

PROCUREMENT MANUAL ULSTER COUNTY DEPARTMENT OF GENERAL SERVICES

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Director of General Services

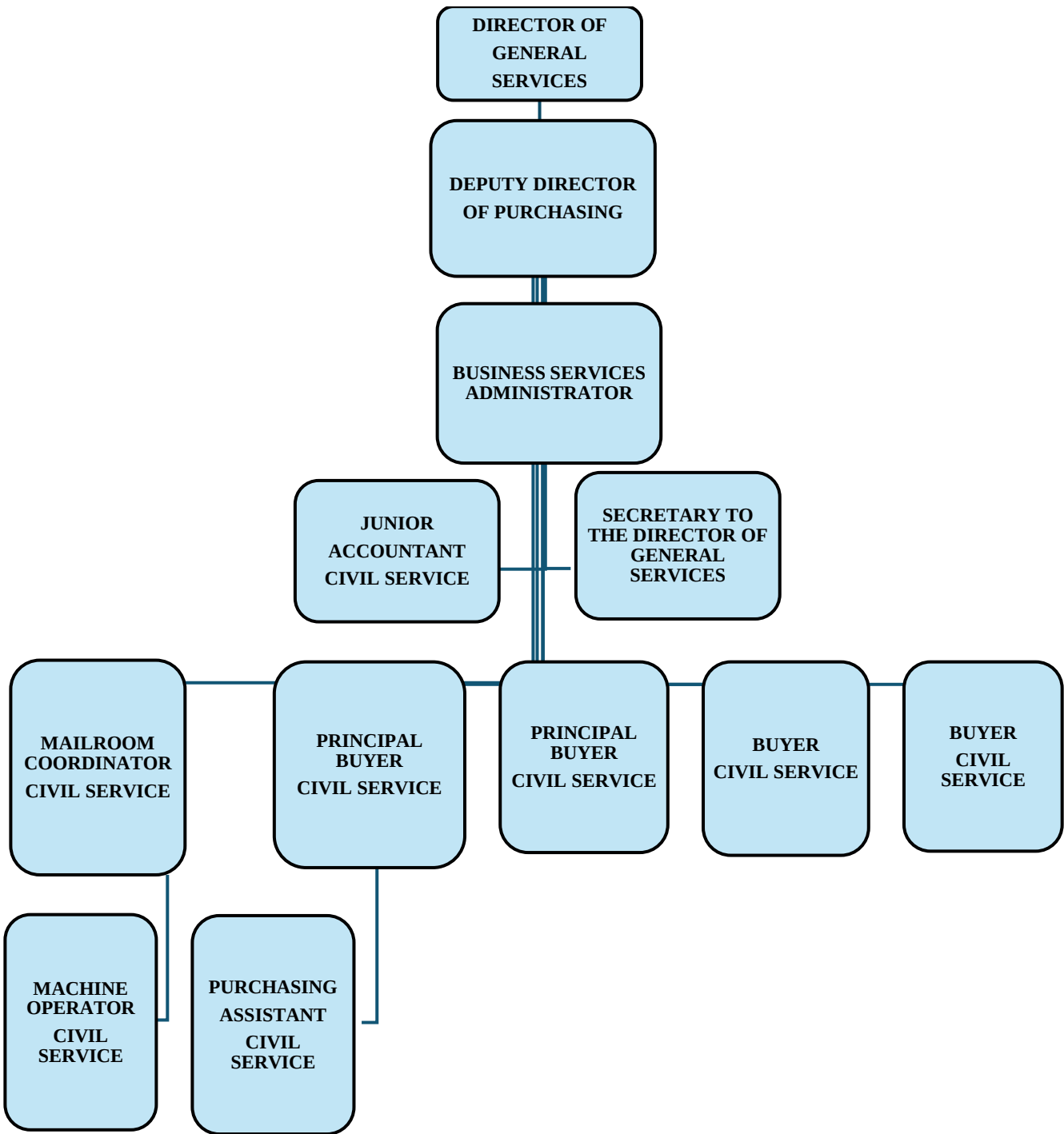


Jen Metzger
County Executive

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DEPARTMENT OF GENERAL SERVICES
ORGANIZATION CHART



ULSTER COUNTY
DEPARTMENT OF GENERAL SERVICES
PROCUREMENT PROCEDURES

SECTION I
INTRODUCTION

It is the intent of this Procurement Manual (hereinafter, the “Manual”) to explain to users what the Department of Purchasing (hereinafter “Purchasing”) does, to provide users with information that will enable them to make the most effective use of the services offered by Purchasing, and to allow them to meet their procurement needs in a manner that complies with State Law and County Policies. It is suggested that all departments read this document closely, ask any questions that are necessary to increase their understanding of the purchasing process, and refer to it as frequently as needed while carrying out their procurement responsibilities. This Manual is reviewed and updated annually.

A. MISSION:

Purchasing shall promote the County's best interest by providing a professional purchasing system of quality and integrity whereby all persons involved in public purchasing are treated fairly and equitably, the value of public funds is maximized and a sufficient supply system is available for all departments/agencies. In addition, Purchasing shall prioritize sustainable purchasing practices that reduce energy use, emissions, toxicity and waste to the extent practicable.

Purchasing will implement and maintain the purchasing system in full accordance with the requirements set forth in the General Municipal Law (“GML”) of the State of New York, with such local laws as passed by the Ulster County Legislature, and/or with such directives as issued by the Ulster County Executive. Purchasing shall conduct the procurement system for the County in a cost effective and objective manner, devoid of favoritism or special interest influence.

B. GOALS:

The goal of Purchasing is to make the purchasing process as competitive and objective as possible, while striving to promote high standards for all business relationships. To the extent allowable by NY State Law, including General Municipal Law Sections 103 and 104-b, it is also a goal of Purchasing to encourage County departments to consider sustainability, environmental stewardship and local economic development during the procurement process.

C. OBJECTIVES:

Purchasing's objectives are to obtain, on a timely basis, quality products and services as economically as possible to satisfy the specific needs of our departments. Purchasing's staff endeavors to assure that the taxpayers receive the maximum value for each dollar expended. The established purchasing objectives center on the need for efficient and effective operations that are responsive to users' needs, and practices that promote sound purchasing management and produce the greatest value for the County taxpayers' dollars. Purchasing is charged with accomplishing the following objectives:

- Ensure timely procurement of supplies, equipment, and services necessary for the daily operation of the County.
- Maximize the value of County funds by ensuring competition.
- Promote fair and open competition among vendors in an impartial manner.
- Promote buying techniques that encourage economies of scale, thereby ordering materials and services in large quantities when applicable.
- Provide guidance, oversight, and problem resolution to County departments, and ensure compliance with County purchasing procedures.
- Simplify, clarify, and standardize the procurement process of the County; make the purchasing procedures practiced by the County as consistent as possible.
- Ensure fair and equitable treatment of all persons/vendors who deal with the County.
- Ensure that all interested suppliers understand how to do business with the County.
- Maintain effective communication with vendors providing goods/services to the County, including the resolution of complaints regarding those goods/services.
- Maintain confidentiality of supplier pricing and technical information
- Ensure that, where allowable under NY State Law, local tax dollars are spent on goods made and services provided by vendors located within Ulster County, contiguous counties, and New York State.

D. PURCHASING DEPARTMENT'S RESPONSIBILITIES

Pursuant to GML 104-b(2)(f), the County hereby identifies the individual listed below as responsible for purchasing, as of the date of the last annual review of this Manual:

Edward M. Jordan, Director, Department of General Services
Peter J. Esposito Jr. , Deputy Director, Department of Purchasing
Lisa Snyder, Secretary to the Director of Purchasing, Department of Purchasing

Purchasing is responsible for providing efficient procurement services of the best value from responsible vendors. Purchasing is responsible for handling all aspects of the procurement process, including the identification and development of sources, assistance to departments in the development of specifications, solicitation of bids, proposals, and quotations, and engaging with vendors.

All County departments must adhere to the provisions detailed in GML Sections 103 and 104-b, (as such sections may be amended from time to time) regardless of whether or not they are covered in this Manual. Provided that there is compliance with these sections of State Law, the Director of Purchasing shall have ultimate discretion regarding any and all procurements.

E. DEPARTMENT RESPONSIBILITIES

Departments must plan for procurements sufficiently in advance to allow Purchasing to obtain the best price and/or overall service. For purposes here, “department” shall mean and include all departments, units, and agencies of the County. Offices of elected officials are considered a unit of County government.

Purchase orders are based on information and specifications shown on the requisition. Departments must prepare specifications that are clear and complete. When requesting parts for machines or equipment, a manufacturer and part number or model number of the unit should be stated on the requisition.

Grant-funded purchases must be planned well in advance of the expiration date of the grant. The department shall immediately notify Purchasing which commodities need to be purchased with the grant money to allow for a cost-effective purchase and prompt payment. Notifying Purchasing in a timely manner will help ensure that grant money will not be lost. Grant funding is subject to the same procurement rules of any budgeted dollars.

Employees who are involved in their department’s procurement process should familiarize themselves with these procedures. Supervisors should ensure that new employees have read this Manual.

Departments may not divide purchases to circumvent statutory competitive bidding requirements.

SECTION II

GENERAL PURCHASING PROCEDURES

A. GENERAL

1. Only the Director of General Services (or an authorized designee) may legally commit the County to a purchase.
2. The dollar amount of the purchase and/or the commodity/service being acquired is the basis for determining the correct purchasing procedure. Dollar thresholds are determined on a County-wide, not departmental, basis. The use of commodity codes has enabled Purchasing to easily identify those commodities that require public bids.
3. The Director of General Services may recommend alternatives if specifications are found to restrict competition or limit cost-effective procurement.
4. When a low bidder proposes an alternative as "an equal" to that which was specified, the Director of General Services will consult with the department head or authorized designee to determine the validity of the alternative.
5. Departments must document instances of vendor non-performance or inconsistency during the course of any contract and must promptly report them to Purchasing. This procedure should be followed each time a vendor does not perform to the standards of our solicitation or contract. The Director of General Services will review the issue and will contact the County Attorney for legal assistance if necessary or prudent.
6. Departments must plan purchases sufficiently in advance to allow Purchasing to obtain the best price and/or overall service.
7. With Purchasing authorization, departments may solicit vendor price quotes and forward them with the requisition. Purchasing will verify all quotes prior to approval.
8. Purchasing must distinguish between contracts for public work and purchase contracts, as these items are not defined in the GML. This distinction is especially important because there is a \$15,000.00 difference between the bidding thresholds. Under Section 103 of General Municipal Law, the bidding threshold for purchase contracts (commodities/goods) is \$20,000. The threshold for public work contracts (services) is \$35,000.

In general, purchase contracts involve the acquisition of commodities, materials, supplies or equipment, while contracts for public work involve services, labor or construction. Procurements must be reviewed case-by-case to determine whether the contract is primarily for services or commodities. As a general rule, if the contract involves a substantial amount of services/labor, such that services are the focal point and the acquisition of goods is incidental, it will be considered a contract for public works. Conversely, if services or labor are only minimal or incidental to the acquisition of goods, it is considered a purchase contract.

For example, a contract for interior painting of a building involves both material (paint) and labor (painting). In most instances, the labor component of the contract will be predominant, making it a contract for public work.

9. Contracts for the provision of services to the County shall require the contractor and all subcontractors to submit to the County payroll information for all employees that provide services pursuant to such contracts, including the wages of such employees and the percentage of their time devoted to the contract. A copy of any and all documentation submitted pursuant to said contract requirement shall be filed with the Clerk of the Legislature within 30 days of receipt. Contracts must permit the County to audit contractor and subcontractor payrolls to ensure compliance.

B. REQUISITIONS

Departments submit requisitions for supplies, services, and equipment through the County's financial system. Purchasing reviews each requisition for completeness and determines the appropriate procurement method.

After reviewing the requisition, the buyer selects the correct processing method to be used to complete the order. Each purchasing staff member is assigned to purchase goods or services based on multiple types of commodities. These staff members will work directly with vendors and issue the appropriate binding purchase order documents.

Requisitions lacking adequate product descriptions will be returned via the financial system until sufficient detail is provided. Departments will be notified via the financial system that the requisition has been sent back.

A completed requisition in the County's financial system will include the following:

- Completion of Green Purchasing Verification Form
- Type of Acquisition
- Name and phone extension of person entering requisition
- Vendor Number/Name
- Contract Number (if applicable)
- "Ship to" Address
- Date item required (realistic)
- Item Requested
- Description of Item
- Unit of measure (each, pack, or other)
- Quantity required
- Account to be charged
- Special instructions
- Pricing (if known)

Once complete, Purchasing converts an approved requisition into a Purchase Order (PO).

C. THE PURCHASE ORDER

1. The Financial System supports four types of Purchase Orders (POs): Standard, Requisition, Contract, and Blanket. Once the PO is approved by the Director of General Services (or designee), it is sent directly to the vendor via e-mail, fax, or mail. For service contracts, a separate PO is typically unnecessary, as the executed contract serves as the authorization. These general procedures for PO's can be and are altered from time to time as agreed upon by Purchasing and the department.

2. Request for Immediate Purchase Order:

If an emergency exists wherein the delay caused by soliciting quotes would endanger the health, welfare or property of the municipality, or more importantly, the individual taxpayer, the procurement of goods or services may proceed at the discretion of the department head. Documentation as to the nature of the emergency shall be sent to the Director of Purchasing within five (5) working days of such procurement. The emergency purchase must be approved by The County Executive. See Section IV.D, 'Emergency Procurements,' for additional requirements.

Emergency purchases must be limited to essential items where delay would significantly disrupt operations. Failure to maintain inventory does not qualify as an emergency.

3. Payment:

Vendors must submit invoices directly to the requisitioning department.

4. Change Purchase Orders:

Change POs are required when the purchase order amount must be adjusted due to product price or shipping changes .

Change POs may not be used to substitute vendors. To change vendors, departments must cancel the original PO in the Financial System and create a new requisition.

SECTION III
PROCUREMENTS SUBJECT TO
SEALED COMPETITIVE BIDDING

Pursuant to GML §103, sealed, competitive bidding is required for purchases exceeding \$20,000 for commodities/equipment and exceeding \$35,000 for public works/services..¹ The competitive bidding process ensures that all bidders receive the same information, and the bid award shall be made to the lowest responsible, responsive bidder or upon determination of best value, depending on the criteria defined in the bid specifications.

As authorized by New York General Municipal Law 103, purchase contracts (including contracts for service work, but excluding any purchase contracts necessary for the completion of a public works contract pursuant to article eight of the Labor Law) may be awarded on the basis of best value, as defined in section 163 of the State Finance Law and as authorized in section 103 of the General Municipal Law, to a responsive and responsible offeror. When the bid specifications state that the bid will be awarded on the basis of "best value," the specifications must identify the criteria that will govern the award. When awarding on the basis of best value, non-price factors may be considered, including environmental benefits, energy efficiency, reliability, ease of maintenance, and vendor experience. The basis for a best value award must be, whenever possible, objective and quantifiable. Such basis may also identify a quantitative factor for offerors that are small businesses or certified minority- or women-owned business enterprises as defined in subdivisions one, seven, fifteen and twenty of section 310 of the Executive Law.

Planning and collecting relevant information prior to issuing a solicitation is vital. Sufficient lead time should be built into the procurement process to permit adequate planning, specification writing, bidding, vendor selection, and completion of documentation. Departments must allow sufficient time for Purchasing to review product specifications and/or scopes of work and complete the bid or proposal documents. Additional time will be needed for bids and requests for proposals (RFPs) where the resulting contracts must be processed through the County Attorney's office and approved by the County Executive and/or the Legislature.

Each bid or RFP will be assigned a unique number before publication.

- Advertisements for public bids and RFPs are published in the designated official County newspapers which are chosen annually via a resolution of the County Legislature.

Bids and RFPs may be posted on the Empire State Purchasing Group (ESPG) website for viewing and downloading as appropriate.

Prior to publishing the bid or RFP in our official papers, the requesting department head will be required to approve and sign off on the specifications. They are also required to identify the funding source.

¹ Exceptions to the sealed, competitive bidding requirements exist and are set forth in Section IV of this Manual.

Purchasing will issue bid or proposal packages to vendors/contractors at the advertised location or the vendors/contractors may download them from the ESPG website. Bid or proposal packages may also be sent to vendors/contractors via email, First Class Mail, Federal Express, or UPS if the vendor/contractor furnishes the County with their account number.

All bid or proposal packages picked up at Purchasing or sent out from Purchasing are recorded in the bid file. The ESPG website maintains a record of all interested parties who download the bid or proposal documents from the website.

A. DEVELOPING BID SPECIFICATIONS

Purchasing creates a bid using the department's list of specifications as the criteria against which vendors' bids are evaluated. These specifications must be clear to all potential bidders and not restrictive. The bid will be awarded to the lowest cost, responsible supplier who meets all the department's needs, exactly as they were defined by the department in the specifications.

Departments will not be allowed to add or delete requirements after the bids open; the evaluation will be based solely on all requirements set forth in the bid. During the bid process, the vendors must be absolutely certain they are all considering the same requirements. Vendors must offer products that meet requirements at a competitive price.

A good specification should do four things:

- Identify minimum requirements
- Allow for competition
- Specify reproducible test methods to measure compliance; and
- Provide for an equitable award at the lowest cost, or, in the case of best value, identify the criteria to be applied.

1. Brand Names

With regard to procurement of goods, Brand names may be used in specifications to illustrate the type and quality of product sought. If the department supplies Purchasing with a brand name, the assigned buyer will generally specify "brand name or equal" on the bid or request for quote. A brand name gives the parties involved an indication of what type and quality of product you require. In many cases, multiple sources can supply a given brand. The department still must address the most important features or requirements. Since no two brands are identical in all respects, the department should describe the attributes required for any product offered to be equivalent; making it clear at the outset what will be considered an acceptable equivalent.

2. Use of Vendor Specifications

Only departments are qualified to know exactly what their needs are. Departments must not rely on vendors to develop specifications.

Vendors' literature is written to describe and promote their products. It is their job to sell their company's product and it is to their benefit to emphasize the uniqueness of their product both verbally and in their product literature.

By copying a vendor's literature rather than writing their own specifications, this practice often results in restrictive specifications favoring a single vendor, which reduces competition and may increase costs.

Departments must write their specifications using their own thoughts and words. If Purchasing unknowingly issues a bid based on specifications supplied by a department that are from a specific vendor's literature, a competing vendor may challenge the bid or purchase decision, arguing that the requirements unfairly favored one vendor and restricted competition. The bids may need to be rejected (or the order canceled) and a new list of requirements developed to more accurately reflect the department's true needs. Departments can avoid delays by spending quality time in advance writing their own, well-developed list of requirements.

3. Avoid Over Specifying

The department should avoid writing down more than what is actually required to meet their operational needs. The more requirements are added, the more likely it is that it will limit the number of vendors that can offer a product or service to meet them. The department should consider the use of a product or the need for a service and limit requirements to what is operationally necessary.

4. Basis For Award

The bid specifications must state whether the bid will be awarded to the lowest responsible, responsive bidder, or upon the basis of best value. The bid specifications must also clearly state the criteria that will govern the award. A non-exclusive list of acceptable criteria used in evaluating a bid on the basis of best value is stated on page 10 of this manual.

B. BIDDERS LIST

In addition to the required public advertisement, Purchasing publishes its Bids/RFPs/Quotes on the Empire State Purchasing Group (ESPG) website. Any vendor wishing to have automatic notification must register on the ESPG website and pay the associated subscription fee. Vendors who do not wish to have automatic notification may register for free to obtain access to downloading any document. Vendors who register for free have the responsibility of checking the ESPG website to look for business opportunities. Purchasing does not maintain lists of vendors for commodities or services. In order for specifications to be sent to any vendor, they must first contact Purchasing by mail, e-mail or fax, requesting specifications. Any vendor requesting that specifications be sent by Federal Express or other overnight carrier must pay for this service. Bid or proposal packages will not be transmitted by fax under any circumstances.

C. BID SECURITY

There are two different types of circumstances that may require bid security.

1. **PURCHASE OF GOODS OR SERVICES** - Bid security, in the form of a certified check or bid bond, is required in an amount equal to a percentage of the estimated bid. The certified check and/or bid bond of the awarded vendor is held until Purchasing receives written notification from the requesting department head that bid items or services have been received. The bid security is then returned to the awarded vendor.
2. **CAPITAL IMPROVEMENT or PUBLIC WORKS PROJECTS** - A percentage or fixed dollar amount bid security in the form of a certified check or bid bond is required. Bid security will be five percent (5%) of the total bid amount or a fixed dollar amount. Bid security will be returned once the required performance bonds have been received and the contracts are fully executed.

D. PERFORMANCE BOND

Performance bonds shall be required when bidding capital improvement or public works projects. Bidders are required to submit their performance bonds before or at the time that they sign a contract. This bond will ensure that the bidder fully completes its performance requirements for the municipality from award through completion as specified in the contract.

E. PREVAILING WAGES

Prevailing wages consist of pay scales that have been bargained for by unions throughout the State and are set by the New York State Department of Labor. Vendors must pay these rates to those employees who work on public projects in any municipal building. These wage rates apply regardless of the dollar amount of the contract. Bidders/proposers must be advised that prevailing wage requirements apply to all public works projects in County facilities, regardless of contract value. Certified payroll reports are required to be filed with the County by the vendor.

F. ADDENDUMS

As stated in the Request for Bid terms and conditions, "only formal written addenda may alter bid specifications." When a discrepancy, ambiguity, or omission is revealed in the bid specifications, Purchasing will issue addenda to clarify requirements as needed. The addendum is posted on the ESPG website or, in some cases, sent to all vendors that have received bid packages. The first addendum will be labeled "Addendum #1". Subsequent addendums issued will be numbered sequentially. Purchasing will make every effort to ensure that all vendors of record receive addenda.

The addendum procedure will also be used to extend the bid date where additional time is necessary to give the vendors/contractors sufficient time to submit a responsible bid.

G. RECEIPT OF BIDS

- (1) Vendors or contractors must mail, express, or otherwise physically deliver sealed bids to the Department of Purchasing Office before the bid deadline specified in the legal advertisement. As the bids are received, they are immediately date and time-stamped and recorded in the Department of Purchasing Bid/Proposal Log. No bids are accepted after the bid deadline. Those received after the bid deadline will be returned unopened to the sender. Bids submitted by fax or unauthorized electronic methods will not be accepted. All bids are kept in a secure location.
- (2) If authorized by the bid specification, bids may be submitted in an electronic format. Submission in an electronic format may not, however, be required as the sole method for the submission of bids.
 - (a) The receiving device designated by the County of Ulster will be the ESPG'S e-Procurement software from BidNet, which will be identified in the bid specification. The receiving device will document time and date, authenticate sender, ensure security, and preserve confidentiality until opening.
 - (b) The timely submission of an electronic bid in compliance with instructions provided for such submission in the advertisement for bids and/or specifications shall be the sole responsibility of each bidder or prospective bidder. The County shall not incur any liability from delays or interruptions in the receiving device designated for the submission and receipt of electronic bids.
- (3) At the appointed time, the Director of Purchasing, or designee, will announce the names of the bidders whose bids are to be opened. The bids will be opened and read aloud, and the bid prices appropriately recorded.

H. BID RECOMMENDATION PROCESS

All bids received are copied and sent to the requesting department with a memo requesting a review of the submittals. The department must review the bid and advise Purchasing whether it properly responds to the bid specifications. Purchasing will review the bids and forward a recommendation memo to the department. If the lowest bidder is not recommended, then a detailed written explanation from the department head must be attached. The Director of Purchasing will review the bids and department recommendation, and, if necessary, contact the County Attorney to address any legal issues and then will approve or disapprove the department's recommendation. All documentation, including any award justification, must remain with the bid package held by Purchasing.

I. BID AWARD PROCESS

If a contract is required, the department head must submit the contract package to the County Attorney's Contract Management Division for review, drafting, and approval. All contracts must be approved by Contract Management, by the County Executive, and in certain instances, by the Ulster County Legislature.

Purchasing will process any necessary notice of award or purchase order. When the award process is finalized, the entire bid package becomes a permanent file in Purchasing.

GML Section 104-b, Subdivision 2, paragraph (e) requires that the procedures "require justification and documentation of any contract awarded to other than the lowest responsible bidder or upon the basis of best value, setting forth the reasons such an award furthers the purpose of this section."

Any time an award is made to other than the lowest responsible bidder submitting a quotation or proposal, or upon the basis of best value, there must be justification and documentation of the reason why the purchase was in the best interest of the County, and how the procurement advances the purposes of GML §104-b.

For example, if a vendor submitting the lowest proposal has a history of not making deliveries on time or of delivering goods of inferior quality, such facts might be justification for taking other than the lowest offer, but such decisions must be factually documented, and the vendor must be given an opportunity to respond before the award is made to another party.

SECTION IV
PROCUREMENTS NOT REQUIRING
SEALED COMPETITIVE BIDS

In addition to the obvious exceptions to the requirements for sealed, competitive bidding (i.e., purchases of goods/equipment that are equal to or less than \$20,000, and purchases of public works/services that are equal to or less than \$35,000), there are additional exceptions, some statutory and others established through case law, that departments must understand.

- A. PROCUREMENTS OF GOODS/EQUIPMENT - \$20,000 OR LESS
- B. PROCUREMENTS OF PUBLIC WORKS/SERVICES - \$35,000 OR LESS
- C. PROFESSIONAL SERVICES
- D. EMERGENCY PROCUREMENTS
- E. SOLE SOURCE PROCUREMENTS
- F. INTER-MUNICIPAL PROCUREMENTS (GOODS/SERVICES OBTAINED THROUGH NYS OGS &/OR FROM OTHER COUNTIES, TOWNS, ETC.)
- G. PROCUREMENTS FROM PREFERRED SOURCES
- H. TRUE LEASES
- I. PROCUREMENTS FROM SURPLUS GOVERNMENT AUCTIONS
- J. PROCUREMENTS RESULTING FROM MANDATES
- K. PROCUREMENTS INVOLVING A NAMED SUB-RECIPIENT IN A GRANT APPLICATION
- L. PROCUREMENTS OF ARCHITECTURAL, ENGINEERING, AND/OR SURVEYING SERVICES BY THE QUALIFICATION-BASED SELECTION (QBS) PROCESS
- M. PROCUREMENTS USING ESTABLISHED NATIONAL AND REGIONAL COOPERATIVE PURCHASING CONTRACTS, INCLUDING BUT NOT LIMITED TO, THE CONTRACTS ISSUED BY THE FOLLOWING ENTITIES: THE U.S. GENERAL SERVICES ADMINISTRATION(GSA) , MINNESOTA MULTISTATE CONTRACTING ALLIANCE FOR PHARMACY(MMCAP), OMNIA PARTNERS GOVERNMENT PURCHASING COOPERATIVE, SOURCEWELL, NASPO VALUEPOINT, TIPS PURCHASING COOPERATIVE, WESTERN STATES CONTRACTING ALLIANCE(WSCA), OR THE NATIONAL JOINT POWERS ALLIANCE(NJPA).

Pursuant to GML§104-b, the County must develop its own procurement procedures for those procurements that are not covered by the sealed competitive bidding requirement. Those procedures must provide for the solicitation of alternative proposals or quotations so that each procurement is in the best interest of the County. Procurements of goods and services that fall below the dollar threshold that would trigger sealed competitive bidding, as well as the other exceptions listed, must still be procured in a manner that (1) ensures the prudent and economical use of public funds, (2) facilitates the acquisition of goods and services of maximum quality at the lowest possible cost under the circumstances, and (3) will safeguard against favoritism, waste, fraud, abuse, and corruption. To this end, a good-faith effort shall be made to obtain the required number of proposals or quotations for each procurement. Documentation is required for each action taken in connection with each procurement. The Director of Purchasing, in any situation, may determine that more stringent procurement procedures are in the County's best interest. **The Director of General Services has ultimate discretion with regard to the procedure required for any given procurement.**

A. PURCHASES OF GOODS/EQUIPMENT/COMMODITIES - \$20,000 OR LESS

UNDER \$5,000	Award made at the discretion of the Director of General Services .*
\$5,001 - \$20,000	Minimum of three (3) quotes. Quotes may be obtained in writing, by email, or facsimile . Award made at the discretion of the Director of General Services.*
OVER \$20,000	Sealed public bid required under GML §103

If the required number of proposals or quotations cannot be obtained, the attempt made at obtaining them shall be documented and made a part of the procurement file. In no event shall the inability to obtain the proposals or quotations be an obstacle to the procurement.

*The Director of General Services may determine more stringent procurement requirements are in the best interest of the County.

B. PURCHASES OF PUBLIC WORKS/SERVICES - \$35,000 OR LESS

“Public Works” relates to most service contracts and is not limited to contracts for construction and building services.

UNDER \$10,000	For procurements under \$10,000, the department may negotiate directly with the vendor and recommend an award to Purchasing. Contract Awarded at the discretion of the Director of General Services.
\$10,001 - \$35,000	For procurements between \$10,001 and \$35,000, the department must obtain at least three written quotes or proposals and may recommend an award to Purchasing. Contract Awarded at the discretion of the Director of General Services.
OVER \$35,000	Sealed Public bid required under GML §103

*The Director of General Services may determine more stringent procurement requirements are in the best interest of the County.

C. PROFESSIONAL SERVICES

When procuring the services of accountants, clergy, physicians, lawyers, dentists, registered nurses, dieticians, or any other profession that requires licensing, specialized skills and training, expertise, judgment, discretion, a relationship of personal trust or confidence, or a high degree of creativity in the performance of the services (as defined in New York State case law or Opinions of the New York State Comptroller), departments must procure such services in accordance with the procedures below, unless otherwise directed by the Director of General Services.

Questions as to whether or not the services may be considered “professional services” should be directed to the Director of Purchasing, who has final authority to make that determination. The Director of Purchasing may also consult with the County Attorney in this respect for advice when making a determination.

UNDER \$10,000	Department negotiates with firm; contract processed through County Attorney and approved by County Executive.
\$10,000 - \$40,000	Obtain three quotes/proposals when possible; award at Director’s discretion; contract through Contract Management and approved by County Executive.
OVER \$40,000	At Director’s discretion, Purchasing may issue an RFP; all contracts approved by County Executive, and if $\geq$ \$50,000, also by the Legislature.

D. EMERGENCY PROCUREMENTS

Section 103(4) of GML sets forth an exception to bidding requirements for emergency situations and provides as follows:

"Notwithstanding the provisions of subdivision one of this section, in the case of a public emergency arising out of an accident or other unforeseen occurrence or condition whereby circumstances affecting public buildings, public property or the life, health, safety or property of the inhabitants of a political subdivision or district therein, require immediate action which cannot await competitive bidding, contracts for public work or the purchase of supplies, material or equipment may be let by the appropriate officer, board or agency of a political subdivision or district therein."

Accordingly, the following three basic statutory criteria must be met to fall within the emergency exception:

1. The situation must arise out of an accident or unforeseen occurrence or condition.
2. Public buildings, public property, or the life, health, safety or property of the County’s inhabitants must be affected.
3. The situation must require immediate action that cannot await competitive bidding. Even when a governing board passes a resolution that a public emergency exists, the public interest dictates that public purchases are made at the lowest possible cost, seeking competition by informal solicitation of quotes or otherwise, to the extent practicable under the circumstances.

The Office of the State Comptroller has suggested that, to meet these criteria, there generally must be a present, immediate and existing condition that is creating an “imminent danger to public or private property or the life, health or safety of the municipality’s residents which makes a further delay in action occasioned by compliance with competitive bidding requirements unwarranted” (1981 Opns St Comp, No. 81-224, P 241).

Further, in as much as GML Section 103(4) provides that the emergency must arise out of an accident or unforeseen occurrence, it is doubtful that a local government may invoke the emergency provisions in a situation that is the result of inaction or dilatory behavior on the part of officials and which, therefore, could have been foreseen (1978 Opns St Comp No. 78-780, unreported; see also, Rodin v. Director of Purchasing, 38 Misc. 2d 362, 238 N.Y.S.2d 2 (1963)).

Note that even in an emergency situation, it is in the public interest that purchases be made at the lowest possible cost (Orange Paint v. Scaramuccia, 59 A.D. 2d 894, 399 N.Y.S.2d 52). Thus, the political subdivision should seek competition by informal solicitation of quotes or otherwise, to the extent practicable under the circumstances.

Departments may not declare an emergency to avoid bidding requirements when the issue arises from inadequate planning. A "sudden" emergency arising from the gradual deterioration of a piece of equipment or an out-of-stock condition of a routine supply item, will not withstand the legal scrutiny.

The requesting department should contact the Director of Purchasing for the determination that the situation qualifies as an emergency. If the Director of Purchasing deems it necessary or prudent, she/he will contact the County Attorney for an opinion.

When circumstances support an emergency purchase, the requesting department should, with Purchasing's assistance, attempt to locate a source for the goods or services. An attempt should be made to obtain the lowest price from a vendor or contractor who will best meet the requirements. When the supplier and the price have been established, the department head or designee will notify Purchasing to initiate emergency purchase procedures. A written determination of the basis for the emergency and for the selection of the supplier shall be included in the procurement file. As soon as practicable, a full record of each emergency procurement shall be made and shall set forth the supplier's name, the amount and type of contract, a listing of the item(s) procured under the contract and the identification number of the contract file.

The County Executive has the ultimate power to designate an "emergency purchase" or "emergency project," and may waive normal bidding requirements. If the emergency designation is approved and certified by the County Executive, the requesting department will submit all original backup information, such as the vendors' or contractors' proposed contracts or proposals, quotations, letters, etc. to Purchasing for its records.

E. SOLE SOURCE PROCUREMENT

A. A contract may be awarded without competition when the Director of Purchasing determines, in writing, after conducting a good-faith review of available resources and publicly advertising the County's intention to make a purchase on a sole-source basis 14 days prior to issuance of the award, that there is only one source for the required commodity, supply, service or construction item. The Director of General Services shall conduct negotiations, as appropriate, as to price, delivery and terms.

A record of sole-source procurements shall be maintained as a public record and shall list each supplier's name, the amount and type of each contract, a listing of the item(s) procured under each contract, and the identification number of each contract file. Sole-source purchases of software maintenance are exempt from this section.

B. In determining whether procurement qualifies as a sole source, the Purchasing Division and the department requesting the procurement shall show, at a minimum:

- (1) The unique benefits to the County of the item as compared to other products available in the marketplace.
- (2) That no other product provides substantially equivalent or similar benefits.
- (3) That, considering the benefits received, the cost of the item is reasonable in comparison to other products in the marketplace; and
- (4) That there is no possibility of competition, as from competing dealers or distributors.

C. If a department intends to request a sole-source purchase, it shall consider the following factors and submit the following documentation to the Director of General Services:

- (1) A department should consider the additional time that will be required to process a sole-source transaction due to the public advertising requirement, which is publication 14 days prior to issuance of the award.
- (2) A department should be aware that the public advertising requirement provides increased exposure to a challenge by other suppliers.
- (3) A department should be aware that if a challenge to the requested sole-source procurement is found to be warranted, the purchase request shall be withdrawn, and the request will be converted to either a competitive bid or request for proposal, which may result in a further delay in completing the transaction.
- (4) A department must submit to the Director of General Services a justification letter providing the information required in Subsection B of this section, The required sole-source justification must be detailed and sufficient to withstand potential challenges. A price difference alone does not constitute proper justification for a sole-source purchase. Additionally, a sole-source letter provided by a supplier does not qualify as a proper justification for a sole-source purchase; and
- (5) If there is a question as to whether or not a sole-source purchase is warranted, the department should contact the Director of General Services before submitting the sole-source purchase request.

F. INTER-MUNICIPAL PROCUREMENTS

Purchases of materials, equipment, supplies and/or services through the NYS Office of General Services (OGS) may be exempt from competitive bidding or subject to a modified competitive bidding process. If a department's procurement item or service is available under an OGS contract, the department must review the OGS contract to determine the possible bidding requirements. Purchasing can assist with this determination if necessary, and the Director of General Services has the discretion to require competition in this area.

Procurements under contracts of other NYS Counties are not subject to competitive bidding (GML §103(3)).

Procurements using established national and regional cooperative purchasing contracts may not be subject to competitive bidding. Purchasing will assist departments in determining whether cooperative purchasing contracts are in the County's best interest.

G. PROCUREMENTS FROM PREFERRED SOURCES

New York State Finance Law, §162, provides that procurements from certain "preferred sources" are exempt from competitive bidding. Pursuant to this law and as determined by the Director of General Services, procurements from the following entities are exempt from competitive bidding

1. CORCRAFT – commodities produced by the Department of Correctional Services.
2. Commodities and services produced by any qualified charitable non-profit agencies for the blind, approved by the Office of Children and Family Services.
3. Commodities and services produced by any special employment program serving mentally ill persons, which shall not be required to be incorporated, and which is operated by facilities within the office of mental health and is approved for such purposes by the Commissioner of Mental Health.
4. Commodities and services produced by any qualified charitable non-profit-making agency for other severely disabled persons approved for such purposes by the Commissioner of Education or incorporated under the laws of the State of New York and approved for such purposes by the Commissioner of Education.
5. Commodities and services produced by a qualified veterans' workshop providing job and employment skills training to veterans, where such a workshop is operated by the United States Department of Veterans Affairs and is manufacturing products or performing services within New York State, and where such workshop is approved for such purposes by the Commissioner of Education.
6. Commodities and services produced by any qualified charitable non-profit-making workshop for veterans approved for such purposes by the Commissioner of Education or incorporated under the laws of New York State and approved for such purposes by the Commissioner of Education.

Departments must consult the Director of General Services for a determination as to whether a particular procurement qualifies under this exemption.

H. TRUE LEASES

Equipment leases are not subject to competitive bidding if they meet the following criteria:

1. the term of the lease is less than the useful life of the equipment being leased; AND
2. the lease does not include a purchase option-at the end of the term.

The Director of Purchasing has the discretion to require competition in this area.

Leases of real property are not subject to §103 or §104 of GML.

I. PROCUREMENTS FROM SURPLUS GOVERNMENT AUCTIONS

If they meet the County's needs, surplus or second-hand supplies, materials, or equipment from the state or federal government or any other political subdivision, district, or public benefit corporation, may be acquired without competitive bidding pursuant to GML §103(6).

J. PROCUREMENTS RESULTING FROM MANDATES

Where payment rates are not set by federal or state government, or where the County must contract with all qualified providers, such services may be procured without issuing an RFP as set forth in Section IV(C) above.

K. PROCUREMENTS INVOLVING A NAMED SUB-RECIPIENT IN A GRANT APPLICATION

Where a contractor has been identified in an approved grant application as the contractor to perform certain professional services covered by the grant, The department may procure those professional services without issuing an RFP as set forth in Section IV(C) above.

However, prior to submitting the grant application, the department must obtain a minimum of three statements of qualifications and cost estimates for the services to be performed. If required under the terms and conditions of the grant, the department shall obtain additional cost quotations.

L. PROCUREMENTS OF ARCHITECTURAL, ENGINEERING, AND/OR SURVEYING SERVICES BY THE QUALIFICATION-BASED SELECTION (QBS) PROCESS

As a public owner, Ulster County has the right to choose any selection process for professional services, unless restricted by applicable statute. NYS Finance Law, Section 136-a, requires all State agencies to procure professional architectural, engineering, and surveying services using Qualification Based Selection (QBS).

Pursuant to the Brooks Act, federally funded projects also require utilization of the QBS process for the procurement of professional architectural, engineering and surveying services. NYS GML §104-b acknowledges that certain professional services may not be suitable for competitive bidding and allows local governments to adopt alternative procedures, such as QBS.

Therefore, notwithstanding any previous requirements, in those instances when Ulster County receives Federal and State funds to procure Professional Architectural/Engineering/Surveying Services, QBS shall be an exception to the RFP process. When utilizing QBS, the County will establish evaluation criteria, solicit statements of qualifications from interested firms, develop a short list of three (3) to five (5) firms, investigate references and previous jobs, invite certain firms for oral interviews, interview and rank the firms, establish contract terms, request a fee proposal, and if acceptable, execute a formal contract.

M. PROCUREMENTS USING ESTABLISHED NATIONAL AND REGIONAL COOPERATIVE PURCHASING CONTRACTS, INCLUDING, BUT NOT LIMITED TO, CONTRACTS ISSUED BY THE FOLLOWING ENTITIES: THE U.S. GENERAL SERVICES ADMINISTRATION (GSA), MINNESOTA MULTISTATE CONTRACTING ALLIANCE FOR PHARMACY(MMCAP), OMNIA PARTNERS GOVERNMENT PURCHASING COOPERATIVE, SOURCEWELL, NASPO VALUEPOINT, TIPS PURCHASING COOPERATIVE, WESTERN STATES CONTRACTING ALLIANCE(WSCA), OR THE NATIONAL JOINT POWERS ALLIANCE(NJPA).

SECTION V

REQUESTS FOR PROPOSALS (RFP)

A Request for Proposals (RFP) is a competitive process for choosing an individual or firm to contract with for services. The contract is awarded based on factors such as cost, qualifications, experience and demonstrated ability, and is not necessarily awarded to the proposer with the lowest price . These guidelines are for the development, solicitation, evaluation, and award of RFPs consistent with applicable laws and regulations of the Federal Government, New York State, and Ulster County. Generally, an RFP should be used when the end-user does not have a pre-defined specification, but rather a set of outcomes or deliverables or specifically identifiable service requirement, but rather a set of outcomes or deliverables needed to meet the project objective(s). An RFP allows responding proposers to propose innovative and cost-effective solutions that meet the project objective(s).

A thorough, well-written RFP will help ensure that meaningful and responsive proposals will be received and that the desired ends for the project will be achieved. The RFP must provide the offeror with a clear, unambiguous statement of work for the project, the instructions for submitting responsive proposals, a detailed statement of the requirements and goals of the project, instructions on the preparation of the proposal, and the method and criteria for proposal evaluation.

Guidelines:

A. RFP ADMINISTRATION AND PROCESS

1. RFP Development

Purchasing will work with the requesting department in the development and review of the RFP specifications. The head of the requesting department shall be provided with a final draft of the RFP. After reviewing the final draft, the department head and Director of General Services must sign the Specification Approval Form before advertising the legal notice and releasing the solicitation

The evaluation committee, evaluation criteria, and evaluation weights shall be determined prior to release of the solicitation. The weight for each evaluation criterion shall be determined by Purchasing, with the advice of the requesting department, and will be based on its importance to the overall evaluation of the submittals. Weights must be percentage-based, and the total must equal 100%.

2. Forming an RFP Development Team

Assembling a competent development team at the outset of the process is essential. RFP development team members should be carefully selected based on relevant expertise and ability to contribute. The team should consist of staff members of the department who have an interest or expertise in the services to be procured. The team should be given sufficient time and resources to participate in the planning and implementation process.

3. Forming the Evaluation Committee

Prior to solicitation, the requesting department, with advice from Purchasing, will form an “evaluation committee” of knowledgeable personnel to evaluate and recommend an award of the RFP. It should be made clear to evaluation committee members from the outset that their duties may require substantial time and effort.

There is no restriction as to how many people there may be on the evaluation committee. A minimum of three members is recommended, and the committee should be diverse, with expertise and knowledge of the product or service being procured.

Prior to commencement of the evaluation process, each evaluation committee member will be provided with the RFP guidelines, a copy of the RFP specifications, the scoring criteria, and scoring sheets for their review.

4. Purchasing’s Role

Purchasing’s knowledge, experience, influence, and consistency are critical to the successful completion of the RFP process. Purchasing personnel typically do not serve as scoring members of the evaluation committee, but will facilitate the process and perform the following responsibilities:

- Collaborate with department staff in drafting the RFP specifications
- Manage the entire RFP process
- Issue all addenda in response to inquiries and questions
- Instruct the evaluation committee members regarding the RFP process, the terms of the subject RFP, and the evaluation process, ensuring committee members understand their roles and responsibilities
- Facilitate and manage the proposal evaluation process
- Oversee the review of technical proposals for responsiveness to mandatory requirements
- Conduct and coordinate any oral presentations and written clarifications with proposers
- Maintain the project file during the RFP process; and
- Organize the permanent file documenting the entire RFP process.

Protests, appeals and lawsuits may result from the RFP process. It shall be Purchasing’s responsibility to assist the County Attorney if one of these actions occurs. Such actions may involve the evaluation committee’s activities. A protestor may review the scoring of the evaluation team. Therefore, it is essential that evaluators score the proposers in a consistent and explainable manner.

5. Role of the Evaluators

- Committee members are required to sign an Evaluation Committee Member Statement form prior to receiving the submitted proposals.
- Evaluators are instructed not to discuss any part of the proposals other than with the evaluations committee members.
- Members are to read and score each proposal independently, without discussion with other committee members.

- For uniformity in scoring, the evaluators are to use the evaluation form supplied by Purchasing.
- All scores must be supported by clear and sufficient documentation to substantiate the evaluators' judgment.
- A facilitator, usually the buyer managing the RFP, should be assigned to serve as a proctor for all meetings of the evaluation committee and to document all evaluation discussions, forms, scoring, and recommendations.
- After each of the evaluators has independently scored the proposals, the committee as a whole will meet to discuss the findings of each member, and to develop a composite score for each proposal. If one or more of the evaluators' scores differ greatly from the majority, the committee should discuss the resulting scoring to ascertain that the criteria were clear to all. If an evaluator feels at this point that he/she did not understand the criteria, or did not understand the proposal, the evaluator may revise their score. At the end of the process, all evaluation scoring forms are turned in to Purchasing to become part of the public record.

6. Conflict of Interest

A conflict of interest exists whenever there is a situation in which an evaluation committee member, advisor, or consultant has a financial interest or bias through current or past association or relationship with any responding offeror. Any individual who believes a potential conflict of interest exists must inform Purchasing immediately. The Director of General Services may seek guidance from the Ulster County Board of Ethics and/or the County Attorney, if deemed necessary.

7. RFP Solicitation Phase

Legal Notices for RFP's shall be published in the official newspapers of Ulster County. Vendors can download RFP's directly from the ESPG website. Upon request, Purchasing can send the RFP to vendors via email.

Departments should compile a list of qualified potential vendors that they would like to be notified of the RFP and forward to Purchasing a written list containing vendor name, contact person, mailing address, email address, phone number and fax number of each of those vendors. Purchasing does not maintain vendor lists for products or services.

8. Local Economic Development

Each RFP will include Local Economic Development as an evaluation criterion. Local Economic Development will account for five percent of the total evaluation score. Ulster County vendors will receive five points, vendors from a contiguous county will receive three points, and vendors from New York State will receive one point.

B. RFP LAYOUT AND CONTENT

The layout and content of all RFPs will include information and requirements from both the department and from Purchasing. The requesting department is primarily responsible for project-specific content, while Purchasing provides standard clauses, contractual terms, and formatting. While RFPs will vary from project to project, they will typically follow a basic outline:

1. Background Information
2. Objectives and Technical Requirements (Scope of Work)
3. Cost/Budget Proposal Requirements
4. Contractual Terms and Conditions
5. Administrative Information
6. Proposal Format and Content
7. Proposal Evaluation Criteria
8. Relevant Attachments
9. Standard Return Documents

With the assistance of Purchasing, the department will be primarily responsible for developing the background information, objectives and technical requirements (scope of work), cost/budget proposal requirements and the evaluation criteria. The department is also responsible for any attachments to the RFP that may be required.

Purchasing will provide the language for the contractual terms and conditions, administrative information (e.g., contact and pre-bidder's conference information), proposal format and content (e.g., required proposal sections and their order), and standard submission return forms.

1. Background Information

This section of the RFP contains background information for those interested in responding to the RFP (hereinafter "proposers"). Background information should describe the department's function for which the services are required, a fairly detailed explanation of why the services are needed, a description of the method or system presently employed (including any existing deficiencies), the staff and resources available, and the objectives of the department. This is a reasonably brief summary of the existing problem and the approach to a solution preferred by the department. The details of tasks are reserved for the scope of work section. For human services RFP's, any current data and demographic information on the target population or utilization of services should also be included here.

2. Objectives and Technical Requirements - Scope of Work (SOW)

This is a detailed description of the work to be performed by the proposer. A well-written SOW enhances the opportunity for all potential proposers to compete equally for County projects and serves as the standard for determining if the proposer meets the stated performance requirements. The SOW should specify in clear, understandable terms the work to be performed by a proposer. An effective SOW requires both an understanding of the required services that are needed to satisfy a particular requirement and an ability to define what is required in specific, performance-based, quantitative terms. A SOW prepared in explicit terms will enable proposers to clearly understand the County's needs.

This facilitates the preparation of responsive proposals and delivery of the required services while shifting the responsibility for preparing the SOW from the County to those responding to the RFP.

Any technical requirements that proposers must meet as an organization or comply with in their proposed program should be detailed in this section. This section should also include any regulatory or legal requirements that must be followed.

The department will need to develop the objectives that the selected proposal will be expected to accomplish. Note: Objectives differ from benchmarks or milestones (e.g., X number of children receive treatment per month). They should be the outcomes you are looking to achieve (e.g., reduce by X% the number of children being hospitalized).

3. Cost/Budget Proposal Requirements

- The department requesting the RFP will be responsible for the details in this section, although certain language is standard in all RFP's and will be provided by Purchasing. The department should describe the form and cost breakdown required for this particular project. Any required budget form should be attached in this section for proposers to complete. Any funding information applicable to the project should be included in this section, even if it has been or will be included in other sections.

4. Contract Terms and Conditions

This section of the RFP includes any particular terms and conditions that apply specifically to the RFP. A sample contract template for the resulting award is included along with any additional paragraphs, agreements or other required contractual language pertinent to the RFP.

5. Administrative Information

All information regarding the RFP submission is included in this section. Details of date and time the RFP is due, address of the office receiving submissions, and contact information are listed. Instructions as to how and where questions are submitted (in writing) and answered (usually by the issuance of an addendum) are detailed. The date and time of any pre-bid meeting is included. If included, the Receipt Confirmation Form and any other required submission instructions of a response to an RFP would be included in this section.

6. Proposal Format and Content

In order to have all responses in the same format to permit an organized evaluation of all proposals, a detailed format is provided to the proposers as to the form and order the proposals are to be written.

7. Proposal Evaluation Criteria

Proposers need to know the criteria upon which the proposals will be judged. Evaluation criteria should be carefully developed, well thought out, and should provide a comprehensive array of qualities on which to judge the proposers.

Multiple criteria that are similar to one another, or criteria that can be ambiguous or unclear, should be avoided. Criteria should be chosen and weighted based upon importance to the project and the mission, and as a factor in successfully meeting the project objectives. Irrelevant or low-value criteria should be excluded. The weight given to the criteria must be stated in the RFP.

8. Relevant Attachments

Any document that provides additional information useful in the preparation of the proposer response relevant to the project or work to be undertaken is to be included as an attachment or appendix.

9. Standard return documents

Several standard Purchasing Department Forms are required to be completed, signed and returned with all procurement submissions. These include Assumed Name Certification and Insurance Statement, Organization Information Form, Acknowledgment and Acceptance Declaration (Living Wage Act), Certification and Signature Form / Affidavit of Non-Collusion, Certification of Compliance with the Iran Divestment Act, MacBride Fair Employment Principles, and Insurance Requirements.

C. COMMUNICATION/CONTACT BETWEEN RFP PROPOSERS AND COUNTY

1. Proposer Questions and/or Inquiries

Once the legal notice has been published, and the RFPs have been distributed, all proposer questions must be directed, in writing, to the Director of General Services. Under no circumstances should a department answer hypothetical or speculative “what if” questions.

Purchasing will issue addenda to respond to all substantive written questions.

2. Pre-Proposal Conferences

Based on the scope and technical requirements of a RFP, a pre-proposal conference may be required. If a pre-proposal conference is conducted, modifications to the RFP may result. The pre-proposal conference provides an opportunity to:

- Review the requirements
- Facilitate a clear understanding of the scope of work; and
- Promote competition.

The pre-proposal conference is a meeting of potential respondents, Purchasing, and the requesting department’s technical representative. A sign-in sheet will be distributed to collect the attendee names, company names, and phone numbers. Some questions may be answered immediately; others may require further review. For questions requiring additional analysis,

Purchasing will indicate to the attendees that there will be a response in writing made in a timely manner before the scheduled opening, or if necessary, the opening will be rescheduled. All questions will be addressed in a subsequent addendum.

3. Addenda

If needed, addenda to the RFP may be issued to correct any inconsistencies in the RFP, revise elements of the RFP, and/or respond to inquiries by potential respondents. Purchasing will be responsible for coordination of the subject matter and for issuing the addenda. The addenda are sent to all vendors who are known to possess a copy of the RFP.

D. POST RFP DEADLINE AND EVALUATION

1. RFP Closing

After the proposal due date and time, the names of respondents may be released once an award decision has been made by the Director of General Services. Such awards shall be subject to contract approval by the County Executive, and in the case of contracts that are \$50,000 or more, by the County Legislature. No other information is given until the County has a signed contract with the awarded proposer. Unlike bids, RFP responses are not publicly opened.

2. RFP Evaluation

After the RFP has closed, Purchasing will distribute copies of all responses to the members of the evaluation committee, with the original responses kept in Purchasing's permanent file. Purchasing shall distribute copies of all responses, with the scoring matrix, to the evaluation committee members.

Prior to the initial evaluation committee meeting, each committee member is to score all proposals independently against the evaluation criteria identified in the RFP. No other criteria may be used in the scoring. Each committee member must provide written justification for their scores for each score given under each criterion. When all evaluation committee members have completed their scoring, the facilitator will tabulate the results and identify the top-rated proposer(s) for award consideration.

3. Oral Presentations

Oral presentations are scheduled to clarify or verify the proposer's written proposal and may be used, when appropriate, to clarify or verify proposals. They may be restricted to only those proposers with the highest scores after the initial evaluation of all proposals. Purchasing, in coordination with the requesting department, shall develop discussion points and questions for the proposers to address during their presentations. All invited proposers will be afforded equal time for their presentations.

All members of the evaluation committee should attend each presentation. Details of competing proposals should not be discussed during presentations. The proposer's presentation and answers to the evaluation committee's questions may enhance the proposer's score in the evaluation areas of the RFP.

The evaluation committee discusses the proposers' written submissions and oral presentations and may re-evaluate and make changes to the scores of the proposers based on the information received from the presentations.

4. RFP Award Phase

After the responses to the RFP have been evaluated and tabulated, or re-evaluated after oral presentations, the committee shall make an award recommendation to the Director of Purchasing, who shall issue an Intent to Award letter to the selected proposer

The facilitator will then prepare minutes of the evaluation process summarizing the committee's findings and documenting the committee's conclusion.

Upon approval and execution of the resolution by the Legislature and the County Executive, Purchasing will issue a Notice of Award to the successful proposer and provide the awarded Scope of Work and Fee Proposal to the department to be used to complete the contract. The department head shall process the tentative contract for approval through the County Attorney's Contract Management Division.

SECTION VI

BID/RFP PROTEST PROCEDURES

This Section sets forth the procedures for handling bid and/or RFP protests and appeals. For simplicity, all bidders and proposers are referred to as ‘bidders,’ and all solicitations (bids and RFPs) are referred to as ‘bids.’

A. OVERVIEW

Purchasing provides all bidders with the opportunity to administratively resolve complaints or inquiries related to bid solicitations or pending contract awards. The Director of General Services encourages bidders to first seek resolution of complaints concerning the contract award process through consultation with Purchasing. All such matters will receive impartial and timely consideration.

B. INFORMAL COMPLAINTS/PROTESTS

Staff should encourage, consider, and resolve issues, inquiries, questions and complaints on an informal basis, whenever possible. All information from interested parties should be reviewed by Purchasing staff and the Director of General Services. As appropriate, the County’s responses to the inquirer should inform the inquirer of the formal protest procedure available if the informal process does not resolve the matter. Staff should document the subject matter and results of any informal inquiries.

C. FORMAL PROTESTS

Bidders may file formal written protests. Final County determinations or recommendations for award may only be reconsidered in the context of a formal written protest.

Any potential bidder, who believes they have been aggrieved in the drafting or issuance of a bid solicitation, or by a pending contract award, may present to Purchasing, a formal complaint and request for administrative relief concerning such action (“Formal Protest”).

1. Submission of Protests:

- a. Concerning Bid Documents: Formal protests concerning bid documents must be submitted at least ten (10) business days before the date set in the solicitation for receipt of bids. If the date set in the solicitation for receipt of bids is less than ten (10) business days from the date of issue, Formal Protests concerning the bid document must be received by Purchasing at least twenty-four (24) hours before the time designated for receipt of bids.
- b. Concerning Proposed Contract Award: Formal Protests concerning a pending contract award must be received within ten (10) business days after the protesting party (“protester”) knows or should have known of the facts that form the basis of the Protest.
- c. A Formal Protest must be submitted in writing to Ulster County Purchasing Department by mail, facsimile, or email to purchase@ulstercountyny.gov.

- d. A Formal Protest must include:
 - (1) the bid number and the protester's contact information
 - (2) a statement of all grounds for disagreement with a bid solicitation or procurement determination,
 - (3) a description of all remedies or relief requested, and
 - (4) all applicable supporting documentation.
- e. Protests should be delivered to the Director of General Services at the following address:

U. C. Department of General Services

County of Ulster

100 Development Court

Kingston, NY 12401

Facsimile: (845) 340-3434

Phone: (845) 340-3400

2. Review and Determination

- a. Protests may be resolved through verbal or written correspondence, and/or either the protester or the Director of General Services may request a meeting to discuss a Formal Protest, at which time the participants may present their concerns. If further resolution is required, the Director of General Services shall assign another County Official not involved in the procurement action to determine and undertake the resolution or settlement of any Protest relative to bid solicitations or pending contract awards.
- b. Purchasing's staff person who drafted the solicitation documents will conduct a review of the records involved in the Protest and provide a memorandum to the Director of General Services summarizing the review results and recommendations. The Director of General Services will evaluate the staff person's recommendation, the material presented by the protester, and, if necessary, consult with the County Attorney, and prepare a draft response to the Protest.
- c. Acceptable Activity Prior to Final Determination: When a Formal Protest is received by Purchasing, a final determination on the Protest should be made prior to approval of the award. However, during the pendency of the Protest, bid evaluation and review of the recommended award may continue at the discretion of the Director of General Services.
- d. Notice of Decision: A copy of the decision, stating the basis for the decision and informing the protester of the right to appeal an unfavorable decision to the County Executive (appeals in Sec. VI.3 go to the County Executive, not back to Purchasing) shall be sent to the protester or its agent within thirty (30) business days of receipt of the Protest, except that upon notice to the protester such period may be extended. The Protest determination should be recorded and included in the Bid file.
- e. Purchasing reserves the right to waive or extend the time requirements for decisions and appeals herein prescribed when, in its sole judgment, circumstances so warrant.

Purchasing will consider all relevant information, and may, at its discretion, suspend, modify, or cancel the protested procurement action including solicitation of bids, or withdrawal of the recommendation of contract award prior to issuance of a Formal Protest decision.

If Purchasing determines that there are compelling circumstances, including the need to proceed with a contract award in the County's best interest, then these Protest procedures may be suspended and such determination must be documented in the bid file.

3. Appeals

- a. Should the protester be dissatisfied with the Protest determination, a written appeal therefrom may be directed to:

Ulster County Executive

244 Fair Street

PO Box 1800

Kingston, NY 12402-1800

Facsimile: (845) 334-5724

Telephone: (845) 340-3800

- b. Written appeals must be received within fifteen (15) business days after the date the decision is sent to the protester. The Director of General Services' decision is final unless appealed to the County Executive within such time period.
- c. The County Executive shall hear and make a final determination on all appeals. The County Executive may designate a person or persons to act on his/her behalf.
- d. Appeals may not introduce new facts except when responding to issues raised in the initial determination by the Director of General Services in the initial protest determination.

4. Records Retention

All records related to bidder Protests and appeals must be retained for at least one year following resolution of the protest. All other records shall be retained according to the Records Retention Policy in place at the time.

SECTION VII

CONTRACT APPROVAL

Pursuant to the Ulster County Charter, which took effect January 1, 2009, all contracts must be approved by the County Executive and/or the County Legislature, depending on contract value and, in some cases, the contract type.

A. COUNTY EXECUTIVE:

Pursuant to Section C-25(m) of the Ulster County Charter and Section A3-4(x) of the Ulster County Administrative Code, the County Executive is empowered to approve and execute contracts valued at less than fifty thousand dollars (\$50,000) without Legislative approval. Under Section A3-4 (X) of the Ulster County Administrative Code, the approval procedure requires the County Executive to approve these contracts through the abstract process. Upon approval, the Director of General Services is authorized to execute the contracts under Section C-74(B)(2) of the County Charter.

B. COUNTY LEGISLATURE:

Pursuant to Section C-11(o) of the Ulster County Charter and Section A2-5(15) of the Ulster County Administrative Code, the County Legislature is empowered to approve contracts valued at fifty thousand dollars (\$50,000) or more. Section A2-5(A)(15)(b) of the Ulster County Administrative Code provides for an approval procedure requires the County Legislature to approve these contracts by resolution. Upon subsequent approval of the resolution by the County Executive, the Director of General Services is authorized to execute such contracts under Section C-74(B)(2) of the County Charter. In addition, Section A3-4(Y) of the Administrative Code provides that the County Legislature has the power—though it may delegate this power to the County Executive—to approve contracts involving: (1) the sale, purchase, or transfer of real property; or (2) the provision of facilities or services by or for another government. Inter-municipal agreements require County Legislature approval under Section 119-o of New York’s General Municipal Law (GML). Pursuant to Section C-11(I) of the County Charter, the Legislature also retains authority to approve all labor contracts.

SECTION VIII

PROCUREMENT CARDS

Ulster County recognizes that the use of procurement cards is a practical alternative to the use of purchase orders or petty cash for frequent, low-dollar purchases. The purpose of the procurement card program is to streamline and simplify the requisitioning, purchasing and payment process for small-dollar, non-recurring purchases and certain travel-related expenses. All requirements contained in Section XIV Sustainable Purchasing also apply to procurement card purchases.

PROCEDURE:

A. Issuance

1. The department head must submit a Procurement Card Request (Form I-02) to the Program Administrator in Purchasing (845-340-3407). The Program Administrator shall be designated by the Director of General Services.
2. Credit cards will be in the custody of and managed by the department head and/or designee, who is responsible for maintaining complete records of all procurement card use.

B. Use

1. Procurement credit cards:

A critical element of this program is the retention of all receipts and prompt reconciliation of statements to these receipts.

- a. Procurement cards may only be used when a vendor does not accept purchase orders, and only for the following categories:
 - air fare
 - car rental
 - lodging
 - other travel expenses such as parking fees and tolls
 - gas
 - goods and services not otherwise obtainable
 - to take advantage of lower pricing and potential discounts
 - to prepay for conference attendance only after a Conference Attendance Approval Form has been completed and approved.

When conference attendance is required, a Conference Attendance Approval Form must be completed and approved prior to booking and charging to the procurement card.

- b. The following is a partial list of items that may **not** be purchased with procurement cards regardless of the dollar amount. Any attempt to purchase these items will be declined by the procurement card company:

- Alcoholic beverages
- Personal items of any kind.
- Association dues or memberships, unless accompanied by an approved SOP Form D-06.
- Cash advances
- County contract items
- Professional services
- Entertainment

Equipment and commodities that currently go through the Executive Approval process must continue with that process. If you have a unique situation, contact the Program Administrator at (845-340-3407) to discuss a possible exception.

- c. The County of Ulster is a tax-exempt organization. Therefore, Procurement card purchases must not include sales tax, as the County is tax-exempt. NOTE: Cardholders are responsible for informing the vendors that Ulster County is exempt from New York State sales tax and New York State Occupancy Tax. The County's tax-exempt information is printed on the card. When using your card, if a vendor will not process the transaction as tax-exempt, do not complete the transaction. For an occupancy tax exemption form, go to www.tax.state.ny.us and search for form ST-129.
- d. Receipts are required for every purchase and shall be saved by the cardholder and submitted during the monthly billing process. The card user must sign the receipt, print his/her name below the signature, and state a brief reason for the charge. When a purchase is made, the cardholder must obtain the customer's copy of the charge slip in addition to the detailed invoice/receipt. The charge slip or related cash register slip/receipt must show in sufficient detail the type and number of items purchased with the unit cost. Should a detailed receipt not be available, the cardholder must submit a written explanation along with the receipt.
- e. If for some reason the cardholder does not have documentation of the transaction to send with the statement, the cardholder must try to obtain a copy, and if this is not possible, a description of the purchase must be attached. This will include a description of each item, the number of items purchased, the unit cost, the date of purchase, the vendor's name, and the reason(s) why there is no supporting documentation. Continued incidents of missing documentation may result in cancellation of the employee's procurement card and further disciplinary action.
- f. Refunds and exchanges must be credited directly back to the Procurement Card account. Under no circumstances shall cash be received for refunds or exchanges.
- g. The Procurement Card should be treated with the same level of security as personal credit cards. Lost or stolen cards shall be immediately reported to JP Morgan Chase Bank at 1-800-207-5359, the card user's Department Head, and the Program Administrator at (845) 340-3407.

Replacement cards may be authorized by the Department Head and the Program Administrator on form I-04.

C. Conditions

1. The billing cycle for procurement cards begins on the 27th of each month through the 26th of the following month. A monthly statement will be printed with detail, signed by the Program Administrator as original, and mailed to each cardholder in a blue inter-office envelope after the 26th day of the month. The cardholder will reconcile all receipts with the monthly statement and forward it for approval to the Department Head or designee. After approval, all documentation and the New World invoice batch must be forwarded to Finance for payment **within five (5) calendar days from receipt of the statement**. If you are planning a vacation, you must submit all receipts to your Department Head or designee before you leave. Vacation, illness, or other absences do not excuse late submissions.
2. **If this information is not submitted on time, your card privileges may be canceled. There are substantial penalties to the County for late payment; therefore, late submissions will not be tolerated.**
3. Any unauthorized purchases or charges with or without receipts will be the responsibility of the person making the purchase. Payment in full, by check payable to the Ulster County Commissioner of Finance, must accompany the current statement. The employee is responsible for all late fees, interest and additional charges incurred due to failure to follow procedure.
4. Employees given the authority to use the procurement card(s) will acknowledge understanding of the rules and procedures by signing in the appropriate area on form I-03 prior to use. **When receiving a procurement card, employees must write 'REQUEST PHOTO ID' on the signatory line.**
5. **Any employee violating any of the conditions of the procurement card program may be subject to disciplinary action up to and including termination and possible criminal prosecution.**

D. Rules and Procedures

Purchasing, after consultation with the County Executive and the County Budget Director, is authorized to implement procedures for the use of procurement cards for the purchase of goods or services. This program shall be designed to shorten approval processes and reduce paperwork associated with purchase orders, petty cash, check requests, and expense reimbursements. Notwithstanding this authority, such procedures must include the following provisions:

1. Each transaction shall be limited to one thousand dollars (\$1,000) per transaction. This limit may only be exceeded with prior written approval of the Director of General Services or his/her designee. The limit may also be exceeded when used for approved out-of-County travel; however, the limit may only be exceeded for airplane fares, vehicle rental and other actual travel expenses (e.g., tolls, parking fees, etc.).

2. Procurement card(s) may not be used for the following:
 - a. Personal purchases of any kind;
 - b. Cash advances;
 - c. Items requiring technical or external approval (e.g., computer equipment purchases) and
 - d. Travel expenses (except as otherwise noted).
3. Each department that requests procurement card(s) must:
 - a. submit a completed Procurement Card Request Form (I-02), including Deputy County Executive approval, to the Program Administrator;
 - b. identify the employee(s) who will be authorized to use each procurement card, including designees;
 - c. upon receipt of their card, read and sign form **I-03**, Acknowledgement of Card Receipt and Card Holder Agreement, in the presence of the Program Administrator.

The above information must be provided for each procurement card issued to a department.

4. Purchasing shall also develop internal controls for each department to ensure proper use of each procurement card(s). These internal controls shall include the following:
 - a. Dollar limits on each transaction (not to exceed \$1,000, except as noted in paragraph 1 of this section), if deemed necessary;
 - b. Total monthly spending limits;
 - c. The number of transactions allowed per specified time period (limit may be daily, weekly or monthly), if deemed necessary;
 - d. Security measures to prevent theft, loss or unauthorized use, including procedures for obtaining, safeguarding and returning cards;
 - e. A system that tracks expenditures as they occur. Such a system must give up-to-date information on purchases and funds expended; and
 - f. The types of goods and services that are not authorized for procurement card purchases.

Such materials and information must be provided for each procurement card issued to a department.

5. The issuance of any procurement card(s) to a department must be approved by the Program Administrator and the Deputy County Executive responsible for this department..
6. Procurement card(s) must be kept in a secure (locked) location when not in use.
7. Only one employee will be authorized to use each procurement card. The Department Head may assign a designee to use the card if the cardholder is unavailable. The Program Administrator must be informed of said designee. Issuance to a specific employee must be approved by the employee's Department Head and the Director of General Services Purchasing. Any unauthorized purchases made with a procurement card shall be submit a completed Procurement Card Request Form (I-02), including Deputy County Executive approval, to the Program Administrator prior to receiving a procurement card.

8. All procurement card purchases must receive prior approval by the employee's department head or his or her designee(s).
9. Any misuse or misrepresentation will (a) result in immediate suspension of all procurement card privileges by the relevant department and (b) be grounds for discipline up to and including termination of employment.
10. Each employee who is authorized to use a procurement card must reconcile procurement card statements and purchases at least twice per month in order to verify that all charges are proper and the correct amounts have been charged. The Director of General Services shall determine the dates when such reconciliation statements must be submitted. The authorized employee and the department head or designee shall sign the reconciliation statement to indicate approval and to ensure that all charges are proper and accurately recorded. The reconciliation must include receipts for each use of the procurement card and a brief description of the good or service purchased. Original receipts, invoices and credit slips from each purchase must be provided for reconciliation and audits. Photocopies are not acceptable. These documents should be attached to the appropriate monthly statement and retained for review. An approved Conference Travel Approval form must also accompany any receipts for expenses incurred during out-of-County travel. Upon request, an additional detailed and written explanation must be provided for any use of a procurement card.
11. It shall be the responsibility of each employee who is authorized to use a procurement card to contact the vendor and/or procurement card issuer directly regarding any discrepancies between the receipt and statement. The Director of General Services and the County Budget Director must also be notified of any discrepancies.
12. The department head and/or the Director of General Services may suspend or revoke the privilege of any employee to use a procurement card at any time. Further, the Director of General Services may suspend departmental procurement card privileges for just cause for any department. For the purposes of this program, the term, "just cause" includes, but is not limited to, failure to comply with procedures regarding the use of procurement card(s).

The Director of General Services shall conduct a periodic review of each procurement card and supporting documentation and departmental procedures on a continuous basis to ensure compliance. The Director of General Services shall, after consultation with the County Comptroller and County Budget Director, develop and promulgate the practices and procedures for conducting these reviews. Failure to comply with or cooperate in an audit may result in suspension or revocation of procurement card privileges for the employee or department.

13. In addition to the provisions contained herein and those implemented by the Director of General Services ~~Purchasing~~, a department head may implement additional rules regarding the use of procurement cards. Such rules may not supersede procedures established by the Director of General Services or this Manual.

E. Termination or Transfer of Cardholder

When an employee ends his or her County employment or is transferred to another department, the department head or designee must collect the procurement card.

If the department is unable to collect the card when an employee terminates, the department head must immediately notify the Program Administrator in Purchasing, who will ensure cancellation of the card.

SECTION IX

E-PROCUREMENT

Purchasing participates in the Empire State Purchasing Group (ESPG) e-procurement system. This platform provides a centralized bidding and vendor registration system, serving as a single point of contact and expanding access to business opportunities within the community. This system, developed in partnership with BidNet, a local company, allows Ulster County and other participating municipalities to post invitations to bid, informal quotes, requests for proposals, construction notices, addenda, and awards through a single system. The system also enables bidders to submit bids electronically while safeguarding the integrity of sealed bids until the designated public opening. This system reduces costs for taxpayers, expands economic opportunities for businesses, streamlines the acquisition of goods and services, and enhances the efficiency and customer service of County purchasing.

SECTION X
SALE OF COUNTY SURPLUS PERSONAL PROPERTY

If a Department Head determines that an item or items of County property (other than real property) is no longer useful, the Director of General Services may utilize an electronic auctioning service such as eBay, or an equivalent service provider, to dispose of the property without publishing notice in the County's official newspapers. On-site auctions will require advertising legal notices in assigned newspapers.

SECTION XI
**ARTICLE XVI – UNIFORM GUIDANCE COMPLIANCE – PROCUREMENT,
SUSPENSION AND DEBARMENT**

§ 140-16. Article XVI, Uniform Guidance Compliance for Federal Awards – Procurement, Suspension and Debarment

§ 140-16.1 Purpose

2 CFR Part 200 (subparts A-F) “Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards requires recipients of federal awards to establish and maintain effective internal controls over those awards.”

§140-16.2 General Policy Statement

The requirements for procurements using federal awards are contained in the Uniform Guidance (2 CFR Part 200, subparts A-F), program legislation, Federal awarding agency regulations, and the terms and conditions of the award.

To comply with 2 CFR Part 200 (subparts A-F), the County of Ulster implements policies and procedures, including the following, at minimum:

A. The County will use its own documented procurement procedures which reflect applicable State, Local and Tribal laws and regulations, provided that the procurements conform to applicable federal law and Uniform Guidance. As such, County procurements related to Federal grants will be subject to New York State General Municipal Law, Ulster County Procurement Policy and Uniform Guidance requirements.

B. Contract files will document the significant history of the procurement, including the rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis of contract price.

C. The County will utilize one of the five acceptable procurement methodologies detailed in §200.320 which include:

- Micro Purchase
- Small Purchase Procedure
- Sealed Bid
- Competitive Proposal
- Non-Competitive Proposal (Sole Source)

D. Procurements will provide for full and open competition as set forth in the Uniform Guidance, or State and local procurement thresholds, whichever is most restrictive.

E. No employee, officer or agent may participate in the selection, award or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, any member of their immediate family, their partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract. The officers, employees, and agents can neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts.

If the financial interest is not substantial or the gift is an unsolicited item of nominal value, no further action is required. However, disciplinary measures will be taken for violations of such standards otherwise.

F. The County will avoid acquisition of unnecessary or duplicative items. Consideration will be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease-versus-purchase alternatives and other relevant analyses to determine the most economical procurement approach. The County will also analyze other means, as described in §200.318 of the Uniform Guidance, to ensure appropriate and economical acquisitions.

G. The County will enter into state and local intergovernmental agreements or inter-entity agreements, where appropriate.

H. The County will only utilize Time and Materials contracts when it has been determined, in writing, that no other contract type is suitable.

I. Vendors/Contractors that develop or draft specifications, requirements, statements of work, or invitation to bids or requests for proposals must be excluded from competing for such procurements.

J. The County will make available, upon request of the federal awarding agency or pass-through entity, technical specifications on proposed procurements where the federal awarding agency or pass-through entity believes such review is needed.

K. County Departments are prohibited from contracting with or making sub awards under covered transactions to parties that are suspended or debarred or whose principals are suspended or debarred.

“Covered Transactions” include those procurement contracts for goods and services awarded under a non-procurement transaction (i.e. grant or cooperative agreement) that are expected to equal or exceed \$20,000. All non-procurement transactions (i.e. sub-awards to recipients), irrespective of award amount, are considered covered transactions.

L. The County of Ulster will include a suspension/debarment clause in all written contracts in which the vendor/contractor must certify that it is not suspended or debarred. The contract will also contain language requiring the vendor/contractor to notify the County immediately upon becoming suspended or debarred. This certification serves as documentation for the duration of the contract.

M. County departments must notify the Purchasing Department and the County Attorney’s Office that federal funding will be used for a certain procurement/contract. When requesting a written contract, the County Department will be responsible for running the Vendor/Contractor’s name through the System for Award Management (SAM) to determine any exclusions. A copy of the SAM search will be included with the contract request. Prior to issuing a purchase order using federal funds, the Purchasing Department will check the SAM to determine if any exclusions exist for the Vendor/Contractor.

If a vendor/contractor is found to be suspended or debarred, the County will immediately cease to do business with the vendor.

N. The County will not use statutorily or administratively imposed state, local or tribal geographical preferences in the evaluation of bids or proposals; except where federal statutes expressly mandate or encourage such preferences.

O. The County will take all necessary steps to ensure that minority businesses, women's business enterprises, and labor area surplus area firms are used when possible.

P. The County will procure recovered materials in compliance with §200.322.

Q. The County will perform a cost or price analysis relating to every procurement more than the Simplified Acquisition Threshold. (\$150,000)

R. The County will require appropriate bonding requirements as per §200.325.

S. The County will only award contracts to Responsible Vendors and will document, in writing, such determination.

T. County contracts will contain the applicable provisions described in Appendix II to Part 200 – Contract Provisions for Non-Federal Entity Contracts Under Federal Awards.

U. The County will maintain oversight to ensure that contractors perform in accordance with the contract's terms, conditions, and specifications.

V. Executed contracts and purchase orders will be maintained in the New World Financial System.

SECTION XII
PROJECTS FUNDED BY U.S. DEPARTMENT OF HOUSING AND URBAN
DEVELOPMENT (HUD) HOUSING AND COMMUNITY DEVELOPMENT PROGRAMS

- A. Section 3 Business Participation in Procurement and Contracting:** For federally funded projects subject to Section 3 of 24 CFR Part 135 of the Housing and Urban Development Act of 1968 (as amended), the County will facilitate participation of Section 3 residents and businesses to the greatest extent feasible of Section 3 residents and Section 3 businesses in the procurement of goods and services in accordance with its Section 3 Participation Plan. Solicitation may include advertisements in local publications encouraging Section 3 participation, or direct outreach by letter or email to Section 3 businesses or individuals listed on HUD's Section 3 Business Registry. The County's established purchasing and contracting thresholds will apply. The County will maintain records of all Section 3 solicitations and responses.

SECTION XIII
ULSTER COUNTY LIVING WAGE ACT
RULES AND REGULATIONS

SECTION 1: OBJECTIVE; EFFECTIVE DATE.

- 1.1. The Living Wage Act, as adopted by Ulster County Local Law Number 6 of 2021 was enacted to ensure that service contractors and sub-contractors will provide a livable wage to employees who perform direct, measurable work in accordance with such service contracts with the County of Ulster of at least \$50,000 in a fiscal year.
- 1.2. This law is effective for contracts entered into on or after January 1, 2022.

SECTION 2: LIVING WAGE DEFINED.

- 2.1. The living wage shall be an amount no less than seventeen dollars and seventy cents (\$17.70) per hour worked, in addition to retirement, health or other benefits received by the covered employee, if any.
- 2.2. The living wage may be increased by County Resolution to account for current market conditions (e.g., inflation, changes in the consumer price index). Any such increase in the living wage shall be posted on the website for the Ulster County Purchasing Department.

SECTION 3: EMPLOYER REQUIREMENTS

- 3.1. An employer covered by the Living Wage Act must post in a conspicuous place on its premises, where notices to Employees and applicants for employment are customarily posted, a notice informing Employees of their rights under this local law, along with the current living wage rate and the procedure for filing a complaint.
- 3.2. An employer covered by the Living Wage Act must maintain payroll records with the name, job title, hourly wage rate and benefits paid to each employee covered by the Living Wage Law and shall submit a certified payroll upon request.
- 3.3. An employer covered by the Living Wage Act must maintain related payroll records for a period of five years after termination of an individual's employment.
- 3.4. All submitted invoices shall be accompanied by a certification that the employer has paid all employees covered by the Living Wage Act an amount no less than the living wage then in effect.
- 3.5. Any employer covered by the Living Wage Act must allow the County access to work sites and payroll records to investigate and monitor compliance with the Living Wage Act on prior notice and during normal business hours.

SECTION 4: EXEMPTIONS

- 4.1. An employer covered by the Living Wage Act may submit a written application for an exemption on a form provided by the Department of Purchasing. The Purchasing Director may require the employer to submit additional information or documentation to make a determination regarding the exemption request.
- 4.2. Within 30 days of receiving a completed application and supporting documentation, if any, the Director must either grant or deny the exemption must notify the applicant of the determination. Notice of such determination shall also be filed with the Clerk of the Legislature within 10 days of making any such determination. All requests for exemptions shall be reviewed on a case-by-case basis.
- 4.3. The Purchasing Department shall publish guidelines for exemptions on its website.
- 4.4. No provision of the Living Wage Act shall supplant or contradict the terms of existing collective bargaining agreement(s), or any provision of Federal Law or New York State Law.
- 4.5. The Living Wage Act shall not apply to Service Contracts awarded utilizing New York State Office of General Services or Federal Government Services Administration procurement.

SECTION 5: EMPLOYEE COMPLAINTS

- 5.1. An employee covered by the Living Wage Act who believes that their employer has violated any provision of this local law may file a written complaint with the County within six (6) months of such violation. Complaint forms are available upon request in English and Spanish.
- 5.2. Within thirty (30) days of receiving a written complaint, the County shall provide such employer with a notice of the allegations contained in the complaint. Within thirty (30) days thereafter, the employer shall submit a response in writing to the County. If the employer denies the complaint or fails to respond, the County shall conduct an investigation. Within sixty (60) days of the initiation of an investigation, the County will issue a written determination as to whether probable cause exists to support the complaint.

Within thirty (30) days of a finding of cause to support the complaint, the County shall issue a hearing notice to the employer. No less than thirty (30) days after the issuance of the hearing notice, the County shall conduct a hearing in which the County shall have subpoena powers, and the parties shall have the right to present evidence and to be represented by counsel. The County may delay or extend such a hearing by no more than thirty (30) additional days at the request of the employer or based on a determination by the County that it needs more time to prepare for a hearing.

Within thirty (30) days of the conclusion of the hearing, the County shall issue its written findings and a written decision. The County may delay the date by which it will issue its written findings and decision by no more than two (2) increments of thirty (30) days each if the County determines that it needs more time to review the evidence related to a complaint.

- 5.3. A finding of noncompliance with Section 4, Section 7, or Section 8 of the Living Wage Act shall be accompanied by a decision to impose, at the end of thirty (30) days following such finding, any or all of the penalties listed in Section 9(E), unless the employer submits written proof satisfactory to the County that it has come into full compliance with the ordinance before the thirtieth (30th) day from the finding of noncompliance. Service Contracts that have been suspended for non-compliance according to this section may be renewed, but only after the employer submits written proof satisfactory to the County that it has come into full compliance with this local law.
- 5.4. An aggrieved party has the right to appeal such decision in an Article 78 proceeding in New York State Supreme Court.
- 5.5. In lieu of seeking redress through a complaint to the County under this section, an employee covered by the Living Wage Act may elect to bring an independent civil action against their employer in a court of competent jurisdiction.
- The court may award damages, costs, and attorney fees to the prevailing party, and may direct any other remedy at law or equity, including but not limited to injunctive relief, reinstatement, back wages, and punitive damages.
- 5.6. The County shall not disclose the identity of a complainant to their employer except where necessary to investigate, pursue or defend a complaint.

CONTACT

For further information regarding the Living Wage Act, call (845) 943-6102 or email uclivingwagelaw@ulstercountyny.gov

SECTION XIV
SUSTAINABLE PURCHASING

1. Purpose:

The purpose of this program is to reduce the environmental impact of County operations by ensuring procurement of products and services that: conserve natural resources, materials, and energy

- reduce toxicity
- reduce waste
- minimize or eliminate single-use plastics
- recognize manufacturers and vendors that reduce environmental impacts in their production and distribution systems
- support markets for recycled goods
- encourage suppliers and contractors to offer environmentally preferable options at competitive prices
- encourage providers of services to consider environmental impacts of service delivery
- align with GreenNY specifications, the NYS Green Purchasing Communities (GPC) program, and ensure compliance with the Climate Smart Communities program under PE3: Environmentally Preferable Purchasing Policy.

2. Definitions:

- a. Sustainability Certifications are third-party recognitions for products that meet certain environmental, social, and economic standards, demonstrating a commitment to sustainability. ENERGY STAR, GreenSeal, Safer Choice, EPEAT, TCO are among the list of Approved GreenNY Sustainability Certifications which are used to help identify products that align with the UC Sustainable Purchasing Program
- b. Environmentally Preferable Products and Services means products and services that have a lesser or reduced negative effect on resource consumption, human health and the environment when compared with competing products that serve the same purpose. This comparison may consider raw materials acquisition, production, manufacturing, packaging, distribution, reuse, operation, maintenance, or disposal of the product.
- c. Life Cycle Cost means the amortized annual cost of a product, including capital, installation, operating, maintenance, and disposal costs, discounted over the product's lifetime.

- d. Practicable means the product or service is satisfactory in performance, readily available and priced comparably to alternatives when considering life cycle cost.
- e. Preferred environmental attribute means a characteristic that identifies a product or service as an environmentally preferable option for procurement.
- f. Recyclable product means a product which, after its intended end use, can demonstrably be diverted from the County of Ulster's solid waste stream for use as a raw material in the manufacture of another product as defined in NYS General Municipal Law Section 104-A.
- g. Reusable product: means a product, such as a washable food or beverage container or a refillable ballpoint pen, that can be used several times for an intended use before being discarded.
- h. Recycled material means material and byproducts that have been recovered or diverted from solid waste and have been utilized in place of raw or virgin material in manufacturing a product. It is derived from post-consumer recycled material, manufacturing waste, industrial scrap, agricultural waste, and other waste material, but does not include material or byproducts generated from, and commonly reused within, an original manufacturing process.
- i. Single-Use (Disposable) means a product intended for single use, which cannot be refilled or reused.

3. Environmentally Preferable Purchasing Procedure

Where Ulster County is procuring a commodity or service, whether by competitive bid or other type of procurement, that is the subject of a GreenNY procurement specification that has received final approval of the NYS GreenNY Council pursuant to Executive Order No. 22 (2022), the purchaser shall follow the GreenNY procurement specification to the maximum extent practicable, provided costs are reasonably competitive under General Municipal Law §104-a. GreenNY approved procurement specifications can be found online at: <https://ogs.ny.gov/greenny/approved-greenny-specifications>.

Where a County policy exists that is more restrictive than the GreenNY specification, as referenced for specific product categories in Section 4. Table 1 below, the products purchased shall meet the County's policy requirements.

Exceptions may be granted under the following circumstances:

- the product is not available competitively
- the product is not available for delivery within a reasonable time frame

- the product does not meet appropriate performance requirements or specifications

Nothing in this procedure requires a department, administrative unit, or contractor to procure products that do not comply with General Municipal Law, do not perform adequately for their intended use or are not readily available.

When initiating the procurement of goods via requisition, County departments shall complete the Green Purchasing Verification Form for each item procured using the Item User Defined Fields module in the New World ERP financial system. This form will require verification that the item complies with the procurement guidance set forth below.

All other procurement activities shall comply with the specific and general procurement guidance listed below to the extent practicable.

4. Specific Procurement Guidance: The County shall procure environmentally preferable products and services when procuring items from the categories listed in Table 1. Compliance with this guidance must be indicated when submitting a requisition to the Purchasing Department using the Green Purchasing Verification Form in the County’s financial system.

The Department of General Services may authorize deviations from this requirement for products or services meeting equivalent or more stringent standards, or at the discretion of the Director of General Services.

Table 1: Specific Procurement Guidance

Cleaning products	Cleaning products used in County facilities shall meet the GreenNY specifications for the corresponding type of Janitorial product, including at least one of the certifications required by GreenNY. Such products will meet or exceed the Green Seal <u>GS-37</u> standard, per <u>Resolution No. 282 of 2010</u> . Products meeting GreenNY specifications for General Purpose Cleaners shall be deemed acceptable equivalents.
Single Use Plastic Items	Disposable Food Service Ware: For County facilities and County sponsored events, no food service containers or food service ware containing expanded polystyrene (Styrofoam) or other single-use plastic shall be procured or used at the event. Food service items such as condiment packets should be provided to end users only upon request per the County’s Skip the Straw Law. Preference shall be given to compostable BPI-certified paper or fiber-based products; compostable BPI-certified bioplastics may be approved at the discretion of the Director of General Services. Note: BPI is a third-party certification program for compostable materials. For more information, please visit: https://bpiworld.org/. Other Single-Use Items: The procurement of certain single-use plastic items is prohibited (e.g. single use plastic water bottles).

	Exceptions for certain items, or certain classes of items (e.g. consumable medical or emergency supplies) may be allowed at the discretion of the Director of General Services through an approved operating procedure.
Electronics and Appliances	Products that meet the GreenNY definitions and specifications for Electronics and Appliances shall be purchased when such products are available. Electronics covered include computers, displays, and imaging equipment and must have EPEAT Silver (or higher) or TCO certification. Appliance and television requirements include ENERGY STAR® certification or equivalent energy usage The most current requirements should be referenced at GreenNY prior to any purchase: https://ogs.ny.gov/greenny/approved-greenny-specifications.
Paints and coatings:	Products purchased must meet Low or No VOC standards and comply with <u>Resolution #283 of 2010</u> Requiring The Purchase And Use Of Low Or No Volatile Organic Compounds (VOC) Paints And Coatings In All County Facilities. See the GreenNY specifications for <u>Paint</u> for updated guidance.
Paper and printing services	All printing and copier paper purchased shall contain 100% post-consumer recycled content. Publications and printing services procured shall comply with the <u>GreenNY specifications for Printing</u>. Publications shall be printed on 100% post-consumer recycled content paper. Where 100% post-consumer recycled paper is not available or does not meet the required form, function and utility, paper procurements shall use post-consumer recycled content to the extent practicable. At a minimum, printing paper products and printing services shall comply with the requirements of <u>Resolution No. 159 of 2011</u>.
Products containing wood fiber (other than printing paper)	Products carrying the <u>Forest Stewardship Council</u> (FSC) or Sustainable Forestry Initiative (SFI) certification label should be purchased when such products are available, or equivalent. The <i>FSC Recycled</i> label is preferred. If a product option carrying the FSC or SFI label is not available, a product containing recycled material is preferred.

5. **General guidelines:** If specific guidance is not provided above, the County shall apply the following guidelines when making procurement decisions, unless otherwise specified:

- a. **NYS Office of General Services Contract:** If the item or equivalent alternative is on an OGS Contract and is the subject of a GreenNY procurement specification, the County should procure products from such contract. The County should consider if items fall within a GreenNY specification category and utilize this resource to procure products that meet such specifications where applicable. Links to these resources are provided below:

Approved GreenNY Product Specifications:
<https://ogs.ny.gov/greenny/approved-greenny-specifications>

NYS OGS Contracts:
<https://ogs.ny.gov/procurement/ogs-centralized-awards-list>

- b. **Third-party standards and ecolabels:** Where available, the County should procure products and services that meet environmental standards that have been established by governmental or other widely recognized authorities (e.g. Forest Stewardship Council, EPEAT Silver, Energy Star, EPA Eco Purchasing Guidelines).
- c. **In the absence of third-party standards:** where no external standards exist, the County should consider preferred environmental attributes when making procurement decisions.

Preferred environmental attributes include, but are not limited to:

- i. Improved Energy Efficiency
- ii. Product is Refillable and/or Reusable
- iii. Reduced Life-Cycle Cost and Emissions
- iv. Recyclability of Product
- v. Product or Service uses Recycled Materials in its Life Cycle
- vi. Minimized Packaging
- vii. Biodegradable Product
- Reduced Water Consumption in Life Cycle
- viii. Toxicity Reduction or Elimination
- ix. Product Produces Less Waste During Use
- x. Product has Improved Durability, Repairability and Service Life
- xi. Product has Reduced Maintenance Requirements
- xii. Product Minimizes Hazards to Workers and the Community
- xiii. Product is Produced Locally
- xiv. Product Materials were Produced Using Organic Practices

6. Department Responsibilities:

Department of General Services

- Inform departments, administrative units and contractors of their responsibilities under this procedure and provide training, in collaboration with the Department of the Environment, to all County departments.
- Ensure the green purchasing verification form in the County financial system is completed by the requisitioning department when required.
- Provide implementation assistance and referrals to the Department of the Environment when needed.

Department of the Environment

- Support Department of General Services in its implementation of this procedure by providing training, information when requested, and assistance in the evaluation of environmentally preferable products and services
- Support departments and administrative units in evaluation and analysis of environmentally preferable products and services
- In collaboration with the Department of General Services and the requisitioning department or administrative unit, establish guidelines for reviewing and approving specifications based on preferred environmental attributes, and provide training on their implementation.

Other Department Responsibilities:

- Inform employees of their responsibilities under this policy
- Evaluate each requested product and service to determine the extent to which the specifications could include an environmentally preferable option
- Procure products and services that meet the requirements in this procedure
- Ensure that contracts issued by the departments or administrative unit meet the guidelines contained in this procedure
- Submit new environmentally preferable product ideas or suggestions to the Department of General Services.