

Bill No. 97-9

# ORDINANCE NO. 97-4- 18

**AN ORDINANCE TO ESTABLISH PROCUREMENT PROCEDURES FOR BERKELEY COUNTY; TO PROVIDE FOR THE PROCUREMENT OF SUPPLIES, SERVICES AND CONSTRUCTION SERVICES ENTERED INTO BY THE COUNTY; TO CONTINUE THE POSITION OF DIRECTOR OF PROCUREMENT; TO ESTABLISH PROCEDURES FOR SOURCE SELECTION AND CONTRACT FORMATION IN PROCUREMENT BY THE COUNTY; TO PROVIDE FOR LEGAL AND CONTRACTUAL REMEDIES IN THE PROCUREMENT PROCESS; TO ESTABLISH INTERGOVERNMENTAL PROCEDURES; AND TO PROVIDE FOR OTHER MATTERS PERTAINING THERETO.**

WHEREAS, it is the intent of Berkeley County Council to provide for the fair and equitable treatment of all persons involved in public purchasing by the County and to maximize the purchasing value of public funds and procurement and to provide safeguards for maintaining a procurement system of quality and integrity, and

WHEREAS, the Berkeley County Council has reviewed the existing procurement ordinance (83-5-18), as amended, and has determined that a revision to this earlier established ordinance is appropriate,

NOW, THEREFORE, BE IT ORDAINED that the procurement procedures and standards contained within this ordinance as of the effective date shall replace and repeal all previously issued ordinances, rules or regulations pertaining to public procurement for this County, and

BE IT FURTHER ORDAINED that shall any portion of this ordinance be specifically repealed or determined invalid through practice or decision of a recognized court of law, the remaining portions of the ordinance shall continue with full force and effect.

ADOPTED this 28<sup>th</sup> day of April A. D. 1997.

(SEAL) \_\_\_\_\_

JAMES H. ROZIER, JR., CHAIRMAN

BERKELEY COUNTY COUNCIL

ATTEST:

\_\_\_\_\_

Betty Lo Hanna

Clerk of County Council

FIRST READING: February 24, 1997

SECOND READING: March 24, 1997

THIRD READING: April 28, 1997

MEMBERS OF COUNTY COUNCIL

\_\_\_\_\_ Excused from meeting - 4-28-97

MILTON FARLEY Voting Yes STEVE M. VAUGHN Voting \_\_\_\_\_

\_\_\_\_\_

JUDITH K. SPOONER Voting Yes JUDY C. MIMS Voting Yes

\_\_\_\_\_

WILLIAM E. CROSBY Voting Yes JULIUS BARNES Voting Yes

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JAMES E. MIXSON Voting Yes BERNICE S. FRIENDLY Voting Yes

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# PROCUREMENT ORDINANCE

## I. GENERAL

## A. Definitions

1. Business: Any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or any other private legal entity.
2. Change order: A written order directing the contractor to make changes which the "Changes" clause of the contract authorizes the County Supervisor or his designee to order.
3. Construction: 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 operation, routine repair, or routine maintenance of existing structures, buildings or real property.
4. Contract: All types of agreements, regardless of what they may be called, for the procurement of supplies, services, or construction services.
5. Contract modification: 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.
6. Contract Time: The period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of work.
7. Contractor: Any person having a contract with the County.
8. County: Refers to Berkeley County.
9. Data: Recorded information, regardless of form or characteristics.
10. Date of commencement of the Work: The date established in the agreement. The date shall not be postponed by the failure to act of the contractor or of persons or entities for whom the contractor is responsible.
11. Days: Calendar days.
12. Designee: A duly authorized representative of a person holding a superior position.
13. Director of Procurement: The person holding the position in Section VI(A) is the head of the central procurement office of the County.
14. Employee: An individual drawing a salary from the County, whether elected or not, and any noncompensated individual performing personal services for the County.
15. Governmental body: Any department or agency of the County.
16. Grant: The furnishing of assistance, whether financial or otherwise, to any person to support a program authorized by law. It does not include an award, the primary purpose of which 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.
17. Procurement: Buying, purchasing, renting, leasing, or otherwise acquiring any supplies, services, or construction. It also includes all functions that pertain to the obtaining of any supply, service, or construction, including description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration.
18. Procurement officer: Any 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.

19. Public procurement unit: Any County, city, town, or any other subdivision of the state or federal government or public agency of any such subdivision, public authority, educational, health, or other institution, any other entity which expends public funds for procurement of supplies, services, or construction.

20. Regulation: A statement having general or particular applicability and future effect, designed to implement, interpret, or prescribe law or policy, or describing organization, procedure, or practice requirements, which has been promulgated in accordance with existing procedure.

21. Service: 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.

22. Substantial Completion: The date certified by the County Engineer or hid designee for substantial completion of the work.

23. Supplies: All property, including but not limited to, equipment, materials, printing, insurance, information technology equipment and software packages, excluding land or a permanent interest in land.

24. Using agency: Any governmental body of the County which utilizes any supplies, services, or construction procured under this chapter.

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## II. PURPOSE

A. The purpose of this ordinance 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.

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## III. APPLICABILITY

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

B. County Council and the Director of Procurement shall administer and enforce procurement practices in accordance with the provisions of this ordinance. It is the purpose of this ordinance to establish a system whereby County Council is responsible for procurement except as provided in Section VII(F) small purchases, VII(H) emergency procurement, and VII(I) repair, operation, maintenance (ROM) items and that the Director of Procurement shall assist County Council in such procurement and shall have responsibility for procurement under these same sections.

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## IV. SPECIFIC REPEALER

A. This ordinance repeals all previously issued ordinances, rules and regulations pertaining to public procurement for the County.

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## V. COMPLIANCE WITH STATE AND FEDERAL REQUIREMENTS

### A. Public access to procurement information

1. Procurement information shall be public record to the extent required by Chapter 4 of Title 30 (Freedom of Information Act), Code of Laws of South Carolina 1976, as amended, with the exception that commercial or financial information obtained in response to a "request for proposals" which is privileged and confidential shall not be disclosed.
2. Additionally, prior to a bid opening the identity and number of bids received shall be made available to County employees with an interest in the bid.

### B. Compliance with federal requirements

1. Where a procurement involves the expenditure of federal assistance or contract funds, the Director of Procurement and County Council shall comply with such federal law and authorized regulations which are mandatorily applicable and which are not presently reflected in this ordinance.

### C. Standards of conduct

1. 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), Code of Laws of South Carolina 1976, as amended, shall be complied with.

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## VI. PROCUREMENT ORGANIZATION

### A. Director of Procurement-Continuation; selection; tenure

1. Continuation of the position: There is hereby continued the position of Director of Procurement, who shall be the County's principal public procurement official. The Director of Procurement shall report to the Supervisor, and the performance of the director's duties hereunder shall be as directed by the Supervisor.
2. Selection: The selection of the Director of Procurement shall be made in accordance with County Personnel Policies and Procedures. The Supervisor shall appoint the Director of Procurement. The Director of Procurement shall have a minimum of four (4) years experience, at least three (3) of which shall have been in public procurement within ten (10) years preceding the date of appointment.
3. Tenure: The Director of Procurement shall be a regular full-time public employee of the County in accordance with County Personnel Policies and Procedures.

### B. Authority and duties of Director of Procurement

1. Principal public procurement official: The Director of Procurement shall serve as the principal public procurement official of the County, and, with County Council, shall be responsible for the procurement of supplies, services, and construction in accordance with this chapter, as well as the

management and disposal of supplies.

2. Duties: In accordance with this chapter, the Director of Procurement shall:

- a. Procure or supervise the procurement of all supplies, services, and construction needed by the County;
- b. Exercise general supervision and control over all inventories and supplies belonging to the County;
- c. Make recommendations to County Council, through the County Supervisor to sell, trade, or otherwise dispose of surplus supplies belonging to the County;
- d. Establish and maintain programs for the inspection, testing, and acceptance of supplies, services, and construction; and
- e. Assist County Council in the procurement of supplies, services and construction pursuant to the terms and provisions of this chapter.

C. Delegation of authority

1. The Director of Procurement may delegate authority to designees of the office of the Director of Procurement.

D. Organization of public procurement-Procurement authority

1. Except as otherwise provided in this section and Section VI (F), the authority relating to the procurement of supplies, services, and construction is hereby vested in the Director of Procurement and County Council as provided in this ordinance.

E. Exceptions

1. The following supplies and services need not be procured through the office of the Director of Procurement or County Council, but shall nevertheless be procured by the appropriate department with the approval of the County Supervisor, subject to the requirements of this chapter :
  - a. Published books, art, maps, periodicals, and technical pamphlets:
  - b. Postage stamps and postal fees;
  - c. Professional services normally obtained on a fee basis: for example, lawyers, appraisers, clergy, physicians, dentists, architects, or engineers, and
  - d. Medicine and drugs.

F. County procurement regulations

1. The Director of Procurement shall promulgate regulations pertaining to procurement by the County. The Director of Procurement shall not delegate this authority to promulgate such regulations. No regulation shall change any commitment, right, or obligation of the County or of a contractor under a contract in existence on the effective date of such regulation.

G. Coordination, training, and education-Collection of data concerning public procurement.

1. The Director of Procurement shall cooperate with County auditors in the preparation of statistical data concerning the procurement, usage, and 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 Director of Procurement may require concerning usage, needs, and stocks on hand, and the Director of Procurement shall have authority to prescribe forms to be used by the using departments in requisitioning, ordering, and reporting of supplies, services, and construction.

H. Procurement advisory groups

1. County Council may appoint procurement advisory groups to assist in the development of specifications or in procurement in specific areas.

I. Procurement training

1. The Director of Procurement shall establish and maintain a procurement training program for procurement personnel of the office of the Director of Procurement.

J. Duties of County Attorney

1. The County Attorney or such officers as the County Attorney may designate, shall serve as legal counsel and provide necessary legal services to the Director of Procurement.

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## VII. SOURCE SELECTION AND CONTRACT INFORMATION

A. Definitions

1. Cost-reimbursement contract: A contract under which a contractor is reimbursed for costs which are allowable and allocable in accordance with the contract terms and the provisions of this chapter, and a fee, if any.

2. Description: 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.

3. Established catalogue price: The price included in a catalogue, 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 customers; and
- 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.

4. Invitation for Bids: All documents, whether attached or incorporated by reference, utilized for

soliciting bids.

5. Request for Proposals: All documents, whether attached or incorporated by reference, utilized for soliciting proposals.

6. Responsible bidder or offeror: 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.

7. Responsive bidder: A person who has submitted a bid which conforms in all material respects to the Invitation for Bids.

8. Responsive offeror: A person who has submitted a proposal which conforms to all requirements in the request for Proposals.

9. Vendor: A merchant; a retail dealer; a supplier; one who buys to sell.

#### B. Enumeration of methods of source selection

1. Unless otherwise required by law, all County contracts shall be awarded by competitive sealed bidding, pursuant to Section VII (D) (Competitive sealed bidding), except as provided in:

- a. Section VII (E) (Competitive sealed proposals)
- b. Section VII (F) (Small purchases)
- c. Section VII (G) (Sole source procurement)
- d. Section VII (H) (Emergency procurement)
- e. Section VII (1) (Repair, operation, maintenance (ROM) items).

#### C. General provisions

1. Extension of time for bid or proposal agreement: After opening bids or proposals, the Director of Procurement may request bidders or offerors to extend the time during which the County may accept their bids or proposals, provided that, with regard to bids, no other change is permitted. The reasons for requesting such extension should normally be documented.

2. Only one bid or proposal received: If only one responsive bid is received in response to an Invitation for Bids (including multi-step bidding), an award may be made to the single bidder if the Director of Procurement finds that the price submitted is fair and reasonable, and that either other prospective bidders had reasonable opportunity to respond, or there is not adequate time for resolicitation. Otherwise the bid may be rejected and either:

- a. New bids or offers may be solicited; or
- b. The proposed procurement may be canceled; or
- c. If the Director of Procurement determines in writing that the need for the supply or service continues, but that the price of the one bid is not fair and reasonable and there is no time for resolicitation or resolicitation would likely be futile, the procurement may be completed as a sole source purchase or an emergency purchase if all the requirements are met for sole source or emergency purchase.

3. One proposal received: If only one proposal is received in response to a Request for Proposals, the Director of Procurement may, as such officer deems appropriate, either make an award or if time permits, resolicit for the purpose of obtaining competitive sealed proposals.

4. Multiple of alternate bids or proposals: Unless multiple or alternate bids or proposals are specifically provided for, the solicitation shall state that such bids or proposals shall not be accepted. When prohibited, multiple or alternate bids or proposals shall be rejected, provided that if a bidder clearly indicates a base bid, it shall be considered for award as though it were the only bid or proposal submitted by the bidder or offeror.

5. Procuring State-produced supplies or services:. The County may procure supplies produced or services performed incident to the State's own programs, such as industries or correctional institutions. The Director of Procurement shall determine whether such supplies or services meet the County's requirements and whether the price represents a fair market value for such supplies or services. If it is determined that such requirements cannot be met by State-produced supplies or services, or the price is not fair and reasonable, the procurement may be made from the private or public sector in accordance with the County's procurement code.

6. Change orders: The Director of Procurement shall have the authority to approve all change orders and modifications of contracts and purchase orders excluding construction change orders up to twenty-five thousand dollars (\$25,000) and the County Supervisor will be informed of all change orders above ten thousand dollars (\$10,000) excluding construction change orders.

#### D. Competitive sealed bidding

1. Conditions for use: Contracts shall be awarded by competitive sealed bidding except as otherwise provided in Section VII (B) (Enumeration of methods of source selection).

2. Invitation for Bids: An Invitation for Bids shall be issued by the Director of Procurement and may be approved by the Committee on Purchasing and Public Works and shall include a purchase description, and all contractual terms and conditions applicable to the procurement if the item is not approved in the annual budget.

3. Bid security: Bid security in an amount equal to two (2) per cent of the bid shall be required for all competitive sealed bidding when the price is estimated to equal to or exceed one hundred thousand dollars (\$100,000). Bid security shall be a bond provided by a security company authorized to do business in this state, or the equivalent in cash, or otherwise supplied in a form satisfactory to the County. Nothing herein prevents the requirement of such bid security on bids estimated to fall under one hundred thousand dollars (\$100,000) when the circumstances warrant.

4. Public Notice: Public notice of the Invitation for Bids shall be given not less than seven (7) days prior to the date set forth therein for the opening of bids. A thirty (30) day notice is required for the procurement of construction services if practicable. Such notice may include publication in a newspaper of general circulation for a reasonable time prior to bid opening.

5. Bid opening: Bids shall be opened publicly in the presence of two or more witnesses at the time and place designated in the Invitation for Bids. The amount of each bid, and such other relevant information as may be specified by regulation, together with the name of each bidder, shall be recorded and open to public inspection; the remaining information of each bid shall be open to public inspection after award.

6. Bid acceptance and bid evaluation: Bids shall be unconditionally accepted without alteration or correction except as authorized in this chapter. Bids shall be evaluated based on the requirements set forth in the Invitation for Bids, which may include criteria to determine acceptability, such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose. Those criteria that will affect the bid price and be considered in evaluation for award shall be objectively measurable, such as discounts, transportation costs, and total or life cycle cost. The Invitation for Bids shall set forth the evaluation criteria to be used. No criteria shall normally be used in bid evaluation that are not set forth in the Invitation for Bids.

7. 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 where appropriate. After bid opening, no changes in bid prices or other provisions of bids prejudicial to the interest of the County in 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 to be made by the Director of Procurement.

8. Local/State preference: Competitive procurement made by Berkeley County shall be made from responsive and responsible resident vendors in Berkeley County for procurement, if such bid does not exceed the lowest qualified bid from a non-Berkeley County vendor by more than two (2%) percent of the latter bid, or shall be made from responsive and responsible resident vendors in the State of South Carolina for procurement, if such bid does not exceed the lowest qualified bid from a non-South Carolina vendor by more than two (2%) percent of the latter bid. Provided, however, the Berkeley County local preference shall always take precedence over any South Carolina state preference.

A vendor shall be deemed to be a resident of Berkeley County if such vendor be an individual, partnership, association or corporation that is authorized to transact business within the State, maintains an office in Berkeley County, and maintains a representative in inventory of commodities within the County on which the bid is submitted and has paid all taxes duly assessed.

A vendor shall be deemed to be a resident of the State of South Carolina if such vendor be an individual, partnership, association or corporation that is authorized to transact business within the State, maintains an office in the State, and maintains a representative inventory of commodities within the State on which the bid is submitted and as paid all taxes duly assessed.

Provided, however, that if the procurement is to be made pursuant to State or Federal guidelines, which prohibit or restrict local or state preferences there shall be no local or state preference unless a more restricted variation is allowed under the guidelines. Local/State preference shall not be allowed for the procurement of construction services.

9. Award: The contract 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 Bids.

a. All bids from \$25,000 to \$50,000 shall normally be subjected to review and approval by the County Supervisor as long as the item is budgeted and the bid amount does not exceed the budgeted amount.

b. All bids exceeding \$50,000 shall normally be presented to the Committee on Public Works and Purchasing for their analysis and recommendation. County Council shall normally, after examination of the recommendation of the Committee, decide whether to award the contract.

c. If all bids exceed available funds and no additional moneys can be appropriated by County Council, the bid will be canceled except as provided in Section VII (D) (9) (d).

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

e. Tie Bids: The Director of Procurement 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 provided a solution, to reject all bids.

f. Disclosure of Bid Information: The following information shall not be disclosed until after bid opening unless disclosure is provided for in the Invitation for Bids or if the bidder has provided written permission to disclose the information:

- (1) Bid estimates;
- (2) The names of those persons who receive bid packages;
- (3) The names of bidders; and

(4) The number of bidders.

10. Multi-step sealed bidding: When it is considered impractical to initially prepare a purchase description to support an award based on price, an Invitation for Bids may be issued requesting the submission of unpriced offers to be followed by an Invitation for bids limited to those bidders whose offers have been qualified under the criteria set forth in the first solicitation.

#### E. Competitive sealed proposals

1. Conditions for use: When the County determines 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.

2. Request for Proposals: Proposals shall be solicited through a Request for Proposal.

3. Public notice: Public notice of the request for proposals shall be given in the same manner as provided in Section VII (D) (4) (Competitive sealed bidding, public notice).

4. Disclosure of proposal information: The following information shall not be disclosed until after opening unless disclosure is provided for in the Request for Proposals or if the offeror has provided written permission to disclose the information:

- a. The names of those persons who receive copies of the proposal;
- b. The names of offerors; and
- c. The number of offerors.

5. 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 negotiation. Proprietary and confidential information, marked as such, in each proposal shall not be disclosed without written consent of the offeror.

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

7. Evaluation factors: The Request for Proposals shall normally state the evaluation factors in relative order of importance.

8. Award: Award shall be made to the responsible and responsive 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 normally be used in the evaluation. The contract file shall normally contain the basis on which the award is made.

#### F. Small purchases

1. Any procurement not exceeding twenty-five thousand dollars (\$25,000.00) may be made by the Director of Procurement in accordance with small purchase procedures promulgated by such Director- provided, however, that procurement requirements shall not be artificially divided so as to constitute a small purchase under this section.

#### G. Sole source procurement

1. Sole source procurement is not permissible unless the item to be procured is available from only a single supplier. An item to be procured for a particular proprietary item does not justify a sole source procurement if there is more than one potential bidder or offeror for that item. The following are examples of circumstances, which could necessitate sole source procurement.

- a. Where the compatibility of equipment, accessories, or replacement parts is the paramount consideration;
- b. Where public utility services are to be procured.

2. The determination as to whether a procurement shall be made as a sole source shall be made by County Council. In cases of reasonable doubt, competition should be solicited. Any request that a procurement be restricted to one potential vendor shall be accompanied by an explanation as to why no other vendor will be suitable or acceptable to meet the need. The Director of Procurement shall conduct negotiations, as appropriate, as to price, delivery, and terms.

#### C. Emergency procurement

1. Emergency procurement: Notwithstanding any other provision of this chapter, the director of Procurement may make or authorize others to make emergency purchases when there exists a threat of public health, welfare, or safety under emergency conditions; provided that such emergency procurement shall be made with such competition as is practicable under the circumstances. A written determination of the basis for the emergency and for the selection of the particular contractor should normally be included in the contract file.

2. Definition of emergency conditions: An emergency condition is a situation which creates a threat to public health, welfare, or safety such as flood(s), hurricane(s), epidemic(s), riot(s), equipment failure, or such other reason as may be proclaimed by the Governor or County Council. The existence of such condition creates an immediate and serious need for supplies, services, or construction that cannot be met through normal procurement methods and the lack of which would seriously threaten:

- a. The functioning of County government; or
- b. The preservation or protection of property; or
- c. The health or safety of any person.

3. Authority to make emergency purchases:

- a. If the emergency requires procurement in amounts greater than twenty five thousand dollars (\$25,000.00), the Director of Procurement should have approval by the County Supervisor, or such other person as the Supervisor may designate in the Supervisor's absence, to make the emergency procurement.

#### I. Repair, operation, maintenance (ROM) items

1. Notwithstanding any other provision of this chapter, fuel supplies, materials, and items of equipment necessarily purchased for routine operations or to replace parts of existing equipment and structures which can be supplied only by the manufacturer of the original articles to be repaired or by such manufacturer's authorized dealer, may be purchased by the Director of Procurement without formality; provided, that the Director of Procurement shall take advantage of every opportunity to economize by securing the best agreements practicable. In all cases, complete

records of the transaction shall be maintained.

J. Cancellation of Invitation for Bids or Requests for Proposals

1. An Invitation for Bids, a request for proposals, or other solicitation may be canceled, or any or all bids or proposals may be rejected in whole or in part as may be specified in the solicitation, when it is in the best interest of the County. The reason therefor shall be made part of the Contract file.

K. Qualifications and duties of supplier- Nonresponsibility of bidders and offerors

1. A written determination of Nonresponsibility of a bidder or offeror shall be made in accordance with regulations promulgated by the Director of Procurement. 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 nonresponsibility with respect to such bidder or offeror.

L. Prequalification

1. Prospective suppliers may be prequalified for particular types of supplies, services, and construction. Solicitation mailing lists of potential contractors shall include, but shall not be limited to, such prequalified suppliers.

A. Cost or pricing data

1. 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 (\$100,00.00) or one million (\$1,000,000.00) dollars on construction projects and is to be awarded under Section VII (E) (Competitive sealed proposals) or Section VII(G) (Sole source procurement).

2. Exceptions: The submission of cost or pricing data relating to the award of a contract is not required where:

- a. The contract price is based on adequate price competition;
- b. The contract price is set by law or regulation; or
- c. It is determined by County Council that the requirements of subsection (1) of this section may be waived, and the determination states the reasons for such waiver.

3. Required submissions relating to change orders or contract modifications: A contractor shall submit cost or pricing data prior to the pricing of any change order or contract modification, including adjustments to contracts awarded by competitive sealed bidding, whether or not cost or pricing data was required in connection with the initial pricing of the contract, when the modification involves aggregate increases or aggregate decreases in costs plus applicable profits that are expected to exceed twenty-five thousand dollars (\$25,00.00) or five hundred thousand dollars (\$500,000.00) on construction projects.

4. Exceptions: The submission of cost or pricing data relating to the pricing of a change order or contract modification is not required where:

- a. Unrelated and separately priced adjustments for which cost or pricing data would not be required are consolidated for administrative convenience; or

b. It is determined by the County that the requirements of subsection (3) of this section may be waived, and the determination states the reason for such waiver.

5. 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 such contractor's 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.

6. Price adjustments 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 of the date agreed upon between the County and the contractor.

#### N. Types of contracts-General

1. 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 County Council is made that such contract is likely to be less costly to the County than any other type that it is impracticable to obtain the supplies, services, or construction required except under such a contract.

#### O. Multi-term contracts

1. Specified period: A contract for supplies or services may be entered into for period of time not to exceed five (5) years except as modified in "Q" herein, provided the term of the contract and the conditions of renewal or extensions, if any, are included in the solicitation and funds are available for the first fiscal period at the time of contracting. Payment and performance obligations for succeeding fiscal periods shall be subject to the availability and appropriation of funds therefor.

2. Determination prior to use: Prior to the utilization of a multi-term contract, it shall be determined in writing:

a. That estimated requirements cover the period of the contract and are reasonably firm and continuing; and

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

3. 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 with no additional cost.

#### P. Maintenance Contracts

1. All maintenance contracts and agreements must be forwarded to the Director of Procurement for review and approval. The Director of Procurement will review the Contract for proper terms and conditions as well as for fair pricing. Maintenance contracts will only be approved by the Director of Procurement or the County Supervisor.

#### Q. Leases

1. A lease is a contract for the use of equipment or other supplies, or real property 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. The lease period shall be restricted to a maximum of twenty (20) years.

2. A lease may be entered into provided:

- a. It is in the best interest of the County;
- b. All conditions for renewal and costs of termination are set forth in the lease,
- c. The lease is not used to circumvent normal procurement procedures; and
- d. The lease contains appropriate nonappropriation language.

3. Lease with purchase option:

- a. 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 facility is the only supply or facility that can meet the County's requirements as determined in writing by the Department head of the requesting department and the Director of Procurement.

4. Option provisions:

- a. 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.

#### R. Inspection of plant and audit of records-Right to inspect plant

1. 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.

#### S. Right to audit records

1. 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 VII(M) (Cost or pricing data) 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 authorized in writing.

2. Contract audit: The County shall be entitled to audit the books and records of a contractor or subcontractor under any negotiated contract or 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 subcontract, unless a shorter period is authorized in writing.

#### T. Reports and records-Reporting of anticompetitive practices

1. When for any reason collusion or other anticompetitive practices are suspected among any bidders or offerors, a notice of the relevant facts shall be transmitted to the County Attorney.

#### U. Procurement records

1. Contract file: All determination and other written records pertaining to the solicitation, award, or performance of a contract shall be maintained in a contract file by the Director of Procurement.
2. Retention of procurement records: All procurement records shall be retained and disposed of in accordance with records retention guidelines and schedules approved by the County. 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 close-out date of the assistance agreement or the final disposition of any controversy arising out of the assistance agreement.

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## VIII. SPECIFICATIONS

#### A. Definitions

1. Specifications: 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.

#### B. Powers and duties of the Director of Procurement

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

#### C. Exempted items

1. Specifications for supplies, services, or construction items exempted in Section VI (E) (Exceptions), may be prepared by the using agency in accordance with the provisions of this article.

#### D. Maximum practicable competition

1. 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. Performance specifications should be included in specifications wherever practicable.

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## IX. PROCUREMENT OF CONSTRUCTION SERVICES

### A. Definitions

1. Architect-engineer and land surveying services: Those professional services within the scope of the practice of architecture, professional engineering, or land surveying.
2. Prime Contractor: A person who has a contract with the County to build, alter, repair, improve, or demolish any public structure or building, or other real public improvements of any kind to any public real property.

### B. Construction contract administration

1. The Director of Procurement and/ or the County Engineer shall maintain a contract administration system designed to insure that a contractor is performing in accordance with the solicitation under which a construction contract was awarded, and in compliance with the terms and conditions of the contract.
2. All construction contracts, including change orders, shall be both reasonable and equitable to all concerned.

### C. Bonds-Required; amount of bid security

1. Requirement for bid security: Bid security shall be required for all competitive sealed bidding for construction contracts when the price is estimated by the Director of Procurement to exceed one-hundred thousand dollars (\$100,000). 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. Nothing herein prevents the requirement of such bonds on construction contracts under one-hundred thousand dollars (\$100,000) when the circumstances warrant.
2. Amount of bid security: Bid security shall be in an amount equal to at least five (5) percent of the amount of the bid and will remain in place until execution of a construction contract and posting of performance/payment bonds.
3. Rejection of bid for noncompliance with bid security requirements: When the Invitation for Bids requires security, noncompliance requires that the bid be rejected.
4. Withdrawal of bids: After the bids are opened, they shall be irrevocable for the period specified in the Invitation for Bids, except as provided in Section VII(D)(7) (Competitive sealed bidding). If the Director of Procurement or County Council exercise their discretion to permit a bidder to withdraw such bidder's bid before award, no action shall be had against the bidder or the bid security.

### D. Contract performance and payment bonds

1. Required amounts: When a construction contract is awarded in excess of one hundred thousand dollars (\$100,000), 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. A performance bond satisfactory to the County, executed by a surety company authorized to do business in this state or otherwise secured in a manner satisfactory to the County, in an amount equal to one hundred (100) percent of the price specified in the contract; and
  - b. A payment bond satisfactory to the County, executed by a surety company authorized to do business in this 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 amount equal to one hundred (100) per cent of the price specified in the contract.

2. Authority to require additional bonds: Nothing in this section shall be construed to limit the authority of the County to require a performance bond of other security in addition to those bonds, or in circumstances other than specified in subsection (1) of this section.

3. Suit on Payment bonds, right to institute: Every person who has furnished labor or materials to the contractor or the contractor's 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 therefor before the expiration of a period of ninety (90) days after the day on which the last of the labor was done or performed by such person or materials were 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 said action for the 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 express or implied with the contractor furnishing said payment bond, shall have a right of action 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 upon which such claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the labor was done or performed. Such notice shall be personally served or served by mailing the same by registered or certified mail, postage prepaid, in an envelope addressed to the contractor at any place the contractor maintains an office or conducts business.

4. Suit on payment bonds, where and when brought: Every suit instituted upon a payment bond shall be brought in a court of competent jurisdiction for 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 materials were supplied by the person bringing suit. The obligee named in the bond need not be joined as a party in such suit.

#### E. Forms; copies

1. Forms: The Director of Procurement shall promulgate by regulation the form of bonds required herein.

2. 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.

#### F. Contract clauses and their administration

1. Contract clauses: All contracts for supplies, services, and construction shall include provisions necessary to define the responsibilities and rights of the parties to the contract. County Council may issue clauses appropriate for supply, service or construction contracts, addressing at least the following subjects:

- a. The unilateral right of the County to order, in writing, changes in the work within the scope of the contract;
- b. 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;
- c. Variations occurring between estimated quantities of work in a contract and actual quantities;
- d. Defective pricing;

- e. Liquidated damages;
- f. Specified excuses for delay or nonperformance;
- g. Termination of the contract for default-.
- h. Termination of the contract in whole or in part for the convenience of the County;
- i. Suspension of work on a construction project ordered by the County; and
- j. 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:

- (1) When the contract is negotiated;
- (2) When the contract provides the sites or design; or
- (3) When the parties have otherwise agreed with respect to the risk of differing site conditions.

## 2. Price adjustments:

- a. Adjustments in price resulting from the use of contract clauses required in subsection (1) 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 practicable;
- (2) By unit prices specified in the contract or subsequently agreed upon;
- (3) 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 Section XII (Legal and Contractual Remedies).

- b. If unit prices are stated in the contract Documents or are subsequently agreed upon, and if quantities originally contemplated are so changed in a proposed Change Order or Construction Change Directive that application of such unit prices to quantities of Work proposed will cause substantial inequity to the County or the Contractor, the applicable unit prices may be equitably adjusted at the discretion of the County.

- c. In determining the cost of credit to the County resulting from a change in the Work such as by change order, the allowances for overhead and profit combined included in the total cost to the Owner shall not exceed the percentages as follows:

(1) For the Prime Contractor, for any work performed by his own forces, 15% of the cost;

(2) For each Subcontractor involved, for work performed by his own forces, 15% of the cost; and

(3) For the Prime Contractor, for work performed by his Subcontractors, 7% of the amount due to the Subcontractor.

d. A contractor shall be required to submit cost or pricing data if any adjustment in contract price is subject to the provisions of Section VII(M) (Cost or pricing data).

#### G. Fiscal responsibility

1. Every contract modification, change order, or contract price adjustment under a construction contract with the County which exceeds available construction funds or is outside of the scope of the original contract shall be subject to prior approval by County Council, after receiving a report from the fiscal officer of the County as to the effect of the contract modification, change order, or contract price adjustment on the total project budget or the total contract budget.

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## X. ARCHITECT- ENGINEERING AND LAND SURVEYING SERVICES

### A. Public Announcement and Selection Process

#### 1. Public Announcement:

a. It is the policy of the County to publicly announce all requirements for architect-engineer and surveying services and to negotiate such contracts on the basis of demonstrated competence and qualifications at fair and reasonable prices. In the procurement of architect-engineer and land surveying services, the Director of Procurement shall request firms to submit a statement of qualifications and performance data.

#### 2. Selection Process:

a. A Selection Committee shall normally consist of at least the affected County Department Head or their designee, and at least two appointees that the Director of Procurement chooses to appoint, shall conduct discussions with no less than three firms, except when fewer respond. They shall select from among them the firms 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 Director of Procurement.

#### 3. Negotiation:

a. The Selection Committee or the Supervisor and his designee(s) (hereafter referred to as Committee) shall negotiate 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 Committee shall take into account the established value, the scope, the complexity, and the professional nature of the services to be rendered. If the Committee is unable to negotiate a

satisfactory contract with the firm considered to be most qualified, negotiations with that firm shall be formally terminated. The Committee shall then undertake negotiations with the second most qualified firm. Failing accord with the second most qualified firm, the Committee shall then undertake negotiations with the third most qualified firm. If the Committee is unable to negotiate a contract with any of the selected firms, the Committee may select additional firms in order of their competence and qualifications, and the Committee shall continue negotiations in accordance with this Section until an agreement is reached.

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## XI. SUPPLY MANAGEMENT

### A. Definitions

1. Excess supplies: Any supplies other than expendable supplies having a remaining useful life but which are no longer required by the using agency in possession of the supplies.
2. Expendable supplies: All tangible supplies other than nonexpendable supplies.
3. Nonexpendable supplies:
  - a. Small Capital: All tangible supplies with a probable useful life of more than one (1) year and having an original acquisition cost of over one thousand dollars (\$1,000.00) per unit for all other tangible supplies not to exceed the large capital threshold (Part "b"). These supplies shall require a fixed asset number and shall be included on the fixed asset listing.
  - b. Large Capital: All tangible supplies with a probable useful life of more than one (1) year and having an original acquisition cost of over five thousand dollars (\$5,000.00) per unit. These supplies shall require a fixed asset number and shall be included on the fixed asset listing.
4. Supplies: For the purpose of this article, supplies owned by the County.
5. Surplus supplies: Any supplies other than expendable supplies no longer having any use to the County. This includes obsolete supplies, scrap materials, and nonexpendable supplies that have completed their useful life cycle.

### B. Supply management regulations required

1. The Director of Procurement shall promulgate regulations governing:
  - a. The management of supplies during their entire life cycle,
  - b. The sale, lease, or disposal of surplus supplies by public auction, competitive sealed bidding, or other appropriate method approved by County Council, provided that no employee of the owning or disposing agency shall be entitled to purchase any such supplies; and
  - c. Transfer of excess supplies.

### C. Deposit of proceeds from sale or disposal of surplus supplies

1. The Director of Procurement shall deposit proceeds from sale, lease, or disposal of surplus supplies in the appropriate County fund.

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## **XII. LEGAL AND CONTRACTUAL REMEDIES**

### A. Authority to resolve protested solicitations and awards

1. 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 Director of Procurement. The protest shall be submitted in writing within fourteen (14) days after such aggrieved person knows or should have known of the facts giving rise thereto, but in no circumstances after thirty (30) days of notification of award of contract.

2. Authority to resolve protests: The Director of Procurement, 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

3. Decision: If the protest is not resolved by mutual agreement, the Director of Procurement shall issue a decision in writing within fifteen (15) days. The decision shall:

- a. State the reasons for the action taken; and
- b. Inform the Protestant of its right to review as provided in this article.

4. Notice of decision: A copy of the decision under subsection (3) of this section shall be mailed or otherwise furnished immediately to the Protestant and any other party intervening.

5. Finality of decision: A decision under subsection (3) of this section shall be final and conclusive, unless fraudulent, or unless any person adversely affected by the decision requests a review, in writing, setting forth the grievance, to County Council within ten (10) days of the decision.

6. Request for review: The request for review shall not stay the contract unless fraudulent.

7. Reimbursement for reasonable costs and authority to grant other relief: In the event a Protestant contends that it should have been awarded the contract under a solicitation but was not, then the party may apply to County Council for relief. Upon receipt of this application, County Council shall promptly issue a decision in writing within thirty (30) days. The decision shall state the reason(s) for the action taken. County Council may order the computation and award of a reasonable reimbursement including bid preparation costs, and may order such other and further relief as justice dictates including, but not limit to, a reaward of the contract or a rebid of the contract. The decision of County Council is the final administrative review.

### B. Authority to debar or suspend

1. Authority: After reasonable notice to the person involved and reasonable opportunity for that person to be heard, County Council, 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 County Council, 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.

2. Causes for debarment or suspension: The causes for debarment or suspension include the following:

- a. Conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract;
- b. Conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which currently and directly affects responsibility as a County contractor;
- c. Conviction under state or federal antitrust statutes arising out of the submission of bids or proposals;
- d. Violation of contract provisions, as set forth below, of a character which is regarded by the Director of Procurement to be so serious as to justify debarment action:

(1) Deliberate failure without good cause to perform in accordance with the specifications or within the time limitation provided in the contract; or

(2) A recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts; provided that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be a basis for debarment.

- e. Any other cause County Council determines to be so serious and compelling as to affect responsibility as a County contractor, including debarment by another governmental entity for cause.
- f. For violation of the ethical standards set forth in the state ethics act

3. Decision: County Council, through the Director of Procurement, shall issue a written decision within thirty (30) days to debar or suspend. The decision shall state the reason for the action taken.

4. Notice of decision: A copy of the decision under subsection (3) of this section shall be mailed or otherwise furnished immediately to the debarred or suspended person and any other party intervening.

5. Finality of decision: A decision under subsection (3) of this section shall be final and conclusive, unless fraudulent.

#### C. Authority to resolve contract and breach of contract controversies

1. Applicability: This section applies to controversies between the County and a contractor and which arise under, or by virtue of, a contract between them. This includes, without limitation, controversies based upon breach on contract, mistake, misrepresentation, or other cause for contract modification or rescission.

2. Authority: County Council is authorized, prior to commencement of an action in a court concerning the controversy, to settle and resolve a controversy described in subsection (1) of this section.

3. Decision: If such a controversy is not resolved by mutual agreement, County Council shall promptly issue a decision in writing within thirty (30) days. The decision shall state the reason(s) for the action taken.

4. Notice of decision: A copy of the decision under subsection (3) of this section shall be mailed or otherwise furnished immediately to the contractor.

5. Finality of decision: The decision under subsection (3) of this section shall be final and conclusive, less fraudulent.

6. Failure to render timely decision: If County Council does not issue the written decision required under subsection (3) of this section within (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 rendered.

#### D. Solicitations or awards in violation of law

1. The provisions of Sections XII (E) and XII(F) apply where it is determined administratively, or upon administrative review, that a solicitation or award of a contract is in violation of law.

#### E. Remedies prior to an award

1. Prior to award, if 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:

- a. Canceled; or
- b. Revised to comply with the law.

#### F. Remedies after an award

1. After an award, if 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 rectified 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 interests of the County, without prejudice to the County's right to such damages as may be appropriate.

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### **XIII. INTERGOVERNMENTAL RELATIONS**

#### A. Definitions

1. Cooperative purchasing: Procurement conducted by or on behalf of, more than one public procurement unit.
2. Public procurement unit: Any County, city, town, or any other subdivision of the state or federal government or public agency of any such subdivision, public authority, educational, health, or other institution, or any other entity which expends public funds for procurement of supplies, services, or construction.

#### B. Cooperative purchasing authorized

1. The Director of Procurement, with the approval of the County Supervisor, may either participate in, sponsor, conduct, or administer a cooperative purchasing agreement for the procurement of supplies, services, or construction with one 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.

#### C. Sale, acquisition, or use of supplies

1. The Director of Procurement, with the approval of the County Supervisor, may sell to, acquire from, or use any supplies belonging to another public procurement unit independent of the requirements of Section VII (Source Selection and Contract Information and Section XI (Supply Management)).

#### D. Cooperative use of supplies or services

1. The Director of Procurement, with the approval of the County Supervisor, may enter into an agreement, independent of the requirements of Section VII (Source Selection and Contract Information) and Section XI (Supply Management), with any public procurement unit for the cooperative use of supplies or services under the terms agreed upon between the parties.

#### E. Joint use of facilities

1. The Director of Procurement, with the approval of the County Supervisor, 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.

#### F. Use of state contracts

1. The Director of Procurement may, procure supplies, services or construction items independent of the requirements of Section VII (Source Selection and Contract Information), whenever such procurement may be obtained at or below the price established by the purchasing division of the state as provided in Chapter 35 of Title 11 (State Consolidated Procurement Code), Code of Laws of South Carolina 1976, as amended, for an identical item.

#### G. Use of Federal Government contracts (GSA)

1. IF AND WHEN APPLICABLE, the Director of Procurement may, independent of the requirements

of Section VII (Source Selection and Contract Information), procure supplies, services or construction items through the contract established by the Federal Government and administer by the General Services Administration (GSA).

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## **XIV. SMALL, DISADVANTAGED BUSINESS ASSISTANCE**

### A. Definitions

1. Disadvantaged business: 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.

2. Small business: 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.

### B. Solicitation of small and disadvantaged businesses

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