

Prince George's County, Maryland
Office of Audits and Investigations

Department of the Environment (DOE)

Special Review – Contract Award - Toter LLC

September 2017



**David H. Van Dyke
County Auditor**

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The County Council and County Executive
of Prince George's County, Maryland

We have conducted a special review of the Prince George's County

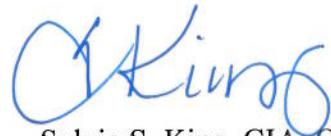
**DEPARTMENT OF THE ENVIRONMENT ("DOE") CONTRACT AWARD TO
TOTER, LLC.**

in accordance with the requirements of Article III, Section 313, of the Charter for Prince George's County, Maryland. Our report is submitted herewith.

We have communicated the contents of this report with appropriate County personnel. We wish to express our sincere gratitude to all personnel from the various County Departments as well as vendors and other interested parties, for the cooperation and assistance extended to us during the course of this review.



David H. Van Dyke, CPA, CIA, CFE, CICA
County Auditor



Sylvia S. King, CIA, CFE, CICA
Audit Manager

INTRODUCTION

On April 14, 2016, the Office of Audits and Investigations (“A&I”) received a letter (*see Appendix B attached*) from Colleen Reilly, a sales manager with Rehrig Pacific Company (“Rehrig”), a California based company, requesting an examination of the procurement of trash receptacles (toters) by the County. The letter alleged that the County did not competitively bid the contract, and may not have received a competitive price. Also, the letter alleged that a Public Information Act (PIA) request was not fully honored by the County.

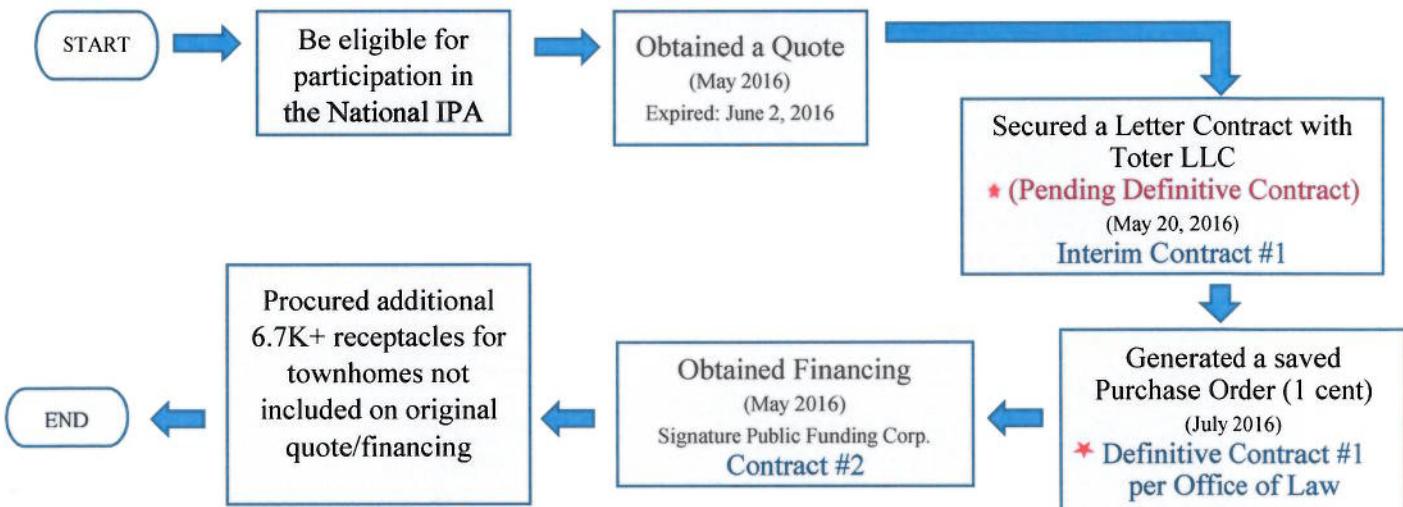
Based upon the complaint by Rehrig, and upon the request of the County Council, a review was conducted, which included reviews of the related procurement action, relevant laws, regulations, policies, procedures, and interviews of appropriate personnel.

BACKGROUND

In May 2016, the Department of the Environment (“DoE”) implemented a once a week trash pickup service and determined that residents will be provided with a free trash toter. In May 2016, the County utilized the services of the National Intergovernmental Purchasing Alliance (“National IPA”) to purchase 142,000, trash receptacles (“toters”) to distribute to County residents, as a result of the County changing its collection pickup service from twice to once a week. The County Council wanted to ensure that residents were provided with a toter at the earliest possible time. Due to the urgency of having to provide the toters as soon as possible, and the large quantity that was required, a Letter Contract was used to expedite the production and delivery of the toters.

The County engaged in two (2) separate contracting agreements to provide toters to residents: (1) a letter contract with Toter LLC (~\$6.5 million) for the product to begin production, in conjunction with a purchase order; and (2) a two-party agreement with Signature Public Funding Corp. (~\$0.5 million) to finance the purchase, for a total of ~\$7 million.

The process that the County used to acquire the toters via the National IPA was as follows:



The National Intergovernmental Purchasing Alliance (“National IPA”)

The Tennessee based National IPA is a *cooperative purchasing* organization established through a collaborative effort of public agencies across the United States, with the specific purpose of reducing procurement costs, by aggregating the purchasing power of participating public agencies, and leveraging group volume, in order to receive larger volume discounts from suppliers. It is an optional program with no minimum purchase requirements. All master agreements are publicly solicited, competitively bid and awarded through a Request for Proposal (“RFP”) process. This nationwide agreement is executed and held by a Principal Procurement Agency (“PPA”). National IPA serves as a nationwide channel to offer the awarded agreement to public and non-profit agencies.

Agreements available through the National IPA are established with the following process:

- The PPA prepares an RFP, incorporating the required language which allows access to the agreement nationally for agencies in states that allow intergovernmental (i.e. “piggyback”) contract usage.
- The suppliers respond to the RFP, and the PPA evaluates and awards the master agreement.
- All applicable documents are posted on the National IPA website.
- All participating agencies are eligible to utilize the contracts through National IPA.¹

Prince George’s County is a member of the National IPA cooperative.

Master Contract - The City of Tucson (the PPA), National IPA and Toter, Incorporated (Toter)

The City of Tucson (the PPA), National IPA, and Toter, Inc. successfully negotiated a refuse and recycling containers contract (Master Contract), and on December 11, 2007, the City of Tucson executed the contract, with an effective date of December 17, 2007. This master contract was last renewed in January 2013, and is valid until January 2018.

Term/Rider Contract - Prince George’s County, Maryland with Toter Inc./Toter LLC

On October 3, 2012, Prince George’s County, Maryland, entered into a rider agreement (Rider 1) with Toter Inc. for the purchase of 840 toters for recycling. Prince George’s County has subsequently executed an Indefinite Delivery/Indefinite Quantity (ID/IQ) rider with Toter Inc. over the years since 2012, in order for DOE to replace recycling receptacles periodically.

On February 29, 2016, Prince George’s County, Maryland, entered into an agreement with Toter LLC, in Statesville, NC, for the period January 1, 2016, through December 31, 2016, with two (2), one(1) year options remaining, based on the C14-042R (Rider National IPA Contract #120576)

¹ <http://www.nationalipa.org/Pages/default.aspx>

dated December 11, 2007, for Refuse and Recycling Containers. (See *Appendix G* attached). This term/rider contract is only valid for up to \$150,000. (See *Appendix L-3* attached).

Contract #1 - Purchase of Trash Receptacles - Toter LLC, Statesville, NC

The County received a **quote** for 142,692 toters from Toter LLC, located in Statesville, NC, on May 3, 2016. The County then signed a **Letter Contract** with Toter LLC, on May 20, 2016, for the purchase of 142,000 trash receptacles. The intent of the **Letter Contract** was to serve as a **Notice to Proceed**, and serve as an **Interim Contract** between Toter LLC and the County, pending a **definitive contract**. A **purchase order ("PO") for 1 cent** was created by the County on July 13, 2016, revised on July 27, 2016, and saved in SAP, the County's financial system. However, this purchase order was not fully executed in SAP's process flow, and at the time of our review was in saved mode. However, per the County's Office of Law, the PO was printed and sent to the vendor, Toter LLC, to satisfy the requirements for a **Definitive Contract** with the County and the vendor. The acceptance of the PO by Toter LLC allowed for the commencement of production of the trash receptacles, in order to meet the County's delivery deadline.

The subsequent additional purchase of 6,720 receptacles for townhome communities was not included in the interim letter contract. However, it is the opinion of the Office of Law that the not-to-exceed amount of \$7,500,000 included on the PO, provided for adjustment of the number of carts due to responses received from townhouses who opted-in to receive a cart, within the period of performance stipulated in the PO of May 20, 2016 – June 30, 2017. (See *Appendix J-1* attached).

Contract #2 - Financing for the Trash Receptacles – Signature Public Funding Corp., New York, NY

On June 29, 2016, the County signed a lease agreement with Toter LLC's financing company, Signature Public Funding Corporation (Signature), for a total cost of ~\$7 million (~\$6.5 million for toters and ~\$0.5 million for finance costs), over a period of eight (8) fiscal years, (or seven (7) calendar years), beginning in January 2017, and ending in July 2023 (FY 2024), at an interest rate of 1.73%.

As of November 2016, three (3) groups of invoices from Toter LLC were received, reviewed, and approved by the County, and forwarded to the finance company for payment. Signature Public Funding Corp., as lessor, was paid \$493,513.87 on 1/3/2017, the first of 14 semi-annual lease payments. Total interest expense will be \$428,915.46.

The subsequent additional purchase of 6,720 receptacles, at an estimated cost of ~\$268,000 (including returns), for additional townhome communities was not included in the financing agreement with Signature, and per the County Administration, additional payments beyond the

amount financed, will be made through DoE's agency budget. Per DoE the price for the additional townhome carts (\$37.30) did not change except for a slight increase in delivery (\$1.10/cart).

Delivery of Toters

The Department of the Environment reported the following on February 9, 2017 and June 22, 2017 respectively:

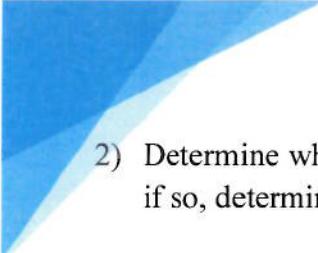
- Toter successfully delivered 142,000 carts to all single family residences by December 31, 2016 per the agreement, the full quantity for all residences except for townhouses.
- As of February 16, 2017, 8,720 carts were delivered to townhomes, with 75 returns.
- As of June 22, 2017, the final cost to the County for the additional 6,720 carts to townhomes that was not included in the original order was \$267,143. The price for the original townhome carts (\$37.30), did not change except for a slight increase in the delivery of \$1.10/cart). (*See Appendix O-1 attached*)

OBJECTIVE

We reviewed all of the allegations outlined in Rehrig's letter to the County Council (*See Appendix B attached*), and the processes used to award the contract in question. We reviewed relevant documentation, and conducted interviews of key participants and County employees involved with the procurement and financing actions of awarding the contract to supply toters to the County by Toter, LLC. Specifically, we reviewed purchasing laws, regulations, guidelines, documentation outlining the process, emails, and steps undertaken by County personnel to support the selection, and obtained advice from both County Council as well as the Office of Law's legal counsel. We also conducted research of publicly available information of parties and data related to the purchase. A timeline of the process is included in this report (*See Appendix C attached*).

The objective of our review was as follows:

- 1) Determine whether the County made a large purchase without the utilization of a formal bid or a quoting process to ensure that the County was getting a competitive price for the product and service required.
 - ❖ Review the renewal of the term/rider contract with Toter LLC, and determine whether there was compliance with the following County based laws:
 - o Purchasing Act (CB-1-1992)/ Cooperative Purchasing with Other Jurisdictions (Sec. 10A-146)
 - o Jobs First Act (CB-17-2011)
 - o Local Economic Opportunity Act (CB-67-2014)
 - o County-based Business Compliance Act (CB-30-2015)



- 2) Determine whether the County made the purchase of toters off of an existing agreement, and if so, determine why the pricing was still being negotiated.
- 3) Determine whether the County adequately responded to Rehrig's request pursuant to the Public Information Act ("PIA"), Annotated Code of Maryland, and whether the County responded to Rehrig in a timely manner.
- 4) Determine whether there was financing available to purchase toter containers in March 2016, and whether the financing agreement complied with applicable County based laws.

METHODOLOGY

As part of the review of this matter, we performed the following:

- Reviewed the letter pertaining to the allegations made by Rehrig.
- Obtained, reviewed, and analyzed County documentation related to the allegations including emails, and internal memorandums.
- Reviewed applicable State and County laws and regulations, existing policies and procedures, to gain an understanding of the laws, regulations, policies and procedures governing the County's Procurement process.
- Conducted research of publicly available information relative to parties involved in the award of the contract, and information pertinent to the allegations made.
- Conducted interviews and/or inquiries with individuals with knowledge of the contract award in person, via phone and/or by email.
- Conducted interviews and/or inquiries with legal counsel and parties related to the allegations made.

For the purposes of this review, our primary focus was the process and award of the wheeled refuse carts contract to Toter LLC, and whether the County responded adequately and timely to Rehrig's PIA, Annotated Code of Maryland request.

FINDINGS

Based on the independent analysis A&I performed which consisted of documents reviewed, information collected, and interviews conducted, we found the following as it relates to the contract between the County and Toter, LLC.

Finding No. 1 – The purchase of the additional trash toters for townhomes that was not financed in the original financing agreement, and additional payments beyond the amount financed will be made through DoE’s agency budget.

The County did not competitively bid the Toter contract to purchase trash toters, at a cost of ~\$7 million to the County. Instead, the award was made as a rider contract, off of an existing County contract with the National IPA and Toter, LLC, with the City of Tucson, AZ, better known as a cooperative agreement, wherein another jurisdiction did the solicitation. The rider was done based on the explanation that the County did not have the time to do a formal solicitation, due to the time constraints faced, and the immediate need to get the service in place. In this case, the County is permitted to utilize a contract from another jurisdiction, which it did. (See *Appendix D Series attached*)

Based upon the advice of the Office of Law, the County did not apply current laws related to the renewal of the term contract/riders with Toter LLC, based on their understanding of the Jobs First Act (CB-17-2011), which is, that a purchase under the rider/other government jurisdictions contract awards do not appear to be covered under the CB-17-2011. Subsequent related laws such as the Local Economic Opportunity Act (CB-67-2014), and the County-based Business Compliance Act (CB-30-2015) were also not applied to the purchase.

A letter contract was initiated between the County and Toter, LLC on May 20, 2016, which was to serve as an agreement between the County and Toter, LLC for the purpose of expediting the commencement of work and delivery related to the purchase of the trash receptacles, until such time as execution of a definitive contract between the parties could be developed and approved. The County has indicated that the purchase order serves as the definitive contract for the initial purchase of 142,000 carts for single family homes and includes 2,000 townhomes. It is the opinion of the Office of Law that the not-to-exceed amount of \$7,500,000 included on the PO, provided for adjustment of the number of carts due to responses received from townhouses who opted-in to receive a cart, within the period of performance stipulated in the PO of May 20, 2016 – June 30, 2017. This allowed for the purchase of 6,720 additional trash receptacles for townhomes (See *Appendix J-1* attached). However, the purchase of additional carts is not covered under the financing agreement the County entered into with Signature Public Funding Corp., and additional payments beyond the amount financed will be made through DoE’s agency budget.

We were unable to determine whether the County's use of this purchasing mechanism resulted in the County receiving the best price, as we had no other quotes to do a comparison with.

In July 2016, Prince George's County made a multi-million dollar purchase (~\$7 million) which is being financed over several years to purchase 142,000² trash toters, including literature, mailers, and shipping. The purchase was made utilizing a "Rider" Agreement/Term Contract with the National IPA, wherein the service was procured by the City of Tucson, AZ with Toter, LLC in 2007. The County has been a rider on this agreement periodically since 2012, when toters were first purchased for recycling, and for the purpose of periodically replacing these recycling toters. As such, although Prince Georges County itself did not do a formal bid process in 2016, one was done by the City of Tucson, AZ in 2007.

The County did not apply the requirements of CB-17-2011, and subsequent other relevant laws (CB-67-2014 and CB-30-2015), because it is the interpretation of OCS, on the advice of the Office of Law, that cooperative agreement type purchases, such as the rider/other government jurisdictions contract awards, are exempt from these laws.

We noted that while there may be County certified minority and/or county based businesses that could possibly *supply* toters to the County, there are no companies that *manufacture* toters in the County. The purchase of the toters for trash pickup did not go through the Supplier Development and Diversity Division (SDDD) process of OCS to determine whether there were any County certified minority and/or county based businesses that could fulfill any parts of the contract, such as delivery and/or assembly.

We inquired of the complainant Rehrig as to the *timeframe* it would have taken to provide the County with a quote, and they indicated that it could be turned around within 24 hours. (*See Appendix P-1 attached*). However, regardless of the timeframe that a quote can be provided by any given company, the Procurement Agent has indicated that the County's procurement process still remains lengthy at an average of 6-12 months. It is the claim of OCS personnel that the use of the cooperative purchasing mechanism, resulted in a shorter time-frame than would have otherwise been realized, had the County sought to procure the goods and services itself. The County utilized the cooperative purchasing agreement in order to adhere to a strict time constraint imposed by the County Council to have the toters manufactured and delivered to the residents in a short period of time, following the move to reduce trash pickup from twice a week, to once a week, in May 2016.

The large quantity and cost (~\$7million) associated with the County's 2016 purchase of toters, could have warranted a more formal bid or use of a Request for Quotation (RFQ) by the

² See Toter LLC purchase order dated July 13, 2016 (See Appendix J attached)

County, to ensure that the County was in fact getting a competitive price for the product and services. We were unable to determine whether the County's use of a cooperative purchasing agreement, which is intended for the specific purpose of reducing procurement costs, by aggregating the purchasing power of participating public agencies and leveraging group volume, in order to receive larger volume discounts from suppliers, resulted in the County receiving a lower price, as we had no other quotes with which to provide a comparison.

Although we recognize that there is a big difference between wholesale versus retail, DoE personnel indicated that they did a cost comparison between what the County paid (wholesale) for the toters ~\$44.88/unit, and what the retail cost of toters was, \$74.98/unit, which resulted in the County paying ~\$30 less per unit. (*See Appendix N-1 attached*)

Townhouses may opt-in to receive a cart after receiving a mailer, and nearly 9,000 townhouses opted-in to receive trash carts. This well exceeded DoE's estimate of 500 – 1,000 based upon the number of townhouses that wanted recycling carts several years ago, a total of 500, thus requiring additional time for production and county-wide delivery. Additional townhouses requested carts after the postcard/email notification date had passed, and several townhome owners that received carts chose to return them, and asked for them to be picked up. There were also instances where some of the carts had wheel issues, which should be covered under the warranty. (*See Appendix G Series attached*)

The contracting documents which include both the Letter Contract (*See Appendix H-1.1 attached*) and the Purchase Order (*See Appendix J-1 attached*), only authorizes 142,000 carts. The quote and financing covers 142,692 carts, which per DoE, includes 2,000 carts for townhomes, and only partially covers the amount of the estimated 9,000 carts for townhomes. As of February 16, 2017, 8720 carts were delivered to townhomes, with 75 returns. Per the Office of Law (OOL) "the PO referenced the product, quantity and maximum price (albeit it in the narrative rather than the designated columns), the latter of which was a not-to-exceed amount of \$7,500,000, to provide for adjustment of the number of carts due to responses received from townhouses who opted-in to receive a cart. The OOL opines that "such PO and Toter's acceptance thereof constituted a binding contract that is adequate as the definitive contract referenced in the Letter Agreement," and that "many County contracts are entered into in this manner (i.e., using purchase orders) in lieu of two-party agreements."

The quoted price for the original trash receptacles received in May 2016, does not appear to be valid for the purchase of the 6,720+ receptacles for townhomes, as this additional purchase occurred after July 31, 2016. The original quote stated that:

"Pricing evaluated every three (3) months for price adjustments based on current market conditions. The pricing for the quote received was effective 5/1/2016 through 7/31/2016" (*See Appendix G-1.3 attached*)

As of June 22, 2017, the cost to the County for the additional 6,720 carts which were not included in the original order was \$267,143 (including returns). DoE indicated that the price of the additional townhome carts (\$37.30) did not change except for a slight increase in delivery (\$1.10/cart).

Finding No. 2 - Pricing was still being negotiated, even though an existing contract was used, pursuant to the original pricing/discount terms of the Master IPA agreement

We determined that although the County made the purchase of the trash receptacles off of an existing agreement with Toter Inc., the pricing was still being negotiated after the contract was signed. This was as a result in part to the unique circumstances surrounding this contract type. Pursuant to the original pricing/discount terms of the Master IPA agreement, it is stipulated that “due to the nature of refuse and recycling container procurement, and the broad menu of options available, each project must be priced individually.” (See *Appendix D* attached)

The nature of the term/rider contract was such that each project had to be individually priced, as the commodity tied to the purchase of toters (resin) is market driven. The County has to get a new quote from the vendor, Toter Inc. every three (3) months, based on the terms of the quote received on May 3, 2016, which states that “*pricing evaluated every three (3) months for price adjustments based on current market conditions. The pricing for the quote received was effective 5/1/2016 through 7/31/2016.*” (See *Appendix G Series* attached).

There was a Term Contract (Rider), which had been in place with Toter Inc. periodically since 2012, for the replacement of recycling receptacles as needed by the County. (See *Appendix L-2* attached). The estimate for these services ranges from \$150,000 - \$200,000 yearly. (See *Appendix L-2 & L-3* attached). The current rider agreement was signed in February 2016 by the County and Toter, LLC. The current Master IPA agreement between National IPA, and Toter Inc. expires on January 30, 2018. (See *Appendix F* attached)

The County received a quote from Toter Inc. for the project of providing 142,692 toters on May 3, 2016. (See *Appendix G Series* attached). The County then signed a Letter Contract with Toter LLC, located in Statesville, NC, on May 20, 2016, for this particular project for 142,000 carts. The intent of the Letter Contract was to serve as a Notice to Proceed, and as an Interim Contract between Toter, LLC and the County. We reviewed the procurement regulations related to the use of the Letter Contract and determined that it appeared to be acceptable. (See *Appendix H Series & I Series* attached). As noted previously, per the Office of Law, the Definitive Contract stipulated in the Letter Contract was in the form of the Purchase Order. (See *Appendix H Series* attached).

Finding No. 3 - Financing for Trash Receptacles was not available until May 2016, and the lease financing agreement the County entered into was not competitively bid

No financing was available to purchase toter containers in March 2016. The County Council approved the multi-year purchase of toters in late May, and the County utilized the vendor that Toter, LLC presented to the County, Signature Public Funding Corporation (Signature), a New York corporation, to obtain financing for the deal in June 2016. The Office of Finance (OOF) assisted DOE in obtaining the best terms on the financing for the transaction with Signature, an interest rate of 1.73%, over 7 calendar years for only 142,692 trash receptacles.

The lease financing agreement between the County and Signature was not competitively bid. The County did not comply with the Jobs First Act (CB-17-2011); the Local Economic Opportunity Act (CB-67-2014); nor the County-based Business Compliance Act (CB-30-2015) when securing the financing for the toters, because it is the interpretation of OCS, on the advice of the Office of Law, that financing agreements are not applicable under these laws.

The County received a quote from Toter, LLC on May 3, 2016, for a total of ~\$6.455 million for the purchase of 142,692 toters to include the containers, literature, mailers and shipping & handling. (See *Appendix G Series attached*)

On May 26, 2016, the County Council approved the multi-year spending for Prince George's County for the acquisition of trash toters over a period of seven (7) calendar years, \$500,000 of which was to be expended in FY 2017 (CB-32-2016). (See *Appendix K attached*)

On June 29, 2016, the County signed a lease agreement with Toter, LLC's financing company, Signature Public Funding Corporation, a New York corporation, for a total cost of ~\$7 million over a period of eight (8) fiscal years, or seven (7) calendar years, beginning in January 2017 and ending in July 2023 (FY 2024), at an interest rate of 1.73%. (See *Appendix M series attached*). The Office of Finance (OOF) assisted DoE in obtaining the best terms on the financing for the transaction with Signature, which was an interest rate of 1.73% over 7 calendar years.

As of November 2016, three (3) groups of invoices from Toter, LLC were received, reviewed, and approved by the County, and forwarded to the finance company for payment. Signature Public Funding Corp. has invoiced the County, and the first payment of \$493,513.87 was made on January 3, 2017. (See *Appendix K attached*)

Finding No. 4 - Rehrig request for pricing information pursuant to the Public Information Act (“PIA”), Annotated Code of Maryland, was not provided because it was not available at the time of the County’s response to Rehrig

While the County appears to have responded to Rehrig’s PIA request in a timely manner regarding portions of the request that were available at the time (April 2016), we noted that the pricing information requested, was not provided to Rehrig, since the information only became available in May 2016, a month after the County responded to the request.

Although we were unable to verify the exact date that Rehrig made the PIA request related to the toter contract, we noted that the County was in receipt of the request on April 13th, 2016, based on their response letter, and responded to Rehrig on April 20th, 2016. Although, the County provided the contracting information requested, they did not provide any pricing information per the request. We noted that pricing related to this contract was not available at the time the County responded to Rehrig, and the information became available in May 2016, a month after the County responded to the request. (*See Appendix Q Series attached*)

MONETARY IMPACT TO PRINCE GEORGE’S COUNTY

The purchase of the toters by the County in May 2016 represented a complex procurement process that was driven by the decision of DoE to implement a once a week trash pickup service on an expedited schedule. The decision to expedite the large multi-million dollar, multi-year purchase, was compounded by the requirement from the County Council to have residents provided with a trash totter at the earliest possible time after the implementation from twice to once a week pickup, which began in May 2016.

If only 142,692 toters were procured, and no replacement toters are provided in out years, the cost of providing the toters to residents will eventually cost the County approximately \$6.747 million, which includes financing costs and the purchase of additional receptacles for townhomes. As of June 2017, we noted that an additional 6,720 carts were delivered to townhomes (including returns), which we estimate will cost the County \$267,143, and will be paid for via DoE’s budget.



RECOMMENDATIONS

- I. We recommend that in the future, should the County seek to non-competitively procure goods or services with another government agency or government, and should the circumstances warrant it, that they consider utilizing the Contract Negotiation – Special Circumstances option as directed in the Procurement Regulations (*See Appendix R-1 attached*), which allows the Purchasing Agent to do so, with certain compliance requirements. The County should then maintain the required certification justification and determination and contracts on file, as per the regulations.
- II. We recommend the County consider doing an RFQ of its own in order to ensure that utilizing the N-IPA contract is still in fact serving the best interest of the County, price and other factors considered, since the solicitation related to the N-IPA contract was done over a decade ago. Additionally, the product is tied closely to a commodity that is highly market driven, and the County's estimated annual purchase of replacement receptacles exceeds \$150K. (*See Appendix L-3 attached*)
- III. We recommend that the Office of Central Services ensure that agencies, (i.e. those with delegated authority), are following procurement guidelines when seeking to make purchases such as this one, that is, one that is a large, multi-year investment, that was highly market driven.
- IV. The County should consider providing the requested pricing information per Rehrig's PIA request. However, it must be noted that the information requested is included in this report, which will eventually become a part of the public domain, and the information will be available to Rehrig and other interested parties.



Russhern L. Baker, III
County Executive

PRINCE GEORGE'S COUNTY GOVERNMENT
Office of Central Services

Roland L. Jones
Director

Floyd E. Holt
Deputy Director

Dear Dave,

Thank you for taking the time along with Sylvia King to meet with County staff to review the Office of Audit and Investigations report, *Department of the Environment - Toter LLC - Special Review - Contract Award* (the "Audit Report"). This correspondence responds to some of the statements in the Audit Report findings and provides the context, complete legal basis, and rationale for the successful purchase and distribution of over 150,000 trash carts to County residents.

In late 2016 the County reached agreement with 15 county residential collections haulers to amend and extend their existing service contracts to change from twice/week to once/week residential and recycling trash collection. The change followed suit with neighboring jurisdictions that had made this switch years ago. County Council approved the change in March 2016 and the transition to once/week service occurred in May 2016. Concurrently, the County announced that it would provide new large 64-gallon trash containers to single family residences, and to townhouses that "opted-in" to receive them. County Council approved financing of the carts in May 2016, which carts were purchased from Toter LLC ("Toter").

As the Report states, the County made the cart purchase via a Rider Agreement/Term Contract with the National Intergovernmental Purchasing Alliance (IPA). The County did so for four reasons. First, using the IPA procurement vehicle is in furtherance of County procurement law. Section 10A-146 of the County Code (the "Cooperative Purchasing Law") states: "It shall be the duty of the Purchasing Agent to develop, to the maximum extent feasible, a program for the joint or cooperative purchasing of common-use supplies with other organizations or jurisdictions and the Purchasing Agent shall endeavor to arrange for a program of standardization of common-use supplies." A trash cart is a common-use supply among local jurisdictions all over the country.

Second, the IPA with Toter -- procured by the City of Tucson in 2007 and updated each year thereafter -- was the result of a national solicitation. Competition for value and pricing of trash carts, including economies of scale associated with a large-scale purchase, are part and parcel of an IPA offering. Over 300 agencies have participated in the purchase of over 2.2 million trash carts under this IPA -- a testament to the effectiveness of the IPA vehicle as a standard practice.

"One Mission - One Team"

1400 McCormick Drive, Suite 336, Largo, Maryland 20774 (301) 883-6450, FAX (301) 883-6464

Third, the County had a track record with Toter. As the Report notes, the County was party to an IPA Rider for recycling with Toter since 2012 when it first purchased recycling carts for County-wide distribution. The company's performance has been exemplary and the County continues to purchase recycling carts for new residences under this Rider.

Finally, an IPA saves time. The Report notes that the County's typical procurement process is indeed lengthy and takes an average of 6-12 months to complete. Had this process been used, a vendor would not have been selected until early 2017 and the manufacture and distribution of the carts would have been delayed by a year. Instead, under a separate section of the County Code - 10A-146 cooperative purchases (the "Cooperative Purchasing Law") - the County entered into a Rider Agreement with Toter that resulted in the manufacture and distribution of trash carts beginning in June 2017 - two months after County Council approval.

With respect to the Jobs First Act, the Audit Report states as follows:

The County did not apply current laws related to the renewal of the term contract/riders with Toter LLC, based on their understanding of the Jobs First Act (CB-17-2011), which is, that a purchase under the rider/other government jurisdictions contract awards do not appear to be covered under the CB-17-2011. Subsequent related laws such as the Local Economic Opportunity Act (CB-67-2014), and the County-based Business Compliance Act (CB-30-2015) were also not applied to the purchase.

As stated above, the County procured the carts under authority of the Cooperative Purchasing Law. This was necessitated by the County Council's request that the County begin cart distribution in June of 2016. To accommodate that request, the County enforced the Cooperative Purchasing Law by utilizing the competitive process of another jurisdiction. Accordingly to the Office of Law, this made the laws cited above inapplicable.

Specifically, CB-17-2011, CB-67-2014 and CB-30-2015 (the "CBSB Laws") set forth County-based small business participation requirements for County contracts. CB-17-2011 limits its scope to procurements "for which a County agency or the County government *secures competitive bids or proposals*, including, but not limited to, competitive bids secured pursuant to [invitation for bids] or competitive proposals pursuant to [requests for proposals] . . ." In purchasing the carts, no County agency or the County government secured requests for proposals, invitation for bids or any other competitive bid or proposal as time constraints warranted a more expeditious procurement process. In light of these facts, the Office of Law opined that the laws of CB-17-2011 did not apply.

The Office of Law also opined that while CB-67-2014 made County-based small business participation requirements applicable to additional procurement vehicles, those vehicles

Management's Response
Page 3 of 3

did not include cooperative purchases. CB-67-2014 added Section 10A-114 negotiated contracts (a.k.a. sole source contracts) and Section 10A-115 small purchases (under \$30,000) to the purview of CBSB Laws as they were not included in CB-17-2011. While it did so by referencing and revising those Sections of the procurement laws, it neither referenced nor revised Section 10A-146 Cooperative Purchasing Laws. Similarly, CB-30-2015 contains no reference or revision that would make the CBSB Laws applicable to cooperative purchases because its only charge was for the Director of the Office of Central Services to prepare and submit an annual Local Business Participation Procurement Report.

We appreciate the opportunity to work with you and Sylvia and to provide this perspective.

Sincerely,



Roland L. Jones

Director office of Central Services
Prince George's County Government
1400 McCormick Drive, Suite 336
Largo, MD 20774

List of Titles and Terms

Term	Definition
A&I	Office of Audits & Investigations
AZ	Arizona
CB	County Bill
DoE	Department of the Environment
FOIA	Freedom of Information Act
FY	Fiscal Year
LLC	Limited Liability Company
NC	North Carolina
ID/IQ	Indefinite Delivery/Indefinite Quantity
IPA	Intergovernmental Purchasing Alliance
OCS	Office of Central Services
OOF	Office of Finance
OOL	Office of Law
PIA	Public Information Act
PO	Purchase Order
PPA	Principal Procurement Agency
RFP	Request for Proposal
RFQ	Request for Quotation
SDDD	Supplier Development & Diversity Division
TN	Tennessee
US	United States

Appendix B
Complaint from Colleen Reilly – Rehrig Pacific



April 14, 2016

PG County
1400 McCormick Drive Ste 336
Largo, MD 20774

Dear Esteemed Council Member,

My Name is Colleen Reilly and I am the sales manager Rehrig Pacific Company.

It has come to our attention through multiple departments with the county partners that Prince George's County has decided to purchase 160K 65 gallon without a formal bid process. While we have requested the pricing information via a FOIA, the dollar amount for this purchase could be in upwards of \$7,000,000. In fact, we were told by the County that the purchase was being made off of an existing agreement, yet we were also told that the pricing is still being negotiated. This information is in conflict with each other and if there was a purchase off another agreement, there wouldn't be further negotiations. We are respectfully requesting the Council review this purchase and consider utilizing a bid or at a minimum a quoting process to insure that the County is getting a competitive price and a high quality product and service.

Rehrig Pacific is the largest in North America and has been meeting with the County since 2012 and is in a great position to offer a competitive price, quality product and service, and meet the time frame of this project for the County. In fact, over the last year, the largest component of our costs, plastic resin, has decreased by over 30% in the last 16 months which could represent in upwards of \$1M in savings.

At the Environment
In December of 2015, we met with the Department of Public Works to discuss this opportunity and we were told that no financing was available. That leads us to a puzzling announcement at the March 22, 2016 Council Meeting of the decision to purchase these containers through a competitor, using a pre-existing contract.

Rehrig Pacific has worked with the County and the County's largest and smallest waste haulers over the last several years to learn and provide information about different collection strategies that may work for the County- including but not limited to, specifications for containers, information on accurate database management, prices and payment options with the haulers for containers, recycling container alternatives, RFID tracking information and of course, new organic collection solutions. In addition, Rehrig Pacific has always supported important Environmental Organizations like MRN that impact our state legislation.

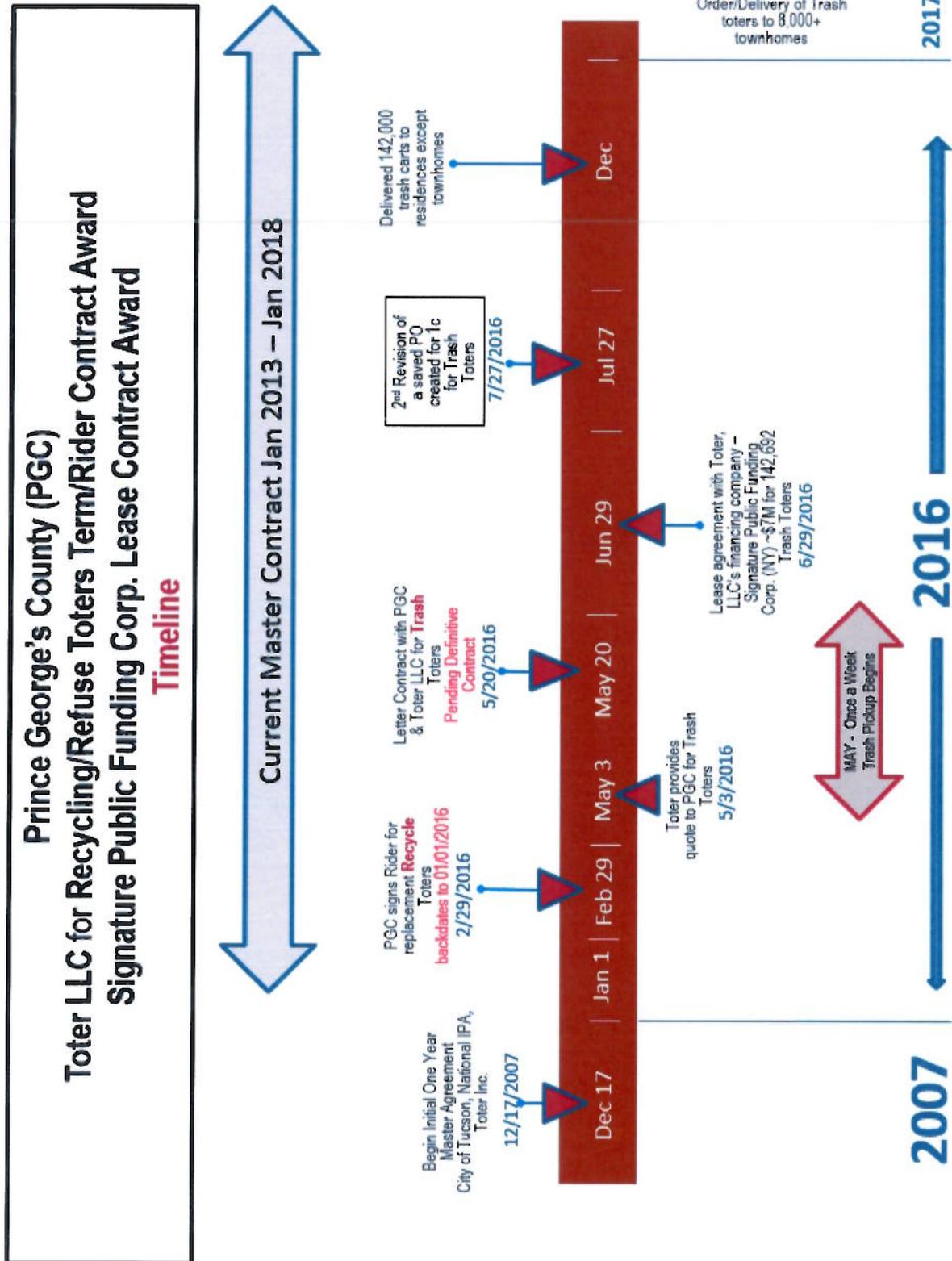
Rehrig Pacific is respectfully requesting that the Council reexamine this purchase with at least one additional, competitive and fair option. If only to ensure you are doing the right thing for your residents.

Thank you so much,

Colleen Reilly

Colleen Reilly

Appendix C
Toter LLC and Signature Public Funding Corp. Contract Timeline



Appendix D-1
Appendix D-1
Cooperative Purchasing
Sec. 10A-146

Subdivision 7. Cooperative Purchasing.

Sec. 10A-146. Cooperative purchasing with other jurisdictions.

It shall be the duty of the Purchasing Agent to develop, to the maximum extent feasible, a program for the joint or cooperative purchasing of common-use supplies with other organizations or jurisdictions and the Purchasing Agent shall endeavor to arrange for a program of standardization of common-use supplies. The Purchasing Agent may, as appropriate, undertake and participate in similar programs involving joint or cooperative purchases with other organizations or jurisdictions and may procure services and supplies from such parties or to utilize the contracts or schedules established by such organizations or jurisdictions when appropriate and when such actions shall be in the best interests of the County as determined by the Purchasing Agent.

CHAPTER IX

IX. Cooperative Purchasing with Other Jurisdictions

A. General

Use of
Cooperative
agreements

In order to promote cooperative relationships with other Governments and political jurisdictions, and to maximize economies of scale in procuring supplies and services, the Purchasing Agent shall develop and/or participate in, to the maximum extent possible, joint or cooperative purchases of common use supplies with such organizations; provided, however, that no such cooperative purchasing agreement shall defeat, encumber or circumvent any requirements of the Code.

1. Methods of Cooperative Purchasing

The Purchasing Agent may participate in or utilize any of the following methods of cooperative purchasing.

a. Include County requirements in a solicitation for bid or combined for purpose of achieving economies of scale.

b. Utilize the contracts of other jurisdictions when the following conditions exist:

- 1) A decision is made that the quantity discounts available are likely to be greater than the county could obtain in its own independent procurement.
- 2) The contract was established in a method consistent with the purposes of Chapter II A, of these regulations.
- 3) Either the contract contains specific authority for other jurisdictions, including the County, to procure from it, or the contractor expressly grants the authority for the County to procure off the contract under the same terms and conditions as the contracting jurisdiction.

Appendix D-2.2
Cooperative Purchasing
Procurement Regulations

- 4) The contract is an established Federal Supply Schedule or State of Maryland competitive contract.
- c. Purchase from another public entity when the public entity is willing to sell materials or supplies to the County at a cost not exceeding what it would charge its own agencies, plus a reasonable handling fee.
- d. Sell supplies to another public entity
 - 1) The County may sell such supplies to another public entity at the same price it sells to County agencies, and may establish a schedule of additional service fees as appropriate.

2. The facilities and services of the Purchasing Agent's office shall be made available, upon request, to other public activities in the County which obtain their financial support in part from the County and to municipalities.
 - a. As a condition to procuring supplies for the above activities, the Purchasing Agent shall obtain a written commitment from the entity that such entity will assume legal and fiscal responsibility for such purchase (s).

Appendix E
Original **Master Contract** with National IPA Agreement/Toter Inc.
Excerpt



Lead Agency: City of Tucson, AZ
RFP Issued: August 14, 2007
Date Open: September 21, 2007

Solicitation: RFP 083008
Pre-Proposal Date: August 27, 2007
Proposals Received: 3



Awarded to:

The City of Tucson Department of Procurement issued RFP 083008 on August 14, 2007 to establish a national cooperative contract for refuse and recycling containers.

Notice of the solicitation was sent to approximately 61 potential offers, as well as advertised in the following:

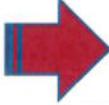
- City of Tucson, AZ Department of Procurement website
- National IPA website

On September 21, 2007, proposals were received from the following offerors:

Otto Environmental Systems, LLC
Rehrig Pacific Company
Toter, Inc.

The proposals were evaluated by an evaluation committee. Using the evaluation criteria stated in the RFP the committee requested clarification on certain portions of each offerors proposals and recommended inviting all three for interview.

Upon completion of interviews, the evaluation committee sent requests for revised offers to all three vendors. The evaluation committee evaluated the revised offers, interviews and the relative strengths and weaknesses of each proposal with regard to the evaluation criteria stated in the RFP. As a result, the committee recommended entering negotiations with the intent to award a contract to the top ranked offeror: Toter, Inc.

 The City of Tucson, National IPA and Toter, Inc. successfully negotiated a contract and the City of Tucson executed a contract on December 11, 2007 with a contract effective December 17, 2007.



Contract includes: Refuse and recycling containers

Term:

Initial one year agreement from December 17, 2007 through December 16, 2008, with option to renew for four (4) additional one-year periods through December 16, 2012.

Pricing/Discount:

 Due to the nature of refuse and recycling container procurement, and the broad menu of options* available, each project must be priced individually. Pricing submitted by Toter, Inc. in response to the City of Tucson, AZ RFP is available upon request by contacting info@nationalipa.org.

PRICING & DISCOUNT

 For additional information, please contact your local Toter representative or contact Toter Municipal Sales Division Customer Service at 800-424-0422.

*Options available include:

- Universal and Fully Automated Cart Designs
- Toter's EVR II Series feature a Nestable design allowing fully assembled carts to be stacked one inside another for storage and delivery efficiencies and cost savings
- Various size containers 20, 32, 48, 64, 96 Gallon for Refuse and Recycling Collection
- Various color options including innovative Granite colors
- Custom markings include hot stamping, lid inserts, and multi-color graphics
- 45 and 60 Gallon Decorative Litter Containers in upscale Granite colors for public areas

Appendix F
Current **Master Contract** with National IPA Agreement/Toter Inc.
Excerpt

NATIONALIPA Reducing Procurement Costs Through Cooperative Contracting

• Home
• Agreements
• Agreement Categories
• Bulk Fuel
Toter
Unleaded Diesel
Biodiesel
Bio-Diesel
• Combination Sewer Truck
READY TO PURCHASE
• CONTRACT HIGHWAYS Maintenance
• DATA DOCUMENTATION Services
• Towers & Tissue CONTACT
Professional Cleaning Chemical
• SANITIZING MATERIALS
Septic Care Products
Can Liners
MEETINGS AND EVENTS
Tools & Accessories
Equipment Rental Services
Foodservices Packaging & Disposables
• Water Treatment Chemicals
SEARCH OUR AGREEMENTS:
• Refuse & Recycling Containers
Select Agreement
• Maintenance, Repair, and Operational Supplies
Electrical
Lamps & Ballasts
HVAC
• Furniture
Office Furniture
Seating
Filing Systems
Educational Furniture
• Wireless & Data Services
• Multifunction Digital Copiers, Supplies & Services
• Service and Rental of Uniforms, Floor Mats, Mops & Towels
• Information Technology
Desktops
Laptops
Servers
Input Devices
Output Devices
Memory
Storage Devices
Network Equipment
Software
Services
• Parks & Golf Grounds Maintenance Equipment
Commercial
Compact Utility
Landscape Contractor
• Golf, Transportation & Utility Cars

Refuse and Recycling Containers

Contract Highlights:

- Contract Term: January 31, 2013 through January 30, 2018
- National aggregate pricing resulting in immediate cost savings
- Industry leading supplier of wheeled, rollout carts in 24, 32, 48, 64 and 96 gallon sizes for curbside automated refuse and recycling collection
- Broad menu of options including size, custom markings, colors, etc.
- Industry's lowest failure rate reduces maintenance budgets
- Industry's newest innovation Granite colors
- Visit the Toter website at www.toter.com or their parent company, Wastequip website here.

Current Master Contract term
1/31/2013 – 1/30/2018

014-042

National Intergovernmental Purchasing Alliance Company
1500 Wedgate Circle, Suite 275, Brentwood, TN 37027 | Toll-Free (866) 408-3077 | Info@nationalipa.org

Appendix G-1.1
Toter Inc. Quote 1 of 3 5/3/16



841 Meacham Rd, Statesville, NC, 28677

PHONE: 800-424-0422 FAX: 704-878-0734

WQ-10015685

Sell To:

Contact Name Joseph Gill
Bill To Name Prince George's County
Bill To 9200 Basil Court (Suite 300)
Largo, MD 20774
USA
Email jpgill@co.pg.md.us
Phone (301) 883-6400

Ship To Name Prince George's County
Ship To Brown Station Road Sanitary Landfill
11611 White House Road
Upper Marlboro, MD 20774
USA

Quote Information

Salesperson Emily Archer
Salesperson Email emilys@wastequip.com

Created Date 5/3/2016
Expiration Date 6/2/2016
Quote Number WQ-10015685

Quote Dated: 5/3/2016
Expiration Date: 6/2/2016

Please Reference: Quote Number on all
Purchase Orders

Model	Product Description	Selected Option	Description	Quantity	Sales Price	Total Price
79264	Model 79264 - Toter 64 Gallon EVR II Universal/Nestable Cart	—Body Color - (209) Blackstone —Lid Color - (200) Black —Body Hot Stamp on Both Sides (Existing) in —Lid Hot Stamp Insert- Read from Street (New) in —Wheels - 10in Sunburst —2/3 Assembled with Lid (down). Stop Bar and Axle Factory Installed —Warranty - 12 Yrs Cart Body, All other components 10 Yrs		142,692.00	\$37.30	\$5,322,411.60

Quote Dated 5/3/2016 from
Toter LLC for 142,692 carts at
\$37.30 each



841 Meacham Rd, Statesville, NC, 28677

PHONE: 800-424-0422 FAX: 704-878-0734

WQ-10015685

Op-A&D-Dense

Assembly and Distribution (Dense): Cart assembly and distribution based on dense urban area in which each residence receives a cart. Carts will be distributed on a route-by-route basis based on customer provided list. A suitable work area for assembly (large, paved, secure and partially covered area) to be provided by customer. We request the customer's assistance in allowing the use of an onsite warehouse type fork lift to unload trailers. (Please Note: Pricing is subject to adjustment or negotiation based on unforeseen circumstances beyond Toter or its contractor's control. Additional Services available upon request and will be priced accordingly. A&D Service Fee will apply to projects below 3,000 carts.)

A&D will attach a Bag containing literature.

142,692.00 \$3.65 \$520,825.80

Appendix G-1.2
Toter Inc. Quote 2 of 3 5/3/16



841 Meacham Rd, Statesville, NC, 28677

PHONE: 800-424-0422 FAX: 704-878-0734

WQ-10015685

Mailer	Physical mailer with encoded web link.	Business Response Mail (BRM) permit fee/one-time fee BRM annual fee Data entry fee per returned postcard; fee is per returned card; assumes a 40% return rate Landing page: Part of Toter.com and Toter could include Prince George's Co. city seal, etc. if needed Postcard printing Mail processing Postcard postage Tax Return mail cost per piece: Toter assumes expense for what is actually returned/ assumes a 40% response rate	1.00	\$50,373.68	\$50,373.68
Payment Terms	Net 30 Days	Subtotal	\$5,893,611.08	Quote Dated 5/3/2016 from Toter LLC for 142,692 carts Total ~\$6.455 million	
Shipping Terms	FOB Origin	Shipping and Handling	\$561,667.64		
		Tax	\$0.00		
		Grand Total	\$6,455,278.72		

Additional Information



841 Meacham Rd, Statesville, NC, 28677

PHONE: 800-424-0422 FAX: 704-878-0734

WQ-10015685

Additional Terms Our quote is a good faith estimate, based on our understanding of your needs. Subject to our acceptance, your Order is an offer to purchase our Products and services in accordance with the Wastequip Terms and Conditions, including our limited warranties, the terms of which are incorporated herein by reference, which constitutes the entire agreement between the parties. The Wastequip Terms and Conditions are available on our website at: <http://www.wastequip.com/terms-conditions.cfm>

Pricing

Pricing is based on your anticipated Order, including product specifications, quantities and timing - any differences to your order may result in different pricing. Due to volatility in petrochemical, steel and related product material markets, actual prices, as well as freight, are subject to change and will be confirmed prior to acceptance of an Order. Unless otherwise stated, materials and container sizes indicated on sales literature, invoices, price lists, quotations and delivery tickets are nominal sizes and representations - actual volume, Products and materials are subject to manufacturing and commercial variations and Wastequip's practices, and may vary from nominal sizes and materials. All prices are in US dollars; this quotation may not include all applicable taxes, brokerage fees or duties.

Wastequip, Toter, Galbreath, Cusco, Accurate, Mountain Tarp, Pioneer, and Parts Place are registered trademarks, trade names and subsidiaries of Wastequip, LLC.

Actual prices and freight
subject to change

Additional Information Due to extremely volatile petrochemical and steel markets, actual prices and freight are subject to change and must be confirmed before acceptance of an order. Above pricing is based on orders placed in the quantities stated above. Orders placed for other than these quantities may be subject to additional freight and cost. Unless otherwise stated, container sizes indicated on sales literature, invoices, price lists, quotations and delivery tickets are nominal sizes. Actual volume may vary from nominal sizes. This proposal is subject to Wastequip/Toter standard terms and conditions. Quotation does not include any applicable taxes other than those specifically listed on this document.

Special Contract Information Please Note: Pricing is based on the National IPA agreement through Toter's Contract No. 120576-01 as awarded by the City of Tucson on January 31, 2013. Per the terms of this contract, pricing is evaluated every three (3) months for price adjustments based on current market conditions. The current pricing is effective 5-1-2016 through 7-31-2016.

Signatures

Accepted By: _____

Company Name: _____

Date: _____

Purchase Order: _____

Not signed and no PO

executed only created xx2422

Please Reference Quote Number on all Purchase Orders

Proposal subject to
Wastequip/Toter standard
terms and conditions, not
Prince George's County's.

Pricing evaluated every three
(3) months for price
adjustments based on current
market conditions. The
pricing for the quote received
was effective 5/1/2016
through 7/31/2016



PRINCE GEORGE'S COUNTY GOVERNMENT
Office of Central Services

Rushern L. Baker, III
County Executive

Roland L. Jones
Director

Floyd E. Holt
Deputy Director

May 20, 2016

Via Priority Mail and Facsimile

Emily Archer, Sales
Toter, LLC
841 Meacham Road,
Statesville, NC 28677

**Re: Letter Contract for the Prince George's County Department of the Environment
Waste Management Division**

Dear Ms. Archer:

This Letter Contract serves as a Notice to Proceed and Interim Contract between Toter, LLC ("Toter") and Prince George's County, Maryland ("County") for the Supply and Delivery of 142,000 Toter 64 Gallon EVR II Universal/Nestable Carts per the Written Quote dated May 3, 2016, and referred to hereafter as WQ-10015685.

The parties agree that this Letter Contract shall serve as an agreement between the County and Toter for the purpose of expediting the commencement of work and delivery, until such time as execution of a definitive contract between the parties. The County shall pay Toter in accordance with the prices set forth in Toter's written quote dated May 3, 2016, within 30 days of after receipt of invoice and acceptance of the carts, whichever occurs last. Except as set forth herein, the County shall not be bound nor obligated beyond monies available and appropriated for these goods and services nor bound to pay in excess of the stated Written Quote for the production and delivery of the specified work. Prince George's County's General Terms and Conditions are incorporated by reference into this Letter Agreement as if fully set forth herein. By acceptance hereof, Toter may commence work immediately while the County is in the process of executing the final contract.

Per Office
of Law
definitive
contract
executed -
was the PO
xx2422

This Letter Contract is for the provision of supplies and services related to the Department of the Environment Waste Management Division's Refuse Container requirements contract and shall be effective immediately and shall remain in effect until such time as: 1) full execution of a definitive contract between the parties; or 2) thirty percent (30%) of the contract price has been expended. The total cost for these services shall not exceed \$7,500,000. There is no obligated amount through fiscal year 2016, which ends June 30, 2016.

This agreement is contingent upon Prince George's County receiving financing to purchase 142,000 carts from Toter. In the event such financing is not secured within 30 days of

"One Mission - One Team"

1400 McCormick Drive, Suite 336, Largo, Maryland 20774 (301) 883-6450, FAX (301) 883-6464

Appendix H-1.2
Procurement Regulations – Letter Contract

Page 2 of 2
Emily Archer
May 20, 2016

the date of this Letter Contract, Prince George's County has the right to terminate this Letter Contract by providing Toter with written notice of termination. In the interim, Toter is authorized to begin production and shipment of carts, pursuant to its May 3, 2016 Written Quote, under this Letter Contract and the County agrees to take delivery of and pay for as many carts as Toter delivers before the end of the second calendar quarter of 2016.

Please sign below indicating Toters' agreement to the terms of this Letter Contract and return the original signed letter to Canjor D. Reed, Division Chief with the County's Office of Central Services, Contract Administration and Procurement Division.

We look forward to an equally rewarding business relationship between the County and Toter.

Sincerely

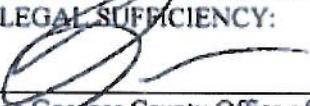
Roland L. Jones
Director

cc: Brad W. Frome, Assistant Deputy Chief Administrative Officer,
Joseph P. Gill, Deputy Director, Department of the Environment
Canjor D. Reed, Division Chief, Office of Central Services
Barbara G. Manley, Procurement Officer III, Office of Central Services

AGREED AND ACCEPTED:
DocuSigned by:

Henry Retamal
By: HENRY RETAMAL
Title: President
Toter, LLC May-23-2016
Dated: _____, 2016

REVIEWED AND APPROVED AS
TO LEGAL SUFFICIENCY:


Prince Georges County Office of Law

Appendix I-1.1
Procurement Regulations – Letter Contract

11. "Contact" means all written types of agreements, grants, and orders for the purchase or disposal of supplies, services, construction, insurance or any other item. It includes but is not limited to contracts of a fixed-price, cost reimbursement, cost-plus-a-fixed-fee, or incentive type; contracts providing for the issuance of job or task orders; grant; leases; **letter contracts**; and purchase orders. It also includes supplemental agreements with respect to any of the foregoing.

1 2 3 4 5 6 

activities involving deception or improper activities.

27. "Indictment" includes information or other filing by a competent authority charging a criminal offense.

28. "Invitation for Bids" means all documents whether attached or incorporated by reference, utilized for soliciting bids in accordance with the procedure set for the in Subtitle 10A, Section 112.

29. "**Letter Contract**" means the written preliminary contractual document that authorizes the contractor to begin a portion of the agreed upon services immediately. A **letter contract** is always associated with a definitive contract and can never be the sole document used to complete the procurement.

30. "Maryland Based Business" means a business whose principal place of operation is based within the State of Maryland.

31. "Minority Individuals" are those who have been subjected to prejudice or cultural bias because of their identity as a member of a group in terms of race, color, ethnic origin, or gender, without regard to their individual capabilities. Minority individuals are limited to members of the following groups:

- a. African Americans (Black Americans);
- b. Asian Americans;
- c. Hispanic Americans; and

Appendix I-1.2

Procurement Regulations – Letter Contract Con't

J. Letter Contracts

A. Applicability

1. A **letter contract** may be used to expedite the commencement of work under a design or construction while the final details and approvals required for the execution of a contract are being completed.
2. A **letter contract** may not amend the scope of services contained in the Invitation for Bids or Request for Proposals.

B. Conditions for Use of Letter Contracts

1. A **letter contract** may only be used with the written approval of the Purchasing Agent, and may only be amended with the Purchasing Agent's approval.
2. A **letter contract** shall, at a minimum contain statements regarding the following:
 - a. The County shall not be bound or obligated beyond monies available and appropriated for the project;
 - b. The General and Special Terms and Conditions and other stipulations contained in the Invitation to Bid, or Request for Proposals are incorporated by reference; and
 - c. A definitive schedule for the execution of the completed contract.
3. **Letter contracts** may only be executed by the Purchasing Agent, or designee.

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4. A **letter contract** may not be issued until the contractor's performance and payment bonds, certificates of insurance, and MBE participation documents, as applicable, have been filed with and approved by the County.
5. A **letter contract** may not exceed 30% of the contract price.

Appendix J-1
Purchase Order – Revised - 7/27/2016

 VENDORS PLEASE NOTE: This Purchase order is subject to the County's Terms and Conditions located on the County's http://procurement.maryland.gov			Bill To Address: DOE Adm Svcs DOE Administration Services 14741 Governor Oden Bowie Dr UPPER MARLBORO MD						Purchase Order Information <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%;">Change Purchase Order No.</td> <td style="width: 25%;">Revision:</td> <td style="width: 25%;">Page :</td> </tr> <tr> <td>4300002422</td> <td>2</td> <td>1</td> </tr> <tr> <td colspan="2">Date of Order</td> <td>Date of Revision</td> </tr> <tr> <td colspan="2">07/13/2016</td> <td>07/27/2016</td> </tr> <tr> <td colspan="3" style="text-align: center;">Payment Terms</td> </tr> <tr> <td colspan="3" style="text-align: center;">NT30</td> </tr> <tr> <td colspan="2" style="text-align: center;">Inco Terms</td> <td style="text-align: center;">Currency</td> </tr> <tr> <td colspan="2" style="text-align: center;">USD</td> <td style="text-align: center;">Buyer Details</td> </tr> <tr> <td colspan="2" style="text-align: center;">Barbara MANLEY</td> <td style="text-align: center;">bgmanley@co.pg.md.us</td> </tr> </table>			Change Purchase Order No.	Revision:	Page :	4300002422	2	1	Date of Order		Date of Revision	07/13/2016		07/27/2016	Payment Terms			NT30			Inco Terms		Currency	USD		Buyer Details	Barbara MANLEY		bgmanley@co.pg.md.us
Change Purchase Order No.	Revision:	Page :																																				
4300002422	2	1																																				
Date of Order		Date of Revision																																				
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Payment Terms																																						
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Inco Terms		Currency																																				
USD		Buyer Details																																				
Barbara MANLEY		bgmanley@co.pg.md.us																																				
Company TOTER LLC 841 MEACHAM RD STATESVILLE NC 28677 USA			Ship to Address PrGeoCoMD Prince Georges County MD DoE - Director's Office 1801 McCormick Drive LARGO MD 20774 USA						Maryland's Tax Exempt # 3000124-3 District of Columbia Tax # 006-09127-06 Manufactures Federal Excise Tax # 52710247- K																													
Contract Number :			Contract Expiration Date : -						The Above PO Number MUST APPEAR ON ALL INVOICES, PACKING LIST, CARTONS AND CORRESPONDENCE RELATED TO THIS ORDER.																													
Line	Product Number	Vendor Part #	Description	Delivery Date	Quantity	UOM	Unit Price	Extended Price																														
1			<p>Trash Containers IN ACCORDANCE TO THE LETTER CONTRACT DATED MAY 20, 2016, PRINCE GEORGES COUNTY IS REQUESTING THE SUPPLY AND DELIVERY OF 142,000 TOTER 64 GAL. EVR II UNIVERSAL/NESTABLE CARTS PER THE WRITTEN QUOTE DATED MAY 5, 2016 AND REFERRED TO AS WQ-10015685. ALL CART PRODUCTION UNDER THE ABOVE AGREEMENT WILL BE RECEIVED AT THE COUNTY WASTE MANAGEMENT DIVISION AND PAID VIA TCF EQUIPMENT FINANCE UNDER THE TERM AND CONDITIONS NEGOTIATED PER THE COUNTY AND TCF WITH A NOT TO EXCEED AMOUNT OF \$7,500,00.00. The County and Toter will adjust the number of carts ordered by the County no later than November 30, 2016 to account for residents who do not wish to have a cart, and/or for townhouse residents who do. Changes to the number of carts due to residents' preferences shall only be allowed after such date if there are any remaining carts to be manufactured pursuant to any separate quotations and delivery will be subject to Toter's production schedule at that time. ALL PAYMENTS WILL</p>	05/20/2016 - 06/30/2017	No quantity, unit price or extended price for PO																																	
					Price subject to written quote dated 5/5/2016																																	
									Allowance for the adjustment of the number of carts no later than 11/30/2016																													
Subtotal :																																						

 Purchase Order Information <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%;">Change Purchase Order No.</td> <td style="width: 25%;">Revision:</td> <td style="width: 25%;">Page :</td> </tr> <tr> <td>4300002422</td> <td>2</td> <td>2</td> </tr> <tr> <td colspan="2">Date of Order</td> <td>Date of Revision</td> </tr> <tr> <td colspan="2">07/13/2016</td> <td>07/27/2016</td> </tr> </table>			Change Purchase Order No.	Revision:	Page :	4300002422	2	2	Date of Order		Date of Revision	07/13/2016		07/27/2016	Line Product Number Vendor Part # Description Delivery Date Quantity UOM Unit Price Extended Price					
Change Purchase Order No.	Revision:	Page :																		
4300002422	2	2																		
Date of Order		Date of Revision																		
07/13/2016		07/27/2016																		
Total Purchase Order :			TRANSFER DIRECTLY TO TOTER LLC TO ENSURE A TIMELY PAYMENT. Subject to Period of Performance: 07/01/2016 and 06/30/2017																	
Additional Instructions to vendor :																				
REPLACEMENT CONTAINERS FOR COUNTY RESIDENTS IN ACCORDANCE TO THE NEW TRASH, GARBAGE, & RECYCLING REQUIREMENTS CONTRACT. Agency POC: DEPUTY DIRECTOR, DEPARTMENT OF THE ENVIRONMENT, JOE GILL, 301-863-6500.																				
Seasonal Message :																				
PGC Form 895(C) - Revised 7/1/2014																				

Appendix J-2
Purchase Order Created for 1c and Never Issued

Purchasing Documents by Document Number

PO	Type	Vendor	Name	Address	City	State	Zip	Phone	Fax	EMail	Order Date	Ext. Refn#
Item	Material		Short Text									
			Order Day	Unit				Net Price	Class	per Unit		
4300002422	PLIR	1000000971	TOTER LLC								103	07/19/2016
00001			Trash Containers									8162721
	B 8 1000 1002			1	BU			0.01	USD	1	BU	
	Still to be delivered			0	BU			0.00	USD	0.00	4	
	Still to be invoiced			1	BU			0.01	USD	1.00	BU	

Order History for Purchase Order 4300002422 00001

Det.	Doc. no.	Item	Inv#	Patn. dt.	Quantity	Qty. in 00s	Value	Value in Inv. Unit	Class
No purchase order history records found									

PO created for
1c and never
issued



Appendix K
 Council Approval of Funding for Toters May 2016 for FY 2017
 Y-T-D Spending for Toters

CB-32-2016 Excerpt Exhibit 7 – Council
 Approval for Toter purchases

\$500K for FY 2017/7 years

CB-32-2016 EXHIBIT 7
 Page 1 of 3

Item #	Agency Name	Vendor Name	Summary of Services Provided	Contract # of Years	Contract Amount
14	DOE	U.S. Refuse Removal, Inc.	Curbside trash and recycling collection		
15	DOE	Uneda Disposal Service, Inc.	Curbside trash and recycling collection		
16	DOE	TCF Equipment Finance	Financing for the acquisition of trash toters	7 years	\$ 500,000
17	DOE	Maryland Environmental Service (MES)	Operation of the Materials Recycling Facility	4	\$ 5,202,532
18	DOE	Maryland Environmental Service (MES)	Operation of the Western Branch composting facility	5	\$ 2,143,423

Sent: Friday, February 10, 2017 2:21 PM

[REDACTED]

[REDACTED]

[REDACTED]

Sylvia,

I have verified with Finance that the wire payment has been made in the amount of \$493,513.87 on 1/3/17. Please let me know if you need any other information.

Thanks!

[REDACTED]

[REDACTED]

[REDACTED]

Subject: RE: Disbursements to Toter

Sylvia,

The County has not paid anything in regards to these toters at this time. The three disbursements (group of invoices) were reviewed and approved by the County and forwarded to finance company for payment. The County has not been invoiced nor is payment currently due to finance company at this time. According to page A-1 of the Master Lease Agreement the first payment to Signature is due 1/1/17 in the amount of \$493,514. This is the amount that you see reflected in the multi-year contract tab, which is the other question you asked.

[REDACTED]

[REDACTED] Please let me know if you need anything further.

Thanks!

Appendix L-1
Reason for the Use of Letter Contract Email

[REDACTED]

Subject: RE: Letter Contract for the Prince George's County Department of the Environment Waste Management Division

Sylvia,

I am trying to back track to my emails. It is my opinion that the request made by the agency was due to urgency and that the Letter contract would best fit the request. The Term Contract was already in place. However, the financial structure was not. Therefore, the letter contract would only need to commit 30% of the required funding. Since the purchase was to be made against the Term Contract which is a "Rider" Agreement against the NIJP Contract, the County regulations did not apply.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Appendix L-2
OCS Responses to Questions

[REDACTED]

Specifically we are interested in the following:

- Did the contract with Toter, LLC, go through the normal procurement process? **No.** If not, what method was used and what was the justification for the method? **The purchase was made utilizing a "Rider" Agreement/Term Contract with the National Joint Purchasing Alliance. The contract was already in effect for use by DOE's use to replace receptacles periodically. The estimate for these services ranges from \$150K – 200K yearly. In previous years no receptacles were purchased.**
- Was the contract with Toter, LLC in compliance with CB-17, and /or applicable County based business procurement laws? **No.** If not, was a waiver granted, or did it meet other criteria which excluded it from the regulations? **It is my understanding that a purchase under the rider/other government jurisdictions contract awards are exempt.**
- Please provide the appropriate documentation that supports the selection and award of the contract to Toter, LLC, and the compliance with all County based business procurement regulations if applicable to this procurement.
The Purchase did not come in to the Purchasing Division under normal procurement request. It was determined and negotiated solely by DOE.

[REDACTED]



Sent: Tuesday, September 27, 2016 1:01 PM

To: King, Sylvia S.

Subject: RE: Toter Inc.

DOE has limited delegation of procurement authority for Storm Water Construction Projects only.

[REDACTED]

Appendix L-3

Use of Toter Inc. Rider/Contract for Replacement Recycle Toters SDDD Review Excerpt

Term/
Rider
usage
\$150K

**Central
SERVICES**
One Mission. One Team.

**BID/CONTRACT REVIEW
CHECK LIST**

Date Submitted To CRC 2/11/16

Solicitation Number: C14-042

Description: Refuse & Recycling Containers
Toter National IPT
Cooperative Contract

New Bid/RFP Exercise of Contract Option to Extend
 "Requirements" Contract One-Time Purchase

Estimated Amount: \$ 150K (If "requirements" contract, show annual estimate)

Base Contract Period: From 1/16 To 12/16

Options contained in solicitation: _____ years Options previously exercised None Other 1
Option periods remaining, if any: 2

Number of County Based Businesses Sourced: 5 Number non-County Based Businesses Sourced: N/A

Date last solicited: N/A

Procurement method when last solicited Open Restricted Mandatory Subcontract
Toter Incorporated

Name of incumbent or immediate past supplier: Toter Incorporated

Is incumbent or immediate past supplier's name on Bidder's List Yes No

If "no", explain: _____

Is incumbent or immediate past supplier a certified County Base Business? Yes No Certified Local Supplier Yes No

Explain any unique or sensitive features of the proposed bid/contract: _____

Buyer Recommendation Re: Procurement Method:

Open Competitive Restricted Mandatory Subcontracting – Amount _____ % to Be Subcontracted

Bonding – Is Performance Bond Required? Yes No Amount _____

Is Bid Security Required? Yes No Amount _____

Buyer's Signature: Barbara Manly Date: 2/11/16

Supervisor Signature: _____ Date: _____

Review Team Determination:

Procurement

Method: Open Competitive Restricted Mandatory Subcontracting _____ %

Remarks: _____

Approvals: 1. Purchasing Manager George D. Reid Date 2-11-16
2. Executive Director, SDDD Jeff Moore Date 2/11/16
3. Director, Central Services J. H. Moore Date 2-11-2016

Approved copy to be retained in Bid/Contract File. Copy to Purchasing Manager and Executive Director, SDDD



**THE PRINCE GEORGE'S COUNTY GOVERNMENT
OFFICE OF LAW**

Rusher L. Baker, III
County Executive

M. Andrea Green
County Attorney

Signature Public Funding Corp.
600 Washington Avenue, Suite 305
Towson, Maryland 21204

Sean G. Dixon
Deputy County Attorney

Jared M. McCarthy
Deputy County Attorney

William A. Snoddy
Deputy County Attorney

Re: Equipment Schedule No. 001 dated June 29, 2016 to that certain
Master Equipment Lease-Purchase Agreement dated June 29, 2016

Ladies and Gentlemen:

As counsel to the PRINCE GEORGE'S COUNTY, MARYLAND (the "Lessee"), I have examined the Master Equipment Lease-Purchase Agreement dated June 29, 2016 and Equipment Schedule No. 001 thereto dated June 29, 2016 (collectively, the "Lease Agreement"), between the Lessee and Signature Public Funding Corp., as lessor ("Lessor"), the Escrow Account and Escrow Agreement dated June 29, 2016, together the Disbursement Request Form and Certificate of Acceptance (collectively, the "Escrow Agreement"), and the proceedings taken by the Governing Body of the Lessee to authorize on behalf of the Lessee the execution and delivery of the Lease Agreement and the Escrow Agreement. The Lease Agreement and the Escrow Agreement are herein collectively referred to as the "Transaction Documents." Based upon the foregoing examination and upon an examination of such other documents and matters of law as I have deemed necessary or appropriate, I am of the opinion that:

1. The Lessee is a political subdivision, which is a body corporate & politic duly established and validly existing as a political subdivision of the State of Maryland under the Constitution and laws of the State of Maryland with full power and authority to enter into the Transaction Documents.
2. The Transaction Documents have each been duly authorized, executed, and delivered by the Lessee and are in full compliance with all local, state and federal laws. Assuming due authorization, execution and delivery thereof by Lessor, the Transaction Documents constitute legal, valid, and binding obligations of the Lessee, enforceable against the Lessee in accordance with their respective terms, subject to any applicable bankruptcy, insolvency, moratorium or other laws or equitable principles affecting the enforcement of creditors' rights generally. The execution of the Transaction Documents and the appropriation of monies due under the Lease Agreement will not result in the violation of any constitutional, statutory or limitation relating to the manner, form or amount of indebtedness which may be incurred by the Lessee.
3. The Equipment to be leased pursuant to the Lease Agreement constitutes personal property and, when subjected to use by the Lessee, will not be a fixture under applicable law.
4. The Lessee has complied with all applicable statutes, laws, rules, regulations, and other requirements in connection with the Transaction Documents and the transactions contemplated thereby. No approval, consent or withholding of objections is required from any State, federal or local governmental authority or instrumentality with respect to the entry into or performance by Lessee of its obligations under the Transaction Documents, except as have already been obtained.
5. No litigation or proceeding is pending or, to the best of my knowledge, threatened to restrain or enjoin the execution, delivery, or performance by the Lessee of the Transaction Documents or in any way to contest the validity of the Transaction Documents, to contest or question the creation or existence of the Lessee or the governing body of the Lessee or the authority or ability of the Lessee to execute or deliver the Transaction Documents or to comply with or perform its obligations thereunder. There is no litigation pending or, to the best of my knowledge, threatened seeking to restrain or enjoin the Lessee from annually appropriating sufficient funds to pay the rental payments or other amounts contemplated by the Lease Agreement. The entering into and performance of the

Appendix M-1.2
Financing Excerpt 6/29/2016

IN WITNESS WHEREOF, LESSOR AND LESSEE HAVE EXECUTED THIS EQUIPMENT SCHEDULE AS OF THE DAY AND YEAR FIRST WRITTEN ABOVE

PRINCE GEORGE'S COUNTY, MARYLAND,
as Lessee

By: 
Name: Thomas Hinler
Title: Deputy Chief Administrative Officer

SIGNATURE PUBLIC FUNDING CORP.,
as Lessor

By: 
Name: Donald S. Keough
Title: Senior Managing Director

Counterpart No. 1 of two manually executed and serially numbered counterparts. To the extent that this Equipment Schedule constitutes chattel paper (as defined in the applicable Uniform Commercial Code), no security or ownership interest herein may be created through the transfer or possession of any Counterpart other than Counterpart No. 1.

SCHEDULE I

INFORMATION TO COMPLETE ESCROW AGREEMENT

Lease Number: 500029

Equipment Schedule: 001

Date of Escrow Agreement: June 29, 2016

Name of Lessee: PRINCE GEORGE'S COUNTY, MARYLAND

Lessee's State / Commonwealth: MARYLAND

Escrow Agent Fee: \$1,000.00 (Will be paid from Closing Fees)

Initial Deposit Amount: 6,480,278.72

Date of Master Lease Agreement: June 29, 2016

Beneficiary Name for Fund: PRINCE GEORGE'S COUNTY, MARYLAND

Ending Date: December 29, 2017

Lessee's Address: 14741 Governor Odem Bowie Drive #3151
Upper Marlboro, MD 20772

Attention: Deputy Chief Administrative Officer
for Budget, Finance, Economic Development and Administration
301-953-5385
301-952-3863

Lessee's Taxpayer Identification Number: 52-6000998

Escrow Agent's Address: SunTrust Bank
919 East Main Street, 7th Floor
Richmond, VA 23219
Attention: Escrow Services
MATTHEW.WARD@SUNTRUST.COM
(804) 782-7182
(804) 225-7141

Lessor's Address: SIGNATURE PUBLIC FUNDING CORP.
600 Washington Avenue, Suite 305
Towson, Maryland 21204
Attention: Tonia Lee
tlee@signatureny.com
(410) 704-0082
(646) 927-4005

Lessor's Taxpayer Identification Number: 47-3574745

Appendix M-1.3
Financing Excerpt 6/29/2016

EXHIBIT A: LEASE SCHEDULE 001

EQUIPMENT SCHEDULE 001 DATED JUNE 29, 2016

This Equipment Schedule 001 dated as of June 29, 2016 ("Equipment Schedule") is made to and part of that certain Master Equipment Lease-Purchase Agreement dated as of June 29, 2016 (the "Master Agreement," and together with the Equipment Schedule, the "Lease"), and the terms, conditions and provisions of the Master Agreement (other than to the extent that they relate solely to other Schedules or Equipment listed on other Schedules or if they are expressly superseded in this Equipment Schedule) are hereby incorporated into this Equipment Schedule by reference and made a part hereof. This Lease is a separate and individual instrument of lease.

1. DESCRIPTION OF THE EQUIPMENT:

Equipment shall consist of those units or items of equipment as set forth below and/or as may be accepted by the Lessee and financed hereunder, together with all embedded software, replacements, additions, attachments, substitutions, modifications, upgrades, warranties, and improvements thereto (collectively the "Equipment") pursuant to that "Vendor Contract" (as described below) between each respective "Vendor" and Lessee, which is and financed by this Lease. Solely with respect to this Equipment Schedule 001, the Lessee represents and warrants that the Vendor has provided the Lessee with a 12 year cart body warranty with respect to the Equipment, which has been collaterally assigned to the Lessor following any Event of Default, Non-Appropriation, or other event giving rise to the return of the Equipment.

Quantity
financed



Quantity	Equipment Description (with VIN and MSN)	Unit Cost	Total Cost	Vendor Name and Contract/Invoice	Location
142,692	Toter 64 Gallon EVR 11 Universal Nestable Carts		6,455,278.72	Toter, LLC Wastequip Inc.	County Residents.
	Escrow Fee		1,000.00		
	Closing Costs		24,000.00		
	TOTAL LEASE PROCEEDS:		6,480,278.72		

2. EQUIPMENT LOCATION: Various locations as the new curbside trash carts are for the residents of the County.

3. PAYMENT SCHEDULE: The Rental Payments shall be made for the Equipment as follows:

Payment Number	Date Due	Total Rental Payment Date	Interest Component	Principal Component	Prepayment Price*
Loan	06/29/16				6,674,687.08
1	01/01/17	493,513.87	56,682.63	436,831.24	6,224,750.90
2	07/01/17	493,513.87	52,275.82	441,238.05	5,770,275.71
3	01/01/18	493,513.87	48,459.11	445,054.76	5,311,869.31
4	07/01/18	493,513.87	44,609.39	448,904.48	4,849,497.70
5	01/01/19	493,513.87	40,726.36	452,787.51	4,383,126.56
6	07/01/19	493,513.87	36,809.75	456,704.12	3,912,721.32
7	01/01/20	493,513.87	32,859.26	460,654.61	3,438,247.07
8	07/01/20	493,513.87	28,874.60	464,639.27	2,959,668.62
9	01/01/21	493,513.87	24,855.47	468,658.40	2,476,950.47
10	07/01/21	493,513.87	20,801.57	472,712.30	1,990,056.80

Appendix M-1.4
Financing Excerpt 6/29/2016

11	01/01/22	493,513.87	16,712.61	476,801.26	1,484,398.57
12	07/01/22	493,513.87	12,588.28	480,925.59	993,854.47
13	01/01/23	493,513.87	8,428.28	485,085.59	499,067.17
14	07/01/23	493,513.87	4,232.33	489,281.54	0.00
Grand Totals		6,909,194.18	428,915.46	6,480,278.72	

** Assumes that all rental payments and other amounts due on and prior to that date have been paid.*

4. **INTEREST RATE:** 1.73%
5. **COMMENCEMENT DATE:** June 29, 2016.
6. **SCHEDULED LEASE TERM:** 7 Years.
7. **OPTIONAL PREPAYMENT COMMENCEMENT DATE:** January 1, 2017.
8. **FISCAL YEAR:** Lessee's current Fiscal Year extends from July 1, 2016.
9. Lessee hereby represents, warrants, and covenants that (i) its representations, warranties, and covenants set forth in the Master Equipment Lease-Purchase Agreement (particularly Paragraph 7 thereof) are true and correct as though made on the date of execution of this Equipment Schedule, and (ii) sufficient funds have been appropriated by Lessee for the payment of all Rental Payments due under this Lease during Lessee's current Fiscal Year. Funds for making Rental Payments are expected to come from annual appropriation of Lessee.
10. **ESSENTIAL USE:** The Equipment will be used by the County for the specific purpose to: stabilize the solid waste fund, forestall a fee increase on residents, and continue to support code enforcement, litter pickup, illegal dumping cleanups and blight removal by providing new carts to residents. The Equipment is essential for the functioning of the Lessee and is immediately needed by the Lessee, and such need is neither temporary, nor expected to diminish during the Lease Term. The Equipment is expected to be used by the Lessee for a period in excess of the Lease Term.
11. **DELETED TERMS:** Section 7.3(d) is not applicable to this transaction. Section 7.5 requires the Lessor's approval prior to the replacement of damaged or lost Equipment. Because this Equipment consists of trash receptacles, the prior approval requirement is waived with respect to this Schedule 001. The sentence "Lessee shall notify Lessor in writing prior to moving the Equipment to another address and shall otherwise keep the Equipment at the address specified in the related Equipment Schedule" in Section 8.1 will be stricken solely with respect to this Schedule 001.

Appendix N-1

Cost Comparison Toter LLC Vs Retail

Cost of 64-Gallon Toters

Lowe's website showing a 64-gallon greenstone plastic wheeled trash can for \$74.98. The page includes options for store pickup, delivery, and in-store map.

Home Depot website showing a 64-gallon green wheeled trash can for \$74.98. The page includes options for store pickup and shipping.

Retail Cost of 64-gal toter = \$74.98

Proposed Cost (Toter LLC) \$37.30 + \$3.93 (S&H) + \$3.65 (literature) = \$44.88

\$74.98 - \$44.88 = \$30.10 * 142,692 = \$4,295,029



Deliveries and
cost to
townhomes



From: Gill, Joseph P.
Sent: Thursday, June 22, 2017 1:05 PM
To: King, Sylvia S.
Subject: RE: Updates Hi Sylvia, The initial order and financing of 142,692 carts included 2,000 townhomes. The cost to the county for the additional 6,720 carts was \$267,143 including returns. The price for the additional townhome carts (\$37.30) did not change except for a slight increase in delivery (\$1.10/cart). Joe

From: Gill, Joseph P.
Sent: Thursday, February 16, 2017 1:58 PM
Hi Sylvia,

8720 carts delivered to townhomes with 75 returns. Joe

From: Gill, Joseph P.
Sent: Thursday, February 09, 2017 4:38 PM
Subject: Re: Carts Shipped
Yes - waiting for a response from Toter. The field supervisor in Prince George's County advised our staff that he is anticipating completion of deliveries by Tuesday but I am awaiting confirmation of this with the Toter home office in addition to the information below. Joe

From: Gill, Joseph P.
Sent: Wednesday, February 08, 2017 1:19 PM
Subject: RE: Carts Shipped Hi Sylvia, Happy to do so. Additional townhouses requested carts after the postcard/email notification date had passed and many townhouses that received carts had a change of heart and asked for them to be picked up. There were also instances where some of the carts had wheel issues. Reconciliation of requested returns/requests and repairs will be addressed by February 20. Any remaining issues (one can never be sure) will be addressed by our collections staff.

Hope this helps. Joe

From: Gill, Joseph P.
Sent: Friday, January 06, 2017 4:44 PM
Subject: Re: Carts Shipped

Hi Sylvia,

Toter successfully delivered 142,000 carts to all single family residences by December 31 per the agreement.

Townhouse delivery is now in progress with completion by the end of January. Nearly 9,000 townhouses wanted trash carts - that is, opted-in to receive them. This well-exceeded our estimate of 500 to 1,000 based upon the number of townhouses that wanted recycling carts several years ago - a total of 500 - thus requiring additional time for production and county-wide delivery. Have a great weekend.

Joe

Appendix P-1
Email Rehrig Providing Quote

From: Colleen Reilly [<mailto:CReilly@Rehrig.com>]
Sent: Wednesday, September 28, 2016 3:44 PM
To: King, Sylvia S.
Subject: RE: Quotes

Hi,

For us to provide you with a quote it would have been turned around within 24 hours. We would determine delivery time frame based off the Counties needs and allocate the amount of crews to the job to get the job done. We have 6 cart producing plants and also our own internal assembly and delivery crews, with that in mind we have the flexibility to produce and also complete assembly and delivery based off our customers needs.

Thanks,
Colleen

From: King, Sylvia S. [<mailto:SSKing@co.pg.md.us>]
Sent: Wednesday, September 28, 2016 3:23 PM
To: Colleen Reilly
Subject: Quotes

Good afternoon Colleen,

Could you please let me know how long it would have taken for Rehrig to provide the County with a quote for the ~160,000 bins?
Also, can you give me an estimate of a reasonable time-frame for the delivery of 160K bins?

Thanks,
Sylvia



FREEDOM OF INFORMATION ACT REQUEST

PG County
Director of Central Purchasing
1400 McCormick Drive ~~Ste 336~~
Largo, MD 20774

Re: Freedom of Information Act Request

Dear Roland Jones:

Under the Freedom of Information Act, 5 U.S. C. subsections 552, I am requesting access to the bid the County used to piggyback the purchase of 300,000 carts for distribution beginning June, 2016 throughout PG County. Please include all pricing along with contract number and documentation of such contract.

If there are any fees for or copying or mailing the records, please let me know and advise on where payment can be sent.

If you have any questions about handling this request, you may contact me at 518-813-7680.

Thank you for your consideration of this request.

Sincerely,

Colleen Reilly

Rehrig Pacific
1738 West 20th Street
Erie, PA 16502
518-813-7680

Appendix Q-2
Date of Rehrig PIA Request

From: Colleen Reilly [mailto:CReilly@Rehrig.com]
Sent: Wednesday, August 17, 2016 6:57 AM
To: King, Sylvia S.
Subject: RE: FOIA
Importance: High

I don't have the copy of the email anymore but I have the letter. The parties that it was sent to should have that copy. See attached.

Colleen

From: King, Sylvia S. [mailto:SSKing@co.pg.md.us]
Sent: Wednesday, August 17, 2016 6:55 AM
To: Colleen Reilly
Subject: RE: FOIA

Thank you Colleen,

Please forward me copy of the email that was sent.

Thank you,
Sylvia

From: Colleen Reilly [mailto:CReilly@Rehrig.com]
Sent: Tuesday, August 16, 2016 11:05 PM
To: King, Sylvia S.
Subject: RE: FOIA

Hi,

We sent the email letter on April 14th and then also sent out a hard copy a few days later.

Thank you,

Colleen

From: King, Sylvia S. [mailto:SSKing@co.pg.md.us]
Sent: Tuesday, August 16, 2016 10:39 AM
To: Colleen Reilly
Subject: FOIA

Hello Colleen,

Could you please let me know the date the FOIA was sent to the County.

Also, how was it sent (email/mail) and was receipt of the request ever acknowledged?

Thank you,
Sylvia

FOIA request made on or around April 14, 2016.

Unable to verify the exact date of the request

Appendix Q-3

County Response to Rehrig PIA Request 4/20/2016



Rushton L. Baker, III
County Executive

M. Andree Green
County Attorney

THE PRINCE GEORGE'S COUNTY GOVERNMENT OFFICE OF LAW

April 20, 2016

County response to
Rehrig's FOIA request
April 20, 2016

Sean G. Dixon
Deputy County Attorney

Jared M. McCarthy
Deputy County Attorney

William A. Snoddy
Deputy County Attorney

Sent via First Class Mail
Colleen Reilly
Rehrig Pacific
1738 West 20th Street
Erie, PA 16502

Re: Maryland Publ

Dear Ms. Reilly:

County received
Rehrig's FOIA request
April 13, 2016

On April 13, 2016, we received your request to the Office Central Services for documents. That request has been construed to be pursuant to the Public Information Act, Annotated Code of Maryland, General Provisions Article ("GP"), §4-201 *et seq.*

Therein, you requested the following:

"[A]ccess to the bid the County used to piggyback the purchase of 300,000 carts for distribution beginning June, 2016 throughout PG County..."

The custodian of records has collected those records in our custody that are responsive to your request. The records have been compiled and are attached. The documents have been numbered 1-3. There is no fee as the search was under two (2) hours.

You may also seek judicial review of the disclosure decision pursuant to the Annotated Code of Maryland, General Provisions Article ("GP"), § 4-362.

Sincerely,

LaKeecia Allen
Associate County Attorney

14741 Gov. Oden Bowie Drive, Suite 5121, Upper Marlboro, Maryland 20772
(301) 952-5225 FAX (301) 952-3071

County response to Rehrig's
FOIA request included a
copy of the term contract
(rider) dated 2/29/2016

Appendix R

Contract Negotiation – Special Circumstances Excerpt

CHAPTER XIX

XIX. Contract Negotiation - Special Circumstances

A. Application and Procedures

The Purchasing Agent or designee may negotiate a contract under the following circumstances:

procurement; or

2. Goods or services are to be provided by or under contract with another government agency or government. In this situation the Purchasing Agent, or designee may non-competitively procure such goods or services directly from the other government upon making a decision that the process are fair and reasonable and no substantial benefit would accrue to the County by making a competitive procurement.



B. General

Authority to negotiate a contract under this Chapter does not excuse compliance with the basic policy of obtaining maximum competition consistent with the needs of the occasion, to the end that all purchases will be made to the best interest of the County, price and other factors considered. The authority to negotiate contracts in no way eliminates the need of the Purchasing Agent to exert reasonable efforts to obtain the most favorable prices possible.

C. Procurement File

The Procurement file shall include:

1. Any certification justification and determination required under Section A, above; and
2. The contract.



Appendix S
Sec. 10A-103 Purchasing Regulations Excerpt

• Sec. 10A-103. - Centralization of contractual authority.

(a)

All rights, powers, duties, and authority relating to the acquisition of supplies, construction, services, printing, and insurance, and the management, control, warehousing, sale, and disposal of supplies now vested in or exercised by any County agency under the several statutes relating thereto, are the responsibility of the Purchasing Agent as provided herein.

(b)

General Powers of the Purchasing Agent. The Purchasing Agent shall have power and authority over, and shall adopt regulations consistent with this Subtitle, governing the procurement, management, control, and disposal of any and all supplies, services, construction, insurance, and other items required to be procured by the County.

(c)

No agency shall, during any fiscal year, expend or contract to expend any money or incur any liability or enter into any contract which by its terms involves the expenditure of money for any purpose in excess of the amounts appropriated or allotted for the same general classification of expenditure in the budget for such fiscal year, or in any supplemental appropriation as hereinabove provided; and no such payment shall be made nor any obligation or liability incurred, except for purchases in an amount not to exceed One Thousand Dollars (\$1,000), unless the Director of Finance or his designee shall first certify that the funds for the designated purpose are available.

(d)

Except as provided herein or pursuant to authorization by executive order of the County Executive, it shall be unlawful for any County official, elected or appointed, or any employee or person to make, alter, suspend, or terminate any contract or letter contract governed by this Subtitle on behalf of the County other than through the Purchasing Agent; and any such purchase, contract, or letter contract made or changed contrary to the provisions hereof may be declared void by the County.

(CB-1-1992)

