PROCUREMENT POLICY OF MONTGOMERY COUNTY

1. Purpose.

This Policy provides a standard reference to established policy, procedures, and guidelines for the procurement of supplies, services, and construction in Montgomery County ("the County") under the authority of the Commonwealth's Second Class A County Code, 16 P.S. § 15100 *et seq*. as well as the Pennsylvania Procurement Code 62 Pa.C.S.A § 311. The underlying purposes of this Policy are:

(a) to simplify, clarify, and modernize the law governing procurement by this County;

(b) to permit the continued development of procurement policies and practices;

(c) to provide for increased public confidence in the procedures followed in public procurement;

(d) to ensure the fair and equitable treatment of all persons who participate in the procurement process of this County;

(e) to provide increased economy and efficiency in County procurement activities and to maximize to the fullest extent practicable the procurement value of public funds of the County;

(f) to foster effective broad-based competition within the free enterprise system;

(g) to provide safeguards for the maintenance of a procurement system of quality and integrity;

(h) to promote sustainable procurement practices, and

(i) to obtain in a cost-effective and responsive manner the materials, services, and construction required by the County in order to better serve this County's businesses and residents.

2. Application.

The Policy will become effective upon approval of the Board of Commissioners. Unless otherwise provided by law, this Policy applies to contracts solicited or entered into after the effective date. This Policy shall apply to every expenditure of public funds irrespective of their source, including state and federal assistance monies except: (a) as otherwise specified in Article 15 (Compliance with State and Federal Requirements), and (b) this Policy shall not apply to either grants, or contracts between the County and its political subdivisions or other governments, except as provided in Article 24 (Cooperative Purchasing). Nothing in this Policy shall prevent the County, or any governmental body or political subdivision from complying with the terms and conditions of any grant, gift, bequest, or cooperative agreement.

3. Changes.

This Policy is intended to serve as a living document reflecting best procurement practices, and changes may be made to this Policy from time to time. Changes and interim or supplemental guidance shall be effective when approved, as appropriate, by the Board of Commissioners or the Chief Operating Officer/Chief Clerk and shall apply to procurements in progress to the extent

feasible under the terms of the issued solicitation documents. All changes made to this Policy will be posted by the County to the Office of Procurement page of the County's website.

4. Public Access to Procurement Information.

(a) *Policy*. Procurement information shall be a public record to the extent provided in the Pennsylvania Right to Know Law, 65 P.S. § 67.101 *et seq.*, and shall be available to the public as provided by statute. All solicitations and contract awards shall be posted on the County's website.

(b) *Exemptions*. Documents that contain trade secrets or confidential proprietary information are exempt from public disclosure. The bidder/offeror/contractor must provide, with the bid, quote, proposal, or contract, a written statement noting that the document contains a trade secret or confidential proprietary information. The Solicitor must be consulted whenever a request is made for materials that are labeled as containing trade secrets or confidential proprietary information.

5. Responsible Contractor Requirements.

(a) To promote efficient use of county resources, , the County must minimize the possibility of a subsequent default by the contractor, late deliveries, or other unsatisfactory performance which may result in additional administrative costs. Prior to any contract award, there must first be a written determination that the bidder or offeror will be a responsible contractor.

(b) This Policy shall apply to all public works projects undertaken by the County for construction, demolition, alteration, renovation service or maintenance of buildings, structures, or facilities valued at or above $250,000.00[1] and shall apply to any and all contractors and subcontractors of any tier that perform work on such projects.

(c) All firms engaged in public works contracts subject to this Policy, including general contractors, construction managers, other lead or prime contractors, and subcontractors at any level, shall be qualified, responsible contracting firms that have sufficient capabilities in all respects to successfully perform contracts on which they are engaged, including the necessary experience equipment, technical skills and qualifications and organizational, financial and personnel resources. Firms bidding or otherwise participating in public works contracts shall also be required to have a satisfactory past performance record and a satisfactory record of law compliance, integrity, and business ethics.

6. Contractor Responsibility Certifications.

(a) As a condition of performing work on a public works contract subject to this Policy, a general contractor, construction manager or other lead or prime contractor seeking award of a contractor shall submit a Contractor Responsibility Certification.

(b) The Contractor Responsibility Certification shall be completed on a form provided by the County and shall reference the project for which a bid is being submitted by name, the solicitation number and contract or project number.

[1] This amount is subject to increase from time to time by the Chief Financial Officer to account for inflation. Any such change will be posted by the County on the purchasing page of its website.

(c) In the Contractor Responsibility Certification, the construction manager, general contractor, or other lead or prime contractor shall confirm the following facts regarding its past performance and work history and its current qualifications and performance capabilities:

(1) The firm and its employees shall have all valid, effective licenses, registrations, certificates, or other credentials required by federal, state, county, or local law, including, but not limited to, licenses, registrations or certificates required to: (a) do business in the designated locale; and (b) perform the contract work it seeks to perform. These shall include, but not limited to, licenses, registrations, or certificates for any type of construction or maintenance trade work or specialty work that the firm proposes to self-perform.

(2) The firm meets the bonding requirements for the contract, as required by applicable law or contract specifications, as well as applicable insurance requirements for the contract including general liability insurance, workers compensation insurance and unemployment insurance.

(3) The firm has not been debarred or suspended by any federal, state, or local government agency or authority in the past three (3) years.

(4) The firm has not defaulted on any project in the past three (3) years.

(5) The firm has not had any type of business, contracting or trade license, registration, or other certification revoked or suspended in the past three (3) years.

(6) The firm and its Principals/Owners have not been convicted of any crime relating to its contracting business in the past ten (10) years.

(7) Within the past three years, the firm has not been found in violation of any law applicable to its contracting business, including, but not limited to, licensing laws, tax laws, prompt payment laws, wage and hour laws, prevailing wage laws, environmental laws or others, where the result of such violation was the payment of a fine, back pay damages or any other type of penalty in the amount of $5,000 or more.

(8) The firm will employ a sufficient number of craft labor personnel required to successfully perform any project work it self-performs or shall use qualified subcontractors to meet this requirement and shall assign workers to perform only work in their respective craft or trade for which they have sufficient skills and training or shall use qualified subcontractors to meet this requirement.

(9) The firm will pay all craft employees on the project, at a minimum, the applicable wage and fringe benefit rates, as established for the classification in which the worker is employed, in accordance with 43 Pa. C.S. § 165-1 *et. seq*. The firm shall display the applicable wage and fringe benefit table at the project site in a prominent location where notices to employees are customarily posted.

(10) The firm will ensure that all craft labor it employs on the project will have completed, prior to working on the project, the OSHA 10-hour training course for safety established by the U.S. Department of Labor. If the firm is a prime contractor, it shall also ensure that at least one (1) person on the project has completed the OSHA 30-hour construction training course established by the U.S. Department of Labor.

(11) The firm participates in a bona fide apprenticeship program, as defined below, for each separate trade or classification in which it employs craft employees.

A. For purposes of this Article, a bona fide apprenticeship program is an apprenticeship program registered with and approved by the U.S. Department of Labor or a state apprenticeship agency and has graduated apprentices to journey person status for at least three of the past five (5) years. This may be an apprenticeship program subject to the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001 *et seq*. ("ERISA"), or a non- ERISA program.

B. To demonstrate compliance, the firm shall provide, with this certification, a list of all trades or classifications of craft employees it will employ on the project and documentation verifying it participates in a bona fide apprenticeship program. The documentation shall be no less than three (3) years old and provide sufficient specificity as to the name, state, and registration number of the apprenticeship program to enable the Office of Procurement to confirm that the program is active.

C. The requirements of Section (c)(11) of this Article help ensure that the craft labor workforce employed on the project will have sufficient skills and training to correctly perform work assigned to them.

(12) The construction manager, general contractor, or other lead or prime contractor responsible for the project shall ensure that:

A. At least 70 percent of the craft labor work hours on the project shall be performed by journeyperson workers who have successfully completed a bona fide apprenticeship program as defined in Section (c)(11) of this Article or by apprentices registered in such programs, in the ratio of one apprentice for the first through fourth journeyperson workers regularly employed; two apprentices for the fifth through ninth journeyperson workers, and so on with an additional apprentice for each unit of five journeyperson workers regularly employed.

B. The apprenticeship participation must be in the same trade or craft for which the workers are employed on the project.

C. The firm shall provide, with this certification, copies of its workers' apprenticeship credentials.

(13) The firm shall make a good-faith effort to employ residents of Montgomery County for at least 40 percent of all craft labor hours worked.

A. The firm shall, as part of its bid submission, make a commitment to meet this goal, demonstrated by describing how the firm will proactively seek to accomplish this goal.

B. The firm shall document its good-faith efforts throughout the duration of the contract and shall produce such documents to the County for inspection upon request.

C. The firm shall promptly and accurately disclose to the County any changes to its plan to meet this goal.

D. The requirements of Section (c)(13) of this Article promote participation in the local economy by encouraging the training and hiring of County residents for high-quality jobs in the construction trades.

(14) To enable the County to monitor compliance with the requirements of Sections (c)(12) and (c)(13) of this Article, each firm agrees that it shall provide sufficient information to identify, in its periodic payroll reports, each of its non-supervisory workers' zip code of residence and whether the worker is currently a registered apprentice, a journeyperson worker who has successfully completed a bona fide apprenticeship program, or neither.

(15) The firm shall assign craft labor personnel work only in the craft or trade in which they are employed.

(16) The firm shall display the following "Know Your Rights" posters, to be provided by the County, for the duration of the contract at the project site in a location where notices to employees are customarily posted:

A. Pennsylvania Equal Pay Law;

B. Pennsylvania Human Rights Commission;

C. Family and Medical Leave Act;

D. National Labor Relations Act;

E. Occupational Safety and Health Act;

F. Montgomery County Labor Liaison; and

G. Any other postings as required by federal or state law.

(17) The firm has all other technical qualifications and resources, including equipment, personnel, and financial resources, to successfully perform the referenced contract and shall maintain such capabilities throughout the duration of the project, or will obtain same through the use of qualified, responsible subcontractors or vendors.

(18) The firm shall notify the County within seven (7) days of any material changes in its operation that relates to any matter attested to in this Contractor Responsibility Certification.

(19) The firm understands that the Contractor Responsibility Certification required by this Policy shall be executed by a person who has sufficient knowledge to address all matters in the certification and shall include an attestation stating, under penalty of perjury, that the information submitted is true, complete, and accurate to the best of the person's knowledge.

(20) The firm agrees that on or around the start date of a public works project subject to this Policy, the County's Labor Liaison shall hold a mandatory meeting session with all workers assigned to the project (to include supervisors and managers) to discuss the applicable provisions of this Policy.

(d) Execution of the Contractor Responsibility Certification required by this Policy shall not establish a presumption of contractor responsibility, and the County may require any additional information it deems necessary to evaluate a firm's status as a responsible contractor, including information regarding the firm's technical qualifications, financial capacity or other resources and performance capabilities. The County may require that such information be included in a separate Statement of Qualifications and Experience or as an attachment to the Contractor Responsibility Certification.

(e) The submitting firm shall stipulate in the Contractor Responsibility Certification that, if it receives a Notice of Intent to Award Contract, it will provide a Subcontractor List and required subcontractor information as specified in Article 8 of this Policy.

(f) If the submitting firm has ever operated under another name or is controlled by another company or business entity or in the past five years controlled or was controlled by another company or business entity, whether as a parent company, subsidiary or in any other business relation, it shall attach an appendix to its Contractor Responsibility Certification that explains in detail the nature of any such relationship. Additional information may be required from such an entity if the relationship in question could potentially impact contract performance.

(g) If a firm fails to provide a Contractor Responsibility Certification required by this Policy, it shall be disqualified from bidding. No action of any nature shall lie against the County because of its refusal to accept a bid for this reason.

(h) In the event that the County receives a sole bid for a contract from a firm which does not meet the requirements of this Article, the County may, at its discretion, issue a waiver of the Responsible Contractor Requirements limited to that firm and contract.

(i) In the event that the County receives no bids for a contract subject to this Article, the County may, at its discretion, reissue the solicitation with a waiver of the Responsible Contractor Requirements.

7. Notice of Intent to Award Contract

(a) After it has received bids for a project, the County shall issue a Notice of Intent to Award Contract to the firm that has submitted the lowest responsible bid.

(b) Such Notice shall be issued immediately or as soon as practicable after bids are opened and shall stipulate that the contract award is conditioned on the issuance of a written Contractor Responsibility Determination for the firm, as required by Article 9 of this Policy, compliance with Subcontractor Certifications required by Article 8 of this Policy, and any other qualification standards required by the County.

8. Subcontractor Responsibility Requirements

(a) Within two (2) days of receiving a Notice to Proceed, the awardee shall submit to the County a Subcontractor List, which provides the name and business address of the subcontractors it intends to use on the project, the scope of the work assigned to each subcontractor, and Subcontractor Responsibility Certifications as required by this Policy.

(b) The awardee shall not be permitted to use a subcontractor on any work performed for the County unless it has identified the subcontractor on its Subcontractor List and provided a Subcontractor Responsibility Certification in accordance with the requirements of Article 6.

(c) At the time an awardee submits the Subcontractor List it shall also submit Subcontractor Responsibility Certifications and any and all applicable supporting information for all listed subcontractors to the County. Subcontractor Responsibility Certifications shall be executed by the respective subcontractors on forms prepared by the County and shall contain the same information, representations, and supporting information required in Contractor Responsibility Certifications, including verification of apprenticeship qualifications as required by Section (c)(11) of Article 6, for each trade or classification of craft workers it will employ on the project.

(d) An awardee shall determine whether any firm on its Subcontractor List is organized as a sole proprietorship owned and operated by a single person. This shall apply to subcontractors at any tier. For any such entity, the prospective awardee shall ensure that the sole proprietorship subcontractor is a legitimate business entity and not a misclassified employee by requiring the subcontractor to supplement its Subcontractor Certification with its Employer Identification Number and copies of any license, certificate, or registration it is required to maintain in order to do business in the state in which it is located.

(e) A subcontractor listed on a firm's Subcontractor List shall not be substituted unless written authorization is obtained from the County and a Subcontractor Responsibility Certification is provided for the substitute subcontractor.

(f) In the event that the County determines that a subcontractor fails to meet the requirements of this Policy or is otherwise determined to be non-responsible, it may, after informing the awardee, exercise one of the following options:

(1) Permit the awardee to substitute a qualified, responsible subcontractor in accordance with the requirements of this Policy, upon submission of a completed Subcontractor Certification for the substitute and approval of the substitute by the County.

(2) Require the awardee to self-perform the work in question if the firm has the required experience, licenses, and other qualifications to perform the work in question; or

(3) Disqualify the awardee.

(g) In the event a subcontractor is disqualified under this Policy, the general contractor, construction manager or other lead or prime contractor shall not be permitted to make any type of claim against the County based on a subcontractor disqualification.

9. Contractor Responsibility Review and Determination

(a) After the County has issued a Notice of Intent to Award Contract to the lowest responsive bidder, it shall undertake a contractor responsibility review process to determine whether the firm is a qualified, responsible firm in accordance with the requirements of this Policy and other applicable laws and regulations. The time frame for conducting this review process shall be as determined by the County.

(b) As part of the review process, the County shall ensure that the Contractor Responsibility Certification and Subcontractor Responsibility Certifications and applicable supporting information comply with the requirements of this Policy.

(c) The County may conduct any additional inquiries to verify that the prospective awardee and its subcontractors have the technical qualifications and performance capabilities necessary to successfully perform the contract and that the firms have a sufficient record of law compliance, integrity, and business ethics to justify the award of a public contract. In conducting such inquiries, the County may seek relevant information from the firm, its prior clients or customers, its subcontractors, or any other relevant source.

(d) After the County determines that all responsibility certifications have been properly executed and has verified that all other relevant information submitted in response to the request pursuant to the review process indicate that the prospective awardee and its subcontractors are qualified, responsible firms, it shall issue a written Contractor Responsibility Determination for the prospective awardee.

(e) In the event a firm has been determined to be non-responsible, the County shall notify the firm in writing and proceed to conduct a responsibility review of the next lowest, responsive bidder or, if necessary, rebid the project. A Responsibility Determination may be revoked at any time if the County obtains relevant information warranting any such revocation.

10. False and Misleading Responsibility Certifications

If the County determines that a Contractor Responsibility Certification, Subcontractor List, or Subcontractor Responsibility Certification contains false or misleading material information that was provided knowingly or with reckless disregard for the truth or omits material information knowingly or with reckless disregard of the truth, or that a firm fails to meet the obligations set forth in its Certification, the County may:

(a) Disqualify the firm for which the Certification was submitted and prohibit the firm from performing work for the County for a period as determined under Article 12 of this Policy;

(b) Withhold payment of any monies due to the firm as damages and cancel or terminate the public work contract at no fault to the County; and/or

(c) Refer all identified or suspected violations of existing wage and hour, safety, procurement or other laws to the appropriate body for additional enforcement.

11. Execution of Final Contract

(a) A contract subject to this Policy shall not be executed until all requirements of this Policy have been fulfilled and until Contractor Responsibility Determination has been issued by the County under Section (d) of Article 9. Upon completion of all requirements under this Policy, the County may execute a final contract based upon the Notice of Intent.

(b) The County shall publicly post the Notice of Intent to Award, Contractor and Subcontractor Responsibility Certifications, Subcontractor Lists, related supporting documentation, and the Contractor Responsibility Determination on the County website for public inspection for the duration of the contract.

12. Suspension & Debarment

(a) *Authority*. After reasonable notice to the business concern or person involved and reasonable opportunity for that business concern or person to be heard, the County shall have authority to debar a business concern or person for cause from consideration for award of County contracts. The debarment shall not be for a period of more than three (3) years if the Contractor is found to have engaged in the conduct that is cause for debarment for the first time, or five (5) years if found to have engaged in the conduct that is cause for debarment a second or subsequent time. The County shall have the authority to suspend a Contractor from consideration for future award of Contracts if there is probable cause for debarment. The suspension shall not be for a period exceeding six (6) months.

(b) *Causes for Debarment or Suspension*. The causes for debarment or suspension include the following:

(1) conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract;

(2) conviction under State or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which currently, seriously, and directly affects responsibility as a County contractor;

(3) conviction under State or federal antitrust statutes arising out of the submission of bids or proposals;

(4) violation of contract provisions, as set forth below, of a character which is regarded by the County to be so serious as to justify debarment action:

(1) deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or

(2) a recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts; provided that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be a basis for debarment.

(5) submission of false or misleading certifications or other documents with bids or proposals;

(6) failure to comply with applicable prevailing wage and health-and-safety laws and regulations;

(7) any other cause the County determines to be so serious and compelling as to affect responsibility as a County contractor, including debarment by another governmental entity for any cause listed in regulations; and

(8) for violation of the ethical standards set forth in Article 27 (Ethics in Public Contracting).

(c) *Decision*. The County shall issue a written decision to debar or suspend. The decision shall state the reasons for the action taken and inform the debarred or suspended business concern or person involved of the rights to administrative review as provided in Article 25 of this Policy.

(d) *Maintenance of List of Debarred and Suspended Concerns*. The Chief Operating Officer/Chief Clerk or Chief Financial Officer shall maintain and update a list of debarred and suspended business concerns or persons. Such list shall be posted on the County's website.

13. Local, Small and Diverse Businesses

(a) *Statement of Policy.* Montgomery County is committed to taking affirmative steps to ensure that local, small and diverse businesses are used in County procurements.

(b) *Definitions*. For purposes of this Policy, the following terms shall have the following meanings:

(1) "Local" business means a person, partnership, corporation or other business entity authorized to transact business in this County and having a bona fide establishment for transacting business in this County at which it was transacting business on the date when bids or proposals for the public contract were first solicited.

(2) "Small" business means a person, partnership, corporation or other business entity in the United States which is independently owned and which is not dominant in its field of operation or an affiliate or subsidiary of a business dominant in its field of operation.

(3) "Diverse" business means a person, partnership, corporation or other business entity in the United State which is owned or controlled by a majority of persons who are women, minorities, persons with disabilities, veterans, military-service-disabled veterans or LGBTQ+ (Note: Minority-owned businesses include but are not limited to Black/African American, Indigenous/Native American, Asian American or Hispanic/Latino-owned businesses).

(c) *Certification*. The diverse vendor must be certified by a recognized third-party certifying organization.

(d) *Implementation*. The Director of Procurement shall implement the Policy set forth in Section (a) of this Article in accordance with the following:

(1) *Goals*. The Chief Operating Officer shall be responsible for setting goals and performance metrics for the County to contract with local, small and diverse businesses.

(2) *Reporting*. The Director of Procurement shall be responsible for tracking vendor status to meet the goals set by the Chief Operating Officer.

(3) *Source Lists*. The Director of Procurement shall compile, maintain, and make available source lists of local, small and diverse businesses for the purpose of encouraging procurement from local, small and diverse businesses.

(4) *Solicitation of Small and Diverse Businesses*. The Director of Procurement shall ensure that local, small and diverse businesses are solicited on each procurement.

(5) *Evaluation Criteria*. The Director of Procurement may, as appropriate, include in solicitations price preferences or evaluation credit for local, small or diverse business status.

(6) *Bonding*. The Director of Procurement may accept alternative forms of security to the extent reasonably necessary to encourage procurement from local, small and diverse businesses.

(7) *Progress Payments*. The Director of Procurement may make such special provisions for progress payments as may be deemed reasonably necessary to encourage procurement from local, small and diverse businesses.

(e) *Exemption*. The provisions of this Article shall not be applicable when the application of this Article may jeopardize the receipt of federal or state funds.

14. Sustainability.

(a) *Statement of Policy.* It is the intent of Montgomery County to procure products and services that are sustainable in order to ensure the continued well-being and quality of life for present and future generations.

(b) *Definitions*. For purposes of this Policy, the following terms shall have the following meanings:

(1) "Environmentally preferable" products and services mean those which have a significantly lesser impact on human health and the environment when compared to others serving the same purpose. Health and environmental considerations include but are not limited to maximizing post-consumer and overall recycled content, minimizing waste, conserving energy or water, reducing the amount of toxic material disposed or consumed, minimizing greenhouse gas emissions, promoting reusability and recyclability, and/or using a product with a sustainability certification.

(2) "Lifecycle cost" means the accounting of the total cost of ownership of a product or service over its lifespan, including initial costs, operational and energy costs, durability, performance, and disposal costs.

(3) "Locally-sourced" products are those which are made or produced within the Commonwealth of Pennsylvania or no greater than 120 miles from the borders of Montgomery County.

(4) "Reasonable and practicable" means sufficient in performance and available at a reasonably comparable price.

(5) "Sustainability certification" means a general or sector-specific certification issued by a recognized certifying agency or organization including International Organization for Standardization (ISO) 14001, EPA Safer Choice, Forest Stewardship Council, Rainforest Alliance, Cradle to Cradle, Greenseal, Ecologo, Green Guard, Energy Star, EPEAT, BIFMA, Fair Trade, Sustainable Forestry Initiative, Food Alliance, B Corp., LEED, USDA Organic, or other certifying agency or organization as recommended by sustainability staff.

(6) "Sustainability preference" means a price preference or evaluation credit awarded on the basis of a sustainability profile.

(7) "Sustainability profile" means a statement, provided as part of the procurement process, by vendors of products or services describing their policies, practices, and/or history of success in providing sustainable products or services.

(8) "Sustainability staff" means the Chief Sustainability Officer and/or their designee(s).

(c) *Lifecycle Cost Analysis*. To the maximum extent possible, the County shall incorporate lifecycle cost analysis into its evaluation of bids and proposals.

(d) *Procurement of Environmentally Preferable Products and Services*. The County shall prioritize procuring the most environmentally preferable products and services reasonably and practically available. For procurements below the bidding threshold as described in Article 19 of this Policy, procurements shall be made as follows:

(1) County personnel shall be authorized to make procurements where the cost of environmentally preferable products and services is no greater than 110 percent of conventional options.

(2) Where the cost of environmentally preferable products and services is between 110 and 120 percent of conventional options, the Director of Procurement shall be consulted before a final selection is made.

(3) Where the cost of environmentally preferable products and services is greater than 120 percent of conventional options, County personnel shall produce a memorandum justifying the procurement to be reviewed by the Director of Procurement and the Deputy Chief Operating Officer before a final selection is made.

(e) *Product-Specific Guidelines.* For the following product types, the County shall prioritize procurements in accordance with the following specifications:

(1) *Cleaning equipment*. Equipment such as, but not limited to, sprayers, mops, dusters, blowers, mowers, brooms, vacuums, and cleaners shall be replaced with or equipped with the appropriate air pollution filters or equipment upgrades, hand grips, wheels, and mounts designed to reduce exposure to volatile organic compounds, fine particulate matter, and excessive knee, back, elbow, and/or hand strain.

(2) *Electronics.* All energy-producing products shall meet the U.S. EPA Energy Star certification or, when Energy Star products are unavailable, the best available certification.

(3) *HVAC equipment*. All heating, cooling, and ventilation equipment shall use non-ozone depleting refrigerants and shall contribute to the goal of net zero energy efficiency in any major rehabilitation, maintenance, and/or new construction.

(4) *Landscaping*. The County shall prioritize the procurement of native, climate-appropriate, and pollinator-friendly plants, limit plant pesticides, and avoid chemicals toxic to pollinators.

(5) *Lighting*. Interior and exterior lighting shall be replaced with energy-efficient lighting using light-emitting diodes (LED) and shall adhere to dark sky lighting principles.

(6) *Local sourcing*. The County shall prioritize the procurement of locally-sourced products.

(7) *Packaging*. The County shall prioritize the procurement of products with minimal packaging and/or recyclable or compostable packaging.

(8) *Paper products.* All paper products must contain a minimum of 30 percent post-consumer recycled content and must be processed chlorine-free.

(9) *Polystyrene foam*. Polystyrene foam products (including Styrofoam) shall not be purchased for food or drink.

(10) *Single-use plastics*. Single-use plastic products, such as plastic bags, plastic drinking containers and straws, and cutlery shall not be purchased.

(11) *Textiles*. The County shall prioritize the purchase of products which have been Fair Trade certified.

(12) *Vehicles*. The County shall prioritize the procurement of gasoline-electric hybrid vehicles, electric vehicles, or plug-in hybrid electric vehicles for its vehicle fleet where doing so will not affect response time or public safety.

(f) [*Implementation of Sustainability Preference.* To effectuate this Policy, the County shall, in consultation with sustainability staff:

(1) Evaluate each requested product or service (including requests for proposals) to determine the extent to which its solicitation should include a sustainability preference and/or a preference for firms participating in the County's Sustainable Business Certification program;

(2) When a sustainability preference is determined to be appropriate, publish specific evaluation criteria in the solicitation, including a scoring rubric for the sustainability preference and a description of how that score will be used, and invite bidders to submit a sustainability profile responsive to the evaluation criteria;

(3) Score each bid in accordance with the published evaluation criteria; and

(4) Incorporate the score into the final evaluation.

(g) *Solicitation of Certified Firms*. The County shall maintain a list of firms certified under the County's Sustainable Business Certification program and shall ensure that those firms are solicited for appropriate procurements.]

(h) *Interpretation*. Nothing in this Article shall be construed or otherwise interpreted to:

(1) Require the procurement of products or services that do not perform adequately or are not available at a reasonable price and/or in a reasonable time period; or

(2) Abrogate or alter any existing procurement procedure that is required by applicable federal, state, or local law.

15. Compliance with Federal & State Requirements.

Where a procurement involves the expenditure of federal or state assistance or contract funds, the County shall comply with such federal or state law and authorized regulations which are mandatorily applicable and which are not presently reflected in this Policy.

16. Methods of Source Selection.

Unless otherwise authorized by law, all County contracts shall be awarded by one of the following methods:

(a) Competitive Sealed Bidding;

(b) Competitive Sealed Proposals;

(c) Small Purchases;

(d) Sole Source Procurement; or

(e) Emergency Procurements.

17. Competitive Sealed Bidding.

(a) *Conditions for Use*. Unless exempt, all contracts or purchases in excess of a base amount subject to an adjustment set annually by the Department of Labor and Industry as outlined in 16 P.S. § 15101(c)(1) shall be awarded by competitive sealed bidding.[2]

(b) *Invitation for Bids*. An Invitation for Bids shall be issued and shall include a purchase description, and all contractual terms and conditions applicable to the procurement. The Invitation for Bids shall set forth the evaluation criteria to be used, which may include criteria to determine acceptability such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose. Those criteria that will affect the bid price and be considered in evaluation for award shall be objectively measurable, such as discounts, transportation costs, and total or life cycle costs.

(c) *Public Notice*. Public notice of the Invitation for Bids shall be given a reasonable time prior to the date set forth therein for the opening of bids. Public notice shall be advertised in at least one newspaper of general circulation, published or circulating in the county at least two (2) times, at intervals of not less than three (3) days where daily newspapers of general circulation are employed for such publication, or in case weekly newspapers are employed, then the notice shall be published once a week for two (2) successive weeks. The first advertisement shall be published not less than ten (10) days prior to the date fixed for the opening of bids. Notice shall also be provided through the County's website.

(d) *Bidder Lists*. The County may maintain bidder lists of prospective contractors, but distribution of the solicitation shall not be limited to contractors on such lists, nor may a prospective contractor be denied award of a contract simply because such contractor was not on a bidders list. The fact that a prospective contractor is included on a bidders list does not necessarily represent a finding of responsibility.

[2] 16 P.S. § 15102.

(e) *Bid Acceptance*. The acceptance of all bids shall be by the County Controller.[3] Upon its receipt, each bid and modification shall be time-stamped but not opened and shall be stored in a secure place until the time and date set for bid opening. Bids shall be accepted electronically at the time and in the manner designated in the Invitation for Bids.

(f) *Bid Opening*. Bids shall be opened publicly at a time and place to be designated in the public notice. All bids shall be announced publicly by the Chief Clerk, or designee, and referred to the appropriate departments for tabulation without the presence of the County Commissioners. Bids shall be opened publicly in the presence of one or more witnesses at the time and place designated in the public notice.[4] Whenever, for any reason, the bid openings shall not be held, the same business may be transacted at a subsequent meeting, the time and place of which shall have been announced at the previous meeting held for such openings. The amount of each bid, and together with the name of each bidder shall be announced publicly by the chief clerk or his designee and recorded; the record and each bid shall be open to public inspection. Any bid received after the time and date set for receipt of bids is late. No late bid will be considered unless it would have been timely but for the action or inaction of County personnel directly serving the procurement activity.

(g) *Bid Evaluation*. Bids shall be unconditionally accepted without alteration or correction, except as authorized by this Policy.[5] Minor informalities or insignificant mistakes that can be corrected without prejudice to other bidders may be waived. Bids shall be evaluated based on the requirements set forth in the Invitation for Bids. No criteria may be used in bid evaluations that are not set forth in the Invitation for Bids.

(h) *Correction or Withdrawal of Bids*; Cancellation of Awards. Correction or withdrawal of inadvertently erroneous bids before or after award, or cancellation of awards or contracts based on such bid mistakes, shall be permitted.[6] After bid opening, no changes in bid prices or other provisions of bids prejudicial to the interest of the County or fair competition shall be permitted. All decisions to permit the correction or withdrawal of bids, or to cancel awards or contracts based on bid mistakes, shall be supported by a written determination made by the Chief Operating Officer/Chief Clerk or Chief Financial Officer.

(i) *Award.* Award shall be made by written notice to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the Invitation for Bids. The contract shall be awarded or all bids shall be rejected within thirty (30) days of the opening of the bids.[7] Thirty-day extensions of the date for the award may be made by the mutual written consent of the Chief Operating Officer/Chief Clerk or Chief Financial Officer and any bidder who wishes to remain under consideration for award. The reasons for requesting such extension shall be documented. The Chief Operating Officer/Chief Clerk or Chief Financial Officer shall excuse from consideration any bidder not wishing to agree to a request for extension of the date for the

[3] 16 P.S. § 15102(e)(1).
[4] *Id.*
[5] Competitive sealed bidding does not include negotiations with bidders after the receipt and opening of bids. Award is to be made based strictly on the criteria set forth in the Invitation for Bids.
[6] To maintain the integrity of the competitive sealed bidding system, a bidder may not be permitted to correct a bid mistake after bid opening that would cause such bidder to have the low bid unless the mistake is clearly evident from examining the bid document, such as extension of unit prices or errors in addition.
[7] 16 P.S. § 15102(e)(2).

award.[8] In the case of low tie bids, award may be made by drawing lots. All fully-executed contracts shall be filed with the Office of the Controller immediately after execution.[9]

(j) *Publicizing Awards*. Written notice of award shall be sent to the successful bidder. Each unsuccessful bidder shall be notified of the award in writing or through electronic means. Notice of award shall be made available to the public through the County's website.

(k) *Nonreceipt of Bids*. If no bids are submitted in response to an Invitation for Bids the item shall be rebid.[10] If no bids are submitted within 45 days of the second advertising date the County may procure the goods pursuant to Article 20 of this Policy (Sole Source Procurement).

(l) *Exemptions*. The contracts or purchases involving an expenditure that exceeds a base amount subject to an adjustment set annually by the Pennsylvania Department of Labor and Industry as outlined in 16 P.S. § 15101(c)(1)[11],which may be awarded by alternative methods of source selection authorized by this Policy, are as follows:

(1) Emergencies. In cases of actual emergency, which shall be declared and stated by resolution of the commissioners, the requirements of this subsection need not be followed.[12]

(2) Maintenance, repairs or replacements for water, electric light, or other public works. Provided that the requirement does not constitute new additions, extensions or enlargements of existing facilities and equipment.[13]

(3) Patented or Copyrighted products. Those where particular types, models or pieces of new equipment, articles, apparatus, appliances, vehicles or parts thereof are desired.[14]

(4) Insurance policies or surety company bonds.[15]

(5) Public utility service and electricity, natural gas or telecommunication services.[16]

(6) Personal or professional services.[17]

(7) Tangible client services provided by nonprofit agencies.[18]

(8) Those involving contracts entered into by nonprofit cooperative hospital service associations for hospitals and nursing homes which are part of the institutional district or which are owned by the county, operated by the county or affiliated with the

[8] *Id.*
[9] 16 P.S. § 15102(e)(3).
[10] 73 P.S. § 1641.
[11] The current Department of Labor and Industry threshold amount is available at the following link: Office of Procurement | Montgomery County, PA - Official Website
[12] 62 Pa.C.S.A. § 516.
[13] 16 P.S. § 15102(h)(1).
[14] 16 P.S. § 15102(h)(3).
[15] 16 P.S. § 15102(h)(4).
[16] 16 P.S. § 15102(h)(5).
[17] 16 P.S. § 15102(h)(6).
[18] 16 P.S. § 15102(h)(8).

county by the procurement of or participating in contracts for materials, supplies and equipment.[19]

(9) Those involving the purchase of milk.[20]

(10) Those made with any public body.[21]

(11) Those exclusively involving construction management services.[22]

(12) Those involving computer software.[23]

18. Competitive Sealed Proposals.

(a) *Conditions for Use*. A contract may be entered into by competitive sealed proposals when the Chief Operating Officer/Chief Clerk or Chief Financial Officer determines in writing that the procurement is exempt from the requirement to use competitive sealed bidding under Article 17 of this Policy.

(b) *Request for Proposals*. Proposals shall be solicited through a Request for Proposals ("RFP").

(c) *Public Notice*. Public notice shall be provided in at least one (1) newspaper of general circulation, and through the County's web site. Public notice of the Request for Proposals shall be given a reasonable time prior to the date set forth therein for the submission of proposals.

(d) *Source Lists*. The County may maintain source lists of prospective contractors, but distribution of the solicitation shall not be limited to such prospective contractors, nor may a prospective contractor be denied award of a contract simply because the contractor was not on a source list. The fact that a prospective contractor is included on a source list does not necessarily represent a finding of responsibility.

(e) *Receipt of Proposals*. Proposals and modifications shall be time-stamped upon receipt and held in a secure place until the established due date. Bids shall be accepted electronically at the time and in the manner designated in the Request for Proposals. Proposals shall be opened so as to avoid disclosure of contents to competing offerors during the process of negotiation. Proposals shall not be opened publicly but shall be opened by procurement officials. A Register of Proposals shall be prepared which shall be open to public inspection only after award of the contract.

(f) *Evaluation Factors*. The Request for Proposals shall state the factors, if any, other than price, to be considered in the Proposal.

(g) *Discussion with Responsible Offerors and Revisions to Proposals*. As provided in the Request for Proposals, discussions may be conducted with responsible offerors who submit proposals determined to be reasonably susceptible of being selected for award for the purpose of clarification to assure full understanding of, and responsiveness to, the solicitation requirements. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussion

[19] 16 P.S. § 15102(h)(7).
[20] 16 P.S. § 15102(h)(10).
[21] 16 P.S. § 15102(h)(9).
[22] 16 P.S. § 15102(h)(11).
[23] 16 P.S. § 15102(h)(12).

and revision of proposals, and such revisions may be permitted after submissions and prior to award for the purpose of obtaining best and final offers. In conducting discussions, there shall be no disclosure of any information derived from proposals submitted by competing offerors.

(h) *Award*. Award shall be made to the responsible offeror whose proposal conforms to the solicitation and is determined in writing to be the most advantageous to the County taking into consideration price and the evaluation factors set forth in the Request for Proposals. No other factors or criteria shall be used in the evaluation. The contract file shall contain the basis on which the award is made. Written notice of the award of a contract to the successful offeror shall be promptly given to all offerors.

(i) *Modification or Withdrawal of Proposals*. Proposals may be modified or withdrawn prior to the established due date. For the purposes of this Article the established due date is either the time and date announced for receipt of proposals or receipt of modifications to proposals, if any; or if discussions have begun, it is the time and date by which best and final offers must be submitted, provided that only offerors who submitted proposals by the time announced for receipt of proposals may submit best and final offers.

(j) *One Proposal Received*. If only one proposal is received in response to a Request for Proposals, the Request for Proposal should be resolicited, if time permits, or award made in accordance with this Article if the Chief Operating Officer/Chief Clerk or Chief Financial Officer finds that the price submitted is fair and reasonable, and that other prospective offerors had reasonable opportunity to respond.

19. Small Purchases.

(a) *Conditions for Use*. Any procurement not exceeding the base amount subject to an adjustment set annually by the Pennsylvania Department of Labor and Industry as outlined in 16 P.S. § 15101(c)(1) may be made in accordance with small purchase procedures; provided, however, procurement requirements shall not be artificially divided so as to constitute a small purchase under this Article.

(b) *Procedure*. Insofar as it is practical for small purchases of supplies or services between $12,500 and the base amount subject to an adjustment set annually by the Pennsylvania Department of Labor and Industry as outlined in 16 P.S. § 15101(c)(1), no less than three businesses shall be solicited to submit written, electronic, or oral quotations that are recorded and placed in the procurement file.

(c) *Small Purchases of $12,500 or Less*. The Chief Operating Officer/Chief Clerk or Chief Financial Officer shall adopt operational procedures for making small purchases of less than $4,000. Such operational procedures shall provide for obtaining adequate and reasonable competition and for making records to properly account for funds and to facilitate auditing of the Office of Procurement.

20. Sole Source Procurement.

(a) *Conditions for Use*. A contract may be awarded without competition when the Chief Operating Officer/Chief Clerk or Chief Financial Officer determines in writing, that the procurement is exempt from competitive sealed bidding, and (a) there is only one source for the required supply, service, or construction item, or (b) when the County's need for the supplies or

services is of such an unusual and compelling urgency that the County would be seriously injured unless the County is permitted to limit the number of sources from which it solicits bids or proposals.

(b) *Negotiation in Sole Source Procurement*. The County shall conduct negotiations, as appropriate, as to price, delivery, and terms.

(c) *Record of Sole Source Procurement*. A record of sole source procurements shall be maintained that lists: (a) each contractor's name; (b) the amount and type of each contract; (c) a listing of the supplies, services, or construction procured under each contract; and (d) the identification number of each contract file. Sole Source awards shall be published on the County's website.

21. Emergency Procurements.

Notwithstanding any other provision of this Policy, the County may make emergency procurements, as permitted by 62 Pa.C.S.A. § 516, when there exists a threat to public health, welfare, or safety under emergency conditions as declared by the County Commissioners; provided that such emergency procurements shall be made with such competition as is practicable under the circumstances. A written determination of the basis for the emergency and for the selection of the particular contractor shall be included in the contract file. Emergency awards shall be published on the County's website.

22. Electronic Solicitations and Bid/Offer Submissions.

The County shall maintain an online portal for distribution of solicitations and submission of bids and proposals. The Chief Operating Officer/Chief Clerk or Chief Financial Officer shall develop policies and procedures for the County to implement receipt of electronic submissions to ensure that the confidentiality of bids/proposals received electronically shall be maintained.

23. Multiple Awards.

Contracts awarded using any of the source selection methods authorized by this Policy may be entered into on a multiple award basis. The Invitation for Bids or Request for Proposals shall set forth the number of awards anticipated.

24. Cooperative Purchasing.

(a) *Policy*. In order to save significant time and money in contract production as well as lower contract prices through the power of aggregation, the County shall procure supplies and services from cooperative purchasing agreements established by the Commonwealth, other states, local governments, or the federal government, including General Services Administration (GSA) schedule contracts, whenever it is feasible and beneficial to the County to do so, provided:

(1) The cooperative purchasing agreement or GSA schedule contract allows states or state agencies from another state to utilize the contract; and

(2) The contracting federal, state, or local government agency entered into the cooperative purchasing agreement complied with its statutory and regulatory requirements in awarding the agreement to the contractor.

(b) *Prohibition*. The County shall not enter into cooperative purchasing agreements for the purpose of circumventing applicable law or this Procurement Policy.

25. Protests

(a) *Right to Protest*. Any actual or prospective bidder, offeror, contractor, or labor organization who is aggrieved in connection with the solicitation or award of a contract may protest to the Chief Operating Officer/Chief Clerk or Chief Financial Officer. Protests relating to cancellation of invitations for bids or requests for proposals and protests relating to the rejection of all bids or proposals are not permitted.

(b) *Time for Filing*. If a protest is filed regarding a contract subject to Section 5 of this Policy (Responsible Contracting Requirements), the protest must be filed by the later of either: (1) seven days from the publication of the final responsibility determination; or (2) seven days from the date the Notice of Intent to Award the Contract was publicized on the Euna/Bonfire Platform. Otherwise, if a protest is filed by a bidder or offeror or a prospective contractor, the protest must be filed within seven (7) days after the protesting bidder or offeror or prospective contractor knew or should have known of the facts giving rise to the protest except that in no event may a protest be filed later than seven (7) days after the date the Notice of Intent to Award the Contract was publicized on the Euna/Bonfire Platform. The date of filing is the date of receipt of the written protest. Untimely filed protests shall be disregarded by the County.

(c) *Authority to Resolve Protests*. The County Commissioners, or their designee – the Chief Operating Officer or the Deputy Chief Operating Officer, shall have the authority to settle and/or resolve a protest of an aggrieved bidder, offeror, or contractor, actual or prospective, concerning the solicitation or award of a contract.

(d) *Decision*. If a protest is not resolved by mutual agreement, the County Commissioners, or their designee – the Chief Operating Officer or the Deputy Chief Operating Officer, shall promptly issue a decision in writing. The decision shall state the reasons for the action taken. A copy of the decision shall be mailed or otherwise furnished immediately to the protestor.

26. Bonding.

(a) Bid bonds or other security may be required for contracts as deemed advisable to protect the interest of the County. Any such requirements must be set forth in the solicitation. In the event any bidder or offeror shall, upon award of the contract to him, fail to comply with the requirements hereinafter stated as to security guaranteeing the performance of the contract, or fail or refuse to enter into a contract, or otherwise fail or refuse to render the required services, the security furnished under this subsection shall be forfeited to the county as liquidated damages, and the contract subsequently may be awarded to the next lowest bidder, who shall manifest his acceptance of such contract by giving a good faith deposit in the amount and manner set forth in this subsection on or before the third day after the award of the contract to such bidder and otherwise comply with the provisions of this section.[24]

(b) The successful bidder, when a formal bid is required herein, shall be required to furnish a bond or irrevocable letter of credit or other security in an amount sufficient to the

[24] 16 P.S. § 5001(b.1).

commissioners guaranteeing performance of the contract within thirty (30) days after the contract has been awarded, unless the commissioners shall prescribe a shorter period or unless the commissioners shall waive the bond requirement in the bid specification.[25] The successful bidder for a contract which involves the construction, erection, installation, completion, alteration, repair of or addition to any public work or improvement of any kind shall furnish security as provided in 16 P.S. § 5518.

27. Ethics in Public Contracting

(a) *Statement of Policy*. Public employment is a public trust. It is the policy of the County to promote government integrity. Such policy is implemented by prescribing essential standards of ethical conduct in the procurement process. Public employees must discharge their duties impartially to protect and foster fair, competitive access to governmental procurement by responsible contractors. Moreover, public employees should conduct themselves in such a manner as to foster public confidence in the integrity and transparency of the County procurement organization. To achieve the purpose of this Policy, it is essential that those doing business with the County also observe the ethical standards prescribed herein. When a person has reason to believe that any breach of ethical standards has occurred, that person should report all relevant facts in writing to the Ombudsman for any appropriate action.

(b) *General Ethical Standards for Employees*. Any attempt to realize personal gain through public employment by conduct inconsistent with the proper discharge of the employee's duties is a breach of a public trust. Pursuant to the Public Official and Employee Ethics Act ("Ethics Act"), 65 Pa. C.S. § 1101 *et seq.*, subject to certain statutory exceptions, "public officials" or "public employees" as defined by the Ethics Act, are prohibited from using the authority of their public positions to obtain a private pecuniary benefit (financial gain that is not authorized in law) for themselves, member(s) of immediate family, or businesses with which they or member(s) of immediate family are associated. In carrying out their procurement responsibilities, County personnel shall:

(1) Comply with the County’s Ethics Policy/Code of Conduct.

(2) Know and observe fair, ethical, and legal trade practices and remain alert to the legal ramifications of procurement decisions.

(3) Encourage competition through open, equitable and fair practices.

(4) Conduct business with potential and current suppliers openly, fairly, equitably, and in an atmosphere of good faith.

(5) Avoid restrictive specifications.

(6) Avoid the intent and appearance of unethical or compromising practices.

(7) Promote positive supplier relationships through courtesy and impartiality in all phases of the procurement cycle.

[25] 16 P.S. § 5001(c).

(c) *General Ethical Standards for Non-Employees*. Any effort to influence any public employee to breach the standards of ethical conduct set forth in this Policy is also a breach of ethical standards.

(d) *Conflict of Interest*. It shall be a breach of ethical standards for any employee to participate directly or indirectly in a procurement when the employee knows that:

(1) the employee or any member of the employee's immediate family has a financial interest pertaining to the procurement;

(2) a business or organization in which the employee, or any member of the employee's immediate family, has a financial interest pertaining to the procurement; or

(3) any other person, business, or organization with whom the employee or any member of the employee's immediate family is negotiating or has an arrangement concerning prospective employment is involved in the procurement.

Similarly, it shall be a breach of ethical standards for any contractor to participate directly or indirectly in a procurement when the contractor knows that a its organizational, financial, contractual or other interests are such that award of the contract may result in an unfair competitive advantage; or the Contractor's objectivity in performing the contract work may be impaired.

(e) *Gratuities and Kickbacks*. Sections 1103(b) and 1103(c) of the Ethics Act, pertaining to improper influence, provide in part that no person shall offer or give to a public official/public employee anything of monetary value and no public official/public employee shall solicit or accept anything of monetary value based upon the understanding that the vote, official action, or judgment of the public official/public employee would be influenced thereby.

(1) *Gratuities*. It shall be a breach of ethical standards for any person to offer, give, or agree to give any employee or former employee, or for any employee or former employee to solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter, pertaining to any program requirement or a contract or subcontract, or to any solicitation or proposal therefor.

(2) *Kickbacks*. It shall be a breach of ethical standards for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher-tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract or order.

(3) *Contract Clause*. The prohibition against gratuities and kickbacks prescribed in this Article shall be conspicuously set forth in every contract and solicitation therefor.

(f) *Use of Confidential Information*. "Public officials" or "public employees," as defined by the Ethics Act, are prohibited from using any confidential information received from their public positions to obtain a private pecuniary benefit (financial gain that is not authorized in

law) for themselves, member(s) of immediate family, or businesses with which they or member(s) of immediate family are associated.[26]

(g) *Political Contributions*. Firms awarded contracts through methods other than competitive sealed bidding ("non-bid contracts") are required to file as required by Section 1641 of the Pennsylvania Election Code a report with the Secretary of the Commonwealth, by February 15 of each year, of all political contributions made by:

(1) Any officer, director, associate, partner, limited partner or individual owner or members of their immediate family whose political contribution exceeded one thousand dollars ($1,000) by any individual during the preceding year; or

(2) Any employee of the supplier or members of his immediate family whose political contribution exceeded one thousand dollars ($1,000) during the preceding year.

Reports required to be filed under Section 1641 of the Pennsylvania Election Code shall also be filed with the County Board of Elections by February 15 of each year.

(h) *Contractor Integrity*. Contractors shall certify as part of each bid or proposal that they will maintain the highest standards of integrity in the performance of County contracts and shall take no action in violation of this Policy, federal, state or local laws, regulations, or other requirements that govern contracting with the County. The Chief Operating Officer/Chief Clerk or Chief Financial Officer shall develop standard contractor representations and certifications to effectuate the policies of this Article.

28. Appointment of Ombudsman.

(a) The County shall appoint an ombudsman to hear and facilitate resolution of concerns from prospective contractors, bidders and offerors, contractors and others. When requested, the ombudsman will maintain strict confidentiality as to the source of the concern. The existence of the ombudsman does not affect the authority of the County Commissioners or Chief Operating Officer/Chief Clerk or Chief Financial Officer, and the ombudsman has no authority to render a decision that binds the agency. Further, the ombudsman does not participate in the evaluation of bids or proposals, the source selection process, or the adjudication of protests or formal contract disputes. The ombudsman may refer the party to another official who can resolve the concern.

(b) Before consulting with an ombudsman, interested parties must first address their concerns, issues, disagreements, and/or recommendations to the Chief Operating Officer/Chief Clerk or Chief Financial Officer for resolution. Consulting an ombudsman does not alter or postpone the timelines for any other processes (e.g. bid protests).

29. Severability.

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

[26] 65 Pa. C.S. § 1003(a).