

**COUNTY OF PUTNAM
LOCAL LAW #21 OF 2007**

*Passed by Legislature at the 12-04-07 Full Mtg
Amended by the Legislature on March 3, 2009 by Resolutions #74 and #80
of 2009 and again on March 2, 2010 by Resolution #70 of 2010.*

**A LOCAL LAW TO AMEND THE CODE OF PUTNAM COUNTY BY ADDING A
NEW CHAPTER 140 ENTITLED "PROCUREMENT POLICY"**

BE IT ENACTED by the Legislature of the County of Putnam as follows:

Section 1.

**The Putnam County Code is hereby amended by adding a new Chapter 140
entitled "Procurement Policy" to read as follows:**

**ARTICLE I
General Provisions**

§ 140-1.1. Purpose.

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

§ 140-1.2. Applicability.

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

§ 140-1.3. Exemptions.

Unless otherwise ordered by regulation the following commodities, supplies or services need not be procured through the Purchasing Division in accordance with the County's Procurement Policy; and shall be procured by the appropriate agency, department or committee:

A. Works of art for public display.

§ 140-1.4. Special procurements.

Notwithstanding any other provision of this policy, the County Executive or County Legislature may, through legislative resolution, initiate a procurement of professional services above the small purchase amount specified in § 140-3.7 where the County Executive or County Legislature determines that an unusual or unique situation exists that makes the application of all requirements of competitive sealed proposals contrary to the public interest. Any special procurement under this section shall be made with such competition as is practicable under the circumstances. A written determination of the basis for the procurement and for the selection of the particular contractor shall be included by the County Executive or County Legislature in the contract file, and a report shall be made publicly available at least annually describing all such determinations made subsequent to the prior report.

§ 140-1.5. Purchasing Officials

Pursuant to Section 104-b of the General Municipal Law the Putnam County Legislature shall at its Organizational Meeting each year identify the individual or individuals responsible for purchasing and their respective titles

§ 140-1.6. Definitions.

ARCHITECT-ENGINEER AND LAND SURVEYING SERVICES -- Those professional services within the scope of the practice of architecture, professional engineering, or land surveying, as defined by the laws of the State of New York.

BEST VALUE—"Best Value" means the basis for awarding contracts for services to the offeror which optimizes quality, cost and efficiency, among responsive and responsible offerors. Such basis shall reflect, wherever possible, objective and quantifiable analysis. Such basis may also identify a quantitative factor for offerors that are small businesses or certified minority- or women-owned business enterprises as defined in subdivisions one, seven, fifteen and twenty of section three hundred ten of the executive law to be used in evaluation of offers for awarding contracts for services.

BRAND NAME OR EQUAL SPECIFICATION -- A specification limited to one or more items by manufacturers' names or catalog numbers to describe the standard of quality, performance, and other salient characteristics needed to meet County requirements, and which provides for the submission of equivalent products.

BRAND NAME SPECIFICATION -- A specification limited to one or more items by manufacturers' names or catalog numbers.

BUSINESS -- Any corporation, partnership, individual, sole proprietorship, joint-stock company, joint venture, or any other private legal entity.

CHANGE ORDER -- A written order signed and issued by the Director of Purchasing, directing the contractor to make changes in relation to a specific purchase order or County contract.

CONFIDENTIAL INFORMATION -- Any information which is available to an employee only because of the employee's status as an employee of the County and is not a matter of public knowledge or available to the public on request.

CONSTRUCTION -- The process of building, altering, repairing, improving, or demolishing any public structure, building, road, highway, bridge or other public improvements of any kind to any public real property. It does not include the routine operation, routine repair, or routine maintenance of existing structures, buildings, or real property.

CONTRACT -- All types of County agreements, regardless of what they may be called, for the procurement of supplies, services or construction.

CONTRACT MODIFICATION (BILATERAL CHANGE) -- Any written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of any contract accomplished by mutual action of the parties to the contract.

CONTRACTOR -- Any person having a contract with the County or a using agency thereof.

COST ANALYSIS -- The evaluation of cost data for the purpose of arriving at costs actually incurred or estimates of costs to be incurred, prices to be paid, and costs to be reimbursed.

COST DATA -- Factual information concerning the cost of labor, material, overhead, and other cost elements which are expected to be incurred or which have been actually incurred by the contractor in performing the contract.

COST-REIMBURSEMENT CONTRACT -- A contract under which a contractor is reimbursed for costs which are allowable and allocable in accordance with the contract terms and the provisions of this policy, and a fee for profit, if any.

DIRECT OR INDIRECT PARTICIPATION -- Involvement through decision, approval, disapproval, recommendation, preparation of any part of a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity.

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

FINANCIAL INTEREST.

- A. Ownership of any interest or involvement in any relationship from which, or as a result of which, a person within the past year has received, or is presently or in the future entitled to receive, more than \$100 per year, or its equivalent;
- B. Ownership of 25% of any property or business; or
- C. Holding a position in a business such as officer, director, trustee, partner, employee, or the like or holding any position of management.

GRATUITY -- A payment, loan, subscription, advance, deposit of money, service, or anything else with a nominal value of \$25 or more.

IMMEDIATE FAMILY -- A spouse, children, parents, brothers, and sisters.

INVITATION FOR BIDS -- All documents, whether attached or incorporated by reference, utilized for soliciting sealed bids.

PERSON -- Any business, individual, union, committee, club, other organization, or group of individuals.

PRICE ANALYSIS -- The evaluation of price data, without analysis of the separate cost components and profit as in cost analysis, which may assist in arriving at prices to be paid and costs to be reimbursed.

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

PROCUREMENT -- The buying, purchasing, renting, leasing, or otherwise acquiring of any supplies, services, or construction. 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.

PUBLIC AGENCY -- A public entity subject to or created by the County.

REQUEST FOR PROPOSALS -- All documents, whether attached or incorporated by reference, utilized for soliciting proposals.

RESPONSIBLE BIDDER or OFFEROR -- A person who has the capability in all respects to perform fully the contract requirements, and the tenacity, perseverance, experience, integrity, reliability, capacity, facilities, equipment, and credit which will assure good faith performance.

RESPONSIVE BIDDER -- A person who has submitted a bid that conforms in all material respects to the requirements set forth in the invitation for bids.

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

SPECIFICATION -- Any description of the physical or functional characteristics or of the nature of a supply, service, equipment or construction item. It may include a description of any requirement for inspecting, testing, or preparing a supply, service, equipment or construction item for delivery.

SUPPLIES -- All property, including but not limited to equipment, materials, and printing, excluding land or a permanent interest in land.

USING AGENCY -- Any department, commission, board, or public agency requiring supplies, services, equipment, or construction procured pursuant to this policy.

§ 140-1.7. Public access to procurement information.

Procurement information shall be a public record to the extent provided in the New York State Freedom of Information Law (Public Officers Law, §§ 84 to 90), and shall be available to the public as provided in such statute.

ARTICLE II
Office of the Director of Purchasing

§ 140-2.1. Authority and duties.

- A. Principal public purchasing official. Except as otherwise provided herein, the Director of Purchasing shall serve as the principal public purchasing official for the County, and shall be responsible for the procurement of supplies, services,

equipment, and public works projects in accordance with this policy, as well as the management and disposal of supplies, services, and equipment.

- B. Duties. In accordance with this policy the Director of Purchasing shall:
- (1) Procure or supervise the procurement of all supplies, services, materials and equipment, as well as public works projects;
 - (2) Exercise direct supervision over the County's central stores and general supervision over all other inventories of supplies belonging to the County;
 - (3) Sell, trade, or otherwise dispose of surplus supplies belonging to the County; and
 - (4) Establish and maintain programs for specification development, contract administration and inspection and acceptance, in cooperation with the public agencies using the supplies, services, and construction.
- C. Operational procedures. Consistent with this policy, the Director of Purchasing may adopt operational procedures relating to the execution of its duties.

§ 140-2.2. Delegations to other County officials.

With the approval of the County Executive, the Director of Purchasing may delegate authority to purchase certain supplies, services, equipment, or construction items to other County officials, if such delegation is deemed necessary for the effective procurement of those items.

§ 140-2.3. Procurement card program.

- A. With the approval of the County Executive, the Director of Purchasing, under the authority provided in § 140-2.1 of this policy, may establish a procurement card program to improve efficiency and streamline the purchasing process of small dollar items, thereby eliminating the need for many petty cash accounts, and also reducing the volume of individual purchase orders and payments processed by the County to suppliers. Audits shall be required to ensure that the cardholders and their respective department head or Commissioner are adhering to proper policies and procedures.
- B. Conditions for use. The Director of Purchasing and the Commissioner of Finance shall develop procurement card policies and procedures that detail the regulations which will govern the program. The Procurement Card Policy shall be reviewed annually by the County Legislature in conjunction with its annual review of the County's Procurement Policy. The Procurement Card Policy shall include:
- (1) Purpose of the procurement card program.

- (2) Scope of the program.
- (3) Detailed listing of all card holders, card limits, and approved uses.
- (4) Applicability of the policies and procedures.
- (5) Responsibilities.
- (6) Assignment and control of the procurement cards.
- (7) Card holder use of the procurement card.
- (8) Prohibited use of the procurement card.
- (9) Procedures for making and paying for purchases.
- (10) Procedures for disputes.
- (11) Review of purchases by departments.
- (12) Audit requirements.

ARTICLE III
Source Selection, Bidder Qualifications, Contract
Formation and Administration

§ 140-3.1. Competitive sealed bidding Lowest responsible bidder.

- A. Conditions for use. All contracts of the County of Putnam shall be awarded by competitive sealed bidding except as otherwise provided in §§ 140-3.3 (Competitive sealed proposals), 140-3.5 (Contracting for legal services), 140-3.7 (Small purchases), 140-3.8 (Sole source procurement), 140-3.9 (Emergency procurements).
- B. Invitation for bids. An invitation for bids shall be issued and shall include specifications, and all contractual terms and conditions applicable to the procurement.
- C. Public notice. Adequate public notice of the invitation for bids shall be given, not less than 14 calendar days prior to the date set forth therein for the opening of bids, unless it is determined by the Director of Purchasing, in writing, that a public notice of less than 14 days is adequate. In no instance shall the public notice be less than five business days. Such notice shall include publication in the

newspaper(s) of general circulation as designated by the County Legislature. The public notice shall state the place, date, and time of the bid opening.

- D. Bid opening. Bids shall be opened publicly in the presence of one or more witnesses at the time and place designated in the invitation for bids. The amount of each bid, and such other relevant information as the Director of Purchasing deems appropriate, together with the name of each bidder shall be recorded; the record and each bid shall be open to public inspection in accordance with § 140-1.7 (public access to procurement information).
- E. Bid acceptance and bid evaluation. Bids shall be unconditionally accepted without alteration or correction, except as authorized in this policy. Bids shall be evaluated based on the requirements set forth in the invitation for bids, which may include criteria to determine acceptability such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose. Those criteria that will affect the bid price and be considered in evaluation for award shall be objectively measurable, such as discounts, transportation costs, and total or life cycle costs. The invitation for bids shall set forth the evaluation criteria to be used. No criteria that are not set forth in the invitation for bids may be used in bid evaluations.
- F. Correction or withdrawal of bids; cancellation of awards. Correction or withdrawal of inadvertently erroneous bids before or after bid opening, or cancellation of awards or contracts based on such bid mistakes, may be permitted where appropriate. Mistakes discovered before bid opening may be modified or withdrawn by written notice received in the office designated in the invitation for bids prior to the time set for bid opening. After bid opening, correction of bids shall not be permitted. After bid opening, no changes in bid prices or other provisions of bids prejudicial to the interest of the County or fair competition shall be permitted. In lieu of bid correction, a bidder alleging a material mistake of fact may be permitted to withdraw his bid if:
 - (1) The mistake is clearly evident on the face of the bid document but the intended correct bid is not similarly evident; or
 - (2) The bidder submits evidence that clearly and convincingly demonstrates that a mistake was made. All decisions to permit correction or withdrawal of bids, or to cancel awards or contracts based on bid mistakes, shall be supported by written determination made by the Director of Purchasing.
- G. Award. The contract shall be awarded with reasonable promptness by appropriate written notice to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the invitation for bids.
- H. Receipt of Bids.

- (1) Bids are to be packaged, sealed and submitted to the location stated in the bid specifications. Bidders are solely responsible for timely delivery of their bids to the location set forth in the bid specification prior to the stated bid opening date/time; or
- (2) If authorized by the bid specification, bids may be submitted in an electronic format. Submission in an electronic format may not, however, be required as the sole method for the submission of bids.
 - a. The receiving device designated by the County of Putnam will be the Empire State Purchasing Group's e-Procurement software from Bidnet or the Bonfire e-Procurement software and will be identified in the bid specification. Both receiving devices will:
 - i. Document the time and date of each bid received electronically;
 - ii. Authenticate the identity of the sender;
 - iii. Ensure the security of the information transmitted; and
 - iv. Ensure confidentiality of the bid until the time and date established for opening of the bids.
 - b. The timely submission of an electronic bid in compliance with instructions provided for such submission in the advertisement for bids and/or specifications shall be the sole responsibility of each bidder or prospective bidder. The County shall not incur any liability from delays of or interruptions in the receiving device designated for the submission and receipt of electronic bids.

§ 140-3.2. Best Value Awards.

- A. Purchase contracts (including contracts for service work, but excluding any purchase contracts necessary for the completion of a public works contract pursuant to article eight of the labor law) may be awarded on the basis of best value, as defined in section 163 of the State Finance Law and as authorized in section 103 of the General Municipal Law, to a responsive and responsible offeror.
- B. Where the basis for award is the best value offer, the Director of Purchasing shall document, in the procurement record and in advance of the initial receipt of offers, the determination of the evaluation criteria, which whenever possible, shall be quantifiable, the process to be used in the determination of best value and the manner in which the evaluation process and selection shall be conducted.
- C. The Director of Purchasing shall select a formal competitive procurement process and document its determination in the procurement record. The process shall include, but is not limited to, a clear statement of need; a description of the required specifications governing performance and related factors; a reasonable process for ensuring a competitive field; a fair and equal opportunity for offerors to submit responsive offers; and a balanced and fair method of award. Where the

basis for the award is best value, documentation in the procurement record shall, where practicable, include a quantification of the application of the criteria to the rating of proposals and the evaluation results or, where not practicable, such other justification which demonstrates that best value will be achieved.

- D. The solicitation shall prescribe the minimum specifications or requirements that must be met in order to be considered responsive and shall describe and disclose the general manner in which the evaluation and selection shall be conducted. The solicitation shall identify the relative importance and/or weight of cost and the overall evaluation criterion to be considered by the County in its determination of best value.
- E. In assessing best value when awarding the purchase contract, non-price factors can be considered. Non-price factors can include, but are not limited to, reliability of a product, efficiency of operation, difficulty/ease of maintenance, useful lifespan, ability to meet needs regarding timeliness of performance and experience of a service provider with similar contracts. The basis for a best value award, however, must reflect, whenever possible, objective and quantifiable analysis. Such basis may also identify a quantitative factor for offerors that are small businesses or certified minority- or women-owned business enterprises as defined in subdivisions one, seven, fifteen and twenty of section three hundred ten of the executive law.

§ 140-3.3. Competitive sealed proposals.

- A. Conditions for use. When the Director of Purchasing determines in writing that the use of competitive sealed bidding is either not practicable or not advantageous to the County, a contract may be entered into by the use of the competitive sealed proposal method.
- B. Request for proposals. Proposals shall be solicited through a request for proposals.
- C. Public notice. Adequate public notice of the request for proposal shall be given in the same manner as provided in § 140-3.1C (Competitive sealed bidding, public notice); provided the minimum time shall be 14 calendar days.
- D. Receipt of proposals. No proposals shall be handled so as to permit disclosure of the identity of any offeror or the contents of any proposal to competing offerors during the process of negotiation. A register of proposals shall be prepared containing the name of each offeror, the number of modifications received, if any, and a description sufficient to identify the item offered. The register of proposals shall be open for public inspection only after contract award.

- E. Evaluation factors. The request for proposals shall state the importance of price and other evaluation factors.
- F. Discussion with responsible offerors and revisions to proposals. As provided in the request for proposals, discussions may be conducted with responsible offerors who submit proposals determined to be reasonably susceptible of being selected for award for the purpose of clarification to assure full understanding of, and conformance to, the solicitation requirements. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals, and such revisions may be permitted after submissions and prior to award for the purpose of obtaining best and final offerors. In conducting discussions, there shall be no disclosure of the identity of competing offerors or of any information derived from proposals submitted by competing offerors.
- G. Award. Award shall be made to the responsible offeror whose proposal is determined in writing to offer the best value to the County, taking into consideration price and the evaluation factors set forth in the request for proposals. No other factors or criteria shall be used in the evaluation. The contract file shall contain the basis on which the award was made.

§ 140-3.4. Contracting for professional services with predetermined rates.

- A. Authority. For the purpose of procuring certain Professional Services where the payment rates are established by the federal or state government, or when the County contracts with all qualified providers, any using agency may procure them without the requirement of issuing a request for proposal as per § 140-3.2 in accordance with the selection procedures specified in this section.
- B. Selection procedure.
 - (1) Conditions for use. This section shall only apply to professional service contracts where the rates to be paid by the County are set by the federal or state government, and where all qualified firms are considered for contracts.
 - (2) Statement of qualifications. Persons or firms engaged in providing the designated types of professional services may submit statements of qualifications or expressions of interest in providing such services to the appropriate department head or Commissioner. An agency using such professional services may specify a uniform format for statements of qualifications. Persons may amend these statements at any time by filing a new statement.

§ 140-3.5. Contracting for legal services.

- A. No contract for the services of legal counsel may be awarded without the approval of the County Executive and the County Attorney, other than the County Legislature which may approve its own such procurements, which shall be approved by the Chairperson of the Legislature and the County Attorney.

§ 140-3.6. Contracting for professional services with grant-approved organizations.

- A. Authority. For the purpose of procuring certain professional services where the contractor has been identified in an approved grant application as the contractor to perform services covered by the grant, any using agency may procure them without the requirement of issuing a request for proposal as per § 140-3.2, in accordance with the selection procedures specified in this section.
- B. Selection procedure.
 - (1) Conditions for use. This section shall only apply to professional service contracts where the contractor has been identified in an approved grant application as the contractor to perform services covered by the grant.
 - (2) Statement of qualifications. Prior to submitting a grant application, the County department shall obtain a minimum of three statements of qualifications and cost estimates for the services to be performed. Additional cost quotations shall be obtained if required under the terms and conditions of the grant.

§140-3.7. Purchases not subject to competitive bidding.

- A. The following purchases are not subject to competitive bidding:
 - (1) Purchases of \$20,000 or less for commodities, equipment, materials, supplies and services.
 - (2) Purchases of \$35,000 or less for public works projects.
 - (3) Purchases through Preferred Sources pursuant to §162 of the State Finance Law.
 - (4) Purchases in excess of \$500, of materials, equipment and supplies (except printed material) through the NYS Office of General Services (OGS), subject to rules established by OGS (see State Finance Law, §163).
 - (5) Purchases through other New York State Counties contracts, pursuant to General Municipal Law Section 103(3).

(6) Purchases of surplus and second hand supplies, materials or equipment from the Federal Government, the State of New York or from any other political subdivision, district or public benefit corporation with the State, pursuant to General Municipal Law §103(6).

(7) Purchases through contracts let by the United States of America or any agency thereof, any state or any other political subdivision or district therein if such contract was let to the lowest responsible bidder or on the basis of best value

B. Section 104-b of New York State General Municipal Law requires that procedures for purchasing goods and services that fall below the monetary bid limits be established and approved by the governing board. The following shall constitute Putnam County policy:

(1) Cumulative purchases.

(a) Purchases shall be evaluated with attention given to cumulative dollar amounts expected in a given fiscal year. The Director of Purchasing shall canvas using agencies to determine yearly value of a commodity or service. Past history can be taken into consideration when evaluating yearly costs associated with the purchase of a commodity or service. If the bid limit is suspected to be exceeded, competitive bidding shall be used. This decision shall rest with the Director of Purchasing.

(b) If there are several comparable separate public works projects for the same or various locations, in a foreseeable time frame, whose expected cumulative total is more than \$10,000, written quotes must be obtained from a minimum of three suppliers.

(2) Methods of procurement not covered by competitive bidding.

(a) Purchases for commodities, equipment, supplies, materials and services in the amount of \$3,000 or less shall be awarded at the discretion of the Director of Purchasing; purchases more than \$3,000 up to and including \$20,000 shall require a minimum of three (3) electronic or written quotes. All purchases more than \$20,000 shall be competitively bid.

(b) Purchases that are defined as public works projects in the amount of \$10,000 or less shall be awarded at the discretion of the Director of Purchasing; purchases more than \$10,000 up to and including \$35,000 shall require a minimum of three (3) written or electronic quotes. All purchases more than \$35,000 shall be competitively bid.

(c) Purchases and contracts defined as professional services in the amount of \$50,000 or less shall be awarded at the discretion of the County Executive, Director of Purchasing and the Commissioner or Director of the using agency. Purchases and contracts more than \$50,000 shall require the issuing of a formal request for proposal and the approval of the County Executive.

(3) Award. All awards from telephone, facsimile, e-mail or written quotes shall be made to the supplier offering the best value to the County. In determining the best value for the County, the purchase price and whether the goods or services meet specifications are the most important considerations. However, the Director of Purchasing may consider other relevant factors, including:

(a) Installation costs;

(b) Life cycle costs;

(c) The quality and reliability of the goods and services;

(d) The delivery terms;

(e) Indicators of probable supplier performance under the contract such as past supplier performance, the supplier's financial resources and ability to perform, the supplier's experience or demonstrated capability and responsibility, and the supplier's ability to provide reliable maintenance agreements and support;

(f) The cost of any employee training associated with a purchase;

(g) The effect of a purchase on agency productivity; and

(h) Other factors relevant to determining the best value for the County in the context of a particular purchase, including the status of the vendor as a Putnam County based small business.

(4) Documentation. All quotes (written or telephone) shall be documented in the procurement record and shall be filed in the respective year's quote files or attached to the Purchasing Division's copy of the purchase order. All purchases resulting from a written, electronic or telephone quote shall have the quote number referenced on the electronic purchase order or voucher, thus creating an audit trail.

§ 140-3.8. Sole source procurement.

A. A contract may be awarded without competition when the Director of Purchasing determines in writing, after conducting a good faith review of available resources

that there is only one source for the required commodity, supply, service or construction item. The Director of Purchasing shall conduct negotiations, as appropriate, as to price, delivery and terms. A record of sole source procurements shall be maintained as a public record and shall list each supplier's name, the amount and type of each contract, a listing of the item(s) procured under each contract, and the identification number of each contract file.

- B. In determining whether procurement qualifies as a sole source, the Purchasing Division and the agency requesting the procurement shall show, at a minimum:
- (1) The unique benefits to the County of the item as compared to other products available in the marketplace;
 - (2) That no other product provides substantially equivalent or similar benefits;
 - (3) That, considering the benefits received, the cost of the item is reasonable in comparison to other products in the marketplace;
 - (4) That there is no possibility of competition, as from competing dealers or distributors.

§ 140-3.9. Emergency procurements.

Notwithstanding any other provisions of this policy, the Director of Purchasing, with the approval of the County Executive and the Chairman of the Legislature, may make or authorize others to make emergency procurements of commodities, supplies, services, or construction items when there exists a threat to public health, welfare, or safety; or County property; provided that such emergency procurements shall be made with such competition as is practicable under the circumstances. A written determination of the basis for the emergency and for the selection of the particular supplier shall be included in the contract file. As soon as practicable, a record of each emergency procurement shall be made and shall set forth the supplier's name, the amount and type of contract, a listing of the item(s) procured under the contract, and the identification number of the contract file.

- A. All Departments, except for Department of Highways and Facilities:

During periods of emergency, such as (1) natural catastrophes such as landslides, snow falls, flooding or other acts of nature which prevent normal operations, (2) damage to buildings, roads, or other structures requiring immediate repair to prevent further deterioration or losses, and (3) breakdown of essential mechanical systems and machinery, such as boilers, electrical circuits, water mains or pipes, the normal purchasing procedures are not practical. Therefore, special emergency procedures are established to aid the departments in their operations.

In those cases of emergency requiring immediate actions, the department head responsible for that operation will assume charge for the operation. The following procedure will then be used:

- (1) If possible, immediately notify the Director of Purchasing of the nature of the emergency and your plans to cope with the situation.
- (2) Contact the vendor immediately and arrange the purchase.
- (3) Notify the Department of Purchasing, as soon as practical, that the emergency purchases are necessary and being arranged.
- (4) Within five (5) days after the emergency purchase is made, the department head will prepare and forward to the Department of Purchasing, a “receiving report” indicating descriptions of the purchase, and other information.

B. Department of Highways and Facilities:

For Field Employees- If an emergency purchase is required, such as:

- (1) Natural catastrophes (e.g. landslides, snowfalls, flooding or other acts of nature which prevent normal operations.)
- (2) Damage to buildings, roads, or other structures requiring immediate repair to prevent further deterioration or losses.
- (3) Breakdown of essential mechanical systems and machinery, such as boilers, electrical circuits, water mains or pipes.

Normal purchasing procedures are not practical. Therefore, the following should be followed:

1. Contact vendor
2. Notification to your Supervisor and/or Commissioner
3. Make purchase

For Highways and Facilities Administration Office ONLY-

- (1) Highways and Facilities Administration ONLY will provide documentation as to the item/service purchased, vendor, date and justification as to why this procedure was utilized, to Purchasing via letter or e-mail.
- (2) Purchasing will then document verification of purchase to Audit.

§ 140-3.10. Cancellation of invitations for bids or request for proposals.

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

§ 140-3.11. Responsibility of bidders and offerors.

- A. Determination of non-responsibility. If a bidder or offeror who otherwise would have been awarded a contract is found non-responsible, a written determination of non-responsibility, setting forth the basis of the finding, shall be prepared by the Director of Purchasing. The unreasonable failure of a bidder or offeror promptly to supply information in connection with an inquiry with respect to responsibility may be grounds for a determination of non-responsibility with respect to such bidder or offeror. The final determination shall be made part of the contract file and be made a public record.
- B. Right of nondisclosure. To the extent possible under the New York State Freedom of Information Law (FOIL), information furnished by a bidder or offeror pursuant to this section shall not be disclosed by the County outside of the office of the Director of Purchasing, or using agency, without prior written consent of the bidder or offeror.

§ 140-3.12. Cost or pricing data.

- A. Required submissions relating to the award of contracts. A prospective contractor shall submit cost or pricing data when the contract is expected to exceed \$100,000 and is to be awarded by competitive sealed proposals (§ 140-3.2, Competitive sealed proposals), or by sole source procurement authority (§ 140-3.7, Sole source procurement).
- B. Exceptions. The submission of cost or pricing data relating to the award of a contract is not required when:
 - (1) The contract price is based on adequate price competition;
 - (2) The contract price is based on established catalog prices or market prices;

- (3) The contract price is set by law or regulation; or
 - (4) It is determined in writing by the Director of Purchasing that the requirements of § 140-3.12A (Cost or pricing data, Required submissions relating to the award of contracts) may be waived, and the determination states the reasons for such a waiver.
- C. Required submissions relating to change orders or contract modifications. A contractor shall submit cost or pricing data prior to the pricing of any change order or contract modification, including adjustments to contracts awarded by competitive sealed bidding, whether or not cost or pricing data was required in connection with the initial pricing of the contract, when the change or modification involves aggregate increases or aggregate decreases in costs plus applicable profits that are expected to exceed 10% of the original contract amount.
 - D. Exceptions. The submission of cost or pricing data relating to the pricing of a change order or contract modification is not required when unrelated and separately priced adjustments for which cost or pricing data would not be required are consolidated for administrative convenience.
 - E. Certification required. A contractor, actual or prospective, required to submit cost or pricing data in accordance with this section, shall certify that, to the best of its knowledge and belief, the cost or pricing data submitted was accurate, complete, and current as of a mutually specified date prior to the award of the contract or the pricing of the change order or contract modification.
 - F. Price adjustment provision required. Any contract award, change order, or contract modification under which the submission and certification of cost or pricing data are required shall contain a provision stating that the price to the County of Putnam, including profit or fee, shall be adjusted to exclude any significant sums by which the County of Putnam finds that such price was increased because the contractor-furnished cost or pricing data that was inaccurate, incomplete, or not current as of the date agreed upon between the County of Putnam and the contractor.

§ 140-3.13. Cost or price analysis.

A cost analysis or a price analysis, as appropriate, shall be conducted prior to award of the contract other than one awarded under § 140-3.1 (Competitive sealed bidding). A written record of such cost analysis or price analysis shall be made a part of the contract file.

§ 140-3.14. Bid and performance bonds on supply or service contracts.

- A. Bid and performance bonds or other security may be requested for supply contracts or service contracts as the Director of Purchasing or head of a using agency deems advisable to protect the County of Putnam's interests. Any such bonding requirements shall be set forth in the solicitation. Bid or performance bonds shall not be used as a substitute for a determination of a bidder's or offeror's responsibility.
- B. The County reserves its right to approve the form, sufficiency, or manner of execution of surety bonds and contracts of insurance furnished by the surety company selected by the bidder to underwrite such bonds or contracts. In addition, all surety companies shall be licensed by the State of New York and have a Best's rating on bonds and contracts of insurance of an A - or better.
- C. In addition, the County reserves the right to approve or reject the contractor's proposed surety company. The County shall notify potential bidders, as part of the bid solicitation, of any surety company that has been deemed unacceptable to the County.

§ 140-3.15. Types of contracts.

- A. General authority. Subject to the limitations of this section, any type of contract which is appropriate to the procurement and which will promote the best interests of the County of Putnam may be used. A cost reimbursement contract may be used only when a determination is made in writing that such contract is likely to be less costly to the County of Putnam than any other type or that it is impracticable to obtain the supply, service, or construction item required under such a contract.
- B. Multiterm contracts.
 - (1) Specified period. Unless otherwise provided by law, a contract for supplies or services may be entered into for any period of time deemed to be in the best interests of the County of Putnam, provided the term of the contract and conditions of renewal or extension, if any, are included in the solicitation and funds are available for the first fiscal period at the time of contracting. Payment and performance obligations for succeeding fiscal periods shall be subject to the availability and appropriations of funds thereafter.
 - (2) Determination prior to use. Prior to the utilization of a multiterm contract, it shall be determined in writing that:
 - (a) Estimated requirements cover the period of the contract and are reasonably firm and continuing; and

(b) Such a contract will serve the best interests of the County of Putnam by encouraging effective competition or otherwise promoting economies in County of Putnam procurements.

(3) Cancellation due to unavailability of funds in succeeding fiscal periods. When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the contract shall be cancelled.

C. Multiple source contracting.

(1) General. A multiple source award is an award of an indefinite quantity contract for one or more similar supplies or services to more than one bidder or offeror. The obligation to order the County of Putnam's actual requirements is limited by the provision of Uniform Commercial Code Section 2-306(1).

(2) Limitations on use. A multiple source award may be made when award to two or more bidders or offerors for similar products is necessary for adequate delivery, service, or product compatibility. Any multiple source award shall be made in accordance with the provisions of § 140-3.1 (Competitive sealed bidding), § 140-3.2 (Competitive sealed proposals), § 140-3.6 (small purchases), and § 140-3.8 (Emergency procurements), as applicable. Multiple source awards shall not be made when a single award will meet the County of Putnam's needs without sacrifice of economy or service. Awards shall not be made for the purpose of dividing the business, making available product or supplier selection to allow for user preference unrelated to utility or economy, or avoiding the resolution of tie bids. Any such awards shall be limited to the least number of suppliers necessary to meet the actual requirements.

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

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

(b) The County of Putnam shall reserve the right to take bids separately if the Director of Purchasing approves a finding that the supply or service available under the contract will not meet a nonrecurring special need of the County of Putnam.

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

(5) Determination required. The Director of Purchasing shall make a written determination setting forth the reasons for a multiple source award, which shall be made a part of the procurement file.

D. Multiple source contracting: purchase of office furnishings by percentage discount awards.

(1) General. A multiple source award for office furnishings is an award of an indefinite quantity contract on one or more office furnishings manufacturer's product lines to more than one bidder or offeror. The obligation to order the County of Putnam's actual requirements is limited by the provisions of Uniform Commercial Code Section 2-306(1).

(2) Limitations of use. A multiple source award may be made when award to two or more bidders or offerors for similar product lines is necessary for adequate delivery, service or product compatibility. All multiple source awards shall be made in accordance with the provisions of § 140-3.1 (Competitive sealed bidding), § 140-3.2 (Competitive sealed proposals), § 140-3.6 (small purchases), and § 140-3.8 (Emergency procurements), as applicable. Multiple source awards shall not be made when a single award will meet the County of Putnam's needs without sacrifice of economy or service. Awards shall not be made for the purpose of dividing the business, making available product or supplier selection to allow for user preference unrelated to utility or economy, or avoiding the resolution of tie bids. Any such awards shall be limited to the least number of suppliers necessary to meet actual requirements.

(3) Contract and solicitation provisions. Specifications shall be drafted to include and utilize a "mini-bid" system to ensure that the County receives the best value for dollars expended.

(4) Mini bid procurement process. The Purchasing Division shall issue bids for discounts off of manufacturers' product lines and suggested retail price list. Award will be made by product line to the bidder offering the highest discount. Departments may request a specific brand and item based on the bid awards made. The Purchasing Division shall review the requested requisition and obtain a minimum of three additional quotations from a minimum of three additional contract vendors for an "equivalent" item from other manufacturers. The Purchasing Division shall review all of the mini-bid quotations and select the vendor/manufacturer that meets the form, function, utility and quality of the requesting agency, and also offers the lowest price.

(5) Waiver of mini bid procurement process. The Director of Purchasing may waive the requirement of the Mini Bid process for those procurements that are additions to and alterations of existing systems furniture groups. The reasons for such waiver shall be documented in writing and made part of the procurement record.

E. Design service contracts for office furnishings.

- (1) General. The Director of Purchasing or his/her designee may enter into separate contracts for design services or space planning services as deemed necessary for a particular project.
- (2) Limitations on use. A design services or space planning services contract may be entered into in accordance with the provisions of § 140-3.2 (Competitive sealed proposals), § 140-3.6 (small purchases), and § 140-3.8 (Emergency procurements), as applicable.
- (3) Contract and solicitation provisions. All solicitations and contracts for design services and space planning services shall include the following requirements:
 - (a) All specifications prepared under this contract shall be drafted so as to promote overall economy for the purpose intended and encourage competition in satisfying the County's needs and shall not be unduly restrictive. Design service contractors are prohibited from recommending or specifying any manufacturer's products or brand names in their plans and specifications if the design services contractor currently holds a Bid Award for that product line/manufacturer with the County of Putnam.
 - (b) When brand names are used in the plans and specifications developed by the Contractor, the contractor shall identify a minimum of three brand names that will satisfy the requirements of the plans and specifications.

§ 140-3.16. Contract clauses and their administration.

- A. Contract clauses. All County of Putnam contracts for supplies, services, materials and equipment, as well as public works projects, shall include provisions necessary to define the responsibilities and rights of the parties to the contract. The Director of Purchasing, after consultation with the County Attorney, may issue clauses appropriate for supply, service, or public works contracts, addressing among others, the following subjects:
- (1) The unilateral right of the County of Putnam to order in writing the changes in the work within the scope of the contract;
 - (2) The unilateral right of the County of Putnam to order in writing temporary stopping of the work or delaying performance that does not alter the scope of the contract;
 - (3) Variations occurring between estimated quantities of work in contract and actual quantities;

- (4) Defective pricing;
- (5) Liquidated damages;
- (6) Specified excuses for delay or nonperformance;
- (7) Termination of the contract for default;
- (8) Termination of the contract in whole or in part for the convenience of the County of Putnam;
- (9) Suspensions of work on a construction project or by the County of Putnam; and
- (10) Site conditions differing from those indicated in the contract, or ordinarily encountered, except that a differing site conditions clause need not be included in a contract:
 - (a) When the contract is negotiated;
 - (b) When the contractor provides the site or design; or
 - (c) When the parties have otherwise agreed with respect to the risk of differing site conditions.

B. Price adjustments.

- (1) Adjustments in price resulting from the use of contract clauses required by Subsection A of this section shall be computed in one or more of the following ways:
 - (a) By agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;
 - (b) By unit prices specified in the contract or subsequently agreed upon;
 - (c) By the costs attributable to the events or situations under such clauses with adjustment of profit or fee, all as specified in the contract or subsequently agreed upon;
 - (d) In such other manner as the contracting parties may mutually agree.

(2) A contractor shall be required to submit cost or pricing data if any adjustment in contract price is subject to the provisions of § 140-3.12 (Cost or pricing data).

- C. Standard clauses and their modification. The Director of Purchasing, after consultation with the County of Putnam County Attorney, may establish standard contract clauses for use in County of Putnam contracts. If the Director of Purchasing establishes any standard clauses addressing the subjects set forth in Subsection A of this Section, such clauses may be varied, provided that any variations are supported by a written determination that states the circumstances justifying such variations, and provided that notice of any such material variation be stated in the invitation for bids or requests for proposals.

§ 140-3.17. Approval of accounting system.

Except with respect to firm fixed-price contracts, no contract shall be awarded unless it has been determined in writing by the Director of Purchasing that:

- A. The proposed contractor's accounting system will permit timely development of all necessary cost data in the form required by the specific contract type contemplated; and
- B. The proposed contractor's accounting system is adequate to allocate costs in accordance with generally accepted cost accounting principles.

§ 140-3.18. Right to inspect plant.

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

§ 140-3.19. Right to audit records.

- A. Audit of cost or pricing data. The County of Putnam may at reasonable times and places, audit the books and records of any contractor who has submitted cost or pricing data pursuant to § 140-3.12 (Cost or pricing data) to the extent that such books, documents, papers, and records are pertinent to such cost or pricing data. Any person who receives a contract, change order, or contract modification for which cost or pricing data is required shall maintain such books, documents, papers, and records that are pertinent to such cost or pricing data for three years from the date of final payment under the contract.
- B. Contract audit. The County of Putnam shall be entitled to audit the books and records of a contractor or subcontractor at any tier under any negotiated contract or subcontract other than a firm fixed-price contract to the extent that such books, documents, papers, and records are pertinent to the performance of such a contract

or subcontract. Such books and records shall be maintained by the contractor for a period of three years from the date of final payment under the contract and by the subcontractor for a period of three years from the date of final payment under the subcontract.

§ 140-3.20. Reporting of anti-competitive practices.

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

§ 140-3.21. County of Putnam procurement records.

- A. Contract file. All determinations and other written records pertaining to the solicitation, award, or performance of a contract shall be maintained by the County of Putnam in a contract file by the Director of Purchasing.
- B. Retention of procurement records. All procurement records shall be retained and disposed of by the County of Putnam in accordance with record retention guidelines and schedules approved by the State of New York.

**ARTICLE IV
Specifications**

§ 140-4.1. Maximum practicable competition.

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

§ 140-4.2. Brand name or equal specification.

- A. Use. Brand name or equal specifications may be used when the Director of Purchasing determines in writing that:
 - (1) No other design or performance specification is available;
 - (2) Time does not permit the preparation of another form of purchase description, not including a brand name specification;

- (3) The nature of the product or the nature of the County of Putnam's requirements makes use of a brand name or equal specification suitable for the procurement; or
 - (4) Use of a brand name or equal specification is in the County of Putnam's best interests.
- B. Designation of several brand names. Brand name or equal specifications shall seek to designate three, or as many different brands as are practicable, as "or equal" references and shall further state that substantially equivalent products to those designated will be considered for award.
 - C. Required characteristics. Unless the Director of Purchasing determines in writing that the essential characteristics of the brand names included in the specifications are commonly known in the industry or trade, brand name or equal specifications shall include a description of the particular design, functional, or performance characteristics that are required.
 - D. Nonrestrictive use of brand name or equal specifications. Where a brand name or equal specification is used in a solicitation, the solicitation shall contain explanatory language that the use of a brand name is for the purpose of describing the standard of quality, performance, and characteristics desired and is not intended to limit or restrict competition.

§ 140-4.3. Brand name specification.

- A. Use. Since use of a brand name specification is restrictive of product competition, it may be used only when the Director of Purchasing makes a written determination that only the identified brand name item or items will satisfy the County of Putnam's needs. After the Director of Purchasing prepares the written determination, a request shall be forwarded to the County Legislature to pass a standardization resolution. Under no circumstances shall any solicitation offered by the County contain only one brand name, without allowing for "or equal" products, unless a standardization resolution has been passed by the County Legislature.
- B. Competition. The Director of Purchasing shall seek to identify sources from which the designated brand name item or items can be obtained and shall solicit such sources to achieve whatever degree of price competition is practicable. If only one source can supply the requirement, the procurement shall be made under § 140-3.8 (Sole source procurement).

ARTICLE V
Debarment or Suspension

§ 140-5.1. Authority to debar or suspend.

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

- A. Conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such a contract or subcontract;
- B. Conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which currently, seriously, and directly affects responsibility as a County of Putnam contractor;
- C. Conviction under state or federal antitrust statutes arising out of the submission of bids or proposals;
- D. Violation of contract provisions, as set forth below, of a character which is regarded by the Director of Purchasing to be so serious as to justify debarment action:
 - (1) Deliberate failure, without good cause, to perform in accordance with the specifications or within the time limit provided in the contract; or,
 - (2) A recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts; provided that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be a basis for debarment;
- E. Any other cause the Director of Purchasing determines to be so serious and compelling as to affect responsibility as a County of Putnam contractor, including debarment by another governmental entity for any cause listed in this Policy; and
- F. For violation of the ethical standards set forth in Article VIII (Ethics in Public Contracting).

§ 140-5.2. Decision to debar or suspend.

The Director of Purchasing shall issue a written decision to debar or suspend. The decision shall state the reasons for action taken and inform the debarred or suspended person involved of its rights concerning judicial or administrative review.

§ 140-5.3. Notice of decision.

A copy of the decision required by § 140-5.2 (Decision to debar or Suspend) shall be mailed or otherwise furnished immediately to the debarred or suspended person.

§ 140-5.4. Finality of decision.

A decision under § 140-5.2 (Decision to debar or suspend) shall be final and conclusive, unless fraudulent, or unless the debarred or suspended person, within 10 days after receipt of the decision, takes an appeal to the County Executive or commences a timely action in court in accordance with applicable law.

**ARTICLE VI
Appeals and Remedies**

§ 140-6.1. Bid protests.

- A. Right to protest. Any actual or prospective bidder, offeror, or contractor who is aggrieved in connection with the solicitation or award of a contract may protest to the County Executive. Protestors are urged to seek resolution of their complaints initially with the Director of Purchasing. A protest with respect to an invitation for bids or request for proposals shall be submitted in writing prior to the opening of bids or the closing date of proposals, unless the aggrieved person did not know and should not have known of the facts giving rise to such protest prior to bid opening or the closing date for proposals. The protest shall be submitted within three calendar days after such aggrieved person knows or should have known of the facts giving rise thereto.
- B. Stay of procurements during protests. In the event of a timely protest under Subsection A of this Section, the Director of Purchasing shall not proceed further with the solicitation or award of the contract until all administrative and judicial remedies have been exhausted or until the County Executive makes a determination on the record that the award of a contract without delay is necessary to protect substantial interests of the County of Putnam.

§ 140-6.2. Contract claims.

- A. Decision of the Director of Purchasing. All claims by a contractor against the County of Putnam relating to a contract, except bid protests, shall be submitted in

writing to the Director of Purchasing for a decision. The contractor may request a conference with the Director of Purchasing on the claim. Claims include, without limitation, disputes arising under a contract, and those based upon breach of a contract, mistake, misrepresentation, or other causes for contract modification or rescission.

- B. Notice to the contractor of the Director of Purchasing's decision. The decision of the Director of Purchasing shall be promptly issued in writing, and shall be immediately mailed or otherwise furnished to the contractor. The decision shall state the reasons for the decision reached, and shall inform the contractor of its appeal rights under Subsection C of this section.
- C. Finality of Director of Purchasing's decision; contractor's right to appeal. The Director of Purchasing's decision shall be final and conclusive unless, within five calendar days from the date of receipt of the decision, the contractor mails or otherwise delivers a written appeal to the County Executive or commences an action in a court of competent jurisdiction.
- D. Failure to render timely decision. If the Director of Purchasing does not issue a written decision regarding any contract controversy within 20 days after written request for a final decision, or within such longer period as may be agreed upon between parties, then the aggrieved party may proceed as if an adverse decision had been received.

§ 140-6.3. Access to administrative forums.

(Reserved)

§ 140-6.4. Authority of Director of Purchasing to settle bid protests and contract claims.

The Director of Purchasing is authorized to settle any protest regarding the solicitation or award of a County of Putnam contract, or any claim arising out of the performance of a County of Putnam contract, prior to an appeal to the County Executive or the commencement of an action in a court of competent jurisdiction.

§ 140-6.5. Remedies for solicitations or awards in violation of law.

- A. Prior to bid opening or closing date for receipt of proposals. If, prior to the bid opening or closing date for receipt of proposals, the Director of Purchasing, after consultation with the County Attorney, determines that a solicitation is in violation of federal, state, or municipal law, then the solicitation shall be cancelled or revised to comply with applicable law.

- B. Prior to award. If, after bid opening or the closing date for receipt of proposals, the Director of Purchasing, after consultation with the County Attorney, determines that a solicitation or a proposed award of a contract is in violation of federal, state, or municipal law, then the solicitation or proposed award shall be cancelled.

- C. After award. If, after an award, the Director of Purchasing, after consultation with the County Attorney, determines that a solicitation or award of a contract was in violation of applicable law, then:
 - (1) If the person awarded the contract has not acted fraudulently or in bad faith:
 - (a) The contract may be ratified and affirmed, provided it is determined that doing so is in the best interests of the County of Putnam; or
 - (b) The contract may be terminated and the person awarded the contract shall be compensated for the actual costs reasonably incurred under the contract, plus a reasonable profit, prior to the termination; or
 - (2) If the person awarded the contract has acted fraudulently or in bad faith, the contract may be declared null and void or voidable, if such action is in the best interests of the County of Putnam.

ARTICLE VII
Ethics in Public Contracting

§ 140-7.1. Criminal penalties.

To the extent that violations of the ethical standards of conduct set forth in this article constitute violations of any New York State or Putnam County law, they shall be punishable as provided therein. Such penalties shall be in addition to the civil sanctions set forth in this article. Criminal, civil, and administrative sanctions against employees or non-employees which are in existence on the effective date of this Policy shall not be impaired.

§ 140-7.2. Employee conflict of interest.

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

- A. The County of Putnam employee or any member of the County employee's immediate family has a financial interest pertaining to the procurement contract; or

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

§ 140-7.3. Gratuities and kickbacks.

- A. **Gratuities.** It shall be unethical for any person to offer, give, or agree to give any County employee or former County employee, or for any County employee or former County employee to solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, or preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim, or controversy, or other particular matter, pertaining to any program requirement or a contract or subcontract, or to any solicitation or proposal therefor.
- B. **Kickbacks.** It shall be unethical for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract or order.
- C. **Contract clause.** The prohibition against gratuities and kickbacks prescribed in this section shall be conspicuously set forth in every contract and solicitation therefor.

§ 140-7.4. Prohibition against contingent fees.

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

§ 140-7.5. Contemporaneous employment prohibited.

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

§ 140-7.6. Waivers for contemporaneous employment prohibition and other conflicts of interest.

The County Board of Ethics may grant a waiver from the employee conflict of interest provision (§ 140-8.2, Employee conflict of interest) or the contemporaneous employment provision (§ 140-8.5, Contemporaneous employment prohibited) upon making a written determination that:

- A. The contemporaneous employment or financial interest of the County employee has been publicly disclosed;
- B. The County employee will be able to perform his/her procurement functions without actual or apparent bias or favoritism; and
- C. The award will be in the best interests of the County of Putnam.

§ 140-7.7. Use of confidential information.

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

§ 140-7.8. Sanctions.

- A. Employees. Sanctions against employees shall be in accordance with Chapter 55 of the Laws of Putnam County (Code of Ethics).
- B. Non-employees. The Director of Purchasing may impose any one or more of the following sanctions on a non-employee for violations of ethical standards:
 - (1) Written warnings or reprimands;
 - (2) Termination of contracts; or
 - (3) Debarment or suspension as provided in § 140-6.2 (Authority to debar or suspend).

**ARTICLE VIII
Disposition of Surplus Personal Property**

§ 140-8.1. Purpose.

No statute prescribes a procedure for the sale of unneeded County personal property, and therefore, there is no statutory mandate that such property be sold only after public

advertisement for sealed bids or advertisement for public auction. The method chosen for sale is within the sound discretion of the Director of Purchasing, subject to the approval of the County Executive. However, in order to fill a fiduciary duty, the method of sale adopted should be one which is thought to bring the best price or maximum benefits and may include sale by either auction, private negotiation, or competitive bidding.

ARTICLE IX
Additional Requirements for Federal Transit
Administration Funded Contracts

§ 140-9.1. Disadvantaged Business Enterprise Program.

The County of Putnam's Department of Public Transportation has established a Disadvantaged Business Enterprise (DBE) Program in accordance with regulations of the U. S. Department of Transportation (DOT), 49 CFR Part 26. The County of Putnam's Department of Public Transportation has received federal financial assistance from the Department of Transportation, and as a condition of receiving this assistance, the County of Putnam's Department of Public Transportation acknowledges that the requirements of 49 CFR Part 26, as amended, shall be complied with. It is the policy of the County of Putnam and its Department of Public Transportation to ensure that DBEs, as defined in Part 26, have an equal opportunity to receive and participate in DOT-assisted contracts.

§ 140-9.2. Required contract clauses.

It is the policy of the County of Putnam and its Department of Planning, Development and Public Transportation to ensure that the most current Federal Transit Administration (FTA) required clauses and procedures as set forth in FTA Circular 4220.1F and any subsequent amendments and circulars governing Third Party Contracting will be followed in all contracts funded in part by FTA. These clauses and procedures are applicable to new contracts, contract amendments and contract related change orders. Further, FTA website www.fta.dot shall be checked prior to procurements to ensure that the most current clauses and procedures are incorporated in county bid documents.

§ 140-9.3. National and regional ITS architecture policy.

- A. Prior to authorization of mass transit funds from the Highway Trust Fund for acquisition or implementation of Intelligent Transportation Systems (ITS) projects, the County of Putnam, and its Department of Public Transportation, shall self-certify with Sections V and VI of the Federal Transit Administration National ITS Architecture Policy on Transit Projects.
- B. Compliance with the following FTA circulars shall also be certified:
 - (1) C5010.1C - Grant Management Guidelines.

(2) C6100.1B - Application Instructions and Program Management Guidelines.

§ 140-9.4. Duty to inquire into Vendor’s election not to submit a bid

Should any Request for Bid or Request for Proposal result in only one (1) submitted bid or proposal, the Purchasing Department will contact all vendors that received a Bid or RFP package and inquire into why they elected not to submit a bid or proposal.

§ 140-9.5. Procedures to implement provisions.

The Director of Purchasing shall develop and implement procedures for the execution of this article.

ARTICLE X

Uniform Guidance for Compliance for Federal Awards – Procurement, Suspension and Debarment

§ 140-10.1 Purpose

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

§140-10.2 General Policy Statement

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

To comply with 2 CFR Part 200 (subparts A-F), the County of Putnam implements policies and procedures, including, but not limited to:

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

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

- C. The County will utilize one of the five acceptable procurement methodologies detailed in §200.320 which include:
- Micro Purchase
 - Small Purchase Procedure
 - Sealed Bid
 - Competitive Proposal
 - Non-Competitive Proposal (Sole Source)
- D. Procurements will provide for full and open competition as set forth in the Uniform Guidance, or State and local procurement thresholds, whichever is most restrictive.
- E. No employee, officer or agent may participate in the selection, award or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract. The officers, employees, and agents can neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. If the financial interest is not substantial or the gift is an unsolicited item of nominal value, no further action will be taken. However, disciplinary actions will be applied for violations of such standards otherwise.
- F. The County will avoid acquisition of unnecessary or duplicative items. Consideration will be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical procurement approach. The County will also analyze other means, as described in §200.318 of the Uniform Guidance, to ensure appropriate and economical acquisitions.
- G. The County will enter into state and local intergovernmental agreements or inter- entity agreements, where appropriate.
- H. The County will only utilize Time and Materials contracts when it has been determined, in writing, that no other contract type is suitable.

- I. Vendors/Contractors that develop or draft specifications, requirements, statements of work, or invitation to bids or requests for proposals must be excluded from competing for such procurements.
- J. The County will make available, upon request of the federal awarding agency or pass-through entity, technical specifications on proposed procurements where the federal awarding agency or pass-through entity believes such review is needed.
- K. County Departments are prohibited from contracting with or making sub awards under covered transactions to parties that are suspended or debarred or whose principals are suspended or debarred. "Covered Transactions" include those procurement contracts for goods and services awarded under a non-procurement transaction (i.e. grant or cooperative agreement) that are expected to equal or exceed \$20,000. All non-procurement transactions (i.e. sub-awards to recipients), irrespective of award amount, are considered covered transactions.
- L. The County of Putnam will include a suspension/debarment clause in all written contracts in which the vendor/contractor will certify that it is not suspended or debarred. The contract will also contain language requiring the vendor/contractor to notify the County immediately upon becoming suspended or debarred. This will serve as adequate documentation as long as the contract remains in effect.
- M. County Departments will be required to notify the Purchasing Department and Department of Law that federal funding will be used for a certain procurement/contract. When requesting a written contract, the County Department will be responsible for running the Vendor/Contractor's name through the System for Award Management (SAM) to determine any exclusions. A copy of the SAM search will be included with the contract request. Prior to issuing a purchase order using federal funds, the Purchasing Department will check the SAM to determine if any exclusions exist for the Vendor/Contractor.

If a vendor/contractor is found to be suspended or debarred, the County will immediately cease to do business with the vendor.
- N. The County will not use statutorily or administratively imposed state, local or tribal geographical preferences in the evaluation of bids or proposals; except in those cases where applicable federal statutes expressly mandate or encourage geographical preference.

- O. The County will take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor area surplus area firms are used when possible.
- P. The County will procure recovered materials in compliance with §200.322.
- Q. The County will perform a cost or price analysis relating to every procurement more than the Simplified Acquisition Threshold. (\$150,000)
- R. The County will require appropriate bonding requirements as per §200.325.
- S. The County will only award contracts to Responsible Vendors and will document, in writing, such determination.
- T. County contracts will contain the applicable provisions described in Appendix II to Part 200 – Contract Provisions for Non-Federal Entity Contracts Under Federal Awards.
- U. The County will maintain oversight to ensure that contractors perform in accordance with the contracts terms, conditions, and specifications.

Copies of executed contracts will be maintained in the MUNIS Financial System and Purchase Orders will be maintained in the MUNIS Procurement System.

Section 2.

This local law shall take effect immediately.