

PURCHASING DEPARTMENT AMENDED AND RESTATED POLICY MANUAL



**Franklin County Purchasing
400 E Locust St
Union, Missouri 63084**

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ARTICLE I-GENERAL PROVISIONS

A. Part A--Purpose and Application

§1-101 Purpose.

The purpose of this Policy is to provide for the fair and equitable treatment of all persons involved in public purchasing by the County of Franklin, hereinafter referred to as County, to maximize the purchasing value of public funds in procurement, and to provide safeguards for maintaining a procurement system of quality and integrity.

§1-102 Application.

This Policy applies to contracts for the procurement of supplies, and services, entered into by the County after the effective date of this Policy. It shall apply to every expenditure of public funds irrespective of the source of the funds. When the procurement involves the expenditure of federal assistance or contract funds, the procurement shall be conducted in accordance with any mandatory applicable federal law and regulations. Nothing in this Policy shall prevent any public agency from complying with the terms and conditions of any grant, gift, or bequest that is otherwise consistent with law.

B. Part B—Definitions

§1-201 Definitions.

(1) Addendum. — An addition or supplement to a document, for example, items or information added to a procurement document (i.e. bid).

(2) Administrative Authority. Any Elected County Official or Department Head or a person designated by them to authorize procurement and the expenditure of County funds pursuant to this Policy.

(3) Amendment. A revision or change to a document, generally the contract; often used to correct a solicitation.

(4) Architect-Engineer and Land Surveying Services. Those professional services within the scope of the practice of architecture, professional engineering, or land surveying as defined by the laws of the State of Missouri Section 8.285 RSMo.

(5) Or Equal Specification. A specification limited to one or more items by manufacturers' names or catalogue numbers to describe the standard of quality, performance, and other salient characteristics needed to meet County requirements, and which provides for the submission of equivalent products.

(6) Brand Name Specification. A specification limited to one or more items by manufacturers' names or catalogue numbers.

(7) Business. Any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or any other private legal entity.

(8) Change Order. A written alteration to a contract, initiated by the Purchasing Agent and signed by the Franklin County Commission, in accordance with the terms of the contract, unilaterally directing the contractor to make changes.

(9) Contract Modification (bilateral change). Any written alteration to any provision of the contract (i.e. specifications, delivery point, rate of delivery, period of performance, price,

quantity, or other provisions of any contract) accomplished by mutual action of the parties to the contract.

(10) Confidential Information. Any information which is available to an employee only because of the employee's status as an employee of the County and is not a matter of public knowledge or available to the public on request.

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

(12) Contract. All types of Franklin County agreements, regardless of what they may be called, for the procurement or disposal of supplies, services or construction.

(13) Contractor. Any person having a contract with the County or an Administrative Authority thereof.

(14) Cost Analysis. The evaluation of cost data for the purpose of arriving at costs actually incurred or estimates of costs to be incurred, prices to be paid, and costs to be reimbursed.

(15) Cost Data. Factual information concerning the cost of labor, material, overhead, and other cost elements which are expected to be incurred or which have been actually incurred by the contractor in performing the contract.

(16) Cost-Reimbursement Contract. A contract under which a contractor is reimbursed for costs which are allowable and allocable in accordance with the contract terms and the provisions of this Policy, and a fee or profit, if any.

(17) County. Franklin County, Missouri.

(18) Employee. An individual drawing a salary or wages from the County, whether elected or not; any non-compensated individual performing personal services for the County or any department, agency, commission, council, board, or any other entity established by the executive or legislative branch of the County; and any non-compensated individual serving as an elected official of the County.

(19) Gratuities — Gratuities include any material goods or services offered with the intent of, or providing the potential for, influencing the buying decision. As such, gratuities may be offered to the purchaser, or to other persons involved in purchasing decisions (or members of their immediate family).

(20) Invitation for Bid. A formal request to prospective vendors soliciting bids; contains, or incorporates by reference, the specifications or scope of work and all contractual terms and conditions.

(21) Person. Any business, individual, union, committee, club, other organization, or group of individuals.

(22) Price Analysis. The evaluation of price data, without analysis of the separate cost components and profit as in cost analysis, which may assist in arriving at prices to be paid and costs to be reimbursed.

(23) Pricing Data. Factual information concerning prices for items substantially similar to those being procured. Prices in this definition refer to offered or proposed selling prices, historical selling prices and current selling prices. The definition refers to data relevant to both prime and subcontract prices.

(24) Procurement. The buying, purchasing, renting, leasing, or otherwise acquiring of any supplies or services. It also includes all functions that pertain to the obtaining of any supply,

or service, including description of requirements, selection, and solicitation of sources, preparation and award of contract, and all phases of contract administration.

(25) Purchase. The term "purchase" as used in this policy refers to the procurement of any and all supplies, materials, equipment, contractual services or articles and shall include the rental or leasing of any equipment or articles as described and required in this policy. A purchase is defined as the value of one transaction, regardless of the number or type of items acquired or ordered in that transaction.

(26) Purchasing Agent. That person, persons or department appointed by the County pursuant to the provisions of Section 50.753 RSMo.

(27) Qualified Products List. An approved list of supplies, services, or items described by model or catalogue numbers, which, prior to competitive solicitation, the County has determined will meet the applicable specification requirements.

(28) Request for Quotation (RFQ). An informal solicitation or request for information, where oral or written quotes are obtained from vendors, without formal advertising or receipt of sealed bids. Used only where statutes do not require formal sealed bids, such as small or emergency purchases, but price competition is desired.

(29) Request for Bid. A formal request to prospective vendors soliciting bids; contains, or incorporates by reference, the specifications or scope of work and all contractual terms and conditions.

(30) Request for Proposal. All documents, whether attached or incorporated by reference, utilized for soliciting proposals. A proposal solicitation method used for requirements exceeding authorized limits when it is expected that negotiations with one or more offerors may be required with respect to any aspect of the requirements, or other factors will be considered in the selection of the contractor in addition to price, or only one source is being solicited.

(31) Responsible Bidder or Offeror. A person who has the capability in all respects to perform fully the contract requirements, and the tenacity, perseverance, experience, integrity, reliability, capacity, facilities, equipment, and credit which will assure good faith performance.

(32) Responsive Bidder. A person who has submitted a bid which conforms in all material respects to the requirements set forth in the Request for Bid.

(33) Services. The furnishing of labor, time, or effort by a contractor, not involving the delivery of a specific end product other than reports which are merely incidental to the required performance. This term shall not include employment agreements or collective bargaining agreements.

(34) Specification. Any description of the physical or functional characteristics or of the nature of a supply or service. It may include a description of any requirement for inspecting, testing, or preparing a supply, or service for delivery.

(35) Supplies. All property, including but not limited to equipment, materials, printing, insurance, and leases of real property, excluding land or a permanent interest in land.

C. Part C--Public Access to Procurement Information

§1-301 Public Access to Procurement Information.

Procurement information shall be a public record to the extent provided in Section 610.010 and 109.180 RSMo. and shall be available to the public as provided in such statutes.

ARTICLE 2--OFFICE OF THE PURCHASING AGENT

§2-101 Establishment, Appointment, and Tenure.

(1) Establishment of the Position of Purchasing Agent (50.753 RSMo). There is hereby created the position of Purchasing Agent, who shall be the County's principal public purchasing official and serve at the pleasure of the Franklin County Commission.

(2) Appointment. The Purchasing Agent shall be appointed by the Franklin County Commission.

(3) Tenure. The Purchasing Agent shall be appointed to serve an indefinite term and may be removed from office by the Franklin County Commission.

§2-102 Authority and Duties.

(1) Principal Public Purchasing Official. Except as otherwise provided herein, the Purchasing Agent shall serve as the principal public purchasing official for the County, and shall be responsible for the procurement of supplies and services in accordance with this Policy.

(2) Duties. In accordance with this Policy, and subject to the supervision of the Franklin County Commission, the Purchasing Agent shall:

(a) Procure or supervise the procurement of all supplies and services needed by the County; and

(b) Establish and maintain programs for specifications development, contract administration and inspection and acceptance, in cooperation with the public agencies using the supplies and services.

(3) Operational Procedures. Consistent with this Policy, and with the approval of the Franklin County Commission, the Purchasing Agent may adopt operational procedures relating to the execution of its duties.

ARTICLE 3--SOURCE SELECTION AND CONTRACT FORMATION

Part A--Methods of Source Selection

(for purchases exceeding \$12,000 in a 90-day period)

§3-101 Competitive Sealed Bidding.

(1) Conditions for Use. All contracts of the County shall be awarded by competitive sealed bidding except as otherwise provided in Sections 3-102 (Competitive Sealed Proposals), 3-103 (Contracting for Designated Professional Service), 3-104 (Small Purchases), 3-105 (Sole Source Procurement), 3-106 (Emergency Procurements), or 5-401 (Public Announcement and Selection Process) of this Policy.

(2) Invitation for Bids and Request for Bids. An Invitation for Bids and Request for Bids shall be issued and shall include specifications, and all contractual terms and conditions applicable to the procurement.

(3) Public Notice. All public notices of the Invitation for Bids and Request for Bids shall be given a reasonable time, not less than fifteen (15) calendar days prior to the date set forth therein for the opening of bids. When time is of the essence, the Purchasing Agent has the discretion to shorten the minimum time the bid is left open, with an opening date of 3 days from time of issue to allow for an emergency faxed/mailed bid. Such notice may include publication

in a newspaper of general circulation a reasonable time prior to bid opening. (50.660 RSMo). The public notice shall state the place, date, and time of bid opening.

(4) Bid Opening. Bids shall be opened publicly in the presence of one or more witnesses at the time and place designated in the Invitation for Bids or Request for Bids. The amount of each bid, and such other relevant information as the Purchasing Agent deems appropriate, together with the name of each bidder shall be recorded; the record and each bid shall be open to public inspection in accordance with Section 1-301 (Public Access to Procurement Information).

(5) Bid Award Recommendations. The Purchasing Department shall present bid award recommendations in scheduled commission meetings for all contract awards.

(6) Bid Acceptance and Bid Evaluation. Bids shall be unconditionally accepted without alteration or correction, except as authorized in this Policy. Bids shall be evaluated based on the requirements set forth in the Invitation for Bids or Request for Bids, 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. The Invitation for Bids or Request for Bids will set forth the evaluation criteria to be used.

(7) Correction or Withdrawal of Bids; Cancellation of Awards. Correction or withdrawal of inadvertently erroneous bids before or after bid opening, or cancellation of awards in such circumstances, may be permitted where appropriate. Mistakes discovered before bid opening may be modified or withdrawn by written notice received in the office of the Purchasing Agent prior to the time set for bid opening. 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. In lieu of bid correction, a low bidder alleging a material mistake of fact may be permitted to withdraw its bid if:

(a) the mistake is clearly evident on the face of the bid document, but the intended correct bid is not similarly evident; or

(b) the bidder submits evidence which clearly and convincingly demonstrates that a mistake was made. 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 Purchasing Agent.

(8) Award. The contract shall be awarded with reasonable promptness by appropriate written notice to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the Invitation for Bids or Request for Bids.

(9) Blanket Purchase Orders. The Franklin County Highway Department is authorized to execute "blanket purchase orders" for aggregates and asphalt. The purchase orders shall be issued to a contract vendor through the proper solicitation process as outlined herein, and in an amount not to exceed the budgetary line item allowance. All invoices in reference to the blanket purchase order shall be subject to review and approval prior to submitting for payment.

§3-102 Competitive Sealed Proposals (Request for Proposals).

(1) Conditions for Use. When the Purchasing Agent determines in writing that the use of competitive sealed bidding is either not practicable or not advantageous to the County, a contract may be entered into by use of the competitive sealed proposals method.

(2) Request for Proposals. Proposals shall be solicited through a Request for Proposals.

(3) Public Notice. Adequate public notice of the Request for Proposals shall be given in the same manner as provided in Section 3-101 (3) (Competitive Sealed Bidding, Public Notice); provided, the minimum time shall be thirty (30) calendar days. When time is of the essence, the Purchasing Agent has the discretion to shorten the minimum time the proposal is left open, with an opening date of 21 days from time of issue.

(4) Receipt of Proposals. No proposals shall be handled so as to permit disclosure of the contents of any proposal to competing offeror's during the process of negotiation.

(5) Evaluation Factors. The Request for Proposals shall state the relative importance of price and other evaluation factors.

(6) 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 conformance to, the solicitation requirements. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussion 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.

(7) Award. Award shall be made to the responsible offeror whose proposal 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.

§3-103 Contracting for Designated Professional Services.

(1) Authority. For the purpose of procuring professional services as defined by the laws of the State of Missouri, any Administrative Authority requiring such services may procure them through the Purchasing Agent.

(2) Selection Procedure.

(a) Obtain Statement of Qualifications. Persons engaged in providing the designated types of professional services may submit statements of qualification and expressions of interest in providing such professional services. The Purchasing Agent may specify a uniform format for statements of qualifications. Persons may amend these statements at any time by filing a new statement.

(b) Provide adequate Public Announcement and Form of Request for Proposals. Adequate public notice of the Request for Proposals shall be given in the same manner as provided in Section 3-102(3) (Competitive Sealed Proposals, Public Notice); provided the minimum time shall be thirty (30) calendar days. The Request for Proposals shall describe the services required, list the types of information and data required of each offeror, and state the relative importance of particular qualifications.

(c) Conduct Discussions. The Purchasing Agent may conduct discussions with any offeror who has submitted a proposal to determine such offeror's qualifications for further consideration. Discussions shall not disclose any information derived from proposals submitted by other offerors.

(d) Award. A written award shall be made to the offeror. The award will be based on the evaluation factors set forth in the Request for Proposals. If compensations cannot be agreed upon with the best qualified offeror, then negotiations will be formally terminated with the selected offeror. If proposals were submitted by one or more other offerors determined to be

qualified, negotiations may be conducted with such other offeror or offerors, in the order of their respective qualification ranking, and the contract may be awarded to the offeror then ranked best qualified if the amount of compensations is determined to be fair and reasonable.

§3-104 Small Purchases (under \$12,000 in a 90-day period).

(1) The requesting department shall verify with the Purchasing Agent that the County hasn't expended in excess of \$12,000 in a 90-day period with the vendor.

(2) For any purchase totaling \$3,000 - \$12,000 the requesting department shall obtain at least three quotes from the Purchasing Agent.

(3) The requesting department shall initiate a purchase order and obtain approval from the department head or Administrative Agent. The purchase order shall be delivered to the Auditor for certification of available funds. The purchase order will then be delivered to the Purchasing Agent.

(4) The Purchasing Agent may require the requesting department to obtain quotes from multiple vendors for any purchase including all purchases under \$12,000

§3-105 Sole Source Procurement.

A contract of a value in excess of \$12,000 in a 90-day period may be awarded without competition when the Commission finds that there is only one feasible source for the required supply, or service item. The Purchasing Agent shall keep and maintain, and provide upon request of the Commission documentation, after conducting a good faith review of available sources, that there is only one feasible source for the required supply or service. The Purchasing Agent shall conduct negotiations as to price, delivery, and terms as appropriate under the circumstances. The Purchasing Agent shall also advertise the requesting department's intent to make a sole source purchase of a value in excess of \$12,000 in at least one daily and one weekly newspaper of general circulation in such places as are most likely to reach prospective bidders or offerors and may provide such information through an electronic medium available to the general public at least ten days before the contract is to be let.

§3-106 Emergency Procurements.

Notwithstanding any other provisions of this Policy, and by direction of the County Commission, the Purchasing Agent may make or authorize others to make emergency procurements of supplies, services, or construction items when there exists a threat to public health, welfare, or safety; 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 documented and submitted to the Purchasing Department by the requesting department. As soon as practicable, a record of each emergency procurement shall be made and maintained by the Purchasing Agent and shall set forth the contractor's name, the amount and type of the contract, and a listing of the item(s) procured under the contract.

§3-107 Cancellation of Request for Bid or Request for Proposal.

A request for bid, a request for proposal, or other solicitation may be canceled, or any or all bids or proposals may be rejected in whole or in part as may be specified in the solicitation, when it is

for good cause and in the best interests of the County. The reasons therefor shall be made part of the bid file. Each solicitation issued by the County shall state that the solicitation may be canceled and that any bid or proposal may be rejected in whole or in part for good cause when in the best interests of the County. Notice of cancellation shall be sent to all businesses solicited. The notice shall identify the solicitation, explain the reason for cancellation and, where appropriate, explain that an opportunity will be given to compete on any re-solicitation or any future procurement of similar items. Reasons for rejection shall be provided upon request by unsuccessful bidders or offerors.

Part B--Qualifications and Duties of Bidders and Offerors

§3-201 Responsibility of Bidders and Offerors.

Determination of Non-responsibility. Following the bid award, if a bidder or offeror who otherwise would be awarded a contract is found non-responsible, a written determination of nonresponsibility, setting forth the basis of the finding, shall be prepared by the Purchasing Agent and retained in the bid file. The unreasonable failure of a bidder or offeror to promptly supply information in connection with an inquiry with respect to responsibility may be grounds for a determination of nonresponsibility with respect to such bidder or Offeror. The final determination shall be made part of the bid file and be made a public record.

§3-203 Cost or Price Analysis.

A cost analysis or price analysis, as appropriate, shall be conducted prior to award of the contract other than one awarded under Section 3-101 (Competitive Sealed Bidding). A written record of such cost analysis or price analysis shall be made a part of the contract file.

§3-204 Bid and Performance Bonds on Supply or Service Contracts.

Bid and performance bonds or other security may be requested for supply contracts or service contracts as the Purchasing Agent deems advisable to protect the County's interests. The Purchasing Agent generally requests bonds and securities for contracts greater than \$50,000, however the Purchasing Agent has the discretion to request bonds or other security for contracts less than \$50,000. Any such bonding requirements shall be set forth in the solicitation. Bid or performance bonds shall not be used as a substitute for a determination of a bidder or offeror's responsibility. (Bidders submit Bid Bond — in the amount of 5% of bid. Then Contractor submits a Performance Bond and a Labor & Material Bond for full amount of contract amount)).

II. Part C--Types of Contracts and Contract Administration

§3-301 Types of Contracts.

(1) General Authority. Subject to the limitations of this Section, any type of contract which is appropriate to the procurement and which will promote the best interests of the County may be used. A cost reimbursement contract may be used only when a determination is made in that such contract is likely to be less costly to the County than any other type of contract, or that it

is impracticable to obtain the supply, service, or construction item required except under such a contract.

(2) Multi-Term Contracts.

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

(b) Determination Prior to Use. Prior to the utilization of a multi-term contract, it shall be determined in writing by the requesting department:

(i.) that estimated requirements cover the period of the contract and are reasonably firm and continuing; and

(ii) that such a contract will serve the best interests of the County by encouraging effective competition or otherwise promoting economies in Franklin County procurement.

(c) Cancellation Due to Unavailability of Funds in Succeeding Fiscal Periods. When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the contract shall be canceled.

(3) Multiple Source Contracting.

(a) General. A multiple source award is an award of an indefinite quantity contract for one or more similar supplies or services to more than one bidder or offeror.

(b) Limitations on Use. A multiple source award may be made when award to two or more bidders or offerors for similar products is necessary for adequate delivery, service, or product compatibility. Any multiple source award shall be made in accordance with the provisions of Section 3-101 (Competitive Sealed Bidding), Section 3-201 (Competitive Sealed Proposals), and Section 3-106 (Emergency Procurements), as applicable. Multiple source awards shall not be made when a single award will meet the County's needs without sacrifice of economy or service. Awards shall not be made for the purpose of dividing the business, making available product or supplier selection to allow for user preference unrelated to utility or economy, or avoiding the resolution of tie bids. Any such awards shall be limited to the least number of suppliers necessary to meet the valid requirements.

(c) Contract and Solicitation Provisions. All eligible users of the contract shall be named in the solicitation, and it shall be mandatory that the actual requirements of such users that can be met under the contract be obtained in accordance with the contract, provided that:

(i) the County shall reserve the right to take bids separately if a particular quantity requirement arises which exceeds its normal requirement, or an amount specified in the contract; and

(ii)]the County shall reserve the right to take bids separately if the Purchasing Agent approves a finding that the supply or service available under the contract will not meet a non-recurring special need of the County.

(d) Intent to Use. If a multiple source award is anticipated prior to issuing a solicitation, the County shall reserve the right to make such an award and the criteria for award shall be stated in the solicitation.

(e) Determination Required. The Purchasing Agent shall make a written determination setting forth the reasons for a multiple source award, which shall be made a part of the official record.

§3-302 Contract Clauses and Their Administration.

(1) Contract Clauses. All County contracts for supplies, services, and construction shall include provisions necessary to define the responsibilities and rights of the parties to the contract.

(2) Standard Clauses and Their Modification. The Purchasing Agent, after consultation with the Franklin County Counselor, may establish standard contract clauses for use in Franklin County contracts.

§3-303 Contract Administration.

A contract administration system designed to ensure that a contractor is performing in accordance with the solicitation under which the contract was awarded, and the terms and conditions of the contract, shall be maintained by the Purchasing Agent.

§3-304 Right to Inspect Plant.

The County may, at reasonable times, inspect the part of the plant, place of business, or work site of a contractor or subcontractor at any tier which is pertinent to the performance of any contract awarded or to be awarded by the County.

§3-305 Right to Audit Records.

(1) Audit of Cost or Pricing Data. The County may at reasonable times and places audit the books and records of any contractor who has submitted cost or pricing data pursuant to Section 3-202 (Cost or Pricing Data) to the extent that such books, documents, papers, and records are pertinent to such cost or pricing data. Such books and records shall be maintained by the contractor for a period of five (5) years from the date of final payment under the subcontract or as otherwise provided by laws of the State of Missouri.

(2) Contract Audit. The County shall be entitled to audit the books and records of a contractor or a subcontractor at any tier under any negotiated contract or subcontract other than a firm fixed-price contract to the extent that such books, documents, papers, and records are pertinent to the performance of such contract or subcontract. Such books and records shall be maintained by the contractor for a period of five (5) years from the date of final payment under the subcontract or as otherwise provided by laws of the State of Missouri.

§3-306 Reporting of Anti-Competitive Practices.

When for any reason collusion or other anti-competitive practices are suspected among any bidders or offerors, a notice of the relevant facts shall be transmitted to the Franklin County Counselor.

§3-307 County Procurement Records.

(1) Retention of Procurement Records. All procurement records shall be retained and disposed of by the Franklin County Clerk for the County in accordance with records retention guidelines and schedules approved by the Missouri Secretary of State.

ARTICLE 4--SPECIFICATIONS

§4-101 Maximum Practicable Competition.

All specifications shall be drafted so as to promote overall economy for the purposes intended and encourage competition in satisfying the County's needs, and shall not be unduly restrictive. The policy enunciated in this Section applies to all specifications including but not limited to, those prepared for the County by architects, engineers, designers, and draftsmen.

§4-102 Brand Name or Equal Specification.

(1) Use. Brand name or equal specifications may be used when the Purchasing Agent determines in writing that:

- (a) no other design or performance specification or qualified products list is available;
- (b) time does not permit the preparation of another form of purchase description, not including a brand name specification;
- (c) the nature of the product or the nature of the County's requirements makes use of a brand name or equal specification suitable for the procurement; or
- (d) use of a brand name or equal specification is in the County's best interests.

(2) Designation of Several Brand Names. Brand name or equal specifications shall seek to designate three, or as many different brands as are practicable, as "or equal" references and shall further state that substantially equivalent products to those designated will be considered for award.

(3) Required Characteristics. Unless the Purchasing Agent determines in writing that the essential characteristics of the brand names included in the specifications are commonly known in the industry or trade, brand name or equal specifications shall include a description of the particular design, functional, or performance characteristics which are required.

(4) Nonrestrictive Use of Brand Name or Equal Specifications. Where a brand name or equal specification is used in a solicitation, the solicitation shall contain explanatory language that the use of a brand name is for the purpose of describing the standard of quality, performance, and characteristics desired and is not intended to limit or restrict competition.

§4-103 Brand Name Specification

(1) Use. Since use of a brand name specification is restrictive of product competition, it may be used only when the Purchasing Agent makes a written determination that only the identified brand name item or items satisfy the County's needs.

(2) Competition. The Purchasing Agent shall seek to identify sources from which the designated brand name item or items can be obtained and shall solicit such sources to achieve whatever degree of price competition is practicable. If only one source can supply the requirement, the procurement shall be made under Section 3-105 (Sole Source Procurement).

§4-104 Missouri Domestic Products Procurement Act (34.353 RSMo) Buy American

(1) Whenever feasible and practicable, any manufactured goods or commodities used, supplied, or leased in the performance of any County contract involving an expenditure greater

than \$25,000 (or any subcontract thereto) shall be manufactured or produced in the United States unless:

- (a) obtaining said products manufactured or produced in the United States would increase the cost of the contract by more than ten percent (10%); or
- (b) there is only one line of a particular good or product manufactured or produced in the United States.

ARTICLE 5 POLICY FOR CONTRACTING FOR ARCHITECTURAL, ENGINEERING, AND LAND SURVEYING SERVICES

§5-101 General Information

1) It shall be the policy of Franklin County, Missouri (the "County") to negotiate contracts for architectural, engineering and land surveying on the basis of demonstrated competence and qualifications at fair and reasonable prices.

2) Only persons, firms, partnerships, corporations or other legal entities providing architectural, engineering and land surveying services (referred to in this policy as "Consultants") that are licensed or registered with their respective governmental agencies and are in good standing shall be permitted to contract with the County. In addition, all Consultants that contract with the County for professional services shall be required to maintain professional liability insurance and other standard business insurance coverages customarily maintained by businesses offering these professional services in such amounts and with such coverage as the County may from time-to-time determine necessary to assure the responsible performance of work and to protect the County and Consultants.

§5-102 County Accepts and Vets Statement of Qualifications

1) Each Consultant desiring to be considered in contracting with the County for architectural, engineering and land surveying services shall file a new or updated statement of qualifications before the close of each calendar year in accordance with this policy:

2) Content of Statement of Qualifications — Each statement of qualifications shall contain the following:

a) Business Information — Contain basic biographical information about the firm, including firm name and former firm names, address, date established, statement of business organization, names of all owners, principals, partners and professional employees.

b) Staff Information — Contain resumes of each professional in the firm, including a description of experience, technical competence, and areas of expertise. The description should also include the number of ancillary staff with job descriptions or titles and relevant experience available for assignment.

c) Registration and Licensing — Contain evidence of professional registration or licensing with the State of Missouri and, in the case of business entities which must be registered with the Secretary of State, current copies of registration and statements of good standing.

d) Work History — Contain a listing of all government agencies for which work was performed within the preceding two years and the nature of services performed. In the event the Consultant seeking registry has not performed professional services for governmental entities, then the Consultant shall provide a listing of institutional or business clients for whom

work has been performed in the preceding two years. If references are unavailable, then the Consultant seeking registration shall provide a detailed explanation of why references are not available.

e) Subcontractors — Contain a listing of subconsultants or subcontractors normally retained by Consultant to perform work not customarily performed by the Consultant. Relevant descriptions of expertise of subcontractors should be included when appropriate.

f) Project Listing — Contain a listing of current and pending projects in which the consultant is the primary provider of professional services or manager of the project.

g) Insurance — Contain evidence of insurance coverages and amounts carried by the Consultant as required by the general qualifications for County Consultants.

h) Quality Controls — Contain a description of internal quality control and assurance procedures used to verify accuracy and reliability of work product.

§5-103 Selection of Consultants

Consultants shall be selected for ongoing general consulting services on an "as needed" basis, for planning, feasibility studies, surveys, cost estimating, and other related work not currently designated or funded for capital improvement expenditures and for professional services on specific projects which are designated or funded for current or future capital improvements.

§5-104 General Consultant Services

For professional services on specific projects the Consultant shall be selected in the following manner: the Purchasing Agent will contact a sufficient number of Consultants from the County Registry of Consultants in order to identify Consultants both qualified and available to perform needed work and to ensure that three (3) or more written proposals will be received for the proposed project. The Purchasing Agent will send written requests for proposals to all of those Consultants who, in the opinion of the Purchasing Agent, possess the necessary qualifications, capacity and ability to perform the professional services required by the County in an efficient and timely manner and who are available to perform such services. Consultant proposals to the County shall be returned to the County by the date stated in the request for proposal and shall include, at a minimum, the following information to the extent not included in the Consultant's current statement of qualifications on file with the County.

1) Experience — The professional experience and technical competence with respect to the type of services required.

2) Performance Ability — The ability and capacity to perform the work in question, including specialized services, within the time limitations fixed for the completion of the project.

3) Past Performance Record — The Consultant's past record of performance with respect to such factors of cost, quality of work, and ability to meet schedules.

4) Proposal — The Consultant's proposal for doing the work, including description of included and excluded services, in accordance with the criteria established in the request for proposal.

5) Fees and Expenses — A fee proposal including estimates of professional fees, the basis for the proposed fees, proposed schedule for payment, and identification and estimate of reimbursable expenses and other costs associated with proposed services.

6) Insurance Coverage — Evidence of current professional liability insurance coverages and amounts of coverage unless specific insurance requirements are specified in the request for proposal, in which case evidence that these requirements are satisfied.

§5-105 Proposal Evaluation

A selection committee consisting of the Purchasing Agent, and other members as appropriate will review the proposals. The Committee shall investigate and evaluate the proposal(s) received and may conduct screening interviews or conferences in person or by telephone to make a short list of Consultants with whom contract negotiations may be conducted. Preference may be given to Consultants who have previously performed work in connection with the proposed project. On the basis of the Committee's investigation and evaluation of the proposals, the Purchasing Agent will list the Consultants in order of qualifications and ability to perform the desired work at a fair and reasonable price in order to negotiate a mutually satisfactory contract for professional services.

§5-106 Contract Negotiations

Regardless of the nature of services sought, the first selected Consultant shall be requested to interview with the Committee to define the scope of services to be provided and to establish the compensation as well as other elements or requirements for the work. The Consultant's fees and expenses for the work shall also be negotiated on the basis of what amounts are mutually agreed upon to be fair and reasonable. The Committee will make its recommendation to the County Commission. A contract shall be prepared on the basis of these discussions and negotiations by the County Counselor which, once finalized, shall be submitted to the County Commission for award and final approval. If after reasonable effort as determined by the Committee a contract cannot be negotiated, the negotiations with the first designated Consultant shall be terminated and negotiations shall be started with the next selected Consultant meeting the County's requirement.

§5-107 Contract Awards

If the Committee is able to successfully negotiate the terms and conditions of a contract with the Consultant it shall recommend award of the contract to the Consultant by the County Commission which shall be the contracting party. In the event the County Commission declines award to the recommended Consultant, the Committee shall negotiate a contract and recommend award to the next succeeding qualified Consultant until contract is awarded.

§5-108 Waiver of Policy Requirements

The Purchasing Agent may in its sole discretion waive any of the procedural requirements set forth in this policy in cases of emergency or exigent circumstances warranting waiver as long as the reasons for waiver are documented in writing; upon timely request of any party objecting to the waiver, the waiver shall be reviewed and approved by the County Commission. The Purchasing Agent may in its sole discretion waive any of the procedural requirements set forth in this policy and select a Consultant from any consultant prequalification list maintained by the Missouri Department of Transportation.

§5-109 Consultant Disqualification

Any Consultant which is not qualified to perform work for the County, or is not financially solvent or responsible, or which violates any term or condition of this policy or substantially or repeatedly fails to perform any term or condition of a contract with the County deemed material by the Purchasing Agent may be disqualified from contracting with the County and will be notified of such disqualification in writing. Any Consultant aggrieved by any decision of the Purchasing Agent disqualifying the Consultant from contracting with the County may appeal such decision to the County Commission within ten (10) days of the rendition of such decision.

ARTICLE 6--DEBARMENT OR SUSPENSION

§6-101 Debarment or Suspension

After reasonable notice to the person involved and reasonable opportunity for that person to be heard, the Purchasing Agent, after consulting with the Franklin County Counselor, is authorized to debar a person for cause from consideration for award of contracts. The debarment shall be for a period of not more than three (3) years. After consultation with the Franklin County Counselor, the Purchasing Agent is authorized to suspend a person from consideration for award of contracts if there is probable cause to believe that the person has engaged in any activity which might lead to debarment. The suspension shall be for a period not to exceed three months. The causes for debarment include:

(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 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 Purchasing Agent to be so serious as to justify debarment action:

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

(b) 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; and

(5) any other cause the Purchasing Agent determines to be so serious and compelling as to affect responsibility as a Franklin County contractor, including debarment by another governmental entity for any cause listed in this Policy

§6-102 Decision to Debar or Suspend.

The Purchasing Agent 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 person involved of its rights concerning judicial or administrative review.

§6-103 Notice of Decision.

A copy of the decision required by Section 6-102 (Decision of Debar or Suspend) shall be mailed or otherwise furnished immediately to the debarred or suspended person.

§6-104 Finality of Decision.

A decision under Section 6-102 (Decision to Debar or Suspend) shall be final and conclusive, unless fraudulent, or the debarred or suspended person within ten (10) days after receipt of the decision takes an appeal to the Franklin County Commission or commences a timely action in court in accordance with applicable law.

ARTICLE 7--APPEALS AND REMEDIES

§7-101 Bid Protests

(1) Right to Protest. Any actual or prospective bidder, offeror, or contractor shall have only those rights to protest bids as are provided under Missouri law. This policy shall not be deemed to provide an independent right to protest bids.

§7-102 Remedies for Solicitations or Awards in Violation of Law.

Bids or solicitations may be cancelled by the Purchasing Agent:

(1) Prior to Bid Opening or the Closing Date for Receipt of Proposals. If prior to the bid opening or the closing date for receipt of proposals, the Purchasing Agent, after consultation with the Franklin County Counselor, determines that a solicitation shall be canceled or revised to comply with applicable law.

(2) Prior to Award. If after bid opening or the closing date for receipt of proposals, the Purchasing Agent, after consultation with the Franklin County Counselor, determines that a solicitation or a proposed award of a contract is in violation of federal, state, or municipal law, then the solicitation or proposed award will be canceled.

ARTICLE 8--COOPERATIVE PURCHASING

§8-101 An active list of cooperative agencies will be kept in the Purchasing Department. Examples may include State of Missouri Cooperative Purchasing.

ARTICLE--9 ETHICS IN PUBLIC CONTRACTING

§9-101 Criminal Penalties

To the extent that violations of the ethical standards of conduct set forth in this Article constitute violations of the criminal laws of the State of Missouri, they shall be punishable as provided therein. Such penalties shall be in addition to the civil sanctions set forth in this Part. Criminal, civil, and administrative sanctions against employees or non-employees which are in existence on the effective date of this Policy shall not be impaired.

§9-102 Employee Conflict of Interest.

It shall be unethical for any Franklin County employee to participate directly or indirectly in a procurement contract when the Franklin County employee knows that:

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

(2) any other person, business, or organization with whom the Franklin County employee or any member of a Franklin County employee's immediate family is negotiating or has an arrangement concerning prospective employment is involved in the procurement contract. A Franklin County employee or any member of a Franklin County employee's immediate family who holds a financial interest in a disclosed blind trust shall not be deemed to have a conflict of interest with regard to matters pertaining to that financial interest.

§9-103 Gratuities and Kickbacks.

(1) **Gratuities.** It shall be unethical for any person to offer, give, or agree to give any Franklin County employee, or for any Franklin County 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, or 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 unethical 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.

§9-104 Prohibition Against Contingent Fees.

It shall be unethical for a person to be retained, or to retain a person, to solicit or secure a County contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies for the purpose of securing business.

§9-105 Contemporaneous Employment Prohibited.

It shall be unethical for any Franklin County employee who is participating directly or indirectly in the procurement process to become or to be, while such a Franklin County employee, the employee of any person contracting with the governmental body by whom the employee is employed.

§9-106 Waivers from Contemporaneous Employment Prohibition and Other Conflicts of Interest.

The Franklin County Commission may grant a waiver from the employee conflict of interest provision (Section 9-102; Employee Conflict of Interest) or the contemporaneous employment provision (Section 9-105; Contemporaneous Employment Prohibited) upon making a written determination that:

- (1) the contemporaneous employment or financial interest of the Franklin County employee has been publicly disclosed;
- (2) the Franklin County employee will be able to perform its procurement functions without actual or apparent bias or favoritism; and
- (3) the award will be in the best interest of the County.

§9-107 Use of Confidential Information.

It shall be unethical for any employee knowingly to use confidential information for actual or anticipated personal gain, or for the actual or anticipated personal gain of any other person.

§9-108 Sanctions.

(1) Employees. The Franklin County Commission may recommend to the employees' Administrative Authority any one or more of the following sanctions on a Franklin County employee for violations of the ethical standards in this Article:

- (a) oral or written warnings or reprimands;
- (b) suspension with or without pay for specified periods of time; or
- (c) termination of employment.

(2) Non-employees. The Franklin County Commission may impose any one or more of the following sanctions on a non-employee for violations of the ethical standards:

- (a) written warnings or reprimands;
- (b) termination of contracts; or
- (c) debarment or suspension as provided in Section 6-101 (Debarment or Suspension).

§9-109 Recovery of Value Transferred or Received in Breach of Ethical Standards.

(1) General Provisions. The value of anything transferred or received in breach of the ethical standards of this Policy by a Franklin County employee or a non-employee may be recovered from both Franklin County employee and non-employee.

(2) Recovery of Kickbacks by the County. Upon a showing that a subcontractor made a kickback to a prime contractor or a higher tier subcontractor in connection with the award of a subcontract or order thereunder, it shall be conclusively presumed that the amount thereof was included in the price of the subcontract or order and ultimately borne by the County and will be recoverable hereunder from the recipient. In addition, that amount may also be recovered from the subcontractor making such kickbacks. Recovery from one offending party shall not preclude recovery from other offending parties.