



PROCUREMENT CODE

Garfield County, Colorado

Effective October 1, 2012

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ARTICLE 1 – INTRODUCTION AND GENERAL PROVISIONS

1.1 PURPOSE

Stewardship of public funds is a fundamental responsibility of county government. The public must have confidence that public funds are spent prudently and transparently on its behalf, with proper planning and evaluation, in a manner that is open and fair to all.

Under the direction of the Board of County Commissioners (“BOCC”), the Garfield County Procurement Code (this “Code”) sets forth the policies and procedures that earn that confidence by demonstrating awareness and adherence to applicable laws and a commitment to promote competition, maximize purchasing power, and ensure fair opportunity and equitable treatment of all who seek to do business with the County.

The purpose of this Code is to guide County personnel in fulfilling their obligations to the public, grantors, vendors, and contractors in the expenditure of public funds. The Code is a comprehensive reference manual for both County personnel and outside parties who have an interest in the County’s procurement and contracting processes. It is intended as a guide to good procurement practices and is to be used as a supplement to sound business judgment in procurement and contracting.

The policies set forth in this Code are intended to:

- Provide a combined centralized and decentralized procurement program encompassing nationally and regionally approved principles and practices;
- Be reviewed, thoughtfully and regularly, to ensure the utility of procurement statutes and to make periodic modifications and improvements that will enhance the efficiency and effectiveness of the procurement function;
- Promote and encourage ethical management and efficiency in the County procurement procedures.

The Garfield County Procurement Department presents this Code in accordance with the direction and approval of the BOCC to promote understanding by employees, vendors, contractors and the public regarding the procurement of goods and services on behalf of the County and with the expectation that it will be used to:

- Simplify, clarify and modernize the County’s procurement practices;
- Support consistent procurement procedures within all County departments;
- Bolster public confidence in public procurement procedures;
- Ensure the fair and equitable treatment of all persons dealing with the County procurement system;
- Provide increased economy in County procurement activities;
- Maximize the procurement value of County funds;
- Safeguard the high quality and integrity of the procurement system;

- Ensure that the expenditure of public funds complies with the terms and conditions of the funding source.

1.2 APPLICABILITY

This Code applies to all publicly funded expenditures entered into by and on behalf of the County for the purchase or lease of goods or services and to the disposal of County property purchased with public funds. All County employees acting as agents of the County for the purpose of procurement or disposal of goods and services shall adhere to these policies as part of their essential job functions.

The policies in this Code do not apply to intergovernmental agreements, memoranda of understanding, purchase, sale, or lease of real property, or grants awarded by the Board of County Commissioners.

In addition, this Code does not apply to any Elected Official or their Offices unless and until the Elected Official chooses to adopt it on behalf of the Office.

Nothing in this Code shall prevent the County from complying with the terms and conditions of any grant, gift, bequest, contract, or cooperative agreement that is otherwise consistent with the law. If any provision of this Code causes denial of state or federal monies that would otherwise be available to the County, or is inconsistent with requirements of state or federal law, that provision shall be suspended to the extent necessary to prevent denial of the monies or to eliminate the inconsistency with state or federal law.

1.3 EFFECTIVE DATE

This Code shall be effective on **October 1, 2012**. It does not retroactively affect any rights and remedies under existing contracts but, to the extent not inconsistent with the express terms of existing contracts, does apply to amendments and renewals of existing contracts.

1.4 INTRODUCTION TO PUBLIC PROCUREMENT

Procurement in the public sector is the process through which a government acquires goods and services. The terms "Procurement" and "Purchasing" are often used interchangeably. However, strictly speaking, "Purchasing" is only one of three stages of the public procurement cycle.

The three stages of public procurement are:

1. **Planning and Scheduling:** This stage includes defining the need, developing the means and methods to meet the need, including the method of source selection, assessing risks, and ensuring proper allocation of resources.
2. **Purchasing and Source Selection:** This stage represents the process through which qualified providers of goods and services are identified, solicited, evaluated, and ultimately

selected. The method of source selection, dictated by the amount of the expenditure, is determined in the Planning and Scheduling stage.

3. **Contract Formation and Administration:** This stage includes confirmation of expected performance measures, finalization of terms and conditions, and signature of authorized parties. This stage also includes post-award enforcement of the terms of the resulting contract, including payment of invoices and adherence to insurance, amendment and renewal requirements through contract completion.

The appropriate procurement process to be followed in any given circumstance is dependent upon a variety of factors. A conceptual framework for determining the appropriate process is summarized as follows:

1. The nature of the purchase dictates (a) whether public competition is required and (b) whether additional approvals are required; and
2. The amount to be spent dictates (a) who has the authority to make the purchase; (b) what kind of competitive solicitation is required; and (c) who has the authority to sign the contract; and
3. Every purchase and sale, regardless of type or amount, must be memorialized in a written document that identifies the rights and obligations of both the buyer and the seller.

This Code is presented in a manner that is intended to address each of these factors in a straightforward and practical way.

Article 1 explains why, when and how to use this Code.

Article 2 explains the roles and responsibilities of those involved in public procurement.

Article 3 explains how to select vendors and conduct County purchases.

Article 4 explains the key to every successful purchase: Specifications and Scopes of Work.

Article 5 explains the competitive solicitation processes and the requirements of each.

Article 6 explains the contract options that apply to every purchase, regardless of amount.

Article 7 explains the determination, protest, claims and dispute resolution processes.

Article 8 explains the legal and ethical obligations of every public employee.

1.5 DEFINITIONS AND USE

Capitalized words and phrases are defined in the Glossary of Terms attached as Appendix A to this Code. The words and phrases defined in the Glossary shall have the meanings set forth whenever they appear in this Code unless otherwise specifically stated.

1.6 GOOD FAITH REQUIREMENT

All parties involved in the solicitation, negotiation, performance or administration of County procurement actions shall act in good faith.

1.7 CODE OF ETHICS

As a political subdivision of the State of Colorado, anyone who makes purchases for the County is an agent of the County and is subject to Article XXIX of the Colorado Constitution concerning ethics in government. Compliance with this provision is also required by the County's Personnel Policies and Procedures Manual, effective November 1, 2009, Section II.M.

1.8 SUPPLEMENTARY GENERAL PRINCIPLES OF LAW

This Code reflects applicable state and local laws and regulations and provides a process that ensures competitive procurement and procedures that conform to applicable laws. Unless otherwise stated, the principles of law and equity, including the Uniform Commercial Code (UCC) and applicable legal authorities, shall supplement the provisions of this Code.

1.9 REFERENCES TO JOB TITLES

Job title references throughout this Code are provided for convenience only and are based upon titles as they exist on July 1, 2012. The roles and responsibilities set forth in the Code correspond to the job function rather than job title and do not change when a job title changes. Every effort shall be made to ensure compliance with this Code, regardless of job title, by substituting the new title or titles applicable to the job responsibilities at issue.

1.10 REVISIONS TO THE CODE

Only the BOCC may authorize revisions to the policies reflected in this Code, and all such revisions will be made by BOCC resolution. The Chief Procurement Officer, with the approval of the County Manager, is authorized to define and implement the procedures required to ensure consistent application and effective compliance with this Code, including updates to the Glossary of Terms.

1.11 PUBLIC ACCESS

Procurement information shall be a public record to the extent provided in the Colorado Open Records Act found at C.R.S. § 23-72-201.01 *et seq.*, as amended ("CORA") and shall be made available to the public in accordance with CORA and with the County's Open Record Policy.

1.12 SEVERABILITY

If any provision of this Code or its application to any person or circumstance is found to be invalid, such invalidity shall not affect the other provisions that can be given effect in its absence.

1.13 CONTACTS

Questions and comments about the application and implementation of this Code shall be directed to:

Chief Procurement Officer
Procurement Department
108 8th Street, Suite 403
Glenwood Springs, CO 81601
970-384-5012

Questions about a specific contract should be directed to:

Contracts Manager
Procurement Department
108 8th Street, Suite 403
Glenwood Springs, CO 81601
970-384-5018

ARTICLE 2 - PROCUREMENT ROLES AND RESPONSIBILITIES

County procurements must be authorized and supported by available and budgeted funds. Responsibilities to ensure that these and other procurement criteria are delegated and satisfied are defined in this Article 2.

2.1 THE BOARD OF COUNTY COMMISSIONERS

1. **Authority.** The Board of County Commissioners (the "BOCC") is authorized to make all contracts necessary to exercise the County's corporate and administrative powers and to establish policies and procedures regarding entering into such contracts.¹ Through its policies and procedures, the BOCC may, as it does here, set forth standards by which to delegate its power to bind the County.² Specifically, the BOCC authorizes the following:
 - a. The BOCC retains sole authority to enter into contracts on behalf of the County when the contract requirement is \$25,000 or more.
 - b. Internal County Departments ("Departments") are authorized to procure (that is, solicit and enter into contracts for) goods or services with a contract requirement of up to \$25,000 when the expenditure is authorized in an approved budget and the Simplified Purchase standards defined in § 3.3 are followed.
 - c. Elected Officials who have adopted this Code are authorized to procure goods or services with a contract requirement of up to \$25,000 when the expenditure is authorized in an approved budget and the Simplified Purchase standards defined in § 3.3 are followed.
2. **Contract Approval.** BOCC approval is required prior to:
 - a. Award of any Standard Purchase contract, defined in § 3.1, for the purchase of goods or services with a contract requirement of \$25,000 or more;
 - b. Award of any contract amendment or change order, discussed in § 6.5(1), that causes a Simplified Purchase contract to exceed the up-to \$25,000 authority limit delegated to Department Heads and Elected Officials; and
 - c. Award of any contract amendment or change order, discussed in § 6.5(2), that causes a Standard Purchase contract to exceed the original contract amount by twenty-five percent (25%) or more.

¹ Colo. Rev. Stat. §§ 30-11-101 and 30-11-103.

² Colo. Rev. Stat. § 30-11-107(aa).

3. **Quarterly Reporting.** In addition to the Standard Purchase approvals that shall be brought to the BOCC for consideration and approval prior to award, the Chief Procurement Officer shall provide a quarterly report to the BOCC of relevant procurement activities. The contents of this report will be determined by the BOCC but may include such categories as: all open solicitations, a list of all Vendors with more than one open contract with the County, all open Sole Source contracts, all open Emergency contracts, and all Simplified Purchases made within the preceding quarter, and all changes to contracts that meet the criteria set forth in § 6.5(3).

2.2 CHIEF PROCUREMENT OFFICER

1. **Authority.** As of July 1, 2012, the Procurement Department operates as a department under the direct management of the County Manager and is administered by the position of the Chief Procurement Officer and staffed with the Contracts Manager and Purchasing Agent(s).
 - a. The Procurement Department shall have the authority required to meet all of the procurement and contract management duties and responsibilities identified and implied in this Code.
 - b. All authority and discretion assigned to the Chief Procurement Officer in this Code shall be exercised in collaboration with and subject to the review and approval of the County Manager and, where appropriate, the County Attorney.
2. **Duties and Responsibilities.** Through the Chief Procurement Officer, in addition to specific duties identified in this Code, the Procurement Department shall:
 - a. Determine, with BOCC approval, the County's procurement policies and for defining and enforcing the processes and practices required to implement those policies;
 - b. Ensure that the County Manager and County Attorney are timely notified of all procurement-related matters requiring their approval, knowledge, input, or handling as defined throughout this Code;
 - c. Ensure that an adequate number of Qualified Vendors are solicited to compete for both Standard and Simplified Purchases;
 - d. Maintain an open and competitive environment to ensure that all potential buyers and sellers have access to County business and that all procurement actions are conducted fairly and impartially in the best interest of the County;
 - e. Conduct all Standard Purchase competitive solicitations on behalf of the County through contract award and issuance of a notice to proceed;
 - f. Assign Purchase Order Numbers to all Standard and Simplified Purchases properly submitted as Purchase Requisitions by Departments or Elected Officials;

- g. Administer the disposal of all surplus County property in accordance with § 3.9;
 - h. Receive and ensure proper handling of all requests for waivers of these Code provisions, all solicitation protests, and all contract claims, and, in collaboration with the County Manager, make any requisite determinations about adherence to this Code;
 - i. Provide quarterly procurement activity reports to the BOCC in accordance with § 2.1(3);
 - j. Ensure that all County procurements remain in compliance with applicable law;
 - k. Provide assistance to any Department, Elected Official, employee, vendor or member of the public on any procurement-related matter; and
 - l. Comply with the duties and responsibilities that apply to all County employees, as defined in §2.6(2).
3. **Contracts Manager.** The Procurement Department includes the position of Contracts Manager, through which the Department shall:
- a. Manage and facilitate the appropriate use of the contract forms and required clauses approved by the County Attorney; and
 - b. Manage compliance with the County's required terms and conditions in all Standard and Simplified Purchase contracts from notice to proceed to contract closure, including the timely receipt of appropriate certificates of insurance.

2.3 COUNTY MANAGER

1. **Authority.** The County Manager shall have the authority required to meet all of the procurement duties and responsibilities identified and implied in this Code and to:
 - a. Exercise the contract signature authority delegated to any Department when the Department Head is unavailable to do so.
2. **Duties and Responsibilities.** In addition to any specific duties identified elsewhere in this Code, the County Manager shall:
 - a. Remain familiar with the requirements of this Code and not allow any exceptions to be made to it without proper approvals and documentation;
 - b. Serve as or designate an appropriate individual to serve as the principal County Representative on all contracts entered into without a specific Department or Elected Official designation;

- c. Review and approve all Sole Source Justifications prior to award; and
- d. Comply with the duties and responsibilities that apply to all County employees, as defined in §2.6(2).

2.4 DEPARTMENT HEADS

1. **Authority.** Each Department Head is authorized to:
 - a. Procure goods or services with a contract requirement of up to \$25,000 when the expenditure is authorized in an approved budget and the Simplified Purchase standards defined in § 3.3 or Small Purchase standards defined in § 3.4 are followed.
 - b. Initiate the procurement of all Standard Purchases as defined in § 3.1.
2. **Duties and Responsibilities.** In addition to any specific duties identified elsewhere in this Code, each Department Head shall:
 - a. Remain familiar with the requirements of this Code and not knowingly allow any exceptions to be made to it without proper approvals and documentation;
 - b. Ensure that all County employees under his or her supervision involved in making purchases on behalf of the Department are familiar with and follow the requirements of this Code;
 - c. Include in the Department's annual budget preparation process all existing, renewing, and anticipated contracts in excess of \$10,000 to be required or requested in the applicable budget year;
 - d. Define the technical specifications and scopes of work necessary to meet the Department's requirements for all purchases in excess of \$10,000;
 - e. Adhere to the payment processing standards established in Article 3 and the Finance Department's Policies and Procedures;
 - f. Identify the appropriate standard by which the Department will demonstrate objective fairness, cost reasonableness and best use of public funds for Small Purchases, as defined in §3.4(1)(d);
 - g. Serve as the principal County Representative, or designate an appropriate County Representative, to be identified in each contract entered into through the Department; and
 - h. Comply with the duties and responsibilities that apply to all County employees, as defined in §2.6(2).

2.5 ELECTED OFFICIALS

1. **Authority.** Each Elected Official who chooses to adopt this Code is authorized to:
 - a. Procure goods or services with an contract requirement of up to \$25,000 when the expenditure is authorized in an approved budget and the Simplified Purchase standards defined in § 3.3 or Small Purchase standards defined in § 3.4 are followed.
 - b. Initiate the procurement of all Standard Purchases as defined in § 3.1.
2. **Duties and Responsibilities.** In addition to any specific duties identified elsewhere in this Code, each Elected Official shall:
 - a. Remain familiar with the requirements of this Code and not knowingly allow any exceptions to be made to it without proper approvals and documentation;
 - b. Ensure that all County employees under his or her supervision involved in making purchases on behalf of the Elected Official are familiar with and follow the requirements of this Code;
 - c. Include in the Official's annual budget preparation process all existing, renewing and anticipated contracts in excess of \$10,000 to be required or requested in the applicable budget year;
 - d. Define the technical specifications and scopes of work necessary to meet the Elected Official's requirements for all purchases in excess of \$10,000;
 - e. Adhere to the payment processing standards established in Article 3 and the Finance Department's Policies and Procedures;
 - f. Identify the appropriate standard by which the Official will demonstrate objective fairness, cost reasonableness and best use of public funds for Small Purchases, as defined in §3.4(1)(d); and
 - g. Serve as the principal County Representative, or designate an appropriate County Representative, to be identified in each contract entered into through the Office.

2.6 COUNTY EMPLOYEES

1. **Authority.** Each County employee is authorized to exercise the authority delegated by his or her Department Head or Elected Official.
2. **Duties and Responsibilities.** Public employment is a reflection of public trust. All County employees, including all Department Heads, Elected Officials, the County Manager and the

County Attorney shall comply with all legal and ethical standards applicable to public procurement, as defined in greater detail in Article 8, to ensure public trust and shall:

- a. Perform their responsibilities impartially so as to ensure fair, competitive access to County procurement by all potential buyers and sellers;
- b. Conduct themselves in a manner that fosters public confidence in the integrity of the County's procurement practices;
- c. Avoid or disclose all conflicts of interest that would arise if an employee participated, directly or indirectly, in a procurement in which the employee, an immediate family member, or business in which the employee or a family member has a current or potential financial interest is involved; and
- d. Refuse any gratuity, kick-back or offer of employment in connection with, or having the opportunity to influence the outcome of, any decision, approval, disapproval, recommendation or preparation of any procurement or contract award.

2.7 COUNTY ATTORNEY

In addition to the authority and duties and responsibilities of a Department Head, the County Attorney is responsible for the preparation of all contract forms and required terms and conditions in accordance with applicable law, for advising the County Manager as requested, for assisting the Chief Procurement Officer and Contracts Manager on all legal issues, and for providing legal representation in all procurement protests and claims as described in Article 7.

ARTICLE 3 – THE PUBLIC PROCUREMENT PROCESS

This Article 3 sets forth how vendors are to be identified and solicited. As a general rule, all County purchases and contracts shall be procured competitively. Accordingly, this Article begins with the manner in which a Standard Purchase is to be conducted.

Both applicable law and the BOCC recognize, however, that it is not always in the County's best interest to expend the time and resources required to make a Standard Purchase. As a result, certain exceptions based upon the nature and amount of the purchase are recognized. Whenever an exception is used to identify and select a vendor, the appropriate contract file should reflect the exception utilized and how it applied to the specific circumstance.

Regardless of the manner in which the vendor is selected and regardless of the amount of the purchase, a contract with that vendor is required (see Article 6).

3.1 STANDARD PURCHASES

A Standard Purchase is any purchase with a contract requirement of \$25,000 or more. The amount of a purchase cannot be divided in an attempt to avoid being classified as a Standard Purchase.

1. **General Rule.** All Standard Purchases must be procured competitively through the appropriate solicitation process and require:
 - a. **Budget:** Only those purchases that are authorized in an approved budget will be procured. If the expenditure is not reflected in the current budget, procurement planning should incorporate the additional time required to obtain a budget supplement.
 - b. **Authorization:** Department Heads and Elected Officials are authorized to initiate Standard Purchases when the amount to be spent is within an approved budget.
 - c. **Initiation of a Standard Purchase - Specifications or Scope of Work:** A Standard Purchase is initiated when the Department or Elected Official prepares written Specifications or a written Scope of Work (defined in Article 4) and attaches it to a Purchase Requisition, along with all of the other information required to complete a Purchase Requisition, via the County's financial software system, New World Systems.
 - d. **Solicitation Standard:** Based upon the information contained in the Purchase Requisition, and in collaboration with the Department or Elected Official, the Chief Procurement Officer will identify the appropriate competitive solicitation method and contract terms and will plan, schedule, and execute the solicitation (discussed in Article 5).

- e. **Legal Review:** All contract forms will be written and approved by the County Attorney's Office and will be included in the appropriate solicitation packages. Only the Chief Procurement Officer and Contracts Manager are authorized to vary the terms of these agreements without additional legal review.
- f. **Contract Award:** Once a Qualified Vendor has been selected, the Chief Procurement Officer and requesting Department or Elected Official will negotiate a final contract document, obtain all requisite attachments and vendor signatures, and present the proposed contract to the BOCC for approval at the next available meeting.
 - i. Unless otherwise approved by the Chief Procurement Officer, no contract will be submitted for BOCC approval until it is ready for signature, should the BOCC vote to approve it.
 - ii. Any work performed in accordance with the contract prior to BOCC approval is undertaken at the Vendor's sole risk and will not be paid for if the contract is not approved.
- g. **Payment Processing:** Upon BOCC approval of a Standard Purchase contract, the Chief Procurement Officer will attach the contract documents to the existing Purchase Requisition and assign a Purchase Order Number to encumber the contract funds from the appropriate budget line item. Invoices thereafter received by the Department or Elected Official will be paid when attached to a Voucher that includes the correct Purchase Order Number and will be submitted to Accounts Payable.
- h. **Centralized Documentation and Contract Management:** The Chief Procurement Officer is responsible for maintaining a complete contract file and all required documentation on all Standard Purchases.

3.2 EXCEPTION: NO COMPETITION REQUIRED

By their very nature, as well as by statute, some purchases and contracts do not require public competition in order to select an appropriate provider. In such instances, the public competition principles of openness, fairness and reasonableness of cost are achieved through other objectively reasonable methods, including competition by other governmental entities.

1. **No Competition Required.** Expenditures to acquire or to pay for the following goods or services may be made without competition or comparison among vendors:
 - a. **Advertising** space to publish or promote County business and events in geographically appropriate or legal newspapers and publications;
 - b. **Auto Mileage and Personal Reimbursements,** which will be reimbursed to County employees in the manner determined by the County Personnel Policies and Procedures or other applicable guidelines;

- c. **Cooperative Purchases**, defined as purchases made from another contract or agreement written by another federal, state, county, city, government agency, or government cooperative for identical goods or services do not require additional competition when the agreement has been formally competed or renewed by the acquiring government within the last 12 months;
 - i. The State bid list qualifies as a source of appropriate vendors for Cooperative Purchases.
- d. **Department of Human Services** contracts for client services that are paid directly to or on behalf of DHS clients for such items as transportation, medications, medical examinations, psychological examinations, physical abuse examinations, birth certificates, drug testing, DNA testing, or other expenditures related to case services;
- e. **Education and Training Expenses** for training of County employees may be paid to organizations with public funds without requiring competition among providers;
- f. **Expert Witnesses** retained to consult with or testify on behalf of the County by the County Attorney, District Attorney, Assessor, or Sheriff or in connection with any judicial matter involving the County;
- g. **Membership Dues, Meeting Registration Fees, and Miscellaneous Travel Expenses** incurred to pay for or attend authorized functions will be paid on behalf of or reimbursed to County employees in the manner determined by the County Personnel Policies and Procedures or other applicable guidelines;
- h. **Outside Legal Counsel** or Special Prosecutor retained by the County Attorney or District Attorney;
- i. **Rent Payments** made pursuant to a properly negotiated and authorized lease agreement for equipment, buildings, vehicles, or other items;
- j. **Telephone service**, including both land lines and cell phones;
- k. **Transcripts** or other records required by the County Attorney or District Attorney;
- l. **Utility Services**, including by way of example, electrical, water, natural gas, sewer, cable, internet, trash, recycling, or similar services;
- m. **Perishable Items**, such as those required by the Public Health Department, including medicines, vaccines, and food products that have a limited useful shelf life or are time or date marked; and
- n. **Purchases directly from government units**, including federal, state, county, or other local governmental entities may be made without additional competition.

2. **Contract is still required.** Purchases of the foregoing items and services are exempt from the competition and publication requirements of public procurement but are not exempt from the requirement that the terms of the purchase must be documented in an appropriate contract.
 - a. The dollar amount of the purchase dictates the appropriate contract form and will be provided by the Contracts Manager upon submission of a Purchase Requisition that states the basis for the exemption from competition.

3.3 EXCEPTION: SIMPLIFIED PURCHASES

A Simplified Purchase is any purchase with a contract requirement of \$10,000 up to \$25,000. The amount of a purchase cannot be divided in an attempt to avoid being classified as a Simplified Purchase or a Standard Purchase.

1. **General Rule.** All Simplified Purchases must be procured competitively through the Documented Quote process and shall include the following:
 - a. **Budget:** Only those purchases that are authorized in an approved budget will be procured.
 - b. **Authorization:** Department Heads and Elected Officials are authorized to make Simplified Purchases when the amount to be spent is within an approved budget and the provisions of this § 3.3 are followed.
 - c. **Initiation of Simplified Purchase - Scope of Work or Specifications:** A Simplified Purchase is initiated when the Department or Elected Official prepares written Specifications or a written Scope of Work or Service (defined in Article 4).
 - d. **Solicitation Standard:** All Simplified Purchases are made directly by the Department or Elected Official by notifying at least three (3) Qualified Vendors of the work or service specifications and essential contract terms, reviewing the responses received within the time specified, and selecting the vendor who best meets the selection criteria.
 - i. Vendors may be notified of the specifications and terms and conditions by letter, email, telephone or in person; however, the method of contact must be documented and steps must be taken to ensure that each vendor received the same information so that all responses are based upon equivalent information.
 - e. **Documented Quote:** A Documented Quote is a written description of the actions undertaken to meet the Solicitation Standard and is to be completed by the Department or Elected Official for each Simplified Purchase. Vendor invoices will

not be approved for payment in the absence of a Documented Quote that includes the following:

- i. A copy of the Scope of Work and additional information provided to the vendors contacted; and
 - ii. The names and addresses of each vendor to whom the information was provided; and
 - iii. A copy (or summary if communicated verbally) of each vendor response received; and
 - iv. The reason(s) the successful bidder was selected.
- f. **Contract Award.** The Department or Elected Official shall negotiate the final contract with the selected vendor using an appropriate County form and shall obtain all required attachments.
- i. The Contracts Manager is available to assist in confirming the proper form.
 - ii. Only the Contracts Manager is authorized to vary the terms of the approved contract forms.
- g. **Commencement of Work:** No work shall be performed until the contract, and all appropriate attachments, are signed by all parties.
- h. **Payment Processing:** No invoice can be paid until the Department or Elected Official attaches both a completed Documented Quote form and a signed contract with all attachments to a Purchase Requisition via New World Systems. Upon receipt of a completed Purchase Requisition, the Chief Procurement Officer will assign a Purchase Order Number to encumber the contract funds from the appropriate budget line item. Invoices thereafter received by the Department or Elected Official will be paid when attached to a Voucher submitted to Accounts Payable that includes the correct Purchase Order Number.
- i. Ideally, the Purchase Requisition will be submitted prior to commencement of work but in any event must be submitted prior to receipt of any vendor invoice.
 - ii. No invoice can be paid without a Purchase Order Number; no Purchase Order Number can be assigned without a completed Purchase Requisition.
- i. **Decentralized Documentation and Contract:** The Department or Elected Official is responsible for ensuring that documentation, including the Documented Quote and signed contract for all Simplified Purchases, is added to New World Systems.

2. **Exception Does Not Apply.** By state statute, certain purchases do not qualify for an exception to the Standard Purchase process and, therefore, regardless of the cost of the requirement must be purchased in accordance with §3.3. These purchases include “contracts for work on county highways” and “stationery supplies”, which are discussed below in § 3.9.
3. **Procurement Department Assistance.** Any Department representative, Elected Official, or County employee who desires assistance for any purchase, regardless of type or cost, is encouraged to contact the Procurement Department.

3.4 EXCEPTION: SMALL PURCHASES

A Small Purchase is any purchase with a contract requirement of less than \$10,000. The amount of a purchase cannot be divided in an attempt to qualify as a Small Purchase.³

1. **General Rule.** Small Purchases may be made on the open market without public notice or competitive quotes when the price paid is objectively consistent with the price that would be paid by a member of the general public and require:
 - a. **Budget:** Only those purchases that are authorized in an approved budget will be procured.
 - b. **Authorization:** Department Heads and Elected Officials are authorized to make Small Purchases when the amount to be spent is within an approved budget.
 - c. **Scope of Work or Specifications:** No written Scope of Work is required.
 - d. **Solicitation Standard:** Each Department Head or Elected Official is responsible for defining the standard by which the Department or Elected Official will demonstrate that the method by which the vendor selected for a Small Purchase contract follows the principles of objective fairness, cost reasonableness and best use of public funds.
 - i. Appropriation solicitation standards could include evidence that price comparisons were conducted or evidence of what a member of the general public would pay when purchasing a like good or service, such as an internet price sheet, a catalog price list, or newspaper advertisement.
 - e. **Contract Award:** Each Department Head or Elected Official is responsible for ensuring that all purchases are properly documented and signed.

³ Colo. Rev. Stat. § 24-103-24

- i. Form terms and conditions for Small Purchases of goods and services approved by the County Attorney’s Office should be sufficient to document a majority of Small Purchase agreements.
 - ii. Examples of additional acceptable contract forms for Small Purchases include: a vendor invoice, purchase order, proof of purchase, P-Card statement, inventory list, or vendor contract form.
 - f. **Payment Processing:** No Purchase Requisition or Purchase Order Number is required for payment of Small Purchase contracts as long as the annual payment to a vendor is less than \$10,000. Invoices for payment should be attached to a Voucher and submitted to Accounts Payable.
 - i. The Procurement Department is not involved in processing payment of Small Purchase contracts; it does, however, monitor such payments and will notify the Department or Elected Official if a payment history suggests that the Small Purchase criteria no longer apply.
 - g. **Decentralized Documentation and Contract Management:** The Department or Elected Official is responsible for retaining documentation sufficient to establish that the price paid was fair and reasonable.
2. **Exception Does Not Apply.** By state statute, certain purchases do not qualify for an exception to the Standard Purchase process and, therefore, regardless of the cost of the requirement must be purchased in accordance with §3.3. These purchases include “contracts for work on county highways” and “stationery supplies,” which are discussed below in § 3.9.
 3. **Procurement Department Assistance.** Any Department representative, Elected Official, or County employee who desires assistance for any purchase, regardless of type or cost, is encouraged to contact the Procurement Department.

3.5 EXCEPTION: SOLE SOURCE PURCHASE

A Sole Source Purchase is any purchase of a good or service with a contract requirement of \$10,000 or more that does not meet the competitive solicitation standards of either a Simplified Purchase or a Standard Purchase, and includes any contract amendment or extension outside the terms of the original solicitation and contract.

1. **General Rule.** A Sole Source Purchase is permissible when a requirement is available only from a single supplier and the County Manager approves the Sole Source Justification.
 - a. **Budget:** Only those purchases that are authorized in an approved budget will be procured.

- b. **Authorization:** Department Heads and Elected Officials are authorized to make Sole Source Purchases when the amount to be spent is within an approved budget, a written Sole Source Justification is prepared, and the Sole Source Justification is approved by the County Manager.
 - c. **Scope of Work or Specifications:** A written Scope of Work or Specifications is required in order to complete the mandatory Sole Source Justification form.
 - d. **Solicitation Standard – Sole Source Justification:** The standard by which the fairness and cost efficiency of a Sole Source Purchase is determined shall be set forth in a written Sole Source Justification form, signed by the Department Head or Elected Official, that includes:
 - i. A description of the Scope of Work or Specifications sought;
 - ii. An explanation of why no other supplier will be suitable or acceptable to meet the need;
 - iii. An explanation of how cost reasonableness was determined; and
 - iv. The County Manager’s signature.
 - e. **Documentation and Contract:** The Department Head or Elected Official is responsible for maintaining documentation when the amount spent is less than \$25,000. The Chief Procurement Officer is responsible for maintaining the documentation when the amount spent is \$25,000 and above.
 - f. **Contract Award:** The appropriate approved contract form, determined by the contract type and amount, shall be used to document all Sole Source Purchases.
 - i. No Sole Source Purchases shall be presented to the BOCC for consideration until the contract is signed by the vendor and all requisite exhibits are attached.
 - g. **Payment Processing:** Payment of invoices submitted for Sole Source Purchases are processed in the same manner as payments for Standard Purchases when the contract is \$25,000 or more (§ 3.1(1)(g)), and as payments for Simplified Purchases when the contract is less than \$25,000 (§ 3.3(1)(h)). Instead of a Documented Quote, however, and for both Standard and Simplified Purchases, the Sole Source Justification must be attached to the Purchase Requisition.
2. **Application of Rule.** Sole Source refers to the supplier, not the product or service. Justification for a Sole Source Purchase depends upon a needed item or service being available from only a single supplier under the prevailing conditions.

- a. Examples of circumstances that could necessitate a Sole Source Procurement include:
 - The purchase of technical equipment for which there is no competitive product and which is available only from one supplier;
 - The purchase of professional services from a vendor, who is uniquely qualified to provide such services;
 - The purchase of a component or replacement part for which there is no commercially available product and which can be obtained only from the manufacturer;
 - The purchase of an item where compatibility is the overriding consideration;
 - The purchase of a used item which becomes immediately available and is subject to prior sale;
 - The purchase of a particular product for a trial or testing;
 - The use of other than Original Equipment Manufacturer (OEM) parts would void a still valid warranty;
 - The purchase of a product/service from a vendor who has been awarded a contract by another governmental entity and who allows its product/service to be purchased by other governmental agencies from that contract.

- b. Examples of circumstances that do not necessitate a Sole Source Procurement include:
 - Whenever the item or service may be obtained from more than one source;
 - The vendor has provided excellent service or products in the past;
 - The vendor is familiar with the County's preferred practices;
 - No other vendor can do the job as well;
 - There is insufficient time to vet the credentials of any other vendor.

3. **BOCC Quarterly Report.** The Chief Procurement Officer shall maintain a list of all Sole Source Purchase contracts and shall provide an updated listing of such contracts, regardless of dollar amount, in a quarterly report to the BOCC.

3.6 EXCEPTION: EMERGENCY PURCHASES

An Emergency Purchase is a purchase made in response to a condition that creates a threat to public health, welfare, or safety such as may arise by reason of flood, epidemic, riot, equipment failure, or other such reason as may be proclaimed by the Governor, BOCC, Sheriff, or County Manager as provided, and creates an immediate and serious need for supplies or services.

1. General Rules.

- a. **Garfield County Sheriff:** In accordance with BOCC Resolution 08-114, contracts and agreements less than \$100,000, whose purpose is to provide emergency response to both natural and manmade emergencies, including but not limited to fires, motor vehicle accidents, rail accidents, airplane accidents, floods, avalanches,

hazardous spills or contamination, earthquakes, industrial or residential fires, and law enforcement activities that require a regional response, may be authorized by the Garfield County Sheriff without other approval so long as sufficient budgeted and appropriated funds are available in the Emergency Response line item of the Emergency Management Department.

- b. **Department Heads and Elected Officials:** Notwithstanding any other provision of this Code, Department Heads and Elected Officials may make, or authorize others to make, emergency purchases of products, services, or construction items within the scope of their purchasing authority and with budgeted and appropriated Department or Elected Official funds when a threat to public health, welfare, or safety exists and the need cannot be met through normal procurement methods.
 - i. The individual authorizing the Emergency Purchase shall inform the County Manager and the Chief Procurement Officer of the Emergency Purchase no later than the first working day following the purchase.
- c. **County Manager:** When the next regularly scheduled BOCC meeting is not in time to address an emergency situation or the functioning and operation of a County Department would be seriously hampered or delayed through use of the otherwise applicable procurement process, the County Manager may authorize an Emergency Purchase up to \$50,000 without additional approval so long as sufficient budgeted and appropriated funds are available in the appropriate line item.
 - i. Any such Emergency Purchase must be placed on the next regularly scheduled BOCC meeting agenda for ratification or termination by the BOCC.
 - ii. If the BOCC terminates the Emergency Purchase, the value of all goods or services received in the interim and any reasonable close-out expenses shall be paid in full.
- d. **Limitations on Purchase:** An Emergency Purchase shall be limited only to a quantity of those supplies, equipment, materials, or services necessary to meet the emergency.
- e. **Review of Emergency:** If the follow-up review of an Emergency Purchase indicates that the purchase was not an emergency, the purchase may be disallowed for payment.

3.7 ADDITIONAL APPROVALS REQUIRED

Certain purchases are of such a nature that the County's need and ability to properly use the item or service purchased should be evaluated by the appropriate Department Head prior to purchase. In such instances, regardless of the procurement method followed above, signature approval of the appropriate Department Head shall be obtained prior to solicitation. This approval indicates that the purchase is compatible with but not duplicative of existing County resources.

Additional Department Head purchase approval is required in the following instances:

1. **Technology Purchases**, including computer hardware, copy machines, and software, regardless of price, must be approved by the appropriate representative of the County's Information Technology Department prior to solicitation. The IT representative will review each request to determine all systems issues, including compatibility, support, architectural standards, and implementation and integration capabilities. When no systemic issues are presented, the IT representative's approval should be reflected in the Purchase Requisition.
2. **Professional Services involving County facilities** such as utilities service, remote communications, custodial service, repair and maintenance, and remodeling and changes to offices and work areas, including design and construction, must include the signature approval of the Director of Public Works and Facilities, regardless of price.
3. **Purchases of Insurance Coverage** must include signature approval of the County Manager or appropriate designee depending on insurance type, regardless of price.
4. **Retention of Outside Legal Services** must include signature approval of the County Attorney.

3.8 STATUTORY PURCHASES

Colorado statutes dictate the solicitation and purchasing requirements in the following specific instances:

1. **Contracts for Work on County Highways - Colo. Rev. Stat. § 43-2-209.**
 - a. **Less than \$5,000:** When the BOCC desires to let out any work on the County highways by contract, it may advertise in a legal newspaper in the County or post a notice in the County courthouse for a period of not less than 10 days before the contract is let, for sealed proposals for performing the work.
 - b. **\$5,000 or More:** When a contract for work on highways involves the expenditure of five thousand (\$5,000) or more, the BOCC shall advertise in a newspaper unless such advertisement, in the judgment of the BOCC would be detrimental to the immediate preservation of the public peace, health, and safety.
 - c. **Advertisement:** Such advertisement shall describe the work to be done and its location and identify the person holding the plans and specifications.
 - d. **Contract Award:** Such contract shall be awarded to the lowest responsible bidder, the BOCC reserving the right to reject any bids proffered.
2. **Bids on Supplies – Colo. Rev. Stat. §§ 30-11-109 to 30-11-112.** It is the duty of the BOCC to cause at least one advertisement to be inserted in the Elected Official newspaper of

Garfield County, under the heading of “stationery proposals”, asking for bids for the supplying, for one year, of all books, stationery, records, printing, lithographing, and such other supplies, specifically mentioning and describing them, as are furnished to the several officers of the county:

- a. The advertisement must be published not less than twenty or more than forty days prior to the opening of such bids. Such advertisement may be made in conjunction with any other county or the state.
- b. In-state stationery suppliers, as defined in C.R.S. § 30-11-110, shall be preferred over out-of-state suppliers when the net cost does not exceed the cost of procurement and delivery from out of state.
- c. Contracts for the procurement of stationery supplies shall not be made for more than one (1) year.
- d. No county officer is authorized to purchase any of the stationery supplies provided for in these statutes.

3.9 DISPOSAL OF COUNTY PROPERTY

This procedure shall be used for disposing of all County-owned supplies and equipment, except for property seized by the Sheriff's Office or property that has come into the possession of the Sheriff's Office.

1. **Authority.** Department Heads and Elected Officials have the authority to deem property to be surplus, with the exception of computer and computer-related equipment, which can be declared as surplus only by an approved representative of the IT Department. The Chief Procurement Officer shall have the authority to determine the disposition of all surplus property.
2. **Approved Dispositions.** When surplus property cannot be sold to a bona-fide third party for value, approved dispositions, in the order of priority, include:
 - a. The exchange or trade-in of supplies as part or full payment for the procurement of new supplies.
 - b. The transfer of property no longer needed by one County Department or Elected Official to another Department or Elected Official. Surplus County property shall first be offered to other County departments via email. The property will be distributed on a first come, first served basis.
 - c. The transfer of property no longer needed by any County Department or Elected Official to another governmental agency.

- d. The transfer of property no longer needed by any County Department or Elected Official to a non-profit entity serving local needs, including any recipients of Human Service Commission awards or other non-profit agencies who have applied for County assistance.
 - e. The sale of supplies that cannot be used by any Department or Elected Official.
 - f. The sale at salvage value of any supplies that cannot be used by any Department or Elected Official and that have been determined to have no value to the County or the public.
3. **Prohibited Dispositions.** County employees and their immediate family members are prohibited from purchasing surplus property, unless such purchases are made at a public auction.
4. **BOCC Approval.** With the approval of the BOCC, the Chief Procurement Officer may sell, transfer, or convey any personal property, vehicles, or equipment, or supplies to another government entity if that property is no longer needed for use by any County department or office.
5. **Manner of Sale.**
- a. **Sales under \$2,000:** A total sale (representing a single transaction of one or more items) estimated to be under \$2,000 should be made by informal procedures calculated to achieve the maximum financial benefit to Garfield County.
 - b. **Sales of \$2,000 or more:** A total sale (representing a single transaction of one or more items) of surplus property in estimated amounts of \$2,000 or more shall be formally advertised, sealed bids shall be taken, and the bids received shall be submitted to the Chief Procurement Officer for award. Sale by public auction may be used in lieu of sealed bids.
 - i. Garfield County employees may submit sealed bids and may bid on surplus property at public auction.
 - ii. If no monetary offers are received in the form of sealed bids or bids at public auction, the Chief Procurement Officer may negotiate a sale. County employees may not procure any surplus County property through a negotiated sale of any type
6. **Returns:** Nothing contained in this Code shall be construed to prohibit the return of unused supplies, which are surplus to the requirements of the County. Unused supplies may be returned to the original supplier with or without a restocking fee if this method of disposal will result in higher benefit to the County.

7. **Refunds.** Funds received from the sale of surplus property will be credited back to the same fund from which its original purchase originated.

ARTICLE 4 – SPECIFICATIONS AND SCOPES OF WORK

As discussed in Article 3, all Standard, Simplified, and Sole Source Purchases begin with written Specifications or a written Scope of Work (“SoW”). The importance of these documents to the quality of the procurement process, the eventual contract and, most important, the final result cannot be overstated.

4.1 GENERAL GUIDELINES

1. Importance of Specifications and Scopes of Work.

- a. From a contractual standpoint, the Specifications/SoW serves as one of, if not the most important contract component. It is attached to and incorporated into the contract as an exhibit. It, more than any other contract term, establishes the expectations of the relationship and is often the determining factor in resolving disputes over what work is or is not included in project.
- b. From the County’s perspective, the Specifications/SoW serves as the guideline for acquisition planning, selection of the appropriate solicitation method, identification of the correct contract terms, and ultimately, dictates the quality of the final result.
- c. From a potential vendor’s perspective, the Specifications/SoW serves as the basis upon which to plan and prepare a responsive bid or proposal. It communicates the nature and scope of the work to be done so that the responsive bid or proposal can be specifically and appropriately tailored.
- d. From a practical standpoint, the Specifications/SoW is required to initiate the County’s internal acquisition planning process, which begins with a Purchase Requisition to which the Specifications/SoW must be attached, and concludes with the Department’s or Office’s ability to pay a vendor’s invoice.

2. Differences between Specifications and Scopes of Work.

- a. **Scope of Work:** As addressed in § 4.2, a SoW is a written description of the result that the County seeks to achieve upon contract completion. A SoW describes “what” needs to be accomplished by the successful vendor as opposed to “how” the successful vendor shall do the work. In very broad terms, a SoW is used in connection with a Request for Proposals, discussed in § 5.3.
- b. **Specifications:** As addressed in § 4.3, Specifications emphasize the functional or performance criteria required to meet the County’s needs, such as specific quantities, qualities, materials, and the like. In very broad terms, Specifications are used in connection with an Invitation for Bids, where contract award is determined solely on the basis of the lowest responsive and responsible bid offer, as discussed in § 5.2.

3. **Maximum Practicable Competition:** Each Specification/SoW shall be prepared and drafted in a manner to ensure maximum practicable competition, promote overall economy for the purpose intended, and to encourage competition in satisfying the County's requirements, and shall not be overly restrictive.
4. **Preparation:** The Department Head, Elected Official, or an appropriate designee is responsible for preparing the Specifications/SoW. The Procurement Department will work with Departments and Offices to ensure each Specification/SoW is as thorough and accurate as possible.
 - a. **Capital Projects.** In the case of Specifications for capital projects, the Chief Procurement Officer, in collaboration with the Department, determines whether or not the specifications shall be prepared internally or by contract with an architect/engineering consultant.
 - b. **Vendor Assistance.** Obtaining vendor assistance to write Specifications/SoW is not common practice and should be avoided when possible because it may inhibit competition. If a vendor is involved in writing one of these documents, the vendor should be paid for the service and prohibited from submitting a bid or proposal in response to the solicitation.
 - i. The Chief Procurement Officer may allow the vendor to submit a bid or proposal if it is in the best interest of the County. If an exception is made and the vendor is allowed to bid, its role in preparing the specifications shall be disclosed to other vendors as part of the solicitation documents.

4.2 SCOPE OF WORK

A SoW is a written description of the required goods or service stated in terms of the result to be achieved. It describes "what" needs to be accomplished as opposed to "how" to do the work and is the key document in a Request for Proposals, discussed in § 5.3, and the resulting contract.

1. **Purpose of a SoW.** The purpose of a SOW is to provide potential vendors with a clear, accurate, and complete description of the work to be performed, including inspections, test and acceptance, quality, support services required, critical time line definitions, data and documentation desired, maintenance, and other necessary requirements.
2. **Elements of a SoW.** Every SoW should be expressly tailored for each specific requirement. There are, however, several common elements that should be addressed whenever applicable:
 - a. **The Work:** Describe the work sought, including any work plan, required deliverables, milestones, performance standards, and due dates.

- b. **Period of Performance:** List the start and end date for the entire project as well as any other scheduling requirements.
- c. **Physical Location:** Identify or describe where the work will be performed. If the place of performance is at a specific address, identify it.
- d. **Supplies and Equipment:** List the supplies and equipment that will be required, used, and/or provided.
- e. **Payment Rate:** Identify how the payment rate for the good or service will be determined; for example, by job, month, day or hour.
- f. **Acceptance Criteria:** State the criteria the County representative(s) will use to determine if the product or service is acceptable.
- g. **Special Requirements:** Identify any special requirements that are required to successfully perform or complete the work, including for example, any anticipated or allowable price increase over the term of the contract, any special hardware or software, specific degrees or certifications, travel requirements, delivery expectations, or any other need not covered by the contract that are necessary to the success of the project.

4.3 SPECIFICATIONS

Specifications emphasize functional or performance criteria while limiting design or other detailed physical descriptions to those necessary to meet the County's needs. Specifications provide the information critical to an Invitation for Bids, discussed in § 5.2, and the resulting contract.

1. **Purpose of Specifications.** The purpose of Specifications is to serve as a basis for obtaining a supply item or service that is adequate and suitable to meet the County's needs in a cost effective manner, taking into account, to the extent practicable, the costs of ownership and operation as well as initial acquisition costs.
2. **Form of Specifications.** Specifications shall be clear and accurate descriptions with sufficient detail to provide for suitable purchases, without being unduly restrictive, and shall include, where applicable:
 - a. Functions and standards characteristics;
 - b. Materials and methods descriptions;
 - c. Preparation for shipment, delivery point;
 - d. Quality assurance and acceptance tests;
 - e. Warranties and service support requirements;

- f. Product, supply and service specifications.
3. **Preference for Commercially Available Products.** To the extent practicable, preference shall be given to procurement of standard commercial products. In developing Specifications, accepted commercial standards should be used and unique requirements should be avoided.
4. **Brand Name or Equal Specifications – Conditions for Use.** “Brand name or equal” specifications may be used when the item to be procured is best described by the use of such a specification and when the Chief Procurement Officer, through acquisition planning, determines that it is in the best interest of the County.
- a. “Brand name or equal” specifications shall seek to designate as many different brands or “as equal” references as are practicable, and shall further state any substantially equivalent products that will be considered for award.
 - b. Where a “brand name or equal specification” is used in a solicitation, the solicitation shall contain explanatory language that the use of a brand name is for the purpose of describing the standard of quality, performance, and characteristics desired and is not intended to limit or restrict competition.
5. **Brand Name Specifications – Conditions for Use.** Since use of a brand name specification is restrictive, it may be used only when the brand name or items will satisfy the Department’s or Office’s needs and the Chief Procurement Officer determines in writing that:
- a. No other design or performance specification or qualified products list is available;
 - b. Time does not permit the preparation of another form of product description, not including a brand name specification;
 - c. The nature of the product or the nature of the County’s requirements makes use of a brand name specification suitable for the procurement;
 - d. Use of a brand name is in the County's best interest due to such concerns as standardization or compatibility with existing products used by other Departments or Elected Officials; or
 - i. “Brand name” only specifications should not be confused with the situation that arises if only one source can supply the requirement. When only one source can supply the requirement, the procurement shall be made under the Sole Source Purchase policy set forth in § 3.5.
 - e. Where a brand name specification is used in a solicitation, the solicitation shall contain explanatory language that the use of a brand name is for the purpose of

describing the standard of quality, performance, and characteristics desired and is not intended to limit or restrict competition.

ARTICLE 5 - METHODS OF COMPETITIVE SOURCE SELECTION

This Article describes the appropriate methods of Competitive Source Selection for Standard Purchases, defined in § 3.1 as all purchases with a contract requirement \$25,000 and above. The provisions of this Article do not apply to the source selection methods applicable to Simplified Purchase solicitations, defined in § 3.3 as purchases with a contract requirement of \$10,000 up to \$25,000, or Small Purchase solicitations, defined in § 3.4 as purchases with a contract requirement less than \$10,000.

5.1 BID PREFERENCE - GARFIELD COUNTY RESIDENT BUSINESS

1. **BOCC Intent.** By Resolution 2011-21, the BOCC expressed its intent to utilize the goods and services provided by “Local Business” whenever possible so long as selection of a Local Business over a non-Local Business does not result in a significant increase in cost to the County. The Board intends to encourage creation of jobs in the County and to give Local Businesses an advantage in the formal competitive solicitation and procurement process (i.e. Standard Purchase solicitation) so that monies spent through that process shall be used by the employees of Local Businesses in the local economy.

2. **Preference Authorized.** Whenever an award of a contract for goods or services is pending following a Standard Purchase solicitation, a Local Business, as defined below, shall be allowed a preference against a non-Local Business as defined in this section.

3. **Definitions.**

- a. “Headquarters” is the principal place of business where most, if not all of the important functions of a Local Business are coordinated and regularly conducted. The location is leased or owned, contains all or a majority of the following: organizational governance (such as CEO, partner, CFO, managers), warehousing operations, location of seventy-five percent (75%) of its employees, or materials and supplies are purchased within the County.
- b. “Local Business” is:
 - i. Any organization, corporation, limited liability company, or other form of business entity; partnership of any kind or sole proprietorship; or group of associated individuals whether profit or non-profit, which is registered and in good standing with the Office of Secretary of State, State of Colorado, and maintains its headquarters in Garfield County, Colorado; and
 - ii. At least seventy-five percent (75%) of its work force resides within the County. If subcontract work is involved, then at least seventy-five percent (75%) of the aggregate contract amount must be completed by Local Businesses and subcontractors who meet the Local Business criteria of

having at least seventy-five percent (75%) of its work force residing in the County; and

- iii. At least seventy-five percent (75%) of its business vehicles or its subcontractor business vehicles are registered in Garfield County, Colorado.
- iv. If a joint venture or teaming arrangement, including design-build construction, the general or primary contractor or team leader must meet the terms of this definition above.

4. Designation as a Local Business.

- a. Prior to submitting a bid or proposal in response to a competitive solicitation, any business that desires to obtain a Local Business designation shall apply for that designation by submitting a written request for that designation to the Procurement Department. The written request shall be in the form of a Local Business Affidavit and supported with sufficient documentation to allow the Procurement Department to review and either approve or deny that written request.
- b. The Procurement Department may grant a Local Business designation to a business if that business satisfies the above criteria.
- c. If the Procurement Department denies a request for a Local Business designation, the business may appeal the decision in writing to the BOCC within seven (7) calendar days of receipt of that decision. The decision of the BOCC on this issue is final.

5. General Requirements for Use. The Procurement Department shall consider all of the following factors to determine if a local preference should be granted:

- a. The respective bid or proposal amounts shall be considered. A preference may be given to a Local Business when there are no material differences between the fit, form, function, qualifications, or value of the goods to be purchased or the services to be performed by the respective bidders or offerors.
- b. The magnitude of the price differences between the Local and non-Local Business shall be considered.
- c. When evaluation of a competitive solicitation process results in a determination that the respective bids or proposals are essentially equal in value, under no circumstances shall a Local Business Preference be granted where any of the following factors apply: (i) the quoted price offered by a Local Business is more than five percent (5%) above the quoted price of a non-Local Business; or (ii) the award of a contract to a Local Business at a higher price will result in the County exceeding its budgeted appropriation for that contract award.

6. **Local Preference – Invitations for Bids: Specific Requirements for Use.** If the Procurement Department determines that a submitted bid is from a responsible and responsive bidder and that the business submitting the bid meets all criteria for a local preference, then that Local Business shall be given a five percent (5%) price preference over a non-Local Business. If within the five percent (5%) price preference, the award shall be made to the Local Business. If the two (2) lowest responsible and responsive bidders both have Local Business designation, then the lowest responsible and responsive bidder shall be awarded the contract.

7. **Local Preference – Requests for Proposals: Specific Requirements for Use.** If the Procurement Department determines that factors other than price are important for a proposal, the award will be issued on a “best value” basis. Any Local Business will receive a 5% scoring advantage during the initial evaluation to determine the competitive range. After applying the initial criteria, Local Business(es) shall not be given any additional preference. The offeror within the competitive range that provides the best value for or to the County shall be awarded the contract, consistent with the purposes of this Code.

8. **No Preference Given in Certain Circumstances.** No preference shall be given under this section if the Procurement Department determines that awarding a contract in compliance with the preference provisions of this rule: (1) may cause a denial of state or federal money that would otherwise be available; (2) may otherwise be inconsistent with any applicable requirement(s) of state law or the purposes of this Code; (3) may cause delay(s) in a procurement action that would compromise the public health, safety, or welfare, then the resident preference authorized by this rule shall be suspended; (4) is redundant, as it would be in the case of a sole source procurement, defined in Section 3.5, or cooperative procurement, defined in Section 3.2(1)(c) of this Code; or (5) is in direct conflict with Federal Grant or Contract Competition Procedures.

9. **Notice.** Every formal Invitation for Bid, defined in § 5.2 (“IFB”), and Request for Proposal, defined in § 5.3 (“RFP”), shall reference this Local Business preference rule and the procedure that must be followed to timely receive a designation as a Local Business. However, if an IFB or RFP results in a rejection of all bids or proposals and no local bids or proposals were received, then this Local Business preference rule shall not apply to any re-issued IFB or RFP for the same goods or services.

10. **Timing.** In no event shall a business be qualified to have the Local Business designation applied to a competitive solicitation unless the Local Business Affidavit has been submitted in writing ten (10) days prior to the due date of the RFP or IFB. Except where expressly authorized by other provisions of this Code, a Local Business may not submit any type of revised bid or proposal in order to take advantage of any of the provisions in this section 5.1.

11. **Challenge.** Any person who has been adversely affected in a competitive solicitation process by the designation of a business as a Local Business may file a written protest with the Procurement Department within seven (7) calendar days of the date that person knew or should have known of the adverse effect. The written protest must set forth with specificity facts supporting the allegation that the business should not receive a Local Business designation. The

Procurement Department shall investigate the allegations and make a recommendation to the BOCC.

12. **Remedies.** If the BOCC determines that a business has erroneously been given a Local Business preference designation, the business shall be assessed a monetary amount equal to the same monetary amount that resulted from application of this Rule. If the BOCC determines that a business knowingly submitted false information to obtain a Local Business designation, then in addition to the above monetary assessment, that business shall be suspended from bidding on other County procurement for a period of one (1) year from the date of the determination.

5.2 INVITATION FOR BIDS

An Invitation for Bids (IFB) is the formal process used to solicit bids from qualified vendors for merchandise and, in some cases for services, when complete specifications or specific purchase descriptions are available. The contract is awarded to the lowest responsive and responsible bidder.

1. **General Rule.** An IFB shall be used to solicit bids for all purchases of \$25,000 or more when complete specifications or purchase descriptions are available. Award of the contract is made to the lowest responsive and responsible bidder. The specifications for the items to be procured are not subject to negotiation.
2. **Requirements of an IFB.** In consultation with the responsible Department or Elected Official, the Chief Procurement Officer will prepare and publish an IFB solicitation package that shall include, at a minimum:
 - a. Instructions and information to bidders concerning the bid submission requirements, including the time and closing date and the address of the office to which bids are to be delivered;
 - b. The project description (furnished by the Department or Office), including the Specifications and/or SoW and all drawings;
 - c. The basis of award, delivery, or performance schedule, and inspection and acceptance requirements;
 - d. The required contract terms and conditions, including any warranty and bonding or security requirements or liquidated damage provisions as applicable; and
 - e. A list of all applicable deadlines.
3. **Public Notice - Advertisement.** Public notice of the opportunity to bid is required for any procurement utilizing the IFB process. Public notice shall be adequate if it meets the following criteria:

- a. Advertisement of the opportunity to bid in a newspaper(s) of relevant geographic circulation or other publication(s) directed to the target vendor market;
 - b. Publicizing the bid opportunity, as well as the date, time, and place of the bid opening;
 - c. At least once weekly on two (2) occasions; and
 - d. No less than fourteen (14) days prior to the date set for the bid opening.
4. **Communication.** Once an IFB is made public, and through the time of contract award, all communication regarding the invitation shall be documented and directed to the Chief Procurement Officer. No other discussion of the bid opportunity shall be discussed with a potential bidder by any other County employee.
5. **Receipt of Bids.** The time and date for receipt of bids shall be included in the IFB and must state the specific time on a certain date. All official bids shall be unconditionally received without alteration or correction, except as specifically authorized elsewhere in this Code. Upon receipt, each bid shall be date/time-stamped by machine or hand and shall be stored in a secure place until bid opening time. Bids shall not be opened upon receipt.
6. **Withdrawal of Bids.** Withdrawal of bids by a vendor may be permitted up to the time of award if the bidder provides a written request to withdraw a bid and/or submits written proof that clearly and convincingly demonstrates that an error was made.
7. **Amendments or Cancellation of an IFB.** The Chief Procurement Officer, in collaboration with the County Manager, may amend or cancel an IFB or reject a solicitation response by a vendor in whole or in part, as specified in the solicitation, when it is in the best interest of the County. Each solicitation issued by the County shall state that the solicitation may be amended or cancelled and that any vendor response to a solicitation issued by the County may be rejected in whole or in part when in the best interest of the County.
8. **Bid Opening.** Vendor bids shall be publicly opened in the presence of one or more witnesses at the time and place designated in the bid document. The name of the bidder and amount of each bid, and any other information deemed relevant by the Chief Procurement Officer or designee, shall be read aloud and recorded. This bid record, including each bid received, will become a public record upon contract award. Since each bid is subject to analysis, legal review, and appropriate approvals prior to contract award, no acceptance of any bid offer will take place at the bid opening.
9. **Bid Evaluation.** Bids shall be evaluated based on the requirements set forth in the solicitation package. Prior to confirmation of an award, the Chief Procurement Officer may contact potential vendors responding to the bid request for the purpose of obtaining clarification to assure a full understanding of, and conformance to, the solicitation requirements. Any questions or concerns regarding cost reasonableness may be addressed

by the Chief Procurement Officer in the manner deemed to be in the best interest of the County.

10. **Budget.** In the event that all bids received exceed the funds budgeted for the acquisition, the County is not required to award a contract. If, however, time or economic considerations preclude the re-solicitation of bids, the Chief Procurement Officer is authorized to negotiate an adjustment of the bid price with the lowest responsive and responsible bidder.
11. **Determination of Non-Responsibility.** If a bidder who otherwise would have been awarded a contract is found not responsible, the Chief Procurement Officer shall prepare a written determination of non-responsibility, setting forth the basis of the finding. A copy of the determination shall be sent promptly to the non-responsible bidder. The final determination shall be made part of the contract file and be made a public record.
12. **Award.** A recommendation to the BOCC that it award a contract to the lowest responsive and responsible bidder whose bid meets the requirements and criterion set forth in the IFB and is determined to be in the best interest of the County shall be made by the Chief Procurement Officer and Department Head or Elected Official with reasonable promptness. Upon BOCC approval, notice of award is sent to the successful bidder, along with all documents required to finalize the contract terms.

5.3 REQUEST FOR PROPOSALS

A Request for Proposals (RFP) is the formal process used to solicit proposals from qualified vendors for services, and in some cases for goods, when the specification is a desired outcome rather than a measurable task or item.

1. **General Rule.** An RFP is used to solicit proposals from potential vendors when a desired outcome is known and recommendations about how to achieve that outcome are requested. Award of the contract is based upon criteria other than or in addition to price, including what is in the best interest of the County. The terms of the proposals upon submission are open to negotiation. The response to an RFP is referred to as both “a proposal” and “an offer”.
2. **Requirements of an RFP.** The Chief Procurement Officer will prepare and publish an RFP solicitation package in consultation with the responsible Department Head or Elected Official, and shall include, at a minimum:
 - a. Instructions and information to the proposer concerning proposal submission requirements;
 - b. A copy of the proposed contract and all required clauses and attachments;
 - c. Accurate and thorough description (prepared by the Department or Office) of the Specifications or SoW;

- d. The evaluation factors and their relevant importance; and
 - e. A schedule of all deadlines and key dates.
3. **When an RFP is Practical.** The RFP process is a time consuming and costly method of procurement that should be used only when sealed bidding is not appropriate.

Factors that may be helpful in deciding whether the RFP method is practical include:

- The estimated contract value is more than \$25,000;
 - The requirement is highly technical, unusual, is not a standard “off the shelf” item, or there are little or no clear standards or specifications available to use in the solicitation;
 - The terms of contract require that payment be other than a fixed-price;
 - It is desired or necessary to conduct oral or written discussions with the offerors concerning technical and price aspects of their proposals;
 - It may be necessary to afford offerors the opportunity to revise their proposals;
 - It may be necessary to base award on a comparative evaluation of price, quality and contractual factors in order to determine the most advantageous offering to the County; or
 - The primary considerations for award are factors other than price.
4. **When an RFP is Advantageous.** Factors that may be helpful in determining whether the RFP method is advantageous include:
- If prior procurements indicate that competitive sealed proposals result in more beneficial contracts for the County; and
 - If the requirement is highly technical or complex in nature and it would be more advantageous to the County to use the RFP method of source selection.
5. **Public Notice and Preparation Time.** Public notice of the opportunity to submit proposals is required for any procurement utilizing the RFP process. Public notice shall be considered adequate if it meets the following criteria:
- a. Advertisement of the opportunity to bid in a newspaper(s) of relevant geographic circulation or other publication(s) directed to the target vendor market;
 - b. Publicizing the proposal opportunity, as well as the deadline, including date, time and location, for receipt of proposals;
 - c. At least once weekly on two (2) occasions; and
 - d. No less than thirty (30) days prior to the submission deadline, unless, the Chief Procurement Officer determines that the complexity of the proposal requires that

more or less notice by publication is appropriate. Under no circumstances will the publication period be less than 21 calendar days.

6. **Receipt of Proposals.** The time and date for receipt of proposals shall be included in the RFP and must state the specific time on a certain date. Proposals received after the specific time on a certain date will be considered late and not accepted. **Proposals will not be opened publicly.**
7. **Modification or Withdrawal of Proposals.** Proposals may be modified or withdrawn by any offeror prior to the established due date and time.
8. **Amendment or Cancellation of RFP.** The Chief Procurement Officer may amend or cancel an RFP when it is in the best interest of the County. Each solicitation issued by the County shall state that the solicitation may be amended or cancelled when in the best interest of the County. If an amendment is made after submission of proposals, any amendment shall be distributed to all offerors who submitted proposals. If the solicitation is cancelled either prior to or after opening, notice of cancellation shall be sent to all offerors and posted on Rocky Mountain ePurchasing, along with the reasons cancellation was determined to be in the County's best interest.
9. **Evaluation Factors.** The RFP shall clearly define all evaluation criteria, including price. Numerical rating systems or weights may be used but are not mandatory; however, if they are used, the criteria must be listed in the RFP and the points or weights must be assigned by the Selection Committee prior to evaluating the proposals.
10. **Evaluation Process.** The RFP evaluation process shall be conducted as a fair and objective process that requires a Selection Committee to evaluate all proposals on the specific criteria stated in the RFP and to not consider any criteria that are not specified.
 - a. **Complete confidentiality** is an ethical and legal requirement, and is vital to fair and equitable evaluation. During the entire RFP process, the Chief Procurement Officer serves as the sole contact for vendors and provides all RFP procedures and communication. Vendor information, number of proposals received, results and other evaluation proceedings should be kept confidential at all times. Following contract award, this information will become a public record available for inspection in accordance with state statute and the County's Open Record Policy.
 - b. **Single Proposal Received:** If only one proposal is received in response to a RFP, the Chief Procurement Officer may:
 - i. Determine if there was sufficient time allotted for offerors to submit a proposal. If not, the solicitation may be amended to extend the receipt of proposal date and the only proposal received shall be returned unopened to the only offeror;

- ii. Proceed with the evaluation of the proposal from the single offeror. If the offer meets the requirements stated in the RFP and the cost is determined to be fair and reasonable through negotiations, an award may be made; or
- iii. If the evaluation determines that the only offeror does not meet the County's needs, or negotiations of the cost does not result in a fair and reasonable price, then the solicitation may be cancelled and re-solicited at a later date.

11. **Selection Committee.** A Selection Committee of three (3) or five (5) County employees shall be appointed by the Department Head or Elected Official to evaluate all submitted proposals.

a. **Purpose:** The purpose of the Source Selection Committee is to ensure that proposals are reviewed on the basis of the Evaluation Criteria alone in a consistent and fair manner with a maximum degree of professionalism.

b. **Eligibility:** With the exception of members of the Procurement Department and County Attorney's Office, any full-time County employee who is willing and who agrees to maintain the confidentiality of the selection process, is eligible to serve on a Selection Committee.

i. Selection Committees should consist of at least one member that is not part of the using department;

ii. The Procurement Department staff facilitates the evaluation process and may not be members of the Selection Committee;

iii. A BOCC member who serves on a Selection Committee shall recuse himself/herself from the final approval of a contract selected by the Selection Committee.

c. **Responsibilities:**

i. Each member of the Selection Committee will be assigned a number and will receive a copy of the solicitation package, a correspondingly numbered copy of each of proposal, and a score card on which to score each proposal based on the stated criteria.

a. The scoring must be based solely on information contained in the proposal and not upon additional information, including any personal knowledge or relationship, unless such information is included as a scoring criterion.

ii. Once each member has scored each proposal, the Score Sheets will be tallied by the Selection Committee and the numbered proposals, along with the

individual score sheets, will be returned to and accounted for by the Chief Procurement Officer.

- iii. Based upon the combined scores of the members, a Selection Committee representative will complete a Source Selection Committee Decision Form that lists the names of the Selection Committee Members, states the results of the scoring, is signed by the Selection Committee Representative, and is returned to the Chief Procurement Officer.
- iv. The results of the scoring by the Selection Committee shall be totaled to determine the overall highest rated proposal.
 - a. A five percent (5%) advantage will be added to the total score of any qualifying Local Business.

12. Written Clarifications or Interviews:

The purpose of interviews and written clarifications is to allow the Selection Committee to differentiate between offerors otherwise similarly situated, as, for example, those offerors who fall within the Competitive Range discussed in § 5.3(13). Interviews may or may not be a part of the source selection process.

- a. **Planned Interviews.** If interviews are intended to be a part of the evaluation criteria, the RFP must contain language that allows for them. The Selection Committee, prior to entering into discussions with any offerors, will make competitive range determinations. Any and all offerors determined to be within the competitive range may be given an opportunity to interview.
- b. **Potential Interviews.** If interviews were not originally intended but the Selection Committee determines that a contract award cannot be made on the initial proposals as submitted, the Selection Committee may request written clarifications or interviews with all responsible offerors within the competitive range. The following are examples of topics that may be appropriate for such follow-up:
 - Advise the offeror of deficiencies in its proposal so the offeror is given an opportunity to satisfy the County's requirements;
 - Attempt to resolve or clarify any uncertainties concerning their proposal;
 - Resolve any suspected mistakes;
 - Provide the offeror a reasonable opportunity to discuss past performance information obtained from references. Names of individuals providing reference information shall not be disclosed; and/or
 - Provide each offeror a reasonable opportunity to submit revisions to both their technical proposals and price proposals as discussed by requiring submission of best and final offers by each offeror within the competitive range at the conclusion of the discussions (see § 5.14 below).

- c. An offeror determined to be within the competitive range will be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals prior to award and for the purpose of obtaining best and final offers.
- d. Interviews and written clarifications should not be used to:
 - i. Help one proposal rise to the level of other proposals;
 - ii. Use “auction techniques” such as indicating a cost or price an offeror must meet to be considered;
 - iii. Advising an offeror of its price standing relative to other offerors; or
 - iv. Provide any information about other offeror’s prices.

13. Competitive Range Determination: Competitive Range refers to a statistical grouping of proposals, as determined during the evaluation process for competitive negotiation, that includes only those offers with a reasonable chance of being selected for award and that may be considered for further discussion via interviews or written clarification. The Competitive Range shall be determined on the basis of criteria stated in the RFP. The determination shall include all proposals that have a reasonable chance of being selected for award. When there is doubt as to whether a proposal is in fact within the competitive range, the proposal shall be included.

- a. The Local Business advantage applies only to the scoring of each proposal to determine the highest rated proposal and whether it falls within the competitive range. Once the highest bid or competitive range is identified, no additional Local Business preference applies.

14. Best and Final Offers. Upon completion of any interviews, the Selection Committee may issue to all offerors still within the competitive range a request for best and final offers. Oral requests for best and final offers shall be confirmed in writing.

- a. The request shall include:
 - i. Notice that discussions are concluded;
 - ii. Notice that this is an opportunity to submit a best and final offer;
 - a. It should be made clear that best and final offers are not mandatory. They are only an opportunity to revise if necessary. If no best and final offer is submitted, the original proposal will be considered.
 - iii. A due date for submission of best and final offer.

- b. After receipt of best and final offers, the Selection Committee shall evaluate them accordingly and recommend that an award be made to the offeror whose best and final offer is most advantageous to the County, considering price and the other factors included in the RFP.

15. **Award.** Selection for award shall be conclusive based on scoring criteria specified in the RFP and evaluated as stated above. The County reserves the right to enter into contractual negotiations with the highest ranked firm selected by the Selection Committee. If a mutually agreeable contractual relationship cannot be established that will meet the County's needs, the County reserves the right to enter into negotiations with the second highest ranked firm, and so on. Award shall be made to the responsible offeror whose proposal is determined to be most advantageous to the County, and in the best interest of the County, based on the evaluation factors set forth in the RFP.

16. **Post Award De-Brief.** Offerors submitting an unsuccessful proposal may, within five (5) business days of the date notification of award is published via Rocky Mountain ePurchasing, request a meeting for debriefing and discussion of their proposals. The request must be submitted in writing and addressed to the Chief Procurement Officer.

5.4 UNSOLICITED PROPOSALS

An Unsolicited Proposal is an offer made by a third party to sell goods or services to the County that has not been solicited or published by the County.

1. **General Rule.** Before any Unsolicited Proposal can be accepted, it must first be categorized as a grant request or an offer to sell.
 - a. **A Grant Request** is a request for assistance, including financial or other means of assistance, from the County to support a program authorized by law.⁴ Grant Requests are not covered by this Code and instead shall be presented directly to the BOCC for consideration at a public meeting in accordance with County standards.
 - b. **An Offer to Sell** a good or service to the County in the absence of a County defined need, SoW, public notice or appropriate source selection must be properly evaluated before further action, including acceptance, is authorized. Proper evaluation includes:
 - i. All unsolicited offers to sell, regardless of who they are initially directed to, including the BOCC, shall be forwarded to the County Manager.
 - ii. The County Manager will make an initial evaluation of the offer and will either reject the offer or will forward the offer to an appropriate Department

⁴ C.R.S. § 24-101-302 (10.5)(a).

Head or Elected Official to determine (a) if the offer meets a County need or provides a benefit that serves the best interest of the County; and (b) whether there are sufficient resources, including an appropriate budget, to make and manage the purchase.

- iii. If the County Manager and Department Head or Elected Official decide to pursue the offer, they must then determine if the offer qualifies for a Sole Source Justification, defined in § 3.5. If so, the unsolicited offer may be accepted by complying with the Sole Source Purchase process and standards (§ 3.5).
- iv. If the offer does not qualify as a sole source but the opportunity is deemed to be worth exploring, then the Standard Purchasing requirements or an applicable exception thereto will dictate the manner in which the opportunity is to be competitively sourced and awarded. Before solicitation, the original proposal should be rejected and the pending opportunity to submit a new proposal explained.
 - a. In this instance, the party who submitted the unsolicited proposal would be required to submit a new responsive proposal and would be evaluated in the same manner as any other proposer.

5.5 OTHER METHODS OF COMPETITIVE SOURCE SELECTION

The Chief Procurement Officer may recommend or utilize any other form of competitive source solicitation, such as, by way of example only, a Request for Information or a Request for Qualifications, when such an alternative may be better suited to meet a specific need or ensure the best value to the County. If an alternative solicitation method is followed, a written explanation of the reasons and the process followed shall be included in the contract file.

5.6 PUBLIC RECORDS AND CONFIDENTIAL BIDS OR PROPOSALS

1. Upon contract award, information contained in bids and proposals becomes a public record subject to inspection in accordance with the Colorado Open Records Act, C.R.S. § 23-73-201.01 *et seq.*
2. If the County receives an open records request that covers information included in an offer that has been designated as “Confidential” by an offeror, the Procurement Department will examine the designated documents to determine if they should be protected from disclosure.
 - a. If some or all of the information reviewed contains trade secrets or other proprietary data identified in writing, the Procurement Department will not disclose the information.

- b. If some or all of the information reviewed does not contain trade secrets or other proprietary data, the Procurement Department will notify the party who submitted the information of the County's intention to make the information available for inspection.
 - c. If the County and the offeror do not agree about whether documents should be made available, the County will disclose what it deems appropriate unless the offeror agrees to defend and indemnify the County for withholding such information.
3. The County shall retain a copy, either in physical or electronic format, of each bid and proposal received that is not selected for contract award for a minimum of two years from the date the relevant contract is awarded. All bids and proposals selected for contract award, as well as bonds, affidavits, bid sheets, and other supporting documentation, including the original solicitation package, shall be retained, either physically or digitally, for a minimum of six years from the date of contract award.

ARTICLE 6 – CONTRACTS AND REQUIRED TERMS

Every procurement action results in a legal contract between the County and the supplier, regardless of purchase type or amount. This Article 6 discusses the appropriate contracts and terms to be used.

6.1 REQUIRED CONTRACT FORMS

All County purchases in amounts greater than \$10,000 shall utilize the standard contract forms written or approved by the County Attorney's Office. Revisions or additions to these approved form, including the incorporation of competing forms or terms requested by a potential vendor must be submitted to the Contracts Manager for review and handling in accordance with the directives of the County Attorney.

6.2 REQUIRED CONTRACT TERMS

The County Attorney shall determine all required contract terms and conditions in accordance with applicable law and in furtherance of the best interests of the County. In addition, the County Attorney shall define the authority given to the Contracts Manager to alter or waive specific contract terms.

6.3 BID SECURITY

Bid security is submitted as a guaranty that an offer will be maintained in full force and effect for a period of not less than sixty (60) days after opening of the offers or as specified in the solicitation.

1. **Requirement for Bid Security is Discretionary.** Bid security may be required for any Standard Purchase procurement at the discretion of the Chief Procurement Officer in an amount not to exceed 5% of the contract amount.
2. **Rejection of Proposals for Noncompliance.** If a bidder fails to accompany the offer with the required bid security, the offer shall be rejected as non-responsive.
3. **Withdrawal of Proposals.** After proposals are opened they shall be irrevocable for the period specified in the Request for Proposals. If a proposer is permitted to withdraw its proposal before award, no action shall be held against the proposer or the bid security.
4. **Acceptable Bid Security.** Acceptable Bid Security shall be limited to:
 - a. A one-time bid bond underwritten by a company licensed to issue bonds in the State of Colorado;
 - b. A bank cashier's check made payable to Garfield County;
 - c. A bank certified check made payable to Garfield County; and

- d. An irrevocable letter of credit in a form acceptable to the County.

6.4 CONTRACT PERFORMANCE AND PAYMENT BONDS

1. **Bond Requirements.** A separate Performance Bond, Labor and Materials Payment Bond, and Maintenance Bond or other legally acceptable surety may be required for all construction, labor and public improvement contracts in excess of \$50,000, each in the amount of 100% of the contract price.
2. **Discretionary Bonds.** Performance, Payments and Material, and Maintenance Bonds may be required on contracts less than \$50,000 if the Chief Procurement Officer determines it to be in the best interest of the County.
3. **Delivery and Satisfaction.** The contractor shall deliver these bond(s) to the Chief Procurement Officer within ten (10) days after receipt of the Notice of Award, or at the same time the contract is executed. If the contractor fails to deliver the required bond(s) the contractor's bid or contract may be rejected or terminated for default.
4. **Bond Form.** The bond(s) must be submitted on bond form(s) executed by a surety company authorized to do business in the State of Colorado.
5. **Waiver.** Performance bonds may be waived and cash accepted and deposited into an escrow account with the County for a designated period of time if the terms of the surety alternative are acceptable to both parties of the contract. A percentage of the total amount of the contract defined to cover all costs associated with a performance breach may be an acceptable condition of an alternate surety.
6. **Exceptions.** If it is deemed to be in the County's best interest and the actual contract price is less than \$50,000, the Contracts Manager or Chief Procurement Officer may waive or reduce the dollar amounts of any bond. However, if the price of any construction, labor, or public improvement contract for which the Contract Manager or Chief Procurement Officer has reduced or waived bonds should reach a value of \$50,000 or more, through change orders or otherwise, then the contractor may be required to provide separate bonds each in the amount of 100% of the new contract price, and additional insurance, as determined by the Contracts Manager or Chief Procurement Officer.
7. **Additional Bonding.** If at any time during the continuance of a contract, a surety on the contractor's bond or bonds becomes irresponsible, the County shall have the right to require additional and sufficient sureties, which the contractor shall furnish with ten (10) calendar days after written notice to do so. Such surety bond shall cover the entire contract amount regardless of changes in the total contract amount.
8. **Certified Copies of Bonds.** Any person may request and obtain from the County a certified copy of a bond upon payment of the cost of reproduction of the bond and postage, if any, in accordance with the County's Open Records Policy. A certified copy of a bond shall be prima facie evidence of the contents, execution, and delivery of the original.

6.5 CONTRACT AMENDMENTS AND CHANGE ORDERS

Any change to a contract that results in a change in price shall be processed through the Procurement Department and shall include all requisite documentation and authorizations. Change orders shall not be used to circumvent the contracting authority delegated in Article 2 or the purchase standards defined in Article 3.

1. **Changes to Simplified Purchase Contracts.** Contract Amendments or Contract Change Orders (collectively, "Contract Changes") that increase the cost of a Simplified Purchase contract to an amount greater than \$25,000 must have approval from the BOCC. Contract Changes to Simplified Purchase contracts that do not increase the cost of the contract to more than \$25,000 must be approved by a Department Head or Elected Official.
2. **Changes to Standard Purchase Contracts.**
 - a. Contract Changes to Standard Purchase contracts that do not increase the original contract cost by more than 25% may be approved by the Department Head or Elected Official.
 - b. Contract Changes to Standard Purchase contracts, whether individually or in combination with prior changes, increase the original contract price by more than 25%, the proposed Contract Change shall be brought to a committee for review and approval. The committee shall be comprised of the County Manager, Chief Procurement Officer, Chief Finance Administrator, and requesting Department Head or Elected Official. If the Committee recommends approval of the change, the item shall be placed on the consent agenda of the next regularly scheduled BOCC Board Meeting.
 - c. Contract Changes to Standard Purchase contracts, whether on individually or in combination with prior changes, increase the original contract price by more than 50%, a review of the project and the proposed Contract Change shall be conducted at the next regularly scheduled BOCC Board Meeting.
3. **BOCC Quarterly Report.** The Chief Procurement Officer shall maintain a list of all Contract Changes to Standard Purchase contracts and changes that cause a Simplified Purchase contract to exceed the \$25,000 limit and shall provide an updated list of such changes in a quarterly report to the BOCC.

6.6 CONTRACT ADMINISTRATION

A County Representative shall be identified on all Standard Purchase and Simplified Purchase contracts. The County Representative is responsible for ensuring that all performance standards are met, for approving all invoices, and for coordinating any change orders or amendments with the Contracts Manager.

ARTICLE 7 – DETERMINATIONS, PROTESTS, AND CLAIMS

7.1 CONSENT

All parties who respond to an Invitation for Bid or a Request for Proposal agree to be bound by the Garfield County Procurement Code and, in particular this Article 7, which governs all challenges, bid protests and contract claims.

7.2 PROCUREMENT QUESTIONS AND INTERPRETATIONS

The Chief Procurement Officer is authorized to answer all procurement related questions and to interpret the provisions of this Code.

7.3 WAIVERS AND EXCEPTIONS

All requests for waivers or exceptions to this Code shall be directed to the Chief Procurement Officer, who, in collaboration with the County Manager and/or County Attorney, is authorized to approve, modify or deny such requests. The basis for any waiver or exception to this Code shall be documented and shall be reflected in the appropriate contract file.

7.4 DETERMINATION OF NON-RESPONSIBILITY

The Chief Procurement Officer shall not allow any contract to be awarded to a bidder or offeror who is found to be non-responsible. If a bidder who otherwise would have been awarded a contract is found to be non-responsible, the Chief Procurement Officer shall prepare a written determination of non-responsibility setting forth the basis of the finding. A copy of the determination shall be sent promptly to the non-responsible bidder. The final determination shall be made part of the contract file and be made a public record.

7.5 CHALLENGES TO LOCAL BUSINESS DESIGNATION

1. Any person who has been adversely affected in a competitive solicitation process by the designation of a business as a Local Business may file a written protest with the Procurement Department within seven (7) calendar days of the date that person knew or should have known of the adverse effect. The written protest must set forth with specificity facts supporting the allegation that the business should not receive a Local Business designation. The Procurement Department shall investigate the allegations and make a recommendation to the BOCC.
2. Any person who claims to have been wrongfully denied a Local Business designation may file a written protest with the Procurement Department within seven (7) calendar days of the receipt of notice of the denial. The written protest must set forth with specificity facts supporting the allegation that the business should receive a Local Business designation. The Procurement Department shall investigate the allegations and make a recommendation to the BOCC.

7.6 BID PROTESTS

A protest is a grievance that is filed with the Chief Procurement Officer prior to award of a bid or proposal and consists of written objections by an interested party to a solicitation, or a cancellation of a solicitation, for bids or proposals.

Reasons for protest may include, by way of example only, the preparation of specifications, insufficient time to respond, restrictive bonding requirements, excessive or restrictive qualification requirements, and evaluation criteria.

1. **Resolution.** It is the policy of the Procurement Department to resolve all controversies by mutual agreement at the earliest opportunity. Before a protest is filed, therefore, it is recommended that the aggrieved party contact the Chief Procurement Officer.
2. **Right to Protest.** Any bidder, offeror, or contractor who is aggrieved in connection with the solicitation or award of a contract may protest to the Chief Procurement Officer.
3. **Effect of Protest.** The filing of a protest will not be allowed to unnecessarily delay the procurement process. The Chief Procurement Officer shall determine whether the protest requires postponement or cancellation of award.
4. **Filing.** All protests shall be submitted in writing to the Chief Procurement Officer and must be received within seven (7) business days from the day the aggrieved party knew or should have known of the facts giving rise to the protest. Protests received after the seven (7) business days will not be formally addressed.
5. **Written Protest.** The protest shall be in writing and shall
 - a. Identify the IFB or RFP number and title;
 - b. State the date of the protest;
 - c. State the basis of the protest and the specific facts supporting the aggrieved party's position;
 - d. Contain the signature of the aggrieved party.
6. **Response.** The Chief Procurement Officer will review the protest with the County Manager, affected Department Head, and other appropriate staff and respond in writing to the aggrieved party within seven (7) business days of receipt of the protest. The Chief Procurement Officer is the only person authorized to respond to the protest. The response shall state the reasons for any decision reached.
7. **Reconsideration.** When an aggrieved party does not agree with the final decision of the Chief Procurement Officer, the party may, within seven (7) days of the final decision, submit a written request for reconsideration stating the reasons for disagreement with the

decision. An original and four (4) copies of the request shall be sent to the BOCC *in care of* the County Attorney. The County Attorney will present the protest or claim to the BOCC for reconsideration. The BOCC shall have 15 business days to send its response to the County Attorney. The County Attorney shall have 5 business days to send the response to the aggrieved party on behalf of the BOCC. The decision of the BOCC is final.

7.7 CONTRACT CLAIMS

A claim is a grievance filed after the award or rejection of a bid or contract and consists of a written objection by an interested party to a bid or contract awarded or rejected by the BOCC as a result of an Invitation for Bids or Request for Proposal.

1. **Resolution.** It is the policy of the Procurement Department to resolve all controversies by mutual agreement at the earliest opportunity. Before a claim is filed, therefore, it is recommended that the aggrieved party contact the Chief Procurement Officer.
2. **Right to File a Claim.** Any bidder, offeror, or contractor who is aggrieved in connection with the award or denial of a contract may file a claim with the Chief Procurement Officer.
3. **Effect of a Claim.** The filing of a claim will not be allowed to unnecessarily delay the procurement process. The Chief Procurement Officer, with the approval of the County Attorney, shall determine whether the protest requires postponement or cancellation of award.
4. **Filing a Claim.** All protests shall be submitted in writing to the Chief Procurement Officer and must be received within seven (7) business days from the day the aggrieved party knew or should have known of the facts giving rise to the claim. Claims received after the seven (7) business days will not be formally addressed.
5. **Written Statement of Claim.** The claim shall be in writing and shall
 - a. Identify the IFB or RFP number and title;
 - b. Date the protest;
 - c. State the basis of the protest and the facts supporting the aggrieved party's position; and
 - d. Contain the signature of the aggrieved party.
6. **Response.** The Chief Procurement Officer will deliver the claim to the County Attorney who will respond to the claim in writing within seven (7) business days. The County Attorney is the only person authorized to respond to the claim. The decision of the County Attorney is final.

7.8 AUTHORITY TO RESOLVE BID PROTESTS AND CONTRACT CLAIMS

1. In collaboration with or at the direction of the County Manager, County Attorney or BOCC, as appropriate, the Chief Procurement Officer is authorized to negotiate the resolution of any protest or claim brought by an aggrieved party.
2. Under no circumstance may legal action to enforce a contract be threatened or initiated on behalf of the County without consultation with the County Manager and County Attorney and approval of BOCC.

7.9 REMEDIES FOR SOLICITATIONS OR AWARDS IN VIOLATION OF LAW

1. **Prior to Bid Opening or Closing Date for Receipt of Proposals.** If, prior to the bid opening or the closing date for receipt of proposals, the Chief Procurement Officer determines that a solicitation is in violation of state or federal law, then the solicitation or proposed award shall be cancelled or revised to comply with applicable law.
2. **Prior to Award.** If, after a bid opening or the closing date for receipt of proposals, the Chief Procurement Officer determines that a solicitation or a proposed award of a contract is in violation of federal or state law, then the solicitation or proposed award of a contract shall be cancelled.
3. **After Award.** If, after an award, the Chief Procurement Officer determines that a solicitation or award of a contract was in violation of applicable law, then the contract is voidable by the County.

7.10 REPORTING OF ANTI-COMPETITIVE PRACTICES

When, for any reason, collusion or other anti-competitive practices are suspected among bidders or offerors, a notice of the relevant facts shall be transmitted to the District Attorney of the Ninth Judicial District and the Garfield County Attorney.

ARTICLE 8 – ETHICS IN PUBLIC CONTRACTING

8.1 GENERAL STANDARDS OF ETHICAL CONDUCT

Any attempt to realize personal gain through public employment by conduct inconsistent with the proper discharge of a County Employee's duties is a breach of a public trust. Any effort to influence any public employee to breach the standards of ethical conduct is also a breach of ethical standards.

In addition to the provisions of this section, the Employees and Officials of the County, as well as non-county individuals and companies who deal with the County through the procurement process, shall comply with the provisions of Article XXIX of the Constitution of the State of Colorado, Ethics in Government.

8.2 EMPLOYEE CONFLICT OF INTEREST

It shall be a breach of ethical standards for any County Employee to participate directly or indirectly in the procurement process when the Employee knows that:

1. The Employee or any member of the Employee's immediate family has a financial interest pertaining to the procurement; or
2. A business or organization in which the Employee, or any member of the Employee's immediate family, has a financial interest pertaining to the procurement; or
3. Any other person, business, or organization with whom the Employee or any member of the Employee's immediate family is negotiating or has an arrangement concerning prospective employment is involved in the procurement.
4. Where an Employee or any member of the Employee's immediate family holds a financial interest in a blind trust, the Employee shall not be deemed to have a conflict of interest with regard to matters pertaining to that financial interest, provided that disclosure of the existence of the blind trust has been made to the County Attorney.
5. A Garfield County employee or any member of a Garfield County employee's immediate family owns a minority ownership interest in a publicly traded company shall not be deemed to have a conflict of interest with regard to matters pertaining to that financial interest, unless the combined ownership interests of the County employee and the immediate family in the publicly traded company represent a majority interest in such publicly traded company.
6. Upon discovery of an actual or potential conflict of interest, an Employee shall promptly file a written statement of disqualification and shall withdraw from further participation in the transaction involved.

8.3 EMPLOYEE DISCLOSURE REQUIREMENTS

1. Any Employee who has, or obtains any benefit from any County contract with a business in which the Employee or member of an Employee's immediate family has a financial interest shall report such benefit to the County Attorney and Chief Procurement Officer.
2. Any Employee who knows or should have known of such benefit, and fails to report such benefit to the County Attorney and Chief Procurement Officer, is in breach of the ethical standards of this Section.

8.4 CONTEMPORANEOUS EMPLOYMENT PROHIBITED

It is prohibited for any County Employee who participates directly or indirectly in the procurement process to be contemporaneously employed by any person or entity that seeks to contract with Garfield County.

8.5 WAIVER OF CONFLICTS AND PROHIBITION ON EMPLOYMENT.

The County Manager may waive application of the conflict of interest provisions (§ 8.2) or the prohibition of contemporaneous employment (§ 8.4) upon making a determination that:

1. The Employee timely disclosed the financial interest or contemporaneous employment;
2. The Employee will be able to perform his/her procurement functions without actual or apparent bias or favoritism; and
3. Waiver is in the best interests of the County.

8.6 PROHIBITION OF USE OF CONFIDENTIAL INFORMATION

It is unethical for any current or former County Employee to knowingly use confidential information for actual or anticipated personal gain, or for the actual or anticipated gain of any other person.

8.7 PROHIBITION OF GRATUITIES AND KICKBACKS

1. **Gratuities.**
 - a. It is unethical for any person to offer, give, or agree to give, any County Employee a gift or gratuity of any pecuniary benefit, a substantial economic benefit, or an offer of employment in connection with any decision, approval, disapproval, recommendation, or preparation of any part of a program requirement or a procurement request.
 - b. It is similarly unethical for any County Employee to solicit, demand, accept, or agree to accept from another person, a gift or gratuity of any pecuniary benefit, a

substantial economic benefit, or an offer of employment in connection with any decision, approval, disapproval, recommendation, or preparation of any part of a program requirement or a procurement request.

2. Kickbacks.

- a. It is unethical for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract or order.
- 3. Contract Clause.** The prohibition against gratuities and kickbacks shall be set forth in every Standard and Simplified Purchase contract and solicitation.

8.8 PROHIBITION OF CONTINGENT FEES

It is a breach of ethical standards for a person to retain, or to be retained, to solicit or secure a contract with the County upon agreement for a commission, percentage, brokerage or contingent fee, except for the retention of a bona fide employee or established commercial selling agency for the purpose of securing business.

8.9 REMEDIES AND CONSEQUENCES OF BREACH

All procedures under this Section shall be exercised in accordance with due process requirements and existing law. Notice and an opportunity for a hearing shall be provided prior to imposition of any employment consequence.

1. Recovery of Value Transferred or Received.

- a. The value of anything transferred or received in breach of the ethical standards of this Article 8 by a County Employee or a non-employee may be recovered from both. Recovery from one offending party shall not preclude recovery from other offending parties.
- b. Upon a showing that a subcontractor made a kickback to a prime contractor or higher tier subcontractor in connection with a County contract, it shall be conclusively presumed that the amount paid was included in the price of the subcontract and ultimately borne by the County; the amount will, therefore, be recoverable by the County from the recipient. In addition, the amount may also be recovered from the subcontractor paying the kickback. Recovery from one offending party shall not preclude recovery from other offending parties.
- c. The provisions of the preceding two paragraphs shall be set forth in every Standard and Simplified Purchase contract and solicitation.

2. **Supplemental Remedies - Employees.** In addition to any other remedies for breach of the ethical standards of this Article, the County may impose any one or more of the following employment consequences:
 - a. Oral or written warnings or reprimands;
 - b. Suspension with or without pay for a specified period of time; and
 - c. Termination of employment.

3. **Supplemental Remedies - Non-Employees.** In addition to existing remedies for breach of the ethical standards of this Article, the County may impose any one or more of the following non-employment related consequences:
 - a. Written warnings or reprimands;
 - b. Termination of transactions; or
 - c. Debarment or suspension from being a contractor or subcontractor under a County contract for a specified period of time.

8.10 CRIMINAL PENALTIES

To the extent violations of ethical standards of conduct constitute violations of the Colorado Criminal Code, they shall be punishable as provided therein. Such penalties shall be in addition to the civil sanctions set forth in this part. Criminal, civil, and administrative sanctions against employees and nonemployees, which are in existence on the effective date of this Code, shall not be impaired.

GLOSSARY OF TERMS

The words and phrases defined in this section shall have the meanings set forth below whenever they appear in Garfield County's 2012 Procurement Code (this "Code"), unless otherwise stated. Not all of the words and phrases below, however, appear in the current version of the Code. They are nevertheless included to ensure and develop a common understanding and usage of common public procurement terminology. Questions regarding the Glossary or regarding terms that do not appear below should be directed to the Chief Procurement Officer.

ADVERTISE means to make a public announcement of the intention to purchase goods or services.

AGREEMENT has the same meaning as Contract, defined below.

APPROPRIATION means the authorization by ordinance or resolution of a spending limit for expenditures and obligations for specific purposes. C.R.S. § 29-1-102(1). There is an absolute prohibition against spending in excess of an appropriation. C.R.S. § 29-1-110(1). A contract requiring the expenditure of funds that have not been appropriated is void and no County money will be paid on such a contract. C.R.S. § 29-1-110(1). Multiple-year contracts may be entered into where allowed by law and if subject to annual appropriation. C.R.S. § 29-1-110(2).

AWARD means the acceptance of a bid or proposal pursuant to the process designated in the Code, which results in the presentation of a contract to a bidder.

ARCHITECTURAL and ENGINEERING SERVICES include program management, construction management, feasibility studies, preliminary engineering, design, architectural, engineering, surveying, mapping and related services.

BEST INTERESTS OF THE COUNTY is a term used in granting the Chief Procurement Officer authority to use discretion to take action believed to be the most advantageous to the County. The term is used when it is impossible to anticipate adequately the circumstances that may arise and thus to delineate more specific directions.

BID means an offer submitted by a prospective vendor in response to a bid invitation issued by a buyer. Bids are usually non-negotiable and become a contract upon acceptance by the buyer.

BIDDER means an individual or entity that submits a bid in response to a bid invitation or other solicitation document issued by a buyer. A bidder is not a contractor until awarded a contract.

BID OPENING is the process through which the contents of bids are revealed for the first time to the government, to other bidders, and usually to the public.

BLIND TRUST means an independently managed trust in which the employee-beneficiary has no management rights and in which the employee-beneficiary is not given notice of alterations in, or other dispositions of the property subject to the trust.

BOCC means the Garfield County Board of County Commissioners.

BRAND NAME means a product name that serves to identify the product of a particular manufacturer. A trade name.

BRAND NAME ONLY SPECIFICATION is a specification that cites the brand names, model numbers or other identifications as representing the quality and performance called for and inviting bids on comparable items or products of any manufacturer.

BREACH OF CONTRACT is a failure, without legal excuse, to perform any obligation that forms all or part of a contract.

BUDGET means the complete estimated financial plan of the County. C.R.S. § 29-1-102(3).

BUDGET YEAR means the ensuing fiscal year. C.R.S. § 29-1-102(3).

BUYER means a purchaser and, in context of the Code, generally refers to the BOCC and those designees, defined in Article 2 of the Code, who are authorized to enter into contracts on its behalf.

CHANGE ORDER refers to work that is added to or deleted from the original scope of work of a contract and that alters the original contract amount or completion date. Approval for Change Orders is addressed in § 6.5 of the Code.

CODE means the 2012 Procurement Code approved by the BOCC on September 4, 2012 to become effective as of October 1, 2012, as reflected in Resolution 12-81 recorded in the records of the Garfield County Clerk & Recorder at Reception No. 823749.

COMPETE means to obtain pricing and other applicable information from potential vendors prior to selecting a source through which to meet the County's requirements.

COMPETITIVE RANGE means those proposals that, upon initial evaluation, are most responsive to the requirements and are from potential vendors who are reasonably qualified to be selected for award. Proposals not within the Competitive Range are given no further consideration, as more specifically discussed in § 5.3(13) of the Code.

COMPETITIVE SEALED BID refers to the preferred method for acquiring goods, services, and construction for public use when award is based solely on the response to the criteria set forth in an Invitation for Bids. Bids are submitted in sealed envelopes to prevent dissemination of the contents before the deadline for the submission of all bids. This procedure is generally required on County procurements expected to cost at least twenty-five thousand dollars (\$25,000) to ensure fair competition among bidders and for requirements where the lowest responsive total price will be the most important factor in winning the award.

COMPETITIVE SEALED PROPOSAL refers to the method for acquiring goods, services and construction for public use when discussions or negotiations may be conducted with responsible offerors who submit proposals within the Competitive Range. The award of the contract may not necessarily go to the lowest bidder.

CONSIDERATION means the reason parties enter into a given contract. Consideration is an essential element of a contract; each party must give up something of value, such as payment, or refrain from doing something it is otherwise able to do.

CONSTRUCTION means the process of building, altering, repairing, improving, or demolishing any public structure, public building, or other public improvements of any kind to real property. It does

not include the routine operation, routine repair, or routine maintenance of any existing public infrastructure facility, including structures, buildings or real property.

CONTRACT means an agreement between two or more parties creating enforceable obligations. The term is used for all types of written agreements, regardless of what they may be called, for obtaining or disposing of goods, services, construction, or other performance obligations in return for specific terms, conditions or price. Specific types of contracts include, by way of example only: purchase orders, grants, leases, intergovernmental agreements and purchase of service agreements. As explained in § 1.2, the Code applies only to contracts entered into for the purchase or lease of goods or services and to the disposal of County property purchased with public funds.

CONTRACT AMENDMENT or MODIFICATION refers to an agreed upon revision or correction to a contract that includes the addition or deletion of original contract terms.

CONTRACT MANAGEMENT means the process of supervising the application of terms of a contract from award through acquisition to successful completion.

CONTRACTS MANAGER refers to the member of the Procurement Department responsible for managing the stages of the contracting process, which may include such activities as ensuring use of the correct contract type necessary to meet relevant legal and business requirements, ensuring inclusion of all necessary terms and conditions, approving contract revisions, managing, coordinating, and monitoring contracts and processes, planning, negotiation, storage and/or analysis of contracts and contract issues.

CONTRACTOR refers to any person or company having a contract with the BOCC; also often referred to as a vendor or seller.

COOPERATIVE PURCHASES mean those purchases made from another contract or agreement written by another federal, state, county, city, or government agency, or government cooperative for identical goods or services that do not require additional competition by the County when the agreement has been formally competed or renewed by the acquiring government within the last 12 months, as discussed in § 3.2(1)(c). The State bid list qualifies as a source of appropriate vendors for Cooperative Purchases. See also C.R.S. §§ 24-110-101(1) and 24-110-201.

COST ANALYSIS refers to an element-by-element evaluation of a contractor's detailed cost estimate.

COST OR PRICING DATA refers to factual information concerning the cost of labor, material, overhead, and other elements of cost that are expected to be incurred or that the contractor has incurred in performing the contract.

COUNTY REPRESENTATIVE refers to the agent of the County, usually an employee, responsible for ensuring that both the County and the vendor meet or exceed their performance requirements stated in any contract. In addition, this individual is responsible for monitoring delivery schedules, ensuring completeness and accuracy, maintaining the contract relationship, addressing related problems, identifying necessary changes, approving all vendor invoices, and actively interacting with the vendor to achieve the contract objectives.

DOCUMENTED QUOTE refers to a solicitation of Qualified Vendors requesting pricing and terms for Simplified Purchases. Documented Quote solicitations are not advertised publicly and are used

commonly for standard, off the shelf items, items built to known specifications, items required in small quantities, or services that can be performed within a calendar year and fall below the Standard Purchase level. Documented Quotes are attached to a properly submitted Purchase Requisition, which requires a written Scope of Work or Specifications, a list of no less than three Qualified Vendors who were contacted, identification of the successful vendor, and the reason that vendor was selected. See § 3.3(1)(e).

ELECTED OFFICIALS refers to those officials elected to position in Garfield County who have opted to follow the Code.

EMERGENCY PURCHASE means a purchase made in response to a condition that creates a threat to public health, welfare, or safety as discussed in § 3.6 of the Code. See also C.R.S. § 24-30-1407.

ENCUMBRANCE means a commitment related to unperformed contracts for goods or services. C.R.S. § 29-1-102(7).

ESTABLISHED CATALOGUE PRICE means the price included in a catalogue, price list, schedule or other format that is regularly maintained by a manufacturer or contractor, is either published or otherwise available for inspection by customers, and states prices at which sales are currently or were last made to a significant number of any category of buyers or buyers constituting the general buying public for the supplies or services involved. C.R.S. § 24-103-101(2).

EXPENDITURE means any use of financial resources of the County consistent with its basis of accounting for budget purposes for the provision or acquisition of goods and services for operations, debt service, capital outlay, transfers, or other financial uses. C.R.S. § 29-1-102(8)(a). Expenditures may not exceed appropriation. C.R.S. § 29-1-110 (1). Any contract involving expenditures that have not been appropriated shall be void and no money belonging to the County will be paid on such a contract. C.R.S. § 29-1-110 (1).

FINANCIAL INTEREST means any financial interest held by an individual and includes an ownership interest, a creditor interest in an insolvent business, employment, or prospective employment for which negotiations have begun, an ownership interest in real or personal property, a loan or any other debtor interest, or being an officer in a business.

FISCAL YEAR means, for Garfield County, the period commencing January 1 and ending December 31. The federal fiscal year refers to the period commencing October 1 and ending September 30.

GOODS mean all property, including but not limited to equipment, materials, printing, insurance and leases of real property, excluding land or permanent interest in land and has the same meaning as Supplies.

GRANT means the transferring of government funds to support or stimulate programs authorized by law to accomplish objectives that are locally defined and managed. It does not mean an award whose primary purpose is to procure an end product, whether in the form of supplies, services or construction (a contract resulting from such an award is not a grant but rather is a procurement contract governed by the Code).

GRATUITIES refer to payment, loan subscription, advance, deposit of money, service, or anything of more than nominal value, present or promised.

IMMEDIATE FAMILY includes a spouse, parent, grandparent, child, grandchild, brother, and sister, either through blood, adoption, or marriage, which includes in-law and step relationships.

INDEMNITY or **INDEMNIFICATION** refers to an agreement to compensate another upon the occurrence of an anticipated loss or damage they may suffer. Article XI of the Constitution of Colorado regarding Public Indebtedness prohibits the County from becoming “responsible for any debt, contract or liability of any person, company or corporation, public or private, in or out of the state.” Colo. Const. art. XI, § 1.

INVITATION FOR BIDS (IFB) means the formal process used to solicit bids, or offers, from qualified vendors for merchandise or services when complete specifications or specific purchase descriptions are available, as discussed in § 5.2 of the Code. The contract is awarded to the lowest responsive and responsible bidder.

LIQUIDATED DAMAGES refer to a specific sum identified in a contract that the parties agree is a fair and reasonable estimate of actual damages that would be incurred in the event of a contractual breach. Liquidated damages replace actual damages and are appropriate only when it would be difficult to determine the amount of actual damages. A liquidated damage provision may apply to one or both parties.

LOCAL BUSINESS refers to businesses that meet the qualifications set by the BOCC in Resolution 2011-21 and further defined in § 5.1 of the Code and that may qualify for certain preferences when bidding on County contracts.

NON-RESPONSIVE BID refers to a bid that does not conform to the mandatory or essential requirements of the Invitation for Bid.

NEW WORLD SYSTEMS refers to the financial management software utilized by the County as of October 1, 2012.

OFFER refers to a proposal from one party to another to do or to refrain from doing something resulting in a legally binding commitment. Acceptance by the other party creates a contract.

PAYMENT BOND refers to a financial guarantee by a successful bidder for a construction project to assure payment to individuals performing work on that project.

PERFORMANCE BOND refers to a financial guarantee by a successful bidder to protect the County from loss due to his/her inability to complete the contract as agreed.

PERSONAL SERVICES refer to acts performed by individuals or entities that provide services involving intellectual or manual effort as opposed to only providing goods (that may or may not have been created by their efforts).

PRICE ANALYSIS refers to the evaluation of price data, which may assist in arriving at the price a buyer might expect to pay. This is done by looking at individual components of the cost.

PRICING DATA refers to factual information concerning prices for items substantially similar to those being procured. Prices in this definition refer to offered or proposed selling prices, current and historical selling prices. The definition refers to data relevant to both prime and subcontract prices.

PROCUREMENT means the acquisition or disposal of supplies, services or construction for the use or benefit of the County, whether through purchase or lease. It also includes all functions that pertain to the obtaining of any supply, service or construction, including description of requirements, selection and solicitation of sources, preparation and award of contract and all phases of contract administration.

PROCUREMENT PROCESS refers to the series of acts of defining requirements, solicitation of sources, issuing bid documents, source selection, preparation and award of contract, and administration of the contract.

PROFESSIONAL SERVICES refer to a type of Personal Services rendered by members of a recognized profession or persons possessing a special skill. Professional services are essentially intellectual in character and include analysis, evaluation, exercise of discretion, independent judgment, prediction, planning, or recommendation in their performance, and an advanced or specialized type of knowledge, expertise or training customarily acquired either by a prolonged course of study or equivalent experience in the field. Professional Services are generally acquired to obtain information, advice, training or direct assistance and include, but are not limited to, services performed by a licensed accountant, auditor, analyst, consultant, lawyer, physician, planner, artist, engineer or architect when the exact scope and content of the services cannot be specified readily with certainty. See also C.R.S. §§ 24-30-1401, *et seq.* and 24-103-101(4).

PROPOSAL refers to the documents submitted by vendors in response to an RFP that then become the basis for negotiations. Proposals are solicited when vendor selection is to be made on the basis of performance rather than price alone. See RFP.

PURCHASE ORDER (PO) refers to a written order issued by a buyer to a vendor formalizing all of the terms and conditions of a proposed transaction. Once signed, a PO becomes a contract. A PO will be included among the approved contract forms authorized for use by the County Attorney when used in connection with Small Purchases.

PURCHASE NUMBER or PURCHASE ORDER NUMBER refers to the number that will be assigned to a properly completed Purchase Requisition signifying that funds have been encumbered and are available to pay future invoices submitted against the relevant contract. The Purchase Number must appear on all vouchers requesting payment to a vendor so that the appropriated funds will be applied. Vouchers for payment in excess of \$10,000 cannot be processed without a Purchase Order Number.

PURCHASE REQUISITION (PR) means a request from or on behalf of a Department or Elected Official to the Procurement Department that a contract be entered into for a specific purpose or to meet a specific need. A PR must be submitted through New World Systems and shall include all of the information required for the purchase, such as a Scope of Work or Specifications if a Standard Purchase (see § 3.1) or Document Quote information and a signed contract if a Simplified Purchase (see § 3.3); other information, as specified in the Code, may be necessary in order to finalize a PR. The Procurement Department cannot process an incomplete PR. Every PR should be complete prior to commencement of performance under the contract.

PURCHASED SERVICES refers to services that are purchased from public or private entities that directly benefit discrete groups or individuals in the general public and that are usually funded by a

law-defined state grant. Examples of Purchases Services include foster care, refugee services, mental health and the like.

QUALIFICATIONS-BASED COMPETITIVE PROCEDURES require that an offeror's qualifications, exclusive of price, be evaluated and that contract negotiations will be conducted only with the offeror deemed most qualified. If agreement as to price cannot be reached, negotiations with the next most qualified offeror will be conducted until a contract award can be made to the most qualified offeror whose price is fair and reasonable to the County.

QUALIFIED VENDOR means a seller or provider of goods or services with the experience, qualifications, and ability to perform a contract if awarded.

REQUEST FOR INFORMATION (RFI) means a published request asking potential vendors to identify information regarding the availability, features or measures for the purchase of goods or services that will assist the County during the procurement process.

REQUEST FOR PROPOSALS (RFP) means a the formal process used to solicit proposals from potential vendors when a desired outcome is known and recommendations about how to achieve that outcome are requested, as discussed in § 5.3 of the Code. Contract award is based upon factors in addition to or other than price.

REQUEST FOR QUALIFICATIONS (RFQ) refers to solicitation documents requesting submittal of qualifications or specialized expertise in response to the scope of services required. Pricing is not solicited with RFQs. RFQs are generally the first in a two part solicitation process and are followed by an RFP or IFB. They are used most often in construction projects.

RESPONSIBLE BIDDER OR OFFEROR refers to those potential vendors who have submitted bids or proposals and who have the capability to fully perform all contract requirements as well as the experience, integrity, reliability, capacity, facilities, equipment and credit assuring good faith performance. Past performance, financial capabilities, and business management may be included as criteria for determination of a bidder's ability to satisfy contract requirements.

RESPONSIVE BID is a bid that substantially conforms to the requirements outlined in the IFB.

RESPONSIVE BIDDER OR OFFEROR is a potential vendor who has submitted an offer that conforms in all material respects to the requirements set forth in the IFB or RFP.

SCOPE OF WORK (SoW) means the written description of the required goods or service stated in terms of the result to be achieved upon contract completion as discussed in §§ 4.1(2)(a) and 4.2 of the Code.

SERVICES mean the furnishing of labor, time, or effort by a contractor, not involving the delivery of a specific end product other than reports that are merely incidental to the required performance. There are many types of services, including by way of example only Professional Services, Personal Services and Purchased Services, each of which may require different contract terms. Services as used here do not include employment agreements or collective bargaining agreements.

SIMPLIFIED PURCHASE means any purchase with a contract requirement of \$10,000 up to \$25,000, as discussed in § 3.3.

SMALL PURCHASE means any purchase with a contract requirement of less than \$10,000, as discussed in § 3.4.

SOLE SOURCE JUSTIFICATION refers to the form that demonstrates that the criteria of a Sole Source Purchase, described in § 3.5, are met and that is completed and signed by the requesting Department and approved by the County Manager prior to entering into a contract with a vendor.

SOLE SOURCE PURCHASE means a purchase of a good or service with a contract requirement of \$10,000 or more that does not meet the competitive solicitation standards of either a Simplified Purchase or a Standard Purchase, and that satisfies the standards described in § 3.5. A contract amendment or extension that is outside the terms of the original solicitation and contract is technically a sole source purchase.

SOLICITATION refers to the telephone call, email, or document, such as an RFP or IFB or Documented Quote, requesting submittal of bids or proposals in accordance with the required specifications. Unlike an offer, a solicitation is not an unequivocal offer to enter into a binding agreement.

SPECIFICATIONS refer to the written description of the physical or functional performance criteria necessary to meet the County's needs as discussed in §§ 4.1(3)(b) and 4.3.

STANDARD PURCHASE means any purchase with a contract requirement of \$25,000 or more, as discussed in § 3.1.

SUPPLIES mean all property, including but not limited to equipment, materials, printing, insurance and leases of real property, excluding land or permanent interest in land and has the same meaning as Goods.

SURPLUS PROPERTY refers to any County owned property that is no longer functional (and is beyond repair), has been utilized for a period of time equal to its useful life, or is no longer of any use to any County Department.

UNIFORM COMMERCIAL CODE (UCC) refers to the statutes, adopted in the State of Colorado as C.R.S. Title 4, that define the rights and duties of parties in commercial situations, such as the sale of goods, secured transactions, and negotiable instruments, and that conform the rules to modern commercial disputes.

UNSOLICITED PROPOSALS refers to any offer made by a third party to sell goods or provide services to the County that have not been solicited or published by the County.

VENDOR means the individual or entity providing the service or product that is the subject of the procurement. It has the same meaning as Contractor or Seller.