

ARTICLE III. PROCUREMENTS*

***Editor's note:** Ord. No. 2000-39, adopted April 24, 2001, amended Art. III in its entirety, in effect repealing and reenacting said article to read as herein set out. The former Art. III, §§ 2-40--2-69, pertained to similar subject matter and derived from §§ 1-101--1-103, 1-201, 1-301--1-303, 2-101, 2-102, 2-201--2-205, 3-101--3-107, 3-201, 3-202, 3-301, 3-302, 3-401, 3-402, 4-101, 4-102, 5-101--5-103, 5-201--5-203, 5-301, 5-302, 6-101, 6-201, 6-202, 7-101, 7-201, and 7-301 of an ordinance adopted June 28, 1983; Ord. No. 95-22, adopted July 25, 1995; and Ord. No. 98-35, adopted Sept. 8, 1998.

Sec. 2-40. Purpose, applicability.

(1) *Purpose.*

- _____ (a) To provide increased economy in Georgetown County procurement activities and to maximize to the fullest extent practicable the purchasing values of funds while ensuring that procurements are the most advantageous to the county and in compliance with the provisions of the Ethics Government Accountability and Campaign Reform Act;
- _____ (b) To foster effective broad-based competition for public procurement within the free enterprise system;
- _____ (c) To develop procurement capability responsive to appropriate user needs;
- _____ (d) To consolidate, clarify, and modernize the law governing procurement in Georgetown County and permit the continued development of explicit and thoroughly considered procurement policies and practices;
- _____ (e) To ensure the fair and equitable treatment of all persons who deal with the procurement system which will promote increased public confidence in the procedures followed in public procurement;
- _____ (f) To provide safeguards for the maintenance of a procurement system of quality and integrity with clearly defined rules for ethical behavior on the part of all persons engaged in the public procurement process; and
- _____ (g) To develop an efficient and effective means of delegating roles and responsibilities to the various departments.

(2) *Application.* This article applies to contracts for the procurement of supplies, services and construction entered into by Georgetown County after the effective date of this article unless the parties agree to its application to contracts entered into prior to the effective 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 bequest, which are otherwise consistent with law.

(Ord. No. 2000-39, 4-24-01)

Sec. 2-41. Definitions.

As used in this article the following words and terms shall be as defined below, unless otherwise specified:

Bid security.

- _____ (a) *Requirement for bid security.* Bid security is required for all competitive sealed bidding for construction contracts in excess of one hundred thousand dollars (\$100,000.00) and such other contracts as may be prescribed by the state engineer's office. Bid security is a bond provided by a surety company meeting the criteria established by the regulations of the board or otherwise supplied in a form that may be established by regulation of the board.
- _____ (b) *Amount of bid security.* Bid security shall be in an amount equal to at least five (5) percent of the amount of the bid at a minimum.

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

Change order. Any written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of any contract accomplished by mutual agreement of the parties to the contract.

Construction. The process of building, altering, repairing, remodeling, 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.

Contract. All types of agreements Georgetown County may enter into, regardless of what they may be called, for the procurement of supplies, services, or construction.

Contract modification. A written order signed by the procurement officer, directing the contractor to make changes which changes the clause of the contract authorizes the procurement officer to order without the consent of the contractor.

Contractor. Any person having a contract with Georgetown County.

Cooperative purchasing. Procurement conducted by, or on behalf of, more than one (1) public procurement unit.

Data. Recorded information, regardless of form or characteristic.

Data processing. The automated collections, storage, manipulation, and retrieval of data including central processing units for micro, mini, and mainframe computers; related peripheral equipment such as terminals, document scanners, word processors, intelligent copiers, off-line memory systems, library and maintenance routines, and applications programs.

Days. Calendar days. In computing any period of time prescribed by this code or the ensuing regulations, the day of the event from which the designated period of time begins to run is not included. If the final day of the designated period falls on a Saturday, Sunday, or a legal holiday for Georgetown County, then the period shall run to the end of the next business day.

Designee. A duly authorized representative of a person holding a superior position.

Employee. An individual drawing a salary from Georgetown County whether elected or not, and any non-compensated individual performing personal services for Georgetown County to include but not limited to board and commissions members.

Governmental body. Any department or agency of Georgetown County.

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 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.

Invitation for bids. A written or published solicitation issued by an authorized procurement officer for bids to contract for the procurement or disposal of stated supplies, services or construction, which will ordinarily result in the award of the contract of the responsible bidder making the lowest responsive bid.

May. Denotes the permissive.

Person. Any business, individual, union, committee, club, other organization, or group of individuals.

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 demonstration.

Procurement officer. The person designated by the county administrator as the head of the central procurement office of Georgetown County.

Public procurement unit. Any county, city, town and any other subdivision of the state or public agency of any such subdivision, public authority, education, or other entity that expends public funds for procurement of supplies or services.

Real property. Any land, all things growing on or attached thereto, and all improvements made thereto including buildings and structures located thereon.

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.

Request for proposals (RFP). A written or published solicitation issued by the procurement officer for proposals to provide goods and services. Evaluation factors upon which the proposals will be evaluated for award of the contract shall be stated in the request for proposals. Price shall be one of the evaluation factors but it shall not be the sole basis for award of the contract.

Responsible bidder or offeror. A person who has the capability in all respects to perform fully the contract requirements and the tenacity, perseverance, experience, integrity, reliability, facilities, and equipment and credit that will assure good faith performance.

Responsive bidder. A person who has submitted a bid that conforms in all material respects to the requirements set forth in the invitation for bids.

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

Shall. Denotes the imperative.

Specification. Any description of the physical or functional characteristic or of the nature of a supply, service, or construction item. It may include a description of any requirement for inspecting, testing, or preparing a supply, service, or construction item for delivery.

Subcontractor. Any person having a contract to perform work or render service to a prime contractor as a part of the prime contractor's agreement with a governmental body.

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

Suspension. The disqualification of a person to receive invitations for bids, request for proposals, or the award of a contract by Georgetown County, for a temporary period pending the compensation of an investigation and any legal proceedings that may ensue because a person is suspected upon probable cause of engaging in criminal, fraudulent, or seriously improper conduct or failure or inadequacy of performance which may lead to debarment.

Telecommunications. Voice, data, message, and video transmissions, and includes the transmission and switching facilities of public telecommunications systems, as well as operating and network software.

Using agency. Any department, commission, board, or public agency requiring supplies, services, or construction procured pursuant to this article.

(Ord. No. 2000-39, 4-24-01)

Sec. 2-42. Public access to procurement information.

Procurement information shall be 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 which is privileged and confidential need not be disclosed.

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:

- _____ (a) Customer lists;
- _____ (b) Design recommendations and identification of prospective problem areas under an RFP;
- _____ (c) Design concepts, including methods and procedures;
- _____ (d) Biographical data on key employees of the bidder. Evaluative documents predecisional in nature such as 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 predecisional deliberations.

At the time of submitting a proposal or bid, the party supplying a bid or proposal must identify any portion of the proposal or bid considered by the party to be a trade secret and thus eligible to be withheld from public inspection and copying. If the information identified by the party is a trade secret, it may be withheld from public inspection and copying. If the party fails to identify information as a trade secret, the entire bid or proposal is to be made available for public inspection and copying.

(Ord. No. 2000-39, 4-24-01)

Sec. 2-43. Compliance with state and federal regulations.

(1) *Compliance with federal requirements.* Where a procurement involves the expenditure of federal assistance or contract funds, the affected department director shall inform the procurement officer of all requirements and the director shall comply with such authorized regulations, which are mandatorily applicable and which are not presently reflected in this article.

(2) *Standards of conduct.* In all actions involving the procurement of supplies, services, or construction for Georgetown County, the provisions of Chapter 13 of Title 8 (State Ethics Act, 1976 Code of Laws of South Carolina) shall be complied with.

(3) *Records retention.* Purchasing records will be the sole responsibility of the purchasing office. Files will be maintained in sufficient detail to document the purchasing process. Purchasing records will be maintained for three (3) years except for grant funded projects. Specific grant guidelines by project will determine the length of record retention.

(4) *Public access to procurement information.* Procurement information shall be a public record to the extent required by Chapter 3, Title 30, South Carolina Code of Laws, 1976, with the exception that commercial or financial information obtained in response to an RFP which is privileged and confidential and not to be disclosed.

(Ord. No. 2000-39, 4-24-01)

Sec. 2-44. Purchasing officer.

(1) *Establishment of position.* There is hereby created the position of purchasing officer who shall be the county's principal public procurement official. The county administrator shall appoint the purchasing officer and this position shall be in accordance with the duly accepted Georgetown County Classification Plan of the Georgetown County Personnel Policy.

(2) *Authority and duties.* The purchasing officer shall serve as the principal public procurement official for Georgetown County and shall be responsible for the procurement of supplies and services in accordance with this article, as well as the management and disposal of supplies.

(Ord. No. 2000-39, 4-24-01)

Sec. 2-45. Duties of county attorney.

The county attorney, or such office as the county administrator shall designate, shall serve as legal counsel and provide necessary legal services to the purchasing officer. The county attorney must approve all contracts.

(Ord. No. 2000-39, 4-24-01)

Sec. 2-46. Organization of public procurement.

(1) *Centralization of procurement authority.* Except as otherwise provided in this section, the authority relating to the procurement of supplies and services is hereby vested in the purchasing officer as provided in the article.

(2) *Authority to contract for certain services.*

_____ (a) *General authority.* For the purpose of procuring professional services normally obtained on a fee basis (clergy, physicians, etc.), those departments utilizing such services may contract on their own behalf for such services in accordance with this article and those operating procedures established by the public procurement office.

_____ (b) *Contracts for legal service.* No contract for services of legal counsel may be awarded beyond those services normally provided by the county attorney without the approval of the county administrator.

(3) *Exemptions.* The following supplies and services need not be procured through the public procurement office, but shall be procured by the appropriate department subject to requirements of this article:

_____ (a) Works of art for museum and public display.

_____ (b) Information technology and software.

_____ (c) Real property.

- (d) Postage stamps and postal fees.
- _____ (e) Expenditure of funds by office of county treasurer in the issuance of bonds to include printing cost and any fees associated with bond issuance.
- _____ (f) Reinsurance through the South Carolina Insurance Reserve Fund.
- _____ (g) Professional dues and memberships.
- _____ (h) Attorneys, subject to approval by the county administrator.
- _____ (i) Artist used by the County Library, sheriff's office, or recreation department.
- _____ (j) Contractual consultant services necessary to provide professional instruction for seminars, put on by and/or for department/agencies and/or their personnel.
- _____ (k) Computer programmers and software analysts engaged to modify county data processing system software, or to develop new software for the county's computer system.

(4) *Procurement regulations and operating procedures.* The purchasing officer shall promulgate regulations and operating procedures pertaining to procurement by Georgetown County. No regulation shall change any commitment, right or obligation of Georgetown County or of a contractor under a contract in existence on the effective date of such regulation.

(5) *Collection of data concerning public procurement.* The purchasing officer shall cooperate with Georgetown County auditors in the preparation of statistical data concerning the procurement, usage and disposition of all supplies and services. All departments shall furnish such reports as the purchasing officer may require. The purchasing officer shall have authority to prescribe forms to be used by the using departments in requesting, ordering and reporting of supplies and services.

(Ord. No. 2000-39, 4-24-01)

Sec. 2-47. Methods of source selection.

Unless otherwise required by law, all Georgetown County contracts shall be awarded by competitive sealed bidding, pursuant to section 2-48, except as provided in:

- _____ (a) Section 2-48, Competitive sealed bidding.
- _____ (b) Section 2-51, Competitive sealed proposals.
- _____ (c) Section 2-53, Small purchases.
- _____ (d) Section 2-54, Sole source procurement.
- _____ (e) Section 2-55, Emergency procurement.
- _____ (f) Section 2-56, Architect-engineering and land surveying services.
- _____ (g) Section 2-77, Use of state contract.

(Ord. No. 2000-39, 4-24-01)

Sec. 2-48. Competitive sealed bidding.

(1) *Condition for use.* Contracts amounting to five thousand dollars (\$5,000.00) or more shall be awarded by competitive sealed bidding except as otherwise may be provided in section 2-47. An award shall be made to the lowest responsive and responsible bidder.

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

(3) *Notice.* A minimum of fourteen (14) days notice of the invitation for bids shall be given at a reasonable time prior to the date set forth therein for the opening of bids. Such notice shall include publication in a newspaper of general circulation.

(4) *Facsimile bids.* Telegraphic messages are not acceptable for sealed bids since prices would be exposed prior to the deadline set for receipt. Facsimile transmission may be accepted only for unsealed bids and must be received by the purchasing office prior to the date and time specified in the solicitation.

When in the opinion of the purchasing officer, the date for the opening of bids will not allow bidders sufficient time to prepare and submit bids on the prescribed forms or when prices are subject to frequent changes, facsimile bids may be authorized.

(5) *Prebid conference.* Holding a conference or site visit early in the solicitation cycle provides an opportunity to emphasize and clarify critical aspects of the solicitation, eliminate ambiguities or misunderstandings, and permits vendor input. Prebid conferences/site visits shall be conducted with potential bidders or offerors when issuing solicitations for complex, large or critical requirements. Attendance at conferences or site visits may be optional or mandatory. When mandatory attendance is stipulated, only bids from these firms represented at the conference or visiting the site will be accepted. If a modification to the solicitation is required as a result of the conference or site visit, an addendum will be issued.

(6) *Receipt and safeguarding of bids.* All bids (including modifications) received prior to the time of opening shall be kept secure and unopened.

(7) *Bid opening.* The purchasing officer or a designee shall decide when the time set for bid opening has arrived, and shall so declare to those present. The purchasing officer shall then personally and publicly open all bids received prior to that time and when practicable, read them aloud to those persons present and have the bids recorded. The following information is read aloud: bidders name, unit price or lot price as may be applicable, discount terms offered if discount terms are to be considered in making the award, and brand name and model number, if requested by the bid attendees. Questions on contents of other bidder's bids shall not be answered until after evaluation is complete and award has been made. The tabulation shall be open to public inspection.

(8) *Disclosure of bid information.* The information disclosed by the purchasing officer or designee at bid opening is considered to be public information under the Freedom of Information Act, Chapter 3 of Title 30, until award is made.

(9) *Bid acceptance and bid evaluation.* Bids shall be unconditionally accepted without alteration or correction, except as authorized in this policy. Bids shall be evaluated based on the requirements set forth in the invitation for bids, which may include, but not be limited to, 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 cost, and total or life cycle costs.

_____ (a) The invitation for bids shall set forth the specification for the item/service. No criteria may be used in bid evaluations that are not set forth in the invitation for bids.

_____ (b) Bids for construction projects may include, but are not limited to, additional evaluation criteria such as:

_____ 1. Capacity of firm to perform the work within time limitations, taking into consideration the current and planned workload of the firm;

_____ 2. Familiarity of the firm with the type of problems applicable to the project;

_____ 3. Specialized experience or technical expertise of the firm and its personnel in connection with the type of services to be provided and the complexity of the project;

_____ 4. Past record of performance on contracts with the county and other clients, including quality of work, timeliness and cost control; and

_____ 5. Demonstrated sufficiency in financial resources and such stability as will ensure satisfactory completion of proposed effort.

(10) *Correction or withdrawal of bids; cancellation of awards.* An offeror must submit in writing a request to either correct or withdraw a bid to the procurement officer. Each written request must document the fact that the offeror's mistake is clearly an error that will cause him substantial loss.

_____ (a) *Correction of awards.* An offeror shall not be permitted to correct a bid mistake after bid opening that would cause such offeror to have the low bid unless the mistake in the judgment of the procurement officer is clearly evident from examining the bid document; for example, extension of unit prices or errors in addition.

_____ (b) *Cancellation of awards prior to performance.* When it is determined after an award has been issued but before performance has begun that Georgetown County's requirements for the goods or services have changed or have not been met, the award or contract may be canceled and either reawarded or a new solicitation issued.

(11) *Canceling or amending solicitation.* When canceling a written solicitation, notification should be mailed to all vendors who have been issued a solicitation and a copy of the notice publicly posted. Sealed bids received on canceled bids will be returned unopened. If it is necessary to amend a solicitation, an addendum shall be sent to all potential bidders or offerors who received a copy of the solicitation and a copy publicly posted. Signed acknowledgement of addendum must be returned to the purchasing office prior to time and date of the opening or with the bid or proposal. When an addendum is issued which will require additional time for the vendor to prepare a solicitation response, the opening date may be extended.

(12) *Discussion with bidders.* As provided in the request for bids, discussions may be conducted with apparent responsive bidders for the purpose of clarification to assure full understanding of the requirements of the invitation for bids. All bids, in the procuring departments sole judgment, needing clarification shall be afforded such an opportunity. Clarification of any bidder's bid must be documented in writing by the procurement officer and shall be included with the bid. Documentation concerning the clarification shall be subject to disclosure upon request.

(13) *Tie bids.* The county administrator shall make award of all tie bids under twenty thousand dollars (\$20,000.00) value. The Georgetown County Council shall award all tie bids in excess of twenty thousand dollars (\$20,000.00). Tie bids may be awarded to one (1) of the bidders based on:

- _____ (a) Availability or completion periods.
- _____ (b) Service availability or facility.
- _____ (c) Previous vendor record.
- _____ (d) Closeness to the delivery point.

Where tie bids are between bidders one of which is a business whose principal place of business is located in Georgetown County and the other bidder is not, the recommended award shall be to the Georgetown County bidder because of the two (2) percent local vendor preference. All conditions equal, the party shall draw lots or flip a coin. The coin toss must be witnessed and the results recorded.

(14) *Award of bid.* In determining the lowest responsive and responsible bidder, in addition to price, there shall be considered the following:

- _____ (a) The ability, capacity and skill of the bidder to perform the contract.
- _____ (b) Whether the bidder can perform the contract within the time specified, without delay of interference.
- _____ (c) The character, integrity, reputation, judgment, experience and efficiency of the bidder.
- _____ (d) The quality of performance on previous contracts.
- _____ (e) The previous and existing compliance by the bidder with laws and ordinances relating to the contract.
- _____ (f) The sufficiency of the financial resources to perform the contract to provide the service.
- _____ (g) The quality, availability and adaptability of the supplies or contractual services to the particular use required.
- _____ (h) The ability of the bidder to provide future maintenance and service.
- _____ (i) The discount terms and conditions of the bid.
- _____ (j) Delivery time.

When necessary for the best interest of the county, bid criteria to determine acceptability may include but not limited to inspection, testing, quality, workmanship, delivery and suitability for a particular purpose. Those criteria that will affect the bid price are to be given to each bidder.

The procurement officer may award bids up to five thousand dollars (\$5,000.00). The county administrator may approve awards up to twenty thousand dollars (\$20,000.00). Awards that are twenty thousand dollars and one cent (\$20,000.01) and over shall be submitted to the county administrator with a request for approval by Georgetown County Council. All contracts for services exceeding twenty thousand dollars (\$20,000.00) shall first receive approval of the county council.

(15) *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.

(16) *Single response to a solicitation.* Even though multiple sources are solicited, there may be occasions when only one (1) response is received for a solicitation. In such cases, the purchasing officer shall investigate to determine why other bidders or offerors did not respond and resolicit. If only one (1) bid is received, it will remain sealed and it will be rebid. Only in circumstances that require immediate action, shall the requirement of resolicitation be waived.

(17) *Request for qualifications.* Prior to soliciting bids, a request for qualifications from prospective bidders may be issued. Such request shall contain at a minimum, a description of the goods or services to be solicited by the invitation for bids, the general scope of the work, the deadline for submission of information, and how prospective bidders may apply for consideration. The request shall require information concerning the prospective bidders' product specifications, qualifications, experience, and ability to perform the requirements of the contract. Adequate public notice of the request for qualifications shall be given in the manner provided in section 2-48 (Competitive sealed bidding).

After receipt of the responses to the request for qualifications from prospective bidders, the prospective bidders shall be ranked from most qualified to least qualified on the basis of the information provide. Bids shall then be solicited from at least the top two (2) prospective bidders by means of an invitation for bids. The failure of a prospective bidder to be selected shall not be grounds for protest.

(Ord. No. 2000-39, 4-24-01)

Sec. 2-49. Brand name or equal specification.

(1) *Use.* Since use of a brand name specification is restrictive of product competition, it may be used only when the purchasing officer makes a determination that only the identified brand name item or items will satisfy the county needs or when is determined that:

- _____ (a) No other design or performance specification or qualified products list is available.
- _____ (b) Time does not permit the preparation of another form of purchase description, not including a brand name specification.
- _____ (c) The nature of the product or the nature of the county's requirements makes use of a brand name or equal specification suitable for the procurement.
- _____ (d) Use of a brand name or equal specification is in the county's best interest.

(2) *Competition.* The purchasing officer shall seek to identify sources from which the designated brand name item or items can be obtained and shall solicit such sources to achieve whatever degree of price competition is practicable. If only one (1) source can supply the requirement, the procurement shall be made under section 2-54 (Sole source procurement).

(Ord. No. 2000-39, 4-24-01)

Sec. 2-50. Local preference.

(1) Competitive procurements made by Georgetown County shall be made from responsive and responsible vendor residents in Georgetown County if procurement of such bid does not exceed the lowest qualified bid for a non-resident vendor by more than two (2) percent of the later bid.

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

(3) In the event the procurement is to be made pursuant to state or federal guidelines that shall prohibit or restrict local preference on services provided by prime contracts or subcontractors in the construction industry, then in such circumstances there shall be no local preference.

(Ord. No. 2000-39, 4-24-01)

Sec. 2-51. Competitive sealed proposals.

(1) *Conditions for use.* When the purchasing officer determines that the use of competitive sealed bidding is either not practical or not advantageous to Georgetown County, a contract may be entered into by competitive sealed proposals. An award shall be made to the offeror whose proposal is considered to be most advantageous to the county.

- (2) *Notice.* A minimum of fourteen (14) days notice of the request for proposals shall be given at a reasonable time prior to the date set forth therein for the opening of bids. Such notice shall include publication in a newspaper of general circulation.
- (3) *Request for qualifications.* Prior to soliciting proposals, the procuring department/director, acting through the authorized procurement officer, may issue a request for qualifications from prospective bidders. Such request shall contain at a minimum a description of the goods or services to be solicited by the request for proposals, the general scope of the work, the deadline for submission of information, and how prospective bidders may apply for consideration. The request shall require information concerning the prospective bidders' product specifications, qualifications, experience, and ability to perform the requirements of the contract. Adequate public notice of the request for proposal shall be given.
- (4) *Ranking of prospective bidders; solicitation of bids from top bidders.* After receipt of the responses to the request for proposal from prospective bidders, the prospective bidders shall be ranked from most qualified to least qualified on the basis of the information provided. Bids shall then be solicited from at least the top two (2) prospective bidders by means of an invitation for bids. The failure of a prospective bidder to be selected to receive the invitation for bids shall not be grounds for protest. An award shall be made to the offeror whose proposal is considered to be most advantageous to Georgetown County.
- (5) *Development of request for proposal (RFP).* The RFP should contain a cover letter of transmittal to prospective offerors and the following enclosures as appropriate: description of scope of work or services, project objectives, schedule, qualification criteria, evaluation of proposed criteria, price cost considerations, proposal format, conditions and provisions.
- (6) *Receipt of proposals.* Proposals shall be opened publicly in the presence of one (1) or more witnesses at the time and place designated in the request for proposals. Only the names of the offerors shall be disclosed at the proposal opening. Contents of the proposals shall not be disclosed during the negotiation process. Proposals shall be open for public inspection after contract award, except that proprietary or confidential information in any proposal that is clearly marked "confidential" by the offeror shall not be disclosed without written consent of the offeror.
- (7) *Request for qualifications.* Prior to soliciting proposals, the purchasing officer may issue a request for qualifications from prospective offerors. Such request shall contain at a minimum a description of the goods or services to be solicited by the request for proposals and the general scope of the work and shall state the deadline for submission of information and how prospective offerors may apply for consideration. The request shall require information only on their qualifications, experience, and ability to perform the requirements of the contract.
- (8) *Receipt of responses.* After receipt of the responses to the request for qualifications from prospective offerors, the perspective offerors shall be ranked from most qualified to least qualified on the basis of the information provided. Proposals shall then be solicited from at least the top two (2) prospective offerors by means of a request for proposals. The failure of a prospective offeror to be selected to receive the request for proposals shall not be grounds for protest.
- (9) *Interviews with interested firms.* Following receipt of information from all interested persons and firms, the selection committee shall hold interviews with at least five (5) persons or firms who have responded to the solicitation and who are deemed most qualified on the basis of information available prior to the interviews. A list of firms selected for interview shall be sent to all firms that submitted information in response to the advertisement, prior to the date selected for the interviews. If less than five (5) persons or firms have responded to the advertisement, the committee shall hold interviews with those that did respond. The selection committee's determination as to which will be interview shall be in writing and shall be based on its review and evaluation of all submitted materials. The written report of the committee shall specifically list the names of all persons and firms that responded to the advertisement and enumerate the reasons of the committee for selecting those to be interviewed. The purpose of the interviews shall be to provide such further information as may be required by the selection committee to fully acquaint itself with the relative qualifications of each firm.
- (10) *Evaluation factors.* The request for proposals shall state the relative importance of price and each other evaluation factor but shall not require numerical weighting of each factor. The evaluation factors shall be examined with respect to each proposal in determining which proposal is most advantageous to Georgetown County. There are no restrictions on the kind or number of evaluation factors that may be used, as long as they are stated in the request for proposals and relate to the purpose of the procurement.

- _____ (a) 1. Specialized experience or technical expertise of the firm and its personnel in connection with the type of services to be provided and complexity of the project;
- _____ 2. Past record performance on contracts with Georgetown County and other clients, including quality if work, timeliness and cost control;
- _____ 3. Demonstrated ability to meet time and budget requirements;
- _____ 4. Location;

_____5. Capability of firm to perform the work within time limitations, taking into consideration the current and planned workload of the firm; and

_____6. Familiarity of the firm with the type of problems applicable to the project.

_____ (b) An evaluation panel of at least three (3) members will be appointed by county administrator to formally conduct the evaluation of each response.

_____ (c) In assigning relative importance of these criteria, price may not be the primary factor.

(11) *Discussion with offerors.* As provided in the request for proposals, discussions may be conducted with apparent responsive offerors for the purpose of clarification to assure full understanding of the requirements of the request for proposals. All offerors whose proposals need clarification shall be afforded such an opportunity.

(12) *Selection and ranking.* Proposals shall be evaluated using, but not limited to, the criteria stated in the request for proposals and there must be adherence to any weightings that have been previously assigned. Once evaluation is complete, all responsive offerors shall be ranked from most advantageous to least advantageous.

(13) *Notice of selection and ranking.* When it is determined by the committee that the ranking is final, written notification shall be sent to all firms interviewed.

(14) *Negotiations.* Whether price was an evaluation factor or not, the procuring department may in its sole discretion and not subject to challenge through a protest, proceed in any of the manners indicated below:

_____ (a) Negotiate price with the highest ranked offeror. If a satisfactory price cannot be agreed upon, price negotiations may be conducted, in the sole discretion of the procuring department, with the second, and then the third, and so on, ranked offerors to such level of ranking as determined by the procuring department in its sole discretion; or

_____ (b) Negotiate with the highest-ranking offeror on matters affecting the scope of the contract, so long as the overall nature and intent of the contract is not changed. If a satisfactory contract cannot be negotiated with the highest ranking offeror, negotiation may be conducted, in the sole discretion of the procuring department, with the second, and then the third, and so on, ranked offerors to such level of ranking as determined by the procuring agency in its sole discretion; or

_____ (c) During the negotiation process as outlined in subsections (a) and (b) above, if an agency is unsuccessful in its first round of negotiations, it may reopen negotiations with any offeror with whom it previously negotiated.

_____ (d) If, after following the procedures, a contract is not able to be negotiated, the scope of the request for proposals may be changed in an effort to reduce the cost to a fair and reasonable amount, and all responsive offerors must be allowed to submit their best and final offers.

In conducting negotiations, there must be no disclosure of any confidential information derived from proposals and negotiations submitted by competing offerors.

(15) *Award.* Award shall be made to the responsive offeror whose proposal is determined to be the most advantageous to Georgetown County, taking into consideration price and the other evaluation factors set forth in the request for proposals. No other factors or criteria may be used in evaluation and there must be adherence to any weighing specified for each factor in the request for proposals. If the county council or its designee should determine that none of the proposals are advantageous to Georgetown County, the county shall have the absolute right to reject any and all proposals. The contract file shall contain the basis on which the award is made and be sufficient.

(Ord. No. 2000-39, 4-24-01)

Sec. 2-52. Negotiations after unsuccessful competitive sealed bidding.

When the price of all proposals received pursuant to a request for proposals appears to be unreasonable, or the price of the lowest proposals exceeds available funds as determined by the county council or its designee, and time or other circumstances will not permit the delay required to resolicit for competitive sealed bidding, a contract may be negotiated provided that:

_____ (a) Each offeror whose original proposal was judged responsive and responsible is notified and given reasonable opportunity to negotiate.

_____ (b) The negotiated price must be lower than the price of the lowest rejected original proposal and within the

limits of available funds as determined by the county council or its designee.

- _____ (c) The scope, nature, and approach of the contract are consistent with the original request for proposals, proposed ratings and approach.

(Ord. No. 2000-39, 4-24-01)

Sec. 2-53. Small purchases.

Small purchase procedures may be utilized in conducting procurements that are less than five thousand dollars (\$5,000.00) in actual or potential value.

- _____ (a) \$0.00--\$500.00: Departments are authorized to make purchases without securing competitive quotations.
- _____ (b) \$500.01--\$1,000.00: Departments must obtain and submit three (3) verbal quotes, specifications and requisition to purchasing.
- _____ (c) \$1,000.01--\$5,000.00: Departments must secure three (3) written quotes, specifications and a requisition to purchasing.

(Ord. No. 2000-39, 4-24-01)

Sec. 2-54. Sole source procurement.

The purchasing officer may award a contract for a supply, service, or construction item without competition when the department head/director submits appropriate documentation and verification is performed. Such procurements involving federal grant funds must receive prior written approval from the grantor agency. Sole source purchases will be identified based on the following criteria:

- _____ (1) There is a lack of competition for a product or service.
- _____ (2) It is a unique, one-of-a-kind service offer.
- _____ (3) The product has patented or proprietary rights that provide superior capabilities that are not obtainable from similar products, and this product is not marketed through other wholesalers, jobbers, or distributors whose competition could be encouraged.
- _____ (4) Where the items are needed for trial use or testing.

(Ord. No. 2000-39, 4-24-01)

Sec. 2-55. Emergency procurement.

Notwithstanding any other provisions of this article, the purchasing officer may make or authorize, subject to the approval of the county administrator, others to make emergency procurements of supplies, services or construction items when there exists a threat to the functioning of Georgetown County government; such as, the preservation or protection of property, or the health, welfare or safety of any person provided that such emergency procurements shall be made with such competition as is practicable under the circumstances as soon as practicable. A written determination of the basis for the emergency and for the selection of the particular contractor shall be made and shall set forth the contractor's name, amount, and a listing of the item(s) procured under the contract.

(Ord. No. 2000-39, 4-24-01)

Sec. 2-56. Architect-engineer and land surveying services--Public announcement and selection process.

(1) *Public announcement.* It is the policy of the county to publicly announce all requirements for architect-engineer and land surveying services and to negotiate such contracts on the basis of demonstrated competence and qualification at fair and reasonable prices. In the procurement of architect-engineer and land surveying services, the purchasing officer shall request firms to submit a statement of qualifications and performance data.

(2) *Selection process.* The evaluating panel and purchasing officer shall conduct discussions with no less than three (3) firms regarding the contract and shall select from among them no less than three (3) of 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 department requesting the service.

(3) *Negotiation.* The using department along with the evaluation panel and purchasing officer shall negotiate a contract with the highest qualified firm for architect-engineer or land surveying services at a compensation that is considered to be fair and reasonable to the county. In making this decision, the using department and purchasing officer shall take into account the established value, the scope, the complexity, and the professional nature of the services to be rendered. Should the using department and purchasing officer be unable to negotiate a satisfactory contract with the firm considered to be most qualified, negotiations with that firm shall be formally terminated. The using department and the purchasing officer shall then undertake negotiations with the second most qualified firm. Failing accord with the second most qualified firm, the using department and purchasing officer shall then undertake negotiations with the third most qualified firm. Should the using department and the purchasing officer be unable to negotiate a contract with any of the selected firms, the purchasing officer and the county administrator shall select additional firms in order of their competence and qualifications, and continue negotiations in accordance with the section until an agreement is reached.

(Ord. No. 2000-39, 4-24-01)

Sec. 2-57. Participation in auctions.

The county shall (a) survey the needed items being offered at auction to ascertain their condition and usefulness, (b) determine a fair market value for new like items through informal quotes, (c) determine the fair market value from similar items considering age and useful life, and (d) estimated repair cost and delivery cost, if any, of the desired items. Using this information, the county shall determine the maximum price paid for each item desired. At the auction, the county shall not exceed the maximum price so determined.

(Ord. No. 2000-39, 4-24-01)

Sec. 2-58. Cancellation of invitation for bids or requests for proposals.

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 for good cause and in the best interest of Georgetown County. The reasons therefore shall be made part of the contract file. Each solicitation issued by Georgetown County shall state that the solicitation may be canceled and that any bid or proposal may be rejected in whole or in part for good cause when in the best interest of Georgetown County. Notice of cancellation shall be sent to all business solicited. The notice shall identify the solicitation, explain the reason for cancellation and, where appropriate, explain that an opportunity will be given to compete on any solicitation or any future procurement of similar items. Reasons for rejection shall be provided upon request by unsuccessful bidders or offerors.

(Ord. No. 2000-39, 4-24-01)

Sec. 2-59. Responsibility of bidders and offerors.

(1) *Determination of responsibility.* Responsibility of the bidder or offeror shall be ascertained for each contract let by the county based upon full disclosure to the procurement officer concerning capacity to meet the terms of the contracts and based upon past record of performance for similar contracts. The county administrator or county council shall by standard establish standards of responsibility that shall be enforced in all county contracts.

(2) *Determination of nonresponsibility.* A written determination of nonresponsibility of a bidder or offeror shall be made in accordance with standard operating procedures promulgated by the purchasing officer with approval of county administrator. The unreasonable failure of a bidder or offeror to supply information promptly in connection with an inquiry with respect to responsibility may be grounds for a determination of nonresponsibility with respect to such bidder or offeror.

(3) *Right of nondisclosure.* Except as otherwise provided by law, information furnished by a bidder or offeror pursuant to this section shall not be disclosed outside the office of the department soliciting the bid, or the office of the purchasing officer without prior written consent by the bidder or offeror.

(4) *County standards of responsibility.* Factors to be considered in determining whether the county standards of responsibility have been met include whether a prospective contractor has:

_____ (a) Available the appropriate financial, material, equipment, facility, and personnel resources and expertise, or the ability to obtain them, necessary to indicate its capability to meet all contractual requirements.

(b) A satisfactory record of performance.

_____ (c) A satisfactory record of integrity.

_____ (d) Qualified legally to contract with the county.

_____ (e) Supplied all necessary information in connection with the inquiry concerning responsibility.

(5) *Duty of contractor to supply information.* The prospective contract shall supply information requested by the purchasing officer concerning the responsibility of such contractor. If such contractor fails to supply the requested information, the purchasing officer shall base the determination of responsibility upon any available information or may find the prospective contractor nonresponsible if such failure is unreasonable.

(6) *Demonstration of responsibility.* The prospective contractor may demonstrate the availability of necessary financing, equipment, facilities, expertise, and personnel by submitting upon request:

_____ (a) Evidence that such contractor possesses such necessary items.

_____ (b) Acceptable plans to subcontract for such necessary items.

_____ (c) A documented commitment from, or explicit arrangement with, a satisfactory source to provide the necessary items.

(7) *Justification for contract award.* Before awarding a contract, the purchasing officer must assure that the vendor is responsive and responsible.

(8) *Written determination of nonresponsibility.* If a bidder or offeror who otherwise would have been awarded a contract is found nonresponsible, a written determination of nonresponsibility setting forth the basis of the finding shall be prepared by the purchasing officer. A copy of the determination shall be sent promptly to the nonresponsible bidder or offeror. The final determination shall be made part of the purchasing file and the minutes of the county council meeting at which the recommendation was made.

(9) *Prequalifications of suppliers.* Prospective contractors may be prequalified for bidders lists, but distribution of the solicitation shall not be limited to prequalified contractors. A prospective contractor may not be denied award of a contract simply because such contractor was not prequalified. The fact that a prospective contractor has not been prequalified does not necessarily represent a finding of nonresponsibility.

_____ (a) Bidders list. Bidders not responding to three (3) consecutive bid requests will be placed on an inactive status list. Bidders may reapply for reinstatement to the active bidders list. Bidders may return a bid marked "no bid" and will be considered as responsive. Bidders that have either been debarred or suspended cannot be placed on the bidders list until the debarment or suspension period has been fulfilled.

(10) *Bid bonds.* For all procurements expected to exceed twenty-five thousand dollars (\$25,000.00) deposits in the amount of at least five (5) percent of the proposed contract price shall be prescribed in the invitation to bid. These deposits may take the form of a cash, certified check, cashier's check, or bond. The bond must be executed by a corporate surety licensed under the laws of this state to execute such bonds. The cashier's check, or certified check may, at the county's option, be retained and deposited to the county's account if the successful bidder fails to enter into the proposed contract within ten (10) days after the award. Bid deposits of unsuccessful bidders will be returned as soon as the contract is awarded. Bid bonds will not be required from firms that have been in business for five (5) consecutive years without filing for bankruptcy. A certificate from the firm stating this qualification will replace the bid bond. Firms not meeting these criteria must furnish a bid bond.

(11) *Performance bonds.* The procurement officer may require a performance bond in the amount of one hundred (100) percent of the contract price in any case where the contract price exceeds twenty-five thousand dollars (\$25,000.00). This provision enables the procurement officer to assure that the contractor provides suitable evidence of their financial condition and their ability to complete the work without financial difficulty. In place of a bond, cash or certified check in the amount of the contract may be deposited. Such deposit will be filed with the executed contract documents and made a part of thereof, all within thirty (30) days from date of awarding contract. Failure of the contractor to satisfactorily fulfill his obligations shall be cause for the forfeiture of his guaranty. In such instance, the purchasing officer shall document the circumstances and file such document with the related contract documents. This provision shall not apply to procurements involving only completion of reports, studies, plans, etc.

(Ord. No. 2000-39, 4-24-01)

Sec. 2-60. Types of contracts.

Subject to the limitations of this section, any type of contract which is appropriate to the procurement and which will promote the best interest of Georgetown 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 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 supply, service, or construction item required except under such a contract.

All contract bid forms and all contracts will be approved by the county attorney as to form and legality. Following such approval, the county administrator shall sign all contracts on behalf of the county up to twenty thousand dollars (\$20,000.00) and county council in excess of twenty thousand dollars (\$20,000.00). A copy of each signed contract shall be filed with the purchasing officer and the finance director shall be notified of the terms of each contract.

(Ord. No. 2000-39, 4-24-01)

Sec. 2-61. Multi-term contracts.

(1) *Specified period.* A contract for supplies or services may be entered into for a period of time not to exceed three (3) 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 for succeeding fiscal periods shall be subject to the availability and appropriation of funds therefor. Provided, however, that the county administrator concurs with the purchasing officer's negotiation with the proposed supplier.

(2) *Determination prior to use.* Prior to the utilization of a multi-term contract, it shall be determined in writing by the department director and approved by the county administrator that:

_____ (a) Estimated requirements cover the period of the contract and are reasonably firm and continuing.

_____ (b) Such a contract will serve the best interest of the county by encouraging effective competition or otherwise promoting economies 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 cancelled.

(Ord. No. 2000-39, 4-24-01)

Sec. 2-62. Inspection of plant and audit of records.

(1) *Right to inspect plant.* Georgetown County may, at reasonable times, inspect the part of the plant or place of business of a contractor or any subcontractor that is related to the performance of any contract awarded or to be awarded by Georgetown County.

(2) *Right to audit records.* Georgetown County may, at reasonable times and places, audit the books and records of any person who has submitted 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 otherwise authorized in writing.

(Ord. No. 2000-39, 4-24-01)

Sec. 2-63. Reports and records.

(1) *Reporting of anticompetitive prices.* When, for any reason, collusion or other anticompetitive prices are suspected among any bidder or offeror, a notice of relevant facts shall be sent to the county attorney.

(2) *Procurement records.* All determinations and other written records pertaining to the solicitation, award or performance of a contract shall be maintained in a contract file in accordance with procurement regulations.

(3) *Retention of purchasing records.* All purchasing records shall be retained and disposed of in accordance with record retention guidelines and schedules approved by the department of archives and history. If a contract is being funded in whole or in part by assistance from a federal agency, then all purchasing records pertaining to that contract shall be maintained for the specified period.

(4) *Records of procurement actions.* Purchasing shall submit quarterly a record listing all contracts to the director of finance. The record shall contain:

- _____ (a) The contractor's name;
- _____ (b) The amount and type of each contract;
- _____ (c) A listing of supplies, services or construction procured under each contract.

The procurement officer shall maintain these records for five (5) years.

(5) *Publication of records.* A copy of the record shall be submitted to the board on an annual basis and shall be available for public inspection.

(Ord. No. 2000-39, 4-24-01)

Sec. 2-64. Regulations for sale, lease, transfer and disposal.

Subject to existing provisions of law, the county shall promulgate regulations governing:

- _____ (1) The sale, lease, or disposal of surplus supplies by public auction, competitive sealed bidding, or other appropriate methods designated by such regulations.
- _____ (2) The transfer of excess supplies between agencies and departments.
- _____ (3) Allocations of proceeds for sale or disposal of surplus supplies.
- _____ (4) The sale of all county-owned supplies, or personal property not in actual public use shall be conducted and directed by the purchasing department. Such sales shall be held at such places and in such manner as in the judgment of the purchasing officer shall be most advantageous to the county. Unless otherwise determined, sales shall be by either public auction or competitive sealed bid to the highest bidder. Each department shall inventory and report to the purchasing department all surplus personal property not in actual public use held by that department for sale. The purchasing officer shall deposit the proceeds from such sales, less expense of the sales, in the fund where the item originated or as otherwise directed.
- _____ (5) Trade-in sales.
 - _____ (a) *Trade-in value.* Unless otherwise provided by law, governmental bodies may trade-in personal property, the trade-in value of which may be applied to the procurement or lease of like items. The trade-in value of such personal property shall not exceed an amount as specified in regulations promulgated by the board.
 - _____ (b) *Approval of trade-in sales.* When the trade-in value of personal property of a governmental body exceeds the specified amount, the county administrator shall have the authority to determine whether:
 - _____ 1. The subject personal property shall be traded in and the value applied to the purchase of new like items; or
 - _____ 2. The property shall be classified as surplus and sold in accordance with the provisions of section 2-66 (Disposal of county owned surplus and obsolete property).

(Ord. No. 2000-39, 4-24-01)

Sec. 2-65. Disposal of county real estate or real property.

It shall be the policy of the county to offer for sale, at fair market value, all surplus real property owned by the county. Surplus real property shall be sold exclusively to adjacent property owners only when, as determined by the appraiser's report, such property is usable only by the adjacent property owner(s). When property is sold, adequate legal provisions shall be made so that no owner will be denied access to his or her property as a result of the sale.

- _____ (1) *Appraisal of property.* All surplus real properties must be appraised to determine fair market value.
- _____ (2) *Management review and recommendation.* When it is determined that real property is no longer needed for current or future use by a department, it shall be considered surplus. Following review, the county administrator will request authorization from county council to sell that county owned real properties that have been deemed to be surplus.
- _____ (3) *County council authorization.* County council must authorize the sale of any surplus real property.

_____ Authorization shall be made in county council meetings by ordinance on the specific property to be offered for sale.

_____ (4) *Sale of real property.* After county council authorization, surplus property will be sold according to the following procedures:

_____ (a) *Properties valued at ten thousand dollars (\$10,000.00) or less.* The county administrator shall make arrangements for the sale of surplus properties valued at ten thousand dollars (\$10,000.00) or less through negotiation at not less than the minimum selling price or if less than fair market value upon approval of county council. If negotiations are not complete within one (1) year from the date of county council authorization, a new appraisal must be made.

_____ (b) *Properties valued at more than ten thousand dollars (\$10,000.00).* The purchasing officer will advertise surplus properties valued at more than ten thousand dollars (\$10,000.00) at least twice in local newspapers with the advertisement containing the minimum selling price and a request for offers-to-buy on a given date, no less than thirty (30) days nor more than seventy-five (75) days after the first publication. Offers-to-buy will be submitted to the purchasing officer to be opened on the specified date and time.

_____ (5) *Acceptance or rejection of offers-to-buy.* On all sealed offers-to-buy (bids) only the highest net offer after deducting any broker's commission will be considered. The county council will have thirty (30) days to accept or reject an offer-to-buy. County council may, by motion, extend the time for considering the offer to sixty (60) days. If the offer is accepted, council shall adopt an ordinance indicating acceptance.

_____ (6) *When no reasonable offers-to-buy received.* In the event that no reasonable offers-to-buy are received, the selling price of such property will be negotiable. The county administrator shall represent the county in any subsequent negotiation.

_____ (7) *Exceptions.*

_____ (a) Community development properties will be sold in accordance with all applicable federal government regulations.

_____ (b) Notwithstanding the above rules and regulations, and except for community development property, the county council may dispose of real property by other legal methods.

(Ord. No. 2000-39, 4-24-01)

Sec. 2-66. Disposal of county owned surplus property.

(1) County owned property would be disposed of through public auction or through taking publicly advertised sealed bids with approval of county council where feasible.

(2) All departments shall submit in written form a listing of all supplies, materials and equipment that are no longer used or have become obsolete, worn out or scrapped. The purchasing officer has the authority to transfer items that are usable to another department. A transfer form should be submitted to purchasing.

(3) The purchasing officer is the only person authorized to sell supplies, materials and equipment that cannot be used by any other department. Sale may be offered through competitive sealed bids or public auction and sold to the highest bidder.

(4) Auctions are held on an annual basis or whenever the purchasing officer deems it will be in the best interest of the county.

(5) Proceeds from sale of surplus property will be deposited into the appropriate fund (not department) less expense of the sale.

(Ord. No. 2000-39, 4-24-01)

Sec. 2-67. Administrative resolution of controversies.

(1) *Right to protest; exclusive remedy.* Any prospective bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the solicitation of a contract shall protest to the purchasing officer within seven (7) days of the date of issuance of the invitation for bids or request for proposals or other solicitation documents, whichever is applicable, or any amendment thereto, if the amendment is at issue.

Any actual bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the intended award or award of a contract shall protest to the appropriate purchasing officer within seven (7) days of the date notification of award is posted in accordance with this code.

The rights and remedies granted in this article to a disappointed bidder, offeror, contractor, or subcontractor is to the exclusion of all other rights and remedies of such disappointed bidder, offeror, contractor, or subcontractor against the County of Georgetown at common law or otherwise for the loss or potential loss of an award of a contract under the Georgetown County procurement policy.

(2) *Protest procedure.* A protest shall be in writing, submitted to the purchasing officer and shall set forth the grounds of the protest and the relief requested with enough particularity to give notice of the issues to be decided with the approval of the county administrator.

(3) *Duty and authority to attempt to settle protests.* Prior to commencement of an administrative review the purchasing officer, or designees thereof shall attempt to settle by mutual agreement a protest of an aggrieved bidder, offeror, contractor, or subcontractor, actual or prospective, concerning the solicitation or award of the contract. The purchasing officer or designees thereof shall have the authority to approve any settlement reached by mutual agreement with approval of the county administrator.

(4) *Administrative review and decision.* If in the opinion of the purchasing officer, after reasonable attempt, a protest cannot be settled by mutual agreement, the purchasing officer shall promptly conduct an administrative review and shall issue a decision in writing within ten (10) days of completion of the review. The decision shall state the reason for the action taken.

(5) *Notice of decision.* A copy of the decision along with a statement of appeal rights under shall be mailed or otherwise furnished immediately to the protestant and any other party intervening. The purchasing officer shall also post a copy of the decision at a date and place communicated to all parties participating in the administrative review, and such posted decision shall indicate the date of posting and shall be accompanied by a statement of the right to appeal.

(6) *Finality of decision.* A decision shall be final and conclusive, unless fraudulent, or unless any person adversely affected by the decision requests a further administrative review by the procurement review panel within ten (10) days of posting of the decision. The request for review shall be directed to the county administrator, who shall forward the request to the procurement review panel and shall be in writing, setting forth the reasons why the person disagrees with the decision of the procurement officer. The person may also request a hearing before the procurement review panel that shall be established at the time of request by the county administrator.

(7) *Stay of procurement during protests.* In the event of a timely protest under paragraph (1) above, the county shall not proceed further with the solicitation or award of the contract until a decision is rendered by the procurement officer or, in the event of a timely appeal to the procurement review panel, until a decision is rendered by the panel; provided, however, that solicitation or award of a protested contract will not be stayed if the procurement officer, after consultation with the head of the using department, makes a written determination that the solicitation or award of the contract without delay is necessary to protect the best interest of the county.

(Ord. No. 2000-39, 4-24-01)

Sec. 2-68. Authority to debar or suspend.

(1) *Authority.* After reasonable notice to the person involved and reasonable opportunity for that person to be heard, the purchasing officer, after consultation with the county administrator, shall have authority to debar a person for cause from consideration for award of contract for a period of not more than five (5) years.

(2) *Causes for debarment or suspension.* The causes for debarment or suspension are as follows:

_____ (a) Conviction for commission of a criminal offense as incident to obtaining or attempting to obtain a public or private 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 honesty.

_____ (c) Conviction under state or federal antitrust statutes.

_____ (d) Violation of contract provisions, set forth below, of a character which is regarded by purchasing officer to be so serious as to justify debarment action:

_____ 1. Deliberate failure without good cause to perform in accordance with the specification or time limit

provided in the contract; or

_____2. A recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one (1) or more contracts.

_____ (e) Any other cause the purchasing officer determines to be so serious and compelling as to affect responsibility of a contractor, including debarment by another governmental entity for cause.

(3) *Decision.* The purchasing officer shall issue a written decision to debar or suspend within fourteen (14) days of the completion of this administrative review of the matter. The decision shall state the reason for the action taken. A copy of this decision shall be mailed or otherwise furnished immediately to the debarred or suspended person.

(4) *Finality of decision.* The decision under paragraph (3) of this section shall be final and conclusive, unless fraudulent, or the contractor appeals administratively within fourteen (14) days to the county administrator.

(Ord. No. 2000-39, 4-24-01)

Sec. 2-69. Authority to resolve contracts and breach of contract controversies.

(1) *Applicability.* This section applies to controversies between Georgetown County and a contractor, which arise under or by virtue of, a contract between them. This includes, without limitation, controversies based on breach of contract, mistakes, misrepresentation or other cause for contract modification or rescission.

(2) *Authority.* The purchasing officer is authorized, prior to the commencement of an action in a court concerning the controversy, to settle and resolve a controversy described in paragraph (1) of this section.

(3) *Failure to render a timely decision.* If the purchasing officer does not issue the written decision under 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 contractor, the contractor may proceed as if an adverse decision had been received.

(Ord. No. 2000-39, 4-24-01)

Sec. 2-70. Remedies prior to an award.

If prior to award of a contract, it is determined that the solicitation or award is in violation of law, then the solicitation or proposed award may be:

_____ (a) Canceled;

_____ (b) Revised to comply with the law and rebid; or

_____ (c) Award in a manner that complies with the provisions of this code.

(Ord. No. 2000-39, 4-24-01)

Sec. 2-71. Remedies after an award.

(1) 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 by doing so is in the best interest of Georgetown County.

_____2. The contract may be terminated and the person awarded the contract may be compensated for actual expenses reasonably incurred under the contract prior to termination.

(2) If the person awarded the contract has acted fraudulently or in bad faith, the contract may be declared null and void.

(3) The contract may be ratified; if such action is in the best interest of Georgetown County without prejudice to the county's right to such damages as may be appropriate.

(Ord. No. 2000-39, 4-24-01)

Sec. 2-72. Frivolous protests.

(1) *Signature on protest constitutes certificate.* The signature of an attorney or party on a request for review, protest, motion, or other document constitutes a certificate by the signer that the signer has read such document, that to the best of the signer's knowledge, information, and belief formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law or a good faith argument for the extension modification, or reversal of existing by law, and that it is not interposed for any proper purpose, such as to harass, limit competition, or to cause unnecessary delay or needless increase in the cost of the procurement of the litigation.

(2) *Sanctions for violations.* If a request for review, protest, pleading, motion, or other document is signed in violation of this subsection on or after appeal to the procurement review panel, the procurement review panel, upon motion or upon its own initiative, may impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the protest, pleading, motion, or other paper, including a reasonable attorney's fee.

(Ord. No. 2000-39, 4-24-01)

Sec. 2-73. Appeal to the procurement review panel; jurisdiction.

The review panel shall elect a chairperson from the members at large and shall meet as often as necessary to afford a swift resolution of the controversies submitted to it.

Request for review of other written determinations, decisions, policies, and procedures as arise from or concern the procurement of supplies services or construction procured in accordance with the provisions of this policy and the ensuing regulations; provided that any matter which could have been brought before the procurement officer in a timely and appropriate manner, but was not shall not be the subject of review. Request for review under this paragraph shall be submitted to the county administrator in writing, setting forth the grounds, within ten (10) days of the date of such written determinations, decisions, policies, and procedures.

Unless an action has been initiated in the courts for essentially the same cause of action, the procurement review panel shall have authority to review and determine:

- _____ (1) Any protest of a solicitation or award of a contract addressed to the county administrator by an actual or prospective bidder or offeror or a contractor.
- _____ (2) Any appeal by an aggrieved party from a determination by the purchasing officer authorized in section 2-67.
- _____ (3) Direct appeal of any award made under section 2-47.

(Ord. No. 2000-39, 4-24-01)

Sec. 2-74. Rules of procedure.

(1) *Time limit for filing an appeal.* For an appeal under section 2-67 the aggrieved person shall file an appeal with the purchasing officer within seven (7) days of receipt of a decision. For an appeal under section 2-68 the aggrieved person shall file an appeal with county administrator within fourteen (14) days of the receipt of decision.

(2) *Decision.* Upon receipt of an appeal from an aggrieved party, the procurement review panel shall conduct an administrative review of the appeal and within twenty (20) days shall affirm, alter or deny the decision rendered by the purchasing officer.

(3) *Appeal of procurement review panel's decision.* Any person receiving an adverse decision may appeal to county council.

(Ord. No. 2000-39, 4-24-01)

Sec. 2-75. Intergovernmental relations.

(1) *Cooperative purchasing authorized.* Any public procurement unit may participate in, sponsor, conduct, or administer a cooperative purchasing agreement for the procurement of any supplies, services, or construction with one (1) or more public procurement units or external procurement activities 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 and open-ended state public procurement unit contracts which shall be made available to local public procurement units, or except as may otherwise be limited by the board through regulations. However, thirty (30) days

notice of a proposed multi-county solicitation shall be provided through advertising and such contracts may be only awarded to manufactures that will be distributing the products to South Carolina governmental bodies through South Carolina vendors.

(2) *Acquisition or use of supplies by a public procurement unit.* Any public procurement unit may sell to, acquire from, or use any supplies belonging to another public procurement unit or external procurement activity, provided, that such procurement shall take place only when the procuring entities have good reason to expect the intergovernmental procurement to be more cost effective than doing their own procurement.

(3) *Agreements between public procurement units.* Any public procurement unit may enter into an agreement with any other public procurement unit or external procurement activity for the cooperative use of supplies or services under the terms agreed upon between the parties; provided, that such cooperative use of supplies or services shall take place only when the public procurement units have good reason to expect the cooperative use to be more cost effective than utilizing their own supplies and services.

(4) *Joint use of facilities.* Any department of the county may enter into agreements for the common use or lease of warehousing facilities, capital equipment, and other facilities with another department under the terms agreed upon between the parties.

(Ord. No. 2000-39, 4-24-01)

Sec. 2-76. Use of state contracts.

The purchasing officer may independent of the requirement of sections 2-48, 2-51, 2-53 through 2-55 and 2-77 of this manual, procure items, to include but not limited to supplies, equipment or services through the contracts established by the purchasing division of the State of South Carolina as provided in Chapter 35 of Title 11 (State Consolidated Procurement Code), South Carolina Code of Laws, 1976.

(Ord. No. 2000-39, 4-24-01)

Sec. 2-77. Ethics in public contracting.

(1) *Criminal penalties.* To the extent that violations of the ethical standards of conduct set forth in this article constitute violations of the South Carolina State Criminal Code, they shall be punishable as provided therein. Such penalties shall be in addition to the civil sanctions set forth in this part. Criminal, civil, and administrative sanctions against employees or non-employees, which are in existence on the effective date of this article, shall not be impaired.

(2) *Employee conflict of interest.* Except as provided for in "Purchasing Policies", Paragraph 11, Page 3 of the county purchasing manual, it shall be unethical for any county employee to participate directly or indirectly in a procurement contract when the county employee knows that:

_____ (a) The county employee or any member of the county employee's immediate family has a financial interest pertaining to the procurement contract.

_____ (b) Any other person, business, or organization with which the county employee or any member of a county employee's immediate family is negotiating or has an arrangement concerning prospective employment is involved in the procurement contract.

_____ (c) A county employee or any member of a county employee's immediate family who holds a financial interest in a disclosed blind trust shall not be deemed to have a conflict of interest with regard to matters pertaining to that financial interest.

(Ord. No. 2000-39, 4-24-01)

Sec. 2-78. Gratuities and kickbacks.

(1) *Gratuities.* It shall be unethical for any person of offer, give, or agree to give, any county employee or former county employee, or for any county employee or former county employee to solicit demand, accept, or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, or preparation of any part of a program equipment or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter, pertaining to any program requirement or a contract or subcontract, or to any solicitation or proposal therefor.

(2) *Kickbacks.* It shall be unethical for any payment, gratuity or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or any person associated therewith as an inducement of the award of a subcontractor order.

(3) *Prohibition against contingent fees.* It shall be unethical for a person to be retained, or to retain a person, to solicit or secure a county contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies for the purpose of securing business.

(4) *Contemporaneous employment prohibited.* It shall be unethical for any county employee who is participating directly or indirectly in the procurement process to become the employee of any person contracting with the governmental body by which the employee is employed.

(5) *Waivers from contemporaneous employment prohibition and other conflicts of interest.* The county administrator may grant a waiver from the employee conflict of interest provision upon making a written determination that:

_____ (a) The contemporaneous employment or financial interest of the county employee has been disclosed.

_____ (b) The county employee will be able to perform its procurement functions without actual or apparent bias or favoritism.

_____ (c) The award will be in the best interest of the county.

(6) *Use of confidential information.* It shall be unethical for any employee or former employee knowingly to use confidential information for actual or anticipated personal gain, or for the actual or anticipated personal gain of any other person.

(7) *Sanctions.*

_____ (a) *Employees.* The county administrator may impose any one (1) or more of the following sanctions on a county employee for violations of the ethical standards in this section:

_____ 1. Oral or written warnings or reprimands;

_____ 2. Suspension with or without pay for specified periods of time; or

_____ 3. Termination of employment.

_____ (b) *Non-employees.* The purchasing officer, subject to approval of the county administrator may impose any one (1) or more of the following sanctions on a non-employee for violations of the ethical standards:

_____ 1. Written warnings or reprimands.

_____ 2. Termination of contract.

_____ 3. Debarment or suspension as provided in section 2-68 (Authority to debar or suspend).

(Ord. No. 2000-39, 4-24-01)

Sec. 2-79. Assistance to disadvantaged business and minorities.

(1) *Disadvantaged business defined.* A "disadvantaged business" is a small business that is owned or controlled by a majority of people, not limited to members of minority group, who have been deprived of the opportunity to develop and maintain a competitive position in the economy because of social disadvantages.

(2) *Solicitation of disadvantaged businesses.* The purchasing officer 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.

(3) *Minority business assistance.* The purchasing officer shall conduct the affairs of the purchasing office consistent with the State of South Carolina Code of Laws as promulgated in Chapter 35 of the South Carolina consolidated Procurement Code, Article 21 (Assistance to Minority Businesses) of Title 11, Section 11-35-5010, Section 11-35-5210, Section 11-35-5220, Section 11-35-5230, Section 11-35-5250 and Section 11-35-5270.

(Ord. No. 2000-39, 4-24-01)