

SPARTANBURG COUNTY PROCUREMENT ORDINANCE

Codified as:

Chapter 2 - ADMINISTRATION

Article VI. Finances

Division 2. Procurement*

- Sec. 2-281. General provisions.
- Sec. 2-282. Procurement organization.
- Sec. 2-283. Source selection and contract formation.
- Sec. 2-284. Specifications.
- Sec. 2-285. Procurement of construction, architect-engineer and land surveying services.
- Sec. 2-286. Supply management.
- Sec. 2-287. Legal and contractual remedies.
- Sec. 2-288. Intergovernmental relations.
- Sec. 2-289. Ethics in public contracting.

* **Editors Note:** Ord. No. 0-06-09, adopted Nov. 20, 2006, repealed div. 2, §§ 2-276--2-301, in its entirety and replaced it with new procurement procedures which have been designated as div. 2, §§ 2-281--2-289, at the discretion of the editor. Former div. 2 pertained to purchasing and derived from the Code of 1980, §§ 2-98--2-121.
State Law References: Counties to provide for centralized purchasing system, S.C. Code 1976, § 4-9-160.

Sec. 2-281. General provisions.

- (a) *Purpose and application.*
- (1) *Citation.* This division shall be known and may be cited as the "Spartanburg County Procurement Ordinance."
- (2) *Intent; policy.* The purpose of these policies is to provide for the fair and equitable treatment of all persons involved in public purchasing by the county, to maximize the purchasing value of public funds in procurement, and to provide safeguards for maintaining a procurement system of quality and integrity.
- (3) *Application.*
 - a. *General application.* This division applies to contracts for the procurement of property, supplies, services, and/or construction entered into by the county after the effective date of this division.
 - b. *Application to county procurement.* This division 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 of America, that procurement shall be in compliance with such state or federal laws and authorized regulations as are mandatory and applicable. However, in every instance where the provisions of this division are not in conflict with mandatory state or federal laws or authorized regulations, the provisions of this division shall be followed.

(b) *Determinations.* Written determinations and findings required by this division and all documents pertinent to contracts shall be retained in official files of the procurement 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.

(c) *Definitions of terms used in this division.*

Architect-engineer and land surveying services. Those professional services associated with the practice of architecture, professional engineering, land surveying, landscape architecture 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. A corporation, partnership, proprietorship, firm, an enterprise, a franchise, an association, organization, or self-employed individual.

Catalogue price. 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 or buyers constituting the general buying public for the supplies or services involved.

Change order (unilateral). A written order signed and unilaterally issued by the procurement director, directing the contractor to make changes which the "changes" clause of the contract authorized the procurement director to order without the consent of the contractor provided that sufficient funds are appropriated for such changes.

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

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

Contractor. Any person having a contract with the county.

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

Data. Recorded information, regardless of form or characteristic.

Days. Calendar days.

Designee. A duly authorized representative of a person with formal responsibilities under this division.

Economic interest.

- (1) An interest distinct from that of the general public in a purchase, sale, lease, contract, option, or other transaction or arrangement involving property or services in which a public official, public member, or public employee may gain an economic benefit of \$50.00 or more.
- (2) This definition does not prohibit a public official, public member, or public employee from participating in, voting on, or influencing or attempting to influence an official decision if the only economic interest or reasonably foreseeable benefit that may accrue to the public official, public member, or public employee is incidental to the public official's, public member's, or public employee's position or which accrues to the public official, public member, or public employee as a member of a profession, occupation, or large class to no greater extent than the economic interest or potential benefit could reasonably be foreseen to accrue to all other members of the profession, occupation, or large class.

Excess supplies. Any supplies other than expendable supplies having a remaining useful life but which are no longer required by the Using Agency in possession of the supplies.

Expendable supplies. All tangible supplies other than nonexpendable supplies.

Gift. Anything of value, including entertainment, food, beverage, travel, and lodging given or paid to a public official, public member, or public employee to the extent that consideration of equal or greater value is not received. A gift includes a rebate or discount on the price of anything of value unless it is made in the ordinary course of business without regard to that person's status. A gift does not include campaign contributions accepted pursuant to S.C. Code 1976, § 8-13-100 et. seq., as amended.

Governmental body. Spartanburg County or any department or agency of this county with which a public official, public member, or public employee is associated or employed.

Immediate family.

- (1) A child residing in a public official's, public member's, or public employee's household;
- (2) A spouse of a public official, public member, or public employee; or
- (3) An individual claimed by the public official, public member, or public employee or the public official's, public member's, or public employee's spouse as a dependent for income tax purposes.

Individual. One human being.

Individual with whom he is associated. An individual with whom the person or a member of his immediate family mutually has an interest in any business of which the person or a member of his immediate family is a director, officer, owner, employee, compensated agent, or holder of stock worth one hundred thousand dollars or more at fair market value and which constitutes five percent or more of the total outstanding stock of any class.

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

Leasing. A lease/purchase financing agreement is a contract by which one party conveys property to another for a period of time in exchange for the payment of interest and a portion of principal on the purchase price of the property.

May. Denotes the permissive.

Nonexpendable supplies. All tangible supplies having an original acquisition cost of over \$100.00 per unit and a probable useful life of more than one year.

Person. 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. All supplies not considered as real property.

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

Public member. An individual appointed to a non-compensated part-time position on a board, commission, or council. A public member does not lose this status by receiving reimbursement of expenses or a per diem payment for services.

Public official. An elected or appointed official of the state, a county, a municipality, or a political subdivision thereof, including candidates for the office. "Public official" does not mean a member of the judiciary except that for the purposes of campaign practices, campaign disclosure, and disclosure of economic interests, a probate judge is considered a public official and must meet the requirements of this chapter.

Procurement. 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.

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

Public agency. A public entity subject to or created by the county.

Public procurement unit. 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.

Procurement director. The person holding the position created in section 2-281(a)(3) (establishment, appointment, and tenure), as the head of the purchasing department of the county.

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

Regulation. A statement having general or particular applicability and future effect, designed to implement, interpret, or prescribe law or policy, or describing organization,

procedure, or practice requirements, which has been promulgated in accordance with existing procedure.

Request for proposals (RFP). A written or published solicitation issued by 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 be controlled alone by, the factor of price proposed to be charged.

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

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

Shall. Denotes the imperative.

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

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

Specification. 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.

Supplies. 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. 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.

Using agency. Any department, commission, board, or public agency of this county requiring supplies, services, or construction procured under this division.

(d) *Public access to procurement information.* Procurement information shall be a public record to the extent required by S.C. Code Ann. § 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 is exempt from disclosure and 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 pre-decisional in nature such as inter- 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. 0-06-09, 11-20-06)

Sec. 2-282. Procurement organization.

- (a) *Organization of public procurement.*
 - (1) *Centralization of Purchasing.* All rights, powers, duties, and authority relating to the purchase of equipment, supplies, and services and to the management, control, warehousing, sale, and disposal of equipment and supplies are hereby vested in the procurement department of the county subject to the legitimate authority of the county council, the county administrator and such ordinances, rules, and regulations as exist for the governance of the county.
 - (2) *Centralization of procurement authority.* Except as otherwise provided in this division, the authority relating to the procurement of supplies, services, and construction is hereby vested in the procurement director of this county.
- (b) *Procurement director.*
 - (1) *Establishment, appointment, and tenure.*
 - a. *Establishment of the Position of procurement director.* There is hereby created the position of procurement director, who shall be the county's principal public procurement official. The procurement director shall report to the county administrator.

- b. *Appointment.* The county administrator shall appoint the procurement director. The procurement director shall be employed with regard to his/her professional qualifications in public procurement and level of education.
- c. *Tenure.* The procurement director shall be a full-time public employee of the county and subject to the county personnel policy and procedures.

(2) *Authority and duties.*

- a. *Principal public procurement official.* Except as otherwise provided herein, the procurement director shall serve as the principal public procurement official of the county, and shall be responsible for the procurement of supplies, services, and construction in accordance with this division, as well as the disposal of supplies.
- b. *Duties.* In accordance with this division, the procurement director 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 division, the county administrator shall adopt operational procedures relating to the execution of the duties of the purchasing department.

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

(c) *Procurement regulations; authority to promulgate regulations.* Except as otherwise provided in this division, the procurement director 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. A manual of purchasing regulations and procedures shall be developed and maintained by the procurement director. All regulations and procedures shall be in keeping with the letter and intent of this division. Such regulations shall be binding in all procurements made by the county.

- (d) *Advisory relationships.*
- (1) *Relationship with using agencies.* The procurement director 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.
- (2) *Advisory groups.* The procurement director 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 procurement director. These groups may include department heads, vendors, and others as deemed necessary.
- (3) *County attorney to provide legal services.* The county attorney, or such other member as the county attorney may designate, shall serve as legal counsel and provide necessary legal services to the county administrator, director of administrative services, and the procurement director in matters pertaining to this division and purchasing practices.

(Ord. No. 0-06-09, 11-20-06)

Sec. 2-283. Source selection and contract formation.

(a) *Exemptions.* Procurements obtained under any of the following methods are exempt from request for bid/RFP procedures listed in this division:

- (1) Emergency procurement (see subsection 2-283(b)(8));
- (2) Sole source procurement (see subsection 2-283(b)(7));
- (3) Existing bid or contract--Acquisition of supplies, services, and/or construction previously contracted for;
- (4) Equipment maintenance or service contracts which are made with the manufacturer or authorized service/agent.
- (5) State of South Carolina contracts;
- (6) General services administration (GSA) or other federal contracts;
- (7) Supplies and/or services procured from another governmental agency;
- (8) Cooperative purchases (see section 2-288(1)).

Although the items listed in this subsection are exempt from the normal procurement procedures of this division, every effort should be made to ensure that the procurement made and/or contract

negotiated is cost effective and is in the best interest of the county.

(b) *Methods of source selection.*

(1) *Methods of source selection.* Unless otherwise required by law, all county contracts shall be awarded by competitive sealed bidding, pursuant to subsection 2-283(b)(2) (competitive sealed bidding), except as provided in:

- a. Subsection 2-283(b)(3) (negotiations after unsuccessful competitive sealed bidding);
- b. Subsection 2-283(b)(4) (competitive sealed proposals);
- c. Subsection 2-283(b)(5) (small purchases);
- d. Subsection 2-283(b)(7) (sole source procurements);
- e. Subsection 2-283(b)(8) (emergency procurements)
- f. Subsection 2-283(b)(9) (real property);
- g. Subsection 2-283(b)(10) (professional services);
- h. Subsection 2-285(a)(1) (construction procurements);
- i. Subsection 2-285(d) (architect-engineering and land surveying services).

(2) *Competitive sealed bidding.*

- a. *Conditions for use.* Contracts amounting to \$30,000.00 or more shall be awarded by competitive sealed bidding except as otherwise provided in section 2-283(b)(1) (methods of source selection).
- b. *Invitation for bids.* An invitation for bids shall be posted on the county's web site 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' list (not required, but may be used at the discretion of the procurement director).* If a bidder's list is used, all sources requesting to be put on a bidders' list shall be so enlisted unless the procurement director makes a written determination that the source should not be enlisted in accordance with regulations.

The procurement director shall ensure that the bidders' list contains all

known sources interested in bidding on a product or service the county uses. The procurement director shall periodically review the bidders' list and add or delete vendors as deemed necessary.

- d. *Public notice.* Adequate public notice of the invitation for bids shall be given a reasonable time, not less than 15 calendar days, prior to the date set forth therein for the opening of bids. Such notice may include publication in a newspaper of general circulation and/or posting on the county's web site a reasonable time prior for bid opening. The public notice shall disclose 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. Bids shall be time stamped when received and this will be the official time of receipt of the bid.
- 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, in accordance with subsection 2-281(d) (public access to procurement information).
- g. *Bid acceptance and bid evaluation.* Bids shall be unconditionally accepted without alteration or correction, except as authorized by this division. 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 evaluations 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 procurement director.

- i. *Award.* The contract shall be awarded with reasonable promptness by appropriate written or email notice to the most responsible and responsive bidder whose bid meets the requirements and criteria set forth in the invitation for bids. The procurement director shall approve the award of contracts up to \$50,000.00 after receiving an acceptable recommendation of award from the appropriate procurement officer or using department.
- j. *Multi-step 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 un-priced 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.
- k. *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 procurement director 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 financial statements;

7. Failure of a bidder to furnish references;
8. Failure of a bidder to indicate a bid number on its submission envelope.
9. Failure of a bidder to indicate his/her contractor's license number.

(3) *Negotiations after unsuccessful competitive sealed bidding.* When bids received pursuant to an invitation for bids under subsection 2-283(b)(2) 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 procurement director that time or other circumstances will not permit the delay required to re-solicit competitive sealed bids, a contract may be negotiated pursuant to this subsection, provided that:

- a. Each responsive/responsible bidder, who submitted a bid under the original solicitation, is notified of the determination and is given reasonable opportunity to negotiate;
- b. The terms and nature of the negotiations with each responsive/responsible bidder are kept confidential and are not divulged to any other responsive/responsible bidders during the negotiation process;
- c. The negotiated price is lower than the lowest rejected bid by any responsive/responsible bidder under the original solicitation;
- d. The negotiated price is the lowest negotiated price offered by any responsive/responsible bidder.

(4) *Competitive sealed proposals.*

- a. *Conditions for use.* When the procurement director 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 method.
- b. *Request for proposals.* Proposals shall be solicited from at least three qualified sources, when such sources are available, through a 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 2-283(b)(2)d. (competitive sealed bidding, public notice); provided the minimum shall be 15 calendar days.

- 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 open for public inspection, in accordance with subsection 2-281(d) (public access to procurement information), after contract award. Propriety or confidential information marked as such in each proposal shall not be disclosed without written consent of the vendor.
- f. *Request for qualifications.* Prior to soliciting proposals, the procurement officer may issue a request for qualifications from prospective offerors. Such request shall contain at a minimum a description of goods or services to be solicited by the Request for Proposals, the general scope of the work, the deadline for submission of information, and how prospective offerors may apply for consideration. The request shall require information only on their qualifications, experience, and ability to perform the requirements of the contract.

After receipt of the responses to the request for qualifications from prospective offerors, the prospective offerors shall be ranked from most qualified to least qualified on the basis of the information provided. Proposals shall then be solicited from at least the top two prospective offerors by means of a request for proposals. The failure of a prospective offeror to be selected to receive the request for proposals shall not be grounds for protest under subsection 2-287(a)(1).
- g. *Public notice.* Adequate public notice of the request for qualifications shall be given in the manner provided in subsection 2-283(b)(2)d.
- h. *Evaluation factors.* The request for proposals shall state the relative importance of the factors to be considered in evaluating proposals. Price may, but need not be, an initial evaluation factor.
- i. *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 capable 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.

- j. *Selection and ranking.* Proposals shall be evaluated using only the criteria stated in the request for proposals and there must be adherence to any weightings that have been previously assigned. Once evaluation is complete, all responsive offerors shall be ranked from most advantageous to least advantageous 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 2-283(b)(4)k.

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.

- k. *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 subsection 2-283(b)(4)l. 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 subsection 2-283(b)(2)j.
- l. *Other.* If, after following the procedures set forth in subsection 2-283(b)(4)j., 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.

Where price was an initial evaluation factor, the using department, through the procurement officer, may in its sole discretion, and not subject to challenge through a protest filed under subsection 2-287(a)(1), proceed in any of the following manners:

1. Negotiate price with the highest scoring offeror. If a satisfactory price cannot be agreed upon, price negotiations may be conducted with the second, and then the third, and so on, ranked offerors to

such level of ranking as determined by the using department and/or procurement officer;

2. Negotiate with the highest ranking offeror on matters affecting the scope of the contract, so long as the overall nature and intent of the contract is not changed. If a satisfactory contract cannot be negotiated with the highest ranking offeror, negotiations may be conducted with the second, and then the third, and so on, ranked offerors to such level of ranking as determined by the using department and/or procurement officer;
3. Change the scope of the request for proposals and give all responsive/responsible offerors an opportunity to submit best and final offers.

If any of these options are chosen, and a contract is still unable to be awarded, any of the procedures outlined herein may be repeated until a proposed contract is successfully achieved.

(5) *Purchases.*

- a. *General.* Procurement requirements shall not be artificially divided so as to constitute a small purchase under this subsection.
- 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 officer 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. Such purchases shall be authorized by the procurement director from funds appropriated for such purpose.
- 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. Such purchases shall be authorized by the procurement director from funds appropriated for such purpose.
- d. *Purchases over \$5,000.00 but not exceeding \$30,000.00.* 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. Such purchases shall be authorized by the procurement director from funds appropriated for such purpose.

- e. *Purchases over \$30,000.00.* Purchases over \$30,000.00 shall require formal bid or sealed proposals.
- f. *Purchases over \$50,000.00.* Purchases over \$50,000.00 regardless of type or purpose shall require the approval of the county administrator who shall assert funding for the purchase has been duly appropriated by the county council.
- g. *Protest rights.* The provisions of subsection 2-287(a)(1) shall not apply to contracts awarded under the procedures set forth in this subsection.

(6) *Purchasing card program.*

- a. The procedures for this program shall be promulgated and amended as needed by the director of administrative services.
- b. This program shall be discontinued at any time as recommended by the director of administrative services and approved by the county administrator.
- c. The cardholder shall use the purchasing card for legitimate business purposes only. Misuse of the card will subject the cardholder to disciplinary action in accordance with county policies and procedures.

(7) *Sole source procurement.* A contract may be awarded for a property, supply, service, or construction item without competition when the procurement officer makes a written determination that there is only one source for the required property, supply, service, or construction item and that determination is accompanied by a written justification explaining the basis for any such determination. 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 stated need.

(8) *Emergency procurements.* Notwithstanding any other provision of this division, the procurement director with approval of the county administrator, 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.

- (9) *Real property.* The county acknowledges that all parcels of real property are unique and principles of competitive bidding do not apply to distinct and singular purchases; however, it is the intention of the county to have established procedures in place and to be fair and open in all of its purchasing practices. To that end, it shall be the policy of this county to announce publicly all requirements for purchases of real property and to negotiate contracts at fair and reasonable prices for such purchases on the basis of location, accessibility, size, fitness for the particular purpose and other factors determined to be applicable to a specific purchase.
- (10) *Professional services.*
- a. *Authority.* For the purpose of procuring the services of accountants, clergy, consultants, court reporters, dentists, lawyers, physicians, "or other professional services" as defined in subsection 2-283(b)(10)b., below, any using department requiring such services may procure them on its own behalf, in accordance with the selection procedures specified in this subsection. Any using department procuring such services shall consult with the procurement director. No contract for services may be awarded without prior approval of county administrator.
 - b. *Definition.* "Professional services" shall be defined as those services which involve extended analysis, the exercise of discretion and independent judgment in their performance, and an advanced, specialized type of knowledge, expertise, or training customarily acquired either by a prolonged course of study or equivalent experience in the field.
 - c. *Selection procedure.*
 1. *Conditions for use.* Except as provided under subsection 2-283(b)(7) (sole source procurement) or subsection 2-283(b)(8) (emergency procurements), the professional services designated in subsection 2-283(b)(10)a. shall be procured in accordance with this subsection.
 2. *Statement of qualifications.* Persons engaged in providing the designated types of professional services may submit statements of qualifications and expressions of interest in providing such professional services. A using department utilizing such professional services may specify a uniform format for statements of qualifications. Persons may amend these statements at any time by filing a new statement.
 3. *Public announcement and form of request for proposals.* Adequate

notice of the need for such services shall be given by the using department requiring the services through a request for proposals. The request for proposals shall describe the services required, list the types of information and data required of each offeror, and state the relative importance of particular qualifications.

4. *Discussions.* The head of the using department procuring the required professional services or a designee of such officer may conduct discussions with any offeror who has submitted a proposal to determine such offeror's qualifications for further consideration. Discussions shall not disclose any information derived from proposals submitted by other offerors.
5. *Award.* Award shall be made to the offeror determined in writing by the head of the using department procuring the required professional services or a designee of such officer to be best qualified based on the evaluation factors set forth in the request for proposals, and negotiation of compensation determined to be fair and reasonable. If compensation cannot be agreed upon with the best qualified offeror, then negotiations will be formally terminated with the selected offeror. If proposals were submitted by one or more other offerors determined to be qualified, negotiations may be conducted with such other offeror or offerors, in the order of their respective qualification ranking, and the contract may be awarded to the offeror then ranked best qualified if the amount of compensation is determined to be fair and reasonable.
6. *Protest rights.* The provisions of section 2-287(a)(1) shall not apply to contracts awarded under the procedures set forth in this subsection.

(c) *Cancellation of invitation for bids or request for proposals.* An invitation for bids, a request for proposals, or other solicitation may be cancelled, or any or all bids or proposals may be rejected in whole or parts when it is in the best interest of the county.

Documentation supporting the reason(s) for rejection shall be made a part of the contract file.

- (d) *Qualifications and duties.*
- (1) *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 offeror who otherwise would have been awarded a contract is found nonresponsible, a written determination of nonresponsibility, setting forth the basis of the finding, shall be prepared by the 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 subsection 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.
- (2) *Prequalification of suppliers.* Prospective suppliers may be pre-qualified for particular types of supplies, services, and/or construction. Solicitation mailing lists of potential contractors shall include but shall not be limited to such pre-qualified suppliers.
- (3) *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 \$30,000.00 and is to be awarded under subsection 2-283(b)(4) (competitive sealed proposals), subsection 2-283(b)(7) (sole source procurement), or subsection 2-285(d) (architect-engineer and land surveying services).
 - 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 procurement director that the requirements of subsection 2-283(d)(3) 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 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 subsection, 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.
- (4) *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 procurement officer 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.
- (e) *Types of contracts.*
- (1) *Types of contracts.* Subject to the limitations of this subsection, 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 procurement director 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.
- (2) *Multi-term 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, provided the terms of the contract and the conditions of renewal or extension, if any, are included in the solicitation and funds are available for the first fiscal period at the time of contracting. Payment and performance obligations for succeeding fiscal periods shall be subject to

the availability and appropriation of funds and shall not be subject to non-substitution provisions.

- b. *Determination prior to use.* Prior to the utilization of a multi-term contract, it shall be determined in writing:
 - 1. That estimated requirements cover the period of the contract and are reasonably firm and continuing; and
 - 2. That 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 multi-term 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 cancelled. Such contracts shall also provide that the county is not subject to a non-substitution provision.

(3) *Leasing.*

- a. *General information.* A lease/purchase financing agreement is a contract by which one party conveys property to another for a period of time in exchange for the payment of interest and a portion of principal on the purchase price of the property. The use of lease/purchase financing will be limited to those situations in which it is in the county's best interest to secure third party financing. Purchases made with lease purchase financing are made using the same purchasing guidelines as other purchases.
- b. *Procedures.* User departments must submit requests to use lease purchase financing to and receive authorization from both the purchasing and budget departments.
- c. *Rental of equipment.* Equipment should only be rented to fill short-term equipment needs. This may include one-time, short-term needs or short term needs that may be re-occurring in which the rental of equipment is more cost effective than ownership of the equipment.

(f) *Inspection of plant and audit of records.*

- (1) *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.

(2) *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 pursuant to subsection 2-283(d)(3) (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 five 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 five years from the date of final payment under the subcontract, unless a shorter period is otherwise authorized in writing.
- (g) *Reports and records.*
- (1) *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.
 - (2) *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 procurement director.
 - 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. 0-06-09, 11-20-06)

Sec. 2-284. Specifications.

(a) *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. Any use characteristics that serve to limit competition shall be avoided. The policy herein enunciated applies to all specifications including but not limited to, those prepared for the county by architects, engineers, designers, draftsmen, and land surveyors.

(b) *Duties of the procurement director and the using agencies.* The procurement

director may prepare or review, issue, revise and maintain the specifications for supplies, services, and construction required by the county. The procurement director 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.

Specifications for property, supplies, services, or construction items exempted in section 2-283(a) (exemptions), may be prepared by the using agency in accordance with the provisions of this subsection.

- (c) *Brand name or equal specification.*
 - (1) *Use.* Brand name or equal specifications may be used when the using agency makes a written determination that:
 - a. No other design or performance specification or qualified products list is available;
 - b. Time does not permit the preparation of another form of purchase description, not including a brand name specification;
 - c. The nature of the product or the nature of the county's requirements makes use of a brand name or equal specifications suitable for the procurement;
or
 - d. Use of a brand name or equal specification is in the county's best interests.
 - (2) *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.
 - (3) *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.
- (d) *Brand name specification.*
 - (1) *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 or items will satisfy the county's needs.
 - (2) *Competition.* The procurement officer shall seek to identify sources from which

the designated brand name item or items can be obtained and shall solicit such sources to achieve whatever degree of price competition is practicable. If only one source can supply the requirement, the procurement shall be made under section 2-283(b)(7) (sole source procurement).

(Ord. No. 0-06-09, 11-20-06)

Sec. 2-285. Procurement of construction, architect-engineer and land surveying services.

(a) *Management of construction contracting; responsibility for selection of methods of construction contracting management.* The director of public works, subject to approval of the county administrator, shall have discretion to select the appropriate method of construction contracting management for a particular project. In determining which method to use, the director of public works shall consider the county's requirements, its resources, and the potential contractor's capabilities. The director of public works shall execute, and include in the contract file a written statement setting forth the facts which led to the selection of a particular method of construction contracting management for each project. This subsection does not apply to a department head who has management responsibilities for federal and state grants.

(b) *Bid security and bonds.*

(1) *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 procurement director to exceed \$15,000.00. 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, cashiers' check or money order). Nothing herein prevents the requirement of such bonds on construction contracts under \$15,000.00 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. *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 pursuant to section 2-283(b)(2)h. (competitive sealed bidding, correction or withdrawal of bids, cancellation of awards), no action shall be had against the bidder on the bid security.

(2) *Contract performance and payment bonds.*

a. *When required; amounts.* When a construction contract is awarded in excess of \$30,000.00 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 provided 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 procurement director 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 subsection 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.
- (3) *Bond forms and copies.*
- a. *Bond forms.* The procurement director shall promulgate by regulation the form of the bonds required by this subsection.
 - 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.
- (c) *Construction contract clauses and fiscal responsibility.*
- (1) *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 procurement director 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 non-performances;
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:
 - (i) When the contract is negotiated;
 - (ii) When the contract provides the site or design; or
 - (iii) When the parties have otherwise agreed with respect to the risk of differing site conditions.

b. *Price adjustments.*

1. Adjustments in price resulting from the use of contract clauses required in subsection a. shall be computed in one 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 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;
- (iv) In such other manner as contracting parties may mutually agree; or
- (v) In the absence of agreement by the parties, by unilateral determination by the county of the reasonable costs allocable, either directly or indirectly, to the events or situations under such clauses as accounted for in accordance with generally accepted accounting principles, and with adjustment of profit or fee, as appropriate, and subject to the provisions of section 2-287 (legal and contractual remedies).

2. A contractor shall be required to submit cost or pricing data if any adjustment in contract price is subject to the provisions of section 2-283(d)(3) (cost or pricing data).

c. *Standard clauses and their modification.* The procurement director may establish standard contract clauses for use in county contracts. If the procurement director establishing any standard clauses addressing the subjects set forth in subsection a., 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 be stated in the invitation for bids or request for proposals.

(2) *Fiscal responsibility.* Every contract modification, change order, or contract price adjustment under a construction contract with the county in excess of \$25,000.00 shall be subject to prior approval by the county administrator after receiving a report from the director of administrative services or designated fiscal officer of the county as to the effect of the contract modification, change order, or contract price adjustment on the total project budget or the total contract budget. Contract modifications, change orders, or contract price adjustments of \$25,000.00 or less shall require the prior approval of the department head and director of administrative services. All price adjustments shall be paid from funds appropriated for such purposes.

(d) *Architect-engineer and land surveying services.*

(1) *Public announcement and selection process.*

- a. *On-call professional services.* A broad range of services may be made available through an on-call, as needed professional services contract. For illustration purposes, the following elements should be basic to this type contractual agreement:
1. Agreements may be multi-year;
 2. Agreements will establish hourly rates for each type of service and other charges;
 3. Agreements will not provide any guarantee of projects, nor identify any specific project to be assigned;
 4. As specific projects are assigned, the county will execute a simple contract modification to add the project and to detail the project's specific scope and services to be provided, the agreed upon number of hours and the time frame for completion; and
 5. If county staff is not agreeable to a firm's proposal to provide services, staff may negotiate with another firm with an on-call agreement to pursue a more acceptable proposal for the project.
- b. *Public announcement.* It is the policy of the county to publicly announce all requirements for architect-engineer and land surveying services and to negotiate such contracts on the basis of demonstrated competence and qualification at fair and reasonable prices.
- c. *Selection process.* A selection committee composed of at least the following members: procurement director, 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 regarding the proposed contract and shall select from among them the firm(s) 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.
- d. *Negotiation.* The selection committee shall negotiate a contract with the highest qualified firm for architect-engineer or land surveying services at compensation which is considered to be fair and reasonable to the county. In making this decision, the committee shall take into account the established value, the scope, the complexity, and the professional nature of the services to be rendered. Should the committee be unable to negotiate a satisfactory contract with the firm considered to be most qualified, negotiations with that firm shall be formally terminated. The committee

shall then undertake negotiations with the second most qualified firm. Failing award with the second most qualified firm, the committee shall formally terminate negotiations. The committee shall then undertake negotiations with the third most qualified firm. Should the committee be unable to negotiate a contract with any of the selected firms, the selection committee shall select additional firms in order of their competence and qualifications and continue negotiations in accordance with this subsection until an agreement is reached.

(Ord. No. 0-06-09, 11-20-06)

Sec. 2-286. Supply management.

(a) *Supply management regulations.*

(1) *Receiving and inventory regulations.* The procurement director shall promulgate regulations and procedures to insure proper receipt, identification, and inventory control for all supplies purchased for county use. Property acquired by grantor (federal or state) funds must also follow grantor guidelines.

(2) *Sale, transfer, lease, and disposal of surplus supplies.* Subject to the letter and intent of this division and of the applicable sections of the County Code, the procurement director 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 regulations, and the transfer of excess supplies between agencies and departments.

(3) *Trade-in sales.* The procurement director shall promulgate regulations and procedures to govern the trade-in of personal property owned by the county.

(b) *Proceeds; 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 or other appropriate fund as determined by the director of administrative services. If property was acquired with grantor funds, grantor disposal rules shall be followed.

(Ord. No. 0-06-09, 11-20-06)

Sec. 2-287. Legal and contractual remedies.

(a) *Pre-litigation resolution of controversies.*

(1) *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 procurement director, except as otherwise stated in this division. The protest shall be submitted in writing within seven calendar days after such aggrieved person receives the written intent to award bid

notice from Spartanburg County.

- b. *Authority to resolve protests.* The procurement director 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. Any such settlement shall first be approved by the county administrator.
- c. *Decision.* If the protest is not resolved by mutual agreement, the procurement director 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 subsection.
- d. *Notice of decision.* A copy of the decision under subsection c. shall be mailed or otherwise furnished immediately to the protestant and any other intervening party.
- e. *Finality of decision.* A decision under subsection c. shall be final and conclusive, unless fraudulent or a person adversely affected by the decision appeals administratively to the county administrator in accordance with this subsection. Debarment is not stayed pending appeal.

(2) *Authority to debar or suspend.*

- a. *Authority.* After reasonable notice to the person involved and reasonable opportunity for that person to be heard, the procurement director, after consultation with the county attorney, shall have authority to debar a person or firm for cause from consideration for award of contracts. The procurement director, after consultation with county attorney, shall also have the authority to suspend a person or firm from consideration for award of contracts if there is probable cause to believe that the person or firm has engaged in any activity which might lead to debarment. The period of debarment or suspension shall be as prescribed as appropriate by the procurement director.
- b. *Causes for debarment or suspension.* The causes for debarment or suspension shall include, but not be 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 of the 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 below, of a character which is regarded by the procurement director 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 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 procurement director determines to be so serious and compelling as to affect responsibility as a county contractor, including debarment by another governmental entity for cause.
 6. For violation of the ethical standards set forth in section 2-289 (ethics in public contracting) or in the South Carolina State Ethics Act.
- c. *Decision.* The procurement director shall issue a written decision to debar or suspend. The decision shall:
1. State the reasons for the action taken; and
 2. Inform the debarred or suspended person involved of its rights to administrative review as provided in this subsection.
- d. *Notice of decision.* A copy of the decision under subsection c. 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. shall be final and conclusive, unless fraudulent or the debarred or suspended person appeals administratively to the county administrator in accordance with this subsection. Debarment is not stayed pending appeal.

(3) *Authority to resolve contract and breach of contract controversies.*

- a. *Applicability.* This subsection 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.
- b. *Authority.* The procurement director is authorized, prior to commencement of an action in a court concerning the controversy, to settle and resolve a controversy described in subsection a. Any such settlement shall first be approved by the county administrator.
- c. *Decision.* If such a controversy is not resolved by mutual agreement, the procurement director shall promptly issue a decision in writing. The decision shall:
 - 1. State the reason for the action taken; and
 - 2. Inform the contractor of its right to administrative review as provided in this subsection.
- d. *Notice of decision.* A copy of the decision under subsection c. shall be mailed or otherwise furnished immediately to the contractor.
- e. *Finality of decision.* The decision under subsection c. shall be final and conclusive, unless fraudulent or the contractor appeals administratively to the county administrator in accordance with this subsection. Debarment is not stayed pending appeal.
- f. *Failure to render timely decision.* If the procurement director does not issue the written decision required under subsection c. within a reasonable time 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.

(b) *Solicitations or awards in violation of law.*

- (1) *Applicability.* The provisions of this subsection apply where it is determined by the procurement director, or upon administrative review, that a solicitation or award of a contract is in violation of law.

- (2) *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, then the solicitation or proposed award shall be:
- a. Cancelled;
 - b. Revised to comply with the law and re-bid; or
 - c. Revised to comply with the law and awarded in a manner that complies with the provisions of this division.
- (3) *Remedies after an award.* If, after an award of a contract, it is determined that the solicitation or award is in violation of law, then:
- a. If the person awarded the contract has not acted fraudulently or in bad faith:
 1. The contract may be ratified and affirmed, provided it is determined that doing so is in the best interest of the county; or
 2. The contract may be terminated and the person awarded the contract shall be compensated for the actual expenses reasonably incurred under the contract prior to the termination.
 - b. If the person awarded the contract has acted fraudulently or in bad faith:
 1. The contract may be declared null and void; or
 2. The contract may be ratified and affirmed if such action is in the best interest of the county, without prejudice to the county's right to such damages as may be appropriate.

(Ord. No. 0-06-09, 11-20-06; Ord. No. O-11-14, § 1, 8-15-11)

Sec. 2-288. Intergovernmental relations.

Cooperative purchasing.

- (1) *Cooperative purchasing authorized.* The procurement director may either participate in, sponsor, conduct, or administer a cooperative purchasing agreement for the procurement of supplies, services, or construction with one or more public procurement units in accordance with an agreement entered into between the participants. Such cooperative purchasing may include, but is not limited to, joint or multi-party contracts between public procurement units.
- (2) *Sale, acquisition or use of supplies.* The procurement director may sell to, acquire

from, or use any supplies belonging to another public procurement unit independent of the requirements of section 2-283 and section 2-286 of this division.

- (3) *Cooperative use of supplies or services.* The procurement director may enter into an agreement, independent of the requirements of section 2-283 and section 2-286 of this division, with any public procurement unit for the cooperative use of supplies or services under the terms agreed upon between the parties.
- (4) *Joint use of facilities/equipment.* The procurement director may enter into agreements for the common use or lease of warehousing facilities, capital equipment, and other facilities with another public procurement unit under the terms agreed upon between the parties.

(Ord. No. 0-06-09, 11-20-06)

Sec. 2-289. Ethics in public contracting.

(a) *Ethics, government accountability and rules of conduct.* The provisions of S.C. Code Ann. § 8-13-100 et seq., known as the Ethics, Government Accountability and Campaign Reform Act, are incorporated herein by reference and are applicable to all county procurement.

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

(c) *Sanctions.* In addition to all other civil and administrative remedies which are provided by law, the following sanctions may be imposed:

- (1) *Employees.* The county administrator may impose any one or more of the following sanctions on a county employee for violations of the ethical standards in this subsection or in the South Carolina State Ethics Act:
 - a. Oral or written warnings or reprimands;
 - b. Suspension with or without pay for a specified period of time; or
 - c. Termination of employment.
- (2) *Non-employees.* The procurement director may impose any one or more of the following sanctions on a non-employee for violations of the ethical standards:
 - a. Written warnings or reprimands;
 - b. Termination of contract(s); or

- c. Debarment or suspension as provided in section 7-102 (authority of debar or suspend).

(Ord. No. 0-06-09, 11-20-06)