PRACTICE

Approved by

The Commission

No. 4-10

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PURCHASING POLICY

AUTHORITY

Effective July 1, 2005, the Commissions consolidatedits purchasing policies into amended Administrative Practice 4-10. Amended Practice 4- 10 rescinded and replaced all previous versions of Practices 4-10, 4-10A, and 4-14.

The Commission adopted additional amendments to Practice 4-10 on June 23, 2010.

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PURPOSE/ BACKGROUND

This Practice sets forth the Commission's purchasing policy. The Practice establishes requirements of the Purchasing Program to include ethical standards and the Anti-Discrimination Program as it relates to procurement. Procedural guidance for Practice 4-10 is issued by the Executive Director through Administrative Procedures titled, Purchasing Manual.

The Commission's procurement policies were introduced in 1976. On October 15, 1997, Practice 4-10 was amended to incorporate updated standards for the acquisition of goods and services. Effective July 1, 2005, following a comprehensive review of the Purchasing Program, the Commission consolidated and updated viable portions of stand alone policies under one Practice document (4-10, Purchasing) to provide more comprehensive standards and ensure greater effectiveness/ease of use. The revised Practice replaced rescinded Practices 4-10A: Minority, Female, and Disabled Purchasing Policy (1993) and 4-14 (1976): Processing of Contracts.

Additional amendments to Practice 4-10 were adopted by the Commission on June 23, 2010. These amendments were made to clarify policy content and incorporate enhancements to the Purchasing Program including updated terminology, streamlined competitive bidding requirements, establishment of authorized users of the Credit Card Program, and strengthened ethical standards.

REFERENCES

- Annotated Code of Maryland,
  - Article 28, Section 2-115: Regulation of Conduct for Commissioners
  - State Government Article, Title 15, Public Ethics Law
- Commission's Anti-Discrimination Program
- Administrative Procedures for Practice 4-10, (Purchasing Manual)
- Practice 2-14: Non-Commission Employment and Non-Commission Business
- Practice 2-21: Risk Management
- Practice 2-24: Ethics
- Practice 3-11: Administration of Cash Funds
- Practice 3-31: Fraud, Waste and Abuse
- Practice 5-70A: Financial Disclosure
- Practice 6-50: Use of Commission-Owned Park Houses

APPLICATION

This Practice applies to all Commission employees (as defined in this Practice), and vendors.

DEFINITIONS

Abuse - The improper use or misrepresentation of actual or apparent Commission authority, including without limitation authority granted or exercised in conjunction with the Commission Merit System Rules and Regulations or other official Commission policies, Administrative Practices or Procedures.

Bid- Offer/proposal submitted by a vendor to perform services or deliver goods in response to a Commission generated solicitation.

Bid Protest - A bid protest is a mechanism by which an actual or potential Bidder/Offeror may contest the bid solicitation or process pertaining to a purchasing action. A protestor is typically a third party who feels aggrieved by the actions of the Commission or believes the solicitation's requirements are too restrictive.

Bribery - The offering, giving, receiving, or soliciting something of value for the purpose of influencing the action of a Commission employee as part of the purchasing process.

Collusion - An understanding between two or more persons to gain something illegally, to defraud another of his or her rights, or to appear as adversaries though in agreement.

Competitive Bidding - a procurement method used by the Commission to solicit bids from competing vendors. Competitive bidding is attained through informal and formal bidding processes.

Conflict of Interest - An actual or potential situation in which the personal interests of a vendor, employee, or public official, are or appear to be, in conflict with the best interest of the Commission.

Contract- A legally binding agreement for the procurement or disposal of goods or services.

Credit Card Program - A program allowing senior management positions (as designated by this Practice) to use a corporate credit card for official business.

Employee - Any Merit System employee (full-time or part-time), contract employee, volunteer, Department Head and Deputy Department Head, appointed official, or any Commissioner serving on the Montgomery or Prince George's Planning Boards with the Commission.

Executive Director - Means the Executive Director of the Commission or any duly authorized designee acting within the scope of the duties entrusted to the designee. The Executive Director shall be the final authority on the exercise of responsibility and in the interpretation of all provisions of a contract.

Family Member (Employee's Relative) - Any individual who is related by blood, marriage, or adoption, including but not limited to: a spouse, parent, step-parent, grandparent, legal guardian, child, brother, step-brother, sister, step-sister, in-law, significant other, or domestic partner.

Formal Bidding Process- A competitive process under which bids from vendors are solicited through formal written advertisement. Bids are submitted in sealed envelopes to be opened publicly on a specified date and time.

- Formal Expedited Bidding: Formal bidding process in which solicitation for bids is conducted through electronic advertisement.

- Formal Standard Bidding: Formal bidding process in which solicitation for bids is generally conducted through published print advertisement. Electronic advertisement may be used when its use has been authorized by the Purchasing Manager.

Fraud - Any act, omission, fraudulent statement/report or concealment involving the intentional breach of a legal or equitable duty or the violation of federal, state, local laws or Commission policies which results in damage to the Commission in any way, including, without limitation, the misappropriation of *any* Commission property/resources as defined below, including cash. Fraud includes, without limitation, false financial reporting.

General Counsel - Head of the Legal Department, who provides advice and represents the Commission in its legal matters.

Gratuities - Anything of value that is presented or promised in anticipation of receiving a consideration, whether or not the consideration is less than, equal to, or greater than the value presented or promised.

Informal Bidding Process- A competitive process under which vendors are solicited through written means. Vendors submit their bids in writing; however there is no requirement for sealed bids or public opening of bids.

Interest - Any source of income or any other legal or equitable economic interest, whether or not subject to an encumbrance or a condition, which is owned or held, in whole or in part, jointly or severally, directly or indirectly. Interest does not include:

(1) An interest in a time deposit or demand deposit in a financial institution;

(2) An interest in an insurance policy, endowment policy, or annuity contract under which an insurance company promises to pay a fixed number of dollars either in a lump sum or periodically for life or some other specified period;

(3) An interest in a mutual fund or exchange-traded fund (ETF);

(4) An interest held in the capacity of an agent, custodian, fiduciary, personal representative, or trustee, unless the holder has an equitable interest in the subject matter; or

(5) An interest in a deferred compensation plan that:

  (a) Has more than 25 participants, and

  (b) The Internal Revenue Service has determined qualifies as a trust under section 401, 507, and 501 of the Internal Revenue Code.

Invoice: A list prepared by the Vendor of goods or services and related charges for which payment is being requested.

Kickbacks - Any inducement offered for the award of a contract or subcontract or order, including payment, gratuity, or offer of employment, made by or on behalf of a Contractor or subcontractor under a contract to the prime Contractor or higher tier subcontractor.

Petty Cash- A fund used to reimburse employees for small dollar, non- contractual disbursements made for official activities and purchases pursuant to Practice 3-11.

Purchase Card Program - A program that allows use of a credit card by employees with delegated purchasing authority to obtain limited goods and services from vendors without use of a contract or purchase order.
Purchases made under this program require approval by a designated departmental authority.

Purchase Order- A Commission generated document that authorizes a purchase transaction with a specified vendor, formalizes the terms and conditions of the proposed transaction, and serves as binding agreement between the Commission and the vendor.

Procurement Transaction - All acts and functions that pertain to the responsibility of the acquisition of any goods, services, equipment, supplies, insurance, construction, or intellectual property, including but not limited to: the description of requirements, selection and solicitation of sources, preparation and reward of contract, or purchase order, and all phases of contract administration.

Secretary-Treasurer - Head of the Finance Department; Supervises the Purchasing Manager and oversees the Central Purchasing Division.

Waiver - An action of approval by the Executive Director authorizing a purchase to be made without competition.

Waste - The neglect or other improper conduct that results in destruction, damage, or a loss in value of Commission property/resources.

POLICY

Commission purchasing is to be conducted to achieve maximum value from the expenditure of public funds. All procurement transactions will be conducted in accordance with established Commission standards and applicable state and federal laws in a manner that:

- Ensures fiscal responsibility and public accountability;
- Encourages and maintains good community, public, vendor and interdepartmental relations;
- Ensures fair and equitable treatment of all persons who deal with the Commission in purchasing matters;
- Promotes economy in Commission purchasing;
- Ensures that the Commission is not an active or passive participant in discrimination against minority, women, or disabled-owned businesses; and
- Provides safeguards for the maintenance of a procurement system of quality, reliability, and integrity.

The Commission encourages competition in the acquisition of goods and services whenever practical. Competitive bidding is required for purchases over $10,000. Competitive bidding may be conducted through an informal or a formal bid solicitation process based on the following thresholds:

- Informal Bidding Threshold: Over $10,000 and up to $30,000
- Formal Expedited Bidding Threshold: Over $30,000 up to $50,000
- Formal Standard Bidding Threshold: Over $50,000

Procurement bidding and transaction methods shall be established to facilitate efficient and effective agency operations while adhering to principles established in this policy. Procurement methods used to obtain goods/services may include contracts, purchase orders, purchase cards, credit cards, petty cash, direct invoicing, and others when their use complies with the requirements of this Practice. Safeguards shall be established for each method to prevent potential conflicts of interest or concerns of fraud, waste, or abuse as defined by Commission Practice 3-31.

The Secretary-Treasurer shall approve the designation of individuals authorized to carry out procurement transactions and shall report abuse to the Executive Director and the respective Planning Board Chair.

Authorized users of the Credit Card Program shall be restricted to the Commission Chair, Commission Vice Chair, and Department Heads.

The Executive Director will establish Administrative Procedures recommended by the Secretary-Treasurer to implement this Practice. The Secretary-Treasurer shall recommend adjustments in the Purchasing Program as needed to ensure compliance with the Practice.

I. Ethics in Purchasing

The oversight, administration, and management of expenditures and resources that are generated through tax collections demand the public's trust. It is the policy of the Commission to preserve the public's trust by prescribing essential standards of ethical conduct in purchasing.

Commission employees must conduct themselves in a manner to foster public confidence in the integrity of the Commission procurement process. Any attempt to realize personal gain by improper discharge of procurement duties or responsibilities by an employee is a breach of public trust and thus of the ethical standards of the Commission.

It is also a breach of ethical standards for an employee to participate directly or indirectly in a procurement transaction in which a conflict of interest may exist, as defined in the Practice and Purchasing Manual. The Commission will not enter into any contracts for purchase of goods or services (including concessions) with its employees or an employee's family members (as defined), or with any entity in which the employee has knowledge that his/her family member may have at least a five percent (5%) interest or association, unless the employee receives a waiver consistent with the provisions outlined in subsection, Conflict of Interest Waivers.

In addition, the Commission will not enter into contracts or agreements for the use, sale, or rental of Commission property by Commission employees or their relatives/family members, except that Commission employees shall be eligible to:

- Purchase surplus Commission personal property prior to public sale;
- Rent and occupy park housing in accordance with Practice 6-50;
- Use garden plots on the same basis as offered to the general public, if the Commission makes such plots available; and
- Use Commission facilities and participate in any Commission programs/events on the same basis as offered to the general public.

Compliance with this policy is required of all participants in the procurement process as representatives of the Commission.

To preserve the integrity of the Purchasing Program the following requirements apply to current and former employees:

Current Employees

All employees involved in procurement transactions on a regular basis, as defined in the Administrative Procedures (Purchasing Manual), must file:

- An annual conflict of interest affidavit, consistent with the procedures outlined in the Purchasing Manual.

- An annual disclosure statement consistent with Practice 5-70A (Financial Disclosure) and the Purchasing Manual.

- Upon discovery of an actual or a potential conflict of interest, the employee must file a written statement of disqualification with the Executive Director and withdraw from participation in the related transaction. See also Conflict of Interest Waivers. The General Counsel shall advise the Executive Director on issues pertaining to actual or potential conflicts of interest.

Former Employees

A former employee shall not participate in a Commission purchasing action for a period of 18 months after termination of employment unless an exception is granted by a review Committee which is comprised of Chairs and Vice Chairs of both Planning Boards and the Executive Director. Exceptions may be granted when it has been determined that the conflict of interest is insubstantial or remote based on the advice of the General Counsel.

Conflict of Interest: The following paragraphs outline circumstances in which an employee has a conflict of interest and the procedures to be followed when such a conflict is discovered.

An employee may not participate in any procurement, if he/she has a personal interest or involvement, or has knowledge of an interest or involvement by a family member in any of the following:

- Any business entity in which he/she has a direct financial interest of which he/she may reasonably be expected to know;
- Any business entity of which he/she is an officer, director, trustee, partner, or employee, or in which he/she knows any family member has such interest;
- Any business entity with which he/she or, to his/her knowledge, any family member is negotiating or has any arrangement concerning prospective employment;
- Any business entity which is a party to an existing contract with the official or employee, or which the official or employee knows is a party to a contract with any family member, if the contract could reasonably be expected to result in a conflict between the private interests of the official or employee and his/her official duties;
- Any entity, either engaged in a transaction with the Commission or subject to regulation by the Commission, in which a direct financial interest is owned by another entity in which the official or employee has a direct financial interest, if he/she may be reasonably expected to know of both direct financial interest;
- Any business entity which the official or employee knows is his/her creditor or obligee, or that of a family member, with respect to anything of economic value and which, by reason thereof, is in a position to affect directly and substantially the interest of the official or employee or any of the above named relatives.

The restriction from participation in any procurement does not apply when the employee is acting in good faith in the exercise of an administrative or a ministerial duty which does not affect the disposition or decision with respect to the procurement.

<u>Financial Interest in a Blind Trust:</u> Where an employee or his/her family member 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.

<u>Discovery of Actual or Potential Conflict of Interest Disqualification and Waiver:</u> Upon discovery of an actual or potential conflict of interest, an employee shall promptly file a written statement of disqualification with the Executive Director and shall withdraw from further participation in the transaction involved. The employee may, at the same time, apply to the Executive Director for a decision as to any further participation that may be permissible in the transaction.

<u>Conflict of Interest Waivers:</u> The Executive Director may grant a waiver from the employee conflict of interest provision if after consultation with

the General Counsel it is determined that the interests of the Commission so require and when the ethical conflict is insubstantial or remote.

<u>Participation in Procurement:</u> In general, an individual who assists a Commission unit in the drafting of procurement specifications, an "Invitation for Bids", or a "Request for Proposals", or a firm that employs that individual, may not:

- Submit a bid or proposal for that procurement; or
- Assist or represent another person, directly or indirectly, who is submitting a bid or proposal for that procurement.

Assisting in the drafting of procurement specifications, an Invitation for Bids, or a Request for Proposals does not include:

- Providing descriptive literature such as catalogue sheets, brochures, technical data sheets, or standard specification "samples", whether requested by a Commission unit or provided on an unsolicited basis;
- Submitting written comments on a specification prepared by a Commission unit or on a solicitation for a bid or proposal when comments are solicited from two or more persons as part of a request for information or a pre-bid or pre-proposal process;
- Providing specifications for a sole source procurement made in accordance with the rules for use of waivers (as found in the Purchasing Manual); or
- Providing architectural and engineering services for programming, master planning, or other project planning services, as determined by the Purchasing Manager on a case-by-case basis, dependent on the scope of such services.

<u>Use of Confidential Information:</u> Any employee or former employee is prohibited from using confidential information not available to the public that was obtained as a result of the employee's public position for his/her actual or anticipated personal gain or that of another.

<u>Use of Prestige of Office:</u> An employee shall not intentionally use the prestige of office or public position for that employee's private gain or that of another. The performance of usual and customary constituent services, without additional compensation, is not prohibited.

<u>Gratuities:</u> All employees of the Commission, who are directly responsible for any procurement transaction, as defined, on a regular basis, are prohibited from soliciting, demanding, accepting, or agreeing to an offer of employment or gift or anything of value, including, but not limited to: samples, others than those received in connection with official procurement; entertainment; meals; special personal price considerations; fees; commissions; or other gratuities from Vendors/Contractors doing business with the Commission, including subcontractors, or in connection with any solicitation or proposal.

Vendors, contractors, or subcontractors who offer employment or the gratuities listed above to Commission employees may be declared irresponsible Bidders and may be debarred from bidding.

Kickbacks/Collusion/Bribery: It shall be unethical for any payment, gratuity, or offer of employment to be made by or on behalf of a contractor or 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 contract, subcontract or purchase order, or for an agreement not to compete for any award.

Prohibition Against Contingent Fees: It shall be unethical for a person to be retained, or to retain a person, to solicit or secure a Commission 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.

II. Anti-Discrimination Program

It is the policy of the Commission that it not be an active or passive participant in discrimination against minority, female or disabled-owned firms (MFDs). This Anti-Discrimination Program seeks to ensure that MFDs have the same opportunities to succeed in pursuing Commission procurement as any other potential vendor absent the effects of discrimination. The Anti-Discrimination Program also addresses treatment of MFDs when performing work, which utilizes the Commission’s funds or other assets.

The Commission’s Anti-Discrimination Program applies to procurement, which the Commission has delegated where such delegation involves the expenditure of Commission or other identified public funds, or use of any other Commission assets. An example of delegated procurement is the hiring of sub-contractors by prime contractors engaged by the Commission.

All firms awarded Commission purchases shall not discriminate against any employee or applicant for employment because of age, gender, race, creed, national origin, or disability. If a firm is determined by a final order of an administrative agency or a court to be in violation of Federal, State or County anti-discrimination laws, any agreement entered into by the Commission with the firm may be terminated or suspended in whole or in part by the Commission, and the firm may be debarred from future procurement with the Commission.

Measures to Prevent Discrimination in the Dissemination of Information Regarding Commission Procurement Opportunities

Notification of Firms of Opportunities to Bid: The Commission shall establish and maintain a bidders list containing both MFD and majority- owned firms and utilize this list, when appropriate, to notify firms of procurement opportunities. Staff should use the Procurement Data form to track whether MFD firms were notified of bid opportunities.

Monitoring of MFD Procurement on Small Purchases: All procurement opportunities shall be open to MFDs. The Executive Director shall communicate the importance of this policy to all Commission staff directly or indirectly involved with procurement transactions, as defined. The Finance Department shall monitor MFD utilization by department and by dollar amount, submitting these utilization reports to Department Heads and the Executive Director or designee.

Measures to Prevent Discrimination in the Commission's Contract Specifications

Bonding: Unless approved by the Secretary-Treasurer before a specific contract is bid, bonding shall not be required for contracts where it would not otherwise be required under the Annotated Code of Maryland.

The Executive Director shall maintain current information regarding bonding assistance programs offered by other agencies and make such information available to any interested firm.

Review of Financial Status of Bidders: For any proposed award of $100,000 or more, the Commission shall require financial statements from bidders and utilize information reported through Dun & Bradstreet to assess bidder financial responsibility. Financial information also may be requested for other awards as deemed necessary for determination of financial responsibility.

Measures to Prevent Discrimination in Commission Contract Awards

Purchases Made Without Competitive Bid: All waivers of competition for purchases valued in excess of $10,000 require approval of the Executive Director.

Elimination of the Practice of Rebidding Based on Revised Scope of Work: Except in unusual circumstances as approved by the Executive Director, the Commission will not ask for revised bids on a reduced or revised scope after initial bids have been submitted. The Purchasing Manager will submit recommendations to the Executive Director regarding whether rebidding should be conducted with all bidders, all vendors who picked up bid documents or re-advertised on the open market. Changes in the scope of construction and renovation projects shall be handled with addenda.

Debarment: A debarment procedure shall be established and included in the Administrative Procedures (Purchasing Manual).

Bid Protest Procedure: A formal bid protest procedure shall be established and included in the Administrative Procedures (Purchasing Manual).

Commission Contract Review Process:
The Commission shall implement a contract review process to resolve matters concerning claims or disputes based upon breach of Contract, mistake, misrepresentation, or other cause for Contract modification or rescission, including a request for waiver of liquidated damages. This process shall be established in the Administrative Procedures (Purchasing Manual).

Price Preference Program: The Commission may utilize the Price Preference Program (Preference Program) to remedy the effects of private marketplace discrimination that affects the opportunity for certain groups of firms to effectively compete for Commission purchases. The Preference Program and its eligibility requirements shall be described in the Administrative Procedures (Purchasing Manual). The group of firms eligible for the Preference Program shall be reviewed by the Executive Director, and recommended for modification from time to time, on an as needed basis.

Only those firms currently approved for the price preference or evaluation preference are eligible for the preference. See also, the Purchasing Manual.

For bids, the amount of the price preference is based on the dollar amount of the lowest acceptable bid. For bids of $1,000,000 or less, the price preference for bids by MFDs is five percent (5%). There is no additional preference for a bid amount over $1,000,000. This means that the maximum preference than can be applied is $50,000.

The evaluation preference for eligible MFDs in a competitive proposal process may be set at any level up to ten percent (10%) of the total points available for a proposal or a Statement of Qualifications. This preference only applies to eligible MFD prime consultants. The non-discrimination in subcontracting program element addresses opportunities for MFDs as subcontractors for this type of procurement.

The Commission must clearly state in the solicitation document the preference to be applied for that particular procurement.

Non-Discrimination in Subcontracting: It is the policy of the Commission that any bidder seeking to contract with the Commission shall not discriminate against MFDs in the selection of subcontractors on Commission projects. On any construction or professional services contract that includes substantial subcontracting opportunities, the Executive Director or his/her designee shall set recommendations for MFD participation levels by category to ensure that the firm has not discriminated against MFDs in the course of preparing the bid or proposal for that contract. Specifically, firms are required to provide MFDs the opportunity to submit bids as subcontractors and to award those MFDs submitting low bids the subcontracts unless there are legitimate reasons not to do so.

The following procedures shall be used to implement this non- discrimination in subcontracting program. A prime contractor bidding on a Commission contract is presumed to have not discriminated against MFDs in selecting subcontractors if it complies with one of the three following requirements in submitting its bid/proposal:

1. Document that it is not the normal practice of the firm to use any subcontractors on the type of contract at hand. If the firm attests that it does not intend to subcontract any of the work in the contract, and the bidder can document that its normal practice on similar assignments is to not subcontract any of the work, then the firm is in compliance with the subcontracting program.

2. Document efforts to solicit MFD pricing, and document that MFDs were not low or could not be used as subcontractors for other legitimate reasons. If the firm intends to use subcontractors on the contract, or would normally use subcontractors on similar types of contracts, the firm may comply with the subcontracting program by:

    - Documenting efforts to obtain pricing from MFD subcontractors; or
    - Documenting that MFD subcontractors submitting pricing would be used on the project; or would not be used because they did not submit the lowest pricing for the particular work, had defects in the bid proposals submitted or were not qualified to perform the particular work.

3. Meet or exceed MFD subcontractor levels of participation on the project. The firm is presumed to have not discriminated against MFD subcontractors if the participation of MFDs assubcontractors in the project meets or exceeds the MFD levels of participation recommended for the project. In this case, the Commission presumes that the firm provided opportunities for MFD’s to submit pricing and that MFDs that submitted the lowest acceptable bids were chosen as subcontractors.

The Executive Director shall establish MFD levels of participation for each relevant category or type of contract that includes substantial subcontracting opportunities.

The contract level of participation shall be based upon the percentage of the contract amount expected to be sub-contracted (based upon industry practice and the experience of the Commission on similar contracts) and the relative availability of MFDs for the portion of work to be subcontracted (from information such as that provided in the 1997 Disparity Study (as updated in 2003) or the most recent Disparity Study and from past Commission experience on similar contracts). The contract level of participation may be set at zero if there are no MFD firms available in the local marketplace to perform the tasks to be subcontracted.

The Purchasing Manager shall examine all projects expected to cost more than $30,000 (the formal bidding threshold) to determine whether the project includes substantial subcontracting opportunities. The Purchasing Manager shall determine whether the standard MFD participation level shall apply or if necessary, recommend a different MFD participation level for consideration by the Executive Director. The MFD participation level shall be identified as a as a percentage of total bid amount.

In cases where the Purchasing Manager recommends a variation in the standard MFD participation level, the Executive Director will consider any recommendations from the respective Department Head regarding the existence of subcontracting opportunities and the size of the level of participation to be applied, if any. The This level of participation shall be approved by the Executive Director before inclusion as a specification in the Invitation for Bids or Request for Proposals.

The Non-Discrimination Program, including project levels of participation shall apply not only to the initial contract award, but also to major change orders that serve to increase the dollar value of the initial contract. In such cases, the department originating the contract change order will make a recommendation to the Purchasing Manager regarding the MFD participation. The Purchasing Manager will make a recommendation to the Executive Director who will determine program application.

Bidder Compliance With Established MFD Participation Levels

Firms will submit standard forms to indicate how they have complied with the non-discrimination requirements.

For a bidder to comply with the non-discrimination in subcontracting requirements through meeting or exceeding the MFD project level of participation, it must comply with the following provisions:

- At the time of the bid/proposal opening, the firm shall provide to the Commission a list of all MFD sub-contractors that are utilized toward the satisfaction of project levels of participation. This list is a material aspect of the offer. The list shall specify:
    - The name, address, telephone number, fax number, if any, and contact name for the MFD;
    - The dollar value and description of the commercially useful function to be performed by the MFD;
    - The value of the commercially useful function to be performed by the MFD as a percentage of the contract amount;
    - A statement from the bidder that the dollar amount of work to be performed by the MFDs on the contract was furnished to the bidder and agreed upon prior to bid opening; and
    - A statement from the bidder that it understands that it must submit an executed letter of intent for each MFD listed within five (5) working days after bids are opened by the Commission, and that failure to do so will render the bid non-responsive.
- If awarded the contract, the awardee must utilize the MFDs to which letters of intent have been issued. In order to facilitate prime contractor's solicitation of potential MFD subcontractors, the Central Purchasing Division will issue a list of MFD construction and professional services firms included in the Commission-wide electronic bidders list upon request.

Subcontractor Payment: Throughout the course of a contract, prime contractor shall submit forms verifying payment to its MFD subcontractors. These forms shall be submitted to the departmental contract administrators/managers.

If contract administrators/managers determine that the MFD subcontractors are not being utilized as specified by the prime contractor in the contract the administrators should notify the Executive Director or designee. Prime contractors should be allowed to substitute, for cause, new MFD subcontractors for any MFD subcontractors that could not perform the assigned tasks. If a prime contractor refuses to comply with the MFD subcontracting plan it submitted with its bid or proposal, or if a prime contractor submits false documentation of its compliance with such a plan, the Commission will conduct a debarment investigation.

Treatment of MFDs When Performing Work for the Commission

The Commission has a policy that MFDs shall not be discriminated against in their performance of work for the Commission by the Commission or its prime contractors.

Any allegations of such discrimination by MFD vendors or contractors shall be investigated by the Executive Director.

Other Implementation Issues

Monitoring: The Finance Department shall prepare quarterly MFD Procurement Statistics reports that track the utilization of MFD firms (on an absolute and percentage basis) by department and procurement category as a percentage of total procurement dollar volume. Utilization as prime contractors will be examined separately from utilization as subcontractors.

Annual reports will track both the number of purchases and the dollar amount of purchases going to MFDs (on an absolute and percentage basis) by department, procurement category, ownership status (e.g., African American-owned firms, Asian-owned firms) and size of purchase (e.g., purchases with a value up to $10,000 and those with a value exceeding $10,000). Departmental payments made on blanket purchase orders will also be included in the annual report. As with the quarterly reports, utilization as prime contractors will be examined separately from utilization as subcontractors.

In order to calculate the proportion of MFD participation in subcontracts on Commission projects, the Finance Department shall utilize departmental data on all subcontractors on Commission projects. Departmental contract administrators/managers must obtain a list of all subcontractors, the work they are to perform, and the amount they are to be paid upon completion of any project involving subcontracting. This original list should be placed in the contract files. A copy should be forwarded to the Purchasing Manager.

The utilization reports should include purchases of goods and services as defined by the Purchasing Manual. The following items will not be included in the analysis of utilization (neither MFD purchases nor total purchases):

- Advertising
- Auto/equipment repairs covered by third party insurance payments;
- Bank fees;
- Charitable or non-profit activities;
- Debt service;
- Employment contracts;
- Employee reimbursement; cash advances, and petty cash;

- Employee relocation;
- Technical experts or witnesses required for purposes of safety/health, requirement of collective bargaining, or legal matters.
- Insurance or insurance reimbursables;
- Inter and intra-governmental memoranda of understanding;
- Inter and Intra-governmental charges;
- Land and interests in land, including easements, rights of way, rents and leases;
- Memberships, dues, fees for conferences/ seminars/training, and related expenses for Commission employees;
- Other payments to government agencies or not-for-profit institutions;
- Published books, maps, periodicals, newspapers, and technical resources;
- Privately funded expenditures of Public/Private Partnerships;
- Supplies or services for resale to the public;
- Travel;
- Tuition assistance; and
- Utilities in which services/rates are non-negotiable

Purchases made by riding other governments' contracts, will be included in the utilization statistics, regardless of whether the other government has instituted anti-discrimination measures.

<u>Identification of MFDs:</u> An MFD firm means any entity that engages in commercial transactions and is at least 51 percent owned and controlled by one or more minority, female or disabled persons. For purposes of this definition, minority individuals are limited to members of the following groups: African Americans, Asians (including Pacific Islanders), Hispanics, and Native Americans. For reporting purposes, African American refers to all persons having origins in and of the black racial groups of Africa; Hispanics refers to all persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race; Asian includes all persons having origins in any of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands except Hawaii; and Native American includes all persons of American Indian, Eskimo, Aleut and Native Hawaiian descent.

Also for purposes of MFD definition, "disabled" means a physical or mental impairment that substantially limits one or more of the major life activities of an individual, as defined in the Americans with Disabilities Act of 1990, as amended.

Except for purposes of the Price Preference Program, MFD status of the firm in Commission records will be as reported by the firm owner on the Bidder/Vendor Registration Form, unless otherwise challenged by an interested party. Information on the race, ethnicity, gender, and disability status will be included on the Registration Form filled out by all new vendors and additions to the bidders list. All vendors already in the

Commission's electronic files will be requested to supply this MFD identification data. Firms declining to submit such information to the Commission will be identified as "status unknown" and presumed to not be MFD businesses.

Firms that knowingly submit false information concerning their MFD status on their Bidder/Vendor registration forms are subject to sanctions up to, and including, debarment from Commission procurement.

The MFD status reported by firms will be identified by the Commission on its Bidders List and on a list of MFDs that report interest in subcontracting opportunities on Commission projects. This list of MFD subcontractors may be made available to firms interested in bidding as prime contractors on Commission projects, or any other interested party.

Any interested party may submit a formal challenge to the MFD status information reported by a vendor. When a formal challenge is submitted, the Purchasing Manager will take appropriate steps to further investigate the ownership status of the firm in question. If the Commission's investigation identifies serious questions concerning the truthfulness of the firm's representation of ownership on the submitted Vendor Registration Form, the Purchasing Manager has the authority to take actions, including reclassifying the firm's status as "status unknown," removing the firm from the Commission's Bidders List, debarring the firm from doing business with the Commission for a period of up to three years, or referring the matter for legal action against the firm for fraud.

Eligibility for the Price Preference: To be approved as eligible for the Price Preference Program, a MFD firm must meet each of the following criteria:

1. Be an African American, female or disabled-owned firm for purposes of receiving program certification for construction or an African American or disabled-owned firm for professional services purchases; be an African American or disabled-owned firm for purposes of receiving program certification for goods purchases; or be a disabled-owned firm for purposes of receiving program certification for miscellaneous services purchases.

2. If a construction or miscellaneous services firm, has a place of business within the federally-defined Washington Primary Metropolitan Statistical Area (that is, the District of Columbia; Calvert, Charles, Frederick, Montgomery and Prince George's counties in Maryland; Arlington, Clarke, Culpeper, Fairfax, Fauquier, King George, Loudon, Prince William, Spotsylvania, Stafford and Warren counties and the cities of Alexandria, Fairfax, Falls Church, Fredericksburg, Manassas, Manassas Park in Virginia; and Berkley and Jefferson counties in West Virginia); if a goods or professional services firm, has a place of business within the federally defined Baltimore-Washington Consolidated Metropolitan

Statistical Area (that is, the Washington PMSA plus the Baltimore PMSA, which consists of Anne Arundel, Baltimore, Carroll, Harford, Howard and Queen Anne's counties and the City of Baltimore.

3. Have average annual gross receipts for the previous three fiscal years that have not exceeded $5.0 million if the firm's primary business is manufacturing or supplying goods, and $3.0 million if a firm's primary business is construction, professional services or miscellaneous services.

4. Not be an employee of the Commission, or a family member of a Commission employee.

5. Have current certification from a federal agency, or a state or local government located in Maryland, the District of Columbia, or the State of Virginia that performs certification accepted by the Commission. (The Executive Director will periodically review the certification agencies accepted by the Commission.)

   Certification for the price preference extends for a period of three years, upon which time the firm must reapply for program certification following the above-listed certification criteria. Firms will be decertified upon notice from the accepted certifying agencies

Penalties: It is impermissible for a person to knowingly misrepresent his or her firm's status as a minority, female or disabled business enterprise or its business location for purposes of Commission procurement. Such a person could be subject to the sanctions as provided in applicable laws of the State of Maryland and applicable Commission rules, regulations and practices.

The Executive Director shall present to the General Counsel and/or Internal Audit, any indication of material noncompliance with the MFD Program with an appropriate recommendation for further investigation and possible legal action. The General Counsel may pursue debarment of the violator through any established processes, as well as other civil or administrative remedies available.

Review of the Anti-Discrimination Program: The Executive Director shall undertake an annual review of the effectiveness of and make recommendations to the Commission for any necessary changes to this Practice.

Duration of the Anti-Discrimination Program: The Anti-Discrimination Program shall be terminated by the Commission based upon a determination that there is no longer a need to take measures to ensure that the Commission is not an active or passive participant in discrimination against MFDs.

If not discontinued earlier based upon the above provision, the Anti-Discrimination Program shall sunset on the date approve by the State of Maryland Legislature.

RESPONSIBILITIES

The following responsibilities are assigned for the overall administration of the Commission's purchasing policy. Detailed responsibilities for implementation of this Practice are outlined in the Administrative Procedures (Purchasing Manual) for this Practice. Responsibilities may be delegated as appropriate.

<u>The Executive Director shall:</u>

1. Review and approve Administrative Procedures for implementation of this Practice as recommended by the Secretary-Treasurer.
2. Ensure that all personnel assigned purchasing and contact administration duties receive appropriate training and guidance in implementing the Anti-Discrimination Program.
3. Review requests to waive competitive bidding or quotation procedures, except as otherwise delegated; and,
4. Review and execute formal written contracts, including major change orders, except as otherwise delegated.
5. Implement the Commission Contract Review Process in accordance with the Administrative Procedures (Purchasing Manual).
6. Review potential or actual conflicts of interests involving current or former employees.

<u>The Secretary-Treasurer shall:</u>

1. Recommend for approval by the Executive Director, Administrative Procedures that, implement Practice 4-10.
2. Designate a representative (Purchasing Manager) to manage the day-to- day operating purchasing functions.
3. Provide explanation of purchasing procedures to all units;
4. Delegate and revoke purchasing authority;
5. Review and approve of all contracts and change orders;
6. Provide waiver or modification of insurance requirements based on recommendation of the Risk Management Office;
7. Provide modification of bonding requirements; and
8. Monitor MFD utilization by department and dollar amount;

<u>The General Counsel shall:</u>

1. Participate in the drafting of agreements prior to the establishment of contractual relationships;
2. Review and approve all contract forms or contracts for sufficiency of legal form; and
3. Shall act in an advisory capacity, on matters related to the Commission's Contract Review Process.
4. Provide advice on any legal matter pertaining to the purchasing process.

Department Heads shall:

1. Ensure that departmental purchasing decisions comply with this Practice and its Administrative Procedures; and
2. Ensure adequate training and compliance.

PROCEDURES

The Executive Director shall approve and issue Administrative Procedures recommended by the Secretary-Treasurer to implement policy contained in this Practice. These Administrative Procedures shall be issued as the Purchasing Manual.

VIOLATIONS

Employees who violate any portion of this Practice 4-10 and its accompanying Administrative Procedures in the Purchasing Manual, will have their purchasing authority revoked and are subject to disciplinary action, up to and including termination of employment.

Disciplinary actions shall be handled in accordance with the Merit System Rules and Regulations, applicable collective bargaining agreements, and Commission Administrative Practice 2-16, "Seasonal/Intermittent, Temporary, and Term Employment". Employees covered under the Law Enforcement Officer's Bill of Rights ("LEOBR") shall be afforded their rights pursuant to the LEOBR statute as well as any applicable Collective Bargaining Agreement.

In addition to disciplinary actions up to termination, violations of policy also may result in criminal prosecution and recovery of losses. Any expenses incurred from an employee's unauthorized purchases or use/misuse or loss of Commission property/resources may be recovered by the Commission through direct repayment of such expenses by the employee, or collection of such expenses through payroll deduction. The Commission reserves the right to determine the method of recovery of such expenses and to pursue legal action for collection of any monies owed by an employee. Disciplinary and recovery actions shall be coordinated through the Secretary-Treasurer's Department, the Department of Human Resources and Management and the Legal Department.

Vendors may be held financially responsible for loss/damage to Commission property/resources resulting from a violation of this Practice and the Purchasing Manual, or any applicable federal, State or local law.

Vendors and individuals doing business or seeking to do business with the Commission are required to comply with the terms of their contract or agreement and all applicable Administrative Practices and Procedures. Failure to comply may result in the vendor or individual being debarred from doing business with the Commission or, if applicable, action pursuant to Administrative Practices and Procedures and federal, state or local laws.