

ARTICLE V. PROCUREMENT*

*State law references: Procurement generally, S.C. Code 1976, § 11-35-10 et seq.

DIVISION 1. GENERALLY

Sec. 2-261. Short title.

This article shall be known and may be cited as the "Pickens County Procurement Ordinance."

(Ord. No. 256, § 1-101, 5-18-1998)

Sec. 2-262. Intent; policy.

(a) *Legislative intent.* It is the intent of the county council that the primary concern of county government be the effective provider of services to the citizens of the county in the most efficient and economical way possible and that all purchases of goods and service needed to provide these services be conducted with primary concern for the most prudent use of revenues provided by those citizens.

(b) *Purpose and policies.* The underlying purposes and policies of this article are to:

- _____ (1) Provide a clear and comprehensive ordinance governing procurement by this county;
- _____ (2) Promote increased public confidence in the procurement regulations, procedures and practices used by this county;
- _____ (3) Maximize the purchasing value of public funds;
- _____ (4) Foster real and effective broad-based competition for public procurement within the free enterprise system;
- _____ (5) Ensure the fair and equitable treatment of all persons who are providing, or seeking to provide, supplies and/or services to this county;
- _____ (6) Provide safeguards for maintaining a procurement system of quality and integrity; and
- _____ (7) Permit the continued development of procurement regulations, procedures and practices that support user needs.

(Ord. No. 256, § 1-102, 5-18-1998)

Sec. 2-263. Obligation of good faith.

Every contract, duty or responsibility within this article imposes an obligation of good faith in its negotiation, performance or enforcement. The term "good faith" means honesty in fact in the conduct or transaction concerned and the observance of reasonable commercial standards of fair dealing.

(Ord. No. 256, § 1-103, 5-18-1998)

Sec. 2-264. Application.

(a) *General application.* This article applies to contracts for the procurement of property, supplies, services and/or construction entered into by the county after May 18, 1998, unless the parties agree to its application to contracts entered into prior to that date.

(b) *Application to county procurement.* This article shall apply to every expenditure of funds by this county for the purpose of procuring property, supplies, services and/or construction for the county irrespective of the source of funds. It shall also apply to the disposal of county equipment and/or supplies.

(c) *Application to state or federal fund procurements.* Where a procurement involves funds provided by the state or the

government of the United States, that procurement shall be in compliance with such state or federal laws and authorized regulations as are mandatorily applicable. However, in every instance where the provisions of this article are more restrictive than state or federal laws or authorized regulations, the provisions of this article shall be followed.

(Ord. No. 256, § 1-104, 5-18-1998)

Sec. 2-265. Determinations.

Written determinations and findings required by this article and all documents pertinent to contracts shall be retained in official files of the purchasing department. This requirement does not include documents, parts of documents or copies of documents that are normally distributed to using agencies, the finance department or any other agency that normally receives such distributions.

(Ord. No. 256, § 1-107, 5-18-1998)

Sec. 2-266. Definitions.

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

Architect-engineer and land surveying services means those professional services associated with the practice of architecture, professional engineering, land surveying, landscape architect and interior design pertaining to construction, as defined by the laws of this state, as well as incidental services that members of these professions and those in their employ may logically or justifiably perform, including studies, investigations, surveys, evaluations, consultations, planning, programming conceptual designs, plans and specifications, cost estimates, inspections, shop drawing reviews, sample recommendations, preparation of operating and maintenance manuals and other related services.

Business means a corporation, partnership, proprietorship, firm, enterprise, franchise, association, organization or self-employed individual.

Catalogue price means the price included in a catalogue, price list, schedule, or other form that:

- _____ (1) Is regularly maintained by a manufacturer or contractor;
- _____ (2) Is either published or otherwise available for inspection by customers; and
- _____ (3) States prices at which sales are currently or were last made to a significant number of any category of buyers constituting the general buying public for the supplies or services involved.

Change order (unilateral) means a written order signed and unilaterally issued by the purchasing manager, directing the contractor to make changes which the changes clause of the contract authorized the purchasing manager to order without the consent of the contractor.

Confidential information means information, whether transmitted orally or in writing, which is obtained by reason of the public position or office held and is of such nature that it is not, at the time of transmission, a matter of public record or public knowledge.

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

Contract means all types of county agreements, regardless of what they may be called, for the procurement or disposal of supplies, services or construction.

Contract modification (bilateral change) 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 of the contract.

Contractor means any person having a contract with the county.

Cooperative purchasing means procurement conducted by or on behalf of more than one public procurement unit.

Data means recorded information, regardless of form or characteristic.

Days means calendar days.

Designee means a duly authorized representative of a person with formal responsibilities under this article.

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.

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.

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

Person means an individual, a proprietorship, firm, partnership, joint venture, joint stock company, syndicate, business trust, an estate, a company, committee, an association, a corporation, club, labor organization, or any other organization or group of persons acting in concert.

Personal property means all supplies not considered as real property.

Procurement means the buying, purchasing, renting, leasing or otherwise acquiring of 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 contracts, and all phases of contract administration. This term does not include capital lease financing, or other financing arrangements and loans.

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

Public employee means a person employed by the state, a county, a municipality, or a political subdivision.

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, any other entity which expends public funds for procurement of property, supplies, services or construction.

Purchasing manager means the person holding the position created in section 2-291 as the head of the central purchasing department of the county.

Real property means any land, all things growing on or attached to and all improvements made to the land, including buildings and structures located on the land.

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

Request for proposals (RFP) means a written or published solicitation issued by an authorized procurement officer for proposals to provide supplies or services, which ordinarily result in the award of the contract to the responsible bidder making the proposal determined to be most advantageous to the county. The award of the contract must be made on the basis of evaluation factors which must be stated in the RFP and must include but not controlled alone by the factor of price proposed to be charged.

Responsible offeror/bidder means a person who has the capability in all respects to perform fully the contract requirements, and the tenacity, perseverance, experience, integrity, reliability, capacity, facilities, equipment and credit which will assure good-faith performance.

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

Service means the furnishing of labor, time or effort by a contractor not required to deliver a specific end product, other than reports which are merely incidental to required performance. This term does not include employment agreements.

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

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.

Subcontractor means any person having a contract to perform work or render service to a prime contractor as a part of the prime contractor's agreement with the county.

Supplies means all personal property, including but not limited to equipment, materials, printing, insurance and leases of real property, excluding real property or an interest in real property.

Surplus supplies means all 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.

Using agency means any department, commission, board or public agency of this county requiring supplies, services or construction procured under this article.

(Ord. No. 256, § 1-108, 5-18-1998; Ord. No. 279, § 1, 2-21-2000)

Cross references: Definitions generally, § 1-2.

Sec. 2-267. Public access to procurement information.

Procurement information shall be a public record to the extent required by S.C. Code 1976, § 30-4-10 et seq. (The Freedom of Information Act). Commercial or financial information obtained in response to a request for proposals which is privileged and confidential need not be disclosed. Privileged and confidential information is information in specific detail not customarily released to the general public, the release of which might cause harm to the competitive position of the party supplying the information or constitute an unreasonable invasion of privacy. Examples of this type information include but are not limited to:

- _____ (1) Customer lists.
- _____ (2) Design recommendations and identification of prospective problem areas under an RFP.
- _____ (3) Design concepts, including methods and procedures.
- _____ (4) Biographical data on key employees of the bidder.
- _____ (5) Evaluative documents predecisional in nature such as inter-agency or intra-agency memoranda containing technical evaluations and recommendations.
- _____ (6) Items marked as proprietary by a bidder under an RFP and not subject to public access under any other provisions.

(Ord. No. 256, § 1-109, 5-18-1998)

Secs. 2-268--2-290. Reserved.

DIVISION 2. PROCUREMENT ORGANIZATION

Sec. 2-291. Establishment, appointment and tenure of purchasing manager.

(a) *Establishment.* The purchasing manager shall be the county's principal public procurement official and shall report to the director of finance.

(b) *Appointment.* In consultation with the director of finance, the county administrator shall appoint the purchasing manager. The purchasing manager shall be employed with regard to his professional qualifications in public procurement and level of education.

(c) *Tenure.* The purchasing manager shall be a full-time public employee of the county and subject to the county personnel rules.

(Ord. No. 256, § 2-101, 5-18-1998)

Sec. 2-292. Authority, duties and operational procedures of purchasing manager.

(a) *Principal public procurement official.* Except as otherwise provided in this division, the purchasing manager shall serve as the principal public procurement official of the county, and shall be responsible for the procurement of supplies, services and construction in accordance with this article, as well as the disposal of supplies.

(b) *Duties.* In accordance with this article, the purchasing manager shall:

- _____ (1) Procure or supervise the procurement of all supplies, services and construction needed by the county.
- _____ (2) Sell, trade or otherwise dispose of surplus supplies belonging to the county.
- _____ (3) Establish and maintain programs for specifications development, contract administration and inspection and acceptance, in cooperation with the using agency, for supplies, services and/or construction.

(c) *Operational procedures.* Consistent with this article, the purchasing manager shall adopt operational procedures relating to the execution of his duties.

(Ord. No. 256, § 2-102, 5-18-1998)

Sec. 2-293. Delegation of authority.

The purchasing manager may delegate authority to purchase certain supplies, services and/or construction to other county officials or designees of the purchasing department, if such delegation is deemed necessary for the effective procurement of those items.

(Ord. No. 256, § 2-103, 5-18-1998)

Sec. 2-294. Authority to promulgate regulations.

Except as otherwise provided in this division, the purchasing manager shall have the authority and responsibility to promulgate regulations governing the procurement, management, control and disposal of any and all supplies, services and/or construction to be procured by the county. All regulations and procedures shall be in keeping with the letter and intent of this article. Such regulations shall be binding in all procurements made by the county.

(Ord. No. 256, § 2-104, 5-18-1998)

Sec. 2-295. Relationship with using agencies.

The purchasing manager and his staff shall maintain a close and cooperative relationship with the using agencies. Each using agency shall be afforded reasonable opportunity to participate in and make recommendations with respect to procurement matters affecting the using agency.

(Ord. No. 256, § 2-105, 5-18-1998)

Sec. 2-296. Advisory groups.

The purchasing manager may appoint advisory groups, such as user committees, to assist with respect to specifications and procurement in specific areas, and with respect to any other matters within the authority of the purchasing manager. These groups could include department heads, vendors and others as deemed necessary.

(Ord. No. 256, § 2-106, 5-18-1998)

Secs. 2-297--2-320. Reserved.

DIVISION 3. SOURCE SELECTION AND CONTRACT FORMATION

Sec. 2-321. Supply/service exceptions.

(a) The following supplies and services need not be procured through the office of the purchasing manager but shall nevertheless be procured by the appropriate department with the approval of the county administrator:

(1) Published books, maps, periodicals and technical pamphlets.

(2) Postage stamps and postal fees.

(3) Medicine and drugs.

(4) Food for prisoners.

(b) The competitive bidding procedures may be waived under the following conditions upon approval by the purchasing manager and the county administrator:

(1) When it is to the advantage of the county to acquire supplies and services on the basis of a previously awarded bid or contract.

(2) When, in the judgment of the purchasing manager and the county administrator, it is to the advantage of the county's interest to do so. This decision must be made on the basis of a detailed written explanation.

(Ord. No. 256, § 3-101, 5-18-1998; Ord. No. 279, § 1, 2-21-2000)

Sec. 2-322. Competitive sealed bidding.

(a) *Conditions for use.* Contracts amounting to \$20,000.00 or more shall be awarded by competitive sealed bidding.

(b) *Invitation for bids.* An invitation for bids shall be issued in an efficient and economical manner to at least three qualified sources on the bidders' list appropriate for the particular procurement and shall include specifications and all contractual terms and conditions applicable to the procurement. If three qualified sources are not available, invitations for bids shall be issued to such qualified sources as are available.

(c) *Bidders' lists.* All sources requesting to be put on a bidders' list shall be so enlisted unless the purchasing manager makes a written determination that the source should not be enlisted in accordance with regulations. The purchasing manager shall ensure that the bidders' lists contain all known sources interested in bidding on county procurement. The purchasing manager shall periodically review the bidders' lists and shall require the addition or deletion to such lists of sources contained in the list, as deemed necessary.

(d) *Public notice.* Adequate public notice of the invitation for bids shall be given a reasonable time, not less than seven calendar days, prior to the date set forth in the notice for the opening of bids. Such notice may include publication in a newspaper of general circulation a reasonable time prior to bid opening. The public notice shall state the place, date and time of bid opening.

(e) *Receipt and safeguarding of bids.* All bids (including modifications) received prior to the time of opening shall be kept secure and unopened in a locked cabinet or safe.

(f) *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 the procurement officer deems appropriate, together with the name of each bidder, shall be recorded. The record (tabulation) and each bid shall be open to public inspection afterward.

(g) *Bid acceptance and bid evaluation.* Bids shall be unconditionally accepted without alteration or correction, except as authorized by this article. 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. 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.

(h) *Correction or withdrawal of bids; cancellation of awards.* Correction or withdrawal of inadvertently erroneous bids before or after bid opening, or cancellation of awards or contracts based on such mistakes, may be permitted subject to the following: Appropriate mistakes discovered by the bidder before bid opening may be modified or withdrawn by submitting written notice to the purchasing department prior to the time set for bid opening. 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, after award but prior to performance shall be supported by a written determination made by the purchasing manager.

(i) *Tie bids.* If two or more bidders are tied in price, while otherwise meeting all of the required items and conditions of the bid, awards may be determined as follows:

(1) If there is an in-county firm (active business or warehousing facility located within the county) tied with an

out-of-county firm, the award will go to the in-county firm.

- _____ (2) If there is an in-state firm (active business or warehousing facility located within the state) tied with an out-of-state firm, the award will go to the in-state firm.
- _____ (3) Tie bids involving two or more in-county or two or more in-state firms may be resolved by accepting the bid that was first received (reference time and date stamp) in the purchasing department.
- _____ (4) Tie bids involving two or more in-county or two or more in-state firms may be resolved by the flip of a coin in the office of the purchasing manager witnessed by all interested parties.

(j) *Award.* The contract shall be awarded with reasonable promptness by appropriate written notice to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the invitation for bids. The purchasing manager shall approve the award of contracts up to \$5,000.00 after receiving an acceptable recommendation of award from the appropriate office or using department. The administrator shall approve the award of contracts for goods and services in excess of five thousand dollars. Pickens county council will act when bids or expenditures are in excess of amounts previously budgeted.

(k) *Multistep sealed bidding.* When it is considered impractical to prepare initially 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 determined to be technically acceptable under the criteria set forth in the first solicitation.

(l) *Minor informalities and irregularities in bids.* A minor informality or irregularity is one which is merely a form or is some immaterial variation from the exact requirements of the invitation for bids having no effect or merely a trivial or negligible effect on total bid price, quality, quantity, or delivery of the supplies or performance of the contract, and the correction or waiver of which would not affect the relative standing of or be otherwise prejudicial to bidders. The purchasing manager shall either give the bidder the opportunity to cure any deficiency resulting from a minor informality or irregularity in a bid or waive any such deficiency when it is to the advantage of the county. Such communication or determination shall be in writing. Examples of minor informalities or irregularities include but are not limited to:

- _____ (1) Failure of a bidder to return the number of copies of signed bids required by the solicitation.
- _____ (2) Failure of a bidder to furnish the required information concerning the number of the bidder's employees or failure to make a representation concerning its size.
- _____ (3) Failure of a bidder to sign its bid, but only if the unsigned bid is accompanied by other material indicating the signature of an authorized representative of the vendor.
- _____ (4) Failure of a bidder to acknowledge receipt of an amendment to a solicitation, when required but only if the amendment has no effect or merely a trivial or negligible effect on price, quality, quantity, delivery or relative standing of bidders.
- _____ (5) Failure of a bidder to furnish product literature.
- _____ (6) Failure of a bidder to furnish certificates of insurance.
- _____ (7) Failure of a bidder to furnish financial statements.
- _____ (8) Failure of a bidder to furnish references.
- _____ (9) Failure of a bidder to indicate a bid number on its submission envelope.
- _____ (10) Failure of a bidder to indicate his contractor's license number.

(Ord. No. 256, § 3-102, 5-18-1998; Ord. No. 279, § 1, 2-21-2000; Ord. No. 307, 5-21-2002)

Sec. 2-323. Negotiations after unsuccessful competitive sealed bidding.

When bids received pursuant to an invitation for bids are unreasonable, or are not independently reached in open competition, or the low bid exceeds available funds as certified by the appropriate fiscal officer, and it is determined in writing by the purchasing manager that time or other circumstances will not permit the delay required to resolicit competitive sealed bids, a contract may be negotiated, provided that:

- _____ (1) Each responsive/responsible bidder who submitted a bid under the original solicitation is notified of the determination and is given reasonable opportunity to negotiate.

_____ (2) The negotiated price is lower than the lowest rejected bid by any responsive/responsible bidder under the original solicitation.

_____ (3) The negotiated price is the lowest negotiated price offered by any responsive/responsible bidder.

(Ord. No. 256, § 3-103, 5-18-1998)

Sec. 2-324. Competitive sealed proposals.

(a) *Conditions for use.* When the purchasing manager determines that the use of competitive sealed bidding is either not practicable or not advantageous to the county, a contract may be entered into by use of the competitive sealed proposals methods.

(b) *Request for proposals.* Proposals shall be solicited through a request for proposals. Request for qualifications will only be solicited in conjunction with request for proposals.

(c) *Public notice.* Adequate public notice of the request for proposals shall be given in the same manner as provided in section 2-322.

(d) *Receipt of proposals.* No proposals shall be handled so as to permit disclosure of the contents of any proposal to competing offerors during the process of negotiation. A register of proposals shall be prepared containing the name of the offeror, the number of modifications received, if any, and a description sufficient to identify the item/service offered. The register of proposals shall be open for public inspection only after contract award.

(e) *Proposal opening.* Proposals shall be publicly opened and only the names of the offerors disclosed at the proposal opening. Contents of competing offerors shall not be disclosed during the process of negotiation. Proposals shall be open for public inspection, in accordance with section 2-329, after contract award. Propriety of confidential information marked as such in each proposal shall not be disclosed without written consent of the offeror.

(f) *Evaluation factors.* The request for proposals shall normally state the relative importance of the factors to be considered in evaluating proposals. Price may, but need not be, an initial evaluation factor.

(g) *Discussion with responsive/responsible offerors and revisions to proposals.* As provided in the request for proposals, discussions may be conducted with responsible offerors who submit proposals determined to be reasonably susceptible of being selected for award for the purpose of clarification to assure full understanding of and conformance 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.

(h) *Selection and ranking.*

(1) Proposals shall be evaluated using only the criteria stated in the request for proposals and there shall be adherence to any weightings that have been previously assigned. Once evaluation is complete, all responsive offerors shall be ranked from most advantageous to least advantageous to the county, considering only the evaluation factors stated in the request for proposals. If price is an initial evaluation factor, award shall be made in accordance with subsection (i) of this section.

(2) If price is not an initial evaluation factor, negotiations shall be conducted with the top-ranked responsive offeror for performance of the contract at a price which is fair and reasonable to the county. Should the procurement officer be unable to negotiate a contract at a price which is fair and reasonable to the county, negotiations shall be formally terminated with the top-ranked responsive offeror and negotiations commenced with the second most advantageous responsive offeror, and then the third and so on until a satisfactory contract has been negotiated. In conducting negotiations, there must be no disclosure of any information derived from proposals submitted by competing offerors.

(i) *Award.* Award must be made to the responsive offeror whose proposal 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, unless one of the options listed in section 2-323 is utilized. The contract file shall contain the basis on which the award is made and must be sufficient to satisfy internal/external audit. Procedures and requirements for notification of intent to award the contract shall be the same as those stated in section 2-324(j).

(j) *Other.* If after following the procedures set forth in section 2-324(h), a contract is not able to be negotiated, the scope of the request for proposals may be changed in an effort to reduce the cost to a fair and reasonable amount, and all responsive offerors must be allowed to submit their best and final offers.

(Ord. No. 256, § 3-104, 5-18-1998; Ord. No. 307, 5-21-2002)

Sec. 2-325. Small purchases.

(a) *General.* Any contract not exceeding \$20,000.00 may be made in accordance with the small purchase procedures authorized in this section. Procurement requirements shall not be artificially divided so as to constitute a small purchase under this section.

(b) *Small purchases under \$1,000.00.* Any purchase not exceeding \$1,000.00 may be accomplished without securing competitive quotations if the prices are considered to be fair and reasonable. Action to obtain competitive quotations need only be taken when the procurement officers suspects the price may not be fair and reasonable, e.g., comparison to previous price paid, personal knowledge of the price range of the item involved. Every effort should be made to distribute such purchases equitably among qualified suppliers.

(c) *Small purchases over \$1,000.00 but not exceeding \$5,000.00.* Insofar as it is practical, solicitations of verbal or written quotes from a minimum of two qualified sources of supply shall be made and documentation of the quotes recorded on or attached to the purchase requisition. The award shall be made to the lowest responsive/responsible source.

(d) *Small purchases over \$5,000.00 but not exceeding \$20,000.00.* Insofar as it is practical, solicitations of verbal or written quotes from a minimum of three qualified sources of supply shall be made and documentation of the quotes recorded on or attached to the purchase requisition. The award shall be made to the lowest responsive/responsible source.

(Ord. No. 256, § 3-105, 5-18-1998; Ord. No. 279, § 1, 2-21-2000)

Sec. 2-326. Sole-source procurement.

(a) A contract may be awarded for a property, supply, service or construction item without competition when the procurement officer determines in writing that there is only one source for the required property, supply, service or construction item. Written documentation must include the determination and basis for the proposed sole-source procurement.

(b) Any request by a using department that a procurement be restricted to one potential vendor must be accompanied by a detailed written explanation as to why no other will be suitable or acceptable to meet the need.

(Ord. No. 256, § 3-106, 5-18-1998)

Sec. 2-327. Emergency procurements.

Notwithstanding any other provision of this division, the purchasing manager may make or authorize others to make emergency procurements of property, supplies, services and/or construction when there exists a threat to public health, welfare or safety under emergency conditions, or where normal daily operations are affected; provided that such emergency procurements shall be made with such competition as is practicable under the circumstances. A written determination by the using agency of the basis for the emergency and for the selection of the particular contractor shall be provided to the purchasing department and included in the contract file.

(Ord. No. 256, § 3-107, 5-18-1998)

Sec. 2-328. Cancellation of invitation for bids or requests for proposals.

An invitation for bids, a request for proposals or other solicitation may be canceled, or any or all bids or proposals may be rejected in whole or in part when it is in the best interest of the county. Documentation supporting the reasons for rejection shall be made a part of the contract file.

(Ord. No. 256, § 3-108, 5-18-1998)

Sec. 2-329. Responsibility of bidders and offerors.

(a) *Determination of responsibility.* Responsibility of the bidder or offeror shall be ascertained for each contract let by the county based upon full disclosure to the procurement officer concerning capacity to meet the terms of the contracts and

based upon past record of performance for similar contracts.

(b) *Determination of nonresponsibility.* If a bidder or offerors who otherwise would have been awarded a contract is found nonresponsible, a written determination of nonresponsibility, setting forth the basis of the finding, shall be prepared by the procurement officer. The unreasonable failure of a bidder or offeror to supply information promptly in connection with an inquiry with respect to responsibility may be grounds for a determination of nonresponsibility with respect to such bidder or offeror.

(c) *Right of nondisclosure.* Except as otherwise provided by law, information furnished by a bidder or offeror pursuant to this section shall not be disclosed by the county outside of the purchasing or using departments without prior written consent by the bidder or offeror since the solicited information to evaluate responsibility may be of a privileged or a proprietary nature.

(Ord. No. 256, § 3-109, 5-18-1998)

Sec. 2-330. Prequalification of suppliers.

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

(Ord. No. 256, § 3-110, 5-18-1998)

Sec. 2-331. Cost or pricing data.

(a) *Required submissions relating to the award of contracts.* A prospective contractor shall submit cost or pricing data when the contract is expected to exceed \$50,000.00 and is to be awarded under section 2-324 or section 2-326.

(b) *Exceptions.* The submission of cost or pricing data relating to the award of a contract is not required when:

- _____ (1) The contract price is based on adequate price competition;
- _____ (2) The contract price is based on established catalogue price or market prices;
- _____ (3) The contract price is set by law or regulation; or
- _____ (4) It is determined in writing by the purchasing manager that the requirements of subsection (a) of this section may be waived and the determination states the reasons for such waiver.

(c) *Required submissions relating to change orders or contract modifications.* A contractor shall submit cost or pricing data prior to the pricing of any change order or contract modification, including adjustments to contracts awarded by competitive sealed bidding, whether or not cost or pricing data were required in connection with the initial pricing or the contract.

(d) *Price adjustment provision required.* Any contract, award, change, order or contract modification under which the submission and certification of cost or pricing data are required shall contain a provision stating that the price to the county, including profit or fee, shall be adjusted to exclude any significant sums by which the county finds that such price was increased because the contractor furnished cost or pricing data that was inaccurate, incomplete or not current as of the date agreed upon between the county and the contractor.

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

(Ord. No. 256, § 3-111, 5-18-1998)

Sec. 2-332. Bid and performance bonds on supply or service contracts.

Bid and performance bonds or other security may be requested for supply contracts or service contracts as the purchasing manager and/or head of the using department deems advisable to protect the county's interest. Any such bonding requirements shall be set forth in the solicitation. Bid or performance bonds shall not be used as a substitute for a determination of a bidder or offeror's responsibility.

(Ord. No. 256, § 3-112, 5-18-1998)

Sec. 2-333. Types of contracts.

Subject to the limitations of this division, any type of contract which will promote the best interest of the county may be used; except that the use of a cost-plus-a-percentage-of-cost contract shall be approved by county council. A cost reimbursement contract, including a cost-plus-a-percentage-of-cost contract, shall be used only when a determination has been made in writing by the purchasing manager 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. 256, § 3-113, 5-18-1998)

Sec. 2-334. Multiterm contracts.

(a) *Specified period.* To the extent permitted by law, a contract for supplies or services may be entered into for a period of time not to exceed five years. The terms of the contract and the conditions of renewal or extension, if any, are to be 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 and shall not be subject to nonsubstitution provisions.

(b) *Determination prior to use.* Prior to the utilization of a multiterm contract, it shall be determined in writing that:

_____ (1) Estimated requirements cover the period of the contract and are reasonably firm and continuing; and

_____ (2) Such a contract will serve the best interest of the county by encouraging effective competition or otherwise promoting economies in county procurement.

(c) *Cancellation due to unavailability of funds in succeeding fiscal periods.* All multiterm contracts shall contain a clause stating that when funds are not appropriated to support continuation of performance in a subsequent fiscal period, the contract shall be canceled. Such contracts shall also provide that the county is not subject to a nonsubstitution provision.

(Ord. No. 256, § 3-114, 5-18-1998; Ord. No. 279, § 1, 2-21-2000)

Sec. 2-335. Maintenance contracts.

All maintenance contracts and agreements must be forwarded to the purchasing manager for review and approval. The purchasing manager will review the contract for proper terms and conditions as well as for fair pricing. Maintenance contracts will only be approved by the purchasing manager or the county administrator.

(Ord. No. 256, § 3-115, 5-18-1998)

Sec. 2-336. 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. 256, § 3-116, 5-18-1998)

Sec. 2-337. Right to audit records.

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

(b) *Contract audit.* The county shall be entitled to audit the books and records of a contractor or subcontractor under any negotiated contract or subcontract other than 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 years from the date of final payment under the subcontract unless a shorter period is otherwise authorized in writing.

(Ord. No. 256, § 3-117, 5-18-1998)

Sec. 2-338. Reporting of anticompetitive practices.

When for any reason collusion or other anticompetitive practices are suspected among any bidder or offerors, a notice of the relevant facts shall be transmitted to the county attorney.

(Ord. No. 256, § 3-118, 5-18-1998)

Sec. 2-339. Procurement records.

(a) *Bid file.* All determinations and other written records pertaining to the solicitation and award of a bid shall be maintained in a file by the purchasing manager.

(b) *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.

(Ord. No. 256, § 3-119, 5-18-1998)

Secs. 2-340--2-360. Reserved.

DIVISION 4. SPECIFICATIONS**Sec. 2-361. Maximum practicable competition.**

All specifications shall be drafted so as to assure cost effective procurement for the purposes intended and encourage competition in satisfying the county's needs, and shall not be unduly restrictive.

(Ord. No. 256, § 4-101, 5-18-1998)

Sec. 2-362. Duties of the purchasing manager and the using agencies.

The purchasing manager may prepare or review, issue, revise and maintain the specifications for supplies, services and construction required by the county. The purchasing manager may obtain expert advice and assistance from personnel of the using agencies or other advisory sources in the development of specifications and may delegate to a using agency the authority to prepare its own specifications. The using agency must submit specifications to the purchasing manager for bidding.

(Ord. No. 256, § 4-102, 5-18-1998)

Sec. 2-363. Brand name or equal specification.

(a) *Use.* Brand name or equal specifications may be used when the using agency makes a written determination that:

- _____ (1) No other design or performance specification or qualified products list is available;
- _____ (2) Time does not permit the preparation of another form of purchase description, not including a brand name specification;
- _____ (3) The nature of the product or the nature of the county's requirements makes use of a brand name or equal specifications suitable for the procurement; or
- _____ (4) Use of a brand name or equal specifications is in the county's best interests.

(b) *Required characteristics.* Unless the procurement officer determines that the essential characteristics of the brand names included in the specifications are commonly known in the industry or trade, brand name or equal specifications shall include a description of the particular design, functional or performance characteristics which are required.

(c) *Nonrestrictive use of brand name or equal specifications.* Where a brand name or equal specification is used in a solicitation, the solicitation shall contain explanatory language that the use of a brand name is for the purpose of describing the standard of quality, performance and characteristics desired and is not intended to limit or restrict competition.

(Ord. No. 256, § 4-103, 5-18-1998)

Sec. 2-364. Brand name specification.

(a) *Use.* Since use of a brand name specification is restrictive of product competition, it may be used only when the using agency makes a written determination that only the identified brand name item will satisfy the county's needs.

(b) *Competition.* The purchasing manager shall seek to identify sources from which the designated brand name item can be obtained and shall solicit such sources to achieve whatever degree of price competition is practicable. If only one source can supply the requirement, the procurement shall be made as described under section 2-326.

(Ord. No. 256, § 4-104, 5-18-1998)

Secs. 2-365--2-390. Reserved.

DIVISION 5. PROCUREMENT OF CONSTRUCTION, ARCHITECT-ENGINEER AND LAND SURVEYING SERVICES

Sec. 2-391. Responsibility for selection of methods of construction contracting management.

The county council shall have discretion to select the appropriate method of construction management for a particular project. In determining which method to use, the county council shall consider the county's requirements, its resources and the potential contractor's capabilities. The purchasing manager shall execute and include in the contract file a written statement setting forth the facts which led to the selection by the county council for a particular method of construction contracting management for each project.

(Ord. No. 256, § 5-101, 5-18-1998; Ord. No. 279, § 1, 2-21-2000)

Sec. 2-392. Bid security.

(a) *Requirement for bid security.* Bid security shall be required for all competitive sealed bidding for construction contracts when the price is estimated by the purchasing manager to exceed \$20,000.00. Bid security shall be a legitimate bid bond provided by a surety company authorized to do business in the state, or the equivalent in cash, or otherwise supplied in the form satisfactory to the county (surety bond, certified check, cashier's check or money order). Nothing in this section prevents the requirement of such bonds on construction contracts equal to or less than \$20,000.00 when the circumstances warrant.

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

(c) *Rejection of bid for noncompliance with bid security requirements.* When the invitation for bids requires security, noncompliance requires that the bid be rejected.

(d) *Withdrawal of bids.* After the bids are opened, they shall be irrevocable for the period specified in the invitation for bids. If a bidder is permitted to withdraw its bid before bid opening, no action shall be had against the bidder on the bid security.

(Ord. No. 256, § 5-102, 5-18-1998; Ord. No. 279, § 1, 2-21-2000)

Sec. 2-393. Contract performance and payment bonds.

(a) *When required; amounts.* When a construction contract is awarded in excess of \$25,000.00, the following bonds or security shall be delivered to the county and shall become binding on the parties upon the execution of the contract:

_____ (1) 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 100 percent of the price specified in the contract; and

_____ (2) 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 work performed for in the contract.

The bond shall be in an amount equal to 100 percent of the price specified in the contract.

(b) *Reduction of bond amounts.* The purchasing manager is authorized to reduce the amount of performance and payment bonds to 50 percent of the contract price for each bond, when it has been determined in writing such reduction is necessary or warranted and is in the best interests of the county to do so.

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

(Ord. No. 256, § 5-103, 5-18-1998)

Sec. 2-394. Bond forms and copies.

(a) *Bond forms.* The purchasing manager shall promulgate by regulation the form of the bonds required by this section.

(b) *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 (materials and labor) 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. 256, § 5-104, 5-18-1998)

Sec. 2-395. Contract clauses and their administration.

(a) *Contract clauses.* All contracts for supplies, services and construction shall include provisions necessary to define the responsibilities and rights of the parties to the contract. The purchasing manager may issue clauses appropriate for supply, service or construction contracts, addressing at least the following subjects:

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

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

- _____ (1) By agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;
- _____ (2) By unit prices specified in the contract or subsequently agreed upon;
- _____ (3) By the cost attributable to the events or situations under such clauses with adjustment of profit or fee, all as specified in the contract or subsequently agreed upon;

_____ (4) In such other manner as contracting parties may mutually agree; or

_____ (5) In the absence of agreement by the parties, by unilateral determination by the county of the reasonable costs allocable, either directly or indirectly, to the events or situations under such clauses as accounted for in accordance with generally accepted accounting principles.

(c) *Standard clauses and their modification.* The purchasing manager may establish standard contract clauses for use in county contracts. If the purchasing manager establishing any standard clauses addressing the subjects set forth in subsection (a) of this section, such clauses may be varied provided that any variations are supported by a written determination that states the circumstances justifying such variations and provided that the nature of any such material variation is stated in the invitation for bids or request for proposals.

(Ord. No. 256, § 5-105, 5-18-1998)

Sec. 2-396. Fiscal responsibility.

Every contract modification, change, order, or contract price adjustment in the aggregate totaling ten percent or more of the total contract price under a construction contract with the county shall be subject to prior approval, as per the tiered award schedule outlined in section 2-322(j). After receiving a report from the project head and fiscal officer from the county as to the effect of the contract modification, change order, or contract price adjustment on the total project budget or the total contract budget.

(Ord. No. 256, § 5-106, 5-18-1998; Ord. No. 279, § 1, 2-21-2000)

Sec. 2-397. Public announcement and selection process.

(a) *Public announcement.* When the contract or purchase order is expected to be \$25,000.00 or more for architecture, engineering, surveying, or related professional services, it is the policy of the county to publicly announce and to negotiate such contracts on the basis of demonstrated competence and qualification at fair and reasonable prices.

(b) *Selection process when over \$25,000.00.* When the contract or purchase order amount is expected to be \$25,000.00 or more, the county administrator shall select persons or firms to perform architecture, engineering, surveying or related professional services, and to negotiate such contracts on the basis of demonstrated competence and qualification at fair and reasonable prices.

(c) *Selection process when less than \$25,000.00.* When the contract or purchase order is expected to be between \$5,000.00 and \$25,000.00, the administrator shall award the contract or purchase order based on the procedure outlined as follows:

_____ A selection committee composed of at least the following members: purchasing manager, head of using agency in need of the architect-engineer or land surveying services, and those determined to be qualified to make an informed decision as to the most competent and qualified firm for the proposed project shall conduct discussions with at least three firms, except when fewer respond, regarding the proposed contract and shall select from among them the firms deemed most qualified to provide the required services.

The selection shall be made in order of preference, based on criteria established and published by the selection committee. When the contract purchase order is expected to be \$5,000.00 or less, it shall be made in accordance with section 2-325.

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

(Ord. No. 256, § 5-107, 5-18-1998; Ord. No. 279, § 1, 2-21-2000; Ord. No. 307, 5-21-2002)

Secs. 2-398--2-410. Reserved.

DIVISION 6. SUPPLY MANAGEMENT

Sec. 2-411. Receiving and inventory regulation.

The purchasing manager shall promulgate regulations and procedures to ensure proper receipt, identification and inventory control for all supplies purchased for county use.

(Ord. No. 256, § 6-101, 5-18-1998)

Sec. 2-412. Sale, transfer, lease and disposal of surplus supplies.

The purchasing manager shall promulgate regulations governing the sale, lease or disposal of surplus supplies by public auction, competitive sealed bidding or other appropriate methods designated by such regulation, and the transfer of excess supplies between agencies and departments.

(Ord. No. 256, § 6-102, 5-18-1998)

Sec. 2-413. Trade-in sales.

The purchasing manager shall promulgate regulations and procedures to govern the trade-in of personal property owned by the county.

(Ord. No. 256, § 6-103, 5-18-1998)

Sec. 2-414. Allocation of proceeds from sale, lease or disposal of surplus supplies.

Proceeds from the sale, lease or disposal of surplus supplies shall be deposited into the county's general fund.

(Ord. No. 256, § 6-104, 5-18-1998)

Secs. 2-415--2-440. Reserved.

DIVISION 7. LEGAL AND CONTRACTUAL REMEDIES

Sec. 2-441. Authority to resolve protested solicitations and awards.

(a) *Right to protest.* Any actual or prospective bidder, offeror or contractor who is aggrieved in connection with the solicitation or award of a contract may protest to the purchasing manager, except as otherwise stated in this division. The protest shall be submitted in writing within 14 calendar days after such aggrieved person knows or should have known of the facts giving rise to the protest but in no circumstances after 30 days of notification of award of contract.

(b) *Authority to resolve protests.* The purchasing manager, after consultation with the county attorney, shall have authority, prior to the commencement of an action in court concerning the controversy, to settle and resolve a protest by an aggrieved bidder, offeror or a contractor, actual or prospective, concerning the solicitation or award of a contract.

(c) *Decision.* If the protest is not resolved by mutual agreement, the purchasing manager shall issue a decision in writing within ten calendar days. The decision shall:

_____ (1) State the reasons for the action taken; and

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

(d) *Notice of decision.* A copy of the written decision as described in this section shall be mailed to or otherwise furnished immediately to the protestant and any other intervening party.

(e) *Finality of decision.* A decision as described in this section shall be final and conclusive, unless fraudulent or unless a person adversely affected by the decision appeals administratively to the county administrator in accordance with this division. Debarment is not stayed pending appeal.

(Ord. No. 256, § 7-101, 5-18-1998)

Sec. 2-442. Debarment or suspension.

(a) *Authority.* After reasonable notice to the person involved and reasonable opportunity for that person to be heard, the purchasing manager, after consultation with the county attorney, shall have authority to debar a person for cause from consideration for award of contracts. The purchasing manager, after consultation with the county attorney, shall also have the authority to suspend a person from consideration for award of contracts if there is probable cause to believe that the person has engaged in any activity which might lead to debarment. The period of debarment or suspension shall be as prescribed as appropriate by the purchasing manager.

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

_____ (1) 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.

_____ (2) Conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any offense indicating a lack of business integrity or business honesty which currently, seriously or directly affects responsibility as a county contractor.

_____ (3) Conviction under state or federal antitrust statutes arising out of the submission of bids or proposals.

_____ (4) Violation of contract provisions, as set forth in this subsection, of a character which is regarded by the purchasing manager to be so serious as to justify debarment action:

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

_____ b. A recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one 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.

_____ (5) Any other cause the purchasing manager determines to be so serious and compelling as to affect responsibility as a county contractor, including debarment by another governmental entity for cause.

_____ (6) For violation of the ethical standards set forth in the S.C. Code 1976, § 8-13-100 et seq.

(c) *Decision.* The purchasing manager shall issue a written decision to debar or suspend. The decision shall:

_____ (1) State the reasons for the action taken; and

_____ (2) Inform the debarred or suspended person involved of his rights to administrative review as provided in this division.

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

(e) *Finality of decision.* A decision under subsection (c) of this section shall be final and conclusive unless fraudulent or unless the debarred or suspended person appeals administratively to the county administrator in accordance with this division. Debarment is not stayed pending appeal.

(Ord. No. 256, § 7-102, 5-18-1998)

Sec. 2-443. Authority to resolve contract and breach of contract controversies.

(a) *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 revision.

(b) *Authority.* The county council is authorized, prior to commencement of an action in a court concerning the controversy, to settle and resolve a controversy described in subsection (a) of this section.

(c) *Decision.* If such a controversy is not resolved by mutual agreement, the county council shall promptly issue a decision in writing. The decision shall state the reason for the action taken.

(d) *Notice of decision.* A copy of the decision under subsection (c) of this section shall be mailed or otherwise furnished immediately to the contractor.

(e) *Finality of decision.* The decision under subsection (c) of this section shall be final and conclusive unless fraudulent.

(f) *Failure to render timely decision.* If the county council does not issue the written decision required under subsection (c) of this section within a reasonable time after written request for a final decision, or within such longer period as may be agreed upon by the parties, the contractor may proceed as if an adverse decision had been received.

(Ord. No. 256, § 7-103, 5-18-1998)

Sec. 2-444. Solicitations or awards in violation of law.

(a) *Applicability.* The provisions of this section apply where it is determined by the purchasing manager, or upon administrative review, that a solicitation or award of a contract is in violation of law.

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

_____ (1) Canceled;

_____ (2) Revised to comply with the law and rebid; or

_____ (3) Revised to comply with the law and awarded in a manner that complies with the provisions of this division.

(c) *Remedies after an award.* If after an award of a contract it is determined that the solicitation or award is in violation of law:

_____ (1) If the person awarded the contract has not acted fraudulently or in bad faith:

_____ a. The contract may be ratified and affirmed, provided it is determined that doing so is in the best interest of the county; or

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

_____ (2) If the person awarded the contract has acted fraudulently or in bad faith:

_____ a. The contract may be declared null and void; or

_____ b. The contract may be ratified and affirmed if such action is in the best interest of the county, without prejudice to the county's right to such damages as may be appropriate.

(Ord. No. 256, §§ 7-104--7-106, 5-18-1998)

Secs. 2-445--2-470. Reserved.

DIVISION 8. INTERGOVERNMENTAL RELATIONS

Sec. 2-471. Cooperative purchasing authorized.

The purchasing manager may either participate in, sponsor, conduct or administer a cooperative purchasing agreement for the procurement of supplies, services or construction with one or more public procurement units in accordance with an agreement entered into between the participants. Such cooperative purchasing may include but is not limited to joint or multiparty contracts between public procurement units.

(Ord. No. 256, § 8-101, 5-18-1998)

Sec. 2-472. Sale, acquisition or use of supplies.

The purchasing manager, with the approval of the county administrator, may sell to, acquire from, or use any supplies belonging to another public procurement unit independent of the requirements of division 3 and division 6 of this article.

(Ord. No. 256, § 8-102, 5-18-1998)

Sec. 2-473. Cooperative use of supplies or services.

The purchasing manager with the approval of the county administrator, may enter into an agreement with any public procurement unit for the cooperative use of supplies or services under the terms agreed upon between the parties.

(Ord. No. 256, § 8-103, 5-18-1998)

Sec. 2-474. Joint use of facilities/equipment.

The purchasing manager, with the approval of the county administrator, 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. 256, § 8-104, 5-18-1998)

Sec. 2-475. Use of state contract.

The purchasing manager may procure supplies, services or construction items independent of the requirements of division 3 of this article whenever such procurement may be obtained at or below the price established by the purchasing division of the state as provided in S.C. Code 1976, § 11-35-10 et seq., for an identical item.

(Ord. No. 256, § 8-105, 5-18-1998)

Secs. 2-476--2-500. Reserved.

DIVISION 9. SMALL, DISADVANTAGED BUSINESS ASSISTANCE

Sec. 2-501. Solicitation of small and disadvantaged businesses.

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

(Ord. No. 256, § 9-101, 5-18-1998)

Sec. 2-502. Definitions.

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

Disadvantaged business 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.

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

(Ord. No. 256, § 9-102, 5-18-1998)

Cross references: Definitions generally, § 1-2.