

APPENDIX E PROCUREMENT CODE

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ARTICLE I. GENERAL PROVISIONS

PART A. PURPOSES, CONSTRUCTION, AND APPLICATION

§ 1-101. Purposes, Rules of Construction.

- (1) *Interpretation.* This Code shall be construed and applied to promote its underlying purposes and policies.
- (2) *Purposes and Policies.* The underlying purposes and policies of this Code are:
 - (a) To simplify, clarify, and modernize the law governing procurement by this County;

- _____ (b) To permit the continued development of procurement policies and practices;
- _____ (c) To make as consistent as possible the procurement laws among the various jurisdictions;
- _____ (d) To provide for increased public confidence in the procedures followed in public procurement;
- _____ (e) To ensure the fair and equitable treatment of all persons who deal with the procurement system of this County;
- _____ (f) To provide increased economy in County procurement activities and to maximize to the fullest extent practicable the purchasing value of public funds of the County;
- _____ (g) To foster effective broad-based competition within the free enterprise system;
- _____ (h) To provide safeguards for the maintenance of a procurement system of quality and integrity; and
- _____ (i) To obtain in a cost-effective and responsive manner the materials, services, and construction required by County agencies in order for those agencies to better serve this County's business and residents.

(3) *Singular-Plural and Gender Rules.* In this Code, unless the context requires otherwise:

- _____ (a) Words in the singular number include the plural, and those in the plural include the singular; and
- _____ (b) Words of a particular gender include any gender and the neuter, and when the sense so indicates, words of the neuter gender may refer to any gender.

(Ord. No. 13-00, § 1, 4-4-00)

§ 1-102. Supplementary General Principles of Law Applicable.

Unless displaced by the particular provisions of this Code, the principles of law and equity, including the Uniform Commercial Code of this State, the law merchant, and law relative to capacity to contract, agency, fraud, misrepresentation, duress, coercion, mistake, or bankruptcy shall supplement the provisions of this Code.

(Ord. No. 13-00, § 1, 4-4-00)

§ 1-103. Requirement of Good Faith.

This Code requires all parties involved in the negotiation, performance, or administration of County contracts to act in good faith.

(Ord. No. 13-00, § 1, 4-4-00)

§ 1-104. Application of this Code.

(1) *General Application.* This Code applies only to contracts solicited or entered into after the effective date of this Code unless the parties agree to its application to a contract solicited or entered into prior to the effective date.

(2) *Application to County Procurement.* This Code shall apply to every expenditure of public funds irrespective of their source, including federal assistance monies except as otherwise specified in Section 11-301 (Compliance with Federal Requirements), by this County under any contract, except that this Code shall not apply to either grants, or contracts between the County and other governments, except as provided in Article 10 (Intergovernmental Relations). It shall also apply to the disposal of County supplies. Nothing in this Code or in regulations promulgated hereunder shall prevent any County agency, department, board or commission from complying with the terms and conditions of any grant, gift, bequest, or cooperative agreement.

[(3) Reserved.]

(4) *Exception for Certain Funding.* Where another governmental agency provides funds to a private sector beneficiary through the County, and procurement of goods or services becomes necessary to achieve the stated ends of such funding, then, subject to the agreement of the funding agency, the private sector beneficiary may either follow the requirements of this Code, or may elect the following steps, if the beneficiary certifies, prior to the procurement, that the beneficiary will comply with any operative procurement regulations of the funding agency:

- _____ (a) For the procurement of professional services which includes, but is not limited to, architectural, engineering, surveying, financial, and legal services, the Beneficiary shall:
- _____ (i) From time to time, establish a list of Pre-Qualified Professional Service Providers, segregated by the nature of the professional service provided. The establishment of such lists shall be accomplished by implementing the following procedures, at a minimum:
- _____ (A) Solicitation of statements of qualifications, including performance data and references, from local and regional professional service providers licensed in the disciplines required;
- _____ (B) Evaluation of the submitted statements of qualifications, performance data, and references; and
- _____ (C) Notification of each professional service provider of their placement on the list of Pre-Qualified Professional Service Providers or the reasons for their exclusion.
- _____ (ii) Prior to the selection of a professional service provider, the Beneficiary shall, at a minimum, take the following steps:
- _____ (A) Upon review of all current statements of qualifications related to the required services, select a minimum of three (3) (if available) professional service providers;
- _____ (B) Contact the selected professional service providers to determine availability and interest, and to obtain any updated information on the provider; and
- _____ (C) Request specific proposals for professional services from the selected professional service provider.
- _____ (ii) Beneficiary shall then negotiate a contract for professional services with the most qualified professional service provider at a fair and reasonable compensation. In making this decision, the Beneficiary shall take into account criteria, including but not limited to, the estimated value, the scope and nature of the contract, prior services rendered, the complexity of the project, the professional nature of the services to be rendered, and such other criteria as the Beneficiary deems necessary to negotiate and enter into a contract.
- _____ (b) Contracts for services other than professional services shall be pursued in a manner intended to implement the principles of sound public procurement, including at a minimum the following requirements:
- _____ (i) Provision of a bid proposal package to at least three (3) (if available) selected qualified contractors to ensure competitive procurement, with the inclusion of language informing prospective bidders that the private sector beneficiary reserves the right to reject any and all bids and to re-solicit the procurement;
- _____ (ii) Submission of sealed bids by offering vendors before a specific time and place to the appropriate officer or representative of the private sector beneficiary;
- _____ (iii) Opening and recording of bids, at designated time and place, by private sector beneficiary's purchasing agent and the engineer of record, if applicable, and the preparation of a spreadsheet comparison of all bids for the purpose of fair and accurate evaluation of all bids;
- _____ (iv) Provision for negotiation with two (2) or more lowest bidders on construction projects for the purpose of value engineering, in order to assure best value, and the tabulation of final bids and subsequent award to the lowest qualified bidder;
- _____ (v) Notice of award to selected contractor; and
- _____ (vi) Retention of all records relating to the procurement project and maintenance of all such records so as to ensure their availability for inspection by the appropriate government official.

(Ord. No. 13-00, § 1, 4-4-00)

§ 1-105. Severability.

If any provision of this Code or any application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or application of this Code which can be given effect without the invalid provision or application, and to this end the provisions of this Code are declared to be severable.

(Ord. No. 13-00, § 1, 4-4-00)

§ 1-106. Specific Repealer.

The following ordinances and all other ordinances and parts of ordinances inconsistent herewith are hereby repealed: Ordinance Number 11-88 and all ordinances effecting amendments thereto.

(Ord. No. 13-00, § 1, 4-4-00)

§ 1-107. Construction Against Implicit Repealer.

Since this Code is a general act, no part of it shall be deemed to be impliedly repealed by subsequent legislation if such construction of the subsequent legislation can be reasonably avoided.

(Ord. No. 13-00, § 1, 4-4-00)

§ 1-108. Effective Date.

This Code shall become effective at 12:01 a.m. on April 4, 2000.

(Ord. No. 13-00, § 1, 4-4-00)

PART B. DETERMINATIONS

§ 1-201. Determinations.

Written determinations required by this Code shall be retained in the appropriate official contract file of the Director of Procurement or the Using Agency.

(Ord. No. 13-00, § 1, 4-4-00)

PART C. DEFINITIONS OF TERMS USED IN THIS CODE

§ 1-301. Definitions.

The words defined in this section shall have the meanings set forth below whenever they appear in this Code, unless: (a) the context in which they are used clearly requires a different meaning; or (b) a different definition is prescribed for a particular article or provision.

_____ (1) *Business* means any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or any other private legal entity.

_____ (2) *Change Order* means a written order signed by the Director of Procurement, directing the contractor to make changes which the Changes clause of the contract authorizes the Director of Procurement to order without the consent of the contractor.

_____ (3) *Director of Procurement* means the person holding the position created in Section 2-201 (Creation of the Office of the Director of Procurement), as the head of the central procurement office of the County.

_____ (4) *Construction* means the process of building, altering, repairing, improving, or demolishing any public structure, public building, public infrastructure facility, or other public improvements of any kind to real property. It does not include the routine operation, routine repair, or routine maintenance of existing structures, buildings, or real property.

_____ (5) *Contract* means all types of County agreements, regardless of what they may be called, for the procurement or disposal of supplies, services, or construction.

_____ (6) *Contract Modification* means 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.

- _____ (7) *Contractor* means any person having a contract with a governmental body.
- _____ (8) *Data* means recorded information, regardless of form or characteristic.
- _____ (9) *Designee* means a duly authorized representative of a person holding a superior position.
- _____ (10) *Electronic* means electrical, digital, magnetic, optical, electromagnetic, or any other similar technology.
- _____ (11) *Employee* means an individual drawing a salary from a governmental body, whether elected or not, and any noncompensated individual performing personal services for any governmental body.
- _____ (12) *Governmental Body* means any department, commission, council, board, bureau, committee, institution, legislative body, agency, government corporation, or other establishment or official of the executive, legislative, or judicial branch of the State of South Carolina, including political subdivisions thereof.
- _____ (13) *Grant* means the furnishing by the County 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.
- _____ (14) *May* denotes the permissive.
- _____ (15) *Person* means any business, individual, union, committee, club, other organization, or group of individuals.
- _____ (16) *Procurement* means 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.
- _____ (17) *Public Notice* means the distribution or dissemination of information using methods that are reasonably available to interested parties. Such methods will often include publication in newspapers of general circulation, electronic or paper mailing lists, and web site(s) designated by the County and maintained for that purpose.
- _____ (18) *Regulation* means a governmental body's 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 applicable law.
- _____ (19) *Services* means 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.
- _____ (20) *Shall* denotes the imperative.
- _____ (21) *Signature* means a manual or electronic identifier, or the electronic result of an authentication technique attached to or logically associated with a record that is intended by the person using it to have the same force and effect as a manual signature.
- _____ (22) *Supplies* means all property, including but not limited to equipment, materials, printing, insurance, and leases of real property, excluding land or a permanent interest in land.
- _____ (23) *Using Agency* means any department, commission, board, or agency of the County or of the State of South Carolina that utilizes any supplies, services, or construction procured under this Code.
- _____ (24) *Written or In Writing* means the product of any method of forming characters on paper, other materials, or viewable screen, which can be read, retrieved, and reproduced, including information that is electronically transmitted and stored.

(Ord. No. 13-00, § 1, 4-4-00)

PART D. PUBLIC ACCESS

§ 1-401. Public Access to Procurement Information.

Procurement information shall be a public record to the extent provided in the South Carolina Freedom of Information Act and shall be available to the public as provided in such statute.

(Ord. No. 13-00, § 1, 4-4-00)

§ 1-501. Authorization for the Use of Electronic Transmissions.

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

(Ord. No. 13-00, § 1, 4-4-00)

ARTICLE II. PROCUREMENT ORGANIZATION

PART A. DIRECTOR OF PROCUREMENT

§ 2-101. Creation of the Office of the Director of Procurement.

There is hereby created an Office of the Director of Procurement, headed by the Director of Procurement.

(Ord. No. 13-00, § 1, 4-4-00)

§ 2-102. Appointment.

The County Administrator shall appoint the Director of Procurement.

(Ord. No. 13-00, § 1, 4-4-00)

§ 2-103. Tenure, Removal, and Compensation.

(1) *Tenure and Removal.* The Director of Procurement shall be a full-time public employee of the County appointed by the County Administrator and subject to the County's Personnel Policy.

(2) *Compensation.* The Director of Procurement shall be compensated as determined by the County Administrator.

(Ord. No. 13-00, § 1, 4-4-00)

§ 2-104. Authority of the Director of Procurement.

(1) *Principal Contracting Officer of the County.* The Director of Procurement shall serve as the central procurement officer of the County.

(2) *Power to Adopt Operation Procedures.* Consistent with the provisions of this Code, the Director of Procurement may adopt operational procedures governing the internal functions of the Office of the Director of Procurement.

(3) *Duties.* Except as otherwise specifically provided in this Code, the Director of Procurement shall, in accordance with regulations:

- _____ (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 of supplies belonging to the County;
- _____ (c) Sell, trade, or otherwise dispose of surplus supplies belonging to the County; and
- _____ (d) Establish and maintain programs for the inspection, testing, and acceptance of supplies, services, and construction.

(4) *Regulations.* The Director of Procurement is authorized to adopt regulations implementing the policies and

provisions of this Code. Any such regulations must be approved by the County Administrator to become effective and may not alter existing contractual relationships unless evidenced by a written modification to that contract signed by both parties thereto.

(Ord. No. 13-00, § 1, 4-4-00)

§ 2-105. Delegation of Authority by the Director of Procurement.

Subject to the regulations, the Director of Procurement may delegate authority to designees or to any department, agency, or official. Any such delegation of authority must be in writing and signed by the individual to whom authority is delegated.

(Ord. No. 13-00, § 1, 4-4-00)

PART B. POLICY DETERMINATIONS

§ 2-201. Authority and Duties of the Director of Procurement.

Except as otherwise provided in this Code, the Director of Procurement shall have the authority and responsibility to promulgate regulations, consistent with this Code, governing the procurement, management, control, and disposal of any and all supplies, services, and construction to be procured by the County. The Director of Procurement shall promulgate the regulations according to Part D of this article to support and implement the policy established by this Code and any future acts of County Council. The Director of Procurement shall have the power to audit and monitor the implementation of his or her regulations and the requirements of this Code.

(Ord. No. 13-00, § 1, 4-4-00)

PART C. ORGANIZATION OF PUBLIC PROCUREMENT

§ 2-301. Centralization of Procurement Authority.

Except as otherwise provided in this part, all rights, powers, duties, and authority relating to the procurement of supplies, services, and construction, and the management, control, warehousing, sale, and disposal of supplies, services, and construction now vested in, or exercised by, any County governmental body under the several statutes or ordinances relating thereto are hereby transferred to the Director of Procurement, as provided in this Code.

(Ord. No. 13-00, § 1, 4-4-00)

§ 2-302. Authority to Contract for Legal Services.

No contract for the services of legal counsel may be awarded without the approval of the County Attorney. Where circumstances warrant, County Council or the County Administrator may retain outside legal counsel in their official capacities without County Attorney approval, but the reasons therefore must be set forth in writing.

(Ord. No. 13-00, § 1, 4-4-00)

§ 2-303. Exemptions.

Unless otherwise ordered by regulation, with approval of the County Administrator, the following supplies, services, and construction may be procured directly by the head of the Using Agency. Strict adherence to the requirements of this Code and the regulations promulgated thereunder is not required, but any procurement authorized under this section should be accomplished with as much regard for the principles of fair competition as practicable under the circumstances. The Director of Procurement shall bear no responsibility for procurements effected under this provision.

- _____ (a) The design, construction, maintenance, operation, and private finance of bridge, highway, water, waste water, or other heavy or specialized infrastructure facility or service, as defined in Article 5 of the Code;
- _____ (b) Works of art for museum and public display;
- _____ (c) Published books; maps; periodicals; technical pamphlets; audio, visual, or audio-visual recordings; and other copyrighted material;

(d) Professional consulting services. Such services may be obtained directly by the County Administrator through negotiations with providers, based on submitted Statements of Qualifications, provided the resulting contract price does not exceed fifteen thousand dollars (\$15,000.00). Contracts for professional consulting services exceeding fifteen thousand dollars (\$15,000.00) may be negotiated directly between the provider and the County Administrator, but must receive approval of County Council prior to execution.

(Ord. No. 13-00, § 1, 4-4-00)

PART D. COUNTY PROCUREMENT REGULATIONS

§ 2-401. County Procurement Regulations.

(1) *Regulations.* Regulations shall be promulgated by the Director of Procurement and subject to County Administrator approval in accordance with applicable law.

(2) *Director of Procurement Shall Not Delegate Power to Promulgate Regulations.* The Director of Procurement shall not delegate his power to promulgate regulations.

(3) *Regulations Shall Not Change Existing Contract Rights.* 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.

(Ord. No. 13-00, § 1, 4-4-00)

PART E. COORDINATION, TRAINING, AND EDUCATION

§ 2-501. Collection of Data Concerning Public Procurement.

The Director of Procurement shall cooperate with the County Office of Finance and the County Internal Auditor 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 Agencies 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 Agencies in requisitioning, ordering, and reporting of supplies, services, and construction.

(Ord. No. 13-00, § 1, 4-4-00)

§ 2-502. Advisory Groups.

The Director of Procurement may appoint Advisory Groups, consisting of County Personnel, to assist with respect to specifications or procurement in specific areas, and with respect to any other matters within the authority of the Director of Procurement.

(Ord. No. 13-00, § 1, 4-4-00)

§ 2-503. Procurement Educational Program.

(1) *Creation.* The Director of Procurement may establish and maintain a Procurement Educational Program, either alone or in cooperation with other States, the Federal Government, municipalities or other units of local government, or other persons.

(2) *Functions.* The Procurement Educational Program may:

_____ (a) Conduct or participate in procurement education and training programs for County employees and others, including persons not employed by the County;

_____ (b) Conduct research into existing and new methods of procurement; and

_____ (c) Establish and maintain a County Procurement Library.

(3) *Funding.* County Council may allocate funds for the Procurement Educational Program as it deems appropriate and

as requested by the Director of Procurement.

(Ord. No. 13-00, § 1, 4-4-00)

PART F. DUTIES OF THE COUNTY ATTORNEY

§ 2-601. Duties of the County Attorney.

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

(Ord. No. 13-00, § 1, 4-4-00)

ARTICLE III. SOURCE SELECTION AND CONTRACT FORMATION

PART A. DEFINITIONS

§ 3-101. Definitions of Terms Used in this Article.

(1) *Cost-Reimbursement Contract* means 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 Code, and a fee, if any.

(2) *Established Catalogue Price* means 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.

(3) *Invitation for Bids* means all documents, whether attached or incorporated by reference, utilized for soliciting bids.

(4) *Purchase Description* means 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.

(5) *Request for Proposals* means all documents, whether attached or incorporated by reference, utilized for soliciting proposals.

(6) *Responsible Bidder* or *Offeror* means 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* means a person who has submitted a bid which conforms in all material respects to the Invitation for Bids.

(Ord. No. 13-00, § 1, 4-4-00)

PART B. METHODS OF SOURCE SELECTION

§ 3-201. Methods of Source Selection.

Unless otherwise authorized by law, all County contracts shall be awarded by competitive sealed bidding pursuant to Section 3-202 (Competitive Sealed Bidding), except as provided in:

_____ (a) Section 3-203 (Competitive Sealed Proposals);

_____ (b) Section 5-204 (Architectural and Engineering Services);

_____ (c) Section 3-204 (Small Purchases);

(d) Section 3-205 (Sole Source Procurement);

(e) Section 3-206 (Emergency Procurements); and

(f) Section 3-207 (Special Procurements).

(Ord. No. 13-00, § 1, 4-4-00)

§ 3-202. Competitive Sealed Bidding.

(1) *Conditions for Use.* Contracts for the procurement of goods, services, or construction exceeding the price established by regulations shall be awarded by competitive sealed bidding except as otherwise provided in Section 3-201 (Methods of Source Selection).

(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) *Public Notice.* Adequate public notice of the Invitation for Bids shall be given a reasonable time prior to the date set forth therein for the opening of bids, in accordance with regulations.

(4) *Bid Opening.* Bids shall be opened publicly in the presence of one 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; the record and each bid shall be open to public inspection.

(5) *Bid Acceptance and Bid Evaluation.* Bids shall be unconditionally accepted without alteration or correction, except as authorized in this Code. 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 costs. The Invitation for Bids shall set forth the evaluation criteria to be used. No criteria may be used in bid evaluation that are not set forth in the Invitation for Bids.

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

(7) *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. In the event all bids for a construction project exceed available funds as certified by the appropriate fiscal officer, and the low responsive and responsible bid does not exceed such funds by more than fifteen 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 of 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.

(8) *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.

(Ord. No. 13-00, § 1, 4-4-00)

§ 3-203. Competitive Sealed Proposals.

(1) *Conditions for Use.*

(a) A contract may be entered into by competitive sealed proposals when the Director of Procurement, the head of a Using Agency, or a designee of either officer determines in writing, pursuant to regulations, that the use of competitive sealed bidding is either not practicable or not advantageous to the County.

(b) The Director of Procurement may provide by regulation that it is either not practicable or not advantageous to the County to procure specified types of supplies, services, or construction by competitive sealed bidding.

(c) Notwithstanding paragraph (a) above, contracts using the Design-Build, Design-Build-Operate-Maintain or Design-Build-Finance-Operate-Maintain project delivery methods described in Article 5 shall be awarded by competitive sealed proposals, except as otherwise provided in subsections (c), (d), (e), and (f) of Section 3-201 (Methods of Source Selection).

(2) *Request for Proposals.* Proposals shall be solicited through a Request for Proposals. Subsections (a) through [(b)] [(d)] shall apply to Design-Build, Design-Build-Operate-Maintain, or Design-Build-Finance-Operate-Maintain Procurements under Article 5.

(a) Requests for Proposals that solicit Design-Build, Design-Build-Operate-Maintain, or Design-Build-Finance-Operate-Maintain services under Article 5 shall include Design Requirements, as defined in Section 5-101(6).

(b) Each Request for Proposal for Design-Build, Design-Build-Operate-Maintain, or Design-Build-Finance-Operate-Maintain services shall solicit Proposal Development Documents, as defined in Section 5-101(10).

(c) The Director of Procurement or the head of the Using Agency shall determine, before a request for Design-Build, Design-Build-Operate-Maintain, or Design-Build-Finance-Operate-Maintain proposals is issued, whether to issue a Request for Qualifications in advance of the RFP to pre-qualify offerors before incurring the cost of full proposal preparation. The individual officer making this determination shall consider the size, estimated price, and complexity of the procurement in relation to the cost of preparing proposals in making this determination.

(d) Each Request for Proposal for Design-Build, Design-Build-Operate-Maintain, or Design-Build-Finance-Operate-Maintain services shall state whether the County will select a short list of Responsible Offerors prior to conducting further discussions and evaluations under subsection 3-203(6) below. The Request for Proposals shall state the number of proposals that will be short-listed. The County shall provide prompt Public Notice to all offerors as to which proposals have been short-listed.

(3) *Public Notice.* Adequate public notice of the Request for Proposals shall be given in the same manner as provided in Section 3-202(3) (Competitive Sealed Bidding, Public Notice).

(4) *Receipt of Proposals.* Proposals shall be opened so as to avoid disclosure of contents to competing offerors during the process of negotiation. A Register of Proposals shall be prepared in accordance with regulations, and shall be open for public inspection after contract award.

(5) *Evaluation Factors.* The Request for Proposals shall state all evaluation factors and subfactors that will be separately rated and the relative order of importance of each factor and subfactor in the evaluation. Subsection (a) shall apply only to Design-Build, Design-Build-Operate-Maintain, and Design-Build-Finance-Operate-Maintain procurements under Article 5. Subsection (b) shall apply only to Design-Build-Operate-Maintain and Design-Build-Finance-Operate-Maintain procurements under Article 5.

[For Design-Build, Design-Build-Operate-Maintain, and Design-Build-Finance-Operate Maintain Procurements Only]

(a) The Request for Proposals shall state the relative importance of (1) demonstrated compliance with the Design Requirements, (2) offeror qualifications, (3) financial capacity, (4) project schedule, (5) price (or life-cycle price for DBOM and DBFOM procurements), and (6) other evaluation factors, if any.

[For Design-Build-Operate-Maintain, and Design-Build-Finance-Operate Maintain Procurements Only]

(b) When the contract price is estimated by the Director of Procurement to exceed ten million dollars (\$10,000,000.00) or when the contract period of operations and maintenance is ten (10) years or longer, the RFP shall require each offeror to identify an Independent Design Peer Reviewer whose competence and qualifications to provide such services shall be an additional evaluation factor in the award of the contract.

(6) *Discussion with Responsible Offerors and Revisions to Proposals.* As provided in the Request for Proposals, and under regulations, 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) *Award.* Award shall be made to the responsible offeror whose proposal conforms to the solicitation and is determined in writing to be the most advantageous to the County taking into consideration price and the evaluation factors set forth in the Request for Proposals. No other factors or criteria shall be used in the evaluation. The contract file shall

contain the basis on which the award is made.

(8) *Notice, Pre-Award, and Post-Award Debriefing.*

(a) Pre-Award Debriefing. Offerors excluded from the competition before award may request a debriefing by the Director of Procurement before award in writing within three (3) days after receipt of the notice of exclusion from the competition. The Director of Procurement shall make every effort to debrief the unsuccessful offeror as soon as practicable, but may defer the request for a debriefing if it is not in the best interests of the County to conduct a debriefing at that time. Debriefings may be done orally, in writing, or by any other method acceptable to the Director of Procurement. A pre-award debriefing shall include: (a) the Using Agency's evaluation of significant elements in the offeror's proposal; (b) a summary of the rationale for eliminating the offeror from the competition; and (c) reasonable responses to relevant questions about whether source selection procedures contained in the RFP, applicable regulations, and other applicable authorities were followed in the process of eliminating the offeror from the competition.

Preaward debriefings shall not disclose: (a) the number of proposals; (b) the identity of other offerors; (c) the content of other proposals; (d) the ranking of other proposals; (e) the evaluation of other proposals; or (f) any information prohibited from disclosure by law, or exempt from release under the South Carolina Freedom of Information Act, including trade secrets, or privileged or confidential commercial or manufacturing information. An official summary of the debriefing shall be included in the contract file.

(b) Notice of Award. Written notice of the award by the County to the successful offeror shall be promptly given to all offerors.

(c) Post-Award Debriefing. An offeror, upon written request received by the Director of Procurement within three (3) days after the date on which that offeror has received notification of contract award, shall be debriefed and furnished the basis for the selection decision and contract award. The debriefing should occur within ten (10) business days after receipt of the written request. Offerors that requested a post-award debriefing in lieu of a pre-award debriefing, or whose pre-award debriefing was deferred beyond contract award, should also be debriefed within this time period. An offeror that was notified of exclusion from the competition, but failed to submit a timely request, is not entitled to a debriefing, although untimely debriefing requests may be accommodated. Debriefings may be done orally, in writing, or by any other method acceptable to the Director of Procurement. A post-award debriefing shall include: (a) the Using Agency's evaluation of significant weaknesses or deficiencies in the proposal, if applicable; (b) the overall evaluated cost or price (including unit prices) and technical rating, if applicable, of the successful offeror and the debriefed offeror; (c) the overall ranking of all proposals, when any such ranking was developed by the agency during the source selection; (d) a summary of the rationale for award; (e) reasonable responses to relevant questions about whether source selection procedures contained in the RFP, applicable regulations, and other applicable authorities were followed. Post-award debriefings shall not include point-by-point comparisons of the debriefed proposal with those of other offerors. The Debriefing shall not reveal any information prohibited from disclosure by law, or exempt from release under the South Carolina Freedom of Information Act, including trade secrets, or privileged or confidential commercial or manufacturing information. An official summary of the debriefing shall be included in the contract file.

(Ord. No. 13-00, § 1, 4-4-00)

§ 3-204. Small Purchases.

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

(Ord. No. 13-00, § 1, 4-4-00)

§ 3-205. Sole Source Procurement.

A contract may be awarded for a supply, service, or construction item without competition when the Director of Procurement, the head of a Using Agency, or a designee of either officer determines in writing that there is only one source for the required supply, service, or construction item. All such determinations must be made in accordance with the regulations promulgated by the Director of Procurement.

(Ord. No. 13-00, § 1, 4-4-00)

§ 3-206. Emergency Procurements.

Notwithstanding any other provision of this Code, the County Administrator, the Director of Procurement, the head of a Using Agency, or a designee of either officer may make or authorize others to make emergency procurements when there exists a threat to public health, welfare, or safety under emergency conditions as defined in regulations; provided that such emergency procurements shall be made with such competition as is practicable under the circumstances. A written and signed determination of the basis for the emergency and for the selection of the particular contractor shall be included in the contract file by the person making such determination.

(Ord. No. 13-00, § 1, 4-4-00)

§ 3-207. Special Procurements.

Notwithstanding any other provision of this Code, the Director of Procurement or the County Administrator may with prior public notice initiate a procurement above the small purchase amount specified in Section 3-204 where the officer determines that an unusual or unique situation exists that makes the application of all requirements of competitive sealed bidding or competitive proposals contrary to the public interest. Any special procurement under this section shall be made with such competition as is practicable under the circumstances. A written determination of the basis for the procurement and for the selection of the particular contractor shall be included by the Director of Procurement in the contract file, and a report shall be made publicly available at least annually describing all such determinations made subsequent to the prior report.

(Ord. No. 13-00, § 1, 4-4-00)

PART C. CANCELLATION OF INVITATIONS FOR BIDS OR REQUESTS FOR PROPOSALS

§ 3-301. Cancellation of Invitations 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 in the best interests of the County in accordance with regulations. The reasons therefor shall be made part of the procurement file.

(Ord. No. 13-00, § 1, 4-4-00)

PART D. QUALIFICATIONS AND DUTIES

§ 3-401. Responsibility of Bidders and Offerors.

(1) *Determination of Non-responsibility.* A written determination of non-responsibility of a bidder or offeror shall be made in accordance with regulations. The unreasonable failure of a bidder or offeror to promptly supply information in connection with an inquiry with respect to responsibility may be grounds for a determination of non-responsibility with respect to such bidder or offeror.

(2) *Right of Nondisclosure.* Confidential information furnished by a bidder or offeror pursuant to this section shall not be disclosed outside of the Office of the Director of Procurement or the Using Agency without prior written consent by the bidder or offeror.

(Ord. No. 13-00, § 1, 4-4-00)

§ 3-402. Prequalification of Suppliers.

Prospective suppliers may be prequalified for particular types of supplies, services, and construction. The method of submitting prequalification information and the information required in order to be prequalified shall be determined by the Director of Procurement.

(Ord. No. 13-00, § 1, 4-4-00)

§ 3-403. Substantiation of Offered Prices.

(1) *Request for Data.* If the Director of Procurement determines that the County lacks sufficient information to determine

price reasonableness, the County may ask for data from offerors to substantiate the prices offered, including factual information reasonably available to each offeror, including information that may suggest the offered price, or substantial portions of it, is too high or too low.

(2) *When Request for Data is Authorized.* The Director of Procurement may request data to substantiate offered prices only with respect to contracts awarded by competitive sealed proposals (Section 3-203); sole source procurement (Section 3-205); or emergency procurements (Section 3-206), and where the total contract price is expected to exceed an amount established by regulations.

(3) *When Substantiation of Prices Is Not Required.* The requirements of this section shall not be applied to contracts where: the contract price is based on adequate price competition; the contract price is based on established catalogue prices or market prices; contract prices are set by law or regulation; or it is determined in writing in accordance with regulations that the requirements of this section may be waived, and the reasons for such waiver are stated in writing.

(Ord. No. 13-00, § 1, 4-4-00)

PART E. TYPES OF CONTRACTS

§ 3-501. Types of Contracts.

Subject to the limitations of this section, any type of contract that will promote the best interests 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 is made in writing that such contract is likely to be less costly to the County than any other type or that it is impracticable to obtain the supplies, services, or construction required except under such a contract.

(Ord. No. 13-00, § 1, 4-4-00)

§ 3-502. Approval of Accounting System.

The Director of Procurement shall issue regulations requiring that contractors submit appropriate documentation prior to the award of contracts in which the County agrees to reimburse costs, confirming that:

- _____ (a) The proposed contractor's accounting system will permit timely development of all necessary cost data in the form required by the specific contract type contemplated; and
- _____ (b) The proposed contractor's accounting system is adequate to allocate costs in accordance with generally accepted accounting principles.

(Ord. No. 13-00, § 1, 4-4-00)

§ 3-503. Multi-Year Contracts.

(1) *Specified Period.* Unless otherwise provided by law, a contract for supplies or services may be entered into for any period of time deemed to be in the best interests of the County provided the term of the contract and 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. Any contract entered into pursuant to this section may not exceed ten (10) years in term, unless the contract is for a lease interest in real property.

(2) *Use.* A multi-year contract is authorized where:

- _____ (a) Estimated requirements cover the period of the contract and are reasonably firm and continuing; and
- _____ (b) Such a contract will serve the best interests 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.* When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the contract shall be cancelled and the contractor shall be reimbursed for the reasonable value of any non-recurring costs incurred but not amortized in the price of the supplies or services delivered under the contract. The cost of cancellation may be paid from any appropriations available for such purposes.

(Ord. No. 13-00, § 1, 4-4-00)

PART F. INSPECTION OF PLANT AND AUDIT OF RECORDS

§ 3-601. Right to Inspect Plant.

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.

(Ord. No. 13-00, § 1, 4-4-00)

§ 3-602. 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 data in substantiation of offered prices pursuant to Section 3-403 (Substantiation of Offered Prices) to the extent that such books and records relate to data. Any person who receives a contract, change order, or contract modification for which such 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.

(2) *Contract Audit.* The County shall be entitled to audit the books and records of a contractor or any 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 prime contract and by the subcontractor for a period of three (3) years from the date of final payment under the subcontract, unless a shorter period is otherwise authorized in writing.

(Ord. No. 13-00, § 1, 4-4-00)

PART G. DETERMINATIONS AND REPORTS

§ 3-701. Finality of Determinations.

The determinations required by Section 3-202(6) (Competitive Sealed Bidding, Correction or Withdrawal of Bids; Cancellation of Awards), Section 3-203(l) (Competitive Sealed Proposals, Conditions for Use), Section 3-203(7) (Competitive Sealed Proposals, Award), Section 3-205 (Sole Source Procurement), Section 3-206 (Emergency Procurements), Section 3-207 (Special Procurements), Section 3-401(1) (Responsibility of Bidders and Offerors, Determination of Non-responsibility), Section 3-403(3) (Substantiation of Offered Prices), Section 3-501 (Types of Contracts), Section 3-502 (Approval of Accounting System), and Section 3-503(2) (Multi-Term Contracts, Determination Prior to Use) are final and conclusive unless they are clearly erroneous, arbitrary, capricious, or contrary to law.

(Ord. No. 13-00, § 1, 4-4-00)

§ 3-702. Reporting of Anti-competitive Practices.

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

(Ord. No. 13-00, § 1, 4-4-00)

§ 3-703. 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 Attorney. All retained documents shall be made available to the County Attorney or a designee upon request and proper receipt therefor.

(Ord. No. 13-00, § 1, 4-4-00)

§ 3-704. Record of Procurement Actions Taken Under Section 3-205 (Sole Source

Procurement), Section 3-206 (Emergency Procurements), and Section 3-207 (Special Procurements).

(1) *Contents of Record.* The Director of Procurement shall maintain a record listing all contracts made under Section 3-205 (Sole Source Procurement), Section 3-206 (Emergency Procurements), or 3-207 (Special Procurements) for a minimum of five (5) years. The record shall contain:

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

(2) *Submission to County Council.* A copy of such record shall be submitted to the County Council on an annual basis. The record shall be available for public inspection.

(Ord. No. 13-00, § 1, 4-4-00)

ARTICLE IV. SPECIFICATIONS

PART A. DEFINITIONS

§ 4-101. Definitions of Terms Used in this Article.

(1) *Specification* means 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 inspecting, testing, or preparing a supply, service, or construction item for delivery.

(Ord. No. 13-00, § 1, 4-4-00)

PART B. SPECIFICATIONS

§ 4-201. Regulations for Specification Preparation.

The procurement regulations shall set standards for governing the preparation, maintenance, and content of specifications for supplies, services, and construction required by the County.

(Ord. No. 13-00, § 1, 4-4-00)

§ 4-202. Duties of the Director of Procurement.

The Director of Procurement shall monitor the use of specifications for supplies, services, and construction required by the County.

(Ord. No. 13-00, § 1, 4-4-00)

§ 4-203. Relationship With Using Agencies.

The Director of Procurement shall obtain expert advice and assistance from personnel of Using Agencies in the development of specifications and may delegate in writing to a Using Agency the authority to prepare and utilize its own specifications.

(Ord. No. 13-00, § 1, 4-4-00)

§ 4-204. Maximum Practicable Competition.

All specifications shall seek to promote overall economy for the purposes intended and encourage competition in satisfying the County's needs, and shall not be unduly restrictive.

(Ord. No. 13-00, § 1, 4-4-00)

§ 4-205. Specifications Prepared by Other Than County Personnel.

The requirements of this article regarding the purposes and non-restrictiveness of specifications shall apply to all specifications prepared other than by County personnel, including, but not limited to, those prepared by architects, engineers, and designers.

(Ord. No. 13-00, § 1, 4-4-00)

ARTICLE V. PROCUREMENT OF INFRASTRUCTURE FACILITIES AND SERVICES; CONSTRUCTION, ARCHITECTURAL AND ENGINEERING SERVICES, OPERATIONS AND MAINTENANCE, FINANCE

PART A. DEFINITIONS

§ 5-101. Definitions.

(1) *Architectural and Engineering Services* means:

_____ (a) Professional services of an architectural or engineering nature, as defined by state and local law, if applicable, which are required to be performed or approved by a person licensed, registered, or certified to provide such services as described in this paragraph;

_____ (b) Professional services of an architectural or engineering nature performed by contract that are associated with research, planning, development, design, construction, alteration, or repair of real property; and

_____ (c) Such other professional services of an architectural or engineering nature, or incidental services, which members of the architectural and engineering professions (and individuals in their employ) may logically or justifiably perform, including: studies, investigations, surveying, mapping, tests, evaluations, consultations, comprehensive planning, program management, conceptual designs, plans and specifications, value engineering, construction phase services, soils engineering, drawing reviews, preparation of operating and maintenance manuals, and other related services.

(2) *Design-Bid-Build* ("DBB") means a project delivery method in which the Director of Procurement sequentially awards separate contracts, the first for Architectural and Engineering Services to design the project and the second for construction of the project according to the design.

(3) *Design-Build* ("DB") means a project delivery method in which the County enters into a single contract for design and construction of an infrastructure facility.

(4) *Design-Build-Finance-Operate-Maintain* ("DBFOM") means a project delivery method in which the County enters into a single contract for design, construction, finance, maintenance, and operation of an infrastructure facility over a contractually defined period. No County funds are appropriated to pay for any part of the services provided by the DBFOM contractor during the contract period.

(5) *Design-Build-Operate-Maintain* ("DBOM") means a project delivery method in which the County enters into a single contract for design, construction, maintenance, and operation of an infrastructure facility over a contractually defined period. All or a portion of the funds required to pay for the services provided by the DBOM contractor during the contract period are either appropriated by the County prior to award of the contract or secured by the County through fare, toll, or user charges.

(6) *Design Requirements* means the County's written description of the infrastructure facility or service to be procured under this article, including: (1) required features, functions, characteristics, qualities, and properties that are required by the County; (2) the anticipated schedule, including start, duration, and completion; and (3) estimated budgets (as applicable to the specific procurement) for design, construction, operation and maintenance. The Design Requirements may, but need not, include drawings and other documents illustrating the scale and relationship of the features, functions, and characteristics of the project.

(7) *Independent Peer Reviewer* ("IPR") services are additional Architectural and Engineering Services provided to the County in Design-Build-Operate-Maintain or Design-Build-Finance-Operate-Maintain procurements. The function of the

IPR is to provide an independent professional peer review to confirm that the key elements of the professional engineering and architectural design provided by the DBOM or DBFOM contractors are in conformance with the applicable standard of care.

(8) *Infrastructure Facility* means a building; structure; or networks of buildings, structures, pipes, controls, and equipment that provide transportation, utilities, public education, or public safety services. Included are government office buildings; public schools; courthouses; jails; prisons; water treatment plants, distribution systems, and pumping stations; wastewater treatment plants, collection systems, and pumping stations; solid waste disposal plants, incinerators, landfills, and related facilities; public roads and streets; highways; public parking facilities; public transportation systems, terminals, and rolling stock; rail, air, and water port structures, terminals, and equipment.

(9) *Operations and Maintenance (O & M)* means a project delivery method whereby the County enters into a single contract for the routine operation, routine repair, and routine maintenance of an infrastructure facility.

(10) *Proposal Development Documents* means drawings and other design related documents that are sufficient to fix and describe the size and character of an infrastructure facility as to architectural, structural, mechanical and electrical systems, materials, and such other elements as may be appropriate to the applicable project delivery method.

(Ord. No. 13-00, § 1, 4-4-00)

PART B. CONTRACTING FOR INFRASTRUCTURE FACILITIES AND SERVICES

§ 5-201. Project Delivery Methods Authorized.

(1) The following project delivery methods are authorized for procurements relating to infrastructure facilities and services in this County:

- _____ (a) Design-Bid-Build (including Construction Manager At-Risk);
- _____ (b) Operations and Maintenance;
- _____ (c) Design-Build;
- _____ (d) Design-Build-Operate-Maintain;
- _____ (e) Design-Build-Finance-Operate-Maintain.

(2) Nothing in this article shall be construed to require that the County contract for the provision of infrastructure facilities or services.

(3) Participation in a report or study that is subsequently used in the preparation of Design Requirements for a project shall not disqualify a firm from participating as a member of a proposing team in a Design-Build, Design-Build-Operate-Maintain, or Design-Build-Finance-Operate-Maintain procurement.

(Ord. No. 13-00, § 1, 4-4-00)

§ 5-202. Source Selection Methods Assigned to Project Delivery Methods.

(1) *Design-Bid-Build.*

- _____ (a) *Design: Architectural and Engineering Services.* The qualifications based selection process set forth in Section 5-204 shall be used to procure Architectural and Engineering Services in Design-Bid-Build procurements.
- _____ (b) *Construction:* Competitive sealed bidding, as set forth in Section 3-202(1)(b), shall be used to procure construction services in Design-Bid-Build procurements.

(2) *Operations and Maintenance.* Contracts for operations and maintenance services shall be awarded as set forth in Section 3-201.

(3) *Design-Build.* Design-Build services shall be procured by competitive sealed proposals, as set forth in Section 3-203. The Director of Procurement is authorized to issue regulations describing those Design Build procurements to which the requirements of Section 3-203(2)(b) shall not apply.

(4) *Design-Build-Operate-Maintain.* Design-Build-Operate-Maintain services shall be procured by competitive sealed

proposals, as set forth in Section 3-203.

(5) *Design-Build-Finance-Operate-Maintain.* Design-Build-Finance-Operate-Maintain services shall be procured by competitive sealed proposals, as set forth in Section 3-203.

(Ord. No. 13-00, § 1, 4-4-00)

§ 5-203. Choice of Project Delivery Methods.

(1) The Director of Procurement shall promulgate regulations describing the project delivery methods listed in Section 5-201. These regulations shall:

- _____ (a) Set forth criteria to be used in determining which project delivery method is to be used for a particular project;
- _____ (b) Grant to the Director of Procurement, or the head of the Purchasing Agency responsible for carrying out the project, the discretion to select an appropriate project delivery method for a particular project;
- _____ (c) Describe the bond, insurance, and other security provisions contained in Part C of this article that apply to each project;
- _____ (d) Describe the appropriate contract clauses and fiscal responsibility requirements contained in Part D of this article that apply to each project; and
- _____ (e) Require the Procurement Officer to execute and include in the contract file a written statement setting forth the facts which led to the selection of a particular project delivery method for each project.

(Ord. No. 13-00, § 1, 4-4-00)

§ 5-204. Design: Architectural and Engineering Services.

(1) *Policy.* It is the policy of this County to publicly announce all requirements for Architectural and Engineering Services and to negotiate contracts for Architectural and Engineering Services on the basis of demonstrated competence and qualification for the type of services required, and at fair and reasonable prices.

(2) *Architectural and Engineering Selection Committee.* In the procurement of Architectural and Engineering Services, the Director of Procurement or the head of a Using Agency shall encourage firms engaged in the lawful practice of their profession to submit annually a statement of qualifications and performance data. The County Administrator, with the assistance of the head of the Using Agency, shall appoint the Architect-Engineer Selection Committee for each Architectural and Engineering Services contract over five hundred thousand dollars (\$500,000.00), and the Director of Procurement shall be a member of all such committees. The Selection Committee for Architectural and Engineering Services contracts under this amount shall be established in accordance with regulations promulgated by the Director of Procurement. The Selection Committee shall evaluate current statements of qualifications and performance data on file with the County, together with those that may be submitted by other firms regarding the proposed contract. The Selection Committee shall conduct discussions with no less than three (3) firms regarding the contract and the relative utility of alternative methods of approach for furnishing the required services, and then shall select therefrom, in order of preference, based upon criteria established and published by the Selection Committee, no less than three (3) of the firms deemed to be the most highly qualified to provide the services required. In the event the Selection Committee determines that there are fewer than three (3) qualified firms from which to select, the Committee shall make such determination in writing, and shall proceed as specified with the firms which are deemed by the Committee to be qualified, however many firms that may be.

(3) *Negotiation.* The Director of Procurement shall negotiate a contract with the highest qualified firm for Architectural and Engineering Services at compensation which the Director of Procurement determines in writing to be fair and reasonable to the County. In making this decision, the Director of Procurement shall take into account the estimated value, the scope, the complexity, and the professional nature of the services to be rendered. Should the Director of Procurement be unable to negotiate a satisfactory contract with the firm considered to be the most qualified, at a price he determines to be fair and reasonable to the County, negotiations with that firm shall be formally terminated. The Director of Procurement shall then undertake negotiations with the second most qualified firm. Failing accord with the second most qualified firm, the Director of Procurement shall formally terminate negotiations. The Director of Procurement shall then undertake negotiations with the third most qualified firm. Should the Director of Procurement be unable to negotiate a contract at a fair and reasonable price with any of the selected firms, he shall select additional firms in order of their competence and qualifications. The Director of Procurement shall continue negotiations in accordance with this section until an agreement is reached.

(Ord. No. 13-00, § 1, 4-4-00)

PART C. BONDS, INSURANCE, GUARANTEES

§ 5-301. 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 an amount established by regulation. Bid security shall be a bond provided by a surety company authorized to do business in this County or cashier's check, or otherwise supplied in a form satisfactory to the County. Nothing herein prevents the requirement of such bonds on such contracts under the amount set by regulation when the circumstances warrant.

(2) *Amount of Security.* Bid security shall be in an amount equal to at least five (5) percent of the amount of the bid.

(3) *Rejection of Bids for Noncompliance with Bid Security Requirements.* When the Invitation for Bids requires security, noncompliance requires that the bid be rejected unless, pursuant to County regulations, it is determined that the bid fails to comply in a non-substantial manner with the security requirements.

(4) *Withdrawal of Bids.* After bids are opened, they shall be irrevocable for the period specified in the Invitation for Bids (except as provided for bids in Section 3-202(6)). If a bidder is permitted to withdraw its bid (or proposal) before award, or is excluded from the competition before award, no action shall be had against the bidder or the bid security.

(5) *Authority to Require Additional Bonds.* Nothing in this section shall be construed to limit the authority of the County to require additional bonds or other security in circumstances other than specified in subsection (1) of this section.

(Ord. No. 13-00, § 1, 4-4-00)

§ 5-302. Contract Performance and Payment Bonds.

(1) *When Required--Amounts.* When a construction, design-build, design-build-operate-maintain, or design-build-finance-operate-maintain contract is awarded in excess of an amount to be established by regulation, 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 portion of the contract price that does not include the cost of operation, maintenance, and finance; 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 material to the contractor or its subcontractors for the performance of the construction work provided for in the contract. The bond shall be in an amount equal to one hundred (100) percent of the portion of the contract price that does not include the cost of operation, maintenance, and finance.

(2) *Reduction of Bond Amounts.* The County may promulgate regulations that authorize the Director of Procurement or head of a Purchasing Agency to reduce the amount of performance and payment bonds to fifty (50) percent of the amounts established in the preceding subsection (1).

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

(4) *Suits on Payment Bonds--Right to Institute.* Every person who has furnished labor or material to the contractor or its subcontractors for the work provided in the contract, in respect of which a payment bond is furnished under this section, and who has not been paid in full 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 material was furnished or supplied by such person for which such claim is made, shall have the right to sue on the payment bond for the amount, or the balance thereof, unpaid at the time of institution of such suit and to prosecute said action for the sum or sums justly due such person; provided, however, that any person having a direct contractual relationship with a subcontractor of the contractor, but no contractual relationship express or implied with the contractor furnishing said payment bond, shall have a right of action upon the payment bond upon giving written notice to the contractor within ninety (90) days from the date on which such person did or performed the last of the labor or furnished or supplied the last of the material upon which such claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the material was furnished or supplied or

for whom the labor was done or performed. Such notice shall be (a) personally served or served by other form of receipted transmittal that confirms actual delivery to the contractor at any place the contractor maintains an office or conducts its business.

(5) *Suits 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 or district in which the construction contract was to be performed, but no such suit shall be commenced after the expiration of one (1) year after the day on which the last of the labor was performed or material was supplied by the person bringing suit. The obligee named in the bond need not be joined as a party in any such suit.

(6) *Exception for Letters of Credit.* A contractor may substitute a letter of credit in the amount equal to one hundred twenty-five (125) percent of the contract price in lieu of a performance bond.

(Ord. No. 13-00, § 1, 4-4-00)

§ 5-303. Bond Forms and Copies.

(1) *Bond Forms.* The County shall promulgate by regulation the form of the bonds required by this part.

(2) *Certified Copies of Bonds.* 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.

(Ord. No. 13-00, § 1, 4-4-00)

§ 5-304. Errors and Omissions Insurance.

The County shall promulgate regulations that specify when the Director of Procurement shall require offerors to provide appropriate errors and omissions insurance coverage for Architectural and Engineering Services provided to the County under the project delivery methods set forth in Section 5-201(1)(a), (c), (d), and (e).

(Ord. No. 13-00, § 1, 4-4-00)

§ 5-305. Other Forms of Security.

The County shall promulgate regulations authorizing the Director of Procurement to require a Request for Proposal to include one (1) or more of the following forms of security to assure the timely, faithful, and uninterrupted provision of operations and maintenance services procured separately, or as one (1) element of Design-Build-Operate-Maintain or Design-Build-Finance-Operate-Maintain services:

_____ (1) Operations Period Surety Bonds that secure the performance of the contractor's operations and maintenance obligations under the project delivery methods set forth in Section 5-201(1)(b), (d) and (e);

_____ (2) Letters of Credit in an amount appropriate to cover the cost to the County of preventing infrastructure service interruptions for a period up to twelve (12) months under the project delivery methods set forth in Section 5-201(1)(b), (d) and (e); and

_____ (3) Appropriate Written Guarantees from the contractor (or depending upon the circumstances, from parent corporations) to secure the recovery of procurement costs to the County in the event of a default in performance by the contractor.

(Ord. No. 13-00, § 1, 4-4-00)

PART D. FISCAL RESPONSIBILITY

§ 5-401. Fiscal Responsibility.

Every contract modification, change order, or contract price adjustment under a construction contract with the County in excess of twenty-five (25) percent of the original contract price shall be subject to prior written certification by the fiscal officer of the entity responsible for funding the project or the contract, or other official responsible for monitoring and reporting upon the status of the costs of the total project budget or contract budget, as to the effect of the contract modification, change order, or adjustment in contract price on the total project budget or the total contract budget. In the

event that the certification of the fiscal officer or other responsible official discloses a resulting increase in the total project budget and/or the total contract budget, the Director of Procurement shall not execute or make such contract modification, change order, or adjustment in contract price unless sufficient funds are available therefor, or the scope of the project or contract is adjusted so as to permit the degree of completion that is feasible within the total project budget and/or total contract budget as it existed prior to the contract modification, change order, or adjustment in contract price under consideration; provided, however, that with respect to the validity, as to the contractor, of any executed contract modification, change order, or adjustment in contract price which the contractor has reasonably relied upon, it shall be presumed that there has been compliance with the provisions of this section.

(Ord. No. 13-00, § 1, 4-4-00)

ARTICLE VI. MODIFICATION AND TERMINATION OF CONTRACTS FOR SUPPLIES AND SERVICES

§ 6-101. Contract Clauses and Their Administration.

(1) *Contract Clauses.* The Director of Procurement may promulgate regulations permitting or requiring the inclusion of clauses providing for adjustments in prices, time of performance, or other contract provisions as appropriate covering the following subjects:

- _____ (a) The unilateral right of the County to order in writing:
 - _____ (i) Changes in the work within the scope of the contract; and
 - _____ (ii) Temporary stopping of the work or delaying performance; and
- _____ (b) Variations occurring between estimated quantities of work in a contract and actual quantities; and
- _____ (c) For construction contracts let under Article V:
 - _____ (i) The unilateral right of the County to order in writing changes in the time of performance of the contract that do not alter the scope of contract work; and
 - _____ (ii) Suspension of the work ordered by the County; and
 - _____ (iii) Site conditions differing from those indicated in the contract, or ordinarily encountered, except that differing site conditions clauses promulgated by the County need not be included in a contract:
 - _____ (A) When the contract is negotiated;
 - _____ (B) When the contractor provides the site or design; or
 - _____ (C) When the parties have otherwise agreed with respect to the risk of differing site conditions.

(2) *Price Adjustments.*

- _____ (a) Adjustments in price pursuant to clauses promulgated under subsection (1) of this section shall be computed in one (1) or more of the following ways:
 - _____ (i) By agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;
 - _____ (ii) By unit prices specified in the contract or subsequently agreed upon;
 - _____ (iii) By the costs 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;
 - _____ (iv) In such other manner as the contracting parties may mutually agree; or
 - _____ (v) In the absence of agreement by the parties, by a unilateral determination by the County of the costs attributable to the events or situations under such clauses with adjustment of profit or fee, all as computed by the County in accordance with applicable sections of the regulations promulgated under Article VII (Cost Principles) and subject to the provisions of Article IX (Legal and Contractual Remedies).
- _____ (b) A contractor shall be required to submit cost or pricing data if any adjustment in contract price is subject to

the provisions of Section 3-403 (Cost or Pricing Data).

(3) *Additional Contract Clauses.* The Director of Procurement may promulgate regulations including, but not limited to, regulations permitting or requiring the inclusion in County contracts of clauses providing for appropriate remedies and covering the following subjects:

- _____ (a) Liquidated damages as appropriate;
- _____ (b) Specified excuses for delay or nonperformance;
- _____ (c) Termination of the contract for default; and
- _____ (d) Termination of the contract in whole or in part for the convenience of the County.

(4) *Modification of Clauses.* The County Attorney may authorize the Director of Procurement to vary the clauses promulgated by the Director of Procurement under subsection (1) and subsection (3) of this section for inclusion in any particular County contract; provided that any variations are supported by a written determination that states the circumstances justifying such variation and provided that notice of any such material variation be stated in the Invitation for Bids or Request for Proposals.

(Ord. No. 13-00, § 1, 4-4-00)

ARTICLE VII. COST PRINCIPLES

§ 7-101. Cost Principles Regulations Required.

The Director of Procurement shall promulgate regulations setting forth cost principles which shall be used to determine the allowability of incurred costs for the purpose of reimbursing costs under contract provisions which provide for the reimbursement of costs, provided that if a written determination is approved at a level above the Director of Procurement, such cost principles may be modified by contract.

(Ord. No. 13-00, § 1, 4-4-00)

ARTICLE VIII. SUPPLY MANAGEMENT

PART A. DEFINITIONS

§ 8-101. Definitions of Terms Used in this Article.

(1) *Excess Supplies* means 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* means all tangible supplies other than nonexpendable supplies.

(3) *Nonexpendable Supplies* means all tangible supplies having an original acquisition cost of over five hundred dollars (\$500.00) per unit and a probable useful life of more than one (1) year.

(4) *Supplies* means, for purposes of this article, supplies owned by the County (see Section 1-301(21) (Supplies)).

(5) *Surplus Supplies* means 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.

(Ord. No. 13-00, § 1, 4-4-00)

PART B. REGULATIONS REQUIRED

§ 8-201. Supply Management Regulations Required.

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 designated by regulation, provided that no employee of the owning or disposing department, agency, commission or board shall be entitled to purchase any such supplies; and

(c) Transfer of excess supplies.

(Ord. No. 13-00, § 1, 4-4-00)

PART C. PROCEEDS

§ 8-301. Transfer of Proceeds from Sale or Disposal of Surplus Supplies.

Unless otherwise provided by law or regulation, the Director of Procurement shall be empowered to transfer proceeds from the sale, lease, or disposal of surplus supplies to the general fund of the County.

(Ord. No. 13-00, § 1, 4-4-00)

ARTICLE IX. LEGAL AND CONTRACTUAL REMEDIES

PART A. PRE-LITIGATION RESOLUTION OF CONTROVERSIES

§ 9-101. 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 County Administrator. 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.

(2) *Authority to Resolve Protests.* The County Administrator shall have the 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 County Administrator shall promptly issue a decision in writing. The decision shall:

(a) State the reasons for the action taken; and

(b) Inform the protestant of its right to judicial 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 any person adversely affected by the decision commences an action in court in accordance with Section 9-401(1) (Waiver of Sovereign Immunity in Connection with Contracts, Solicitation and Award of Contracts).

(6) *Stay of Procurements During Protests.* In the event of a timely protest under subsection (1) of this section or under Section 9-401(1) (Waiver of Sovereign Immunity in Connection with Contracts, Solicitation and Award of Contracts), the County shall not proceed further with the solicitation or with the award of the contract until the Director of Procurement, after consultation with the head of the Using Agency, makes a written determination that the award of the contract without delay is necessary to protect substantial interests of the County.

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

(Ord. No. 13-00, § 1, 4-4-00)

§ 9-102. Authority to Debar or Suspend.

(1) *Authority.* After reasonable notice to the person involved and reasonable opportunity for that person to be heard, the Director of Procurement, after consultation with the Using Agency and the County Attorney, shall have authority to debar a person for cause from consideration for award of contracts. The debarment shall not be for a period of more than three (3) years. The same officer, after consultation with the Using Agency and 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, seriously, 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:

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

_____ (ii) A recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one (1) or more contracts; provided that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be a basis for debarment;

_____ (e) Any other cause the Director of Procurement determines to be so serious and compelling as to affect responsibility as a County contractor, including debarment by another governmental entity for any cause listed in regulations; and

_____ (f) For violation of the ethical standards set forth in applicable state or federal law.

(3) *Decision.* The Director of Procurement shall issue a written decision to debar or suspend. The decision shall:

_____ (a) State the reasons for the action taken; and

_____ (b) Inform the debarred or suspended person involved of its rights to judicial 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 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, or the debarred or suspended person commences an action in court in accordance with Section 9-403(2) (Waiver of Sovereign Immunity in Connection with Contracts, Debarment or Suspension).

(Ord. No. 13-00, § 1, 4-4-00)

§ 9-103. 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 of contract, mistake, misrepresentation, or other cause for contract modification or rescission.

(2) *Authority.* The County Administrator, with the advice upon consultation of the County Attorney, is authorized, prior to commencement of an action in a court concerning the controversy, to settle and resolve a controversy described in subsection (1) of this section. This authority shall be exercised in accordance with regulations.

(3) *Decision.* If such a controversy is not resolved by mutual agreement, the County Administrator shall promptly issue a decision in writing. The decision shall:

_____ (a) State the reasons for the action taken; and

(b) Inform the contractor of its right to judicial 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 contractor.

(5) *Finality of Decision.* The decision under subsection (3) of this section shall be final and conclusive, unless fraudulent, or the contractor commences an action in court in accordance with Section 9-401(3) (Waiver of Sovereign Immunity in Connection with Contracts, Actions Under Contracts or for Breach of Contract).

(6) *Failure to Render Timely Decision.* If the County Administrator does not issue the written decision required under subsection (3) of this section within sixty (60) days after written request for a final decision, or within such longer period as may be agreed upon by the parties, then the contractor may proceed as if an adverse decision had been received.

(Ord. No. 13-00, § 1, 4-4-00)

PART B. SOLICITATIONS OR AWARDS IN VIOLATION OF LAW

§ 9-201. Applicability of this Part.

The provisions of this part apply where it is determined administratively, or upon administrative or judicial review, that a solicitation or award of a contract is in violation of law.

(Ord. No. 13-00, § 1, 4-4-00)

§ 9-202. Remedies Prior to an Award.

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

- _____ (a) Cancelled; or
- _____ (b) Revised to comply with the law.

(Ord. No. 13-00, § 1, 4-4-00)

§ 9-203. Remedies After an Award.

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

- _____ (a) If the person awarded the contract has not acted fraudulently or in bad faith:
 - _____ (i) The contract may be ratified and affirmed, provided it is determined that doing so is in the best interests of the County; or
 - _____ (ii) 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:
 - _____ (i) The contract may be declared null and void; or
 - _____ (ii) The contract may be ratified and affirmed if such action is in the best interests of the County, without prejudice to the County's rights to such damages as may be appropriate.

(Ord. No. 13-00, § 1, 4-4-00)

PART C. INTEREST

§ 9-301. Interest.

Interest on amounts ultimately determined to be due to a contractor or the County shall be payable at the statutory rate

applicable to judgments from the date the claim arose through the date of decision or judgment, whichever is later.

(Ord. No. 13-00, § 1, 4-4-00)

PART D. WAIVER OF SOVEREIGN IMMUNITY; LIMITATIONS ON ACTIONS

§ 9-401. Waiver of Sovereign Immunity in Connection with Contracts.

(1) *Solicitation and Award of Contracts.* The Horry County Court of Common Pleas shall have jurisdiction over an action between the County and a bidder, offeror, or contractor, prospective or actual, to determine whether a solicitation or award of a contract is in accordance with the Constitution, statutes, regulations, and the terms and conditions of the solicitation. The Horry County Court of Common Pleas shall have such jurisdiction, whether the actions are at law or in equity, and whether the actions are for monetary damages or for declaratory, injunctive, or other equitable relief.

(2) *Debarment or Suspension.* The Horry County Court of Common Pleas shall have jurisdiction over an action between the County and a person who is subject to a suspension or debarment proceeding, to determine whether the debarment or suspension is in accordance with the Constitution, statutes, and regulations. The Horry County Court of Common Pleas shall have such jurisdiction, whether the actions are at law or in equity, and whether the actions are for declaratory, injunctive, or other equitable relief.

(3) *Actions Under Contracts or for Breach of Contract.* The Horry County Court of Common Pleas shall have jurisdiction over an action between the County and a contractor, for any cause of action which arises under, or by virtue of, the contract, whether the action is at law or in equity, whether the action is on the contract or for a breach of the contract, and whether the action is for monetary damages or declaratory, injunctive, or other equitable relief.

(4) *Limited Finality for Administrative Determinations.* In any judicial action under this Section, factual or legal determinations by employees, agents, or other persons appointed by the County shall have no finality and shall not be conclusive, notwithstanding any contract provision, regulation, or rule of law to the contrary, except to the extent provided in Section 3-701 (Finality of Determinations).

(Ord. No. 13-00, § 1, 4-4-00)

§ 9-402. Time Limitations on Actions.

(1) *Protested Solicitations and Awards.* Any action under Section 9-401(1) (Waiver of Sovereign Immunity in Connection with Contracts, Solicitations and Award of Contracts) shall be initiated as follows:

_____ (a) Within sixty (60) days after the aggrieved person knows or should have known of the facts giving rise to the action; or

_____ (b) Within thirty (30) days after receipt of a final administrative decision pursuant to Section 9-101(3) (Authority to Resolve Protested Solicitations and Awards, Decision).

(2) *Debarments and Suspensions for Cause.* Any action under Section 9-401(2) (Waiver of Sovereign Immunity in Connection with Contracts, Debarment or Suspension) shall be commenced within six (6) months after receipt of the decision of the County Administrator under Section 9-102(3) (Authority to Debar or Suspend, Decision).

(3) *Actions Under Contracts or for Breach of Contract.* The statutory limitations on an action between private persons on a contract or for breach of contract shall apply to any action commenced pursuant to Section 9-401(3) (Waiver of Sovereign Immunity in Connection with Contracts, Actions Under Contracts or for Breach of Contract).

(Ord. No. 13-00, § 1, 4-4-00)

ARTICLE X. INTERGOVERNMENTAL RELATIONS

PART A. DEFINITIONS

§ 10-101. Definitions of Terms Used in this Article.

(1) *Cooperative Purchasing* means procurement conducted by, or on behalf of, one (1) or more Public Procurement Units, as defined in this Code.

(2) *External Procurement Activity* means any buying organization not located in this State which, if located in this State, would qualify as a Public Procurement Unit. Agencies of the United States and of any other State in the United States of America are External Procurement Activities.

(3) *Local Public Procurement Unit* means any county, city, town, and any other subdivision of the State or public agency of any such subdivision, public authority, educational, health, or other institution, and to the extent provided by law, any other entity which expends public funds for the procurement of supplies, services, and construction, and any nonprofit corporation operating a charitable hospital.

(4) *Public Procurement Unit* means any one (1) of the following:

_____ (a) A Local Public Procurement Unit;

_____ (b) An External Procurement Activity;

_____ (c) A State Public Procurement Unit; and

_____ (d) Any not-for-profit entity comprised of more than one Unit or Activity listed in subparagraphs (a), (b), or (c).

(5) *State Public Procurement Unit* means the Office of the Chief Procurement Officer of this or any other State and any other Purchasing Agency of this State or any other State.

(Ord. No. 13-00, § 1, 4-4-00)

PART B. COOPERATIVE PURCHASING

§ 10-201. Cooperative Purchasing Authorized.

The County may either 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 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 Public Procurement Unit contracts that are made available to other Public Procurement Units.

(Ord. No. 13-00, § 1, 4-4-00)

§ 10-202. Sale, Acquisition, or Use of Supplies by a Public Procurement Unit.

The County may sell to, acquire from, or use any supplies belonging to another Public Procurement Unit independent of the requirements of Article III (Source Selection and Contract Formation) and Article VIII (Supply Management) of this Code.

(Ord. No. 13-00, § 1, 4-4-00)

§ 10-203. Cooperative Use of Supplies or Services.

The County may enter into an agreement, independent of the requirements of Article III (Source Selection and Contract Formation) and Article VIII (Supply Management) of this Code, with any other Public Procurement Unit for the cooperative use of supplies or services under the terms agreed upon between the parties.

(Ord. No. 13-00, § 1, 4-4-00)

§ 10-204. Joint Use of Facilities.

The County 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.

(Ord. No. 13-00, § 1, 4-4-00)

§ 10-205. Supply of Personnel, Information, and Technical Services.

(1) *Supply of Personnel.* The County may, in its discretion, upon written request from another Public Procurement Unit, provide personnel to the requesting Public Procurement Unit. The Public Procurement Unit making the request shall pay the County the direct and indirect cost of furnishing the personnel, in accordance with an agreement between the parties.

(2) *Supply of Services.* The informational, technical, and other services of the County may be made available to any other Public Procurement Unit. The requesting Public Procurement Unit shall pay for the expenses of the services so provided, in accordance with an agreement between the parties.

(3) *County Information Services.* Upon request, the Director of Procurement may make available to Public Procurement Units the following services, among others, to the extent authorized by law:

- _____ (a) Standard forms;
- _____ (b) Printed manuals;
- _____ (c) Product specifications and standards;
- _____ (d) Quality assurance testing services and methods;
- _____ (e) Qualified products lists;
- _____ (f) Source information;
- _____ (g) Common use commodities listings;
- _____ (h) Supplier pre-qualification information;
- _____ (i) Supplier performance ratings;
- _____ (j) Debarred and suspended bidders lists;
- _____ (k) Forms for Invitations for Bids, Requests for Proposals, Instructions to Bidders, General Contract Provisions, and other contract forms; and
- _____ (l) Contracts or published summaries thereof, including price and time of delivery information.

(4) *County Technical Services.* The County, through the Director of Procurement, may provide the following technical services, among others, to the extent authorized by law:

- _____ (a) Development of products specifications;
- _____ (b) Development of quality assurance test methods, including receiving, inspection, and acceptance procedures;
- _____ (c) Use of product testing and inspection facilities; and
- _____ (d) Use of personnel training programs.

(5) *Fees.* The Director of Procurement may publish a schedule of fees for the services provided under subsections (3) and (4) of this section, and may negotiate contractual relationships for the same.

(Ord. No. 13-00, § 1, 4-4-00)

§ 10-206. Use of Payments Received by a Supplying Public Procurement Unit.

All payments from any Public Procurement Unit or External Procurement Activity received by the County for the provisions of personnel or services shall be available to the County as provided by law.

(Ord. No. 13-00, § 1, 4-4-00)

§ 10-207. Public Procurement Units in Compliance with Code Requirements.

The County may not enter into a Cooperative Purchasing agreement for the purpose of circumventing this Code.

(Ord. No. 13-00, § 1, 4-4-00)

§ 10-208. Review of Procurement Requirements.

To the extent possible, the Director of Procurement may collect information concerning the type, cost, quality, and quantity of commonly used supplies, services, or construction being procured or used by Public Procurement Units. The Director of Procurement may make available all such information to any other Public Procurement Unit upon request.

(Ord. No. 13-00, § 1, 4-4-00)

PART C. CONTRACT CONTROVERSIES

§ 10-301. Contract Controversies.

Under a cooperative purchasing agreement to which the County is a party, any dispute between the County and the supplying bidders, offerors, or contractors shall be resolved in accordance with the provisions of Article IX (Legal and Contractual Remedies), unless otherwise provided by the terms of the contract.

(Ord. No. 13-00, § 1, 4-4-00)

ARTICLE XI. ASSISTANCE TO SMALL AND DISADVANTAGED BUSINESSES; FEDERAL ASSISTANCE OR CONTRACT PROCUREMENT REQUIREMENTS

PART A. DEFINITIONS

§ 11-101. Definitions of Terms Used in this Article.

The Director of Procurement shall promulgate regulations establishing detailed definitions of the following terms, using, in addition to the criteria set forth in this section, such other criteria as it may deem desirable, including the number of employees and the dollar volume of business. As used in this article:

_____ (1) *Disadvantaged Business* means 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* means a United States 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.

(Ord. No. 13-00, § 1, 4-4-00)

PART B. ASSISTANCE TO SMALL AND DISADVANTAGED BUSINESSES

§ 11-201. Statement of Policy and its Implementation.

(1) *Statement of Policy.* It shall be the policy of this County to assist small and disadvantaged businesses in learning how to do business with the County.

(2) *Implementation.* The Director of Procurement shall implement the policy set forth in subsection (1) of this section in accordance with regulations under this article.

(Ord. No. 13-00, § 1, 4-4-00)

§ 11-202. Mandatory Duties of the Director of Procurement.

(1) *Assistance.* Where feasible, the Director of Procurement shall provide appropriate staff who shall be responsible to the Director of Procurement to assist County small and disadvantaged businesses in learning how to do business with the County.

(2) *Special Publications.* From time to time, and as feasible, the Director of Procurement shall issue special publications designed to assist small and disadvantaged businesses in learning how to do business with the County.

(3) *Source Lists.* The Director of Procurement shall compile, maintain, and make available source lists of small and disadvantaged businesses for the purpose of encouraging procurement from small and disadvantaged businesses.

(4) *Solicitation Mailing Lists.* To the extent deemed by such officer to be appropriate and as may be required by regulation, the Director of Procurement shall include small and disadvantaged businesses on solicitation mailing lists.

(5) *Solicitation of Small and Disadvantaged Businesses.* The Director of Procurement shall endeavor to solicit small and disadvantaged businesses on each procurement for which such businesses may be suited.

(Ord. No. 13-00, § 1, 4-4-00)

§ 11-203. Discretionary Duties of the Director of Procurement.

(1) *Bonding.* Notwithstanding other provisions of this Code, the Director of Procurement may reduce the level or change the types of bonding normally required or accept alternative forms of security to the extent reasonably necessary to encourage procurement from small and disadvantaged businesses.

(2) *Progress Payments.* The Director of Procurement may make such special provisions for progress payments as such officer may deem reasonably necessary to encourage procurement from small and disadvantaged businesses.

(Ord. No. 13-00, § 1, 4-4-00)

§ 11-204. Report to County Council.

The Director of Procurement shall annually, before the end of each fiscal year, report in writing to County Council concerning the awarding of contracts to small and disadvantaged businesses during the preceding fiscal year.

(Ord. No. 13-00, § 1, 4-4-00)

PART C. FEDERAL ASSISTANCE OR CONTRACT PROCUREMENT REQUIREMENTS

§ 11-301. Compliance with Federal Requirements.

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

(Ord. No. 13-00, § 1, 4-4-00)