

Chapter: Fiscal and Administrative Affairs Modification No. 0189

Subject: Procurement, Contracts, and Consultant Services

I. The Board of Trustees has authority to enter into ~~e~~C contracts for goods and services to carry out the College's mission. The Board of Trustees expects that the College's procurement processes will be consistent with all applicable laws, regulations and ethical standards.

II. ~~This policy serves several purposes; of this policy creating a procurement system for the College include:~~ the following purposes:

- ~~A. Providing for confidence in College procurements;~~
- A. To govern procurements by the College to facilitate the educational mission of the College through the acquisition of goods and services.
- B. To apply best procurement methods and practices that provide for a clear procurement process, broad-based competition, and public confidence through standard procurement policies and procedures.
- C. Ensuring that the College utilizes and leverages its purchasing power directly, and through other governmental entities, to meet educational and institutional needs in a timely, economical, effective and responsible way.
- D. Providing safeguards for maintaining a College procurement system of quality and integrity, consistent with conflicts of interests' requirements and other requirements of law, regulations, and grant governing documents.
- E. Fostering effective broad-based competition to the extent practicable.
- F. Supporting governmental priorities and responsibilities, including appropriate encouragement and support for minority contracting in accordance with MD Code Education Article §16-311(c)(7)(ii) and the use of environmentally conscientious responsible materials and services; and
- ~~B.G. Ensuring fair and equitable treatment of all persons who deal with the College procurement system.~~
- ~~C.D. Providing safeguards for maintaining a College procurement system of quality and integrity, consistent with conflicts of interests requirements and other requirements of law, regulations and grants;~~
- ~~D. Fostering effective broad-based competition to the extent practicable;~~
- ~~E. Obtaining maximum benefit from the public funds available to the College to purchase necessary and beneficial College mission-related materials and services;~~
- ~~F. Providing increased efficiency and timeliness in College procurements;~~
- ~~G. Assuring compliance with changing requirements of law and regulations;~~

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- 49 ~~II. Supporting governmental priorities and responsibilities, including appropriate~~
- 50 ~~encouragement and support for minority contracting and use of environmentally~~
- 51 ~~conscientious materials and services; and~~
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- 53 ~~I. Ensuring that the College utilizes and leverages its purchasing power directly,~~
- 54 ~~and through other governmental entities, to meet educational and institutional~~
- 55 ~~needs in a timely, economical, effective and responsible way.~~
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- 57 III. The Board of Trustees must authorize by resolution all ~~competitively bid e~~CContracts that
- 58 exceed \$250,000.00 (full-term) ~~and all sole source contracts that exceed \$250,000~~
- 59 ~~\$100,000 (full term)~~. The Board delegates to the Ppresident, or designee, the authority to
- 60 procure and enter into agreements for materials and services that do not exceed these
- 61 stated thresholds.
- 62
- 63 IV. All eCContracts shall be awarded by eCCompetitive sSsealed sSolicitation unless such
- 64 eCContract is below the threshold required, the eCContract is a Special Procurement, the
- 65 Ppresident, or designee, deems that an eEemergency pPprocurement or sSole sSsource
- 66 award is appropriate, or under other circumstances when alternative authorized
- 67 procurement methods are there is some other reason deemed to be in the best interest of
- 68 the College. ~~to use another authorized method.~~
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- 70 V. The College may enter into multi-year eCContracts for goods and services pursuant to any
- 71 procedures that may specify or limit terms of such agreements that extend beyond the
- 72 current fiscal year.
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- 74 A. A multi-year Contract must not obligate the College to allocate funding in
- 75 subsequent fiscal years.
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- 77 B. Each year of the term shall be subject to appropriation, and a determination by
- 78 the College that funds are sufficient for the then current fiscal year and to meet all
- 79 of the College's anticipated needs, including the subject Contract.
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- 81 C. The sufficiency determination is at the sole discretion of the College and for any
- 82 fiscal year in which the College determines that funding is not adequate to meet
- 83 all of the College's needs, the College may terminate the Contract and the
- 84 Contractor and the College will then be discharged from future performance of
- 85 the Contract, but not from their rights and obligations existing up to the time of
- 86 termination.
- 87
- 88 D. The College will reimburse Contractor for the reasonable value of any non-
- 89 recurring costs incurred but not amortized in the price of the Contract.
- 90
- 91 E. The College shall not enter into a eCContract where any part of the compensation
- 92 is based on a cost-plus-a-percentage-of-cost of the work performed or goods
- 93 provided. ~~All multi-year contracts are issued subject to available funding.~~
- 94
- 95 VI. College Contracts should not include the following provisions:
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- 97 A. A provision that requires the College to indemnify, defend, or hold harmless
- 98 another person beyond the limits of MD Code, Courts and Judicial Proceedings
- 99 Article, Title 5, Subtitle 3 and Section 5-519, or beyond the amount of an express
- 100 appropriation of funds for that purpose.

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102 B. A provision that requires the College to submit to binding arbitration or any other
103 binding extrajudicial dispute resolution process.
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- 105 C. A provision that names a jurisdiction or venue for any action or dispute against
106 the College other than a court of proper jurisdiction in the State of Maryland.
107
- 108 D. A provision that requires the College to be bound by a term or condition that (1) is
109 unknown to the College at the time of signing a Contract, (2) may be unilaterally
110 changed by the other party.
111
- 112 E. A provision for automatic renewal that obligates the College to allocate funding in
113 subsequent fiscal years.
114
- 115 VII. Except as otherwise provided, a eContract which is entered into in violation of this Policy
116 is void, unless it is determined, upon review, that good faith has been shown by all
117 parties, and that there has been substantial compliance with these policies and
118 procedures. If a eContract is void, any eContractor who entered the agreement in good
119 faith and without knowledge of any violation or contribution to any violation prior to award
120 may be compensated for actual costs incurred.
121
- 122 VIII. The Board of Trustees authorizes the President to modify eContracts or to enter into
123 Contract Amendments for Contracts previously approved by the Board of Trustees so
124 long as the total modifications or Contract Amendments does not exceed 25 percent over
125 the life of the initial eContract award amount. ~~The Board of Trustees delegates to the~~
126 ~~President or designee the authority to enter into contracts for goods and services up to~~
127 ~~\$250,000 using competitive procurement processes, and award sole source contracts up~~
128 ~~to \$100,000, consistent with procedures.~~ In the event that College Policy 61001: Fiscal
129 Control is contradictory to this policy, where applicable, this policy shall prevail.
130
- 131 ~~VII. The College encourages participation in the procurement process from Montgomery~~
132 ~~County based firms, minority businesses, and contractors who can provide goods and~~
133 ~~services to the College in an environmentally sustainable manner. Consistent with~~
134 ~~applicable procedures, the President or designee must maintain a minority business~~
135 ~~program to facilitate the participation of responsible certified minority business~~
136 ~~enterprises.~~
137
- 138 VIII. ~~Nothing in this policy should be construed to authorize contract awards that are fiscally~~
139 ~~disadvantageous or that confer any special privilege or status upon any business or~~
140 ~~group or individual representing a business.~~
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- 142 IX. The Board of Trustees authorizes the President ~~is authorized~~ to establish any
143 procedures necessary to implement this policy.
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146 Board Approval: November 19, 1984; June 16, 1986; July 20, 1987; May 16, 1988; July 17,
147 1989, effective July 1, 1989; October 16, 1989; June 18, 1990; December 16, 1991; November
148 15, 1993; February 26, 1996; June 17, 1996; June 15, 1998; December 10, 2001; June 18, 2012;
149 December 14, 2015; June 25, 2018; January 29, 2020; DATE

Chapter: Fiscal and Administrative Affairs

Modification No. 0242

Subject: **Procurement, Contracts, and Consultant Services**

I. Definitions

A. Administrator: An Administrator is a management level employee of the College with decision making authority over the Business Unit that is initiating any procurement action under these procedures.

B. Affiliated Non-employee: This type of non-employee is defined as a Consultant, or board member of either the Montgomery College Foundation or the PIC MC Foundation, Inc.- Affiliated ~~Non-employees~~ may also be a former employee of the College, or a current or former employee of Montgomery County or another governmental entity.

~~A.~~ ~~Authorized employee: A College employee empowered by role or their supervisor to initiate the procurement process, make purchases, or sign a contract on behalf of the College.~~

~~B-C.~~ Bid (or RFP) Addendum: A document issued by the College to change a material aspect of an initial solicitation prior to the closing date.

~~C-D.~~ Bidder: A person or entity that submits a ~~proposal~~ bid in response to a Request for Bid issued by the College.

E. Business Unit: A section or office within a division, program or institute of the College or one of its supporting foundations.

~~D-F.~~ Competitive Sealed Solicitation: The College's preferred procurement method requiring ~~b~~Bidders/~~e~~Offerors to submit sealed bids which are opened in a public forum and the results read aloud at a specific date and time. There are two types of ~~e~~Competitive ~~s~~Sealed ~~s~~Solicitations:

1. ~~Competitive Sealed Bid or~~ Request for Bid: A type of procurement method used when the College awards a ~~e~~Contract to a ~~b~~Bidder solely because the ~~b~~Bidder provided the lowest price for the goods or services with no material exception to the provisions of the Request for Bid.

2. ~~Competitive Sealed Proposal or~~ Request for Proposal: A procurement method used when the College issues a list of unique specifications for goods or services and evaluates proposals by ~~e~~Offerors based on a range of pre-determined criteria. ~~Notably, price is not typically the primary evaluation factor.~~

~~E-G.~~ Consultant: A person or company that possesses unique qualifications that allow them to perform specialized services for or on behalf of the College for a fee.

~~F-H.~~ Contract: A written agreement between parties exchanging goods or services for money or other consideration for a specified duration.

~~G-I.~~ Contract Amendment: A mutually agreed upon modification to an existing

- 198 eContract.
- 199
- 200 J. Contractor: Any person or entity that is a party to a Contract with the College.
- 201
- 202 K. Cooperative Procurement: A procurement method involving two or more public
 203 entities that combine their needs for goods or services to obtain cost savings and
 204 other benefits.
- 205
- 206 L. Emergency Procurement: A procurement method which typically waives formal
 207 competitive bidding procedures based on a need to purchase goods or services
 208 for an unexpected or urgent reason such as risks of health and safety or the
 209 conservation of public resources.
- 210
- 211 M. Interagency Procurement: The purchase of goods or services from a federal,
 212 state, or local government agency; ~~or a~~ political sub-division, or of from a public
 213 college, university, state or school or school system, whereby the best interest of
 214 the College is served.
- 215
- 216 N. Offeror: A person or company that submits an offer/proposal in response to a
 217 Request for Proposal issued by the College.
- 218
- 219 O. Open Market Purchase: A procurement method permitting an authorized college
 220 employee to obtain a single quote for the goods or services when ~~if~~ the amount is
 221 less than the threshold required for the competitive procurement process.
- 222
- 223 P. Procurement Through Other Agency (PTOA): A form of intergovernmental
 224 cooperative purchasing in which an entity will be extended the pricing and terms
 225 of a eContract entered into by another entity. Generally, one entity will
 226 competitively award a eContract that will include language allowing for other
 227 entities to utilize the eContract, which may be to their advantage in terms of
 228 pricing, thereby gaining economies of scale that they normally would not receive,
 229 if they competed on their own.
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- 231 Q. Prohibited eContract: Any eContract where any part of the compensation is
 232 based on a cost-plus-a-percentage-of-cost of the work performed or goods
 233 provided.
- 234
- 235 R. Quote: A pricing document that a vVendor submits in response to a request for
 236 goods or services.
- 237
- 238 S. Requisition Form: A form submitted by an authorized college employee to initiate
 239 the request to purchase goods or services.
- 240
- 241 T. Request for Quote: A document issued by the College requesting prices from
 242 potential vVendors for goods or services.
- 243
- 244 U. Responsible bBidder/eOfferor: A business entity or individual who has the
 245 integrity and reliability as well as the financial and technical capacity to perform
 246 the requirements of the solicitation and subsequent eContract.
- 247
- 248 V. Responsive bBidder/eOfferor: A bid or proposal that fully conforms in all material
 249 respects to the Request for Bid or Request for Proposals, and all of its
 250 requirements, including all form and substance, and College terms and

- 251 conditions.
- 252
- 253 ~~FW.~~ Small ~~p~~Purchase (f~~R~~Request for ~~q~~Quote): A purchase valued at less than the
- 254 competitive sealed bid or proposal threshold, but higher than the ~~e~~Open ~~m~~Market
- 255 ~~p~~Purchase threshold.
- 256
- 257 ~~UX.~~ Sole Source: A non-competitive method of procurement used when only a single
- 258 ~~v~~Vendor meets the specifications listed in the solicitation, including without
- 259 limitation, timeliness, or because only one ~~v~~Vendor is available to provide the
- 260 goods or services-~~;~~ or ~~because of the need for to fulfill~~ an ~~e~~Emergency
- 261 ~~p~~Purchase procurement.
- 262
- 263 ~~WY.~~ Special Purchasing Request Form: A form required ~~by from~~ a Business Unit
- 264 ~~authorized employee~~ who requests a specific brand, ~~s~~Sole ~~s~~Source, or
- 265 emergency procurement exceeding \$25,000.00~~\$10,000.~~
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- 267 ~~WV.~~ Vendor: A person or company that provides goods or services. Each Contractor,
- 268 Consultant, Bidder, and Offeror is considered a Vendor.

270 II. General

- 271
- 272 A. The President has delegated the responsibility for meeting the College's needs
- 273 for goods and services to the Director of Procurement. The Director of
- 274 Procurement shall:
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- 276 1. Establish internal procedures consistent with best practices to promote
- 277 an efficient procurement process in compliance with federal, state and
- 278 local laws;
- 279
- 280 2. Provide technical assistance and advice to ~~authorized~~ employees and
- 281 provide guidance on which procurement processes to use;
- 282
- 283 3. Publicly advertise competitive sealed bids or competitive sealed
- 284 proposals in timeframes specified by procedure;
- 285
- 286 4. Keep informed of current developments in the field of purchasing, prices,
- 287 market conditions and new products;
- 288
- 289 5. Maintain ~~v~~Vendor catalogs and other current market information
- 290 regarding goods and services to be made available to faculty and staff of
- 291 the College;
- 292
- 293 6. Ensure that all purchases, procurements and ~~e~~Contracts are made in the
- 294 best interest of the College and in an ethical manner.
- 295
- 296 B. College procurements are effectuated using one or more of the following
- 297 methods:
- 298
- 299 1. Open Market Procurement (~~e~~Contracts and purchases up to
- 300 \$25,000.00~~\$10,000~~)
- 301
- 302 2. Small Procurement (~~e~~Contracts and purchases between amounts above
- 303 \$25,000.00 and up to \$100,000.00~~\$10,001 and \$25,000~~)

3. Competitive Sealed Solicitation (over ~~\$100,000.00~~ ~~-\$25,000~~)
 4. Special Procurements
 5. Purchasing and Corporate Card
- C. The College will follow the ~~below~~-processes outlined below to ensure information and communication technology is purchased or acquired by the College is accessible pursuant to College Policy and Procedure 66004: Information and Communication Technology Accessibility:
1. ~~All v~~vendors shall adhere to current Web Content Accessibility Guidelines (WCAG) standards. At minimum, Vendors must comply with WCAG 2.1 Level AA, as required by applicable Federal, Maryland, and Montgomery County regulations. ~~must be asked to provide information about the accessibility of their products through the use of a VPAT.~~
 2. Vendors must provide an Accessibility Conformance Report (e.g., ACR/VPAT), completed within one year prior to Contract to demonstrate accessibility conformance to the standard. The ACR/VPAT provided by Vendors must be accurate and based on evaluation conducted by a qualified third party or according to a recognized methodology, such as the Section 508 Trusted Tester process or WCAG conformance evaluation procedures, and should include a plan and schedule for any necessary remediations. Evaluations should include a combination of automated testing, manual inspection, and assistive technology use. ~~The information provided by vendors must be valid, measured using a method that is reliable and objective.~~
 3. Those making procurement decisions shall ~~must~~ ensure adherence to the provisions of this Section II.C, must not have conflicts of interest, and ~~must be able to~~ objectively evaluate the accessibility of products, ~~and to scrutinize~~ ~~determine if~~ the information provided by ~~v~~vendors conforms to the requirements herein. Technical assistance for reviewing documentation to determine accessibility of technology is available through the Office of Information Technology and the ~~, in conjunction with the d~~Director of ADA Compliance ~~will provide assistance with review of documentation in determining the accessibility of new technology.~~
 4. ~~The most effective means of providing equal access to multimedia (i.e., videos, movie clips, DVDs, films, etc.) is through the use of products with open or closed captioning or subtitles. It is the responsibility of all units/departments, administrators, faculty, and staff to utilize only media products with open or closed captioning or subtitles, and/or provide an alternate format, such as a script.~~
- D. ~~No e~~College operating funds shall not will be used ~~for the to~~ purchase ~~of~~ gift cards for college employees. ~~In addition, student g~~Gift card purchases for students are prohibited unless prior written documented approval is obtained from the Senior Vice President of Administrative and Fiscal Affairs upon with the advice recommendation from ~~of~~ the Director of Procurement.
- III. Methods of Procurement

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- A. Open Market Procurement – PURCHASES UP TO \$25,000.00~~\$10,000~~
 - 1. A Business Unit~~n authorized employee~~ shall obtain a single, valid price quote from a ~~v~~Vendor and forward the quote to the ~~Office of Procurement~~Procurement Department, along with requisition, for review, approval and purchase.
 - 2. Business Units~~Requesting departments~~ may not split requisitions into separate requests to circumvent ~~the procurement process~~thise threshold~~thresholds in subsections B and C.~~

- B. Small Procurement (Request for Quote) – PURCHASES above \$25,000.00~~through to \$100,000.00~~ ~~\$10,001 to \$25,000~~
 - 1. ~~An authorized r~~Requesting departments~~Business Units~~ ~~employee~~ shall work with the ~~Office of Procurement~~Procurement Department to obtain a minimum of three valid price quotes from at least three different ~~v~~Vendors, ~~one of which must be~~including from local or minority business enterprise to the extent possible.
 - 2. Contracts shall be ~~Procurement staff shall~~ awarded contract to the ~~v~~Vendor submitting who provides the lowest responsive and /responsible price ~~for the requested goods or services.~~To qualify as - responsive and responsible, prices includes Vendor’s must commitment to full compliance with the adhere to College’s standard terms and conditions (including but not limited to -without limitation data protection and accessible information communication technology provisions ~~terms,~~ where applicable), without material deviation.

- C. Competitive Sealed Solicitation – Purchases Greater than \$100,000.00 ~~\$25,000~~
 - 1. When applicable, the ~~e~~C~~s~~Competitive ~~s~~Sealed ~~s~~Solicitation process is the College’s preferred method for procuring goods and services. It is comprised of the following two solicitation types:
 - a. Request for Bid (RFB):

Used to solicit competitive sealed bid responses for goods or services, when price is the sole basis for award along with Vendor’s commitment to adhere to College’s standard terms and conditions (including without limitation data protection and accessible information communication technology terms, where applicable) without material deviation.
 - b. Request for Proposal (RFP):

Used to solicit competitive sealed proposals for goods and services when price is not the sole basis for award.
 - 2. Requesting units are responsible for forming a Vendor proposal evaluation committee; ~~upon which~~

- 410 a. ~~Typically, t~~The Vendor proposal evaluation committee should
- 411 ~~shall~~ consist of College employees. Where expert advice is
- 412 required for the work of the committee, the Business Unit
- 413 initiating the procurement, with the concurrence of the
- 414 Procurement Director, may hire Consultants to provide expert
- 415 advice to a Vendor proposal evaluation committee. These
- 416 Consultants shall not be considered members of the committee
- 417 nor be involved in the scoring of the Vendor proposal.
- 418
- 419 b. ~~Additionally, i~~n cases where specialized knowledge or expertise
- 420 would help in the evaluation and selection of the most qualified
- 421 Vendor, the Business Unit may request that the committee
- 422 include one or more ~~and~~ Affiliated Non-employees. ~~may serve.~~
- 423 ~~However~~
- 424
- 425 c. If a Vendor proposal evaluation committee includes Affiliated
- 426 Non-employees, the majority of the committee shall be
- 427 comprised of ~~a~~ college employees and a college employee must
- 428 be the chair of the committee.
- 429
- 430 d. Affiliated Non-employees participating on a Vendor proposal
- 431 evaluation committee and any Consultant advising a committee
- 432 must first sign a binding confidentiality agreement with the
- 433 College, and participation must have been approved by the
- 434 Procurement Director.
- 435
- 436 e. Affiliated Non-employees on a Vendor proposal evaluation
- 437 committee must promptly return and not retain any solicitation
- 438 materials including evaluation forms.
- 439
- 440 f. No person may serve on a Vendor proposal evaluation
- 441 committee or be a Consultant to the committee if that member
- 442 has a relationship with an Offeror.

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444 ~~2.3.~~ Solicitation Process

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- 446 a. ~~Requesting department~~Business Units shall work with the ~~Office~~
- 447 ~~of Procurement~~Procurement Department to develop~~ment~~
- 448 solicitation specifications. The specifications must include the
- 449 following:
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- 451 1) A comprehensive description of all requested goods
- 452 and/or service requirements and the minimum
- 453 requirements to meet the needs of the Business Unit.
- 454
- 455 2) The closing date, time, and location of solicitation.
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- 457 3) If a specific brand or patented goods or services are
- 458 required by the College, and which are obtainable in two
- 459 or more equally competitive brands, acceptable “or
- 460 equal” language must be included in solicitation.
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- 462 4) Contract award criteria.

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- b. Solicitation shall be made available to the vVendor community for a minimum of 14 days from issuance date.
 - c. Announcement of solicitation shall be posted on the Maryland State e-procurement website, in addition to the College’s procurement website.
 - d. Associated solicitation addenda shall be issued, as needed.
 - e. The College reserves the right to modify a solicitation through a bid or RFP Addendum, and/or to extend solicitation closing dates, as needed.
 - f. After solicitation closing date, all received ~~b~~Bidder/Offeror bids/proposals shall be evaluated by the Vendor proposal evaluation committee~~appropriate College staff~~ in accordance with evaluation criteria contained in solicitation.
 - g. The College reserves the right to allow best and final offers, if it is in the best interest of the College.
 - h. Contract award will be made to lowest priced, or highest ranked responsive/responsible participating ~~b~~Bidder/Offeror.
 - i. In the case of tie solicitation responses, the tie shall be resolved by award to:
 - 1) The Bidder/Offeror that took no exceptions to the solicitation.
 - ~~1)2)~~ 2) The in-county ~~b~~Bidder/Offeror rather than in-state ~~b~~Bidder/Offeror.
 - ~~2)3)~~ 3) The in-state ~~b~~Bidder/Offeror rather than out-of-state ~~b~~Bidder/Offeror.
 - ~~3)~~ 4) The minority vVendor rather than the majority vVendor.
 - 4) All other tie bids/offers shall be resolved by a toss of a coin which shall be witnessed by a College employee not involved with the procurement.
 - ~~j.~~ A record of all tie bids shall be made and forwarded to the General Counsel.
 - ~~k.j.~~ If a College employee’s should report has a reasonable, good faith basis to believe that the procurement process concerns has been compromised in any way or that a law, regulation or College policy or procedure has been violated, the College employee should report those concerns to the either the Office of Compliance, Risk and Ethics or to the the Office of General Counsel when they have a reasonable, good faith belief that the

§16 process has been compromised in any way or that applicable a
§17 laws, regulations, or College policies y or procedure have been
§18 violated. All reports should and include relevant any
§19 documentation and or evidence, as part of the report.
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521 3.4. Cancellation and Rejection of Competitive Sealed Solicitations

- 522
- 523 a. Every solicitation issued shall state that the solicitation may be
524 cancelled when it is in the best interest of the College to do so.
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- 526 1) Cancellation prior to opening. If the Director of
527 Procurement determines that it is in the best interests of
528 the College to cancel a solicitation prior to opening bids
529 or proposals, all bids or proposals received shall be
§30 returned to the vVendors and a notice of cancellation
531 shall be included. Criteria for determination may include,
532 but not be limited to:
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- 534 a) Restriction of funding for project.
535
536 b) Imperfection in bid document.
537
538 c) Defective notice of advertisement.
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- §40 2) Rejection of all bids or proposals. If after opening bids
§41 or proposals, but prior to award, the Director of
542 Procurement determines that it is in the best interest of
543 the College to reject all bids or proposals, all open bids
544 or proposals shall be retained and a notice of rejection
§45 shall be sent to all vVendors that submitted bids or
546 proposals. Criteria for rejection may include but not be
547 limited to:
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- 549 a) All bids exceed budgeted funds.
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551 b) Imperfection in bid document discovered after
552 public opening.
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554 c) Defective notice after opening which would
§55 prove injurious to bBidders.
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- 557 3) Determinations of reasons for cancellation or rejection
558 shall be made part of the procurement file.
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- §60 4) ~~The Director of Procurement shall issue a report to the
§61 President of all bids or proposals canceled or rejected
§62 that exceed \$25,000, with justification for such action as
§63 it occurs.~~
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- §65 54) The Director of Procurement shall have the right to
566 waive any minor technicality or deficiency when it would
567 be an advantage to the College.
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- 569 b. Every solicitation issued by the College shall provide that any bid
- 570 or proposal may be rejected in whole or in part when it is in the
- 571 best interest of the College to do so.

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4.5. Bid and Contract Security

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The Director of Procurement is authorized to require a bid or performance bond if the circumstances warrant. This bond shall be provided by a surety company authorized to do business in the State of Maryland, or the equivalent in cash, or in a form satisfactory to the General Counsel and the President. No bid, performance or payment bond may be required for eContracts less than the minimum set by state law, unless otherwise required by law or a grant.

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- a. Bid Security. For eContracts that exceed ~~\$100,000.00~~ \$25,000, the College may require submission of bid security in an amount equal to at least five percent of the total amount bid at the time the bid is submitted. If bid security fails to accompany the bid, it shall be deemed unresponsive, unless the Director of Procurement deems the failure to be non-substantial.

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- b. Performance and Payment Bond. Performance and payment bonds are required prior to Contract execution in all construction eContracts that exceed ~~\$100,000.00~~ \$25,000, and may be required in all other eContracts that exceed ~~\$100,000.00~~ \$25,000. Performance and payment bonds shall be in the amount equal to at least 100 percent of the Contract price. Payment bond requirements may be reduced to 50 percent prior to solicitation, if it is determined to be in the best interest of the College to do so.

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5.6. Irrevocability and Withdrawal of Offers

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Bids, proposals and best and final offers are irrevocable for the period specified in the RRequest for bBids, RRequest for pProposals or request for best and final offers except the President or designee, upon recommendation from the Director of Procurement, may permit the withdrawal of a bid, proposal or best and final offer.

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D. Special Procurements

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1. Sole Source

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A Ssole sSource procurement is authorized if, in the opinion of the Director of Procurement, the requirements of the College can be satisfied by only a single vVendor.

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- a. Any request that a procurement be restricted to a single vVendor shall be accompanied by an acceptable explanation as to why no other shall be suitable or acceptable to meet the need.

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- b. The Director of Procurement shall conduct negotiations as to price, terms and delivery, as appropriate.

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- c. Contracts that are the result of a ~~s~~Sole ~~s~~Source procurement valued above \$250,000.00 at the time the Contract is entered into or subsequently through Contract Amendment ~~that do not qualify as a "Small Procurement"~~ shall be approved by the Board of Trustees.
2. Emergency Procurements
- a. ~~In the event of an e~~Emergency Procurements exceeding involving the expenditure of over \$100,000.00 \$25,000 may be conducted through non-competitive negotiation by the Director of Procurement, with ~~the~~ approval ~~from~~ of the Senior Vice President for Administrative and Fiscal Services, ~~may enter into non-competitive negotiation for the~~when immediate procurement of goods or services is necessitated by the emergency.
 - b. ~~In the event of an e~~Emergency eContracts may be awarded through non-competitive negotiation, by the Director of Procurement, with such ~~may award a contract through non-competitive negotiation, obtaining such~~ competition as is practical under the circumstances.
 - c. The Business Unit must provide the Director of Procurement ~~will submit an annual report to the President which summarizes the procurements of~~with written justification of thean emergency ~~nature~~need.
3. Cooperative Procurement
- a. When it is determined by the Director of Procurement that cooperative purchasing efforts may result in a fiscal advantage to the College, the Director is authorized by the President to enter into a eCooperative pProcurement process with other state and local agencies for the purpose of developing specifications, terms, and conditions.
 - b. The Director of Procurement may bid the cooperative agreement for participating agencies and make available certain facilities necessary to form a eContract, if an award results from the process.
 - c. Under no circumstances shall the College assume any obligation for performance, payment or other duty implied nor shall it be construed that the College may be held accountable for any agency participating in the cooperative effort.
 - d. All purchases under such eContracts shall be in accordance with policies approved by the Board of Trustees.
4. Interagency Procurement
- a. The Director of Procurement may procure goods and services

675 from state and local agencies whenever it is advantageous for
 676 the College ~~to do, and provided~~ such goods and services meet
 677 all requirements of the College. ~~An Examples of such agencies~~
 678 ~~are, but not limited to:~~

- ~~1) Maryland State Agency for Surplus Property~~
- ~~2) Montgomery County Public School Warehouse~~

b. The Director of Procurement shall determine that price, quality, and availability are satisfactory and competitive and shall establish necessary controls for fiscal responsibility. Under no circumstance will budgetary constraints be waived when purchasing from another governmental agency.

5. Procurement Through Other Agency (PTOA)

a. The Director of Procurement shall have the authority to eContract for goods or services that are the subject of a current eContract of a Federal, State, or local government or agency, political subdivision of a state school system where the eContract was the subject of appropriate competition, and is in the best in interest of the College. Best interest can be determined by price, timeliness, or associated realized efficiencies.

b. The ~~Office of Procurement~~ Procurement Department shall seek out public agency minority awarded eContracts for possible use, when available and applicable.

c. Long term PTOAs shall be reviewed by the Director of Procurement on an annual basis to ensure it remains in the College's best interests to continue to utilize them.

~~d. Upon request, The Director of Procurement shall submit a report and review with the President details of all PTOAs on a semi-annual basis.~~

E. Purchasing and Corporate Card

~~The use of the p~~Purchasing and corporate cards shall be used done in accordance with established card program guidelines. Complete guidelines are available in the Refer to purchasing card user guide, and corporate card guidelines available on the Procurement Department website for more information.

IV. Encouraging Participation in the Procurement ~~from Minority Businesses~~Process

A. The Director of Procurement shall encourage by all reasonable and practical means broad participation of qualified businesses in the procurement process, including, the participation of minority underrepresented, female-owned, and disadvantaged businesses in the procurement process of the College.

1. Business enterprises are notified of Montgomery College bid

728 [opportunities, via eMaryland Marketplace Advantage \(eMMA\), the State](#)
 729 [of Maryland e-procurement platform. Notification is subject to the](#)
 730 [completion of the Vendor registration process.](#) ~~The Office of~~
 731 ~~Procurement shall maintain a list of certified minority businesses, via the~~
 732 ~~Montgomery County Minority/Female/Disabled (MFD) business~~
 733 ~~database. This list will be assembled by dedicated Montgomery County~~
 734 ~~Government employees.~~
 735
 736 ~~2. The Montgomery County MFD database businesses will be solicited for~~
 737 ~~quotes, bids and proposals. If no qualified minority businesses are~~
 738 ~~identified, other entities will be canvassed in an effort to assure Minority,~~
 739 ~~Female, and Disabled business participation.~~
 740
 741 ~~3. Vendors shall be encouraged to identify themselves to the College as~~
 742 ~~minority or disadvantaged entities, where applicable.~~
 743
 744 42. The Director of Procurement shall create, seek out, and participate in
 745 activities which encourage, stimulate and assist [broad participation of](#)
 746 [qualified businesses including](#) minority ~~businesses~~ [business enterprises](#)
 747 in the procurement process at the College. These efforts may be within
 748 the College or cooperative efforts with other state and local agencies.
 749
 750 ~~B. The Director of Procurement shall attempt to achieve the target of minority~~
 751 ~~business participation of 15 percent of the total dollars awarded through the~~
 752 ~~procurement process.~~
 753
 754 ~~C. The Director of Procurement shall report to the President annually the total~~
 755 ~~number and value of the College's purchases from minority business enterprises,~~
 756 ~~and the percentage which these purchases represent of the total dollars~~
 757 ~~expended during the fiscal year.~~

758
 759 V. Preference for Montgomery County Products

760
 761 A. The Director shall solicit bids or proposals from Montgomery County-based firms
 762 whenever it is reasonable and practical, and is deemed to be in the best interests
 763 of the College to do so.
 764
 765 B. Vendors shall be asked to indicate location of principal place of business on the
 766 ~~b~~[Bidder's/Offeror's](#) application form as a means of identifying such county-based
 767 firms.
 768
 769 C. [The College encourages participation in the procurement process from](#)
 770 [Montgomery County-based firms, including without limitation, minority business](#)
 771 [enterprises, and](#) ~~e~~[Contractors who can provide goods and services to the College](#)
 772 [in an environmentally sustainable manner. Consistent with applicable](#)
 773 [procedures, the President or designee must](#) ~~maintain a minority business~~
 774 ~~program to~~ [facilitate the participation of responsible businesses, including, without](#)
 775 [limitation, certified minority business enterprises.](#)
 776

777 VI. Procedures for Federal Grant-Funded Purchases

778
 779 A. For all federal ~~or state government~~ grant-related requests, Montgomery College
 780 will [execute the procurement in accordance with all governing regulations and](#)

- 781 ~~compliance requirements. consider the use of federal excess or surplus property~~
 782 ~~in lieu of the purchase of new equipment and property, when applicable.~~
 783
 784 B. For all federal government grant-related requests, Montgomery College will reach
 785 out to small and minority business organizations for possible participation, when
 786 applicable.
 787
 788 C. For all federal government grant-related requests, Montgomery College will
 789 procure items designated in EPA guidelines at 40 CFR part 247 that contain the
 790 highest percentage of recovered materials practicable, consistent with
 791 maintaining a satisfactory level of competition, where the purchase price of the
 792 item exceeds \$10,000.00 ~~(or such other threshold specified in 40 CFR 247.2)~~, or
 793 the value of the quantity acquired by the preceding fiscal year exceeded
 794 \$10,000.00 ~~(or such other threshold specified in 40 CFR 247.2)~~; procuring solid
 795 waste management services in a manner that maximizes energy and resource
 796 recovery, and establishing an affirmative procurement program for procurement
 797 of recovered materials identified in the EPA guidelines.
 798
 799 VII. Procurement Exceptions
 800
 801 The following goods and services are exempt from the competitive procurement process:
 802
 803 A. Purchases of print (hardcopy) and non-print (digital) library and learning resource
 804 material, defined as texts, videos, software, and other materials that teachers use
 805 to assist students with meeting learning expectations.
 806
 807 B. Merchandise purchased for resale. The ~~Office of Procurement~~Procurement
 808 Department may assist and advise limits to obtain the best fiscal advantage.
 809
 810 C. Consistent with the provisions ~~of Section 213 of the Montgomery County Charter~~
 811 ~~and~~ the provisions of the Montgomery County Code 11B-4(a), ~~e~~Contracts for the
 812 services of special legal counsel or for the services of experts, ~~e~~Consultants and
 813 investigators, deemed appropriate by the General Counsel, whether in
 814 anticipation of litigation or in preparation for a trial or a compliance issue.
 815
 816 D. ~~Montgomery College organizational and professional memberships to affinity~~
 817 groups.
 818 ~~-and~~
 819
 820 E. ~~Performing artists, though requests should be supported by a completed Special~~
 821 ~~Purchase Request/Sole Source Form and certification of legal review~~Office of
 822 ~~General Counsel sign-off for legal sufficiency.~~
 823
 824 VIII. Protests and Disputes
 825
 826 A. ~~An interested party (actual or prospective bBidder, eOfferor, or eContractor) may~~
 827 ~~protest to the Director of Procurement an award or proposed award of a~~
 828 ~~eContract for supplies, services, maintenance, or construction.~~
 829
 830 1. ~~The protest shall be in writing and addressed to the Director of~~
 831 ~~Procurement of the College.~~
 832
 833 2. ~~Protests must be filed with the Director within ten (10) days of the~~

announcement of award or intent of award, whichever comes first.

BA. The Director shall inform the ~~President~~ Senior Vice President for Administrative and Fiscal Services (SVPAFS) and General Counsel upon receipt of the protest.

CB. The Director shall comply with all applicable federal, state and local laws regarding requests for information and timely decisions.

D. The Director shall confer with the General Counsel and the SVPAFS President prior to issuance of a decision regarding disputes of eContracts or awards in excess of ~~\$75100,000.00~~ \$25,000.

E. Pursuant to the procedures, the Director of Procurement may, consistent with the budget and all applicable laws, regulations, and Board policies, negotiate and resolve protests and disputes relating to the formation of a procurement eContract with the College. The Director shall inform the ~~President~~ SVPAFS of controversies involving the formation of eContracts pursuant to the procedures. Protests may be addressed to the Board only through the President. The SVPAFS shall inform the President as necessary, who will, in turn, keep the Board of Trustees apprised.

D.F. Decisions shall be transmitted to interested parties within 30 days of filing of written protest by certified mail, return receipt requested, or by any method that provides evidence of receipt.

~~VIX. Resolution of Protests and Disputes~~

~~i. Pursuant to the procedures, the Director of Procurement may, consistent with the budget and all applicable laws, regulations, and Board policies, negotiate and resolve protests and disputes relating to the formation of a procurement contract with the College. The Director shall inform the President of controversies involving the formation of contracts pursuant to the procedures. Protests may be addressed to the Board only through the President.~~

~~B. An interested party (actual or prospective bidder, offeror, or contractor) may protest to the Director of Procurement an award or proposed award of a contract for supplies, services, maintenance, or construction.~~

~~1. The protest shall be in writing and addressed to the Director of Procurement of the College.~~

~~2. Protests must be filed with the Director within ten (10) days of the announcement of award or intent of award, whichever comes first.~~

X. Reporting

The Director of Procurement shall produce a report of all procurement activity upon request from the ~~on a semi-annual basis, and deliver to the~~ President or Senior Vice President for Administrative and Fiscal Services or their designee. ~~Procurement activity includes the following:~~

~~A. All competitive contract awards~~

~~B. All special procurements~~

- 887 ~~C. Purchasing and Corporate card usage/spend.~~
- 888 ~~D. Issued purchase orders~~
- 889 ~~E. Percentage contract minority business enterprise contracts awards~~
- 890 ~~F. Percentage of contract awards within County, within state of Maryland, and out of~~
- 891 ~~state.~~
- 892 ~~G. Cancelled solicitations that exceed \$25,000.~~

894 XI. Consultant Services

- 895
- 896 A. When requesting eConsultant services, ~~requestor~~ a Business Unit shall:
- 897
- 898 1. ~~Complete and submit an online requisition to the Office of Procurement.~~
- 899
- 900 2. ~~F~~ollow the general procurement process, including all dollar thresholds.
- 901

902 ~~GB.~~ Guidelines for Requesting Consultant Services

- 903
- 904 1. The Business Unit is encouraged ~~If the advice they are to determine if~~
- 905 the Consultant give or the services sought they are to provide ~~cannot~~ be
- 906 furnished by faculty, staff, administrators, or students without interfering
- 907 with the performance of their normal functions and without a conflict of
- 908 interest. Nothing in this section precludes hiring ~~a consulting specialist~~
- 909 ~~may be used with the approval of the President or their designee.~~
- 910 ~~appropriate Senior Vice President~~ to meet the needs of the Business
- 911 Unit.
- 912
- 913 2. Prior to initiating a request for the services of a eConsultant, the initiator
- 914 should consider contacting the professional staff of associations or
- 915 societies with which the College has membership and whose activities
- 916 ~~impinge on~~ involve the area for which consulting service is needed. The
- 917 initiator should determine if the association provides advice or service of
- 918 the type needed by the College and if the association's resources can be
- 919 used by the College.
- 920
- 921 3. Unless the material contained in a eConsultant's report is confidential,
- 922 the contents of the report should be available to all College personnel
- 923 who have responsibilities related to the report.
- 924

925 ~~DC.~~ Process for Requesting Consultant Services

926

927 When the need for the services of a eConsultant has been determined, the

928 requester will submit a completed online requisition, to include the following:

929

- 930 1. The need to be served by the use of a eConsultant.
- 931
- 932 2. A complete Statement of Work (SOW).
- 933
- 934 3. The cost estimated that would be incurred for obtaining consulting
- 935 services. Costs for per diem, or travel, if any, should be shown
- 936 separately.
- 937
- 938 4. A statement documenting indicating any other resources that were ~~if~~
- 939 ~~any, which have been~~ explored prior to engaging ~~before resorting to the~~

- 940 ~~use of a~~ eConsultant services.
- 941
- 942 XII. Contracts
- 943
- 944 A. Initiation
- 945
- 946 1. ~~The Director of Procurement Department will work with the initiating~~
 947 ~~department Business Unit to begin Contract development~~ A contract may
 948 ~~be initiated by an authorized College employee.~~
- 949
- 950 2. When possible, the standard college eContract format should be utilized.
 951 ~~Authorized employees Business Units~~ should contact the ~~Office of~~
 952 ~~Procurement~~ Procurement Department for a copy of the standard format.
- 953
- 954 3. For those eContracts for which there is no standard college format, ~~an~~
 955 ~~authorized employee~~ Business Unit should contact the ~~Office of~~
 956 ~~Procurement~~ Procurement Department or the General Counsel's Office
 957 for assistance.
- 958
- 959 4. ~~Vendors are~~ should use the College's form of Contracts and terms and
 960 conditions and are discouraged from taking exception to provisions of a
 961 solicitation. Use of ~~v~~ Vendor prepared eContracts and exceptions to
 962 provisions of a solicitation are not preferred and must be reviewed and
 963 approved by the ~~department administrator~~ Administrator of the
 964 Business Unit, Office of Procurement ~~Procurement Department~~, and
 965 General Counsel prior to execution. Vendors insisting on the use of their
 966 form of Contract may be found to be non-responsive or to not meet the
 967 College's minimum qualifications for a solicitation. College's Data
 968 Protection Addendum and Accessible Information Communication
 969 Technology Addendum should be used where applicable.
- 970
- 971 5. The General Counsel shall review and approve proposed eContracts and
 972 Contract Amendments for form and legality. In those instances where the
 973 General Counsel has approved a standard eContract or Contract
 974 Amendment, this approval is not required as long as there are no
 975 substitutions for, additions to or deletions from the standard approved
 976 language.
- 977
- 978 B. Review and Execution
- 979
- 980 1. The President has delegated the general authority to execute eContracts
 981 on behalf of the College to the Senior Vice President for Administrative
 982 and Fiscal Services, the Senior Vice President for Academic
 983 Affairs/College Provost, the Senior Vice President for Student Affairs, and
 984 the Senior Vice President for Advancement and Community Engagement.
 985 All Senior Vice Presidents may sub-delegate eContract execution within
 986 their perspective areas of responsibility.
- 987
- 988 2. Sub-delegation authority must be submitted in writing to the ~~Office of~~
 989 ~~Procurement~~ Procurement Department. Contract execution sub-delegation
 990 authority shall not exceed \$25,000.00.
- 991
- 992 3. All Contracts signed and executed by the Senior Vice Presidents, or their

993 sub-delegates, should be sent to the Procurement Department for central
 994 administration and recordkeeping for audit purposes.

995
 996 4. The Director of Procurement shall have authority to execute Contracts up
 997 to \$100,000.00 in value

998
 999 25. It is the responsibility of the Business Unit originating office, the
 1000 appropriate supervisor and the appropriate administrator(s) to review,
 1001 and approve, and be accountable for all eContracts before they are
 1002 transmitted for execution on behalf of the College. The Administrator of a
 1003 Business Unit must have authorized the procurement prior to a Business
 1004 Unit pursuing a procurement action. Administrator(s) will be held
 1005 accountable for contracts.

1006
 1007 A transmittal routing form will accompany each Contract review to
 1008 document the collective accountability, through signatures, of the
 1009 following parties:

- 1010
- 1011 a. The Administrator responsible for procuring and monitoring
 1012 Contract performance as to the review and acceptance of the
 1013 terms and responsibilities of the proposed Contract.
- 1014
- 1015 b. The Procurement Department as to meeting the requirements of
 1016 this Policy and Procedure,
- 1017
- 1018 c. The General Counsel (where other than standard terms are
 1019 used) for legal sufficiency prior to Contract execution.
- 1020
- 1021 d. SVP authorized to sign and bind the College to the Contract
 1022 terms.

1023
 1024 26. Contracts should be signed by ~~Generally all signatures from all other~~
 1025 parties before execution by the College's ~~should be obtained before a~~
 1026 contract is signed by the ~~authorized representative individual on behalf of~~
 1027 the College. Offerors and Bidders signatures must be provided in proper
 1028 legal form by individuals authorized to bind their organization.

1029
 1030 37. Two original copies of every hard copy eContract should be submitted so
 1031 that the College and the eContractor may each have an original. E-
 1032 signature may be used where all parties to the Contract consent to the use
 1033 of a secure electronic record prior to execution and except as may be
 1034 prohibited by policy, state or federal law or regulation.

- 1035
- 1036 a. The following conditions apply to any Contract signed
 1037 electronically:
- 1038
- 1039 1) The signature must be allowed by law and the
 1040 methodology/software approved by OIT.
- 1041
- 1042 2) The signature must be by an individual authorized to sign
 1043 on behalf of the Bidder/Offeror and have provided
 1044 identification.

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- 3) Authentication of the signer must be possible based on the e-signature.

- 4) The signer must confirm intent to sign the Contract.
- 5) The e-signature must be reliably associated with the Contract.
- 6) The signed Contract must be legible, have no indication of alteration, be securely and reliably stored, and with limited access by authorized persons.
- 7) Prior to accepting a legally binding electronic document from a Bidder/Offeror, the Procurement Office must ensure that Bidder/Offeror has confirmed signature authority and authenticity. The Procurement Office must retain the e-signatures and associate it with the Contract that it authenticates.

48. Unless otherwise specified, after an agreement is executed, the initiator is responsible to the appropriate major A administrator for the administration of the agreement.

~~C. Distribution~~

~~Upon execution of the agreement by all parties, copies of the contract will be distributed by the originating/initiating office as follows:~~

- ~~1. General Counsel~~
- ~~2. SVP of Administrative and Fiscal Services or Designee~~
- ~~3. Originating Office~~
- ~~4. Contractor (if appropriate)~~
- ~~5. Implementing Office (if not one of the above)~~

~~D. Reporting~~

~~Upon request, Each Senior Vice President shall submit to the General Counsel by September 1 of each year an annual report of all contracts signed pursuant to the delegated authority during the previous fiscal year.~~

Administrative Approval: November 20, 1984; April 23, 1985; June 16, 1986; January 12, 1987; May 16, 1988; July 27, 1989; July 14, 1990; January 5, 1993; March 20, 1995; February 26, 1996; March 24, 1997; June 15, 1998; January 3, 2000; December 10, 2001; August 13, 2010; February 9, 2016; February 2, 2017 (administrative correction only); June 30, 2017; June 28, 2018; January 31, 2020; June 22, 2021; DATE.