
PURCHASES BETWEEN \$500 AND \$3000	<ul style="list-style-type: none">• The Director of Purchasing or his or her designee must obtain verbal price quotes from at least three vendors on the Office of Purchasing’s list of qualified vendors for the good or service.• If there are less than three vendors on the list, the Director or the designee shall solicit quotes from all vendors on the list and shall document why there are no other reasonably available vendors from which to obtain quotes.• In addition, quotes may be solicited from vendors who have replied to prior solicitations or who have been recommended by the department requesting the purchase.

	<ul style="list-style-type: none"> • The Director of Purchasing or his or her designee shall set forth in writing the reason for selecting the winning vendor.
PURCHASES GREATER THAN \$3000, BUT LESS THAN \$10,000	<ul style="list-style-type: none"> • The Director of Purchasing or designee shall issue an RFQ soliciting price quotes in writing or by fax from at least three vendors, again using the Office of Purchasing bidder list. • Again, quotes may also be solicited from other vendors who have replied to prior solicitations or to vendors recommended by the requesting department. • The Director of Purchasing or his or her designee must set forth in writing the reason for selecting the winning vendor.
APPROVAL OF SMALL PURCHASES	Small purchase awards are subject to the same approvals that apply to larger competitively sealed bid purchases after a winning bidder or proposer has been identified.
DIRECT PURCHASE ORDERS	<ul style="list-style-type: none"> • Supplies or other goods that may be needed by multiple agencies often will be contracted for by the Director of Purchasing at the beginning of the year under "<i>blanket contracts</i>". • The blanket contract normally will be subject to competitive bidding requirements, but after it has been executed, individual departments may place <i>direct orders</i> with the County Office of Purchasing for items purchased under a blanket contract. • Such direct purchase orders are subject to approval by OMB and by the Comptroller.

VII EMERGENCIES

When there is an unforeseen danger to life, safety, property or a necessary service, emergency procurement procedures can be used in place of competitive procurement processes.

EXAMPLES OF EMERGENCIES	<p>Conditions that may give rise to an emergency include:</p> <ul style="list-style-type: none"> • Floods • Epidemics • Riots • Fires • Acts of terrorism • Equipment failures
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	<ul style="list-style-type: none"> • Computer system failures that severely disrupt County operations • Water main breaks • Unforeseen Demolitions • Unanticipated default, bankruptcy or dissolution of contractor upon which the County was relying to complete an urgent project.
<p>EMERGENCY PURCHASES OF GOODS AND NON-PERSONAL SERVICES</p>	<p>Pursuant to section 702 of the County Charter, the County Executive, upon the written recommendation of the Director of Purchasing (or his or her designee), may authorize the Director of Purchasing (or his or her designee) to let contracts for the purchase of supplies, material, equipment or services in connection with the operation, renovation or maintenance of County facilities or equipment without any competitive process when:</p> <ul style="list-style-type: none"> • immediate action is required due to an “accident or unforeseen occurrence or condition affecting: <ul style="list-style-type: none"> ➤ public buildings; ➤ public property or ➤ the life, health, safety or property of the inhabitants” of the County. • The authorization must be in writing unless the nature of the emergency prevents a writing from being obtained. • Such purchases may be only for such amount and term as is necessary to remediate the emergency, as determined by the Director of Purchasing or his or her designee. <p>Pursuant to section 2206 of the County Charter, when the County Executive issues a declaration of an emergency that sets forth the nature of the emergency, goods and non-personal services covered under that section may be procured directly without formal sealed bidding.</p>
<p>APPROVAL OF EMERGENCY PURCHASES OF GOODS AND NON-PERSONAL SERVICES</p>	<p>All emergency purchases of goods and non-personal services must be approved by:</p> <ul style="list-style-type: none"> • OMB; and • the Comptroller. <p>Contracts for purchases of goods and non-personal services that must be executed by the County Executive or a designated DCE are additionally subject to approval by:</p> <ul style="list-style-type: none"> • the County Attorney.

<p>LEGISLATIVE RATIFICATION OF EMERGENCY PURCHASES OF GOODS AND NON-PERSONAL SERVICES</p>	<ul style="list-style-type: none"> • Emergency purchases of \$100,000 or more must be ratified by a resolution of the full County Legislature at its next available meeting. • Without such a resolution, any emergency purchase must be limited to a term of one year and to an expenditure of \$100,000 plus any funds expended to remediate the emergency prior to the Legislative Meeting at which there was a vote upon the ratifying resolution.
<p>EMERGENCY PURCHASES OF PERSONAL SERVICES</p>	<p>When the County Executive declares that there is an emergency that requires the immediate procurement of personal services, the County Executive may enter into a personal services contract without soliciting competing proposals.</p>
<p>APPROVAL OF EMERGENCY PROCUREMENT OF PERSONAL SERVICES</p>	<p>Contracts by the County Executive to purchase emergency personal services must be approved by:</p> <ul style="list-style-type: none"> • OMB • the County Attorney; and • the Comptroller.
<p>LEGISLATIVE APPROVAL OF EMERGENCY PROCUREMENT OF PERSONAL SERVICES</p>	<p>Rules Committee approval is required for emergency purchases of personal services in the same cases where it is required for non-emergency purchases, <i>but</i>:</p> <ul style="list-style-type: none"> • In an emergency where there is a threat to of Nassau County residents' or employees' <i>health or safety</i>, the Rules Committee will be <i>deemed</i> to have <i>approved</i> a personal services contract with a person or firm whose aggregate amount of expenditure receipts from the County exceeds \$50,000 for a term of one year if the Legislature does <i>not convene</i> a meeting to act on the proposed contract <i>within 12 hours of notice</i> being given to the Chair of the Rules Committee or the Clerk or Presiding Officer of the Legislature. • In the event of an emergency that does <i>not</i> threaten the <i>health or safety</i> of Nassau County residents or employees, failure of the Rules Committee to convene within <i>72 hours</i> of the actual <i>notice</i> to consider is <i>deemed an approval</i>.

VIII SOLE SOURCE

When there is only one source for a good or service, competitive bids or proposals are not required. The chart below sets forth the procedures relating to sole source procurements.

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<p>WHEN SOLE SOURCE PROCUREMENT MAY BE USED</p>	<p>Before using sole source procurement, the Director of Purchasing (for purchases made by the Office of Purchasing) or the head of the procuring department (for other purchases) must determine in writing that:</p> <ul style="list-style-type: none"> • there is only one source for a particular good or service that has sufficient experience, skill or knowledge to deliver the goods or services required by the County in the timely manner, provided, however, that a vendor's unique qualification may not be based solely on its having a continuing or historic relationship with the County in providing the solicited service or a related service; • there are no other goods or services that provide the equivalent or similar benefits; and • the cost of the goods or services are reasonable in light of the benefits.
<p>PRACTICAL CONSIDERATIONS</p>	<p>Prior to using a sole source procurement, best efforts shall be made to verify that the County's needs cannot be met by an alternative product or service that may be available from other vendors.</p>
<p>APPROVAL OF SOLE SOURCE CONTRACTS</p>	<p>Sole source contracts must be approved by the same officials as approve competitively selected contracts after a winning bidder has been identified by the Office of Purchasing or the department Selection Committee.</p>

IX PURCHASES FROM, WITH, OR THROUGH OTHER GOVERNMENTS

Agreements to procure goods or services from, with or through other governments can be made without competitive bids or competitive proposals in the following circumstances:

1. Purchases of services *from* New York State departments, public authorities and public benefit corporations.
2. Purchases of surplus and second-hand supplies, material or equipment *from* the federal government, New York State, or from any other municipality, district or public benefit corporation.
3. Municipal Cooperation Agreements to perform services in cooperation *with* other municipalities.

4. Purchases or goods and services *through* the State Office of General Services.
5. Purchases off the contracts of other counties in the State.

Varying approval processes apply to these procurements. In general, approval by the Legislature is not required. For example, legislative approval is not required for purchases through the State Office of General Services.

It is not practical to describe all the different types of intergovernmental procurements in this Policy. However, since purchasing through State OGS is a commonly and frequently used method of procurement, it will be covered. In the case of all other types of intergovernmental procurement, the County Attorney's Office should be consulted regarding what approvals must be obtained.

OGS' Procurement Services Group has published a "Guide to OGS Contracts" that is designed to assist political subdivisions. The Procurement Services Group also has published an "Index of Commodity, Service and Technology Contracts" that lists the category numbers used to identify the numerous different types of commodities, services and technology products that OGS procures which are available to counties. The "Guide" and the "Index" are available on the OGS web site at <http://www.ogs.state.ny.us/Purchase/aboutpsg.asp>. In addition, OGS has specific guides for different categories of technology contracts. The categories are: e-Learning Training Services; Electronic On-Line Databases (TBD); IT Services; Microcomputers; Printers; Software; Systems & Peripherals; Networking Hardware and Software; Cable and Installation; Telecommunication Systems; Key Systems (TBD); Digital Centrex Systems (TBD); PBX Systems (TBD); Interactive Voice Response (TBD); Video Conferencing Systems. These specific guides may be found at:

<http://www.ogs.state.ny.us/purchase/snt/awardnotes/tcgSpecificContracts.htm>.

Below is a summary of some of the procedures that the County must follow when purchasing commodities, services or technology through OGS.

<p>REGISTRATION WITH OGS</p>	<p>While OGS contracts can be directly accessed by the County over OGS' internet web site, OGS advises municipalities first to register with OGS. Registration may be done on-line at: http://www.ogs.state.ny.us/PNS/PurchaserRegistration1.asp. Registering ensures that OGS will send you new guidelines, requirement letters and other important information periodically mailed by OGS. Registering also facilitates prompt responses from OGS to inquiries.</p>
<p>IN WHICH STATE CONTRACTS MAY THE COUNTY SEEK TO PARTICIPATE?</p>	<ul style="list-style-type: none"> • The County is eligible to use only those OGS contracts that have an "<i>Extension of Prices</i>" or a "<i>Non-State Agencies Participation in Centralized Contracts</i>" clause. These clauses extend the price clause of the State contract to political subdivisions of the State that seek to participate in the contract and that provide the contractor with proper tax exemption certificates. • Most contract award notices on OGS' website specify in the Title section whether political subdivisions of the State may participate. Some specify that they include "political subdivisions" and others state simply that they are "Statewide", meaning that they are open to all state agencies, political subdivisions and all others authorized by law to participate.
<p>HOW TO USE STATE CONTRACTS</p>	<ul style="list-style-type: none"> • State contracts are listed in the OGS web site in four categories: Commodities; Services; Information Technology and Telecommunications. • For commodities contracts, the process normally is simply to place a purchase order with the listed vendor. However, if the contract is a "Filed Requirements" (Definite Quantity) Contract, then the County may participate only if the County filed a "Requirement Letter" well before bids were opened on the contract. • When OGS is preparing to solicit bids on a Filed Requirements Contract, it sends notices to all eligible entities that have indicated in their registrations with OGS that they might be interested in the item. Attached to the notice is a form "Requirement Letter" that must be submitted by any party that intends to purchase off the contract. • For many of the Services, Information Technology and Telecommunications contracts, a "How to Use this Contract" document is included on the OGS web site section for the contract. Some of these contracts permit "Direct Purchasing". Others require that the purchaser engage in "Best and Final Negotiations" or provide a justification for contracting with a sole source.

Finally, sometimes purchasers are required to follow a “Formal Mini-Bid” process.

- The ‘*Direct Purchase*’ method permits the purchaser to issue a purchase order directly to a single contractor with whom OGS has negotiated a contract. For certain items, the direct purchase option is available only for purchase under a certain dollar threshold and/or only if the purchase is made from certain vendors. For example, for Information Technology Services, direct purchases may be made from any vendor that has a Back Drop contract with the State only for services of \$15,000 or under. For Information Technology Services between \$15,000 and \$50,000, an authorized user of OGS contracts either can solicit bids from a minimum of three of the available State contractors or make a direct purchase from a New York State certified SBE (small business enterprise) or M/WBE (minority or woman-owned business enterprise).
- Under the “*Best and Final Negotiations*” process, OGS does either a preliminary competitive bid or a negotiated contract where the pricing is a good, competitive price. However, since these OGS contracts are for indefinite delivery and indefinite quantity, the purchaser, at the time of purchase, often can obtain better pricing based on its volume or commitment level, by obtaining a best and final price among OGS contract holders for the specific technology or service in question. Sometimes, the specific contract guidelines require the purchaser to solicit bids from all state contract holder, and sometimes the specific guidelines require obtaining bids from at least three contractors.
- The formal *Mini-Bid* process is explained in OGS’ Mini-Bid Guidelines which are available on OGS’ web site at <http://www.ogs.state.ny.us/purchase/snt/wordfiles/MiniBidGuidelines.doc>. The formal Mini-Bid process is required for all “PBX” contracts over \$15,000. PBX is an acronym for Private Branch Exchange which is a private telephone switching system, usually located on a customer's premises connecting a common group of lines from one or more central offices to provide service to a number of individual phones. The formal Mini-Bid Process also generally is required for IT Services contracts over \$50,000.
- In the formal Mini-Bid process, the purchasing entity must set forth its requirements in a Project Definition (“PD”) or a Request for Training Services (“RTS”). The PD or RTS are issued to qualified Back Drop contractors that submit proposals and the purchaser then determines which proposal gives the best value based upon the evaluation criteria set forth in the PD or RTS..
- Back drop contracts are not contracts to purchase any products or services, but rather enable the selected contractors to be placed on OGS’ list of prequalified vendors from which bids may be selected

	in a mini-bid process. Most OGS back drop contracts contain maximum prices that the prequalified vendors may not exceed.
20% RULE	<ul style="list-style-type: none"> Information Technology services do not always have to be procured independently. Sometimes, services can be procured with a technology product. OGS Information Technology contracts contain a “20% Rule” which enables an agency buying the product to buy ancillary services under the same contract for the purpose of customizing the product or for product roll-out and implementation. The 20% Rule allows for a purchase of services for up to 20% of the value of the product and the first year’s maintenance.
PROCUREMENT RECORD	<ul style="list-style-type: none"> Most OGS contracts, other than those where direct purchases are permitted, require that the buyer maintain a “Procurement Record”. This Procurement Record generally must include: (a) a list of the contractors solicited; (b) copies of all written quotes or proposals received; (c) a document setting forth the evaluation criteria and explaining why the winning contractor was selected. Where only a single source is solicited, there also must be a written justification for why it would be impracticable for any other contractors qualified by State OGS to meet the purchaser’s needs.

X. PREFERRED SOURCES

Under certain circumstances, the County is required, pursuant to Section 162 of the State Finance Law, to purchase commodities and services enumerated on “the List of Preferred Source Offerings” published by the State Office of General Services (“OGS”) from certain specified “Preferred Sources”. OGS’ guidelines for Preferred Source procurement are published on the OGS web site at <http://www.ogs.state.ny.us/procurecounc/psguidelines.asp>. Those guidelines must be consulted by the Office of Purchasing and DPW prior to letting any contract. Certain significant portions of those guidelines are summarized in the table below.

PREFERRED SOURCES AND FACILITATING AGENCIES	<p>“Preferred Sources” include:</p> <ul style="list-style-type: none"> <i>Commodities</i> produced by the State Department of Correctional Services' Correctional Industries Program (<i>CORCRAFT</i>). <i>Commodities and Services</i> produced by any qualified,
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	<p>charitable, <i>non-profit-making agency for the blind</i> approved by the State Commissioner of Social Services.</p> <ul style="list-style-type: none"> • <i>Commodities and Services</i> produced by any <i>special employment program serving mentally ill persons</i>, operated by facilities within the <i>State Office of Mental Health</i> and approved by the Commissioner of Mental Health. • <i>Commodities and Services</i> produced by any qualified, charitable, <i>non-profit-making agency for the other severely disabled persons</i> approved by the <i>State Commissioner of Education</i>. • <i>Commodities and Services</i> produced by a <i>qualified veterans' workshop</i> providing job and employment skill training to veterans, operated by the <i>United States Department of Veterans Affairs</i>, that manufactures products or performs services within the State and is approved by the Commissioner of Education. <p>OGS has designated a number of non-profit organizations to act as "Facilitating Agencies" for Preferred Sources. Facilitating agencies serve the preferred sources as their agent by disseminating information regarding preferred sources and their offerings, by processing inquiries and orders as a "one stop" contact for purchasers, and by facilitating the distribution of those commodities and services provided by preferred sources.</p>
<p>PRIORITY AMONG PREFERRED SOURCES</p>	<p>Commodities available in the form, function and utility required by the County must be purchased from preferred sources in the following prioritized order:</p> <ol style="list-style-type: none"> 1st - Department of Correctional Services' Correctional Industries Program. 2nd - Approved, charitable, non-profit making agencies for the blind; 3rd - Equal priority to approved, charitable, non-profit-making agencies for the severely disabled, qualified special employment programs for mentally ill persons, and qualified veterans' workshops. <p>Services available in the form function and utility required by the County must be purchased from a preferred source. Equal priority is accorded to approved, charitable, non-profit-making agencies for the blind, other severely disabled persons, qualified special employment programs for mentally ill persons and qualified veterans workshops. If more than one preferred source meets the service requirements, cost shall be the determining factor in selecting among the qualified sources.</p>

APPROVAL OF PREFERRED SOURCE PURCHASES	Preferred source purchases must be approved by: <ul style="list-style-type: none"> • OMB • The Comptroller.
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XI. ETHICS

Nassau County employees are bound by the County’s Code of Ethics set forth in Section 2218 of the Nassau County Charter and Section 22-4.2 of the Nassau County Administrative Code, as well as by Article 18 of the General Municipal Law (“Conflicts of Interest of Municipal Officers and Employees”). Employees are responsible for informing themselves of all these requirements and complying with them. This section does not purport to be a comprehensive guide to such ethical considerations, but is merely a summary of those ethical guidelines that apply to the procurement process. A further summary of ethics provisions that has been published by the Board of Ethics is attached to this Policy/Procedure.

GENERAL PRINCIPLES	County employees having discretionary responsibility for contracting at all levels shall: <ol style="list-style-type: none"> (i) encourage competition, prevent favoritism, and obtain the best value in the interest of the County and the taxpayers; (ii) place professional responsibilities above personal interests; (iii) ensure fair competitive access to County procurement opportunities; (iv) deal with the public and with vendors with courtesy, consideration and even-handedness; (v) not engage in any communication regarding the procurement with employees, agents, consultants or lobbyists of a bidder or proposer after the official commencement of a competitive procurement process (by the publication of an Invitation to Bid or RFP or similar action), except in such manner as is specifically authorized by the Invitation to Bid, RFP or other written instructions issued to bidders or proposers; (vi) use information gained confidentially in the performance of County duties solely in the County's
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	<p>interest; and</p> <p>(vii) report corruption and unethical practices, wherever and whenever discovered, to the appropriate official, and/or take such other action as is warranted by the situation</p>
CAMPAIGN CONTRIBUTIONS	In soliciting, awarding, or administering a procurement, under no circumstances may an official or employee take into consideration the fact that a vendor or associated individual(s) has or has not made or promised to make a campaign contribution.
WHEN THE EMPLOYEE IS UNSURE WHAT IS ETHICALLY REQUIRED	When an employee has doubt as to whether conduct is prohibited by Nassau County's Code of Ethics or by Article 18 of the General Municipal Law, he or she should first consult with agency counsel and then, if necessary, with the County Attorney's Office. If he or she remains in doubt, then he or she should seek an opinion from the County Board of Ethics.

XII. MINORITY AND WOMEN BUSINESS ENTERPRISE ("MWBE") PROGRAM

Nassau County is committed to promoting the opportunity for meaningful participation by minority and women-owned business enterprises in County contracting opportunities. In 2002, the County Legislature adopted Title 53 of the Miscellaneous Laws of Nassau County which authorized the County to create an MWBE program. Pursuant to Section 106 of Title 53, the County undertook a "disparity study", which is a study of the utilization of minority and women-owned business enterprises (M/WBEs) as subcontractors on certain County contracts compared with the availability of such firms to perform such work. The County contracts covered by the certified M/WBE program are those for goods and non-construction services that exceed \$25,000, and those for construction services (including acquisition, construction, demolition, replacement, major repair or renovation of real property) that exceed \$100,000.

The final report of the disparity study is due on October 31, 2004 and is likely to demonstrate significant underutilization of minority and women-owned business enterprises as

subcontractors on county contracts. As a result, the Director of the Nassau County Office of Minority Affairs (the "Office of Minority Affairs) will promulgate goals for utilization of certified M/WBEs on County contracts and will establish contract specific requirements for the utilization of certified M/WBEs as subcontractors on County contracts. Contracting agencies shall monitor contractor compliance with utilization requirements. Where a contractor is unable, despite its best efforts, to fully comply with a utilization plan, it will be permitted to apply to the contracting agency for a waiver and to appeal to the Director of the Office of Minority Affairs if the contracting agency denies a waiver.

Pursuant to Section 106 of Title 53, the County has already begun making affirmative efforts to promote participation by minority and women-owned business in County contracting opportunities. Under current law, the Office of Minority Affairs is notified whenever the County is soliciting bids or proposals on a contract and the Office of Minority Affairs then makes outreach efforts to qualified minority and women-owned business that it believes may have an interest in bidding. In addition, the Office of Minority Affairs has held and continues to hold workshops directed at assisting minority and women-owned small businesses, covering such topics as how to do business with the County and on all aspects of small business development, including financing, business planning, tax planning and preparation and marketing.

XIII. FORMS

The County uses a number of forms in connection with its procurement procedures. These forms are listed below and copies of each are available in a separate manual of procurement forms.

FORMS:

- #1 "Invitation to Bid"
 - #2 "Blanket Purchase Order"
 - #3 "Purchase Order"
 - #4 "Legal Advertisement"
 - #5 "Vendor/Bid List Request Form"
 - #6 "Application for Registration as Bidder"
 - #7 "Formal Sealed Bid Proposal"
 - #8 "Amendment to Formal Sealed Bid"
 - #9 "Summary of Bids" worksheet"
 - #10 "Formal Bid Recommendation"
 - #11 "Cancellation of Bid"
 - #12 "Staff Summary"
 - #13 Rules Committee Resolution form
 - #14 "Request to Initiate" Form
 - #15 "Model Base Form" for Personal Services Contracts and Instructions
 - #16 "Advisement/Contract Summary/Routing Slip" form
 - #17 "Comptroller Approval" form for personal, professional or human services contracts.
- Sample RFP
- Sample Rating Sheet

Thomas R. Suozzi
Nassau County Executive



NASSAU COUNTY
PROCUREMENT INTERNAL
CONTROL GUIDELINE

June 2006

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INTRODUCTION

In September 2004, the Office of Compliance issued a Countywide Procurement Policy/Procedure that described the different methods by which County agencies may procure goods and services and specified the steps that need to be taken to complete a procurement under each method. All personnel performing procurement functions in County agencies are expected to familiarize themselves with the Policy/Procedure and to comply with it. This Procurement Internal Control Guideline is intended to enhance agencies' internal control of their procurements by: (i) helping to promote understanding of the requirements of the Procurement Policy; and (ii) adding certain additional controls on procurement.

Part I of the Internal Control Guideline consists of the Procurement Choice Flow Charts, the Procurement Matrix, the RFP checklist and the Legislative Approval Process for Contracts. The **Flow Charts** and **Matrix** provide a quick and straightforward means for identifying the permissible methods for procuring a good or service in any given case. The **RFP Checklist** summarizes the steps in an RFP process. In addition, the Checklist also identifies all the documents that need to be attached to an RFP when it is issued. The **Legislative Approval Process** summarizes which contracts are subject to review by the County Legislature and the process for review.

Part II of the Guideline establishes certain new controls designed to enhance accountability, integrity and reliability in the County's procurement process. These new control measures are:

- **Designation of an Department or Agency Chief Contracting Officer ("DCCO" or "ACCO")**

Each department and agency will be required to designate a Department Chief Contracting Officer ("DCCO") or an Agency Chief Contracting Officer ("ACCO") who oversees the department's or agency's procurement actions and will be held accountable for ensuring that the department's or agency's

procurements fully comply with the County's Procurement Policy and applicable law. The DCCO/ACCO will be responsible for overseeing all aspects and phases of a department or agency's procurement activity from the pre-procurement planning stage through the contract performance evaluation process.

- **Preparation of Proposed Specifications and Preference for Generic, Non-Brand Name Specifications**

Each department and agency will be required to submit proposed specifications for each requisition that it submits to the Office of Purchasing. To the extent practicable, specifications are to be drafted in functional, generic terms so as to maximize competition. A department or agency may specify a particular brand name product in its requisition only if the DCCO/ACCO reasonably determines in writing that only that brand name will meet the department's or agency's needs.

- **Contract Performance Evaluation**

For all service contracts above the small purchase limit, a department or agency must prepare a written evaluation, at least annually, outlining the contractor's entire performance history throughout the duration of the contract. This evaluation must be completed at least six months prior to the expiration of a contract to determine whether the contract should be renewed or extended where renewal or extension is otherwise authorized. For all other contracts, the department or agency must prepare a written evaluation whenever it deems the vendor's performance to be deficient. A copy of each evaluation must be given to the DCCO/ACCO and the original must be transmitted to the Office of Purchasing for retention in the Contract File.

- **Contract File Management**

The Office of Purchasing (for contracts to purchase goods and non-personal services), the Department of Public Works (for public works contracts) and each individual department or agency (for personal services contracts) shall be responsible for maintaining contract files for the contracts they procure.

Part III of the Guideline establishes the countywide Vendor Protest Policy. This policy sets forth procedures which must be followed to administratively resolve complaints or inquiries related to competitive procurements or contract awards. The purpose of this policy is to create a uniform method of protesting and to provide a clear and concise way to doing so. The Vendor Protest Procedure outlines which actions are subject to protest, eligibility to protest, grounds for

protesting, and the form and contents of protests. Additionally, the policy sets forth the timing of protest, stays of procurement, and notice of protest.

Nothing in this Internal Control Guideline should be construed to limit, amend, modify or supersede the County's Procurement Policy and Procedure. Rather, this Guideline simply attempts to explain certain critical components of the Policy and Procedure and also adds certain new control procedures. Similar to the Procurement Policy and Procedure, this Guideline does not create any legal rights or duties or causes of action. Rather, it summarizes existing State and local law and policy and preferred practices of Nassau County. The Procurement Internal Control Guideline shall be amended from time to time, as necessary to reflect changes in the law and County Policy.

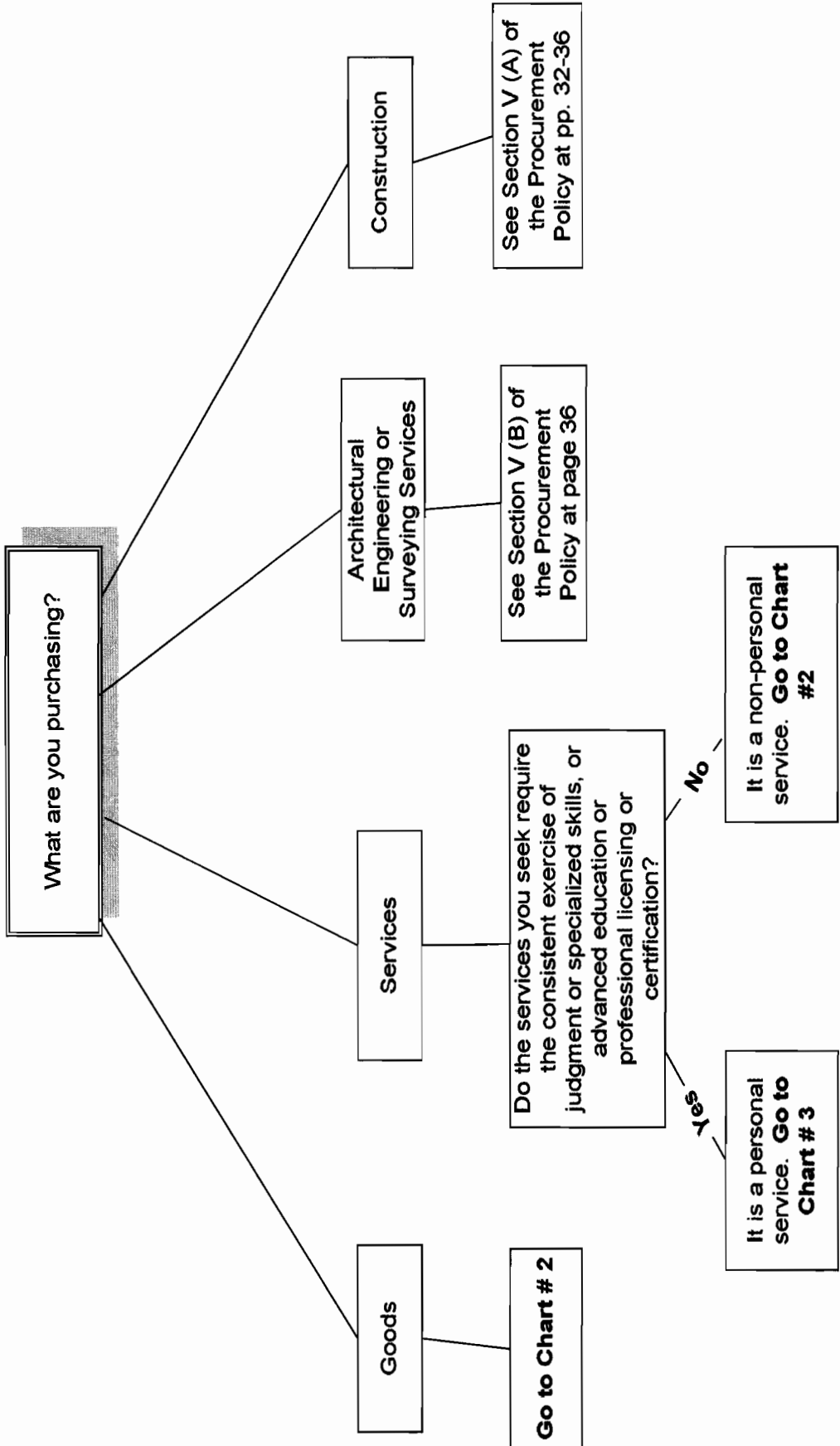
PART I – USING THE COUNTY PROCUREMENT POLICY

The Flow Charts and Matrix in this Part help procurement personnel to identify the permissible methods of procuring any good or service under the County's Procurement Policy. The RFP checklist is a summary of the steps that procurement personnel needs to follow when conducting a procurement by RFP and includes a list of the documents that must be attached to a completed RFP.

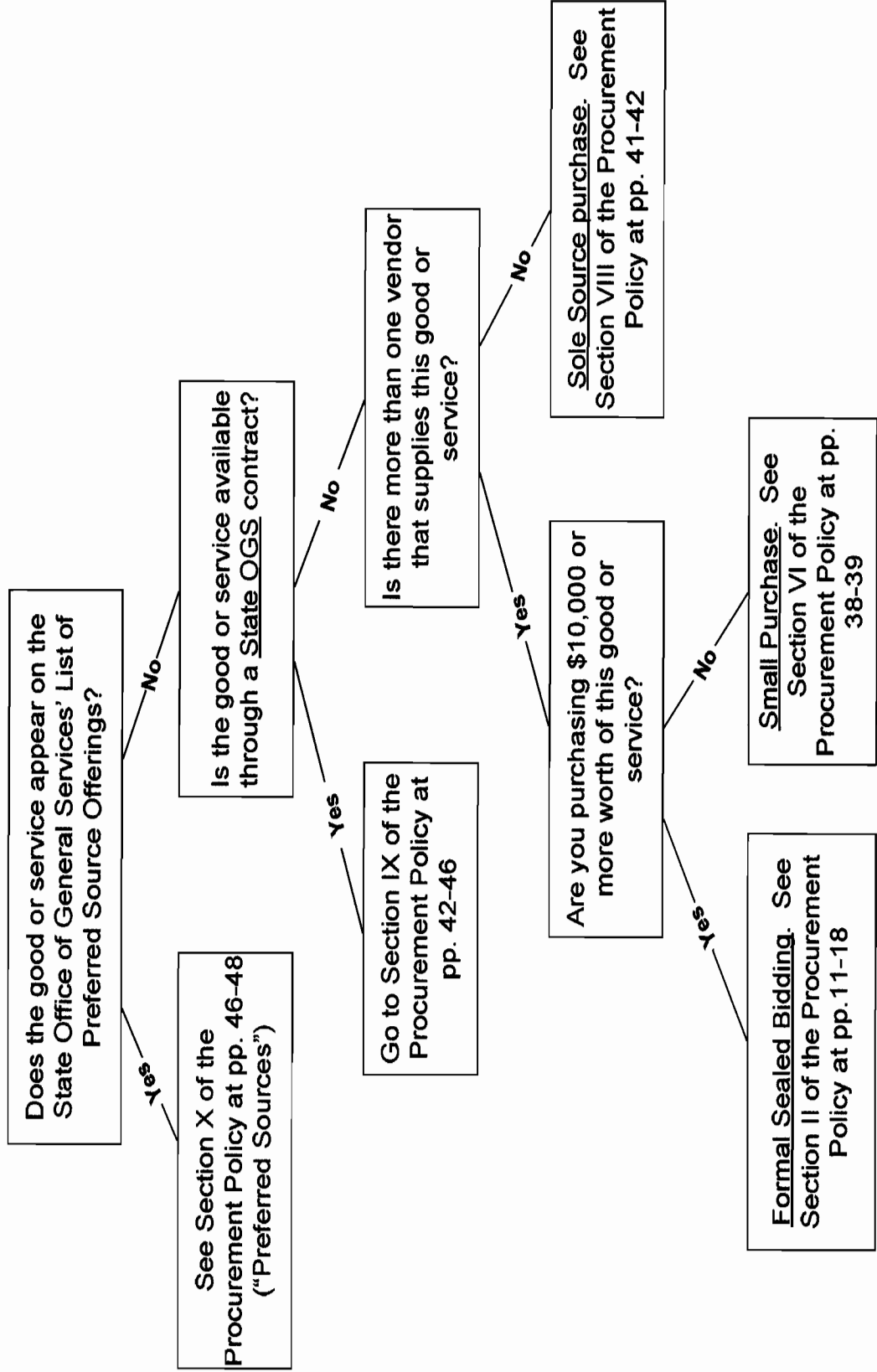
A. PROCUREMENT FLOW CHARTS

The following flow charts show you how to identify the permissible methods for procuring a good or service in non-emergency situations. In emergency situations, please refer to Section VII of the Procurement Policy at pages 39-41.

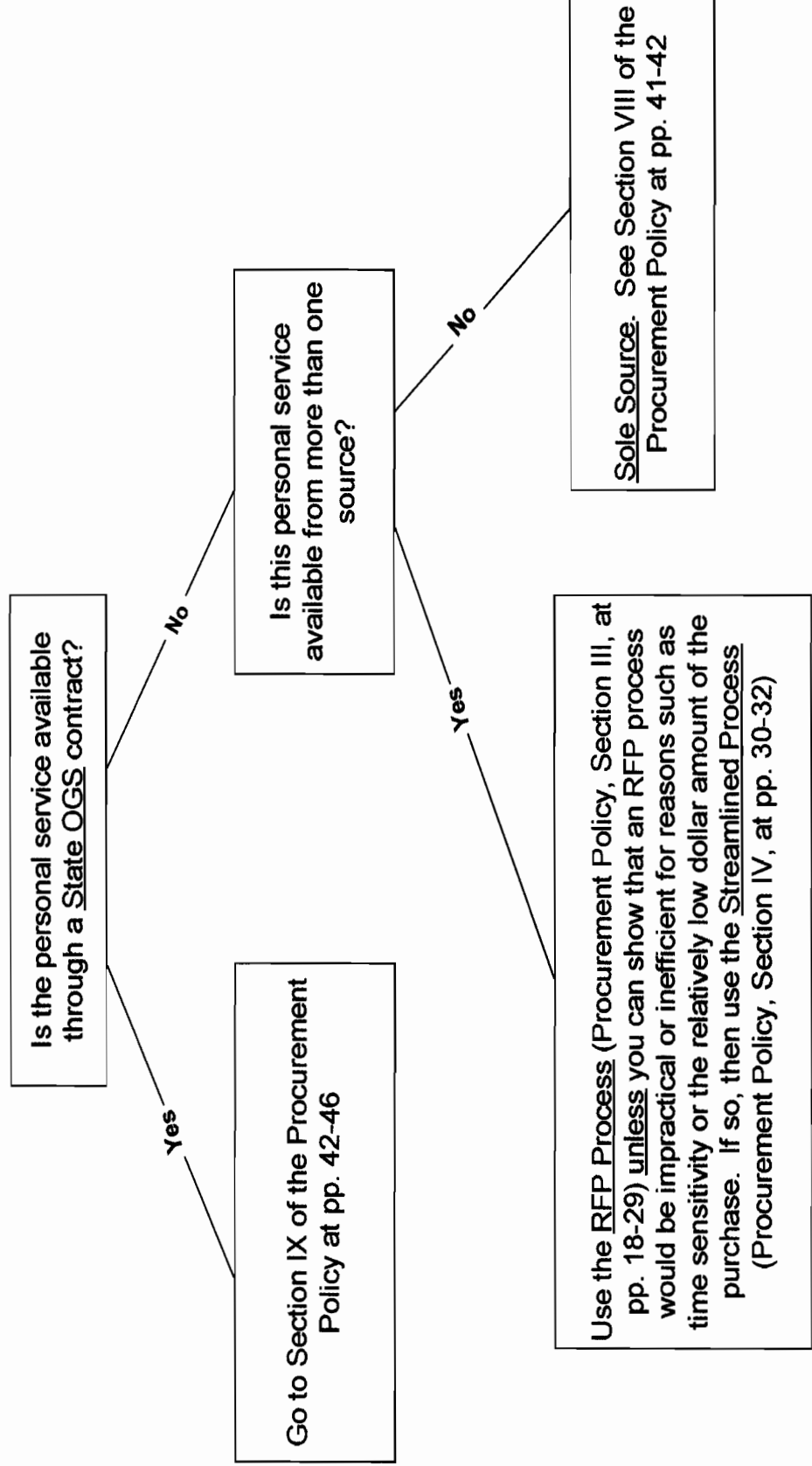
PROCUREMENT INTERNAL CONTROL GUIDELINE



**CHART # 2
GOODS AND NON-PERSONAL SERVICES**



**CHART #3
PERSONAL SERVICES**



B. PROCUREMENT MATRIX

POSSIBLE PROCUREMENT METHODS

This Matrix is intended as a *quick reference* to determine permissible methods for procuring specified goods or services under the County's Procurement Policy/Procedure when there is more than one source that is capable of providing the County with the good or service in question.

	FORMAL SEALED BID	DPW FORMAL SEALED BID	RFP	STREAMLINED METHOD	INTERGOVERN- MENTAL PURCHASES	PREFERRED SOURCE
Office Supplies	✓				✓	✓
Office Furniture/ Equipment	✓				✓	✓
Computer Hardware and Peripherals	✓					
Computer Software/ Systems	✓		✓	✓	✓	
Facility Maintenance Equipment and Supplies	✓				✓	✓
Telecommuni- cations Equip- ment	✓				✓	
Telecommuni- cations Systems	✓		✓	✓	✓	
Field Equipment/ Machinery	✓				✓	✓
Motor vehicles	✓					
Food and Beverages	✓				✓	✓
Clothing, Uniforms and Accessories	✓				✓	✓
Construction Services		✓			✓	✓
Consulting Services	✓		✓	✓	✓	
Data Processing Services	✓		✓	✓	✓	✓
Financial Services	✓		✓	✓	✓	
Health Services	✓		✓	✓	✓	
Legal Services	✓		✓	✓	✓	

C. RFP CHECKLIST

This checklist is intended to assist department or agency personnel in preparing RFPs. It is not intended to supersede or override the County's Procurement Policy and Procedure in any respect. Rather, this is simply a tool that may be used by agencies to help them comply with the Procurement Policy.

1. Request to Initiate (See Procurement Policy/Procedure, at p.20)

Before a department or agency may issue an RFP to procure personal services, it must prepare a Request to Initiate which is approved by the Department or Agency Head, the Deputy County Executive overseeing the agency's Vertical (the "Vertical DCE"), and the Deputy County Executive for Operations. When an agency submits a Request to Initiate to the Vertical DCE, it must include the following:

- ✓ A description of the personal service sought.
- ✓ A statement of the scope of work to be performed.
- ✓ A justification for why the service is needed.
- ✓ A statement of when the service will be needed and for how long.
- ✓ An estimate of the cost or the price range of the services.

The Request to Initiate Form appears in the Procurement Policy/Procedure Form Booklet at p.36.

2. RFP Preparation (See Procurement Policy/Procedure, at pp. 20-22)

The RFP document must incorporate each of the elements set forth in pages 20 through 22 of the County's Procurement Policy and Procedure ("What Information Does an RFP Include?"). The principal sections of the RFP include:

- ✓ *A Statement of the Purpose* of the RFP.
- ✓ *General Information*, including the County's contact person, the timetable for proposal submission, instructions regarding the form and content of proposals, and relevant legal notices.

- ✓ *Specifications*, including a detailed statement of the scope of services to be performed, the required qualifications of proposers and a timetable for completing the work.
- ✓ *Evaluation Criteria* and relative weight of criteria.

The Sample RFP beginning at page 66 of the Form Booklet for the County's Procurement Policy/Procedure is a good starting point for anyone drafting an RFP. It is also useful to look at other RFPs for comparable services that the County previously has issued. When drafting specifications, RFPs from other jurisdictions for similar services are worth consulting also.

3. Attachments to the RFP

The following documents must be attached to an RFP:

- ✓ The Standard Clauses for Nassau County Contracts (Appendix E)
- ✓ Equal Employment Opportunities for Minorities and Women (Appendix EE)
- ✓ Local Law No. 19-2003 (Appendix U)
- ✓ Business History Form
- ✓ Principal Questionnaire Form
- ✓ Cost Proposal Worksheet

A copy of each of these documents is appended to this Guideline. Some of the forms appended hereto also appear in the Form Booklet as part of the Sample RFP, beginning at page 66 of the Form Booklet, but to the extent that there are any differences, the forms herein supersede those that appear in the Form Booklet. The Cost Proposal Worksheet appended to this Guideline is a *sample*, not a template. The actual Cost Proposal Worksheet for an RFP needs to be tailored to the specific facts of that RFP.

4. Publication of RFP (See Procurement Policy/Procedure, at pp. 22-23)

A reasonable period of time before proposals are due to be submitted, a synopsis of the RFP should be published either in:

- ✓ Newsday;

- ✓ a trade or professional journal; or
- ✓ on the web site of a trade or professional association that is likely to reach potential vendors.

In addition, the RFP should be published in its entirety on the *County's web site* and must be forwarded by the Department of Information Technology to the Office of Minority Affairs.

5. Pre-Proposal Conference (See Procurement Policy/Procedure, at p. 23)

Although it is not mandated by the County's Procurement Policy, it often will be useful to hold a Pre-Proposal Conference a reasonable period of time after publication of the RFP and prior to the deadline for submission of an RFP. Such a conference can help to clarify the RFP and also be used by the agency to evaluate the level of interest among potential service providers.

6. Establishment of Selection Committee (See Procurement Policy/Procedure, at p. 23)

Before responses on the RFP are due, the department or agency should establish a Selection Committee to review the proposals. Normally, the Selection Committee should be composed of no fewer than three qualified individuals. The Selection Committee may appoint one or more persons with appropriate expertise to serve as advisors to it with respect to technical or price issues.

7. Evaluation of Proposals (See Procurement Policy/Procedure, at pp. 24-26)

The evaluation process must incorporate each of the following steps:

- ✓ Each Selection Committee member (and/or technical advisors if any) shall complete a Rating Sheet evaluating each proposal on its technical merit.
- ✓ The ratings of the Committee members shall be aggregated and an Evaluation Report comparing the respective technical merit of the proposals shall be prepared.
- ✓ The Committee may elect to do price evaluations only for the three proposals with the highest technical scores or may elect to do price evaluations more broadly.
- ✓ The Committee should then identify each of the remaining proposals that has

a reasonable price offer based upon the County's cost estimate or other relevant criteria.

- ✓ The Committee should then record, in writing, a total rating for each of the remaining proposals based on a combination of price and technical criteria.

8. Deciding Whether To Have Further Discussions Or Make An Award (See Procurement Policy/Procedure, at pp. 26-27)

After the Selection Committee has completed its evaluations, it must decide whether to make an award to the highest rated proposer(s) or to continue discussions with a group of finalists. If the Committee decides to hold discussions, it should:

- ✓ Establish an agenda and schedule for all discussions.
- ✓ Accord fair and equal treatment to all finalist proposers with respect to their opportunity for discussion and revision of proposals.
- ✓ Resolve any ambiguities or uncertainties in the proposals.
- ✓ Keep records of discussions and their results.

After holding discussions, the Selection Committee must decide whether it wants to recommend awarding the contract to one or more of the proposers based on its (their) existing proposal(s) or to solicit a Best and Final Offer ("BAFO") from each of the finalists. The Committee must solicit the BAFOs by written notice to each of the finalists. The notice should specify:

- ✓ The form requirements for the BAFO;
- ✓ The content requirements for the BAFO;
- ✓ The due date; and
- ✓ The person(s) to whom the BAFO is to be submitted.

The procedure for evaluating BAFOs is the same procedure as is used for evaluating the original proposals:

- ✓ The Selection Committee members individually complete the rating sheets for technical merit and their scores are then aggregated.
- ✓ The individual members rate the price proposals and their scores are then aggregated.
- ✓ The technical ratings and price ratings are then combined.

The Selection Committee then must decide whether it is satisfied with the highest ranked proposal and wants to recommend awarding the contract to that proposer or whether it wants to either have further discussions with the proposers or to cancel the RFP. In general, multiple rounds of BAFOs should be avoided.

9. Deciding To Make An Award (See Procurement Policy/Procedure, at pp. 27-28)

Where the Selection Committee decides to recommend awarding a contract to the highest rated proposer, it must complete Part III of the Request to Initiate and submit it to the DCE for Operations for approval. In Part III of the Request to Initiate, the Committee must set forth:

- ✓ A list of all the proposals received.
- ✓ The prices proposed in the respective offers.
- ✓ The overall rating of each proposal.
- ✓ The Committee's recommendation of who should be awarded the contract.
- ✓ The justification for the recommendation.
 - If the award is *not to the lowest cost* proposer, the justification must explain why awarding the contract to the recommended vendor best serves the County's interests (e.g., the winning proposal gives the County the "best value" in terms of technical quality per dollar paid; the winning proposer has unique experience; the technical quality of the winning proposer was far superior to others and technical quality is a high priority; the ability of the winner to meet special time and deliverability requirements).
 - If *less than three proposals were obtained* by the County, the Committee must explain why more proposals could not be obtained.

If the DCE for Operations approves the Committee's recommendation, the Committee shall notify the winning proposer in writing of the County's intent to award it the contract and then commence contract negotiations with the winner. The County shall notify the other remaining proposers of the County's decision. The Committee may ask the other proposers to hold their offers open for a stated period of time in case the County's contract negotiations with the winning proposer do not conclude successfully.

D. LEGISLATIVE REVIEW OF CONTRACTS

Some contracts must be approved by the County Legislature. This section summarizes which contracts are subject to legislative approval and what the process is in normal, non-emergency conditions for submitting contracts to the Legislature. The procedure for emergencies is described in Section VII of the Procurement Policy/Procedure.

In general, a **personal services contract** is subject to approval by the Legislature if:

- The contract *exceeds \$25,000*;
- The contract is for a term of *more than one year*; or
- The contract would result in the contractor being awarded contracts from the County in that year which exceed \$50,000.

There are **11 exceptions** to this requirement of legislative approval that are enumerated in Section 103(8)(c) of the County Charter and are summarized in Section III of the County's Procurement Policy/Procedure at page 29. One of the most frequently cited exceptions is for contracts **procured through the State Office of General Services**. (See the Charter and the Policy for the other exceptions).

A **goods or non-personal services contract** must be approved by the County Legislature if it **exceeds \$100,000**.

Amendments to contracts that were not previously approved by the Legislature will require legislative approval if the amendment would bring the contract within the ambit of one of the above-cited criteria for legislative approval. For example, if a \$15,000 personal services contract is amended to add \$11,000, the amendment needs to be approved by the Legislature because the contract amount would now exceed the \$25,000 threshold requiring legislative approval.

Amendments to contracts that were previously approved by the Legislature generally require legislative approval. In the case of any such amendment, the contracting department or

agency shall presume that legislative approval is required and submit the amendment to the Legal Counsel Bureau of the County Attorney's Office in accordance with the procedure described below.

The rules of the County Legislature require that a contract or contract amendment be submitted to the **Clerk of the Legislature 17 days** before the meeting at which the contract will be considered by the Rules Committee. Prior to submission to the Legislature, the contract must be reviewed by the Transactions Bureau and the Legal Counsel Bureau of the County Attorney's Office. Consequently, the contracting agency or department must submit the contract to the County Attorney's Office **one month in advance** of the date that it must be submitted to the Clerk of the Legislature. If it is impracticable to meet this deadline for legislative submission, but it is important that the contract be considered by the Legislature as soon as possible, the agency or department should contact the County Executive's Director of Legislative Affairs.

When the agency or department submits the contract or contract amendment to the County Attorney's Office, it must be accompanied by either a **Staff Summary** (in the case of goods and non-personal services contracts) or a **Contract Summary/Advisement** (in the case of personal services contracts). The **Staff Summary** form is Form 12 in the Procurement Policy/Procedure Form Booklet and the **Contract Summary/Advisement** is Form 16. Both these forms have the following key sections that must be completed:

- *Purpose* – This section briefly describes why the goods or services being procured are needed by the agency or department or why the amendment to the contract is needed.
- *Method of Procurement* - This section identifies which one of the procurement methods allowed under the County's Procurement Policy/Procedure (e.g., formal sealed bids, RFP, small purchase, sole source, etc.) was used to procure the contract. It also identifies the number of bids or proposals received and the basis for selecting the contractor (e.g. lowest responsible bidder; best value proposer, etc.). In the case of a contract amendment, the agency or department should indicate the method used to procure the original contract.

- *Procurement History* – This section describes how and when the goods or services being purchased now were previously obtained by the department or agency.
- *Description of General Provisions* – This section provides all pertinent information regarding the period of time covered by the contract, the price, and the nature of the goods or services to be received.
- *Impact on Funding/Price Analysis* – This section identifies the costs and/or savings associated with the contract, whether it is included in the budget, and how pricing compares to previous contracts for these goods or services.

PART II - ADDITIONAL INTERNAL CONTROL MEASURES

A. DEPARTMENT/AGENCY PROCUREMENT RESPONSIBILITIES FOR PROCUREMENT OF GOODS AND NON-PERSONAL SERVICES

While the Office of Purchasing has central responsibility for procuring goods and non-personal services for County agencies, the meaningful participation of all agencies in the procurement process is essential to meeting the County's procurement goals. Each department or agency must have staff that can and will carry out the department or agency's procurements efficiently and effectively and in full compliance with the County's Procurement Policy and Procedure. To this end, the Office of Compliance is now requiring that each department and agency shall appoint a Department Chief Contracting Officer ("DCCO") or Agency Chief Contracting Officer ("ACCO") who will have the duties specified herein.

1. Designation of DCCO/ACCO

The head of each department or agency is that department or agency's Internal Control Officer ("ICO"). To ensure that a control environment exists for all procurements, the ICO shall appoint a DCCO/ACCO. The DCCO/ACCO shall be ultimately accountable for all of the department or agency's procurement activity. For procurement of goods and non-personal services, the DCCO/ACCO shall supervise and monitor:

- pre-procurement planning and scheduling;
- drafting of specifications;

- submitting of requisitions to the Office of Purchasing;
- cooperating with the Office of Purchasing;
- overseeing and evaluating contractor performance; and
- maintaining procurement records.

The DCCO/ACCO shall supervise and monitor all aspects of his or her department or agency's procurement of personal services from the submission of a Request to Initiate and the drafting of an RFP, through the administration of the contract and oversight of contractor performance.

2. Requisitions

When a department or agency orders goods or services covered by an existing blanket contract or is ordering office supplies using the new purchasing system, it does not need to submit a requisition. However, when a department or agency wants to acquire goods or non-personal services not covered by an existing contract, it must submit a requisition to the Office of Purchasing through the Advanced Purchasing and Inventory Control System ("ADPICS"). This requisition must include the following elements:

- *Specifications* prepared in accordance with the requirements of the County Procurement Policy and the criteria set forth below;
- *Quantity* of goods desired;
- Requested *delivery* date(s);
- *Period of performance* of services;
- *Estimate of cost*
- List of *known qualified vendors*; and
- *Justification* for the purchase.

If there is no room for any of such elements on ADPICS, then the department or agency should submit an email transmission with the requisition that includes the missing information.

a. Specifications

When submitting a requisition, a department or agency shall include recommended specifications that are drafted in accordance with the County's Procurement Policy and which

clearly and accurately describe the department or agency's needs. The specifications shall:

- permit maximum practicable competition;
- describe clearly the County's requirements without favoritism toward a vendor or a vendor's good, service, or construction;
- to the extent practicable, be generic in nature and emphasize functional or performance criteria, while limiting design or other detailed physical descriptions to those necessary to meet the County's needs;
- to the extent practicable, utilize accepted commercial standards, and limit unique requirements that would tend to favor a vendor or a vendor's goods, service, or construction; and
- not limit the solicitation to a specific brand name unless the DCCO/ACCO determines in writing that only the specific brand name will meet the department or agency's needs. The determination will be submitted with the requisition and shall explain the reasons for its conclusion, which may include:
 - the item is part of a system and only the brand name product is compatible with or can interoperate with that system efficiently; or
 - only the brand name product can safely and/or efficiently meet the department or agency's needs.

The department or agency shall also set forth criteria it will use to evaluate the vendor's performance of the contract. These criteria must also be outlined in the contract.

b. Justification

Each requisition must state a *justification* for the proposed purchase. The justification explains why the department or agency needs to make the purchase. Standard justifications include:

- *Replacement required* due to existing item having been consumed or being at the end of its useful life;
- *Upgrade of equipment required* to improve productivity or efficiency (justification should include a brief explanation of how the upgrade will facilitate this improvement);
- *Workload volume increase* (describe why volume increase requires new purchase);
- *Item required by new statutory, regulatory or collective bargaining mandate* (identify the mandate);
- *New or expanded activities* (explain why these new activities are being undertaken); or

- *Health or Safety Protection* (explain how proposed acquisition will improve health or safety of workers or public).

4. Cooperation with Office of Purchasing

Each department or agency must cooperate fully with the Office of Purchasing. Each department or agency must:

- provide the Office of Purchasing with all information and documentation requested in connection with processing a requisition or purchase order;
- assist the Office of Purchasing, if requested, in evaluating the responsiveness of bids; and
- assist the Office of Purchasing, if requested, in negotiating contracts with vendors.

5. Evaluation and Documentation of Vendor Performance

Departments and agencies shall evaluate and document vendor performance of contracts executed by the Office of Purchasing on their behalf. A copy of each performance evaluation shall be given to the DCCO and ACCO and the original shall be transmitted to the Office of Purchasing for retention in the Contract File maintained by Purchasing.

a. Content of Evaluations

Performance evaluations shall be recorded in writing and shall assess the vendor's performance in terms of its satisfaction of the evaluation criteria set forth in the contract. At a minimum, these criteria shall include:

- the extent to which the vendor delivered goods or services that met the stated specifications;
- the timeliness of performance; and
- the responsiveness of the vendor to department or agency concerns or inquiries.

b. Frequency of Evaluations

- For all *service contracts above the small purchase limit* that have been executed on behalf of a department or agency, the department or agency shall monitor the vendor's performance on an ongoing basis *at least annually* and at least six months prior to the end of the contract term to determine whether an existing contract should be extended, renewed,

terminated, or allowed to lapse. Such performance evaluation shall be done no less than once annually.

- For *procurements of goods by formal sealed bid and procurements below the small purchase limit*, an evaluation report shall be prepared only in cases of deficient performance. Notification to the vendor of deficient performance shall be made as soon as practicable, and shall not await the annual evaluation.

B. CONTRACT FILE MANAGEMENT

1. Required Contents of Contract Files

It is the policy of the County that copies of County contracts and other standard information regarding County contracts and vendors (including information relating to the vendor's qualification and performance evaluations, and contract audits) are reasonably available for public inspection as provided by law, with adequate protection for confidential information. Such files shall contain all documentation, including each report, record, justification, approval or determination required by law or the County's Procurement Policy, pertaining to:

- Solicitation of vendors
- Contract award
- Management of the contract
- Purchase orders
- Amendments and change orders; and
- Renewals

2. Who is Responsible for Maintaining Contract Files?

It shall be the responsibility of the Office of Purchasing to maintain such contract files for contracts to purchase goods and services through the Office of Purchasing. It shall be the responsibility of the Department of Public Works ("DPW") to maintain such contract files for all public works contracts procured by DPW. Finally, it shall be the responsibility of each individual department or agency to maintain such files for all personal services contracts procured by the department or agency.

3. Electronic Documents

To the extent permissible under applicable law, agencies may store the contents of department or agency contract files electronically, and may use and may allow vendors to use, electronic documents and signatures in the course of procurements. Any system used for storage of procurement-related documents in electronic form must be such as to provide for the security and integrity of the documents contained in it to an equal or greater degree than a traditional hard copy filing system.

4. Retention of Documents

All contract files shall be retained within the County for a minimum of six years beyond the expiration date of the contract by each department or agency before final disposition in accordance with the County's records retention policy.

PART III – VENDOR PROTEST PROCEDURE

A. POLICY

It is the policy of the Nassau County to provide vendors with an opportunity to administratively resolve complaints or inquiries related to competitive procurements or contract awards. Interested parties are to file a formal written protest according to the below procedures.

B. PROCUREMENT ACTIONS SUBJECT TO PROTEST

The following procurement actions, if done in an arbitrary, capricious or unlawful manner, are subject to protest:

- Competitive solicitations for the procurement of commodities, services or public works by a Nassau County agency, board, commission, department or office ("Nassau County Agency").
- A cancellation of a procurement solicitation by a Nassau County Agency.
- An award or proposed award of a contract by a Nassau County Agency.
- A cancellation of an award of a contract by a Nassau County Agency.

C. ELIGIBILITY OF VENDORS TO PROTEST

Any actual or prospective bidder or proposer who is aggrieved in connection with a procurement action subject to protest under this Procedure may file a protest.

D. GROUNDS FOR PROTESTING

A vendor protest must be based on one or more of the following grounds:

- Competition was unduly restricted.
- There was a material deviation from the written procedures for awarding the contract, as set forth in the solicitation document or in applicable law or regulations. This would include, for example, an award based on a miscalculation of bids.
- The solicitation, award or cancellation was materially affected by fraud, collusion or a conflict of interest prohibited by law.

E. FORM AND CONTENTS OF PROTESTS

- A protest must be submitted in writing to the procuring Nassau County Agency by mail or in person.
- The protest must include:
 1. Name of entity, contact name, address, e-mail, and telephone and fax numbers.
 2. Bid number or Request for Proposal number.
 3. Detailed statement of the legal and factual grounds for the protest, including a description of the resulting prejudice to the protestor.
 4. Copies of relevant documents.
 5. Request for a ruling by the procuring Nassau County Agency.
 6. Statements as to the form of relief requested.
 7. All information establishing that the protestor is an aggrieved party for the purpose of filing a protest.
 8. All information establishing the timeliness of the protest.
- Protests shall be addressed to the Agency Head or a designee of the Agency Head specified in the Formal Sealed Bid document, Request for Proposals or other solicitation document.
- The County reserves the right to waive irregularities, omissions, or other technical defects in protests if, in its judgment, the best interest of the County will be served accordingly

F. TIMING OF PROTEST

- A protest shall be made within ten days after the protesting supplier knows or should have known of the facts that prompted the protest but no later than ten days after publication of the notice of award. However, if the deadline for responding to a solicitation is less than ten (10) calendar days from the date of issuance of the solicitation, then the protest must be received at the procuring Nassau County agency at least twenty-four (24) hours prior to the deadline. Protests filed prior to the deadline must be based upon alleged restrictive specifications or alleged impropriety.

G. STAY OF PROCUREMENT

- A procurement process shall not be stayed unless the procuring Agency Head determines that it is in the County's best interest to stay the procurement. Any stay of a procurement process by an Agency Head may be revoked by the Agency Head if he or she determines that continuing the stay is no longer in the County's interest.

H. NOTICE OF PROTEST

- Notice of any vendor protest and/or stay of a procurement shall be posted with the other information about the solicitation on the Nassau County website's Solicitations Board, which is located at <https://eproc.nassaucountyny.gov/MainBidBoard>
- In addition, in the case of any protest filed subsequent to the deadline for submitting bids or proposals, all vendors that have submitted bids or proposals shall be individually notified of any protest(s) and/or stay of a procurement.

I. DETERMINATION OF PROTEST

- Upon receipt of the protest, the procuring Nassau County Agency shall date stamp the document and set up a folder for the protest and its related document.
- During the review of the protest, the procuring Nassau County Agency may seek any legal, technical or other advice it deems necessary in determining the merit(s) of the protest.
- The procuring Nassau County Agency may request, in writing, additional materials and/or information from the protestor and/or other interested parties. The protestor and/or other interested parties shall have ten (10) calendar days from the date of the Office of Purchasing or other Nassau County Agency's request to submit additional materials and/or information.
- The Agency Head or his or her designee shall make a written decision of the protest within thirty (30) days of the receipt of either the original bid protest or any additional materials, whichever is later. The decision shall state the

reason(s) upon which the decision was made and informs the protestor of the right to appeal this decision.

- The procuring Nassau County Agency Head or his or her designee may waive or extend the time requirements for decisions herein prescribed when, in his or her sole judgment, circumstances warrant.
- The determination of the Nassau County Agency Head or his or her designee shall be final.

PROCUREMENT INTERNAL CONTROLS GUIDELINE

RFP BOILERPLATE

Nassau County Office of _____
Thomas R. Suozzi - County Executive _____ - *Director of* _____

REQUEST FOR PROPOSALS

[Name of RFP]

RFP# [obtained from Purchasing]

Issue Date:

Nassau County
Long Island, New York



TABLE OF CONTENTS

This RFP contains the following sections:

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- B. Anticipated Proposal Schedule
- C. Scope of Services
- D. Contract Term
- E. Mandatory Proposal Response Requirements
- F. Proposal Submission Instructions
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- H. General Information
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Appendices:

Appendix A – Cost Proposal

Appendix B – Program Description and Staffing

Appendix C – Business History Form

Appendix D – Principal Questionnaire Form

Appendix E – Standard Clauses for Nassau County Contracts

Exhibit EE – Equal Opportunities for Minorities and Women

Exhibit U – Local Law 19-2003

Request For Proposal (RFP)

A. Introduction

Nassau County, New York (the "County") is currently seeking proposals from qualified individuals and entities located and authorized to do business in the State of New York, to provide _____. The purpose of the RFP is to provide Nassau County with proposals and recommendations for _____.

[Further explanation of RFP can be inserted here]

Nassau County is committed to policy of equal opportunity and does not discriminate against vendors on the basis of age, sex, sexual orientation, race, color, creed, religion, ethnicity, national origin, disability, marital status, familial status, veteran status or any other basis protected under federal, state, and local laws, regulations, and ordinances.

B. Anticipated Proposal Closing Schedule

RFP Issue Date	_____	, 200_
RSVP for Bidder's Conference, if necessary	_____	, 200_
Pre-Bidders Conference, if necessary	_____	, 200_
Proposal Due Date	_____	, 200_
Oral Presentation, if necessary	_____	, 200_
Award Date	On or about _____	, 200_

Dates indicated above are subject to change at the sole discretion of the County.

THE FOLLOWING SCOPE OF SERVICE SHOULD BE TREATED AS A GUIDELINE IN PREPARING A PROPOSAL RESPONSE IN APPENDIX B, AND MAY BE SUBJECT TO NEGOTIATIONS RESULTING IN A FINAL AGREEMENT. THE PROPOSER SHOULD PROVIDE A PROPOSAL IN APPENDIX B WHICH MEETS THE SCOPE REQUIREMENTS SET FORTH BELOW. THE COUNTY WILL REVIEW SINGLE OR MULTIPLE PROPOSALS FROM AN INDIVIDUAL OR ENTITY.

C. Scope of Services

The Scope of Services ("Scope") outlined below has been established for the purpose of achieving and implementing program goals and objectives described in this document. Although the Scope is intended to serve as a reference in the preparation of the proposal, forthcoming proposals may offer additional services which support the goals of this job title and compensation review and analysis. *[to be inserted by whoever is creating RFP]*

D. Contract Term

It is the intent to award a contract for a one ___ year period [*if desirous of renewing contract, may use this language:* with the option to renew for an additional ___ year period, for a possible total term of ___ years], subject to the County's right of early termination as provided in the contract. The decision to renew the contract(s) will be at the sole discretion of the County.

E. Mandatory Proposal Response Requirements

All proposals must state the period for which the proposal shall remain in effect (i.e., how much time does the County have to accept or reject the proposal under the terms proposed). Such period shall not be less than 180 days from the proposal date.

All Proposals must contain the following:

1. Cost Proposal Form attached as Appendix A.
2. Proposed approach to the Scope of Work attached as Appendix B, containing a complete written description of proposer's Proposal.
3. A duly completed and verified Business History Form attached as Appendix C, together with a current certified or verified financial statement and/or other commercially reliable written evidence of the proposer's credit, financial standing and capacity to perform in accordance with the terms of the Contract.
4. All officers and any individuals who hold a ten percent (10%) or greater ownership interest in the proposer shall complete and verify the Principal Questionnaire attached as Appendix D.
5. All submissions must be signed on the designated signature line by an officer or authorized agent of the proposing party.
6. Additional information that you believe pertinent to the County's requirements.
7. Statement proposer has registered with the County as a vendor.

F. Proposal Submission Instructions

Each proposal shall be prepared simply and economically avoiding the use of elaborate promotional materials beyond those sufficient to provide a complete, accurate, and reliable presentation. For ease of review, the proposals must follow the outline in the section of this Request For Proposal ("RFP") titled **Mandatory Proposal Response Requirements**. Each response should be clearly numbered and the full question listed.

The proposals must be signed by an individual who is authorized to bind the proposer to all commitments made in the proposal. The original and five (5) copies of the proposal, together

with all attachments, must be submitted to the County in a sealed opaque envelope no later than 4:00 p.m. EST on Friday, June 3, 2005. No telegraphic or facsimile proposals will be accepted. Any late proposals will be returned unopened. **Proposals received after the above date and time will not be considered.** The County is under no obligation to return proposals.

The County is under no obligation to respond to any question, inquiry or assertion that is not received in writing. Interested parties may contact the authorized contact person listed below by telephone to advise that a fax transmission has been sent to the above number. Violation of these provisions may result in immediate disqualification. Proposers will submit all proposals and direct all responses, questions, and any other communications to the following authorized contact person:

Title
Nassau County Department of _____
Address
Mineola, New York 11501
Telephone: (516) 571-

No contact with any other County personnel other than the authorized contact person is allowed until such times as an award (or awards) has (have) been made.

G. Contract Proposal Evaluation Criteria *[use whatever criteria best fits your RFP, but can use these as a base if suitable]*

Proposal elements, as described above, will be reviewed and evaluated for completeness and responsiveness according to pre-determined standards and selection criteria. Proposals will be deemed responsive only if the Vendor responds to and meets all of the requirements of this RFP. Vendors may be invited for interviews to discuss project requirements and proposal elements in more detail should the selection committee request such. The selection committee will evaluate each proposal and use the following for scoring each submission:

Contract Requirements and Proposed Solution ____%

- Overall responsiveness of the proposal;
- Demonstration of a clear understanding of the requirements portion of the RFP;
- Clear description of the scope of work needed to satisfy the defined RFP requirements,
- Acceptability and efficacy of proposed analysis, management and implementation methods and procedures and supporting systems for ongoing project management and implementation support, previous engagements of similar scope and quality, description of recommendations and alternative approaches that the County might use to improve its management process including rationale for the recommendations or alternative approaches.

Vendor Profile: Organization, Capacity, Staffing, Resumes _____%

Complete substantiation of the organizational structure and capacity to provide and support the proposed services defined in Section 1, Number 2, Scope of Services, resumes of the proposed personnel (quality / demonstrated skills of proposed personnel); clear description of potential resource utilization methods and approach.

Related Experience _____%

Prior public sector experience, project management and implementation qualifications and related experiences of the Vendor including references, organizational and technical capacity, and outcome/results of services provided to other similar clients of similar size; comprehensive description of why the Vendor can perform the tasks defined in the RFP.

Cost of Overall Project _____%

Total cost to the County.

The County will consider any other relevant factors as determined by the selection committee.

H. General Information

1. **Incurring Cost.** The County shall not be liable for any costs incurred in the preparation and production of a proposal in response to this RFP or for any work performed prior to the issuance of a contract.
2. **Rejection of Proposals.** This RFP does not commit the County to award a contract, or to procure, or to contract for services or supplies. Notwithstanding any other provisions of this RFP, the County reserves the right to award this contract to the vendor(s) that best meet the requirements of the RFP, and not necessarily to the lowest proposer. The County reserves the right to accept or reject any or all proposals received as a result of this request; to negotiate with all qualified sources; or to cancel in part or in its entirety this RFP if it is in the interests of the County to so do.

The County may require the Proposer selected to participate in negotiation and to submit any price, technical, or other revisions, or their proposals as may result from negotiations.

3. **Addenda to Request for Proposals.** Amendments to this RFP may be necessary prior to the closing date and will be furnished by mail to all prospective Proposers who have requested these materials.
4. **Contract Negotiations.** The County intends to enter into contract negotiations with the firm or firms selected by the RFP Evaluation Committee, who shall be required to enter into a written contract with the County in a form approved by legal counsel for the County. The contract usually includes, without limitation, the standard clauses set forth in Appendix "E" attached hereto. This RFP and the proposal, or any part thereof, may be incorporated into and made a part of the contract. The contract may contain provisions not contained herein.

The County reserves the right to negotiate the terms and conditions of the contract with the selected proposer(s), if any. These negotiations could include all aspects of services and fees. Neither the selection of a vendor nor the negotiation of the contract with such vendor(s) shall constitute the County's acceptance of the proposal or a binding commitment on behalf of the County to enter into a contract with such vendor(s), as any binding arrangement must be set forth in the contract signed by both parties and is subject to all requisite approvals.

5. **Additional Information.** The County may award a contract based upon offers received without discussion of such offers with the Proposers. Each offer, therefore, should be submitted in the most favorable terms that the Proposers can offer the County from a price and technical standpoint. However, the County reserves the right to request additional data or oral discussions or presentations in support of written proposals from any and all of the Proposers. In addition, the County reserves the right to make on-site visits to the Proposer's place of business to assess and/or evaluate Proposer's qualifications.
6. **Disclosure of proposal contents.** The County will withhold proposals submitted under this RFP from disclosure, unless otherwise required by law, including, but not limited to, the Freedom of Information Law ("FOIL"). Proposers should indicate any information they feel is exempted from disclosure under FOIL. In the event that the County determines that information is required by applicable law to be disclosed, the County will notify the Proposer in advance of such disclosure to enable the Proposer to take such action as it deems appropriate. Copies of executed contracts are not exempt from FOIL.
7. **Independent Price Determination:** By submission of its offer, the Proposers certify (and in the case of a joint offer, each party thereto certifies as to its own organization) that, in connection with procurement:
 - A. The prices in this offer have been arrived at independently, without consultation, communication, or agreement for the purpose of restricting competition, as to any matters relating to such prices with any other proposer or competitor; and
 - B. Unless otherwise required by law, the prices which have been quoted in this offer have not been knowingly disclosed by the Proposers prior to award, directly or indirectly, to any other Proposer or competitor; and
 - C. No attempt has been made or will be made by the Proposer to induce any other person or firm to submit or not to submit an offer for the purpose of restricting competition; and
 - D. No elected or appointed official or employee of the County shall benefit financially or materially from this contract. The County may terminate this contract if gratuities were offered or given by the Proposer or his or her agency to any such official or employee.
8. **Ownership of Information:** All materials submitted in response to this Request for Proposals will become the property of the County.
9. **Examination of Records:** In submitting a proposal, the successful Proposer agrees that the County shall have access to and the right to examine directly all pertinent documents, papers and records of the Proposer and/or any sub-proposer as related to any contract

and/or subcontract resulting from this RFP until six years after final payment has been made pursuant to any contract awarded as a result of the County's acceptance of proposal.

10. **Subcontracting:** The Proposer will be responsible for the entire contract performance. The Proposer must indicate in the RFP if it intends to use a sub-contractor for any part of the work. If so, the Proposer shall identify each sub-contractor by name, business address and expertise, and must include the name(s) of the principal(s) of the subcontracting entity. A full description of the tasks to be performed by the sub-contractor must be included. The Proposer will not be permitted to subcontract any part of the contract or any of the rights and obligations thereunder without the prior written approval of the County.
11. **Negotiated Changes:** In the event that negotiated changes occur after the awarding of the contract, the same pricing policies called for in the original contract will remain in effect.
12. **Disclaimer:** The County and its respective officers, directors, agents, members and employees make no representation or warranty and assume no responsibility for the accuracy of the information set forth in this RFP. Further, the County does not warrant nor make any representations as to the quality, content, accuracy or completeness of the information, text, graphics, links or other facet of this RFP once it has been downloaded or printed from this or any server, and hereby disclaims any liability for technical errors or difficulties of any nature that may arise in connection with the Website on which this RFP is posted, or in connection with any other electronic medium utilized by respondents or potential respondents in connection with or otherwise related to the RFP.

I. General Conditions for Proposers

1. The Proposers will be required to pay the prevailing wage rate as published by the New York State Department of Labor, if applicable, and comply with all applicable New York State Labor Law.
2. Proposer is bound by and shall comply with the terms of Exhibit U and Exhibit EE which is attached hereto and hereby made a part hereof and with the provisions of Local Law No. 9-2002 entitled "A Local Law to Require Apprenticeship Training Programs for County Contracts".
3. The contract shall provide that in the event of any material misrepresentation by the Proposer contained in its proposal, County shall have the right to immediately terminate the agreement. It shall also provide that in the event the Proposer or any of its principals are convicted of a misdemeanor or felony during the term of the agreement, that the County shall also have the right to terminate the agreement.

J. Additional Demonstrative Materials

Parties are encouraged to provide as much additional material and detail as possible to completely describe and demonstrate the Proposal.

K. Award of Contract

The County shall select a firm by means of a Notice of Award issued by the RFP Evaluation Committee. Neither the selection of a firm nor the issuance of a Notice of Award shall constitute the County's acceptance of the proposal or a binding commitment on behalf of the County to enter into a contract with the firm, as any binding arrangement must be set forth in definitive documentation signed by both parties and shall be subject to all requisite approvals.

L. Protest Policy

As indicated in Section F, all questions or concerns regarding this RFP must be directed to the designated contact person. If a Proposer believes that a concern has not been satisfactorily addressed, it may request a copy of the Vendor Protest Procedure from the designated contact person.

[Depending on type of RFP, you may need to have additional sections. Below is a table of contents from a Parks RFP that contains additional material]

This RFP contains the following sections:

Introduction

Anticipated Proposal Schedule

Scope of Services

License Term

Mandatory Proposal Response Requirements

Proposal Submission Instructions

Proposal Evaluation Criteria

General Information

General Conditions for Licensee

Specific Conditions for Licensees

Additional Demonstrative Materials

Award of License

Appendices:

Appendix A –Cost Proposal

Appendix B – Program Description and Staffing

Appendix C – Business History Form

Appendix D – Principal Questionnaire Form

Appendix E – Standard Clauses for Nassau County Contracts

Exhibit EE – Equal Opportunities for Minorities and Women

Exhibit U – Local Law 19-2003

Appendix F – Facility Requirements

**APPENDIX A
COST PROPOSAL**

[this is a sample, needs to be created for specific RFP scope of work]

Proposed Cost Breakdown

Task	Partner		Manager		Analyst		Total Hours	Subtotal Hourly Costs	Estimated Expenses	Total Cost
	Hours	Billing Rate	Hours	Billing Rate	Hours	Billing Rate				
1. Field Data										
2. Analysis										
3. Final Report										
Totals										

The undersigned hereby certifies his or her compliance with the following:

“NON-COLLUSIVE PROPOSAL CERTIFICATION”

By submission of this Proposal, each proposer and each person signing on behalf of any other proposer certifies, and in the case of a joint Proposal, each party thereto certifies as to its own organization, under penalty of perjury, that to the best of his or her knowledge and belief:

The prices of this Proposal have been arrived at independently without collusion, consultation, communication, or agreement for the purpose of restricting competition, as to any matter relating to such prices with any other proposer or with any competitor; and

Unless otherwise required by law, the prices which have been quoted in this Proposal have not been knowingly disclosed by the proposer and will not knowingly be disclosed by the proposer prior to opening, directly or indirectly, to any other proposer or to any competitor; and

No attempt has been made or will be made by the proposer to induce any other person, partnership or corporation to submit or not to submit a Proposal for the purpose of restricting competition.

The undersigned has carefully examined the Proposal and Contract Documents and agrees to perform this contract and to provide all services, labor, material and equipment necessary for this contract.

SUBMITTED BY: _____

(Signature)

PRINT NAME: _____

DATE: _____

APPENDIX B
Program Description and Staffing

[sample, needs to be adjusted to particular RFP]

Please provide a complete written description of the Proposal, including the following information:

- a. Staffing: Bios of firm principals as well as staff expected to be assigned to this project.
- b. Detail prior experience in the area of compensation consulting.
- c. Detail prior experience with public sector clients (similar size and scope).
- d. Detailed cover letter on the firm's letterhead indicating EIN number and the name of the parties authorized to discuss and/or enter into negotiations with Nassau County with respect this proposal.

(USE ADDITIONAL SHEETS IF NECESSARY)

APPROVED AND SUBMITTED BY: _____

(Signature)

PRINT NAME: _____ **DATE:** _____

Business History Form

The contract shall be awarded to the responsible proposer who, at the discretion of the County, taking into consideration the reliability of the proposer and the capacity of the proposer to perform the services required by the County, offers the best value to the County and who will best promote the public interest.

In addition to the submission of proposals, each proposer shall complete and submit this questionnaire. The questionnaire shall be filled out by the owner of a sole proprietorship or by an authorized representative of the firm, corporation or partnership submitting the Proposal.

(USE ADDITIONAL SHEETS IF NECESSARY TO FULLY ANSWER THE FOLLOWING QUESTIONS).

Date: _____

1) Proposer's Legal Name: _____

2) Address of Place of Business: _____

List all other business addresses used within last five years:

3) Mailing Address (if different): _____

Phone : _____

Does the business own or rent its facilities? _____

4) Federal I.D. Number or Social Security Number: _____

5) Dun and Bradstreet number: _____

6) The proposer is a (check one): ___ Sole Proprietorship ___ Partnership ___ Corporation ___
Other (Describe) _____

7) Does this business share office space, staff, or equipment expenses with any other business?
Yes ___ No ___ If Yes, please provide details: _____

8) Does this business control one or more other businesses? Yes ___ No ___ If Yes, please provide
details: _____

9) Does this business have one or more affiliates, and/or is it a subsidiary of, or controlled by, any other
business? Yes ___ No ___ If Yes, provide details. _____

10) Has the proposer ever had a bond or surety cancelled or forfeited, or a contract with Nassau County or any other government entity terminated? Yes ___ No ___ If Yes, state the name of bonding agency, (if a bond), date, amount of bond and reason for such cancellation or forfeiture: or details regarding the termination (if a contract). _____

11) Has the proposer, during the past seven years, been declared bankrupt? Yes ___ No ___ If Yes, state date, court jurisdiction, amount of liabilities and amount of assets _____

12) In the past five years, has this business and/or any of its owners and/or officers and/or any affiliated business, been the subject of a criminal investigation and/or a civil anti-trust investigation by any federal, state or local prosecuting or investigative agency? And/or, in the past 5 years, have any owner and/or officer of any affiliated business been the subject of a criminal investigation and/or a civil anti-trust investigation by any federal, state or local prosecuting or investigative agency, where such investigation was related to activities performed at, for, or on behalf of an affiliated business. Yes ___ No ___ If Yes, provide details for each such investigation. _____

13) In the past 5 years, has this business and/or any of its owners and/or officers and/or any affiliated business been the subject of an investigation by any government agency, including but not limited to federal, state and local regulatory agencies? And/or, in the past 5 years, has any owner and/or officer of an affiliated business been the subject of an investigation by any government agency, including but not limited to federal, state and local regulatory agencies, for matters pertaining to that individual's position at or relationship to an affiliated business. Yes ___ No ___ If Yes, provide details for each such investigation. _____

14) Has any current or former director, owner or officer or managerial employee of this business had, either before or during such person's employment, or since such employment if the charges pertained to events that allegedly occurred during the time of employment by the submitting business, and allegedly related to the conduct of that business:

a) Any felony charge pending? No ___ Yes ___ If Yes, provide details for each such charge. _____

b) Any misdemeanor charge pending? No ___ Yes ___ If Yes, provide details for each such charge. _____

c) In the past 10 years, you been convicted, after trial or by plea, of any felony and/or any other crime, an element of which relates to truthfulness or the underlying facts of which related to the conduct of business? No ___ Yes ___ If Yes, provide details for each such conviction _____

d) In the past 5 years, been convicted, after trial or by plea, of a misdemeanor?
No ___ Yes ___ If Yes, provide details for each such conviction. _____

e) In the past 5 years, been found in violation of any administrative, statutory, or regulatory provisions? No ___ Yes ___ If Yes, provide details for each such occurrence.

15) In the past (5) years, has this business or any of its owners or officers, or any other affiliated business had any sanction imposed as a result of judicial or administrative proceedings with respect to any professional license held? No ___ Yes ___; If Yes, provide details for each such instance. _____

16) For the past (5) tax years, has this business failed to file any required tax returns or failed to pay any applicable federal, state or local taxes or other assessed charges, including but not limited to water and sewer charges? No ___ Yes ___ If Yes, provide details for each such year. Provide a detailed response to all questions checked 'YES'. If you need more space, photocopy the appropriate page and attach it to the questionnaire. _____

Provide a detailed response to all questions checked "YES". If you need more space, photocopy the appropriate page and attach it to the questionnaire.

17) Conflict of Interest:

a) Please disclose:

(i) Any material financial relationships that your firm or any firm employee has that may create a conflict of interest or the appearance of a conflict of interest in acting as collection agent on behalf of Nassau County.

(ii) Any family relationship that any employee of your firm has with any County public servant that may create a conflict of interest or the appearance of a conflict of interest in acting as collection agent on behalf of Nassau County.

(iii) Any other matter that your firm believes may create a conflict of interest or the appearance of a conflict of interest in acting as a collection agent on behalf of Nassau County.

b) Please describe any procedures your firm has, or would adopt, to assure the County that a conflict of interest would not exist for your firm in the future.

Attachments To Business History Form

Please provide any other information which would be appropriate and helpful in determining the Proposer's capacity and reliability to perform these services.

- A. Include a resume or detailed description of the Proposer's professional qualifications, demonstrating extensive experience in your profession. Any prior similar experiences, and the results of these experiences, must be identified.

Should the proposer be other than an individual, the Proposal should include:

- i) Date of formation;
- ii) Name, addresses, and position of all persons having a financial interest in the company, including shareholders, members, general or limited partner;
- iii) Name, address and position of all officers and directors of the company;
- iv) State of incorporation (if applicable);
- v) The number of employees in the firm;
- vi) Annual revenue of firm;
- vii) Summary of relevant accomplishments
- viii) Copies of all state and local licenses and permits.

- B. Indicate number of years in business.

- C. Provide any other information which would be appropriate and helpful in determining the Proposer's capacity and reliability to perform these services.

- D. Provide names and addresses for no fewer than three references for whom the Proposer has provided similar services or who are qualified to evaluate the Proposer's capability to perform this work.

Company _____

Contact Person _____

Address _____

City/State _____

Telephone _____

Fax # _____

E-Mail Address _____

Company _____

Contact Person _____

Address _____

City/State _____

Telephone _____

Fax # _____

E-Mail Address _____



Company _____

Contact Person _____

Address _____

City/State _____

Telephone _____

Fax # _____

E-Mail Address _____

APPENDIX D

PRINCIPAL QUESTIONNAIRE FORM

All questions on these questionnaires must be answered and the answers typewritten or printed in ink. If you need more space to answer any question, make as many photocopies of the appropriate page(s) as necessary and attach them to the questionnaire.

COMPLETE THIS QUESTIONNAIRE CAREFULLY AND COMPLETELY. FAILURE TO SUBMIT A COMPLETE QUESTIONNAIRE MAY MEAN THAT YOUR BID OR PROPOSAL WILL BE REJECTED AS NON-RESPONSIVE AND IT WILL NOT BE CONSIDERED FOR AWARD

1. Principal Name _____
SSN _____
Date of birth ____ / ____ / ____
Home address _____
City/state/zip _____
Business address _____
City/state/zip _____
Telephone _____
Other present address(es) _____
City/state/zip _____
Telephone _____
List of other addresses and telephone numbers attached

2. Positions held in submitting business and starting date of each (check all applicable)

President ____ / ____ / ____ Treasurer ____ / ____ / ____
Chairman of Board ____ / ____ / ____ Shareholder ____ / ____ / ____
Chief Exec. Officer ____ / ____ / ____ Secretary ____ / ____ / ____
Chief Financial Officer ____ / ____ / ____ Partner ____ / ____ / ____
Vice President ____ / ____ / ____ / ____ / ____ / ____
(Other)

3. Do you have an equity interest in the business submitting the questionnaire?
NO ___ YES ___ If Yes, provide details.
4. Are there any outstanding loans, guarantees or any other form of security or lease or any other type of contribution made in whole or in part between you and the business submitting the questionnaire?
NO ___ YES ___ If Yes, provide details.
- 5.

6. Within the past 3 years, have you been a principal owner or officer of any business or not-for-profit organization other than the one submitting the questionnaire? NO ___ YES ___; If Yes, provide details.
6. Has any governmental entity awarded any contracts to a business or organization listed in Section 5 in the past 3 years while you were a principal owner or officer? NO ___ YES ___ If Yes, provide details.

NOTE: An affirmative answer is required below whether the sanction arose automatically, by operation of law, or as a result of any action taken by a government agency.

Provide a detailed response to all questions checked "YES". If you need more space, photocopy the appropriate page and attach it to the questionnaire.

7. In the past (5) years, have you and/or any affiliated businesses or not-for-profit organizations listed in Section 5 in which you have been a principal owner or officer:
 - a. Been debarred by any government agency from entering into contracts with that agency? NO ___ YES ___ If Yes, provide details for each such instance.
 - b. Been declared in default and/or terminated for cause on any contract, and/or had any contract cancelled for cause? NO ___ YES ___ If Yes, provide details for each such instance.
 - c. Been denied the award of a contract and/or the opportunity to bid on a contract, including, but not limited to, failure to meet pre-qualification standards? NO ___ YES ___ If Yes, provide details for each such instance.
 - d. Been suspended by any government agency from entering into any contract with it; and/or is any action pending that could formally debar or otherwise affect such business's ability to bid or propose on contract? NO ___ YES ___ If Yes, provide details for each such instance.
8. Have any of the businesses or organizations listed in response to Question 5 filed a bankruptcy petition and/or been the subject of involuntary bankruptcy proceedings during the past 7 years, and/or for any portion of the last 7 year period, been in a state of bankruptcy as a result of bankruptcy proceedings initiated more than 7 years ago and/or is any such business now the subject of any pending bankruptcy proceedings, whenever initiated? If 'Yes', provide details for each such instance. (Provide a detailed response to all questions checked "YES". If you need more space, photocopy the appropriate page and attach it to the questionnaire.)
 - a) Is there any felony charge pending against you? NO ___ YES ___ If Yes, provide details for each such charge.
 - b) Is there any misdemeanor charge pending against you? NO ___ YES ___ If Yes, provide details for each such charge.

- c) Is there any administrative charge pending against you? NO ___ YES ___ If Yes, provide details for each such charge.
 - d) In the past 10 years, have you been convicted, after trial or by plea, of any felony, or of any other crime, an element of which relates to truthfulness or the underlying facts of which related to the conduct of business? NO ___ YES ___ If Yes, provide details for each such conviction.
 - e) In the past 5 years, have you been convicted, after trial or by plea, of a misdemeanor? NO ___ YES ___ If Yes, provide details for each such conviction.
 - f) In the past 5 years, have you been found in violation of any administrative or statutory charges? NO ___ YES ___ If Yes, provide details for each such occurrence.
9. In addition to the information provided in response to the previous questions, in the past 5 years, have you been the subject of a criminal investigation and/or a civil anti-trust investigation by any federal, state or local prosecuting or investigative agency and/or the subject of an investigation where such investigation was related to activities performed at, for, or on behalf of the submitting business entity and/or an affiliated business listed in response to Question 5? NO ___ YES ___ If Yes, provide details for each such investigation.
10. In addition to the information provided, in the past 5 years has any business or organization listed in response to Question 5, been the subject of a criminal investigation and/or a civil anti-trust investigation and/or any other type of investigation by any government agency, including but not limited to federal, state, and local regulatory agencies while you were a principal owner or officer? NO ___ YES ___ If Yes; provide details for each such investigation.
11. In the past 5 years, have you or this business, or any other affiliated business listed in response to Question 5 had any sanction imposed as a result of judicial or administrative proceedings with respect to any professional license held? NO ___ YES ___ If Yes; provide details for each such instance.
12. For the past 5 tax years, have you failed to file any required tax returns or failed to pay any applicable federal, state or local taxes or other assessed charges, including but not limited to water and sewer charges? NO ___ YES ___ If Yes, provide details for each such year.

CERTIFICATION

A MATERIALLY FALSE STATEMENT WILLFULLY OR FRAUDULENTLY MADE IN CONNECTION WITH THIS QUESTIONNAIRE MAY RESULT IN RENDERING THE SUBMITTING BUSINESS ENTITY NOT RESPONSIBLE WITH RESPECT TO THE PRESENT BID OR FUTURE BIDS, AND, IN ADDITION, MAY SUBJECT THE PERSON MAKING THE FALSE STATEMENT TO CRIMINAL CHARGES.

I, _____, being duly sworn, state that I have read and understand all the items contained in the foregoing pages of this questionnaire and the following pages of attachments; that I supplied full and complete answers to each item therein to the best of my knowledge, information and belief; that I will notify the County in writing of any change in circumstances occurring after the submission of this questionnaire and before the execution of the contract; and that all information supplied by me is true to the best of my knowledge, information and belief. I understand that the County will rely on the information supplied in this questionnaire as additional inducement to enter into a contract with the submitting business entity.

Sworn to before me this day of 2005.

Notary Public

Name of submitting business

Print name

Signature

Title

_____/_____/_____
Date

APPENDIX E

STANDARD CLAUSES FOR NASSAU COUNTY CONTRACTS

STANDARD CLAUSES FOR NASSAU COUNTY CONTRACTS

1. **Independent Contractor.** The Contractor is an independent contractor of the County. The Contractor shall not, nor shall any officer, director, employee, servant, agent or independent contractor of the Contractor (a "Contractor Agent"), be (i) deemed a County employee, (ii) commit the County to any obligation, or (iii) hold itself, himself, or herself out as a County employee or Person with the authority to commit the County to any obligation. As used in this Agreement the word "Person" means any individual person, entity (including partnerships, corporations and limited liability companies), and government or political subdivision thereof (including agencies, bureaus, offices and departments thereof).

2. **No Arrears or Default.** The Contractor is not in arrears to the County upon any debt or contract and it is not in default as surety, contractor, or otherwise upon any obligation to the County, including any obligation to pay taxes to, or perform services for or on behalf of, the County.

3. **Compliance With Law.**

(a) **Generally.** The Contractor shall comply with any and all applicable Federal, State and local Laws, including, but not limited to those relating to conflicts of interest, discrimination, and disclosure of information, in connection with its performance under this Agreement. In furtherance of the foregoing, the Contractor is bound by and shall comply with the terms of Exhibits EE and U attached hereto. As used in this Agreement the word "Law" includes any and all statutes, local laws, ordinances, rules, regulations, applicable orders, and/or decrees, as the same may be amended from time to time, enacted, or adopted.

(b) **Records Access.** The parties acknowledge and agree that all records, information, and data ("Information") acquired in connection with performance or administration of this Agreement shall be used and disclosed solely for the purpose of performance and administration of the contract or as required by law. The Contractor acknowledges that Contractor Information in the County's possession may be subject to disclosure under Section 87 of the New York State Public Officer's Law. In the event that such a request for disclosure is made, the County shall make reasonable efforts to notify the Contractor of such request prior to disclosure of the Information so that the Contractor may take such action as it deems appropriate.

4. **Minimum Service Standards.** Regardless of whether required by Law:

(a) The Contractor shall, and shall cause Contractor Agents to, conduct its, his or her activities in connection with this Agreement so as not to endanger or harm any Person or property.

(b) The Contractor shall deliver services under this Agreement in a professional manner consistent with the best practices of the industry in which the Contractor operates. The Contractor shall take all actions necessary or appropriate to meet the obligation described in the immediately preceding sentence, including obtaining and maintaining, and causing all Contractor Agents to obtain and maintain, all approvals, licenses, and certifications ("Approvals") necessary or appropriate in connection with this Agreement.

5. Indemnification; Defense; Cooperation.

(a) The Contractor shall be solely responsible for and shall indemnify and hold harmless the County, its officers, employees, and agents (the "Indemnified Parties") from and against any and all liabilities, losses, costs, expenses (including, without limitation, reasonable attorneys' fees and disbursements) and damages ("Losses"), arising out of or in connection with any acts or omissions of the Contractor or a Contractor Agent, regardless of whether taken pursuant to or authorized by this Agreement and regardless of whether due to negligence, fault, or default, including Losses in connection with any threatened investigation, litigation or other proceeding or preparing a defense to or prosecuting the same; provided, however, that the Contractor shall not be responsible for that portion, if any, of a Loss that is caused by the negligence of the County.

(b) The Contractor shall, upon the County's demand and at the County's direction, promptly and diligently defend, at the Contractor's own risk and expense, any and all suits, actions, or proceedings which may be brought or instituted against one or more Indemnified Parties for which the Contractor is responsible under this Section and the Contractor shall pay and satisfy any judgment, decree, loss or settlement in connection therewith.

(c) The Contractor shall, and shall cause Contractor Agents to, cooperate with the County in connection with the investigation, defense or prosecution of any action, suit or proceeding in connection with this Agreement.

(d) The provisions of this Section shall survive the termination of this Agreement.

6. Insurance.

(a) Types and Amounts. The Contractor shall obtain and maintain throughout the term of this Agreement, at its own expense: (i) one or more policies for commercial general liability insurance, which policy(ies) shall name "Nassau County" as an additional insured and have a minimum single combined limit of liability of not less than one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) aggregate coverage, (ii) if contracting in whole or part to provide professional services, one or more policies for professional liability insurance, which policy(ies) shall have a minimum single combined limit liability of not less than one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) aggregate coverage, (iii) compensation insurance for the benefit of the Contractor's employees ("Workers' Compensation Insurance"), which insurance is in compliance with the New York State Workers' Compensation Law, and (iv) such additional insurance, including, without limitation, builder's all risk, if applicable, automobile liability insurance and umbrella liability insurance, as the County may from time to time specify.

(b) Acceptability; Deductibles; Subcontractors. All insurance obtained and maintained by the Contractor pursuant to this Agreement shall be (i) written by one or more commercial insurance carriers licensed or authorized to do business in New York State and acceptable to the County, and (ii) in form and substance acceptable to the County. The Contractor shall be solely responsible for the payment of all deductibles to which such policies are subject. The Contractor shall require any subcontractor hired in connection with this Agreement to carry insurance with the same limits and provisions required to be carried by the Contractor under this Agreement.

(c) Delivery; Coverage Change; No Inconsistent Action. Prior to the execution of this Agreement copies of current certificates of insurance evidencing the insurance coverage required by this Agreement shall be delivered to the County Attorney's Office. Not less than thirty (30) days prior to the date of any expiration or renewal of, or actual, proposed or threatened reduction or cancellation of coverage under, any insurance required hereunder, the Contractor shall provide written notice to the County Attorney's Office of the same and deliver to the County Attorney's Office renewal or replacement certificates of insurance. The Contractor shall cause all insurance to remain in full force and effect throughout the term of this Agreement and shall not take any action, or omit to take any action that would suspend or invalidate any of the required coverages. The failure of the Contractor to maintain Workers' Compensation Insurance shall render this contract void and of no effect. The failure of the Contractor to maintain the other required coverages shall be deemed a material breach of this Agreement upon which the County reserves the right to consider this Agreement terminated as of the date of such failure.

7. Assignment; Amendment; Waiver; Subcontracting.

(a) This Agreement and the rights and obligations hereunder may not be in whole or part (i) assigned, transferred or disposed of, (ii) amended, (iii) waived, or (iv) subcontracted, without the prior written consent of the County Executive or his or her duly designated deputy (the "County Executive"), and any purported assignment, other disposal or modification without such prior written consent shall be null and void. The failure of a party to assert any of its rights under this Agreement, including the right to demand strict performance, shall not constitute a waiver of such rights.

(b) It shall be a condition to the consent of the County Executive to any assignment or subcontract that

the Person to or with whom or which such assignment or subcontract is made agrees in writing that, except as provided in the following sentence with respect to amounts payable by the County, such Person shall be bound by the terms and conditions of this Agreement as though an original party hereto. Unless the action being approved is an assignment of every right and obligation of the Contractor under this Agreement (i) the Contractor shall remain responsible for the full performance of its obligations under this Agreement, and (ii) no amounts payable by the County under this Agreement shall be or become payable by the County to any Person other than the Contractor.

8. Termination. (a) Generally. This Agreement may be terminated (i) for any reason by the County upon thirty (30) days' written notice to the Contractor, (ii) for "Cause" by the County immediately upon the receipt by the Contractor of written notice of termination, (iii) upon mutual written Agreement of the County and the Contractor, and (iv) in accordance with any other provisions of this Agreement expressly addressing termination.

As used in this Agreement the word "Cause" includes: (i) a breach of this Agreement; (ii) the failure to obtain and maintain in full force and effect all Approvals required for the services described in this Agreement to be legally and professionally rendered; and (iii) the termination or impending termination of federal or state funding for the services to be provided under this Agreement.

(b) By The Contractor. This Agreement may be terminated by the Contractor if performance becomes impracticable through no fault of the Contractor, where the impracticability relates to the Contractor's ability to perform its obligations and not to a judgment as to convenience or the desirability of continued performance. Termination under this subsection shall be effected by the Contractor delivering to the commissioner or other head of the Department (the "Commissioner"), at least sixty (60) days prior to the termination date (or a shorter period if sixty days' notice is impossible), a notice stating (i) that the Contractor is terminating this Agreement in accordance with this subsection, (ii) the date as of which this Agreement will terminate, and (iii) the facts giving rise to the Contractor's right to terminate under this subsection. A copy of the notice given to the Commissioner shall be given to the Deputy County Executive who oversees the administration of the Department (the "Applicable DCE") on the same day that notice is given to the Commissioner.

(c) Contractor Assistance Upon Termination. In connection with the termination or impending termination of this Agreement the Contractor shall, regardless of the reason for termination, take all actions reasonably requested by the County (including those set forth in other provisions of this Agreement) to assist the County in transitioning the Contractor's responsibilities under this Agreement. The provisions of this subsection shall survive the termination of this Agreement.

8. Accounting Procedures; Records. The Contractor shall maintain and retain, for a period of six (6) years following the later of termination of or final payment under this Agreement, complete and accurate records, documents, accounts and other evidence, whether maintained electronically or manually ("Records"), pertinent to performance under this Agreement. Records shall be maintained in accordance with Generally Accepted Accounting Principles and, if the Contractor is a non-profit entity, must comply with the accounting guidelines set forth in the federal Office of Management & Budget Circular A-122, "Cost Principles for Non-Profit Organizations." Such Records shall at all times be available for audit and inspection by the County Comptroller, the County Attorney's Office, any other governmental authority

with jurisdiction over the provision of services hereunder and/or the payment therefore, and any of their duly designated representatives. The provisions of this Section shall survive the termination of this Agreement.

9. Limitations on Actions and Special Proceedings Against the County. No action or special proceeding shall lie or be prosecuted or maintained against the County upon any claims arising out of or in connection with this Agreement unless:

(a) **Notice.** At least thirty (30) days prior to seeking relief the Contractor shall have presented the demand or claim(s) upon which such action or special proceeding is based in writing to the Applicable DCE for adjustment and the County shall have neglected or refused to make an adjustment or payment on the demand or claim for thirty (30) days after presentment. The Contractor shall send or deliver copies of the documents presented to the Applicable DCE under this Section to each of (i) the Department and the (ii) the County Attorney (at the address specified above for the County) on the same day that documents are sent or delivered to the Applicable DCE. The complaint or necessary moving papers of the Contractor shall allege that the above-described actions and inactions preceded the Contractor's action or special proceeding against the County.

(b) **Time Limitation.** Such action or special proceeding is commenced within the earlier of (i) one (1) year of the first to occur of (A) final payment under or the termination of this Agreement, and (B) the accrual of the cause of action, and (ii) the time specified in any other provision of this Agreement.

10. Consent to Jurisdiction and Venue; Governing Law. Unless otherwise specified in this Agreement or required by Law, exclusive original jurisdiction for all claims or actions with respect to this Agreement shall be in the Supreme Court in Nassau County in New York State and the parties expressly waive any objections to the same on any grounds, including venue and forum non conveniens. This Agreement is intended as a contract under, and shall be governed and construed in accordance with, the Laws of New York State, without regard to the conflict of laws provisions thereof.

11. All Legal Provisions Deemed Included; Severability; Supremacy; Construction.

(a) Every provision required by Law to be inserted into or referenced by this Agreement is intended to be a part of this Agreement. If any such provision is not inserted or referenced or is not inserted or referenced in correct form then (i) such provision shall be deemed inserted into or referenced by this Agreement for purposes of interpretation and (ii) upon the application of either party this Agreement shall be formally amended to comply strictly with the Law, without prejudice to the rights of either party.

(b) In the event that any provision of this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

(c) In the event of a conflict between the terms and conditions of the contract, including any and all attachments thereto and amendments thereof, and the terms of this Appendix A, the terms of this Appendix A shall control.

(d) Each party has cooperated in the negotiation and preparation of this Agreement, so if any construction

is made of the Agreement it shall not be construed against either party as drafter.

12. Administrative Service Charge. The Contractor agrees to pay the County an administrative service charge of _____ dollars (\$_____) for the processing of this Agreement pursuant to Ordinance Number 74-1979, as amended by Ordinance Number 201-2001. The administrative service charge shall be due and payable to the County by the Contractor upon signing this Agreement.

<u>Value of contract:</u>	<u>Administrative fee:</u>
\$0 - \$5,000	\$0
\$5,001 - \$50,000	\$150
\$50,001 - \$ 100,000	\$250
\$100,001 or more	\$500

13. Executory Clause. Notwithstanding any other provision of this Agreement:

(a) Approval and Execution. The County shall have no liability under this Agreement (including any extension or other modification of this Agreement) to any Person unless (i) all County approvals have been obtained, including, if required, approval by the County Legislature, and (ii) this Agreement has been executed by the County Executive (as defined in this Agreement).

(b) Availability of Funds. The County shall have no liability under this Agreement (including any extension or other modification of this Agreement) to any Person beyond funds appropriated or otherwise lawfully available for this Agreement, and, if any portion of the funds for this Agreement are from the State and/or federal governments, then beyond funds available to the County from the State and/or federal governments.

EXHIBIT EE

Contract Exhibit EE

Equal Employment Opportunities For Minorities and Women

The provisions of this Exhibit EE are hereby made a part of the document to which it is attached.

The Contractor shall comply with all federal, State and local statutory and constitutional anti-discrimination provisions. In addition, Local Law No. 14-2002, entitled "Participation by Minority Group Members and Women in Nassau County Contracts," governs all County Contracts as defined by such title and solicitations for bids or proposals for County Contracts. In accordance with Local Law 14-2002:

(a) The Contractor shall not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status in recruitment, employment, job assignments, promotions, upgradings, demotions, transfers, layoffs, terminations, and rates of pay or other forms of compensation. The Contractor will undertake or continue existing programs related to recruitment, employment, job assignments, promotions, upgradings, transfers, and rates of pay or other forms of compensation to ensure that minority group members and women are afforded equal employment opportunities without discrimination.

(b) At the request of the County contracting agency, the Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, union, or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability, or marital status and that such employment agency, labor union, or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein.

(c) The Contractor shall state, in all solicitations or advertisements for employees, that, in the performance of the County Contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

(d) The Contractor shall make Best Efforts to solicit active participation by certified minority or women-owned business enterprises ("Certified M/WBEs") as defined in Section 101 of Local Law No. 14-2002, including the granting of Subcontracts.

(e) The Contractor shall, in its advertisements and solicitations for Subcontractors, indicate its interest in receiving bids from Certified M/WBEs and the requirement that Subcontractors must be equal opportunity employers.

(f) Contractors must notify and receive approval from the respective Department Head prior to issuing any Subcontracts and, at the time of requesting such authorization, must submit a signed Best Efforts Checklist.

(g) Contractors for projects under the supervision of the County's Department of Public Works shall also submit a utilization plan listing all proposed Subcontractors so that, to the greatest extent feasible, all Subcontractors will be approved prior to commencement of work. Any additions or changes

to the list of subcontractors under the utilization plan shall be approved by the Commissioner of the Department of Public Works when made. A copy of the utilization plan any additions or changes thereto shall be submitted by the Contractor to the Office of Minority Affairs simultaneously with the submission to the Department of Public Works.

(h) At any time after Subcontractor approval has been requested and prior to being granted, the contracting agency may require the Contractor to submit Documentation Demonstrating Best Efforts to Obtain Certified Minority or Women-owned Business Enterprises. In addition, the contracting agency may require the Contractor to submit such documentation at any time after Subcontractor approval when the contracting agency has reasonable cause to believe that the existing Best Efforts Checklist may be inaccurate. Within ten working days (10) of any such request by the contracting agency, the Contractor must submit Documentation.

(i) In the case where a request is made by the contracting agency or a Deputy County Executive acting on behalf of the contracting agency, the Contractor must, within two (2) working days of such request, submit evidence to demonstrate that it employed Best Efforts to obtain Certified M/WBE participation through proper documentation.

(j) Award of a County Contract alone shall not be deemed or interpreted as approval of all Contractor's Subcontracts and Contractor's fulfillment of Best Efforts to obtain participation by Certified M/WBEs.

(k) A Contractor shall maintain Documentation Demonstrating Best Efforts to Obtain Certified Minority or Women-owned Business Enterprises for a period of six (6) years. Failure to maintain such records shall be deemed failure to make Best Efforts to comply with this Exhibit EE, evidence of false certification as M/WBE compliant or considered breach of the County Contract.

(l) The Contractor shall be bound by the provisions of Section 109 of Local Law No. 14-2002 providing for enforcement of violations as follows:

- a. Upon receipt by the Executive Director of a complaint from a contracting agency that a County Contractor has failed to comply with the provisions of Local Law No. 14-2002, this Exhibit EE or any other contractual provisions included in furtherance of Local Law No. 14-2002, the Executive Director will try to resolve the matter.
- b. If efforts to resolve such matter to the satisfaction of all parties are unsuccessful, the Executive Director shall refer the matter, within thirty days (30) of receipt of the complaint, to the American Arbitration Association for proceeding thereon.
- c. Upon conclusion of the arbitration proceedings, the arbitrator shall submit to the Executive Director his recommendations regarding the imposition of sanctions, fines or penalties. The Executive Director shall either (i) adopt the recommendation of the arbitrator (ii) determine that no sanctions, fines or penalties should be imposed or (iii) modify the recommendation of the arbitrator, provided that such modification shall not expand upon any sanction recommended or impose any new sanction, or increase the amount of any recommended fine or penalty. The Executive Director, within ten days

(10) of receipt of the arbitrator's award and recommendations, shall file a determination of such matter and shall cause a copy of such determination to be served upon the respondent by personal service or by certified mail return receipt requested. The award of the arbitrator, and the fines and penalties imposed by the Executive Director, shall be final determinations and may only be vacated or modified as provided in the civil practice law and rules ("CPLR").

(m) The contractor shall provide contracting agency with information regarding all subcontracts awarded under any County Contract, including the amount of compensation paid to each Subcontractor and shall complete all forms provided by the Executive Director or the Department Head relating to subcontractor utilization and efforts to obtain M/WBE participation.

Failure to comply with provisions (a) through (m) above, as ultimately determined by the Executive Director, shall be a material breach of the contract constituting grounds for immediate termination. Once a final determination of failure to comply has been reached by the Executive Director, the determination of whether to terminate a contract shall rest with the Deputy County Executive with oversight responsibility for the contracting agency.

As used in this Exhibit EE the term "Best Efforts Checklist" shall mean a list signed by the Contractor, listing the procedures it has undertaken to procure Subcontractors in accordance with this Exhibit EE.

As used in this Exhibit EE the term "County Contract" shall mean (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of twenty-five thousand dollars (\$25,000), whereby a County contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the County; or (ii) a written agreement in excess of one hundred thousand dollars (\$100,000), whereby a County contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon. However, the term "County Contract" does not include agreements or orders for the following services: banking services, insurance policies or contracts, or contracts with a County contracting agency for the sale of bonds, notes or other securities.

As used in this Exhibit EE the term "County Contractor" means an individual, business enterprise, including sole proprietorship, partnership, corporation, not-for-profit corporation, or any other person or entity other than the County, whether a contractor, contractor, licensee or any other party, that is (i) a party to a County Contract, (ii) a bidder in connection with the award of a County Contract, or (iii) a proposed party to a County Contract, but shall not include any Subcontractor.

As used in this Exhibit EE the term "County Contractor" shall mean a person or firm who will manage and be responsible for an entire contracted project.

As used in this Exhibit EE "Documentation Demonstrating Best Efforts to Obtain Certified Minority or Women-owned Business Enterprises" shall include, but is not limited to the following:

- a. Proof of having advertised for bids, where appropriate, in minority publications, trade newspapers/notices and magazines, trade and union publications, and publications of general circulation in Nassau County and surrounding areas or having verbally solicited M/WBEs whom the County Contractor reasonably believed might have the qualifications to do the work. A copy of the advertisement, if used, shall be included to demonstrate that it contained language indicating that the County Contractor welcomed bids and quotes from M/WBE Subcontractors. In addition, proof of the date(s) any such advertisements appeared must be included in the Best Effort Documentation. If verbal solicitation is used, a County Contractor's affidavit with a notary's signature and stamp shall be required as part of the documentation.
- b. Proof of having provided reasonable time for M/WBE Subcontractors to respond to bid opportunities according to industry norms and standards. A chart outlining the schedule/time frame used to obtain bids from M/WBEs is suggested to be included with the Best Effort Documentation
- c. Proof or affidavit of follow-up of telephone calls with potential M/WBE subcontractors encouraging their participation. Telephone logs indicating such action can be included with the Best Effort Documentation
- d. Proof or affidavit that M/WBE Subcontractors were allowed to review bid specifications, blue prints and all other bid/RFP related items at no charge to the M/WBEs, other than reasonable documentation costs incurred by the County Contractor that are passed onto the M/WBE.
- e. Proof or affidavit that sufficient time prior to making award was allowed for M/WBEs to participate effectively, to the extent practicable given the timeframe of the County Contract.
- f. Proof or affidavit that negotiations were held in Best Efforts with interested M/WBEs, and that M/WBEs were not rejected as unqualified or unacceptable without sound business reasons based on (1) a thorough investigation of M/WBE qualifications and capabilities reviewed against industry custom and standards and (2) cost of performance. The basis for rejecting any M/WBE deemed unqualified by the County Contractor shall be included in the Best Effort Documentation
- g. If an M/WBE is rejected based on cost, the County Contractor must submit a list of all sub-bidders for each item of work solicited and their bid prices for the work.
- h. The conditions of performance expected of Subcontractors by the County Contractor must also be included with the Best Effort Documentation
- i. County Contractors may include any other type of documentation they feel necessary to further demonstrate their Best Efforts regarding their bid documents.

As used in this Exhibit EE the term "Executive Director" shall mean the Executive Director of the Nassau County Office of Minority Affairs; provided, however, that Executive Director shall include a designee of the Executive Director except in the case of final determinations issued pursuant to Section (a) through (l) of these rules.

As used in this Exhibit EE the term "Subcontract" shall mean an agreement consisting of part or

parts of the contracted work of the County Contractor.

As used in this Exhibit EE the term "Subcontractor" shall mean a person or firm who performs part or parts of the contracted work of the County Contractor. The work shall include, but not be limited to, labor, materials and/or supplies, and professional services necessary for a County Contractor to fulfill the obligations of a County Contract.

Local Law No. 19 – 2003

A LOCAL LAW TO PROHIBIT THE USE OF COUNTY RESOURCES TO INTERFERE WITH COLLECTIVE BARGAINING ACTIVITIES OF UNIONS IN NASSAU COUNTY.

BE IT ENACTED by the Nassau County Legislature as follows:

The Miscellaneous Laws of Nassau County are amended by adding a new title to read as follows:

Title 56

COLLECTIVE BARGAINING ACTIVITIES OF UNIONS IN NASSAU COUNTY

§ 1. Legislative Intent.

This Legislature hereby finds and determines that funds appropriated by the County Legislature for the purchase of necessary goods and services should ultimately be expended solely for the purpose for which they were appropriated and should not be used to deter, or promote union organizing.

This Legislature also finds that the use of County funds and property to assist, deter or promote union organizing causes conflicts and work interruptions which waste scarce County resources on issues of secondary importance.

This Legislature further finds and determines that where the County expends significant resources for the purchase of goods or the delivery of needed human services, the County's financial interests is advanced by the promotion of non-confrontational procedures which limit the economic and social disruptions associated with collective bargaining disputes.

This Legislature also determines that the State of New York has recently enacted amendments to the New York Finance Law to restrict the use of State funds in assisting, deterring or promoting union organizing.

Therefore, the purpose of this law is to protect the County's financial interests in connection with its commitment of economic resources by prohibiting funding of certain forms of labor/management conflict and is not intended to provide an advantage to either labor or management during the conduct of union organization campaigns, nor to express any generally applicable policy regarding labor/management relations.

§2. Definitions.

As used in this law, the following terms shall have the meanings indicated:

- A.) "Assist, Promote or Deter Union Organizing" shall mean any attempt by an employer to influence the decision of its employees in the County of Nassau or those of its subcontractors regarding either of the following:
 - 1.) whether to support or oppose a labor organization that represents or seeks to represent those employees; and
 - 2.) whether to become a member of any labor organization.
- B.) "Binding Arbitration Agreements" shall mean a written agreement to submit any dispute arising out of the efforts of a labor organization to represent the employees of a County contractor to final and binding arbitration.
- C.) "County Contractor" shall mean any employer that receives more than Fifty Thousand (\$50,000) Dollars in County finds for supplying goods or services pursuant to a written license with the County of Nassau or any of its agencies; pursuant to a Nassau County grant; pursuant to a Nassau County program; pursuant to a Nassau County reimbursement for services provided in any calendar year; or pursuant to a sub-license with any of the above.
- D.) "County Funds" shall mean any monies appropriated by the Nassau County Legislature.
- E.) "County Property" shall mean any property or facility owned or leased to or by the County of Nassau or any Nassau County agency or authority.
- F.) "Employee" shall mean any person employed by an employer other than a person employed in a supervisory, managerial or confidential position as defined by applicable law.
- G.) "Employer" shall mean any individual, corporation, unincorporated association, partnership, government agency or authority, or another legal entity, whether a for profit entity, a not-for-profit entity or a public entity that employs more than one person in the County of Nassau.
- H.) "Fair Communication Agreements" shall mean a written agreement requiring the parties to such agreement to refrain from providing employees with false and misleading information regarding the circumstances surrounding their employment.
- I.) "Human Services License" shall mean a County license, grant or reimbursement of over Fifty Thousand (\$50,000) Dollars for the provision of health, mental health, residential or day treatment services to the mentally ill and developmentally disabled, social services and other care and treatment services of the County.

- J.) "Labor Disputes" shall mean any concerted action concerning wages, hours and conditions of employment or concerning the representation of person in negotiating, maintaining changing or seeking to arrange wages, hours and conditions of employment.
- K.) "Labor Organization" shall mean an organization of any kind in which employees participate and which exists for the purpose, in whole or in part, or representing employees concerning wages, rates for pay, benefit, grievances, labor disputes, hours of employment, working conditions or other matters incidental to the employment relationship, and shall include the parent, national or international organization of a local labor organization.
- L.) "Majority Authorization Card Agreement" shall mean a written agreement authorizing the recognition of a labor organization as the exclusive bargaining agent for a bargaining unit based on the presentation of a majority of authorizing cards.
- M.) "Neutrality Agreement" shall mean a written agreement by a County contractor not to participate in or request or otherwise seek to influence, either in writing or orally, the decision of its employees as to whether or not to be represented by a labor organization.
- N.) "Non-Intimidation Agreements" shall mean a written agreement prohibiting the parties from coercing or intimidating employees explicitly or implicitly in selecting or not selecting a bargaining representative.
- O.) "Reasonable Access Agreement" shall mean a written agreement granting a labor organization reasonable access to employees and information necessary to be communicated therewith.

§3. Prohibitions

- A) A County contractor shall not use any of County funds to assist, promote or deter union organizing.
- B.) No County funds shall be used to reimburse a County contractor for any costs incurred to assist, promote or deter union organizing.
- C.) The County of Nassau shall not use County funds to assist, promote or deter union organizing.
- D.) All County contracts, grant applications, program guidelines and any other relevant documents shall contain the text of the prohibitions in this section.
- E.) No employer shall use County property to hold a meeting with employees or supervisors if the purpose of such meeting is to assist, promote or deter union organizing.
- F.) Prior to the award of a County contract or grant, and/or prior to authorization to

participate in a County program, the potential awardee, recipient, and or program participant, as the case may be, shall provide a certification, subscribed by such awardee, recipient and or program participant and affirmed by said person as true under the penalties of perjury to the County agency or authority involved that none of the funds shall be used to assist, promote or deter union organizing.

- G.) Every request for payment of County funds by a County contractor shall include a certification, subscribed to by such person seeking reimbursement and affirmed by said person as true under the penalties of perjury, that the contractor is not seeking reimbursement for costs incurred to assist, promote or deter union organizing.
- H.) Every County Department, Agency, Authority or Office shall require those seeking County contracts, grants, awards, program participation and/or County reimbursement to certify and affirm as true under the penalty of perjury that such entities will take all action necessary to ensure that County funds are not used to assist, promote or deter union organizing.
- I.) Any County contractor who makes expenditures or incurs costs to assist, promote or deter union organizing shall maintain records sufficient to show that no County funds were used for those expenditures and, as applicable, that no reimbursement from County funds has been sought for such costs. Such records shall be made available to the pertinent County agency or authority, the County Comptroller, or the County Attorney, upon request.

§ 4. Accounting.

Each County contractor shall account for funds spent on assisting, deterring or promoting union organizing activities as follows:

- A) County funds designated by the County for use for a specific expenditure of the recipient shall be accounted for as allocated to the expenditure.
- B.) County funds that are not designated as described in paragraph (A) of this section shall be allocated on a pro rata basis to all expenditures by the recipient that support the program for which the grant is awarded.
- C.) If County funds and other funds are commingled, and the contractor fails to keep records sufficient to satisfy the requirements of paragraphs (A) or (B) of this section, any expenditure to assist, promote or deter union organizing shall be allocated between the County funds and other funds on the pro rata basis derived from the interplay of paragraphs (A) and (B) of this section.
- D.) Any expense, including legal and consulting fees and salaries of supervisor and employees, incurred for research for, or preparation, planning or coordination of, carrying out, an activity to assist, promote or deter union organizing shall be treated as paid or incurred for that activity.

§ 5. Applicability.

- A) This law shall apply to any contracts awarded on or after the effective date of this law.
- B.) This law shall not apply to an activity performed or to an expense incurred in connection with any of the following:
 - 1.) addressing a grievance or negotiating or administering a collective bargaining agreement;
 - 2.) allowing a labor organization or its representative's access to the employer's facility or property;
 - 3.) performing an activity required by Federal or State law or by a collective bargaining agreement; and
 - 4.) negotiating, entering into or carrying out a voluntary recognition agreement with a labor organization.

§ 6. Implementation.

Every Nassau County Department, Agency; Authority or Office shall:

- 1.) Include in all bid documents, County grant applications, County program guidelines and County reimbursement documents, a statement informing potential and actual County contactors that the efficient, timely and non-disruptive provision of goods and services sought by such Department, Agency, Authority or Office is a paramount financial interest of the County of Nassau and as such the County expects the potential County contractor to protect the County's financial interest by adopting non-confrontational procedures for the orderly resolution of labor disputes. The statement shall also inform the potential and actual County contractors that such non-confrontational procedures may include, but are not limited to, neutrality agreements, majority authorization card agreements, binding arbitration agreements, fair communication agreements, non-intimidation agreements and reasonable access agreements.
- 2.) Require County contractors and those seeking County contracts, to certify and affirm as true under the penalty of perjury:
 - a.) that such contractor will not express to employees any false or misleading information that is intended to influence the determination of employee preferences regarding union representation;
 - b.) that such contractor will not coerce or intimidate employees, explicitly or implicitly, in selecting or not selecting a bargaining representative;

- c.) that such contractor will not require an employee, individually or in a group, to attend a meeting or an event that is intended to influence his or her decision in selecting or not selecting a bargaining representative;
 - d.) that such contractor understands its obligation to limit disruptions caused by pre-recognition labor disputes through the adoption of non-confrontational procedures for the resolution of pre-recognition labor disputes with employees engaged in the production of goods or the rendering of services for the County; and
 - e.) that such contractor has and will adopt any or all of the above-referenced procedures, or their functional equivalent, to ensure the efficient, timely and quality provision of goods and services to the County. The contractor shall include a list of said procedures in such certification.
- 3.) Ensure that every County contract for the provision of services, when such services will be performed on County property, include as a condition of award, grant receipt or reimbursement, as the case may be, a requirement that such County contractor adopt a reasonable access agreement, a neutrality agreement, fair communication agreement, non-intimidation agreement, and a majority authorization card agreement.
 - 4.) Ensure that every County contract for the provision of human services, when such services are not to be performed on County property, include as a condition of award, grant receipt or reimbursement, as the case may be, a requirement that such County contractor adopt, at the least, a neutrality agreement.

§ 7. Penalties.

- A) A County contractor who expends funds and/or obtains reimbursement for funds spent in violation in Section 3 or 4 of this law shall be liable for any funds so expended plus a civil penalty equal to twice the amount of those funds. Such penalty shall not be paid by the contractor from any other County funds. In addition, said County contractor shall be prohibited from bidding on County contracts for a period of five (5) years from the final determination of a violation, either by administrative action or judicial action.
- B.) An employer that violates Section 3 of this law, shall also be liable for a civil penalty equal to One Thousand (\$1,000) Dollars per employee per meeting. Such penalty shall not be paid by the employer from any other County funds.
- C.) Any public official who knowingly authorizes the use of County funds in violation of Section 3 of this law, shall be liable to the County for those funds.

§ 8. Enforcement.

- A) A civil action for a violation of this law may be brought by the County Attorney's office for injunctive relief, damages, civil penalties and other appropriate equitable relief.
- B.) All damages and civil penalties collected pursuant to this law shall be paid to the general fund of the county;
- C.) Any Labor Organization may file a complaint with the Nassau County Department of Labor or the Nassau County Attorney's office alleging violations of this law. Said complaint shall be promptly investigated and a written response shall be issued to the complaining Labor Organization.

§ 9. Rules and Regulations.

The Department of Labor shall promulgate such rules and regulations as it deems necessary and appropriate for the implementation and enforcement of any provision of this law.

§ 10. Severability.

If any clause, sentence, paragraph, subdivision, section or part of this law or the application thereof to any person, individual, corporation, firm, partnership, entity, or circumstance shall be adjudged by any court of competent jurisdiction to be invalid or unconstitutional, such order or judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part of this law or in its application to the person, individual, corporation, firm, partnership, entity or circumstance directly involved in the controversy in which such order or judgment shall be rendered.

§ 11. Effective Date.

This law shall take effect on the later of March 1, 2004 or upon the filing with the Office of the Secretary of State.