

**STATE OF SOUTH CAROLINA
COUNTY OF UNION
ORDINANCE NO. 327**

AN ORDINANCE AMENDING THE UNION COUNTY CODE OF ORDINANCES AND PROCUREMENT PROCEDURES, IN CERTAIN LIMITED REGARDS AND PARTICULARS ONLY, ESTABLISHING THE PROCUREMENT REGULATIONS AND PROCEDURES OF UNION COUNTY, SOUTH CAROLINA; AND OTHER MATTERS RELATED THERETO.

WHEREAS, Union County, South Carolina (the "County"), a body politic and corporate and a political subdivision of the State of South Carolina (the "State"), acting by and through its governing body, the Union County Council (the "County Council"), has adopted multiple ordinances for the effective, efficient governance of the County, which, subsequent to adoption, are codified in the Union County Code of Ordinances (the "Code of Ordinances"), as amended, from time to time; and

WHEREAS, the County, acting by and through the County Council, is authorized by Section 4-9-30 of Title 6 of the South Carolina Code, 1976, as amended (the "S.C. Code"), among other sources, to adopt and implement a procurement code and procedures for the County, not inconsistent with the South Carolina procurement code, as set forth in the S.C. Code; and,

WHEREAS, on April 3, 1985, in Ordinance Number 83, the County previously adopted certain procurement procedures and regulations and standards in the County, which were codified in Chapter 12, Article V of the Code of Ordinances; and

WHEREAS, County Council recognizes that there is a need to revise the law of the County to meet the changing needs of the County and that there is a need to amend, specifically, Chapter 12, Article V of the Code of Ordinances to update the procurement procedures, regulations and standards of the County; and

WHEREAS, County Council has therefore determined to modify the Code of Ordinances in the following regards and particulars only, and to affirm and preserve all other provisions of the Code of Ordinances not specifically or by implication amended hereby.

NOW, THEREFORE, it is hereby ordained by the Union County Council, in meeting duly assembled, that:

1. That Chapter 12, Article V of the Code of Ordinances, Union County, South Carolina, entitled Procurement, is hereby rescinded, repealed and removed, and said section is hereby replaced to read as shown on Attachment A, attached hereto and incorporated herein by this reference as if fully set forth herein, to be effective upon final enactment of this ordinance, following public hearing of the same, as the current and official procurement procedures, regulations, and standards of the County.

2. Should any part or provision of this Ordinance be deemed unconstitutional or unenforceable by any court of competent jurisdiction, such determination shall not affect the rest and remainder of this Ordinance, all of which is hereby deemed separable.

3. All ordinances, orders, resolutions, and actions of County Council inconsistent herewith are, to the extent of such inconsistency only, hereby repealed, revoked, and rescinded. However, nothing contained herein, or in the Attachments hereto, shall cancel, void, or revoke, or shall be interpreted as cancelling, voiding, or revoking in any regard any prior acts, actions, or decisions of the County or County Council, valid and lawfully undertaken at the time, or to reinstate any prior act or enactment of Union County which was revoked or rescinded by such prior acts, actions, or decisions, in any regard.

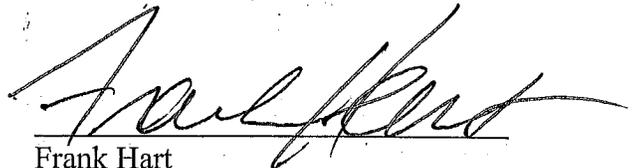
5. All other terms, provisions, and parts of the Code of Ordinances not amended hereby, directly or by implication, shall remain in full force and effect.

6. This Ordinance shall take effect and be in full force and effect from and after third reading and enactment by County Council.

ORDAINED in meeting, duly assembled, this 13th day of March, 2018.

ATTEST:


Linda Jolly
Clerk to Union County Council


Frank Hart
Chairman, Union County Council

First Reading: November 14, 2017
Second Reading: December 12, 2017
Third Reading: March 13, 2018
Public Hearing: January 9, 2018

Attachment A



UNION COUNTY PROCUREMENT CODE

ARTICLE V: PROCUREMENT

SECTION 12-71. GENERALLY.

(a) **General Application.** This Article applies to the procurement of property, supplies, services, and construction entered into by the County after the effective date of Union County Procurement Ordinance 327, unless the parties agree to its application to procurement entered into prior to the effective date. This Article is intended to generally comport and comply with the South Carolina Procurement Code, in material respects, and nothing herein contained is intended to, nor shall it, countervene, disregard, or change the concepts and goals of the South Carolina Procurement Code in any material regard, with respect to Union County, South Carolina procurements. Accordingly, this Article shall be interpreted and applied in every instance so as best to materially and generally comply with the South Carolina Procurement Code, to the greatest degree possible, except where specifically and explicitly stated, or objectively implied, otherwise.

(b) **Application to County Procurement.** This Article shall apply to all expenditures of funds by the County for the purpose of procuring property, supplies, services, and construction services for the County irrespective of the source of funds. It shall also apply to the disposal of County equipment and supplies.

(c) **Application to State or Federal Fund Procurements.** Where a procurement involves funds provided by the State of South Carolina or the United States of America, 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.

(d) **Contract Interpretation, Revision(s) and Execution.** No department head, employee or person in any position of Union County Government shall enter into, approve or execute any contract for any services, merchandise or any obligation of Union County until and unless signed and executed on behalf of Union County by the County Supervisor/Council Chair or his designee.

SECTION 12-72. DEFINITIONS.

The following words, unless the context clearly indicates otherwise, shall mean:

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 well as incidental services that members of these professions and those in their employ may logically or justifiably perform, including but not limited to 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.

Bidder. A business who has submitted a bid in response to an invitation for bids.

Business. Any corporation, partnership, sole proprietorship, firm, enterprise, company, franchise, association, organization, self-employed individual, or any other private legal entity organized for the sake of transacting business.

Change Order. An agreed-upon written order to a Contractor executed by the Procurement Director and the Contractor after or in conjunction with execution of the base contract, directing a change in the work which may include a change in the contract price, the time for the Contractor's performance, or any combination thereof.

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.

Construction Management Services, Design-Build Services, or Turnkey Management Services. Approaches to construction contract management that allow for the selection of a single business to perform and manage the complete design and construction of a project.

Contract. All types of County agreements, regardless of how they may be styled, for the procurement or disposal of property, supplies, services, or construction.

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

Contractor. Any business having a contract with the County.

Cooperative Procurement. Procurement conducted by, or on behalf of, more than one Public Procurement Unit.

Cost Reimbursement Contract. A contract that reimburses the contractor for all incurred costs which are allowable and allocable under the terms of the contract and may include a profit or fee.

County. For the purposes of this Article V, the political subdivision of Union County, and includes, without limitation, all departments and agencies operating under the authority of Union County, including Special Tax Districts within Union County and agencies created by Union County.

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

Duly Certified Disadvantaged Business Enterprises (DBE), Small Business Enterprises (SBE), Minority Business Enterprises (MBE), and Women's Business Enterprises (WBE) are businesses which have obtained a certification as a DBE, SBE, MBE or WBE from the State Government, including, but not limited to certification as an MBE by the Governor's Office of Small and Minority Business Assistance.

Electronic. Electrical, digital, magnetic, optical, electromagnetic, or any other similar technology.

Employee. Any individual drawing a salary from Union County, whether elected or not, and any non-compensated individual performing personal services for the County.

Excess Supplies. Any supplies which are no longer required by the using County department in possession of the supplies or which no longer have a remaining useful life.

Expendable Supplies. Supplies or equipment that are normally consumed during use and have a very short life cycle.

Grant. The furnishing by the State or Federal government of assistance, whether financial or otherwise, to any person to support a program authorized by law.

Governmental Body. Union County or any department or agency of this County with which a public official or public employee is associated or employed.

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

Nonexpendable Supplies. Supplies that are not consumed during use or that do not lose their identity during use.

Offeror. A business who has submitted an offer in response to a request for proposals.

Person. One human being acting individually or on behalf of a business, an estate, a committee, an association, a club, or any other organization or group of persons acting in concert.

Personal Property. All property not considered as real property.

Professional services. 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, including, without limitation, accountants, lawyers, paralegals, architects, clergy, surveyors, consultants, court reporters, dentists, physicians, and nurses.

Procurement. The buying, renting, leasing, or otherwise acquiring of any property, supplies, services, or construction services. It also includes all functions that pertain to the obtaining of any property, 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 Director. The County Supervisor/Council Chair or his/her designee.

Public Agency. A public entity subject to or created by the County.

Public Procurement Unit. Any county, city, town, or other subdivision of the State or public agencies 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, any association which limits membership to governmental units.

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

Request for Proposals ("RFP"). A written or published solicitation issued by the County for proposals to provide property, supplies, services, or construction services which ordinarily result in the award of the contract to the responsible offeror making the qualified and responsive 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 Request for Proposals, and may include, but not be controlled alone by, the factor of price proposed to be charged.

Responsible Bidder or Offeror. A business 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 or Offeror. A business who has submitted a bid or offer which conforms in all material respects to the requirements set forth in the invitation for bids or request for proposals.

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.

Signature. Any identifier or authentication technique attached to or logically associated with an electronic record that is intended by the party using it to have the same force and effect as a manual signature, as provided in the "South Carolina Electronic Commerce Act", Section 26-5-10, et seq. of the South Carolina Code of Laws, 1976, as amended.

Subcontractor. Any business 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 of a property, supply, service, or construction item. It may include a description of any requirement for inspecting, testing, or preparing a property, supply, service, or construction item for delivery.

Supplies. All personal property, including but not limited to equipment, materials, printing, insurance, excluding real property or an interest in real property.

Surplus Supplies or Property. Any supplies or property that are no longer needed by the County and are designated for disposal outside of the County. This includes obsolete supplies and/or property, scrap materials, and nonexpendable supplies that have completed their useful life cycle. (See section 12-97)

Using Department. Any department, commission, board, or public agency of this County requiring supplies, services, or construction procured under this Article.

SECTION 12-73. PROCUREMENT ORGANIZATION.

(a) **Centralization of Procurement.** 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 property, equipment and surplus supplies are hereby

vested in a central Procurement Department for the County subject to the legitimate authority of the County Council, the County Supervisor/Council Chair and such ordinances, rules, and regulations as exist for the governance of the County.

(b) Centralization of Procurement Authority. Except as otherwise provided in this Article, the authority relating to the procurement of property, supplies, services, and construction is hereby vested in the Procurement Director of this County.

(c) Establishment, Appointment, and Tenure. There is hereby created the position of Procurement Director, who shall be the County's principal public procurement official. The County Supervisor/Council Chair shall be the Procurement Director, or 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.

(d) Authority and Duties. 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 Article, as well as the disposal of Surplus Supplies and Property. In accordance with this Article, the Procurement Director shall: (a) procure or supervise the procurement of all property, supplies, services, and construction services needed by the County; (b) sell, trade, or otherwise dispose of Surplus Supplies and Property belonging to the County; (c) establish and maintain programs for specifications development, contract administration and inspection and acceptance, in cooperation with the using department, for property, supplies, services, and/or construction services.

(e) Delegation of Authority. The Procurement Director may delegate authority to purchase certain property, supplies, services, and construction to other County officials or designees of the Procurement Department, if such delegation is deemed necessary for the effective procurement of those items, but only in accordance with the other terms and provisions of this Article.

(f) Authority to Promulgate Regulations. Except as otherwise provided in this Article, the Procurement Director shall have the authority and responsibility to promulgate regulations governing the procurement, management, control, and disposal of any and all property, supplies, services, and/or construction to be procured by the County. A manual of Procurement 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 Article and the South Carolina Procurement Code.

(g) Relationship With Using Departments. The Procurement Director and his/her staff shall maintain a close and cooperative relationship with the using departments. Each using department shall be afforded reasonable opportunity to participate in and make recommendations with respect to procurement matters affecting the using department.

(h) Procurement Review Committee. The County Supervisor/Council Chair shall appoint a Procurement Review Committee to be chaired by the Procurement Director and include one department staff member, and one or more additional member(s) to resolve Procurement protests, Debarments or Suspensions, and Contract Controversies.

(i) Advisory Groups. The Procurement Director may appoint advisory groups 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 could include

department heads, vendors, and others as deemed necessary. Such groups shall, to the extent required by law, comply with all South Carolina laws applicable to such groups.

(j) **County Attorney.** The County Attorney, or others as he may designate, shall serve as legal counsel and provide necessary legal services to the Procurement Director.

SECTION 12-74. PROCUREMENT RECORDS.

(a) **Retention of Procurement Records.** All determinations and other written records pertaining to the solicitation and award of an Invitation to Bid, a Request for Proposals, or any other solicitation made under this Article, and findings required by this Article shall be maintained in a file by the Procurement Director. This requirement does not include documents, parts of documents, or copies of documents that are normally distributed to using departments, the Finance Department, or any other department that normally receives such distributions. All procurement records shall be retained and disposed of in accordance with records retention guidelines and schedules approved by the County. If a contract is being funded in whole or in part by assistance from a Federal agency, then all procurement records pertaining to that contract shall be maintained for three (3) years from the closeout date of the assistance agreement, or the final disposition of any controversy arising out of the assistance agreement.

(b) **Public Access to Procurement Information.** Procurement information shall be a public record to the extent required by the South Carolina Freedom of Information Act ("SCFOIA") as set forth in Chapter 4 of Title 30, of the South Carolina Code of Laws, 1976, as amended. Except as required by law or court order, commercial or financial information which an offeror or bidder seeks to protect from disclosure (hereinafter "Proprietary Information" in this subsection) will not be disclosed after the award provided the offeror or bidder clearly marks any information the offeror or bidder considers to contain Proprietary Information as "CONFIDENTIAL" on each part of the proposal documents by page, paragraph, section or line, as appropriate. Proprietary Information includes information that, if disclosed, might cause harm to the competitive position of the offeror or bidder supplying the information or disclose business secrets or other information of the offeror or bidder which would harm the business interests of the proposer or bidder and is subject to non-disclosure under SCFOIA. Additionally, the offeror or bidder seeking to exempt information from disclosure under SCFOIA shall be solely responsible for identifying information as exempt from disclosure under SCFOIA and for visibly marking each specific document or part of a document which the offeror or bidder deems to be so exempt as "EXEMPT FROM S.C. FREEDOM OF INFORMATION ACT." If any part of a proposal is designated as exempt from SCFOIA, there must be attached to that part an explanation of how this information fits within one or more categories exempt from disclosure under SCFOIA. The County shall reserve the right to determine, in its sole discretion, whether this information, including marked items, meets SCFOIA requirements for non-disclosure or otherwise should be exempt from disclosure. The offeror or bidder shall be solely responsible for any consequences related to or arising from the nondisclosure of any information that is subsequently determined not exempt from disclosure under SCFOIA. The County will not assume responsibility for the disclosure of any information that is disclosed as a result of the offeror or bidder's failure to visibly mark as "CONFIDENTIAL" or "EXEMPT FROM S.C. FREEDOM OF INFORMATION ACT," and the County will not bear liability for disclosing Proprietary Information or other

information that the County in good faith has determined to be subject to disclosure under applicable law or court order. The County shall disclaim any responsibility for not disclosing information identified by an offeror or bidder as exempt from SCFOIA.

SECTION 12-75. DBE/SBE/MBE/WBE UTILIZATION.

The County wishes to ensure that qualified and duly certified Disadvantaged Business Enterprises ("DBE"), Small Business Enterprises ("SBE"), Minority Business Enterprises ("MBE"), and Women's Business Enterprises ("WBE") are afforded the opportunity to fully participate in the overall procurement process of the County. The Procurement Officer shall assist any SBE, MBE, or WBE in understanding County solicitations.

SECTION 12-76. SPECIFIC STATE AND FEDERAL LAW REQUIREMENTS.

(a) **Drug-free Workplace Act.** The County shall require offerors and bidders responding to any written or published solicitation issued by the County to certify in writing that the offeror or bidder is in full compliance with the requirements of the Drug-free Workplace Act as set forth in Chapter 107 of Title 44 of the South Carolina Code of Laws, 1976, as amended.

(b) **Unauthorized Aliens and Public Employment.** The County shall require offerors and bidders responding to any written or published solicitation issued by the County to certify in writing that the offeror or bidder is in full compliance with the requirements set forth in Chapter 14 of Title 8 of the South Carolina Code of Laws, 1976, as amended, and specifically that the offeror or bidder agrees to provide to the public employer any documentation required to establish either: (a) Chapter 14 of Title 8 of the South Carolina Code of Laws, 1976, as amended, is inapplicable to the offeror or bidder or any subcontractor or sub-subcontractor of the offeror or bidder; or (b) the offeror or bidder and any subcontractor or sub-subcontractor of the offeror or bidder is in full compliance with Chapter 14 of Title 8 of the South Carolina Code of Laws, 1976, as amended. The offeror or bidder shall also certify that the offeror or bidder will, and at all times during the performance of work provided to the County, be in full compliance with the provisions of the Immigration Reform and Control Act of 1986 (IRCA) in the hiring of its employees, and the offeror or bidder shall indemnify, hold harmless and defend the County against any and all actions, proceedings, penalties or claims arising out of the offeror or bidder's failure to comply strictly with IRCA or Chapter 14 of Title 8 of the South Carolina Code of Laws, 1976, as amended.

(c) **Compliance with Federal Requirements; Compliance with Disbursement and Management Requirements of Financing Documents.** Where a procurement involves the expenditure of Federal assistance or contract funds, the Procurement Director shall comply with such Federal law and authorized regulations which are mandatorily applicable, and which are not presently reflected in this Article. Where a procurement involves the expenditure of funds; which are the proceeds of bonds or certificates of participation, or other financing instruments or documents, the Procurement Director and other applicable County personnel shall comply with the terms of such financing as they relate to the disbursement of funds and management of projects, insofar as such terms are mandatorily applicable and which are not presently reflected in this Article.

SECTION 12-77. STANDARDS OF CONDUCT AND ETHICS IN PUBLIC CONTRACTING.

(a) In all actions involving the procurement of property, supplies, services, or construction for the County, the provisions of Chapter 13 of Title 8 of the South Carolina Code of Laws, 1976, as amended, (the "State Ethics Act"), shall be complied with. It shall be unethical for a person or business to be retained, or to retain a person or business, 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.

(b) Any County employee, elected official, or other staff is prohibited from discussing any solicitation with any potential bidder or offeror once the bid or proposal has been advertised, or otherwise released to the public. Potential Bidders or Offerors are also prohibited from discussing any solicitation with any County employee, elected official, or other staff once a bid or proposal has been advertised, or otherwise released to the public. Both County employees, staff, elected officials, potential bidders or offerors should direct all questions, concerns or information to the Procurement department. All information related to any solicitation must be discussed with the Procurement staff and made a part of the official solicitation file.

SECTION 12-78. EXEMPTIONS.

(a) **Funding Exemptions** If the County merely and lawfully provides funds for the provision of public services, public improvements or public infrastructure in connection with a private project, where the work for the project, including without limitation, the design, acquisition, construction or installation of improvements or infrastructure (including the public improvements or infrastructure) is to be performed by a private business or its agent, and the County does not exercise authority or control over the project, such a project shall be exempt from this Article and the private business need not procure the services and the supplies associated with such a project as specified in this Article.

(b) **Supply/Service Exemptions.** The following supplies and services are exempt from this Article and need not be purchased through the standard procurement process: (1) Works of art and one-of-a-kind items, such as paintings, antiques, sculptures and similar objects; (2) Published books, maps, periodicals, technical pamphlets, and other such materials; (3) Membership fees, professional dues, registration fees; (4) Postage stamps and fees; (5) Utility Services subject to rate regulation by the Public Service Commission; (6) Advertising time or space in newspapers, radio, television, professional journals or publications; (7) Professional training including travel and lodging; (8) The purchase of goods, products, and services from the South Carolina Department of Corrections, Division of Prison Industries; (9) Attorneys and legal services; (10) License agreements for computer software, after such software has been purchased subject to the provisions of this Article; (11) The procurement of copyrighted educational films, filmstrips, slides and transparencies, CD-ROM documents, databases, computer assisted instructional materials, video programs and other related materials.

(c) **Other Exemptions.** Procurements obtained under any of the following methods are exempt from Invitation to Bid/Request for Proposals procedures listed in this Article: (1) Sole Source procurement (see section 12-85); (2) Emergency procurements (see section 12-86); (3) Equipment Maintenance or service contracts which are made with the manufacturer or authorized service/agent. This also includes additional purchases of equipment to replace or

upgrade part of a system that is covered under a maintenance agreement; (4) Repairs to equipment performed by an authorized dealer including repair parts that may only be obtained from an authorized dealer; (5) Equipment or services purchased through South Carolina State Contracts, South Carolina State or Federal Surplus Property, Federal GSA Contracts, or from Invitations to Bid/Requests for Proposals issued by other governmental agencies or political subdivisions and other cooperative purchases under section 12-96; (6) Used Equipment – When County staff have inspected used equipment and found it to be in good condition and competitively/fairly priced and when “time is of the essence” to secure said equipment, the County Supervisor/Council Chair has authority to approve this type of purchase; (7) Existing bid or contract – the acquisition of supplies, services or construction previously contracted for; (8) Payments to the State or Federal Government; (9) Self Insurance Claims; (10) Professional Membership Dues. Although the items listed in this section are exempt from the normal procurement procedures of this Article, 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.

SECTION 12-79. METHODS OF SOURCE SELECTION.

Unless otherwise required by law, all County procurements amounting to Fifty Thousand Dollars (\$50,000.00) or more shall be awarded by competitive sealed bidding, pursuant to section 12-80 (Competitive Sealed Bidding), except as provided in: (1) section 12-78(b) (Supply/Service Exemptions); (2) section 12-78(c) (Other Exemptions); (3) section 12-80(m) (Negotiations After Unsuccessful Competitive Sealed Bidding); (4) section 12-81 (Competitive Sealed Proposals); (5) section 12-82 (Competitive Best Value Bidding); (6) section 12-83 (Purchasing Limits); (7) section 12-85 (Sole Source Procurement); (8) section 12-86 (Emergency Procurements); (9) section 12-98 (Real Property); (10) section 12-87 (Professional Services); (11) section 12-94 (Construction Contracts).

SECTION 12-80. COMPETITIVE SEALED BIDDING.

(a) **Conditions for Use.** Procurements amounting to Fifty Thousand Dollars (\$50,000.00) or more shall be awarded by competitive sealed bidding except as otherwise provided in section 12-79 (Methods of Source Selection).

(b) **Invitation to Bid.** An Invitation to Bid shall be issued in an efficient and economical manner to at least three qualified sources on the bidders' lists 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 to bid shall be issued to such qualified sources as are available.

(c) **Bidders' Lists.**

1. 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.

2. The Procurement Director shall ensure that the bidders' lists contain all identified sources interested in bidding on County procurement. The Procurement Director shall periodically review the bidders' lists and shall require the addition or deletion to such lists of sources contained therein, as deemed necessary by the Procurement Director.

(d) Public Notice. Adequate public notice of the Invitation to Bid shall be given for a reasonable time, not less than ten calendar days prior to the date set forth therein for the opening of bids. Such notice may include publication in print or electronic media 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 (in addition to the Procurement Director) at the time and place designated in the Invitation to Bid. The amount of each bid, and such other relevant information as the Procurement Director deems appropriate, together with the name of each bidder shall be recorded. Late bids shall not be opened and considered for award, but the name of the late Bidder(s) and the time of the attempted delivery shall be recorded in the bid file, wherever possible. The record (tabulation) and each bid shall be open to public inspection after award of bid in accordance with section 12-74. The Procurement Director may record the bid opening, by appropriate media, in his/her sole determination.

(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 to Bid, which may include criteria to determine acceptability such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose. The Invitations to Bid shall set forth the evaluation criteria to be used and their respective weighting. No criteria or weighting may be used in bid evaluations that are not set forth in the Invitation to Bid.

(h) Discussion with Bidders. As provided in the Invitation to Bid, discussions may be conducted with apparent responsive bidders for the purpose of clarification if in the Procurement Director's sole judgment such clarification is necessary and beneficial to the County. Clarification of any bidder's bid must be documented in writing by the Procurement Director and shall be included with the bid file.

(i) 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 Procurement 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 best interests of the County 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, and must always be in the best interests of the County.

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

1. If there is an in-county business (active business or warehousing facility located within Union County) tied with an out-of-county business, the award will go to the in-county business.

2. If there is an in-state business (active business or warehousing facility located within South Carolina) tied with an out-of-state business, the award will go to the in-state business.

3. Tie bids involving in-County and in-State firms may be resolved by the flip of a coin in the office of the Procurement Director witnessed by all interested parties.

(k) **Award.** The contract of procurement 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 to Bid. The Procurement Director shall approve the award of contracts up to Fifteen Thousand Dollars (\$15,000.00). The County Supervisor/Council Chair shall approve the award of contracts more than Fifteen Thousand Dollars (\$15,000.00). Awards of contracts over Fifteen Thousand Dollars (\$15,000.00) awarded to other than the low bidder shall be approved by majority vote of County Council after an acceptable recommendation of award from the using department and approval of the Procurement Director and the County Supervisor/Council Chair.

(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 to Bid 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 to do so. Such communication or determination shall be in writing. Examples of minor informalities or irregularities may, in the County's sole discretion, 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 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 or if it appears by the bid that the bidder took the information in an addendum into account;
4. failure of a bidder to furnish product literature;
5. failure of a bidder to furnish financial statements;
6. failure of a bidder to indicate a bid number on its submission envelope;
7. failure of a bidder to indicate his/her contractor's license number.

(m) **Negotiations After Unsuccessful Competitive Sealed Bidding.** When bids received pursuant to an Invitation to Bid are unreasonable or the low bid exceeds available funds as certified by the Finance Director, and it is determined by the Procurement Director, and upon approval of the County Supervisor/Council Chair, that time or other circumstances will not permit the delay required to re-solicit competitive sealed bids or it is not deemed in the best interest of the County to do so, a contract may be negotiated pursuant to this section with the lowest responsive/responsible bidder on the unsuccessful competitive sealed bid.

(n) **Cost of Bids.** Under no circumstances will the County be liable for any costs associated with any response to solicitations made under this Article. The bidder shall bear all costs associated with the preparation of responses to solicitations made under this Article.

(o) **Rejection or Acceptance of Bids; Waiver of Technicalities and Irregularities.** The County shall reserve the unqualified right to reject any and all bids or accept such bids, for any or no reason, as appears in the County's own best interest. The County shall reserve the unqualified right to waive technicalities or irregularities of any kind in solicitations made under this Article. In all cases, the County shall be the sole judge as to whether a bidder's bid has or has not satisfactorily met the requirements of solicitations made under this Article.

(p) **Bid Payment and Performance Bonds on Supply or Service Contracts.** All procurements for equipment, supplies, and services may require bid security and performance bonds at the discretion of the Procurement Director in consultation with the using department head. Bid security when required, shall be in an amount equal to at least five percent (5%) of the amount of the bid. Payment Performance bonds, when required, will normally be equal to one hundred percent (100%) of the contract. A determination regarding bids received for equipment, supplies, and services without requiring bid security will be made by the Procurement Director in the same manner as provided for in Section 12-94 (c). A cashiers/official bank check made payable to the County may be submitted in lieu of a bond, or a letter of credit under circumstances deemed acceptable by the Procurement Director and the County Attorney's office. Bonding requirements will be set forth in the solicitation.

(q) **Change Orders.** The County Supervisor/Council Chair shall have the authority to approve all change orders and contract modifications up to a cumulative total of fifteen percent (15%) of the total contract amount. Change orders in excess of a cumulative total of fifteen percent (15%) of the total contract amount must be approved by County Council. The County Supervisor/Council Chair shall report to County Council on all change orders approved by the County Supervisor/Council Chair.

(r) **Report to Administrative Committee or Council.** The Procurement Director shall provide to County Council and/or an Administrative Committee thereof, monthly, a report detailing any sealed bid awards \$50,000.00 and over awarded by the County Supervisor/Council Chair and change orders approved by the County Supervisor/Council Chair if the contract was originally approved by County Council.

SECTION 12-81. COMPETITIVE SEALED PROPOSALS / REQUEST FOR PROPOSALS.

(a) **Conditions for Use.** When the Procurement Director determines, in writing, with explanation of the reason(s), 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. If three qualified sources are not available, proposals shall be solicited from as many qualified sources as are available.

(c) **Public Notice.** Adequate public notice of the Request for Proposals shall be given in the same manner as provided in Section 12-80 (d) (Competitive Sealed Bidding, Public

Notice); provided the minimum notice period shall be fifteen (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 offerors. 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 proposals shall not be disclosed during the process of negotiation. Proposals shall be open for public inspection, in accordance with Section 12-74, after contract award. Late proposals shall neither be opened nor considered for award; however, the name and address of the late offeror and the time of attempted delivery shall be recorded wherever practicable.

(f) Request for Qualifications. Prior to soliciting proposals, the Procurement Director 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 and the general scope of the work and shall state the deadline for submission of information and how prospective offerors may apply for consideration. The request shall require information only on their qualifications, experience, and ability to perform the requirements of the contract. 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 three 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 Section 12-95.

(g) Public Notice. Adequate public notice of the Request for Qualifications shall be given in the manner provided in Section 12-80 (d).

(h) Evaluation Criteria. The Request for Proposals shall state the criteria and weighting to be considered in evaluating proposals. Price may, but need not be, an initial evaluation criterion.

(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 eligible 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 weighting that has 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 criteria and weighting stated in the Request for Proposals. If price is an initial evaluation criterion, award shall be made in accordance with Section 12-80 (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 Director 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 responsible and responsive offeror whose proposal is determined in writing to be the most advantageous to the County, taking into consideration price and the evaluation criteria and weighting set forth in the Request for Proposals, unless one of the options listed in Section 12-81 (l) is utilized. The contract file shall contain the basis on which the award is made. Procedures and requirements for notification of intent to award the contract shall be the same as those stated in Section 12-80 (k).

(l) Other. If, after following the procedures set forth in Section 12-81 (j), it is not possible to negotiate a contract, 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 Director, may in his/her sole discretion, and not subject to challenge through a protest filed under Section 12-95, 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 the Procurement Director;

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 the Procurement Director;

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 it is still not possible to award a contract, any of the procedures outlined herein may be repeated until a proposed contract is successfully achieved.

(m) Minor Informalities and Irregularities in Proposals. A minor informality or irregularity is one which is merely a form or is some immaterial variation from the exact requirements of the request for proposals having no effect or merely a trivial or negligible effect on total 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 offerors. The Procurement Director shall either give the offeror the opportunity to cure any deficiency resulting from a minor informality or irregularity in a proposal 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 may, in the County's sole discretion, include, but are not limited to:

1. failure of a offeror to return the number of copies of signed proposals required

by the solicitation;

2. failure of a offeror to furnish the required information concerning the number of the offeror's employees or failure to make a representation concerning its size;

3. failure of a offeror 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 offerors;

4. failure of a offeror to furnish product literature;

5. failure of a offeror to furnish financial statements;

6. failure of a offeror to indicate a bid number on its submission envelope;

7. failure of a offeror to indicate his/her contractor's license number.

(n) **Cost of Proposals.** Under no circumstances will the County be liable for any costs associated with any proposal. The offeror shall bear all costs associated with the preparation of proposals.

(o) **Rejection or Acceptance of Proposals; Waiver of Technicalities and Irregularities.** The County shall reserve the unqualified right to reject any and all proposals for any reason or no reason, or accept such proposals, as appears in the County's own best interest. The County shall reserve the unqualified right to waive technicalities or irregularities of any kind in solicitations made under this Chapter. In all cases, the County shall be the sole judge as to whether a proposer's proposal has or has not satisfactorily met the requirements to solicitations made under this Chapter.

SECTION 12-82. COMPETITIVE BEST VALUE BIDDING.

(a) **Conditions for Use.** When the Procurement Director has determined that the use of competitive sealed bidding is either not practicable or not advantageous to the County, and has documented the same in writing, a contract may be entered into by competitive best value bidding subject to the provisions of Section 12-79 (Methods of Source Selection). The purpose of best value bidding is to allow factors other than price to be considered in the determination of award for specific supplies, services, or information technology.

(b) **Invitation to Bid.** An Invitation to Bid shall be issued in the same method described in subsection 12-80 (b).

(c) **Bidders' Lists.**

1. 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.

2. The Procurement Director shall ensure that the bidders' lists contain all identified sources interested in bidding on County procurement. The Procurement Director shall periodically review the bidders' lists and shall require the addition or deletion to such lists of sources contained therein, as deemed necessary by the Procurement Director.

(d) **Public Notice.** Adequate public notice of the Invitation to Bid must be given in the same method described in subsection 12-80 (d).

(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, in addition to the Procurement Director, at the time and place designated in the Invitation to Bid. At the bid opening the only information that will be released is the names of the participating bidders. The Procurement Director may record the bid opening. Cost information will be provided after the ranking of the bidders and the issuance of award.

(g) Bid Acceptance and Bid Evaluation Factors. Bids shall be unconditionally accepted without alteration or correction, except as authorized by this Article. Bids shall be evaluated based on the factors and weighting factors stated in the bid documents. Cost must be a factor in determination of award and cannot be weighted at less than 60 percent. Bid evaluation factors may include, but are not limited to, any of the following: a) operational costs that the County would incur if the bid is accepted; b) quality of the product or service or its technical competency; c) reliability of delivery and implementation schedules; d) maximum facilitation of data exchange and systems integration; e) warranties, guarantees, and return policy; f) vendor financial stability; g) quality and effectiveness of business solution and approach; h) industry and program experience; i) prior record of vendor performance; j) vendor expertise with engagement of similar scope and complexity; k) innovative use of current technologies and quality results.

(h) Discussion with Bidders. As provided in the Invitation to Bid, discussions may be conducted with apparent responsive bidders for the purpose of clarification if in the Procurement Director's sole judgment such clarification is necessary and beneficial to the County. Clarification of any bidder's bid must be documented in writing by the Procurement Director and shall be included with the bid file.

(i) 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 as in subsection 12-80 (i).

(j) Selection and Ranking. Bids shall be evaluated by using only the criteria stated in the best value bid and by adhering to the weighting as assigned. All evaluation factors, other than cost, will be considered prior to determining the effect of cost on the score for each participating bidder. Once the evaluation is complete, all responsive bidders shall be ranked from most advantageous to least advantageous to the County.

SECTION 12-83. PURCHASING LIMITS.

(a) General. Any procurement not exceeding Fifty Thousand Dollars (\$50,000.00) may be made in accordance with the procedures authorized in this Section. Procurement requirements shall not be artificially divided so as to fall within a different purchasing limit. All purchases must be approved in advance by way of a purchase order or procurement card. All purchasing limits include the expense of sales or use taxes. Procurement reserves the authority to review any request made by a using department pursuant to this section.

(b) Procurements not exceeding Five Hundred Dollars (\$500.00). Any procurement not exceeding Five Hundred Dollars (\$500.00) may be accomplished without securing competitive quotations if the prices are considered to be fair and reasonable. Competitive quotations need only be taken when the Procurement Director 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 or other applicable criteria). Every effort should be made to distribute such procurements equitably among qualified suppliers.

(c) Procurements over Five Hundred Dollars (\$500.00) but not exceeding Ten Thousand Dollars (\$10,000.00). Insofar as it is practical, any procurement exceeding Five Hundred Dollars (\$500.00) but not exceeding Ten Thousand Dollars (\$10,000.00) may be accomplished through solicitations of written quotes from a minimum of three qualified sources of supply shall be made by the requesting department and documentation of the quotes attached to the purchase requisition. The award shall be made to the lowest responsive/responsible source after all quotes are reviewed by the Procurement Department.

(d) Procurements over Ten Thousand Dollars (\$10,000.00) but not exceeding Fifty Thousand Dollars (\$50,000.00). Insofar as it is practical, any procurement exceeding Ten Thousand Dollars (\$10,000.00) but not exceeding Fifty Thousand Dollars (\$50,000.00) may be accomplished through solicitations of written quotes from a minimum of three qualified sources of supply shall be made by the Procurement Director. Documentation of the quotes shall be attached to the purchase requisition. The award shall be made to the lowest responsive/responsible source.

(e) Protest Rights. The provisions of Section 12-95 shall not apply to procurements awarded under the procedures set forth in this Section.

SECTION 12-84. PROCUREMENT CARD PROGRAM.

(a) The procedures for this program shall be promulgated and amended as needed by the Procurement Review Committee approved by the County Supervisor/Council Chair.

(b) This program shall be discontinued at any time as recommended by the Procurement Director and approved by the County Supervisor/Council Chair.

(c) The Cardholder shall use the Procurement Card for legitimate business purposes only. Misuse of the card will subject the cardholder to disciplinary action in accordance with County personnel policies and/or applicable criminal laws.

(d) Small purchases may be made by departmental users with a Procurement Card.

(e) Purchases exceeding the small purchase limit may be made with a Procurement Card by the Procurement staff or the County Supervisor/Council Chair if in the best interests of the County.

SECTION 12-85. SOLE SOURCE PROCUREMENT.

Any request by an agency or department head that a procurement be restricted to one potential source shall be accompanied by a letter from the using department signed by the department head stating why no other source will be suitable or acceptable to meet the needs. In such instance, a contract may be awarded for a property, supply, service, or construction item without competition when the Procurement Director determines in writing that there is only one source for the required property, supply, service, or construction item or that the proposed award to a single source is a permitted, non-competitive procurement as established herein. After verification of a sole source vendor, or the justification of a sole source purchase is warranted, the Procurement Director, has the authority to negotiate the price, terms, and conditions of the procurement. An example of a

permissible, non-competitive procurement includes, but is not limited to where the Procurement Director and the Department Head have deemed the compatibility of equipment, accessories, services, systems, software or replacement parts is of paramount importance. The purchase will be approved as in subsection 12-80(k).

SECTION 12-86. EMERGENCY PROCUREMENTS.

Notwithstanding any other provision of this Article, the Procurement Director, after consultation with the County Supervisor/Council Chair, 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, provided that such emergency procurements shall be made with such competition as is practicable under the circumstances. Written communication by the using department to document the basis for the emergency and for the selection of the particular contractor shall be provided to the Procurement Department and included in the procurement file. Expenditures in excess of One Hundred Thousand Dollars (\$100,000.00) shall be reported to the County Council as early as practical.

SECTION 12-87. PROFESSIONAL SERVICES.

(a) **Authority.** The Procurement Director may procure professional services on behalf of the using department and the County in accordance with the selection procedures specified in this section. Procurement of legal services shall be handled by the County Supervisor and shall not be otherwise subject to the provisions of this Section 12-87.

(b) **Selection Procedure.**

1. **Conditions for Use.** Except as provided under section 12-85 (Sole Source Procurement) or section 12-86 (Emergency Procurements), professional services shall be procured in accordance with this subsection.

2. **Statement of Qualifications.** Businesses 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. Businesses 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, which will be provided, at a minimum, to all businesses which have submitted statements of qualification and expressions of interest. 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 Procurement Director along with the head of the using department procuring the required professional services 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 to be best qualified based

on the evaluation factors set forth in the Request for Proposals, and based on 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 for that offeror is determined to be fair and reasonable.

6. Protest Rights. The provisions of section 12-95 shall not apply to contracts awarded under the procedures set forth in this section.

(c) Exceptions. Professional Services as defined in this section that are estimated to not exceed Fifty Thousand Dollars (\$50,000.00) may be awarded by direct negotiation and selection, taking into account the following factors:

1. the type of services required;
2. the proximity (location) of the professional providing the services;
3. the capability of the professional to produce the required service within a reasonable time;
4. past performance and
5. the ability to meet the budget requirements.

SECTION 12-88. CANCELLATION OF INVITATIONS TO BID OR REQUESTS FOR PROPOSAL.

An Invitation to Bid, a Request for Proposals, or other solicitation may be cancelled, or any or all bids or proposals may be rejected in whole or part for any reason or no reason when it is in the best interest of the County. Documentation supporting the reason(s) for cancellation or rejection shall be made a part of the solicitation file. Under no circumstances will the County be liable for any costs associated with any bid or proposal. The bidder or offeror shall bear all costs associated with the preparation of bids and proposals.

SECTION 12-89. LOCAL PREFERENCE.

The lowest local responsible and responsive bidder who is within five percent (5%) of the lowest non-local responsible and responsive bidder, may match the bid submitted by the non-local responsible and responsive bidder and thereby be awarded the contract. The local preference as set forth in this section shall only be applied to responses to solicitations of written quotes and invitations to bid in excess of ten thousand dollars (\$10,000.00). The local preference as set forth in this section shall only be given to local responsible and responsive bidders who have a physical business address located and operating within Union County for a minimum of six (6) months prior to the solicitation of quotes and/or bids, and who have met all other requirements of the solicitations of written quotes or the invitation to bid, including, without limitation, payment of all duly assessed state and local taxes. If state or federal guidelines prohibit or otherwise limit local preference, then the County shall not use local preference in awarding the contract. If there are multiple responsible and responsive bidders who meet the local preference guidelines as set forth in this section, the County shall use standard procurement practice and procedure as set forth in this Article to determine

the priority of selection. The local preference as set forth in this section does not waive or otherwise abrogate the County's unqualified right to reject any and all bids or proposals or accept such bids or proposals, as appears in the County's own best interest.

SECTION 12-90. QUALIFICATIONS AND DUTIES OF BIDDERS AND OFFERORS.

(a) Responsibility of Bidders and Offerors.

1. Determination of Responsibility. Responsibility of the bidder or offeror shall be ascertained by the Procurement Director for each contract entered into by the County based upon full disclosure to the Procurement Director concerning capacity to meet the terms of the contracts and based upon past record of performance for similar contracts.

2. Determination of Non-responsibility. If a bidder or offeror who otherwise would have been awarded a contract is found non-responsible, a written determination of non-responsibility, setting forth the basis of the finding, shall be prepared by the Procurement Director. 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 non-responsibility with respect to such bidder or offeror.

SECTION 12-91. TYPES OF CONTRACTS.

(a) Limitation on Contracts. Subject to the limitations of this section, any type of contract which will promote the best interest of the County may be used for procurement purposes.

(b) Multi-Term Contracts.

1. 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 a total of five (5) 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. Extension beyond the five year total will be at the discretion of the County Supervisor/Council Chair or as County Council may direct. Payment and performance obligations for succeeding fiscal periods shall be made subject to the availability and appropriation of funds therefore and shall not be subject to non-substitution provisions.

2. Determination Prior to Use. Prior to the utilization of a multi-term contract, it shall be determined in writing by the using department: (a) that estimated requirements cover the period of the contract and are reasonably firm and continuing; and (b) that such a contract will serve the best interest of the County by encouraging effective competition or otherwise promoting economies in County procurement.

3. Cancellation Due to Unavailability and Non-Appropriation 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 any subsequent fiscal period, the contract shall be cancelled. Such contracts shall also provide that the County is not subject to a non-substitution provision.

(c) Leasing Contracts.

1. Lease/Purchase Agreements. 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. The use of lease/purchase financing shall be approved by County Council. Purchases made with lease purchase financing are made using the same procurement guidelines as other purchases.

2. 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.

3. Lease of Business Personal Property. A business lease is a contract for the use of equipment or other supplies under which Title does not pass to the County unless there is a purchase option, where Title may pass to the County at some future time. A lease may be entered into provided: (a) that it is in the best interests of the County, (b) all conditions for renewal and costs of termination are set forth in the lease, and (c) the lease shall be obtained using normal Procurement procedures.

(d) Maintenance Contracts. All maintenance contracts and agreements must be procured by the Procurement Director and in compliance with the Procurement Policy. A requisition is required for all maintenance agreements regardless of the dollar amount. Whenever practical, the terms of maintenance contracts shall be resolved in connection with the original solicitation for the item or equipment, which is the subject of the maintenance contract. Maintenance contracts may be reviewed by the Procurement Director or the County Supervisor/Council Chair for proper terms and conditions as well as fair pricing. Maintenance contracts may only be approved by the Procurement Director.

SECTION 12-92. RIGHT TO INSPECT BUSINESS AND AUDIT OF RECORDS.

(a) Right to Inspect Business. The County may, at reasonable times, inspect the part of the 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.

(b) Auditing.

1. Audit of Cost or Pricing Data. The County may, at reasonable times and places, audit the books and records of any business who has submitted cost or pricing data to the extent that such books and records relate to such cost or pricing data. Any business who receives a contract, change order, or contract modification for which cost or pricing data is required, shall maintain such books and records that relate to such cost or pricing data for three (3) years from the date of final payment under the contract, unless a shorter period is otherwise authorized in writing.

2. Contract Audit. The County shall be entitled to audit the books and records of a contractor or subcontractor under any negotiated contract or subcontract other than firm fixed-price contract to the extent that such books and records relate to the performance of such contract or subcontract. Such books and records shall be maintained by the contractor for a period of three (3) years from the date of final payment under the subcontract, unless a shorter period is otherwise authorized in writing.

SECTION 12-93. CONTRACT TERMS AND SPECIFICATIONS.

(a) **Maximum Practical Competition.** All specifications for procurement purposes and contracts 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 of characteristics that serve to limit competition shall be avoided. The policy enunciated in this section 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 Departments.** The Procurement Director may prepare or review, issue, revise and maintain the specifications for property, supplies, services, and construction required by the County. The Procurement Director may obtain expert advice and assistance from personnel of the Using departments or other advisory sources in the development of specifications and may delegate to a Using Department the authority to prepare its own specifications. Specifications for property, supplies, services, or construction items exempted in section 12-78, may be prepared by the Using Department in accordance with the provisions of this Article.

(c) **Brand Name or Equal Specification.**

1. **Use.** Brand name or equal specifications may be used when the Using Department makes a written determination that one of the following exists: (a) no other design or performance specification or qualified products list is available; (b) time does not permit the preparation of another form of procurement 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 Director 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 procurement, 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 Only Specification.**

1. **Use.** Since use of a "brand name only" specification is restrictive of product competition, it may be used only when the using department makes a written determination that only the identified brand name item or items will satisfy the County's needs and such determination is approved, in writing, by the Procurement Director.

2. **Competition.** The Procurement Director shall seek to identify sources from which the designated brand name only 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 may be made under section 12-85 (Sole Source Procurement).

(e) **Contract Clauses and Their Administration.**

1. Contract Clauses. All contracts for property, supplies, services, and construction shall include provisions necessary to define the responsibilities and rights of the parties to the contract consistent with this Article, and containing the mandatory provisions and language of this Article. The Procurement Review Committee may also issue clauses appropriate for property, supply, service, or construction contracts, addressing at least the following subjects:

a. the unilateral right of the County to order, in writing, changes in the work within the scope of the contract;

b. the unilateral right of the County to order, in writing, temporary stoppage of the work or delaying performance that does not alter the scope of the contract;

c. variations occurring between estimated quantities of work in a contract and actual quantities;

d. defective pricing;

e. liquidated damages;

f. specified excuses for delay or non-performances;

g. termination of the contract for default;

h. termination of the contract in whole or in part for the convenience of the County;

i. suspension of work on a construction project ordered by the County; and

j. site conditions differing from those indicated in the contract, or ordinarily encountered, except that differing site 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.

2. Price Adjustment. Adjustments in price resulting from the use of contract clauses required in subsection 12-93(e)1 of this section shall be computed in one or more of the following ways:

a. by agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;

b. by unit prices specified in the contract or subsequently agreed upon;

c. 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;

d. in such other manner as contracting parties may mutually agree; or

e. 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 12-94.

A contractor shall be required to submit cost or pricing data if any adjustment in contract price is applicable and requested by the County.

3. Standard Clauses and Their Modification. The Procurement Director may establish, after consultation with the County Attorney, standard contract clauses, consistent with this Article and containing the mandatory provisions and the language of this Article, for use in County contracts.

SECTION 12-94. CONSTRUCTION CONTRACTS.

(a) Construction Management Services, Design-Build Services, Turnkey Management Services. County Council finds that certain non-traditional means of public construction project management can be in the best interests of the County in certain circumstances. Therefore, the following methods may be employed under the following circumstances:

1. The Procurement Director, with approval of the County Supervisor/Council Chair, shall have the discretion to use construction management services, design-build services, or turnkey management services as alternatives for construction contracting administration. In exercising such discretion, the County Supervisor/Council Chair shall consider the method which in the Procurement Director's discretion is the most advantageous to the County and will result in the most timely, economical, and successful completion of the construction project. The determination of the method of source selection utilized shall be stated in writing and included as part of the solicitation file.

2. If the County Supervisor/Council Chair determines that the use of construction management services, design-build services or turnkey management services is the most advantageous means of securing the construction contracting administration set forth in this section, and the amount of services to be secured thereby is anticipated to exceed Five Million Dollars (\$5,000,000.00), the selection of the method of construction contracting administration used by the County and set forth in this section shall be submitted for review and approval by the County Council, which will make findings of fact to support any decision to use such services.

3. The competitive sealed proposal method of construction contracting administration, using Requests for Proposals prepared in accordance with section 12-81, is the most advantageous to the County, and the County shall use the competitive sealed proposal method as set forth in section 12-81 for the purposes of procuring construction management services, design build services, or turnkey management services or any other similar type of construction management contract. The County Supervisor/Council Chair may retain outside consulting services to prepare such Requests for Proposals. The Request for Proposals for any of these services shall set forth the criteria and weighting which the County will be using to select the successful proposal.

(b) Bid Security.

1. Requirement for Bid Security. Bid security shall be required at the discretion of the Procurement Director for all competitive sealed bidding and competitive sealed proposals for construction contracts. Bid security shall be a legitimate bid bond provided by a surety company authorized to do business in South Carolina, or the equivalent in cash, or otherwise supplied in the form satisfactory to the County (surety bond, certified check, cashiers' check or official money order). Nothing herein prevents the requirement of such

bonds on any construction contracts when the circumstances warrant.

2. Amount of Bid Security. Bid security shall be in an amount equal to at least five percent (5%) of the amount of the bid or proposal and shall remain in place until completion of construction or posting of performance and payment bonds.

3. Rejection of Bid for Noncompliance with Bid Security Requirements. When the invitation to bid or request for proposal requires security, noncompliance requires that the bid be rejected as non-responsive.

4. Withdrawal of Bids or Proposals. After the bids or proposals are opened, they shall be irrevocable for the period specified in the invitation to bid or request for proposal or a minimum of ninety (90) calendar days, whichever is greater. If a bidder is permitted to withdraw its bid before bid opening pursuant to subsection 12-80 (i) (Competitive Sealed Bidding, Correction or Withdrawal of Bids, Cancellation of Awards) or if a offeror is permitted to withdraw his/her proposal prior to the opening of proposals, no action shall be had against the bidder or proposer on the bid security.

(c) Contract Performance and Payment Bonds.

1. When Required - Amounts. When a construction contract is awarded in excess of Two Hundred Thousand Dollars (\$200,000.00) the following bonds or security shall be delivered to the County and shall become binding on the parties upon the execution of the contract: (a) a performance bond satisfactory to the County, executed by a surety company authorized to do business in this State or otherwise secured in a manner satisfactory to the County, in an amount equal to one-hundred percent (100%) of the price specified in the contract; and (b) a payment bond satisfactory to the County, executed by a surety company authorized to do business in this State or otherwise secured in a manner satisfactory to the County, for the protection of all businesses 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 one-hundred percent (100%) of the price specified in the contract. Nothing herein prevents the requirement of such bonds on any construction contracts when the circumstances warrant.

2. Reduction of Bond Amounts. The County Supervisor/Council Chair is authorized to reduce the amount of performance and payment bonds to fifty percent (50%) 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.

3. 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 greater than or in addition to those bonds.

(d) Bond Forms. The Procurement Director with consultation of the County Engineer and County Attorney shall promulgate by regulation the form of the bonds required by this section.

(e) Fiscal Responsibility. In addition to the authorities and requirements set forth in section 12-80 (q), every contract modification, change order, or contract price adjustment under a construction contract with the County shall be subject to prior approval as set forth in section 12-80 (q), after determination of the effect of the contract modification, change order, or contract price adjustment on the total project budget or the total contract budget.

(f) Architect, Engineer and Land Surveying Services and Methods of Selection.

1. **Policy.** It is the policy of the County to announce publicly all requirements for architect-engineer, construction management, and land surveying services and to negotiate contracts for such services on the basis of demonstrated competence and qualification for the particular type of services required and at fair and reasonable prices.

2. **On Call Professional Services.** A broad range of architect, engineer and land surveying services may be available through an on-call, as needed professional service contract. For illustration purposes, the following elements should be basic to this type of contractual agreement: (a) agreements may be multi-year, (b) agreements will establish hourly rates for each type of service and other charges, (c) agreements will not provide any guarantee of projects, nor identify any specific project to be assigned, (d) 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 (e) if the Procurement Director is not satisfied with an architect, engineer and land surveying business's proposal to provide services, the Procurement Director may negotiate with another architect, engineer and land surveying business with an on-call agreement to pursue a more acceptable proposal for the project.

3. **Qualifications and Performance Data.** In the procurement of architect-engineer and land surveying services, the Procurement Director shall publicly request architect, engineer and land surveying businesses to submit a statement of qualifications and performance data. The request must include, but not be limited to, the project title, the general scope of work, a description of all professional services required, the submission deadline, and how interested businesses may apply for consideration.

4. **Selection Process.** A selection committee composed of the Procurement Director, County Engineer, head of using department 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 business for the proposed project, shall conduct interviews with at least three (3) businesses deemed most qualified to provide the required services on the basis of information available before the interviews. The selection committee shall evaluate each of the businesses interviewed in view of their:

- a. past performance;
- b. the ability of professional personnel;
- c. demonstrated ability to meet time and budget requirements;
- d. location and knowledge of the locality of the project if the application of this criterion leaves an appropriate number of qualified firms, given the nature and size of the project;
- e. recent, current, and projected workloads of the business;
- f. creativity and insight related to the project;
- g. related experience on similar projects;
- h. volume of work awarded by the using department to the business during the previous five years, with the objective of effectuating an equitable distribution of contracts by the County among qualified architect, engineer and land surveying businesses including Disadvantaged Business Enterprises, Small Business Enterprises, Minority Business

Enterprises, and Women's Business Enterprises; and

- i. any other special qualification required pursuant to the solicitation.

Based upon these evaluations, the selection committee shall select the three (3) businesses that, in its judgment, are the best qualified, ranking them in priority order. The selection committee's report ranking the three (3) chosen businesses must be in writing and include data substantiating its determinations.

5. Notice of Selection and Ranking. When it is determined by the Procurement Director that the ranking report is final, written notification of the highest ranked business must be sent immediately to all businesses responding to the solicitation.

6. Negotiation of Contract. The selection committee shall negotiate a contract with the highest qualified business 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 business considered to be most qualified, negotiations with that business shall be formally terminated. The committee shall then undertake negotiations with the second most qualified business. Failing award with the second most qualified business, the committee shall formally terminate negotiations. The committee shall then undertake negotiations with the third most qualified business. 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 section.

7. Award of Contract. Award shall be made as set forth in section 12-80.

8. Exceptions for Small Architect-Engineer and Land Surveying Services Contracts.

a. Architect-Engineer and Land Surveying Services which are estimated to not exceed One Hundred Thousand Dollars (\$100,000.00) may be awarded by direct negotiation and selection, taking into account:

- i. the nature of the project;
- ii. the proximity of the architect-engineer or land surveying services to the project;
- iii. the capability of the architect, engineer, or land surveyor to produce the required service within a reasonable time;
- iv. past performance; and
- v. ability to meet project budget requirements.

b. Fees paid to an Architect-Engineer or Land Surveying business during the twenty-four (24) month period immediately preceding the award of a contract under an exception found in this subsection shall not exceed One Hundred Thousand Dollars (\$100,000.00). Should such fees exceed that amount, that Architect-Engineer or Land Surveying business is not eligible for award of a contract under an exception found in this subsection.

c. A larger project may not be broken into smaller projects for the purposes of circumventing the provisions of this section.

9. Architect, engineer, or construction manager; performance of other work.

An architect or engineer performing design work, or a construction manager performing construction management services under a contract awarded pursuant to the provisions of subsection 12-94(a), may not perform other work, by later amendment or separate contract award, on that project as a contractor or subcontractor either directly or through a business in which he/she or his/her architectural engineering or construction management business has greater than a five percent interest. For purposes of this section, safety compliance and other incidental construction support activities performed by the construction manager are not considered work performed as a contractor or subcontractor. This subsection applies only to procurements for construction using the Construction Management, Design- Build, and Turnkey Management project delivery methods.

SECTION 12-95. PROTEST AND DEBARMENT PROCEDURE.

(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 Article. The protest shall be submitted in writing within seven (7) calendar days after such aggrieved prospective bidder, offeror, or contractor knows or should have known of the facts giving rise thereto.

(b) Authority to Resolve Protests. The Procurement Director, 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 on Protests. If the protest is not resolved by mutual agreement, the Procurement Review Committee shall issue a decision in writing within ten (10) calendar days following final settlement attempts pursuant to subsection 12-95(b), hereof. The decision shall: (a) state the reasons for the action taken; and (b) inform the protestant of the protestant's rights to appeal the decision of the Procurement Director as provided in this section.

(d) Notice of Decision on Protests. A copy of the decision under subsection 12-95(c) of this section shall be mailed or otherwise furnished to the protestant.

(e) Finality of Decision on Protests. A decision under subsection 12-95(c) of this section shall be final and conclusive, unless a business adversely affected by the decision appeals administratively to the County Supervisor/Council Chair in accordance with this section.

(f) Authority to Debar or Suspend. After reasonable notice to the business or person involved and reasonable opportunity for that business or person to be heard, the Procurement Review Committee, after consultation with the County Attorney, shall have authority to debar a business or person for cause from consideration for award of contracts. The Procurement Director shall have the authority to suspend a business or person from consideration for award of contracts if there is probable cause to believe that the business or 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 Procurement Director after consultation with the County Attorney.

(g) Causes for Debarment or Suspension. The causes for debarment or suspension shall include, but not be limited to, the following:

1. Conviction of a business or any of its principal officers or employees 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. a determination by the Procurement Review Committee that the business, as an offeror or bidder engaged in misuse of the County's protest procedure, including, but not limited to, the filing of frivolous protests or appeals, the filing of protests or appeals whereby it is clear that the basis of an appeal would not result in the protestant being awarded a contract under a solicitation, or the filing of protests or appeals intended to cause delay in awarding a contract;

3. a determination by the Procurement Review Committee that the business as an offeror or bidder engaged in collusion or other anti-competitive practices;

4. conviction of a business or any of its principal officers or employees under State or Federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which currently, seriously, or directly affects responsibility as a County contractor;

5. conviction of a business or any of its principal officers or employees under State or Federal antitrust statutes arising out of the submission of bids or proposals;

6. violation by a business or any of its principal officers or employees of contract provisions of a character which is regarded by the Procurement Review Committee to be so serious as to justify debarment action:

7. deliberate failure of the business without good cause to perform in accordance with the Specifications or within the time limit provided in a contract with the County;

8. a recent record by the business 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;

9. any other cause the Procurement Review Committee determines to be so serious and compelling as to affect responsibility as a County contractor, including debarment by another governmental entity for cause; or

10. for violation by a business or any of its principal officers or employees of the ethical standards set forth in Chapter 13 of Title 8 of the South Carolina Code of Laws, 1976, as amended (the State Ethics Act).

(h) Decision on Debarment or Suspension. 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 business or person involved of business or person's rights to administrative review as provided in this Article.

(i) Notice of Decision on Debarment or Suspension. A copy of the decision under subsection 12-95(h) shall be mailed or otherwise furnished to the debarred or suspended business or person. For the purposes of subsection 12-95(l), such notice shall be deemed received three (3) calendar days after such mailing, or on the day of actual delivery.

(j) Finality of Decision on Debarment or Suspension. A decision under subsection 12-95(h)

of this section shall be final and conclusive, or unless the debarred or suspended business or person submits a timely appeal to the Procurement Director in accordance with this section. Debarment is not stayed pending appeal.

(k) Contract and Breach of Contract Controversies.

1. **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 revision.

2. **Authority.** The Procurement Director is authorized, after consultation with the County Attorney, prior to commencement of an action in a court concerning the controversy, to settle and resolve a controversy described in subsection 12-95(k)1 of this subsection.

3. **Decision.** If such a controversy is not resolved by mutual agreement, the Procurement Review Committee shall promptly issue a decision in writing, following final action by the Procurement Director. The decision shall: (a) state the reason for the action taken; and (b) inform the contractor of the contractor's rights to administrative review as provided in this Article.

4. **Notice of Decision.** A copy of the decision under subsection 12-95(k)3, of this subsection shall be mailed to the contractor.

5. **Finality of Decision.** The decision under subsection 12-95(k)3, of this section shall be final and conclusive, unless fraudulent, or unless the contractor submits a timely appeal to the County Supervisor/Council Chair in accordance with this section.

6. **Failure to Render Timely Decision.** If the Procurement Director does not issue the written decision required under subsection 12-95(k)3, of this subsection 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.

(l) Finality and Appeal of Procurement Director's Decisions. The decision of the Procurement Director and County Supervisor/Council Chair shall be final unless appealed to County Council by either the County or the business or person, within ten (10) days after service of notice of the Procurement Director's decision, using the same time criteria of subsection 12-95(i). If such a decision is appealed to County Council, County Council shall review the records and without further hearing affirm, modify, or deny the appeal in open session. The decision of County Council shall be final and any stay that may be instituted shall be lifted at that time. Service of notice of the decision of County Council may be accomplished by delivery in person or by mailing, and shall be complete when either delivered in person or placed in the mail. Service may be made either to the business or person or to the business or person's attorney.

(m) Stay of Procurement During Protest or Appeal. In the event of a timely protest under this section, the County shall not proceed further with the solicitation or with the award of the Contract until a final decision has been made and the time for appeal has expired, unless the Procurement Director, after consultation with the head of the using department, makes a written determination that the award of the Contract is necessary to protect substantial interests of the County.

(n) **Solicitations or Awards in Violation of the Law.** The provisions of this subsection apply where it is determined by the Procurement Director, or upon administrative review, and in the County's sole discretion, that a solicitation or award of a contract is in violation of law.

1. **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; or
- b. revised to comply with the law and rebid; or
- c. revised to comply with the law and awarded in a manner that complies with the provisions of this Article.

2. **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 business awarded the contract has not acted fraudulently or in bad faith:
 - i. the contract may be ratified and affirmed, if legal to do so, provided it is determined that doing so is in the best interest of the County; or
 - ii. the contract may be terminated and the business awarded the contract shall be compensated for the actual expenses reasonably incurred under the contract and adequately documented to the County prior to the termination.
- b. if the business awarded the contract has acted fraudulently or in bad faith:
 - i. the contract may be declared null and void; or
 - ii. the contract may be ratified and affirmed if such action is both legal and in the best interest of the County, without prejudice to the County's right to such damages as may be appropriate.

SECTION 12-96. INTERGOVERNMENTAL RELATIONS.

(a) **Cooperative Procurement Authorized.** The Procurement Director may participate in, sponsor, conduct, or administer a cooperative procurement agreement for the procurement of property, supplies, services, or construction services with one or more Public Procurement Units in accordance with an agreement entered into between the participants. Such cooperative procurement may include, but is not limited to, joint or multi-party contracts between Public Procurement Units. Examples of such cooperative procurement are General Services Administration (GSA) contracts, supplies and/or services procured from another governmental agency, and the U.S. Communities Government Purchasing Alliance.

(b) **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 this Article with the approval of the County Supervisor/Council Chair.

(c) **Cooperative Use of Supplies or Services.** The County Supervisor/Council Chair may enter into an agreement, independent of the requirements of this Article, with any Public Procurement Unit for the cooperative use of supplies or services under the terms agreed upon

between the parties, to the extent allowed by law.

(d) Joint Use of Facilities/Equipment. The County Supervisor/Council Chair 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, to the extent allowed by law.

(e) Use of State Contracts. The Procurement Director may, independent of the requirements of this Article, procure supplies, services or construction items through the contracts established by the Purchasing Division of the State as provided in Chapter 35 of Title 11 of the South Carolina Code of Laws, 1976, as amended (State Consolidated Procurement Code).

SECTION 12-97. SUPPLY MANAGEMENT.

(a) 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.

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

(c) Sale, Transfer and Disposal of Surplus Supplies and Property. The Procurement Director shall promulgate regulations governing the sale, transfer, or disposal of surplus supplies and property by public auction, competitive sealed bidding or other appropriate methods designated by such regulations, and the transfer of excess supplies between departments. The Procurement Director shall have authority to transfer such items to other County departments or to approve the disposal of unwanted items that cannot be sold.

(d) Trade-In Sales. The Procurement Director shall promulgate regulations and procedures to govern the trade-in of personal property owned by the County.

(e) Allocation of Proceeds from Sale or Disposal of Surplus Supplies. Proceeds from the sale or disposal of surplus supplies and property shall be deposited into the County's general fund except for any proceeds from the sale of equipment belonging to an enterprise fund, which will be deposited back into the enterprise account for that activity.

SECTION 12-98. REAL PROPERTY.

(a) The County acknowledges that all parcels of real property are unique and principles of competitive bidding do not apply to distinct and singular purchases of real property by the County.

(b) The following rules shall apply to the purchase or sale of real property:

1. The County shall sell, contract to sell, acquire by purchase, exchange or gift, real property only upon approval of County Council by public auction, competitive sealed bidding or other appropriate methods designated by such regulations.

2. A public hearing must be held, after reasonable public notice, and an ordinance enacted, prior to final County action to sell or otherwise dispose of real property owned by the County.

- (c) The following rules shall apply to the lease of real property:
1. The County shall contract to lease, sublease, or cause to be leased real property for a definite period of more than one year only upon approval by County Council, and, if the lease is of property owned by the County, following public hearing and approval of an ordinance authorizing such lease.
 2. The County Supervisor/Council Chair may enter into leases, extensions or modifications of leases less than one year duration.

SECTIONS. 12-99 - 12-110. - Reserved.