

AN ORDINANCE AMENDING THE CHARLESTON COUNTY PROCUREMENT CODE,
ORDINANCE NUMBER 504 (as amended by Ordinance 1136)

Section 1.0 Recitals, Purpose of Amendment, Findings

WHEREAS, South Carolina state law requires that county governments provide for a centralized purchasing system and adopt procurement procedures; and

WHEREAS, County Council has met these requirement by enacting its procurement ordinance, Ordinance number 504, on December 20, 1983, as amended by ordinances 1136 on March 21, 2000; and

WHEREAS, County Council now finds that it is beneficial to update certain provisions of the ordinance;

NOW, THEREFORE, Council hereby amends its procurement ordinance as follows:

Section 2.0 Tex Changes

The Charleston County procurement code is amended as shown in the attached text, incorporated herein and made a part hereof by reference.

Section 3.0 - Effective Date

This Ordinance shall become effective upon approval at Third Reading.

The attached text is as follows:

Article VI. Procurement

DIVISION 1 - GENERAL

SECTION 2-151. PURPOSE

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

SECTION 2-152. APPLICABILITY OF ARTICLE

This Article applies to contracts for the procurement of supplies, services, and construction entered into by the County after December 21, 1983, unless the parties agree to its application to contracts entered into prior to such date. It shall apply to every expenditure of public funds irrespective of their source. Nothing in this Article shall prevent any County department or agency from complying with the terms and conditions of any grant, gift or request, which is otherwise consistent with law.

SECTION 2-153. DEFINITIONS

The following words, terms and phrases, when used in this Article, shall have the meanings ascribed to them in this Section, except where the context clearly indicates a different meaning:

Best Interests of Charleston County shall mean advantageous to Charleston County.

Bid Sample shall mean an item furnished by a Bidder to show the characteristics of the item offered in the bid.

Business shall mean any corporation, partnership, individual, sole proprietorship, joint-stock company, joint venture, or any other private legal entity.

Capability shall mean Contractor capability at the time of contract award.

Change Directive is an order to a Contractor directing a change in the work where there is a lack of total agreement on the terms of a change order, or insufficient time to execute a bilateral change order. A change directive will set forth the change in the work and the change, if any, in the contract price or time for performance for subsequent inclusion in a change order. Change directives shall include a not-to-exceed preliminary price against which the Contractor may begin billing (subject to the requirements set forth in the contract) as the work is performed. See also *Change Order (unilateral)*.

Change Order (bilateral) shall mean an agreed-upon written order to a Contractor executed by the County and the Contractor after execution of the base contract, directing a change in the work which may include a change in the contract price, the time for the Contractor's performance, or any combination thereof.

Change Order (unilateral) (also known as Change Directive) shall mean a written order unilaterally issued by the Contracts and Procurement Director, or his designee, directing the Contractor to make changes which the contract authorizes the County to order without the consent of the Contractor.

Construction shall mean the process of building, altering, repairing, improving or demolishing any public structure, or building, or other public improvements of any kind to any public real property. It does not include the routine operations, routine repair, or routine maintenance of existing structures, buildings or real property.

Construction Management Services, Design-Build Services, or Turn-key Management Services are approaches to construction contract management that allow for the selection of a single firm to perform and/or manage the complete design and construction of a project.

Contract shall mean all types of County agreements, regardless of what they may be called, for the procurement of supplies, services or construction.

Contract Modification shall mean any written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of any contract accomplished by mutual action of the parties to the contract.

Contractor shall mean any person having a contract with the County.

Cost Analysis shall mean the evaluation of cost data for the purpose of arriving at costs actually incurred or estimates of costs to be incurred, prices to be paid, and costs to be reimbursed.

Cost Data shall mean information concerning the actual or estimated cost of labor, materials, overhead, and other cost elements that have been actually incurred, or that are expected to be incurred, by the Contractor in performing the contract.

Cost-Plus-A-Percentage-Of-Cost-Contract shall mean a cost reimbursement contract that, prior to completion of the work, the parties agree that the profit fee will be a predetermined percentage of the total cost of the work.

Cost-Plus-Fixed-Fee-Contract shall mean a cost reimbursement that provides for the payment of a fixed fee to the Contractor. The fixed fee, once negotiated, does not vary with the actual cost but may be adjusted as a result of any subsequent changes in the Scope of Work or services to be performed.

Data shall mean recorded information, regardless of form or characteristic.

Days shall mean calendar days.

Department Head shall mean the person in charge of any department or agency of the County including, but not limited to, elected and appointed officials.

Descriptive Literature shall mean information available in the ordinary course of business that shows the characteristics, construction, or operation of an item offered in a Bid or Proposal.

Designee shall mean a duly authorized representative of a person holding a superior position.

Design Specifications shall mean a specification that sets forth physical characteristics

in definitive terms.

Contracts and Procurement Director shall mean the person holding the position created in Section 2-163 as the head of the central Procurement Department of the County.

Discussions, as used in the source selection process, shall mean an exchange of information or other manner of negotiation during which the Offeror and the County may alter or otherwise change the conditions, terms, and price of the proposed contract.

Electronic means electrical, digital, magnetic, optical, electromagnetic, or any other similar technology.

Employee shall mean an individual drawing a salary from the County, whether elected or not, and any non-compensated individual performing personal services for the County. *This definition shall apply for purposes of this Article only.*

Fixed-Price Contract shall mean a price not subject to any adjustments by reason of the cost experience of the Contractor in the performance of the contract.

Functional Specification shall mean a specification that sets forth the specific operations, actions, or results for which it is to be used.

Governmental Body shall mean any department or agency of the County.

Grant shall mean the furnishing of assistance, whether financial or otherwise, to any person to support a program authorized by Law. It does not include an award whose primary purpose is to procure an end product, whether in the form of supplies, services, or construction. A contract resulting from such an award is not a grant but a procurement contract.

May denotes the permissive.

Minor Informality shall mean mistakes, excluding judgmental errors, that have negligible effect on price, quantity, quality, delivery, or other contractual terms, and the waiver or correction of such mistakes does not prejudice other Bidders or Offerors, or the County.

Performance Specification shall mean a specification that sets forth a capacity/objective that had been determined necessary for the item involved.

Person shall mean any corporation, business, individual, union, committee, club, other organization, or group of individuals.

Procurement shall mean buying, purchasing, renting, leasing, or otherwise acquiring any supplies, services, or construction. It also includes functions that pertain to the obtaining of any supply, service, or construction including a description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract

administration.

Procurement Director shall mean the person duly authorized to enter into and administer contracts, and make written determinations with respect thereto. The term also includes an authorized representative acting within the limits of authority.

Public Notice means the distribution or dissemination of information using methods that are reasonably available to interested parties. Such methods will often include publication in newspapers of general circulation, electronic or paper mailing lists, and web site(s) designated by the County and maintained for that purpose.

Regulation shall mean a statement having general or particular applicability and future effect designed to implement, interpret, or describe organization procedures, or practice requirements, which have been promulgated in accordance with existing procedures.

Request for Proposals shall mean the submission of proposals based on a generalized Scope of Work with contract award to the responsible person(s) submitting the most advantageous and responsive proposal.

Request for Proposals Two-Step Competitive Negotiation shall mean the submission of an unpriced technical proposal, review and selection of acceptable proposals, and the subsequent solicitation of sealed bids from those person(s) submitting technically acceptable proposals.

Request for Qualifications shall mean formal solicitation for professional/technical capabilities.

Request for Quotations shall mean informal solicitations obtaining written quotations without formal advertising and receipt of sealed bids.

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

Shall always means mandatory.

Signature means any identifier or authentication technique attached to or logically associated with an electronic record that is intended by the party using it to have the same force and effect as a manual signature, as provided in the "South Carolina Electronic Commerce Act", S.C. Code Section 26-5-10 et seq.

Supplies shall mean all property including but not limited to equipment, materials, printing, insurance, information technology equipment software packages, and leases of real property, excluding land or a permanent interest in land.

Using Agency shall mean any department of the County, or entity, that utilizes any

supplies, services, or construction procured under this Article.

Written or In Writing means the product of any method of forming characters on paper, other materials, or viewable screen, which can be read, retrieved, and reproduced, including information that is electronically transmitted and stored.

Written Determination shall mean a written decision resolving a question or controversy, or finalizing a position within the limits of authority under this Ordinance.

SECTION 2-154. PUBLIC ACCESS TO PROCUREMENT INFORMATION

(a) Procurement information shall be a public record to the extent required by Chapter 4 of Title 30 (The Freedom Of Information Act) with the exception that commercial or financial information obtained in response to a Request for Proposals, or any type of bid solicitation, or Request for Quotations which is privileged and confidential, shall not be disclosed as well as other information which may be exempt from disclosure. Privileged and confidential information is information in specific detail not customarily released to the general public, the release of which might cause harm to the competitive position of the party supplying the information. Examples of this type of information would include, without limitation:

- (1) Customer lists.
- (2) Design recommendations and identification of prospective problem areas under an RFP.
- (3) Design concepts, including methods and procedures.

Biographical data on key employees of the Bidder.

(b) Evaluative documents pre-decisional in nature, such as, but not limited to inter- or intra-departmental memoranda containing technical evaluations and recommendations, are exempted so long as the contract award does not expressly adopt or incorporate the inter- or intra-departmental memoranda reflecting the pre-decisional deliberations.

(c) Commercial or financial information, which an Offeror seeks to protect from disclosure, will not be disclosed provided it is marked "CONFIDENTIAL" by Offeror on the proposal document. Before submittal, all Offerors must visibly mark as "CONFIDENTIAL" each part of their proposal by page, paragraph, section or line, as appropriate, which they consider to contain proprietary information. The County will not assume responsibility for any information, which is disclosed as a result of Offeror's failure to visibly mark it as "CONFIDENTIAL." In all solicitations, the County shall reserve the right to review marked items to determine whether they meet South Carolina Freedom Of Information Act (FOIA) requirements for exemption from disclosure. The County shall not bear liability for any information which is disclosed as a result of Offeror's failure to visibly mark it as "CONFIDENTIAL@, or for releasing information which it in good faith has determined to be

subject to disclosure under applicable law.

Section 2-155. Compliance with Federal Requirements; Compliance with Disbursement and Management Requirements of Financing Documents

Where a procurement involves the expenditure of Federal assistance or contract funds, the Contracts and Procurement Director shall comply with such Federal law and authorized regulations which are mandatorily applicable, and which are not presently reflected in this Article. Where a procurement involves the expenditure of funds, which are the proceeds of bonds or certificates of participation, or other financing instruments or documents, the Contracts and Procurement Director and other applicable County personnel shall comply with the terms of such financing as they relate to the disbursement of funds and/or management of projects, insofar as such terms are mandatorily applicable and which are not presently reflected in this Article.

SECTION 2-156. STANDARDS OF CONDUCT

In all actions involving the procurement of supplies, services, or construction for the County, the provisions of Chapter 13 of Title 8 (State Ethics Act) of the South Carolina Code of Laws, 1976, [8-13-10--8-13-1020] as it may be amended from time to time, shall be complied with.

Sections 2-157 - 2-162. Reserved

DIVISION 2 - ORGANIZATION

SECTION 2-163. CONTRACTS AND PROCUREMENT DIRECTOR - POSITION CREATED, APPOINTMENT, TENURE

(a) **Position Created.** There is hereby created the position of Contracts and Procurement Director, who shall be the County's principal public procurement official. The Contracts and Procurement Director shall report to the County Administrator, or his designee, who will, unless otherwise set forth in writing, be as outlined on the County=s organizational chart.

(b) **Selection.** The selection of the Contracts and Procurement Director shall be made in accordance with County personnel policies and procedures.

(c) **Tenure.** The Contracts and Procurement Director shall be a full-time public employee of the County, and may be removed in accordance with County personnel policies and procedures.

SECTION 2-164. SAME B AUTHORITY AND DUTIES

(a) ***Principal Public Procurement Official.*** The Contracts and Procurement Director shall serve as the principal public procurement official of the County, and shall be responsible for the procurement of supplies, services, and construction in accordance with this Article.

(b) ***Duties.*** In accordance with this Article, the Contracts and Procurement Director shall:

(1) Procure or supervise the procurement of all supplies, services, and construction needed by the County.

(2) Establish and maintain programs for the inspection, testing, and acceptance of supplies and services.

(c) ***Operational Procedures.*** Consistent with this Article, the Contracts and Procurement Director shall adopt operational procedures relating to the execution of his duties.

SECTION 2-165. SAME - DELEGATION OF AUTHORITY

The Contracts and Procurement Director may delegate authority to designees of the office of the Contracts and Procurement Director, and certain other designees as defined herein.

SECTION 2-166. SAME - TO PROMULGATE REGULATIONS

The Contracts and Procurement Director shall promulgate regulations pertaining to procurement by the County subject to the approval of the County Administrator. The Contracts and Procurement Director shall not delegate his authority to promulgate such regulations. No regulation shall change any commitment, right, or obligation of the County or a Contractor under a contract in existence on the effective date of such regulation.

SECTION 2-167. CENTRALIZATION OF AUTHORITY

Except as otherwise provided in this Article, the authority relating to the procurement of all supplies, services, and construction for the County is hereby vested in the Contracts and Procurement Director provided in this Article.

SECTION 2-168. AUTHORITY TO CONTRACT FOR CERTAIN SERVICES

Those departments utilizing services of clergy, physicians or dentists may contract on their own behalf for such services in accordance with this Article. Contracts must be approved by the department head in consultation with the Legal Department.

SECTION 2-169. COLLECTION OF DATA CONCERNING PUBLIC PROCUREMENT

The Contracts and Procurement Director shall cooperate with County auditors in the preparation of statistical data concerning the procurement, usage, disposition of all supplies, services and construction, and employ such trained personnel as may be necessary to carry out this function. All using departments shall furnish such reports as the Contracts and Procurement Director may require concerning usage, needs, and stocks on hand, and the Contracts and Procurement Director shall have authority to prescribe forms to be used by the using departments in requisitioning, ordering, and reporting of supplies, services, and construction.

SECTION 2-170. ADVISORY GROUPS

The Contracts and Procurement Director may appoint procurement advisory groups composed of representatives from various departments to assist with respect to specifications or procurement in specified areas, and with respect to any other matters within the authority of the Contracts and Procurement Director.

SECTION 2-171. TRAINING PROGRAM

The Contracts and Procurement Director shall establish and maintain a Procurement Training Program for procurement personnel of the office of the Contracts and Procurement Director.

SECTION 2-172. COUNTY ATTORNEY TO PROVIDE LEGAL SERVICES TO CONTRACTS AND PROCUREMENT DIRECTOR

The County Attorney, or such other member of the Legal Department as the County Attorney may designate, shall serve as legal counsel and provide necessary legal services to the Contracts and Procurement Director, the County Administrator, and department heads where direct contracting is permitted.

Section 2-173. AUTHORIZATION FOR THE USE OF ELECTRONIC TRANSMISSIONS

The use of electronic or digital media is authorized consistent with the State and County=s applicable statutory, regulatory or other guidance for such media, so long as such guidance provides for (1) appropriate security to prevent unauthorized access to the bidding, approval, and award processes; and (2) accurate retrieval or conversion of electronic forms of such information into a medium which permits inspection and copying.

SECTIONS 2-174. EXEMPTIONS

The following supplies and services are exempt from the procurement procedures outlined in this article. Additions and deletions shall be made by regulation:

Advertising time or space in newspapers, radio, television, professional journals or publications

Original works of art for public display

Published books, maps, periodicals, and technical pamphlets

Postage stamps and postal fees and U.S. Post Office box rentals

Professional Training

Conference facilities

Maintenance on equipment that must be provided by the original equipment manufacturer or an authorized dealer

Chemicals for mosquito control

Maintenance services for aircraft

Services provided by public utilities (gas, electricity, water and sewer) subject to rate regulation by the Public Service Commission

Credit card purchase for gas, oil and jet fuel charges only

Professional dues and registration and membership fees

Attorneys and legal services

License agreements for computer software, after such software has been purchased subject to the provisions of the ordinance

The procurement of copyrighted educational films, filmstrips, slides and transparencies, CD ROM documents, data bases, computer assisted instructional materials, interactive video programs and other related materials made available by information technology that can only be obtained from the company providing the information or service

The purchase of goods, products, and services from the South Carolina Department of Corrections, Division of Prison Industries.

Payment to the State against purchases made from the State

Payment to SPCA for animal control

All insurance premium and self insurance claims

Monthly fees for nonstandard services, (e.g., Medical Examiner, etc.)

Hospital fees

All payments to Federal and State agencies, (e.g., unemployment taxes, fees to Coastal Council)

Travel and Lodging

SECTIONS 2-175 - 2-180. RESERVED

DIVISION 3 B SOURCE SELECTION AND CONTRACT FORMATION

SECTION 2-181. DEFINITIONS

The following words, terms and phrases when used in this Division, shall have the meanings ascribed to them in this Section except where the context clearly indicates a different meaning:

Cost Reimbursement Contract shall mean a contract under which a Contractor is reimbursed for costs which are allowable and allocable in accordance with the contract terms and the provisions of this Article, and a fee, if any.

Established Catalog Price shall mean the price included in a catalog, price list, schedule, or other form that:

- (a) Is regularly maintained by a manufacturer or contractor.
- (b) Is either published or otherwise available for inspection by customer.
- (c) States prices at which sales are currently or were last made to a significant number of any category of buyers, or buyers constituting the general buying public for the supplies or services involved.

Invitation for Bid (IFB) shall mean all documents, whether attached or incorporated by reference, utilized for soliciting bids.

Purchase Description shall mean the words used in a solicitation to describe the supplies, services, or construction to be purchased, and includes specifications attached to, or made a part of, the solicitation.

Request for Proposals (RFP) shall mean all documents whether the basic RFP document, or a document attached or incorporated by reference and utilized for soliciting proposals.

Responsible Bidder, or Offeror, shall mean a person who has the capability in all respects to perform fully the contract requirements and the integrity and reliability, which will assure good faith performance. Past experience between the County and a Bidder may be considered in making the determination of responsibility.

Responsive Bidder shall mean a person who has submitted a bid, which conforms in all material respects to the Invitation for Bid.

SECTION 2-182. METHODS OF SOURCE SELECTION

Unless otherwise required by Law, all County contracts shall be awarded by

competitive sealed bidding pursuant to Section 2-184 (competitive sealed bidding), except as provided in:

- (a) Section 2-185, Competitive Sealed Proposals
- (b) Section 2-186, Small Purchases
- (c) Section 2-187, Sole Source Procurement/Non-Competitive Procurement
- (d) Section 2-188, Emergency Procurement
- (e) Section 2-222, Selection of Method of Construction Contract Management
- (f) Section 2-229, Architect-Engineer and Land Surveying Services

Section 2-183. Source Selection and Contract Approval by County Council

County Council shall retain the authority to establish or approve a method of source selection other than those specified in Sections 2-184 through 2-188, 2-222 and 2-229. County Council shall further retain the authority to give final approval to any procurement authorized under this Article.

SECTION 2-184. COMPETITIVE SEALED BIDDING

(a) **Conditions for Use.** Contracts shall be awarded by competitive sealed bidding except as otherwise provided in Section 2-182 (*Methods of Source Selection*).

(b) **Invitation for Bid.** An Invitation for Bid shall be issued and shall include a purchase description, and all contractual terms and conditions applicable to the procurement.

(c) **Public Notice.** Public notice of the Invitation for Bid shall be given not less than seven (7) days prior to the date set forth therein for the opening of bids. Such notice may include publication in a newspaper of general circulation.

(d) **Bid Opening.** Bids shall be opened publicly in the presence of one (1) or more witnesses at the time and place designated in the Invitation for Bid. The amount of each bid and other such relevant information as may be specified by regulation, together with the name of each Bidder, shall be recorded. The record and each bid shall be open for public inspection after award. Late bids shall not be opened and considered for award, but the name of the late Bidder(s) and the time of the attempted delivery shall be recorded in the bid file wherever possible.

(e) **Bid Acceptance and Evaluation.** Bids shall be unconditionally accepted without alteration or correction, except as authorized in this Article. Bids shall be evaluated based on the requirements set forth in the Invitation for Bid, which may include criteria to determine acceptability such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose. Those criteria that will affect the bid price and be considered in evaluation for award shall be objectively measurable such as discounts, transportation costs, and total or life cycle costs. The Invitation for Bid shall set forth the

evaluation criteria to be used. No criteria may be used in bid evaluations that are not set forth in the Invitation for Bid.

(f) **Correction or Withdrawal of Bids, Cancellation of Awards.** Corrections or withdrawal of inadvertently erroneous bids, before or after award or cancellation of awards or contracts based on such bid mistakes, may be permitted in accordance with Regulations. After bid opening, no changes in bid prices or other provisions of bids prejudicial to the interest of the County or fair competition shall be permitted. Except as otherwise provided by Regulation, all decisions to permit the correction or withdrawal of bids, or to cancel awards or contracts based on bid mistakes, shall be supported by a written determination made by the Contracts and Procurement Director.

(g) **Award.** Except as hereinafter prescribed, all contracts shall be awarded with reasonable promptness by written notice to the lowest responsible and responsive Bidder whose bid meets the requirements and criteria set forth in the Invitation For Bid.

(1) Bids exceeding fifty thousand dollars (\$50,000.00) on all single items of capital goods or construction projects (to be performed by outside Contractors), shall be subject to review and approval by County Council. These items shall be placed on the Finance Committee Consent Agenda.

(2) In other than construction projects, if all bids exceed available funds and no additional monies can be appropriated, then the bids will be rejected.

(3) In the event all bids for a construction project exceed available funds, and the lowest responsive and responsible bid does not exceed such funds by more than five percent (5%), the Contracts and Procurement Director is authorized in situations where time or economic considerations preclude re-solicitation of work of a reduced scope, to negotiate an adjustment in the bid price including changes in the bid requirements with the lowest responsive and responsible Bidder in order to bring the bid within the amount of available funds.

(h) **Tie Bids.** The Contracts and Procurement Director is authorized in the case of tie bids to make awards on any reasonable basis subject to governing rules and regulations intended to prevent identical bidding, and in instances where that does not provide a solution, to reject all bids and either issue a new solicitation or if time and economic considerations do not allow, negotiate a more favorable purchase.

(i) **Disclosure of Bid Information** prior to bid opening for goods and services, excluding construction:

(1) All estimates of costs prepared, by or for the County, shall remain confidential prior to execution of a contract.

(2) The names of those persons who receive bid packages will not be revealed.

(3) The number of Bidders will not be revealed.

(j) **Disclosure of Bid Information** for construction projects prior to award:

A bid range based on estimated project costs may be disclosed.
Names of potential Bidders may be released to the extent known.

SECTION 2-185. COMPETITIVE SEALED PROPOSALS

(a) **Conditions for Use.** Subject to Section 2-222, when the Contracts and Procurement Director determines in writing that the use of competitive sealed bidding is either not practicable or not advantageous to the County, a contract may be entered into by competitive sealed proposals.

(b) **Request for Proposals.** Proposals shall be solicited through a Request for Proposals.

(c) **Public Notice.** Public notice of the Request for Proposals shall be given in the same manner as provided in Section 2-184(c).

(d) **Proposal Opening.** Proposals shall be publicly opened and only the names of the Offerors disclosed at the proposal opening. Contents of competing Offerors shall not be disclosed during the process of review and discussions. Proposals shall be for public inspection after contract award. Proprietary or confidential information marked as such in each proposal shall not be disclosed without written consent of the Offeror as provided for in Section 2-154 of this Code. Late proposals shall neither be opened nor considered for award; however, the name and address of the late Offeror and the time of attempted delivery shall be recorded wherever practicable.

(e) **Clarifications with Responsible Offerors and Revisions to Proposals Prior to Selection of Preferred Offeror/Proposal.**

As provided in the Request for Proposals, discussions may be conducted with responsible Offerors who submit proposals determined to be reasonably susceptible of being selected for award for the purpose of clarification to assure full understanding of, and responsiveness to, the solicitation requirements. Offerors shall be accorded fair and equal treatment with respect to any opportunity for submissions, and prior to award for the purpose of obtaining best and final offers. In conducting such discussions, there shall be no disclosure of any information derived from proposals submitted by competing Offerors.

(f) **Evaluation Factors .** The Request for Proposals shall state the evaluation factors in relative order of importance, unless otherwise noted.

(g) **Discussions with Preferred Offeror.** After proposals have been evaluated, discussions may be held with the preferred Offeror in an effort to reach terms advantageous to the County. Notwithstanding this provision, solicitations may incorporate contract terms to which all Offerors shall be expected to adhere.

(h) **Award.** Except as hereinafter prescribed, the award shall be made to the responsible Offeror whose proposal is determined, in writing, to be most advantageous to the County taking into consideration the evaluation factors set forth in the Request For Proposals. No other factors or criteria shall be used in the evaluation. The contract file shall contain the basis on which the award is made. Proposed awards exceeding fifty thousand dollars (\$50,000.00) on all single items of capital goods or construction projects (to be performed by outside Contractors), shall be subject to review and approval by County Council. These items shall be placed on the Finance Committee Consent Agenda.

SECTION 2-186. SMALL PURCHASES

Any procurement not exceeding the amount established by regulations may be made in accordance with small purchase procedures promulgated by the Contracts and Procurement Director provided, however, that procurement requirements shall not be artificially divided so as to constitute a small purchase under this Section.

SECTION 2-187. SOLE SOURCE PROCUREMENT / NON-COMPETITIVE PROCUREMENT

(a) Any request by an agency or department head that a procurement be restricted to one potential source shall be accompanied by a justification form provided by the Contracts and Procurement Director and signed by the department head stating why no other source will be suitable or acceptable to meet the needs. A contract of less than, or equal to \$150,000.00, may be awarded for a supply, service, or construction item without competition when the County Administrator, or his designee, and the Contracts and Procurement Director, or his designee, determine in writing that there is either only one source for the required supply, service, or construction item, or that the proposed award to a single source is a permitted, non-competitive procurement as set forth herein. After verification of a sole source vendor, or the justification of a sole source purchase is warranted, the Contracts and Procurement Director, or his designee, has the authority to negotiate the price, terms, and conditions of the procurement. A sole source or non-competitive contract award greater than \$150,000.00 for a supply, service, or construction item is subject to County Council approval.

(b) Examples of permissible, non-competitive procurements include, but are not limited to:

- (1) Where the County Administrator, or his designee, has deemed the compatibility of equipment, accessories, services, systems, software or replacement parts is of paramount importance.
- (2) Where an item is required for trial use or testing.
- (3) Where public utility services are to be procured.

SECTION 2-188. EMERGENCY PROCUREMENT

Notwithstanding any other provisions of this Article, the Contracts and Procurement Director, subject to approval by the County Administrator, or in the Administrator's absence a Deputy Administrator, may make or authorize others to make emergency procurements when there exists a threat to public health, welfare, or safety under emergency conditions, or where normal daily operations are substantially affected provided that such procurements shall be made with such competition as is practical under the circumstances. These actions shall be documented on an Emergency Procurement Justification Form as provided by the Contracts and Procurement Director and placed in the procurement files.

SECTION 2-189. CANCELLATION OF INVITATION FOR BID OR REQUESTS FOR PROPOSALS

An Invitation for Bid, a Request for Proposal, or other solicitation may be canceled, or any or all bids or proposals may be rejected in whole or in part when it is in the best interest of the County in accordance with regulations. The reasons therefor shall be made part of the solicitation file.

SECTION 2-190. RESPONSIBILITY OF BIDDERS AND OFFERORS

A written determination of non-responsibility of a Bidder or Offeror shall be made in accordance with Regulations promulgated by the Contracts and Procurement Director. The unreasonable failure of a Bidder or Offeror to promptly supply information in connection with an inquiry, with respect to responsibility, may be grounds for a determination of non-responsibility with respect to such Bidder or Offeror, as well as other factors as determined by the Contracts and Procurement Director in applying sound public purchasing principles.

SECTION 2-191. BID SECURITY AND BONDS

Except as prescribed in Sections 2-224 and 2-225 for construction contracts, all contracts for equipment, supplies, and services may require bid security and performance bonds at the discretion of the Contracts and Procurement Director. Bid security, when required, shall be in an amount equal to at least five percent (5%) of the amount of the bid.

Performance bonds, when required, will normally be equal to one hundred percent (100%) of the contract. A determination regarding bids received for equipment, supplies, and services without required bid security will be made by the Contracts and Procurement Director in the same manner as provided for in Section 2-224(c). A cashier's/bank check made payable to the County may be submitted in lieu of a bond, or a letter of credit under circumstances deemed acceptable by the Contracts and Procurement Director.

SECTION 2-192. PRE-QUALIFICATION OF SUPPLIERS

Prospective suppliers may be pre-qualified by the Contracts and Procurement Director for particular types of supplies, services and construction. Solicitation mailing lists of potential Contractors shall include, but shall not be limited to, such pre-qualified

suppliers, unless determined in writing that a specific project warrants limitation of Offerors to the pre-qualified list, and public notice of pre-qualification is given.

SECTION 2-193. COST OR PRICE DATA

(a) **Required Submissions Relating to the Award of Contracts.** A prospective Contractor shall submit cost or pricing data when the contract is expected to exceed one hundred thousand dollars (\$100,000.00) and is to be awarded under Section 2-185 *Competitive Sealed Proposals*, Section 2-187 *Sole Source/Non-Competitive Procurement*, or Section 2-229 *Architect-Engineer and Land Surveying Services*. Prospective Contractors may be required to provide cost or pricing data on contracts of lesser amounts, or contracts to be awarded by all other means of solicitation when in the best interest of the County.

(b) **Exceptions to Submissions Relating to Awarding of Contracts.** The submission of cost or pricing data relating to the award of a contract is not required where:

- (1) The contract price is based on adequate price competition.
- (2) The contract price is set by law or regulation.
- (3) It is determined in writing by the Contracts and Procurement Director that the requirements of Subsection (a) of this Section may be waived, and the determination states the reasons for such waiver.

(c) **Required Submissions Relating to Change Orders or Contract Modifications.** A Contractor shall submit cost or pricing data prior to the pricing of any change order or contract modification, including adjustments to contracts awarded by competitive sealed bidding, whether or not cost or pricing data was required in connection with the initial pricing of the contract.

(d) **Exceptions to Submissions Relating to Change Orders or Modifications.** The submission of cost or pricing data relating to the pricing of a change order or contract modification is not required where:

- (1) Unrelated and separately priced adjustments, for which cost or pricing data would not be required, is consolidated for administrative convenience, or
- (2) It is determined in writing by the Contracts and Procurement Director that the requirements of Subsection (c) of this Section may be waived, and the determination states the reason for such waiver.

(e) **Certification Required.** A Contractor, actual or prospective, required to submit cost or pricing data in accordance with this Section, shall certify that to the best of their knowledge and belief, the cost or pricing data submitted was accurate, complete, and current as of a mutually specified date prior to the award of the contract, or the pricing of the change order or contract modification.

(f) **Price Adjustment Provision Required.** Any contract awarded, change order or contract modification under which submission and certification of cost or pricing data is required, shall contain a provision stating that the price to the County, including profit or fee, shall be adjusted to exclude any significant sums by which the County finds that such price was increased because the Contractor-furnished cost or pricing data was inaccurate, incomplete, or not current as the date agreed upon between the County and the Contractor.

SECTION 2-194. CHANGE ORDERS

The Contracts and Procurement Director shall have the authority to approve all change orders and modifications of contracts that do not exceed the budgeted amount approved by the County Council with the exception of construction modifications or change orders, which shall be approved as provided in Division 5 below. (See also Section 2-228). Any increase over the budgeted amount must be approved by the County Administrator.

SECTION 2-195. TYPES OF CONTRACTS

Subject to the limitations of this Article any type of contract, which will promote the best interest of the County, may be used provided that the use of a cost-plus-a-percentage-of-cost contract is prohibited. A cost-reimbursement contract may be used only when a determination by the Contracts and Procurement Director is made, in writing, that such contract is likely to be less costly to the County than any other type, or that it is impractical to obtain the supplies, services or construction required except under such a contract.

SECTION 2-196. MULTI-TERM CONTRACTS

(a) **Specified Period.** A contract for supplies or services may be entered into for renewable periods of time, or until completion of the project(s) which was described in the original solicitation, whichever is later, not to exceed a total of five (5) years, provided the term of the contract and the conditions of renewal or extension, if any, are included in the solicitation and funds are available for the first fiscal period at the time of contracting. Payment and performance obligations of the County for each succeeding fiscal period shall be subject to the availability and appropriation of funds therefor.

(b) **Determination Prior to Use.** Prior to the utilization of a multi-term contract, it shall be determined in writing:

That estimated requirements cover the period of the contract and are reasonably firm and continuing, and

That such a contract will serve the best interests of the County by encouraging effective competition or otherwise promoting economies in County procurement.

(c) **Cancellation Due to Unavailability of Funds in Succeeding Fiscal Periods.** All multi-term contracts shall contain a clause stating that when funds are not

appropriated, or otherwise made available to support continuation of performance in a subsequent fiscal period, the contract shall be canceled.

Section 2-197. Leases of Business Personal Property

(a) **Definition.** A lease is a contract for the use of equipment or other supplies, under which Title does not pass to the County unless there is a purchase option, where Title may pass to the County at some future time.

(b) **Conditions.** A lease may be entered into provided:

- (1) It is in the best interest of the County,
- (2) All conditions for renewal and costs of termination are set forth in the lease, and
- (3) The lease shall be obtained utilizing normal procurement procedures.

(c) **Lease With Purchase Option .** A purchase option in a lease may be exercised only if the lease containing the purchase option was awarded under competitive sealed bidding, or competitive sealed proposal, or the leased supply or equipment is the only supply or equipment that can meet the County's requirements as determined, in writing, by the department head of the requesting department and the Contracts and Procurement Director.

(d) **Option Provisions.** When a contract is to contain an option for renewal, extension, or purchase, notice of such provision shall be included in the solicitation. Exercise of the option is always at the County's discretion only, and not subject to agreement or acceptance by the Contractor.

Section 2-198. Maintenance Contracts

All maintenance contracts and agreements must be procured by the Procurement Department. Wherever practical, the terms of maintenance contracts shall be resolved in connection with the original solicitation for the item or equipment, which is the subject of the maintenance contract. The County Administrator, or the Contracts and Procurement Director in consultation with the Legal Department, will review the contract for proper terms and conditions as well as for fair pricing. Maintenance contracts may only be approved by the Contracts and Procurement Director or the County Administrator.

SECTION 2-199. RIGHT OF INSPECTION

The County may, at reasonable times, inspect the part of the plant or place of business of a Contractor or any Subcontractor, which is related to the performance of any contract awarded or to be awarded by the County.

SECTION 2-200. AUDITING

(a) **Audit of Cost or Pricing Data.** The County may, at reasonable times and places, audit the books and records of any person who has submitted cost or pricing data pursuant to Section 2-192 to the extent that such books and records relate to such cost or pricing data. Any person who receives a contract, change order, or contract modification for which cost or pricing data is required shall maintain such books and records that relate to such cost or pricing data for three (3) years from the date of final payment under the contract, unless a shorter period is otherwise authorized in writing.

(b) **Contract Audit.** The County shall be entitled to audit the books and records of a Contractor or Subcontractor under any negotiated contract subcontract other than a firm fixed-price contract to the extent that such books and records relate to the performance of such contract or subcontract. Such books and records shall be maintained by the Contractor for a period of three (3) years from the date of final payment under the prime contract and by the Subcontractor for a period of three (3) years from the date of final payment under the subcontract, unless a shorter period is otherwise authorized in writing.

Section 2-201. Records

(a) **Contract File Required.** All determinations and other written records pertaining to the solicitation, award or performance of a contract shall be maintained in a contract file by the Contracts and Procurement Director. After award of construction contracts, contract files reflecting daily administration shall be maintained in the department responsible for overall administration of the project. Copies of change directives and executed change orders to the contract shall also be maintained in the Procurement Department contract file.

(b) **Retention.** All procurement records shall be retained and disposed of in accordance with record retention guidelines and schedules approved by the State. If a contract is being funded in whole or in part by assistance from a Federal agency, then all procurement records pertaining to that contract shall be maintained for three (3) years from the closeout date of the assistance agreement, or the final disposition of any controversy arising out of the assistance agreement.

SECTIONS 2-202 - 2-208. RESERVED

DIVISION 4 - SPECIFICATIONS

SECTION 2-209. DEFINITIONS

As used in this Division, a specification shall mean any description of the physical or functional characteristics, or of the nature of a supply, service, or construction item. It may include a description of any requirement for inspection, testing, or preparing a supply, service or construction item for delivery.

SECTION 2-210. DUTIES OF THE CONTRACTS AND PROCUREMENT DIRECTOR

The Contracts and Procurement Director may prepare and issue specifications for supplies, services and construction required by the County. The Contracts and Procurement Director may obtain expert advice and assistance from personnel of using agencies in the development of specifications, and may delegate a using agency the authority to prepare its own specifications.

SECTION 2-211. MAXIMUM PRACTICAL COMPETITION

All specifications shall be drafted so as to promote overall economy for the purpose intended and encourage maximum free and open competition in satisfying the County's needs, and shall not be unduly restrictive. This should include the use of performance specifications wherever practical.

SECTIONS 2-212 - 2-220. RESERVED

DIVISION 5 - CONSTRUCTION, ARCHITECT-ENGINEER AND LAND SURVEYING SERVICES

SECTION 2-221. DEFINITION

As used in this Division ~~an~~ architect-engineer and land surveying services@ shall mean those professional services within the scope of the practice of architecture, professional engineering or land surveying.

Section 2-222. Selection of Method of Construction Contract Management

(a) The Contracts and Procurement Director, with approval of the County Administrator or his designee, shall have discretion to select the appropriate method of construction contracting for a particular project. In determining which method to use, the Contracts and Procurement Director shall consider the County's requirements, the scope of the project, its resources, and the potential Contractors= capabilities. The department head responsible for management of the project shall advise the Procurement Director on all matters related to the selection of contracting method.

(b) **Construction Management Services, Design-Build Services, Turnkey Management Services.** County Council finds that certain non-traditional means of public construction project management can be in the best interest of the County in certain circumstances. Therefore, the following methods may be employed under the following circumstances:

(1) The Contracts and Procurement Director, with approval of the County Administrator, or his designee, shall have the discretion to designate construction management services, design-build services, or turnkey management services as alternatives for construction contracting. In exercising such discretion the County Administrator, or his designee, shall consider the method which is the most advantageous to the County and will result in the most timely, economical, and successful completion of the construction project. The determination for the method of source

selection utilized shall be stated in writing and included as part of the contract file.

(2) If the Contracts and Procurement Director, with approval of the County Administrator or his designee, determines that the use of construction management services, design-build services, or turnkey management services is the most advantageous means of securing the construction contracting set forth in this Section, and the amount of services to be secured thereby exceeds \$5 million, the selection of this method set forth in this Section shall be submitted to County Council at a special meeting, or at its next scheduled meeting and if County Council does not reject the selection of this method, the construction contracting shall be secured in the manner set forth in Subsection (3).

(3) If the Request For Proposals method of source selection is determined to be the most advantageous to the County, the County shall use the competitive sealed proposal method set forth above for the purposes of procuring construction management services, design-build services, or turnkey management services.

Section 2-223. Contract Administration System Required

The Contracts and Procurement Director shall maintain a contracts administration system designed to ensure that a Contractor is performing in accordance with the solicitation under which the contract was awarded, and the terms and conditions of the contract.

SECTION 2-224. BID SECURITY FOR CONSTRUCTION CONTRACTS

(a) **Requirement.** Bid security shall be required for all competitive sealed bidding for construction contracts when the price of the contract is estimated by the Contracts and Procurement Director to warrant bid security. Bid security shall be a bond provided by a surety company authorized to do business in this state, or the equivalent in cash, or otherwise supplied in a form satisfactory to the County.

(b) **Amount.** Bid security shall be in an amount equal to at least five percent (5%) of the amount of the bid, and will remain in place until completion of construction or posting of performance/payment bonds.

(c) **Rejection of Bid for Non-Compliance with Bid Security Requirements.** When the Invitation for Bid requires security, non-compliance requires that the bid be rejected. However, if the failure to comply is determined by the Contracts and Procurement Director to be insubstantial in that only one (1) bid is received and time is of the essence, or if none of the Bidders provide bid security and the requirement for the bid security is determined by the Contracts and Procurement Director to have become insubstantial, then the bid or bids may be accepted.

(d) **Withdrawal of Bids.** After the bids are opened, they shall be irrevocable for the period specified in the Invitation For Bid, except as provided in Section 2-184(f). If a Bidder is permitted to withdraw their bid before award, no action shall be had against the Bidder or the bid security.

SECTION 2-225. CONSTRUCTION CONTRACT PERFORMANCE AND PAYMENT BONDS B GENERAL

(a) **Required Amounts.** When a construction contract is awarded at the discretion of the Contracts and Procurement Director, the following bonds or security shall be delivered to the County and shall become binding on the parties upon the execution of the contract:

A Performance Bond satisfactory to the County executed by a surety company authorized to do business in the state, or otherwise secured in a manner satisfactory to the County in an amount equal to one hundred percent (100%) of the price specified in the contract, and

A Payment Bond satisfactory to the County executed by a surety company authorized to do business in the state, or otherwise secured in a manner satisfactory to the County for the protection of all persons supplying labor and materials to the Contractor, or its Subcontractors, for the performance of the work provided for in the contract. The bond shall be in an amount equal to one hundred percent (100%) of the price specified in the contract.

(b) **Reduction of Amounts.** The Contracts and Procurement Director is authorized to reduce the amount of performance and payment bonds to fifty (50%) percent of the contract price for each bond when it has been determined, in writing, such reduction is necessary or warranted.

(c) **Authority to Require Additional Bonds.** Nothing in this Section shall be construed to limit the authority of the County to require a performance bond or other security in addition to those bonds, or in circumstances other than specified in Subsection (a) of this Section.

(d) **Right to Institute Suits on Payment Bonds.** Every person who has furnished labor or materials to the Contractor, or its Subcontractors, for the work provided in the contract in respect of which a payment bond is furnished under this Section, and who has not been paid in full, therefore before the expiration of a period of ninety (90) days of the day on which the last of the labor was done or performed by such person or material was furnished or supplied by such person for which such claim is made, shall have the right to sue on the payment bond for the amount, or the balance thereof, unpaid at the time of institution of such suit and to prosecute such action for the sum or sums justly due such person, provided, however, that any person having a direct contractual relationship with a Subcontractor of the Contractor, but no contractual relationship expressed or implied with the Contractor furnishing the payment bond, shall have a right of action upon the payment bond upon giving written notice to the Contractor within ninety (90) days from the date on which such person did or performed the last of the labor, or furnished or supplied the last of material which such claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the material was furnished, or supplied, or for whom the labor was done or performed. Such notice shall be personally served, or served by mailing the same by registered or certified mail with postage prepaid, in an envelope addressed to the Contractor at any place the Contractor maintains an office or conducts its business.

(e) **Time and Place of Payment Bond Suits.** Every suit instituted upon a payment bond shall be brought in a court of competent jurisdiction in the County, but no such suit shall be commenced after the expiration of one (1) year after the day on which the last of the labor was

performed or material was supplied by the person bringing suit. The obligee named in the bond need not be joined as a party in such suit.

SECTION 2-226. SAME B FORMS AND CERTIFIED COPIES

(a) **Forms.** The Contracts and Procurement Director shall promulgate by Regulation the form of bonds required by this Division.

(b) **Certified Copies.** Any person may request and obtain from the County a certified copy of a bond upon payment of the cost of reproduction of the bond and postage, if any. A certified copy of a bond shall be prima facie evidence of the contents execution and delivery of the original.

SECTION 2-227. CONTRACT CLAUSES

(a) **Required Provisions; Additional Provisions.** All contracts for supplies, services, and construction shall include provisions necessary to define the responsibilities and rights of the parties to the contract. The Contracts and Procurement Director may also issue clauses appropriate for supply, service or construction contracts, which may address the following subjects:

- (1) The unilateral right of the County to order, in writing, changes in the work within the scope of the contract,
- (2) The unilateral right of the County to order, in writing, temporary stoppage of the work or delaying performance that does not alter the scope of the contract,
- (3) Variations occurring between estimated quantities of work in a contract and actual quantities,
- (4) Defective pricing,
- (5) Liquidated damages,
- (6) Specified excuses for delay or non-performance,
- (7) Termination of the contract for default,
- (8) Termination of the contract in whole, or in part, for the convenience of the County,
- (9) Suspension of work on a construction project ordered by the County,
- (10) Site conditions differing from those indicated in the contract or ordinarily encountered, except that differing site conditions clauses need not be included in a contract:
 - (a) When the contract is negotiated,
 - (b) When the contract provides the site or design, or
 - (c) When the parties have otherwise agreed with respect to the risk of differing site conditions, and

(11) Types and amounts of insurance coverage, which are prudent and required for the protection of the County. The Risk Manager shall advise the Contracts and Procurement Director on all matters relating to insurance.

(b) **Price Adjustments.** Adjustments in price resulting from the use of contract clauses required in Subsection (a) of this Section shall be computed in one or more of the following ways:

(1) By agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practical,

(2) By unit prices specified in the contract or subsequently agreed upon, By the cost attributable to the events or situations under such clauses with adjustment of profit or fee, all as specified in the contract or subsequently agreed upon,

(4) In such other manner as the contracting parties may mutually agree, or

(5) In the absence of agreement by the parties, by unilateral determination by the County, of the reasonable costs allocable either directly or indirectly to the events or situations under such clauses as accounted for in accordance with generally accepted accounting principles, and with adjustment of profit or fee, as appropriate, and subject to the provisions of Division 7 of this Article.

(c) A Contractor shall be required to submit cost or pricing data if any adjustment in contract price is subject to the provisions of Section 2-193.

SECTION 2-228. APPROVAL OF CONSTRUCTION C CONTRACT MODIFICATIONS, CHANGE ORDERS OR PRICE ADJUSTMENTS

Every contract modification, change order, or contract price adjustment under a construction contract with the County shall be subject to prior approval by the Procurement Director. The Procurement Director may approve such modifications, change orders, or adjustments that do not exceed the budgeted amount approved by County Council. Any increase over the budgeted amount must be approved by the County Administrator.

SECTION 2-229. ARCHITECT-ENGINEER AND LAND SURVEYING SERVICES

(a) **Public Announcement Required.** It is the policy of the County to publicly announce all requirements for architect-engineer and land surveying services, except those falling under Small Purchases Section 2-186, and to negotiate such contract on the basis of demonstrated competence and qualification at fair and reasonable prices. In the procurement of architect-engineer and land surveying services, the Contracts and Procurement Director shall request firms to submit a statement of qualifications and performance data.

(b) **Selection Process.** A selection committee appointed by the Procurement Director shall conduct discussions with qualified firm(s) regarding the contract and shall select the firm deemed most qualified to provide the required services. The selection shall be made in order of preference based on criteria established and published by the Contracts and Procurement Director for the solicitation in question.

(c) **Negotiation.** The selection committee shall negotiate a contract with the highest

qualified firm for architect-engineer or land surveying services at a compensation, which is considered to be fair and reasonable to the County. In making this decision, the selection committee shall take into account the established value, the scope, the complexity, and the professional nature of the services to be rendered. Should the selection committee be unable to negotiate a satisfactory contract with the firm considered to be most qualified, negotiations with that firm shall be formally terminated. The selection committee shall then undertake negotiations with the second most qualified firm. Failing accord with the second most qualified firm, the selection committee shall formally terminate negotiations. The selection committee shall then undertake negotiations with the third most qualified firm. Should the selection committee be unable to negotiate a contract with any of the selected firms, the selection committee shall select additional firms in order of their competence and qualifications, and the selection committee shall continue negotiations in accordance with this Section until an agreement is reached unless it is determined by the committee that in the best interest of the County, the process should be terminated or modified. The duties of the selection committee members in regards to this Section shall not be delegated.

SECTIONS 2-230 - 2-249. RESERVED

DIVISION 6 - SUPPLY MANAGEMENT

SECTION 2-250. REGULATIONS.

The management of supplies and inventories, and the disposal of excess supplies and fixed assets, shall be accomplished pursuant to regulations promulgated by the County Administrator.

DIVISION 7 B LEGAL AND CONTRACTUAL REMEDIES

SECTION 2-251. RESOLUTION OF PROTESTED SOLICITATIONS AND AWARDS

(a) ***Right to Protest.*** Any actual or prospective Bidder, Offeror or Contractor who is aggrieved in connection with the solicitation, or award of a contract, may protest to the Contracts and Procurement Director. The protest shall be submitted in writing within seven (7) days after such aggrieved person knows, or should have known, of the facts giving rise thereto.

(b) ***Authority to Resolve Protests.*** The Contracts and Procurement Director, after consultation with the County Attorney, shall have authority prior to the commencement of an action in court concerning the controversy to settle and resolve a protest of an aggrieved Bidder, Offeror or Contractor, actual or prospective, concerning the solicitation or award of a contract other than an act of County Council.

(c) ***Decision.*** If the protest is not resolved by mutual agreement, the Contracts and Procurement Director shall issue a decision in writing within ten (10) days. The decision shall:

(1) State the reasons for the action taken, and

(2) Inform the protestant of its right to administrative review as provided in this Division.

(d) **Notice of Decision.** A copy of the decision under Subsection (c) of this Section shall be mailed or otherwise furnished immediately to the protestant and any other party intervening.

(e) **Finality of Decision.** A decision under Subsection (c) of this Section shall be final and conclusive, unless fraudulent, or unless the person adversely affected by the decision appeals administratively to the Procurement Appeals Board in accordance with the provisions of this Division.

SECTION 2-252. DEBARMENT OR SUSPENSION

(a) **Authority.** After 15 days notice to the person involved and reasonable opportunity for that person to be heard, the Contracts and Procurement Director, after consultation with the County Attorney, shall have authority to debar a person for cause from consideration for award of contracts. The debarment shall not be for a period of more than three (3) years. The same officer, after consultation with the County Attorney, shall have authority to suspend a person from consideration for award of contracts if there is probable cause for debarment. The suspension shall not be for a period exceeding three (3) months. The authority to debar or suspend shall be exercised in accordance with regulations.

(b) **Causes.** The causes for debarment or suspension include, but are not limited to, the following:

(1) Conviction for commission of a criminal offense as an incident to obtain, or attempting to obtain, a public or private contract or subcontract, or in the performance of such Contractor subcontract,

(2) Conviction under State or Federal statutes for embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which currently, seriously, and directly affects responsibility as a County Contractor,

(3) Conviction under State or Federal antitrust statutes arising out of the submission of bids or proposals,

(4) Violation of contract provisions, as set forth below, of a character which is regarded by the Contracts and Procurement Director to be so serious as to justify debarment action:

(a) Deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract, or

(b) A recent record of failure to perform, or of unsatisfactory performance, in accordance with the terms of one (1) or more contracts provided that failure to perform, or unsatisfactory performance caused solely by acts beyond the control of the Contractor,

shall not be considered to be a basis for debarment.

(5) Any other cause the Contracts and Procurement Director determines to be so serious and compelling as to affect responsibility as a County Contractor, including debarment by another governmental entity for cause.

(6) For violation of the ethical standards set forth in the State Ethics Act.

(7) Failure to pay uncontested or un-appealed, but delinquent, real or personal property taxes. These taxes are meant to include those taxes, assessments and penalties for which the County Treasurer has issued his tax execution to the Delinquent Tax Department. However, this is not deemed to include tax assessments that are actually under formal appeal, or in litigation, at the time the debarment or suspension decision is made.

(c) **Decision.** The Contracts and Procurement Director shall issue a written decision to debar or suspend. The decision shall:

1. State the reasons for the action taken, and

2. Inform the debarred or suspended person involved of his/her rights to administrative review as provided in this Division.

(d) **Notice of Decision.** A copy of the decision under Subsection (c) of this Section shall be mailed or otherwise furnished immediately to the debarred or suspended person, and any other party intervening.

(e) **Finality of Decision.** A decision under Subsection (c) of this Section shall be final and conclusive unless fraudulent, or the debarred or suspended person appeals administratively to the Procurement Appeals Board in accordance with the provisions of this Division.

(f) **Time of Decision, Prohibition From Accepting Bids or Offers From Person(s) Where Contract is Terminated.** In addition to his authority to suspend or debar at any appropriate time, the Contracts and Procurement Director is expressly authorized to suspend a Bidder or Offeror after submittal of a bid or response to a solicitation where the Bidder/Offeror is not determined to be subject to debarment or suspension until after the bid or response has been filed. Where the County has terminated a contract, or contracts, with a person for cause, or due to the failure or inability of the person to properly perform, the Procurement Department may not accept a bid or proposal for goods or services from such a person for a solicitation which, either in whole or in part, seeks a replacement or substitute for the goods or services which were the subject of the terminated contract. For purposes of this Section, the Procurement Department may not accept a bid or offer from a person or company that is an affiliate, successor or assignee of the defaulting company or person, or which has an element of common management, ownership, or control with the terminated company.

Section 2-253. Resolution of Contract Controversies

Using agencies shall have responsibility for daily contract administration in consultation with the Procurement Department and Legal Department. This Section shall not be deemed to supersede the using agency=s daily contract administration, but shall apply in cases of significant controversies where the using agency is not successful in resolution.

(a) **Applicability.** This Section applies to controversies between the County and a Contractor which arise under or by virtue of a contract between them. This includes, without limitation, controversies based upon breach of contract, mistake, misrepresentation or other cause for contract modification or rescission.

(b) **Authority.** The Contracts and Procurement Director, after consultation with the County Attorney, is authorized prior to commencement of an action in a court concerning the controversy, to settle and resolve a controversy described in Subsection (a) of this Section.

(c) **Decision.** If such a controversy is not resolved by mutual agreement, the Contracts and Procurement Director shall promptly issue a decision in writing. The decision shall:

(1) State the reason for the action taken, and

(2) Inform the Contractor of its right to administrative review as provided in this Division.

(d) **Notice of Decision .** A copy of the decision under Subsection (c) of this Section shall be made or otherwise furnished immediately to the Contractor.

(e) **Finality of Decision.** The decision under Subsection (c) of this Section shall be final and conclusive, unless fraudulent, or the Contractor appeals administratively to the Procurement Appeals Board in accordance with the provisions of this Division.

(f) **Failure to Render Timely Decision.** If the Contracts and Procurement Director does not issue the written decision required under Subsection (c) of this Section within thirty (30) days after written request for a final decision, or within such longer period as may be agreed upon by the parties, then the Contractor may proceed as if an adverse decision had been received.

SECTION 2-254. REMEDIES PRIOR TO AN AWARD

(a) **Applicability.** The provisions of this Section apply where it is determined by the Contracts and Procurement Director, or upon administrative review, that a solicitation or award of a contract is in violation of Law.

(b) **Established.** If prior to award it is determined that a solicitation or proposed award of a contract is in violation of law, then the solicitation or proposed award shall be

:

- (1) Canceled, or
- (2) Revised to comply with the law.

SECTION 2-254.1 REMEDIES AFTER AN AWARD

If, after an award, it is determined that a solicitation or award of a contract is in violation of law, then:

- (a) If the person awarded the contract has not acted fraudulently or in bad faith:
 - (1) The contract may be ratified and affirmed, provided it is determined that doing so is in the best interest of the County, or
 - (2) The contract may be terminated and the person awarded the contract shall be compensated for the actual expenses reasonably incurred under the contract, plus a reasonable profit, prior to the termination.
- (b) If the person awarded the contract has acted fraudulently or in bad faith:
 - (1) The contract may be declared null and void, or
 - (2) The contract may be ratified and affirmed if such action is in the best interest of the County, without prejudice to the County's right to such damages, as may be appropriate.

Section 2-255. Procurement Appeals Board

(a) **Establishment, Composition, Appointment.** There is hereby established a Procurement Appeals Board, hereinafter referred to as the Board, to be composed of a chairperson and at least two (2) other members, but not more than six (6) members. The chairperson and members of the Board shall be appointed by County Council but may not be members of Council.

(b) **Term.** The term of office of the chairperson and each member of the Procurement Appeals Board shall be two (2) years, except that in making the initial appointments, three (3) members shall be appointed for a term of one (1) year, and two (2) members and the chairperson shall be appointed for a term of two (2) years, so that half of the terms of office shall expire every year. Thereafter, their successors shall be appointed for terms of two (2) years, or for the balance of any unexpired term. Members may be reappointed for succeeding terms. County Council may terminate for just cause any Board Member's term of office.

(c) **Authority of Chairperson.** The chairperson of the Procurement Appeals Board may adopt operational procedures and issue such orders, not consistent with this Article, as may be necessary in the execution of the Board=s functions. The chairperson=s authority may be delegated to any of the Board members, and only members of the Board may issue decisions on appeals.

(d) **Quorum.** Two-thirds of those members appointed to the Procurement Appeals Board shall constitute a quorum for the conduct of business.

(e) **Administrative Support.** The County Administrator shall provide such services as the chairperson of the Procurement Appeals Board requests, on such basis as may be required.

(f) **Qualifications for Membership .** The chairperson of the Procurement Appeals Board shall be experienced in contract or commercial matters. The remaining members of the Board appointed by County Council shall be representative of, but not limited to, the below listed professions and shall be qualified in terms of experience and education to examine facts and apply legal principles to the controversies falling within the Board's jurisdiction:

Goods and services,

Construction,
Architect/engineer, and

Procurement.

(g) **Jurisdiction.** Unless an action has been initiated previously in the courts for essentially the same cause of action, or the act complained of was an act of County Council, the Procurement Appeals Board shall have authority to review and determine: Any protest of a solicitation or award of a contract addressed to the Board by an aggrieved actual or prospective Bidder or Offeror, or a Contractor, and any appeal by an aggrieved party from a determination by the Contracts and Procurement Director, which is authorized in Sections 2-251, 2-252 and 2-253.

(h) **Rules of Procedure.** The Procurement Appeals Board shall adopt Rules of Procedure which, to the fullest extent possible, will provide for the expeditious resolution of controversies.

(i) **Time Limit for Filing an Appeal.** For an appeal under Section 2-251(c), the aggrieved person shall file an appeal with the Procurement Appeals Board within seven (7) days of receipt of decision. For an appeal under Sections 2-252(c) and 2-253 (c), the aggrieved person shall file its appeal with the Board within fourteen (14) days of the receipt of a decision. Appeals to the Board shall be delivered to the Contracts and Procurement Director, who shall so notify the Board chairman.

(j) **Decisions.** Upon receipt of an appeal from an aggrieved party, the chairperson shall convene the Procurement Appeals Board within ten (10) days to conduct

an administrative review of the appeal. The Board, within ten (10) days of hearing such appeal, shall affirm, alter, or deny the decisions rendered by the Contracts and Procurement Director. The Board shall promptly decide whether the:

Solicitation or award being appealed was in accordance with regulations, and the terms and conditions of the solicitation.

Debarment or suspension being appealed was in accordance with regulations and in the best interest of the County, and was fair.

Contract and breach of contract controversy settlement being appealed was in accordance with regulations and in the best interest of the County, and was proper.

(k) **Standard of Review for Factual Issues.** A determination of an issue of fact by the Procurement Appeals Board shall be final and conclusive unless arbitrary, capricious, fraudulent or clearly erroneous.

(l) **Appeal of Decisions.** The decision of the Board shall be final unless appealed to County Council by either the County, or Offeror, within ten (10) days after service of notice of the Board's decision. County Council shall review the records and without further hearing affirm, modify, or deny the appeal. The decision of Council shall be final unless appealed to a court of competent jurisdiction within ten (10) days after service of notice of County Council's decision. Service of notice may be accomplished by delivery in person or by mailing, and shall be complete when either delivered in person or placed in the mail. Service may be made either to the party or to the party's attorney.

SECTION 2-256. STAY OF PROCUREMENT DURING PROTEST OR APPEAL

(a) In the event of a timely protest under Section 2-251, the County shall not proceed further with the solicitation or with the award of the contract unless the Contracts and Procurement Director, after consultation with the head of the using agency, makes a written determination that the award of the contract, without delay, is necessary to protect substantial interests of the County.

(b) **Entitlement to Costs.** In addition to any other relief, when a protest is sustained and the protesting Bidder or Offeror should have been awarded the contract under the solicitation but is not, then the protesting Bidder or Offeror shall be entitled to only the reasonable costs incurred in connection with the solicitation, including bid preparation costs, other than attorney's fees.

SECTIONS 2-257. - 2-260. RESERVED

DIVISION 8 B INTERGOVERNMENTAL RELATIONS

SECTION 2-261. DEFINITIONS

The following words, terms and phrases, when used in this Division, shall have the

meanings ascribed to them in this Section, except where the context clearly indicates a different meaning:

Cooperative Purchasing shall mean procurement conducted by, or on behalf of more than one (1) public procurement unit.

Public Procurement Unit shall mean any county, city, town, and any other subdivision of the State or public agency of any such subdivision, public authority, educational, health or other institution, and any other entity which expends public funds for procurement of supplies, services, or construction.

SECTION 2-262. COOPERATIVE PURCHASING AUTHORIZED

The Contracts and Procurement Director may participate in, sponsor, conduct or administer a cooperative purchasing agreement for the procurement of supplies, services, or construction with one (1) or more public procurement units in accordance with an agreement entered into between the participants. Such cooperative purchasing may include, but is not limited to, joint or multi-party contracts between public procurement units.

SECTION 2-263. SALE, ACQUISITION OR USE OF SUPPLIES

The Contracts and Procurement Director may sell to, acquire from, or use any supplies belonging to another public procurement unit independent of the requirements of Division 3 and Division 6 of this Article.

SECTION 2-264. COOPERATIVE USE OF SUPPLIES OR SERVICES

The Contracts and Procurement Director may enter into an agreement, independent of the requirements of Division 3 and Division 6 of this Article, with any public procurement unit for the cooperative use of supplies or services under the terms agreed upon between the parties.

SECTION 2-265. JOINT USE OF FACILITIES

The Contracts and Procurement Director may enter into agreements for the common use or lease of warehousing facilities, capital equipment, and other facilities with another public procurement unit under the terms agreed upon between the parties.

SECTION 2-266. USE OF STATE CONTRACTS

The Contracts and Procurement Director may, independent of the requirements of Division 3 of this Article, procure supplies, services or construction items through the contracts established by the Purchasing Division of the State as provided in Chapter 35 of Title II (*State Consolidated Procurement Code*) of the South Carolina Code of Laws, 1976 [11-35-10-11-35-5270].

SECTIONS 2-267 - 272. RESERVED

DIVISION 9 B SMALL AND DISADVANTAGED BUSINESSES

SECTION 2-273. DEFINITIONS

The following words, terms, and phrases when used in this Division shall have the meanings ascribed to them in this Section, except where the context clearly indicates a different meaning:

Disadvantaged Business shall mean a small business, which is owned or controlled by a majority of persons, not limited to members of minority groups, who have been deprived of the opportunity to develop and maintain a competitive position in the economy because of social disadvantages.

Small Business shall mean a business which is independently owned and which is not dominant in its field of operation, or an affiliate or subsidiary of a business dominant in its field of operation.

SECTION 2-274. SOLICITATION BY CONTRACTS AND PROCUREMENT DIRECTOR

The Contracts and Procurement Director shall maintain a bidder=s list of small and disadvantaged businesses, and shall solicit those firms on such list for each procurement for which they are qualified.

DIVISION 10 B REAL PROPERTY

SECTION 2-275. REAL PROPERTY TRANSACTIONS

(a) The following rules shall apply to the purchase and sale of County-owned real property:

(1) Council shall sell, contract to sell, acquire by purchase, exchange or gift, real property only upon recommendation of the Finance Committee and approval of Council. At least one appraisal by a certified appraiser shall be received.

(2) A public hearing must be held, after reasonable public notice, prior to final Council action being taken to sell or contract to sell property owned by the County. Sale of property may not occur until approval of an ordinance upon third reading.

(3) Subject to (6) below, the sale or other disposal of real property owned by the County shall be made pursuant to the Request For Proposals method.

(4) Notwithstanding (1) above, the exchange of real property is to be permitted only after appraisal of both properties by two (2) certified appraisers.

(5) The foregoing requirements shall not pertain to the sale of property rehabilitated by use of HUD funds.

(6) County Council shall retain the authority to determine an appropriate alternative method for offering any County-owned property for sale.

(b) The following rules shall apply to the lease of real property by the County: Subject to (2) below, the County shall contract to lease, sublease, or cause to be leased by the County, real property for a definite period of more than one year only upon the recommendation of the Finance Committee and approval of a resolution by Council. The County Administrator may enter into leases, extensions or modifications of equal to or less than one year=s duration.

A public hearing must be held, after reasonable public notice, prior to final Council action being taken to lease or contract to lease property owned by the County.