

ORDINANCE 2024/33

AN ORDINANCE TO REPEAL AND REPLACE BEAUFORT COUNTY CODE OF ORDINANCES CHAPTER 2, ARTICLE VII, DIVISION 4 (BEAUFORT COUNTY PURCHASING ORDINANCE); TO ESTABLISH NEW POLICIES OF CENTRALIZED PURCHASING AND COMPETITIVE BIDDING FOR COUNTY DEPARTMENTS AND ELECTED OFFICIALS (A NEW PURCHASING ORDINANCE); DELEGATING PURCHASING AUTHORITY TO THE COUNTY PURCHASING DIRECTOR; ESTABLISHING PROCEDURES FOR THE PURCHASING OF GOODS AND SERVICES AS REQUIRED BY COUNTY DEPARTMENTS AND ELECTED OFFICIALS; AND OTHER MATTERS RELATED THERETO

WHEREAS, Beaufort County is required by the South Carolina Code of Laws, Section 11-35-5320, to adopt competitive procurement policies; and

WHEREAS, Beaufort County's existing Purchasing Ordinance was originally adopted in 1982. The Ordinance has been amended several times. The most significant and most comprehensive amendment took place in 1996, more than twenty-six years ago; and

WHEREAS, Council wishes to update the County's existing Purchasing Ordinance, Policies, Procedures and Regulations by repealing the existing Ordinance and by adopting a new Ordinance that embodies sound principles of appropriately competitive procurement; and

WHEREAS: The new Ordinance is set forth in Exhibit "A" which is attached hereto and incorporated herein by reference. The purpose of the Ordinance is to set forth a centralized purchasing system that provides for fair and equitable treatment of all persons involved in public purchasing by Beaufort County Departments, Elected and Appointed Officials, to maximize value in public procurement, and to provide safeguards for maintaining a procurement system that is based on integrity, transparency, uniformity, and accountability; and

WHEREAS, the provisions of this Ordinance, as set forth in Exhibit "A", shall apply to all contracts and to the procurement of all supplies, services, and construction, entered into by Beaufort County Departments, Elected and Appointed Officials after the effective date of the Ordinance. It shall apply to every expenditure of public funds for public purchasing irrespective of the source of the funds. When procurement involves the expenditure of federal assistance or contract funds, the procurement shall be conducted in accordance with any mandatory applicable federal laws and regulations. Nothing in this Ordinance shall prevent any public agency from complying with the terms and conditions of any grant, gift, or bequest that is otherwise consistent with the law.

NOW, THEREFORE, BE IT ORDAINED BY BEAUFORT COUNTY COUNCIL
That: Chapter 2, Article VII, Division 4 (Beaufort County Purchasing Ordinance) is hereby repealed, and a new Purchasing Ordinance for Beaufort County Public Departments and Elected Officials as set forth in Exhibit "A" is hereby adopted.


Adopted this 23rd day of September 2024.

This Ordinance shall take effect immediately upon Third and Final Reading by County Council.

COUNTY COUNCIL OF BEAUFORT COUNTY


By: Joseph Passiment, Chairman

ATTEST:


Sarah W. Brock, Clerk to Council

First Reading: August 26, 2024 / 11:0

Second Reading: September 9, 2024 / 11:0

Public Hearing: September 23, 2024

Third and Final Reading: September 23, 2024 / 11:0

Part 1-General Ordinances, Chapter 2-Administration, Article VII-Finance,
DIVISION 4. – PROCURMENT SERVICES

Sec. 2-501. Title.

This Division shall be known as and may be cited as the "Beaufort County Procurement Ordinance".

Sec. 2-502. General Provisions.

- (a) *Statement of Policy and Application.* It shall be the policy of Beaufort County Council that all goods and services required by County Departments, Appointed Officials, and Elected Officials shall be procured by centralized purchasing procedures based on integrity, transparency, uniformity, and accountability. The provisions of the Beaufort County Procurement Ordinance shall apply to all contracts and to the procurement of all supplies, services, and construction entered into by Beaufort County Departments, Appointed Officials, and Elected Officials. It shall apply to every expenditure of public funds for public purchasing irrespective of the source of the funds.
- (b) *Intent and Purpose.* It is the intent of County Council that a primary concern of county government be the effective provision of services to the citizens of the County in a competitive, efficient and economical way, and that all purchases of goods and services be conducted with a primary concern for the efficient and economical use of revenues provided by its citizens. The purpose of the procedures, requirements, regulations, and processes set forth in this Division, hereinafter collectively referred to as the "Procedures", is to adopt procurement practices that are appropriately competitive and allow the County:
- (1) to provide increased economy in County procurement activities and to maximize to the fullest extent practicable the purchasing values of funds while ensuring that procurements are the most advantageous to the County and in compliance with the provisions of the Ethics Government Accountability and Campaign Reform Act;
 - (2) to foster effective broad-based competition for public procurement within the free enterprise system;
 - (3) to provide a clear and comprehensive ordinance governing procurement by the County and to permit the continued development of explicit and thoroughly considered procurement policies and practices;
 - (4) to ensure the fair and equitable treatment of all persons who deal with the County's procurement system which will promote increased public confidence in the procedures followed in public procurement; and
 - (5) to provide safeguards for the maintenance of a procurement system of quality and integrity with clearly defined rules for ethical behavior on the part of all persons engaged in the public procurement process.

Sec. 2-503. Definitions.

Except as specifically defined in this Section, all words used in this Division have their customary dictionary meaning. For purposes of this Division the following words, terms and phrases shall have the meanings ascribed in this Section, except where the context clearly indicates a different meaning:

After the Fact Purchase means a request to create a purchase order in support of a good, service, or contract which has already been received or executed. Purchase orders or contracts as a result of an "Emergency Purchase" are not considered an "After the Fact" purchase.

Authorized Person means those Officials or Employees authorized to execute County Contracts as set forth in Section 2-506.

Brand name or Equal Specification means a specification limited to one or more items by manufacturers' names or catalogue numbers to describe the standard of quality, performance, and other salient characteristics needed to meet county requirements, and which provides for the submission of equivalent products.

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

Capital Assets means a County owned item, acquired through purchase, donation, construction or transfer, which has tangible value of Five Thousand (\$5,000) Dollars or greater and a useful life of greater than two (2) years. The County Asset Manager under the direction of the Procurement Services Director may deem any county owned item as a managed capital asset.

Change Order or Contract Modification means a written document signed and issued by an Authorized Person and a contractor of the County altering the specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of any contract accomplished by mutual action of the parties of the contract.

Competitive Bid Process means an informal or formal procurement process requesting from sellers or vendors quotes, bids, qualifications and proposals from qualified vendors for the provision of a goods or services. This process requires an Employee to evaluate each vendor response and select the vendor who offers the lowest price, is most qualified, or is the best value to the County.

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

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

Contractor means any person having a contract with the County.

Contractors On-Call List means a project delivery method where a vendor or groups of vendors after a competitive solicitation process are selected to provide services or materials to the County for one or more types of projects over an extended period of time but limited to a time period not to exceed three (3) years.

Construction Management at-Risk means a project delivery method in which the County awards separate contracts, one for design services to design a project and the second to a construction manager at-risk for both construction of the project according to the design and construction management services, which include but are not limited to those Professional Services associated with contract administration, project management, and other services provided in connection with the administration of a construction project.

Co-operative Purchasing Entity means an organization or alliance of municipalities or other governmental bodies throughout the United States established in part to achieve economies of scale and innovations through group purchasing strategies, shared resources and centrally administered competitive procurement processes to afford value and discount pricing programs to its members.

County means Beaufort County, a political subdivision of the State of South Carolina.

County Council Committees means the committees comprised of members of County Council.

Delegation of Authority or *Delegate Authority* means the transfer of decision-making power, responsibilities and authority from one individual to another individual, where said transfer shall only be deemed to have occurred if memorialized in writing and signed by the assignor.

Design Services means 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 without limitation studies, investigations, surveys, evaluations, consultations, planning, programming, conceptual design, plans and specifications, construction documents, cost estimates, construction observations, shop drawing reviews, sample recommendations, preparation of operating and maintenance manuals and other related services.

Design-Bid-Build means a project delivery method in which the County sequentially awards separate contracts following separate competitive processes. The first for design services to design a project and the second for construction of the project according to the design.

Design-Build means a project delivery method in which the County enters into a single contract for design and construction of a project.

Design-Build-Finance-Operate-Maintain means a project delivery method in which the County enters into a single contract for design, construction, finance, maintenance, and operation of a project over a contractually defined period.

Design-Build-Operate-Maintain means a project delivery method in which the County enters a single contract for design, construction, maintenance, and operation of a project over a contractually defined period.

Emergency Procurement means the purchase of goods or services when there exists an imminent threat of harm to public health, welfare, critical economy and efficiency, government operations, or safety under emergency conditions.

Employee(s) means any individual who is monetarily compensated, draws a salary or wage from the County, excluding elected and appointed officials; and any other compensated individual performing services for the County or any department, agency, commission, council, board, or any other entity established by the County, excluding contractors and subcontractors; and whereby this definition is solely applicable to the Beaufort County Procurement Ordinance.

Financial interest means ownership of or ownership in, and should be determined when:

- a. any interest of immediate family or involvement in any relationship from which, or as a result of, a person within the past year has received, or is presently or in the future entitled to receive, equal to or greater than Five Hundred (\$500) Dollars per year, or its equivalent;
- b. Ownership of Five (5%) Percent of any real property, personal property, or business; or
- c. Holding a position or controlling interest in a business such as officer, director, trustee, partner, employee, or the like; or holding any position of management.

Gratuity means a payment, loan, subscription, advance, deposit of money, service, or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is received.

Immediate Family means a spouse, children, parents, an individual for whom an individual has legal custody of, or an individual claimed as a dependent for income tax purposes.

Invitation for Bids or *IFB* means all documents, whether attached or incorporated by reference, utilized for soliciting sealed bids.

Local Vendor means a vendor shall be deemed to be a "Beaufort County Local Vendor" if such vendor is a Person or Business that is authorized to transact business within the state, maintains an office in Beaufort County, has a business license of Beaufort County or one of the municipalities within Beaufort County, and maintains a representative inventory of commodities within Beaufort County or one of the municipalities on which the bid is submitted and has paid all taxes duly assessed.

Non-Responsive Bidder means a Person or Business who has submitted a bid, proposal, or qualification which does not conform with all material aspects of the Scope of Work presented. These persons or business may not be considered to have or possess the following:

- a. evidence of financial stability, material, equipment, facility, personnel resources, expertise or ability to obtain them;
- b. A satisfactory record of performance and integrity;
- c. Qualified legally to contract with the County; and
- d. Supplied all necessary information in connection with the inquiry concerning responsibility.

Official means an individual elected by the people, or an individual appointed by the General Assembly or the Governor; including, but not limited to, the Sheriff, Auditor, Treasurer, Clerk of Court, Coroner, Public Defender, Probate Judge, Magistrates, Director of Veterans Affairs, and Director of Voter Registration and Elections. When referencing all elected and appointed officials described above, the term "Officials" shall be used.

Operations and Maintenance means a project delivery method in which the County enters into a single contract for the routine operation, routine repair, and routine maintenance of a project.

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

Procurement means buying, purchasing, renting, leasing or otherwise acquiring any supplies, services, equipment or construction.

Professional Services refers to those services provided by an individual or business requiring specialized knowledge and skill usually of a mental or intellectual nature and usually requiring a license, certificate or registration. These services may include, but are not limited to, being within the scope of the practice of architecture, professional engineering, land surveying, real property appraisal, auditors, construction management, veterinarians, consultants, legal counsel, medical services, actuary services, and lobbyists.

Public Agency means a public entity subject to or created by the County who acts in an official capacity or performs functions for the County and is supported in whole or in part by public funds; this includes, but is not limited to, organizations, corporations, and non-profits.

Public Procurement Unit means any agency of the Federal Government, the State of South Carolina, and any county, city, town, special purpose district or any other government subdivision of the State of South Carolina or public agency of any such subdivision.

Procurement Services Department means the Employee(s), regardless of department name, which serves as the County's central procurement office for processing the County's goods and services; and provides support to the Procurement Services Director as requested and necessary to ensure compliance with the Procedures.

Procurement Services Director means the Employee, regardless of title, whose primary function is to oversee and manage, with assistance from the Procurement Services Department, all procurement activities of the County, including but not limited to compliance with the Procedures.

Qualified Bidder means a determination by the Procurement Services director or designee, that a bidder or bid has passed preliminary evaluation and is eligible to submit bids, is well-suited to fulfill the requirements outlined in a solicitation, is financial stable, and possess the requisite experience, and technical ability.

Ratification means the act of confirmation or affirmation of an unauthorized purchase, contract, or agreement by the appropriate approval authority.

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

Request for Qualifications or *RFQ* means a solicitation document that is issued by a procurement entity to obtain statements of the qualifications of potential responders (development teams or consultants) to gauge potential competition in the marketplace, prior to issuing the solicitation. RFQ's may include requesting proposals as part of the RFQ solicitation process.

Responsive Bidder means a Person or Business who has submitted a bid or proposal which conforms in all material aspects to the Invitation for Bids or Request for Proposals.

Responsible Bidder means a Person or Business who has the capability in all respects to perform adequately the contract requirements set forth in an Invitation for Bids or Request for Proposals, and has the integrity and reliability which, as substantiated by past performance and reputation, will assure good faith quality performance. Factors to be considered in determining whether the county standards of responsibility have been met include whether a prospective Contractor has:

- a. evidence of financial stability, material, equipment, facility, personnel resources, expertise or ability to obtain them;
- b. A satisfactory record of performance and integrity;
- c. Qualified legally to contract with the County; and
- d. Supplied all necessary information in connection with the inquiry concerning responsibility.

Reverse Auction Method means a real-time bidding process taking place at a previously scheduled time in which multiple prospective Contractors, anonymous to each other, submit bids to provide the designated goods or services.

Small Disadvantaged Business means a business which is at least fifty-one (51%) owned and controlled by socially disadvantaged individuals including, but not limited to, most minority classes and women.

Selection Committee means a group of individuals who have specific knowledge or ability necessary to evaluate proposals or bids based on evaluation criteria specified in the solicitation.

Members and number of members must be void of conflict of interest and shall be appointed by the Procurement Services Director.

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

Sole Source refers to a situation where goods or services are only available from a single source vendor, with a unique ability or knowledge with respect to the supply, service or construction or a circumstance that is beneficial to the County and to the public. The sole source vendor and selection process may be based on issues concerning availability, standardization, warranty, and proprietary justification.

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

Split Purchase means a procurement which has been divided into two or more purchase orders, contracts, or agreements, with the intent to avoid the approved solicitation process.

Supplies means all property, including but not limited to equipment, materials, printing, insurance, and leases of personal property.

Unauthorized Purchase means the procurement of goods or services which have not been properly procured through the County procurement procedures or approved by the appropriate authority as defined in this Division.

Using Agency means any department, commission, board, or public agency requiring supplies, services, or construction procured.

Sec. 2-504. Application of Procedures.

- (a) *General Application.* These Procedures apply to Procurements that are solicited for or contracts entered into after the adoption of and effective date of the Beaufort County Procurement Ordinance.
- (b) *Application of County Procurement.* These Procedures shall apply to every expenditure 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 or the type of procurement. 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) *Purchases of \$5,000.00 and Under; Exempt Items.* These Procedures do not apply to any Procurement less than \$5,000.00 or that are exempt pursuant to Section 2-505. Departments may not create a Split Purchase to circumvent the dollar amount of \$5,000.00.

Sec. 2-505. Items Exempt from Procedures.

- (a) *Decision of County Council.* County Council, upon recommendation from the County Administrator, may exempt by ordinance specific items, services, or projects from these Procedures when County Council finds that such exemption is in the best interest of the County.
- (b) *Specific Exemptions Generally.* The following items shall be exempt from the provisions of these Procedures:
- (1) Works of art for museum and public display;
 - (2) Published books, library books, maps, periodicals, technical pamphlets;
 - (3) Copyrighted educational films, filmstrips, slides and transparencies;
 - (4) Postage stamps, postal fees, and U.S. Post Office box rentals;
 - (5) Professional dues, membership fees, seminar registration fees, and professional training, subject to the County Administrator's approval;
 - (6) Medicine and drugs;
 - (7) Utilities including gas, electric, water and sewer;
 - (8) Advertisements or advertisement time/space in professional publications, newspapers, radio, television, and social media platforms, including local Chambers of Commerce;
 - (9) Fixed wing and rotary wing aircraft maintenance;
 - (10) Fixed Base operators, but only if approved by County Council; and
 - (11) Legal services, provided that legal services must be approved by the County Administrator or County Council.
- (c) *Real Property.* The purchase, lease or sale of real property by the County are exempt from the Procedures. The County Administrator may direct Employee(s) to have initial discussions with the owner of real property to determine potential terms and conditions for the purchase of real property; and may secure ancillary Professional Services when deemed appropriate. After receipt of approval from County Council, the County Administrator shall negotiate the final terms of a purchase, lease or sale of real property.
- (d) *Cooperative Purchasing.* The County may either participate in, sponsor, conduct, or administer a cooperative purchasing agreement or programs for procurements with one or more Public Procurement Units in accordance with an agreement entered into between the participants.

- (1) Such cooperative procurement may include, but is not limited to, joint or multi-party contracts between Public Procurement Units.
- (2) Without limiting the County's ability to participate in procurements with other Public Procurement Units, the County may participate in the South Carolina Statewide Term Contracts program ("State Contract"), provided, however, that if any item needed for a Procurement is available from a potential Contractor within Beaufort County and the item (i) meets all State Contract specifications and (ii) is priced equal to or less than the State Contract price, the County may purchase such items from the potential Contractor within Beaufort County.

Sec. 2-506. Procurement Responsibilities, Duties and Authority.

The Procurement Services Director shall oversee and manage all procurement activities of the County, ensure compliance with these Procedures, and upon request or when required shall provide an annual report to the County Administrator concerning the County's procurement activities.

- (a) *Principal Public Procurement Official.* The Procurement Services Director shall serve as the principal public procurement official of the County and shall be responsible for the procurement of supplies, services, and construction, as well as the management and disposal of managed capital assets.
- (b) *Duties.* In accordance with this Division, the Procurement Services Director shall:
 - (1) Purchase all supplies, materials, equipment, and contractual services required by County agencies and perform the procurement-related functions required of the Procurement Services Director;
 - (2) Negotiate contracts, or delegate authority to negotiate contracts, and submit the contracts for approval and award;
 - (3) Use standard specifications wherever they are applicable to purchase orders and contracts and ensure compliance with such specifications through adequate inspection of deliveries;
 - (4) Manage the transfer of capital assets between agencies of supplies, materials, and equipment that are no longer needed by a holding agency but that can be used by the receiving agency;
 - (5) Exchange, trade in, or sell those supplies, materials and equipment which are surplus, obsolete or unused and which are found by the County Administrator not to be required or appropriate for public use;
 - (6) Develop, with the approval of the County attorney as to legal sufficiency, standard forms and conditions of solicitations, purchase orders and contracts;
 - (7) Develop and prescribe the use by agencies of other documents required in carrying out this Division and amend or eliminate any such forms;
 - (8) Dispose of managed assets or other property that is deemed surplus; and
 - (9) Perform other duties as assigned by supervisor.

(c) *Operational Procedures.* Pursuant to this Division and consistent with the Procedures, the Procurement Services Director shall develop and adopt operational procedures relating to the execution of its duties.

(d) *Delegation of Authority.*

(1) The Procurement Services Director may delegate authority established in this Division to an assignee within the Procurement Services Department, the Chief Financial Officer, or to any Employee or Official approved by the County Administrator.

(2) The County Administrator may delegate authority established in this Division to any Employee at their discretion but excluding the Procurement Services Director and the Chief Financial Officer.

(3) Notwithstanding any other terms contained in this Division pertaining to delegation of authority, procurement authority with respect to certain supplies, services, or construction may be delegated to other Employees by the County Administrator, when such delegation is deemed necessary for the effective procurement of the supplies, services, or construction.

(4) This Section shall apply to every delegation of authority referenced in this Division.

(e) *Dollar Limitations for Contract Execution.* Only the following Authorized Persons shall have the authority to execute contracts on behalf of Beaufort County:

(1) The Procurement Services Director or the Chief Financial Officer shall have the authority to execute any contract subject to this Division which is equal to or less than Fifty Thousand (\$50,000) Dollars;

(2) The County Administrator or the County Administrator's designee shall have the authority to execute any contract subject to this Division which is equal to or less than One Hundred Fifty Thousand (\$150,000) Dollars;

(3) County Council Committees shall have the authority to authorize the County Administrator to execute any contract subject to this Division which is equal to or less than Two Hundred Thousand (\$200,000) Dollars; and

(4) County Council shall have the authority to authorize the County Administrator to execute any contract subject to this Division which is greater than Two Hundred Thousand (\$200,000) Dollars.

(f) *Beaufort County Procurement Cards.*

- (1) *Authorized Procurement Card.* The Procurement Card is a credit card issued to an Employee or Official by the Procurement Services Director, the Chief Financial Officer, or County Administrator.
 - (2) *Use of Procurement Card.* Procurement cards may be used to purchase goods and services by Employees and Officials that hold such card. The cardholder shall use the procurement card for legitimate County purposes only and in compliance with the Beaufort County Procurement Card Program Manual.
 - (3) *Procurement Card Compliance.* Purchases for goods and services with a procurement card shall adhere to the Dollar Limitations established in Section 2-506(e) in this Division. Purchases with a procurement card shall *not* be made if it creates a Split Purchase, an After the Fact purchase, or to circumvent the creation of a Purchase Order.
 - (4) *Misuse of Procurement Card.* Misuse of the procurement card shall subject the cardholder to disciplinary action in accordance with County personnel policies and criminal laws.
- (g) *Specialty Services.* Professional Services under Fifty Thousand (\$50,000) Dollars may be selected based on qualifications, availability, or from an “on-call” pre-qualified list. Final cost may be negotiated by the Procurement Services Director. Vendors on the “on-call” list should be rotated, for similar type of Professional Services.
- (h) *Elected and Appointed Officials.* Provided that funds have been approved by County Council as part of the annual budget appropriation process, and that any expenditure of funds regardless of the amount will not result in a budget deficit within any Official’s office shall be exempt from the dollar limitations on expenditure authority established in Section 2-506(e) of this Division, provided that an Official’s office complies with all the provisions as may be required by South Carolina law and the Beaufort County Purchasing Ordinance. County Council may request reports and information as it deems necessary and prudent on the procurement activities of an Official to ensure compliance with the Beaufort County Procurement Ordinance.
- (i) *Solicitations, Bids, Awards or Purchase in Violation of Ordinance.*
- (1) *Applicability.* The provisions herein apply where it is determined administratively, or upon administrative review, that a purchase, solicitation, bid, or award of a contract is in violation of this ordinance.
 - (2) *Remedies Prior to Award.* If prior to award it is determined that a solicitation, bid, or proposed award of a contract is in violation of law, then the solicitation, bid, or proposed award shall be:
 - (i) Canceled; or
 - (ii) The unlawful bid not considered; or
 - (iii) Revised to comply with the law.

(j) *Ratification.*

- (1) Ratification shall only be approved by the County Administrator.
- (2) Ratification may be considered for purchases which did not follow proper procedures or approvals established in these Procedures.
- (3) Upon knowledge of an unauthorized purchase or contract approval, known as but not limited to an After the Fact or a Split Purchase, the Procurement Services Director shall notify in writing the Department Head or other appropriate Employee of the purchase which is considered unauthorized.
- (4) The Department Head or other appropriate Employee shall prepare a written determination as to the facts and circumstances surrounding an unauthorized procurement, what corrective action is being taken to prevent occurrence, action taken against the individual committing the act, and documentation that the price paid is fair and reasonable. If the price paid is unreasonable, the individual committing that act may be held pecuniarily liable for the difference.
- (5) Procurement Services Director shall prepare written justification of Ratification. Ratification documents shall be prepared for and presented to the County Administrator for consideration. Ratification approval process should adhere to the limitations established in Section 2-506(e).

Sec. 2-507. Retention of and Public Access to Procurement Information.

(a) *County Procurement Records.*

- (1) *Project File.* All determinations and other written records pertaining to the solicitation, award, or performance of a contract shall be kept together in a singular Project File by the Procurement Services Director.
- (2) *Retention of Procurement Records.* All procurement records shall be retained and disposed of by the County in accordance with records retention guidelines and schedules approved by County Council and consistent with South Carolina Department of Archives and History and Records Management Division's General Records Retention Schedules for County Records.

(b) *Public Record.* Procurement information shall be a public record pursuant to S.C. Code 1976, § 30-4-10 et seq. (The Freedom of Information Act).

- (1) Commercial or financial information obtained in response to a request for proposal which qualifies as privileged and confidential under the statute may be exempt from disclosure.

- (2) Privileged and confidential information is information in specific detail not customarily released to the general public, the release of which might cause harm to the competitive position of the party supplying the information. Examples of this type of information would include the following:
- (i) Customer lists;
 - (ii) Design recommendations;
 - (iii) Identification of prospective problem areas under a request for proposal;
 - (iv) Design concepts, including methods and procedures; and
 - (v) Biographical information which qualifies as personal and private information under the statute may be exempt.
- (3) For all documents submitted in response or with regard to any solicitation or other request, the person submitting the documents shall comply with instructions provided in the solicitation for marking information exempt from public disclosure. Information not marked as required by the applicable instructions may be disclosed to the public.

(c) *Access to Solicitation Prior to Award.* If requested in writing before a final award by an actual bidder, offeror, contractor, or subcontractor with regard to a specific intended award or award of a contract, the Procurement Services Director shall, within five days of the receipt of any such request, make documents directly connected to the procurement activity and not otherwise exempt from disclosure available for inspection at an office of the Procurement Services Director. Without otherwise limiting any other exemptions granted by law, and except as provided herein, documents of and documents incidental to proposed contractual arrangements, including those used for contract negotiations, are not exempt from disclosure after the date notice of intent to award is given, unless the notice is subsequently canceled.

Sec. 2-508. Methods of Source Selection.

Unless otherwise provided by these Procedures, all County contracts must be awarded by an IFB (pursuant to Section 2-509) or Request for Proposals (pursuant to Section 2-510), except as provided in:

1. Section 2.511 -- Small Purchases Under \$50,000.00;
2. Section 2.512 -- Request for Qualifications;
3. Section 2-513 -- Reverse Auction
4. Section 2-514 -- Emergency Procurement;
5. Section 2-515 -- Sole Source Procurement; and
6. Section 2-516 -- Pre-Qualification.

Sec. 2-509. Invitation for Bids (IFB).

- (a) *Notice of Invitation for Bids.* An Invitation for Bids shall include (or state where such information is to be made available) a project or purchase description, and all contractual terms and conditions applicable to the procurement. At least two weeks before the date designated in the IFB for the opening of bids, the IFB shall be publicly announced.
- (b) *Receipt and Opening of Bids; Electronic Submittal Requirements.* Bids will only be received electronically and must be submitted online prior to the date and time listed in the IFB. Bids shall be received into an online 'lockbox' folder and shall not be opened prior to the due date and time listed in the IFB. Bids will be opened in a transparent manner and the amount of each bid, and such other relevant information as may be deemed appropriate by the Procurement Services Director, together with the name of each bidder, shall be tabulated by the Procurement Services Director. The ranking of each bidder, which need not include the dollar amounts of the bids, shall be made available to all bidders after the contract award.
- (c) *Bid Acceptance and Bid Evaluation.* Subject to the County's right not to accept any bid, the selected bid shall be accepted unconditionally without alteration or correction, except as otherwise authorized in these Procedures or by the Procurement Services Director. The IFB shall set forth the evaluation criteria to be used. No criteria may be used in bid evaluation that is not set forth in the IFB or addenda to such bids. Bids shall be evaluated based on the requirements set forth in the IFB and addenda.
- (d) *Correction or Withdrawal of Bids or Proposals, Cancellation of Awards.* Correction or withdrawal of inadvertently erroneous bids or proposals before or after award, or cancellation and re-award of awards or contracts, after award but before performance, may be permitted in accordance with the solicitation, when it is for good cause and in the best interests of the County, provided, however, after bid or proposal opening, changes in prices or other provisions of solicitations prejudicial to the interest of the County or fair competition must not be permitted. The reasons for cancellation, withdrawal or correction shall be made part of the Project File and notice of cancellation shall be sent to all businesses solicited. The notice shall identify the solicitation, explain the reason for cancellation and, where appropriate, explain that an opportunity will be given to compete on any re-solicitation or any future procurements of similar items.
- (e) *Award.* If an award is to be made, the contract shall be awarded by written notice to the lowest responsible/responsive bidder. In the event two or more bidders are tied in price while otherwise meeting all the required conditions, an award shall be made to bidder who is determined in the discretion of the Procurement Services Director to be the most responsive, responsible, and qualified for the project described in the IFB.
- (f) *Right of Rejection and Re-solicitation.* The Procurement Services Director has the right, prior to award of the contract, to reject any and all bids for cause, or without cause, as he or she deems appropriate. The County has the right to determine not to award the contract to any bidder or to re-solicit bids based upon modified terms and conditions.

Sec. 2-510. Request for Proposals (RFP).

- (a) *Notice of Request for Proposals.* The RFP shall be publicly announced at least two weeks before the date designated in the RFP for the bid opening and shall include a description of the Project, enumerating all requirements for the Project; or state where such information is to be made available.
- (b) *Receipt and Opening of Proposals; Electronic Submittal Requirements.* Proposals will only be received electronically and must be submitted online prior to the date and time listed in the RFP. Proposals shall be received into an online 'lockbox' folder and shall not be opened prior to the due date and time and time listed in the RFP. Proposals will be opened in a transparent manner, but information within such proposals shall not be disclosed at this time.
- (c) *Selection Committee.* For each project in which a RFP is used, the Procurement Services Director shall approve a Selection Committee whom the Procurement Services Director determines to be qualified to make an informed decision as to the most responsive, responsible and qualified bidder for the proposed project.
- (d) *Evaluation of Proposals.* The RFP shall state the relative importance of each evaluation criterion but need not require numerical weightings for each factor. The Selection Committee shall review all responsive proposals and evaluate them using only the criteria set forth in the RFP. The Selection Committee shall adhere to any weightings for each of the criteria set forth in the RFP. The Selection Committee may hold interviews with the most qualified proposers as the Selection Committee deems appropriate. Following its evaluation of the proposals, the Selection Committee will rank the top proposer.
- (e) *Negotiation.* The Procurement Services Director shall negotiate a contract for services with the most qualified firm at a compensation which is fair and reasonable to the County. The Procurement Services Director may, at their discretion, include members of the Selection Committee in the negotiation process. Should the Procurement Services Director be unable to negotiate a satisfactory contract with the firm, negotiations shall be formally terminated. Negotiations shall commence in the same manner with the second and then the third, until a satisfactory contract has been negotiated. If no agreement is reached with one of the three, additional persons or firms in order of their competence and qualifications may be selected after consultation with the Selection Committee, and negotiations shall be continued in the same manner until agreement is reached.
- (f) *Right to Withdraw and Re-Solicit.* Until award, the Selection Committee and the Procurement Services Director have the right to determine not to award the contract to any proposer or to determine to re-solicit proposals based upon modified terms and conditions.

Sec. 2-511. Small Purchases.

- (a) *Small Purchase Authority.* The Procurement Services Director may authorize any procurement not exceeding \$50,000 by the solicitations of written quotations from a minimum of three qualified prospective Contractors.
- (b) As necessary, the Procurement Services Director may be required to contact additional prospective Contractors to obtain three quotations. If three quotations are not available following a reasonable effort, the Procurement Services Director shall document this fact in writing and place it in the Project File.
- (c) Award will be made to the lowest responsive and responsible bidder, provided that in addition to price, maintenance and service costs, transportation costs, delivery time, and other requirements relative to the purchase may be evaluated. If an award is not made to the lowest bidder, the reasons shall be documented in writing by the Procurement Services Director.

Sec. 2-512. Request for Qualifications (RFQ).

- (a) *Preparation of Project Description.* The Procurement Services Director along with the Using Agency Department Head shall be responsible for developing a description of the proposed project, listing the required Professional Services for that project, and preparing a formal invitation to firms for submission of information.
- (b) *Public Announcement.* The formal invitation shall be publicly announced. Nothing contained herein shall preclude the Procurement Services Director from directly inviting any person to submit information.
- (c) *Selection Committee.* For each project in which a RFQ is used, the Procurement Services Director shall approve a Selection Committee whom the Procurement Services Director determines to be qualified to make an informed decision as to the most responsive, responsible and qualified bidder for the proposed project.
- (d) *Selection and Ranking of the Most Qualified.* The Selection Committee shall evaluate each of the firms interviewed based upon criteria set forth in the invitation. Based upon these evaluations, the Selection Committee shall select the firms which, in its judgment, are the best qualified. The Selection Committee's report ranking the firms shall be in writing and will be made available to all firms interviewed upon written request from the interviewed firms.
- (e) *Interviews with Interested Firms.* Following receipt of information from all interested persons and firms, the Selection Committee shall hold interviews with at least three firms who have responded to the Selection Committee's advertisement and who are deemed most qualified on the basis of information available prior to the interviews, or if less than three persons or firms have responded to the advertisement, the Selection Committee shall hold

interviews with those that did respond. The purpose of the interviews shall be to provide such further information as may be required by the Using Agency Selection Committee to fully acquaint itself with the relative qualifications of the several interested firms.

- (f) *Negotiation of Contract.* The Procurement Services Director shall negotiate a contract for services with the most qualified firm at a compensation which is fair and reasonable to the County. The Procurement Services Director may, at their discretion, include members of the Selection Committee in the negotiation process. Should the Procurement Services Director be unable to negotiate a satisfactory contract with the firm, negotiations shall be formally terminated. Negotiations shall commence in the same manner with the second and then the third, until a satisfactory contract has been negotiated. If no agreement is reached with one of the three, additional persons or firms in order of their competence and qualifications may be selected after consultation with the Selection Committee, and negotiations shall be continued in the same manner until agreement is reached.
- (g) *Small Professional Purchases.* Purchases not expected to exceed \$50,000.00 for Professional Services may be procured using the small purchasing procedures in Section 2-511.

Sec. 2-513. Reverse Auction.

- (a) *Invitation for Reverse Auction Bids.* The Procurement Services Director shall issue an invitation for Reverse Auction Bids, which shall include all requirements for the bids, include the specifications for the required goods and services, the time of delivery and the quantities required.
- (b) *Public Notice.* Public notice of the bids (or pre-qualification of bidders) shall be announced. Not less than fourteen (14) days prior to the date set forth therein for the commencement of the Reverse Auction.
- (c) *Receiving Bids.* Bids shall be received online through a managed website specifically utilized for a Reverse Auction at a time and place designated in the IFB, and pursuant to the time period allotted for the Reverse Auction and other rules applicable to the Reverse Auction as set forth in the Invitation for Reverse Auction. The final amount of each bid and such other relevant information, together with the name of each bidder, shall be recorded in writing. This record, and each final bid, shall be open to public inspection after award.
- (d) *Bid Acceptance, Evaluation and Award.* Bids shall be unconditionally accepted without alteration or correction except as authorized in this Policy. The bidder with the lowest responsive, responsible bid will be awarded the contract.
- (e) *Correction or Withdrawal of Bids; Cancellation of Awards.* Correction or withdrawal of erroneous bids before or after award, or cancellation of awards or contracts based on such bid mistakes, may be permitted as set forth in Section 5-509(d).

Sec. 2-514. Emergency Procurement.

Notwithstanding any other provision of these Procedures, the Procurement Services Director may make or authorize others to make Emergency Procurements. Such Emergency Procurements shall be made with as much competition as is practicable under the circumstances. A written determination of the basis for the Emergency Procurement and for the selection of the particular vendor shall be included in the Project File; however, such written determination shall not be deemed to be a condition precedent to an award under this Section. The written determination must state at a minimum the cause of the Emergency Procurement, the reason the non-emergency procurement could not be followed within the time needed for the goods or services provided, and whether any competition was practicable.

Sec. 2-515. Sole Source.

- (a) *Use of Sole Source.* Sole source procurement is not the preferred procurement method and shall only be used when absolutely necessary and when all other procurement methods have been exhausted.

- (b) *Determination of Sole Source.* A contract may be awarded without competition when the Procurement Services Director recommends in writing, stating with particularity the factual basis for the determination. Sole Source justification and recommendation described herein shall be submitted by the Procurement Services Director to the County Administrator. Sole source determination shall demonstrate that:
 - 1. There exists only one appropriate, practicable source for the required supply, service, equipment or construction item;
 - 2. An explanation as to why no other vendor will be suitable or acceptable to meet the need;
 - 3. That a particular source for the required supply, service or construction item has a unique ability or knowledge, or circumstance that is beneficial to the County and to the public with respect to the supply, service or construction;
 - 4. Determination of fair and reasonable price; and
 - 5. Sole Source awards may be granted for contract renewals to maintain standardization, for specific proprietary concerns, to maintain existing product or service warranties or guarantees, or when in the best interest of the County as determined to meet the requirements herein.

- (c) *Record of Sole Source.* A record of Sole Source procurements shall be maintained as a public record and shall include the written Sole Source determination, listing each Contractor's name, the amount and type of each Contract, a listing of the items procured under each Contract, and the identification number of each Project File.

Sec. 2-516. Prequalification of Bidders.

- (a) The Procurement Services Director may pre-qualify all prospective bidders (including those for Reverse Auction) or proposers. The Procurement Services Director may also use pre-qualification selection procedures for the On-Call Contractor's List method of Source Selection in Section 2-522(d).
- (b) Notice of pre-qualification shall be publicly announced and shall set forth the criteria (or state where such criteria are to be made available) by which the qualifications and appropriateness of prospective bidders shall be determined. Only those criteria set forth in the pre-qualification notice may be considered in pre-qualifying bidders. The Procurement Services Director shall make all pre-qualification decisions in the exercise of its reasonable discretion and shall make a written record of the bases for its pre-qualification determinations. Prior to issuance of the IFB or RFP, all prospective bidders or proposers that were provided with pre-qualification notice will be notified of the Procurement Services Director's decisions relating to pre-qualification.

Sec. 2-517. Cancellation and Rejection of Solicitations.

When it is for good cause and in the best interests of the County, the County may cancel an IFB, RFP, RFQ or any other solicitation, or reject any or all bids or proposals in whole or in part as may be specified in the solicitation. The reasons for such cancellation or rejection shall be made part of the Project File. Each solicitation issued by the County shall state that the solicitation may be cancelled and that any bid or proposal may be rejected in whole or in part for good cause when in the best interests of the County. Notice of cancellation shall be sent to all businesses solicited and, where appropriate, explain that an opportunity will be given to compete on any re-solicitation or any future procurements of similar items.

Sec. 2-518. Responsibility of bidders and offerors.

- (a) *Determination of Non-Responsibility.* If a bidder or offeror who otherwise would have been awarded a County contract is found non-responsible, a written determination of non-responsibility, setting forth the basis of the finding, shall be prepared by the Procurement Services Director. The unreasonable failure of the bidder or offeror to promptly supply information in connection with an inquiry with respect to responsibility may be grounds for a determination of non-responsibility with respect to such bidder or offeror.
- (b) *Right of Nondisclosure.* Unless otherwise required by applicable law, information furnished by a bidder or offeror pursuant to this section shall not be disclosed by the County outside of the office of the Procurement Services Director, Administration, Legal Department, or Using Agency without prior written consent by the bidder or offeror.

Sec. 2-519. Local Vendor Preference.

- (a) *Extension of Local Vendor Preference.* To the extent no bids are received from a Beaufort County Local Vendor, a vendor shall be deemed to be a Beaufort County Local Vendor if such vendor is a Person or Business authorized to transact business within the state, maintains an office in Jasper, Hampton, or Colleton Counties (but only if Jasper, Hampton or Colleton Counties offer reciprocal preferences to Beaufort County Local Vendors), has a business license of Jasper, Hampton or Colleton Counties or one of the municipalities within such counties, and maintains a representative inventory of commodities within Jasper, Hampton or Colleton Counties or one of the municipalities within such counties.
- (b) *Preference Amount.* If a bid from a responsive and responsible Beaufort County Local Vendor does not exceed the lowest qualified bid from a nonlocal vendor by more than five percent or \$10,000.00, whichever is less of the lowest nonlocal bidder, the lowest Beaufort County Local Vendor has the discretion to match the bid submitted by the nonlocal vendor and receive the contract award.
- (c) *State or GSA Contracts.* When purchasing from State or General Services Administration (“GSA”) contracts, the County may purchase like items from a Local Vendor if the Local Vendor is willing to meet or beat the State or GSA contract pricing.

Sec. 2-520. Small Disadvantaged Businesses.

- (a) *Policy.* The County promotes an atmosphere whereby Small Disadvantaged Businesses are given an opportunity to provide goods and services to the County. The Procurement Services Department shall include Small Disadvantaged Businesses on any bidders lists it maintains, and the Procurement Services Department will actively seek bids and proposals from Small Disadvantaged Businesses.
- (b) *Approved List.* The Procurement Services Department will maintain an approved list of Small Disadvantaged Businesses. The Procurement Services Department will utilize an approved published list of Small Disadvantaged Business Enterprise from the South Carolina Department of Transportation's certified list.

Sec. 2-521. Project Delivery Methods.

- (a) *Authorized Methods.* The following project delivery methods are authorized:
 - (1) Design-Bid-Build;
 - (2) Construction Management at-Risk;
 - (3) Operations and Maintenance;
 - (4) Design-Build;
 - (5) Design-Build-Operate-Maintain;
 - (6) Design-Build-Finance-Operate-Maintain;
 - (7) Contractors On-Call List; and

(8) Such other project delivery method that the Procurement Services Director may approve combining one or more aspects of the delivery methods in items 1-7 above in this Section 2-521.

(b) *Construction Projects.* The Procurement Services Director, in consultation with the relevant Using Agency, shall have discretion to select the appropriate method of project delivery for a particular construction project. In determining which method to use, the Procurement Services Director shall consider the County's requirements, its resources, and the potential contractor's capabilities. The Procurement Services Director shall execute and include in the Project File a written determination setting forth the facts which led to the selection of a particular method of project delivery for each construction project.

Sec. 2-522 Source Selection of Project Delivery Methods.

Except as provided elsewhere in these Procedures, source selection methods applicable to procurements for the project delivery methods identified in Section 2-521 shall be as follows:

(a) *Design-Bid-Build and Construction Management At-Risk.*

(1) *Design.* The selection process provided for in Section 2-514 of this Division shall be used to procure Professional Services; including construction management.

(2) *Construction.* Either an IFB or RFP must be used to procure construction in design-bid-build procurements.

(b) *Design-Build, Design-Build-Operate-Maintain and Design-Build-Finance-Operate-Maintain.* RFPs must be used for the procurement of all design-build project delivery methods.

(c) *Operations and Maintenance.* IFBs or RFPs must be used to procure contracts for operations and maintenance.

(d) *Contractors On-Call List.* The Procurement Services Director is authorized to select a group or groups of pre-qualified vendors to provide services or materials to the County for one or more types of projects over an extended period of time (not to exceed three years).

(1) Such group(s) of pre-qualified vendors shall be selected pursuant to an RFP or Qualifications Based Selection processes set forth in these Procedures.

(2) Once an on-call contract is properly executed, the Procurement Services Director may procure services from such contractor(s) without further public notice or solicitation. If multiple vendors are on the executed contract, the Procurement Services Director should rotate the vendors when possible.

Sec. 2-523. Bonds and Security.

- (a) Bid security shall be required for all IFBs for construction contracts entered into pursuant to Section 2-509. Payment bonds, performance bonds, or other bonds as applicable shall be one provided by one or more surety companies meeting the criteria established by the Procurement Services Director. Bid security shall be in an amount equal to at least five percent of the bid unless a higher percentage is specified in the IFB. Any bid which does not comply with the bid security requirements shall be rejected.
- (b) When a contract to improve real property exceeding \$50,000 is awarded, the following bond security shall be delivered to the County upon or within a reasonable time after the execution of the contract and shall be binding on the parties:
 - (1) A performance bond satisfactory to the County, executed by one or more surety companies meeting the criteria established in the IFB or otherwise secured in a manner satisfactory to the County, in an amount equal to 100% of the contract price; and
 - (2) A payment bond satisfactory to the County, executed by one or more surety companies meeting the criteria established in the IFB or otherwise secured in a manner satisfactory to the County, for the protection of all persons supplying labor and material to the contractor or its subcontractors for the performance of the work provided for in the contract. The bond shall be in the amount equal to 100% of the contract price.
 - (3) Bonding requirements may be waived for any emergency procurement.

Sec. 2-524. Disposal of Surplus Supplies.

All surplus supplies, materials and equipment which are considered salvage or surplus, may be sold to the highest responsive bidder in accordance with and upon such terms and conditions as the Procurement Services Director shall require with respect to such surplus supplies and materials; provided, however, that the Procurement Services Director may sell, lease, or dispose of any supplies, materials, or junk which has a value of less than Five Thousand (\$5,000) Dollars. An internet-based auction site may be used to sell surplus supplies, materials or equipment.

Sec. 2-525. Contract Terms.

- (a) *General Authority.* Subject to the limitations of this Section, any type of contract which is appropriate as determined by the Procurement Services Director and which will promote the best interests of the County may be used, provided that the use of a cost-plus-a-percentage-of-cost contract is prohibited. A cost reimbursement contract may be used only when a determination is made in writing that such contract is likely to be less costly to the County than any other type or that it is impracticable to obtain the supply, service, or construction item required except under such a contract.

- (b) *Multiterm Contracts; Specified Period.* A contract for supplies or services may be entered into for a period of time, including all renewals or extensions, not to exceed five years unless otherwise approved by County Council, provided that the term of the contract and the conditions of renewal or extension, if any, are included in the solicitation and funds are available for the first fiscal period at the time of contracting. Payment and performance obligations for succeeding fiscal periods shall be subject to the availability and appropriation of funds therefor.
- (c) *Void Contract Terms or Conditions.* Any term or condition in any contract entered into by the County that requires the County to defend, indemnify, or hold harmless another Person shall be void ab initio, unless such term is expressly authorized by law. Any contract containing any terms or conditions inconsistent with any of the foregoing is otherwise enforceable as if it did not contain such term or condition.
- (d) *Contract Audit.* The County shall be entitled to audit the books and records of a contractor or any subcontractor under any negotiated contract or subcontract other than a firm fixed price contract to the extent that such books and records relate to the performance of such contract or subcontract. Such books and records shall be maintained by the contractor for a period of three years from the date of final payment under the prime contract and by the subcontractor for a period of three years from the date of final payment under the subcontract, unless a shorter period is otherwise authorized in writing by the Procurement Services Director.
- (e) *Change Orders.* All Change Orders or Contract modification in excess of ten percent of the original Contract must first be approved by the Procurement Services Director and Beaufort County Budget Director. Change Orders must not exceed the total budgeted project amount, to include any approved contingency funds. Change Order requests which exceed the total budgeted funds are subject to the approval process established in Section 2-506.
- (f) *Gratuities and Kickbacks.* The prohibition against gratuities and kickbacks prescribed in Section 2-533 of this Division shall be conspicuously set forth in every contract and solicitation.
- (g) *Standard Contract Clauses.* The Procurement Services Director, after consultation with the County Attorney, may establish standard contract clauses for use in County contracts. If the Procurement Services Director establishes any standard clauses, such clauses may be varied provided that any variation and that notice of any such material variation be stated in the IFB or RFP.

Sec. 2-526. Specifications

- (a) *Purpose.* The purpose of a specification is to serve as a basis for obtaining a supply, service, or construction item adequate and suitable for the extent practicable, the cost of ownership and operation as well as initial acquisition cost.
- (b) *Policy.* It is the policy of the County that all specifications shall be drafted so as to assure cost effective procurement of the County's actual needs and shall not be unduly restrictive.
- (c) *Brand Name or Equal Specification.* The use of a Brand Name or Equal Specification may be used only when the Procurement Services Director determines in writing that the use of such a specification is in the County's best interests.

Sec. 2-527. Resolving Protests

- (a) *Right to Protest.* Any actual or prospective bidder, proposer or contractor, who is aggrieved in connection with the solicitation or award of a contract, may protest to the Procurement Services Director. The protest, setting forth the grievance and the grounds therefor, shall be submitted in writing within ten days after such aggrieved person knows or should have known of the facts giving rise thereto, but in no circumstance after fifteen days of notification of award of contract.
- (b) *Authority to Resolve Protests.* The Procurement Services Director shall have the authority to settle and resolve a protest of an aggrieved bidder, proposer or contractor, actual or prospective, concerning the solicitation or award of a contract.
- (c) *Decision.* Should the parties fail to resolve the protest, the Procurement Services Director shall promptly issue a decision in writing, stating the reasons for the action taken. A decision of the Procurement Services Director shall be mailed or otherwise furnished immediately to the protestant and any other intervening party, and the decision shall be final unless a Person adversely affected by the decision appeals to the County Administrator within seven (7) days of receiving the decision. The County Administrator shall make a ruling concerning the appeal within fifteen days of receipt of the appeal. The ruling of the County Administrator shall be mailed or otherwise furnished immediately to the protestant and any other intervening party, and the ruling shall be final.

Sec. 2-528. Debarment.

The offer of cash, merchandise, gratuities or any other thing of value to an Official or Employee by any Contractor or prospective Contractor is prohibited and shall be reason for the Procurement Services Director or County Administrator declaring such Contractor or prospective Contractor to be an irresponsible bidder and for debarring such Contractor or prospective Contractor from participation in the County's Procurements for a period of (2) years. A decision to debar shall be mailed or otherwise furnished immediately to the affected Contractor or prospective Contractor, and the decision shall be final unless appealed in writing to County Council and received by the Clerk to Council within ten (10) days of receiving the decision.

Sec. 2-529. Auditing and fiscal reporting.

- (a) The Chief Financial Officer shall develop written plans for the annual auditing of County Procurements.
- (b) On an annual basis auditors working for the County either as employees or as third-party professional consultants shall review the adequacy of the County's internal controls in order to ensure compliance with the requirement of these Procedures. A noncompliance discovered through an audit must be transmitted in writing to the Chief Financial Officer and County Administrator.

Sec. 2-530. Internal Reporting.

When any information or allegations concerning anticompetitive or unethical practices among any bidders or proposers come to the attention of any Employee, immediate notice of the relevant facts shall be transmitted to the County Attorney or pursuant to the County's Whistleblower Policy.

Sec. 2-531. Training.

The Procurement Services Director will develop a system of training for procurement processes that are consistent with and further the efficient implementation of these Procedures and that encompasses the latest techniques and methods of public procurement which are consistent with these Procedures. All Employees with purchasing responsibility shall take part in annual training.

Sec. 2-532. Employee conflict of interest.

It shall be unethical for any Employee to participate directly or indirectly in a procurement contract when the Employee knows that:

1. The Employee or any member of the Employee's Immediate Family has a financial interest pertaining to the procurement contract;
2. Any other person, business, or organization with whom the Employee or any member of an Employee's Immediate Family is negotiating or has an arrangement concerning prospective employment is involved in the procurement contract; or
3. An Employee or any member of an Employee's Immediate Family who holds a financial interest in a disclosed blind trust shall not be deemed to have a conflict of interest with regard to matters pertaining to that financial interest.

Sec. 2-533. Gratuities and Kickbacks.

- (a) *Gratuities.* It shall be unethical and prohibited for any person to offer, to give, or agree to give any Employee or former Employee, or for any Employee or former Employee to solicit, demand, accept, or agree to accept from another person a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, or preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for

ruling, determination, claim or controversy, or other particular matter, pertaining to any program requirement or a contract or subcontract, or to any solicitation or proposal therefor.

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

Sec. 2-534. Prohibited Employee Participation.

An Employee is prohibited from participating directly or indirectly in any procurement process while said Employee is also an employee of an entity contracting with the County. An Employee is prohibited from any unethical participation or action including, but not limited to, S.C. Code of Laws Ann. Title 8 Chapter 13 Public Officers and Employees as it applies.

Sec. 2-536. Use of Confidential Information.

It shall be unethical for any Employee or former Employee to use confidential information for actual or anticipated personal gain or for the actual or anticipated personal gain of any other person.

Sec. 2-537. Severability.

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

Sec. 2-538. Repealed.

All previously issued ordinances pertaining to public procurement for this County are hereby repealed.