

## **PROCUREMENT ORDINANCE**

### **§ 35.005 PURPOSES, CONSTRUCTION, AND APPLICATION.**

(A) *Interpretation.* This subchapter shall be construed and applied to promote its underlying purposes and policies.

(B) *Purposes and policies.* The underlying purposes and policies of this subchapter are:

(1) To simplify, clarify, and modernize the law governing procurement by the county, its departments, its employees acting within the scope of their employment, its agencies, boards, commissions, and its elected officials;

(2) To establish and to permit the continued development of procurement policies, practices, and procedures;

(3) To prescribe the manner in which the county shall control, in a cost-efficient manner, the purchase of supplies, materials, equipment and services (including construction) required by county government; and additionally, to prescribe the manner in which the county shall dispose of surplus or excess personal properties, real estate, and real properties in a cost-effective manner or other manner beneficial to the county.

(4) To provide increased economy in county procurement activities and to maximize, to the fullest extent practicable, the purchasing value of public funds of the county, by fostering effective broad-based competition within the free enterprise system.

(5) To provide for increased public confidence in the procedures followed by the county in procurement activities;

(6) To ensure the fair and equitable treatment of all persons who deal with the county procurement system; and

(7) To provide and to authorize safeguards for the maintenance of a procurement system of quality and integrity, and to protect against fraud and favoritism.

(C) *Centralized purchasing.* There is hereby established a centralized purchasing system for the competitive procurement of all supplies, materials, equipment and services (including construction) required by county government, and as provided in the S.C. Code § 11-35-50.

(D) *Construction.* In this subchapter, unless the context requires otherwise:

(1) Words in the singular number include the plural, and those in the plural include the singular; and

(2) Words of a particular gender include any gender and the neuter, and when the sense so indicates, words of the neuter gender may refer to any gender.

(E) *Requirement of good faith.* This subchapter requires all parties involved in the negotiation, performance, or administration of county contracts to act in good faith.

(F) *Application of this subchapter.*

(1) *General application.* This subchapter applies only to contracts solicited or entered into after the effective date of this subchapter.

(2) *Application to county procurement.*

(a) All supplies, materials, equipment and services required by county government shall be purchased and procured in accordance with the terms and provisions of this subchapter.

(b) All items of personal property declared surplus or "excess fixed asset" shall be disposed of in accordance with this subchapter.

(c) All real estate or real property shall be disposed of in accordance with this subchapter.

(d) This subchapter shall apply to every expenditure of public funds appropriated by County Council for public purchasing, irrespective of their source, except as otherwise provided by state law, state regulation, county ordinance or administrative policy.

(e) When the procurement involves the expenditure of federal or state funds, the procurement shall be conducted in accordance with any mandatory applicable federal or state law or regulations, in addition to any term or provision required by local ordinance.

(f) Nothing in this subchapter shall prevent the county, its departments, agencies, boards, commissions, or its elected officials, from complying with the terms and conditions of any grant, gift, bequest, or cooperative agreement; nor prevent the county, its departments, agencies, boards, commissions, or its elected officials from specifying a management entity for the grant, gift, bequest, or cooperative agreement.

(g) All county agencies, boards, commissions, departments, and/or officials receiving or expending funds appropriated by the county shall comply with the procurement provisions set forth herein.

(h) All other agencies, boards, commissions, departments and/or entities receiving or expending funds appropriated by the county shall agree to comply with the procurement provisions set forth herein, or shall adopt a written procurement policy or regulations for the procurement of goods and services that, at a minimum, require a competitive bidding process.

(G) *Severability.* If any provision of this subchapter, or any application thereof to any person or circumstances, is held invalid, such invalidity shall not affect other provisions or application of this subchapter that can be given effect without the invalid provision or application, and to this end the provisions of this subchapter are declared to be severable.

(H) *Construction against implicit repealer.* Since this subchapter is a general act, no part of it shall be deemed to be impliedly repealed by subsequent legislation, if such construction of the subsequent legislation can be reasonably avoided.

(Ord. 1006, passed 4-17-06; Am. Ord. 2014, passed 6-2-14)

### **§ 35.006 DEFINITIONS.**

The following defined terms, words, and phrases shall have the meanings set forth below whenever they appear in this subchapter, unless the context clearly indicates otherwise. Any inconsistency between the definitions set forth below and the description and intended meaning of these terms, words or phrases as they may appear within the sections and parts of this subchapter is to be reconciled and harmonized, to the fullest extent possible, with each term, word, or phrase being read in the context of the section and part in which it may appear. Any term, word, or phrase utilized within this subchapter and not set forth and defined below shall be given its plain and ordinary meaning while being read in context with the section and part in which it may appear.

**ACT OF GOD.** An overwhelming, unpreventable act without the intervention of man and occasioned by the forces of nature, the effects of which could not be avoided by the exercise of due care or foresight.

**ADDENDA.** Additional directions or modifications to the solicitations, which are issued as separate documents after issuance of the solicitations.

**ADVANTAGEOUS.** In the county's best interests, as solely determined by the county, except as otherwise specified in this subchapter.

**AWARD.** The acceptance of a bid, offer, or proposal by the proper governmental authority. The County Council shall approve all purchases over the limit established, with the exception of emergency procurements.

**BID.** An offer to perform a contract for work and labor or supplying materials at a specified time.

**BID BOND.** A form of security indemnifying the county against a successful bidder's failure to execute the contract documents and proceed with performance.

**BID TABULATION.** A summation of bids received in response to an Invitation For Bids.

**BLANKET PURCHASE ORDER.** A purchase order annually used to reduce administrative costs associated with routinely created, small purchase orders.

**BOND.** A form of security in compliance with the South Carolina statutes which indemnifies the county from various events.

**BRAND NAME.** A specific make, model or type.

**BUSINESS.** Any corporation, partnership, individual, sole proprietorship, joint-stock company, joint venture, limited liability company, or any other private legal entity.

**CAPABILITY.** Contractor ability to fully perform the contract requirements at the time of award.

**CHANGE ORDER.** A written change to the contract documents. It may change the contract sum, time of performance, quantity, or degree of services contemplated in the original contract's intent.

**CLARIFICATION.** Written or oral communication with a respondent, including demonstrations or questions and answers, for the sole purpose of information gathering, eliminating minor informalities or correcting nonjudgmental mistakes in a bid or proposal.

**COMPETITIVE BEST VALUE BIDDING.** The procurement process set forth to solicit competitive prices, where other evaluation factors other than price are considered in the determination of award for specific materials or services based on pre-determined criteria identified by the county.

**COMPETITIVE SEALED BIDDING.** The procurement process set forth to solicit competitive prices.

**COMPETITIVE SEALED PROPOSALS.** The solicitation process set forth to solicit prices and services.

**CONSTRUCTION.** A process of building, improving, altering, repairing, remodeling or demolishing any public structure, public building, highway, bridge, public infrastructure facility, or other public improvement of any kind to any real property. **CONSTRUCTION** does not include the routine maintenance of existing structures, buildings, or real property.

**CONSTRUCTION MANAGER.** Under a **CONSTRUCTION MANAGER** type of construction contract relationship format, York County contracts with an individual or entity to serve as its agent in managing the construction process on behalf of its interests throughout the construction project. Two types of relationship format are chosen - one is a pure agency relationship, and the other is a relationship in which the construction manager is "at risk."

**CONTRACT.** All types of binding county agreements, regardless of what they may be called, for the procurement or disposal of materials, supplies, services, or construction.

**CONTRACT MODIFICATION.** Any written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, the terms and conditions of any contract, or any other provision, accomplished by mutual action of the parties to the contract.

**CONTRACTOR.** Any person who has a contract with county government.

**COOPERATIVE PURCHASING.** A procurement conducted by, or on behalf of, more than one public entity.

**COUNCIL.** The York County Council.

**DEBARMENT.** An action taken to prohibit a vendor from participating in county procurements.

**DEPARTMENT HEAD.** The person in charge of any county department or agency, including but not limited to, appointed and elected officials.

**DESIGN-BID-BUILD.** A project delivery method that includes three linear phases for completing a construction project - engineering and/or architectural design, bidding, and construction. As part of the **DESIGN-BID-BUILD** project delivery method, the county awards two separate contracts - the first for architectural and or engineering design and bid phase services, and the second for construction according to the design. Under this project delivery approach, the architect/engineer is selected through a qualification-based or competitive best value bidding approach, and the contractor is selected through competitive sealed bidding.

**DESIGN-BUILD.** The **DESIGN-BUILD** type of construction contract relationship format is one in which one contractor supplies all of the work involved in the project, including the design. York County provides the performance specifications and the contractor designs and constructs the project consistent with those performance specifications. In a **DESIGN-BUILD** type of contract relationship format, the contractor may even provide the site as part of the construction contract.

**DESIGNEE.** A duly authorized representative of the county manager, purchasing director or County Council.

**EMERGENCY.** A threat to public health, welfare, safety, property or other substantial loss to the county.

**ENCUMBRANCE.** To encumber or earmark funds for a particular purchase.

**EMPLOYEE.** An individual employed by the county, drawing a salary or wages from the county.

**EQUAL.** An item or service of the same measure, quantity, amount, or number as the specified item, or is like in quality, nature, or status.

**ERRORS AND OMISSIONS INSURANCE.** Liability insurance to protect those providers of services from claims arising out of negligent acts, errors or omissions, or breach of the contract during performance of the contractual duties.

**EVALUATION FACTORS.** Factors which must be stated in the competitive best value bid to be used in award selection and numerical weighting for each factor. Cost must be considered as a factor in the award of the contract and it (cost) must be weighted at least 60% of the overall considerations.

**EXCESS FIXED ASSET.** Any personal property, which has a remaining useful life, but which no longer is required by the using agency or department in possession of the fixed assets.

**FIXED ASSET.** Any tangible capital item with a purchase value of \$5,000 or more, and a life expectancy of one year or more.

**FIXED-PRICE CONTRACT.** A price not subject to any adjustments by the contractor in performing a contract.

**GRANT.** The transfer of funds, property or services to a county governmental unit.

**INVITATION FOR BIDS.** All documents, whether attached or included, detailing the scope of work and/or technical specifications that are used for soliciting bids.

**LEASE.** A contract between a lessor and a lessee for the hire of a specific asset. The ownership or asset is retained by the lessor, but the right to use the asset is given the lessee for an agreed period of time in return for a series of payments paid by the lessee to the lessor.

**LIQUIDATED DAMAGES.** Damages provided under a contract in a sum certain to be awarded to the county if a contractor fails to perform as agreed.

**LITIGATION.** All judicial, administrative, alternative dispute and mediation proceedings or hearings.

**LOCAL FIRM.** To be considered local, the firm, company, or entity must operate an office in York County, South Carolina.

**MANDATORY BID AMOUNT.** The dollar amount at which the formal competitive bid/request process is required, unless an exemption is provided in this subchapter. Also refers to the delegation of authority granted by the County Council to the county manager to approve purchases, sign and execute contracts, approve and execute change orders and leases, when the value is less than the **MANDATORY BID AMOUNT**.

**MATERIALS.** All property, including equipment, supplies, printing, insurance and leases of personal property but does not include land or other real property interests.

**MINOR INFORMALITY.** Mistakes, excluding judgmental errors, that have negligible effect on price, quantity, quality, delivery or other contractual terms, and the waiver or correction of such mistakes does not prejudice other respondents.

**MINORITY VENDOR.** A vendor that owns a business individually and is a member of a minority group; or a vendor that owns a business through partnership, joint venture, or association, at least 51% owned or controlled by members of a minority group; or a vendor that owns a business in corporate form that is certified to be wholly, or at least 51% owned, or controlled, by members of a minority group.

**NOTICE OF AWARD.** A letter from a county governmental unit advising the respondent of the award of a contract.

**NOTICE TO PROCEED.** A letter from the county governmental unit authorizing the contractor to start the work specified in the contract.

**OFFER.** A proposal of terms, either solicited or unsolicited, made with the purpose of securing or modifying a contract.

**OFFEROR.** The business or vendor who offers a response to a competitive solicitation.

**OPEN PURCHASE ORDER.** A purchase order whereby a vendor provides supplies or services on demand or on a prescribed schedule not to exceed a specific 12-month period or dollar amount or the mandatory bid amount.

**PARTIAL PAYMENT PURCHASE ORDER.** A payment made to a vendor for partial services rendered, or partial items delivered. Upon an invoice, payment for partial services or partial items delivered is deducted from the total amount of the purchase order.

**PAYMENT BOND.** A form of security required to be provided by a contractor for the protection of claimants supplying labor and/or materials to the contractor or his or her subcontractors.

**PERFORMANCE BOND.** A form of security provided by a contractor that secures the contractor's obligation to properly complete their work in accordance with the contract.

**PERFORMANCE SPECIFICATION.** A specification that sets forth a predefined criteria or objective to be met.

**PERSON.** Any corporation, business, individual, union, committee, club, other organization or group of individuals.

**PRIVILEGED AND CONFIDENTIAL INFORMATION.** 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.

**PROCUREMENT.** Buying, purchasing, renting, leasing or otherwise acquiring any information, materials, services or construction. **PROCUREMENT** also includes all functions that pertain to the obtaining of any material, service, or construction, including description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration.

**PROCUREMENT OFFICER.** Any person duly authorized by the purchasing director to engage in specific limited procurement activity, acting within the limits of authority under this subchapter.

**PROFESSIONAL SERVICES.** Services appropriate for procurement that require the application of specialized or advanced training, experience, or skills or qualifications in a given field of science or learning generally accepted as a profession, and where the final product or result may not be accurately predicted.

**PROPOSAL.** A written offer, solicited or unsolicited, for consideration as a basis for awarding or modifying a contract.

**PUBLIC NOTICE.** The distribution or dissemination of information using methods that are reasonably available to interested parties. Such methods will often include publication in newspapers of general circulation, electronic or paper mailing lists, and web sites designed by the county and maintained for that purpose.

**PURCHASE REQUISITION.** A paper document, electronic transmission, or verbal request, whereby a using agency specifies a need, and may include the product description, delivery schedule, suggested sources of supply, and other information.

**PURCHASING DEPARTMENT.** The county purchasing department or any county governmental unit delegated by the county manager and approved by the County Council to engage in specific procurement activity.

**PURCHASING DIRECTOR.** The employee specifically designated by the county manager to manage and oversee the county's procurement activities.

**PURCHASE ORDER.** A purchaser's document to formalize a purchase transaction with a vendor, conveying acceptance of a vendor's proposal and committing the county to buy goods or services as described on the form.

**QUALIFICATIONS-BASED SELECTION.** Selection of award based on either a "pure qualifications-based selection" or a combination of qualifications and fees.

**QUOTATION.** An informal solicitation used to obtain written or verbal responses without formal advertising.

**REQUEST FOR PROPOSAL (RFP).** All documents, whether attached or incorporated by reference, intended for the solicitation for products and services that are technical and complex in nature, and that do not lend themselves to be included in an Invitation for Bid format. Responses to a RFP may include the submission of proposals based upon a generalized scope of work, with contract award to the responsible person(s) submitting the most advantageous and responsive proposal.

**REQUEST FOR QUALIFICATION (RFQ).** A method for obtaining professional services. Qualified professional firms are invited to submit statements of interest, and their qualifications and relevant experiences in meeting a specific need for professional services.

**RESPONDENT.** Any individual, corporation, partnership, or business entity, organization, or agency that responds to an Invitation to Bid, Request for Proposals, or Request for Qualifications.

**RESPONSIBLE BIDDER OR PROPOSER.** A respondent capable in all respects of fully performing the contract requirements, and the integrity and reliability to assure good faith performance.

**RESPONSIVE BIDDER OR PROPOSER.** A respondent who has submitted a bid or proposal response conforming in all material respects to the Invitation to Bid, Request for Proposals, or Request for Qualifications.

**SELECTION COMMITTEE.** A group of persons appointed, as provided in this subchapter and regulations, to rank in preferential order those professional firms interested in providing services on a particular project, and to assist in negotiating a final contract with the highest rated firm approved by the County Council.

**SERVICES.** The furnishing of labor, time or effort by a contractor, not involving the delivery of a specific end product other than required reports incidental to the required performance. This term shall not include employment agreements.

**SOLE SOURCE.** The only known vendor or the only reasonable vendor capable of providing a service or commodity to the county or some unique beneficial or economically advantageous service, commodity, and/or property to the county.

**SOLICITATION.** An Invitation for Bids, a Request for Proposals, a Request for Qualifications, Quotations, or any other invitation or request by which the county invites a person to participate in procurement.

**SPECIFICATION.** Any description of the physical or functional characteristics, or the nature of a material, service or construction item. Specifications may include a description of any requirement for inspecting, testing, or preparing a material, service or construction item for delivery.

**STATE CONTRACT.** A contract established by the state's chief procurement officer for a specific product or service for a specified time, and for which it is optional that all governmental bodies procure their requirements for the goods and services during its term.

**SUPPLIES.** All property, including but not limited to, equipment, materials, printing, insurance, information technology, software packages, and leases of real property, excluding land or a permanent interest in land.

**SURPLUS PROPERTY.** Any materials, fixed assets, or county property that no longer have any use for the county's needs, and that has been deemed "surplus" by the County Council and/or the purchasing director, and designated for disposition.

**UNIT PRICE.** A price under which the contractor is paid for the selected unit for goods or service.

**USING AGENCY.** Any county governmental department or office, commission, board, or agency of the county that utilizes any materials, supplies, equipment, services or construction procured.

**VENDOR.** An actual or potential supplier of an item, service or material.

**WRITTEN DETERMINATION.** A written decision resolving a question or controversy, or finalizing a position within the limits of authority.

(Ord. 1006, passed 4-17-06; Am. Ord. 3411, passed 10-17-11; Am. Ord. 2014, passed 6-2-14)

## **§ 35.007 ORGANIZATION AND STANDARDS.**

### **(A) Purchasing responsibility.**

(1) The county manager shall designate a county purchasing director, who shall have duties and responsibilities as are fixed by the provisions of the S.C. Code § 4-9-160, the provisions of this subchapter, county purchasing policies as may from time to time be established by the County Council, and other duties and responsibilities as may be assigned by the county manager.

(2) Except as otherwise specifically provided in this subchapter, in accordance with the requirements provided and subject to the supervision of the county manager, the purchasing director shall serve as the principal public purchasing official for the county, and shall be responsible for the procurement of all supplies, materials, equipment and services in accordance with this subchapter, as well as the management and disposal of county assets, supplies and equipment when appropriate.

(3) The purchasing director shall have such authority, duty and responsibility to approve purchases, and sign and execute certain purchasing agreements, contracts, and purchase orders for goods and/or services, based upon the procedures and policies established in this subchapter. Unless otherwise referenced in this subchapter, the purchasing director shall be authorized to approve all purchases and awards up to the mandatory bid amount.

(4) The chairperson, or under special circumstances, the acting chairperson, of the County Council shall retain sole authority to sign and execute, on behalf of the Council, all ordinances, resolutions, directives, deeds, bonds, contracts, and other official instruments or documents, except for purchase orders or purchasing contracts for amounts less than the mandatory bid amount.

(5) The purchasing director and/or his or her designee(s) shall be the only individuals authorized to sign purchase orders or certain procurement contracts on behalf of the county, as provided and authorized in this subchapter.

(6) The purchasing director shall not incur any obligation on behalf of the county, if sufficient funds have not been specifically appropriated by the County Council or are otherwise not available, and if they have not been properly designated for the specified purchase by the appropriate county official(s).

(7) The purchasing director shall work cooperatively with county departments in making determinations relative to the purchase of supplies, materials, equipment and services.

(B) *Purchasing director's responsibility.* In accordance with this subchapter, and subject to the supervision of the county manager and the County Council, the purchasing director shall:

(1) Procure or supervise the procurement of all supplies, materials, equipment and services needed by the county, consolidating purchases of like or common items, and work with all county offices and departments to establish standardization of materials, supplies, and equipment, when appropriate and advantageous to the county.

(2) Sell, trade, transfer or otherwise dispose of surplus supplies, property and equipment designated and approved for disposal by the County Council.

(3) Maintain a complete record of all purchasing transactions.

(4) Establish and maintain programs for specification development, contract administration, inspection and acceptance, in cooperation with the public offices using the supplies, materials, equipment and services.

(5) Exercise general supervision over inventories of supplies belonging to the county.

(6) Draft or cause to be drafted Invitations for Bids, Requests for Proposals, Requests for Qualifications and other solicitations as may be permitted by law, and prepare specifications or scopes of work for the same.

(7) Supervise the handling and processing of all interoffice, incoming and outgoing U.S. Mail, and the distribution and collection of that mail throughout county offices.

(8) Decide whether it is in the best interest of the county to purchase directly from State contracts for single purchases totaling less than \$30,000, or for collective purchases of multiple single units totaling less than \$30,000; to seek County Council authorization to purchase directly from state contracts when the total amount of a single purchase is \$30,000 or more, or the collective purchase of multiple single units is \$30,000 or more, and the purchase from the state contracts is found to be in the best interest of the county; or seek competitive pricing, based upon the limitations and/or guidelines of this subchapter.

(9) Delegate duties, responsibilities and assignments to assistant purchasing employees when deemed necessary; provided such staff should comply with all applicable laws, rules and procedures previously established by the County Council.

(10) Maintain the names and address information of various suppliers, contractors, consultants and other vendors of products and services to be used as a source for providing for the needs of the county, and investigate new products and new sources of supply.

(11) Retain all records relating to procurement projects, and maintain all such records so as to ensure their availability for inspection by the appropriate government official.

(12) 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 director. These groups could include department heads, vendors, and others deemed necessary by the director. Such groups shall, to the extent required by law, comply with all South Carolina laws applicable to such groups.

(13) Take all necessary action to further the objectives of the county regarding promotion and encouragement of minority and women businesses' participation in the procurement process.

(C) *Central store.*

(1) Certain goods and supplies, common to many county departments, may be purchased in bulk by the county and placed in a central store's inventory.

(a) Such goods may include basic office supplies, office equipment, various paper products and various chemical products.

(b) Minimal quantities of these items will be purchased and maintained on-hand for use by all county departments and offices.

(2) The purchasing department will manage the stocking and distribution of the various supply items included in the central store's inventory, maintain central store stock records, and make adjustments to reflect current stock levels and availability.

(D) *Standards of conduct.*

(1) In all actions involving the procurement of supplies, services, or construction for the county, the county shall comply with the provisions of the State Ethics Act, S.C. Code §§ 8-13-10 through 8-13-1020, as may be amended from time to time.

(2) Acceptance of gifts and/or gratuities at any time shall be prohibited.

(3) Employees shall not become obligated to any vendor, and must not negotiate any county transaction from which they may personally benefit, either directly or indirectly.

(4) The purchasing director shall not knowingly issue a purchase order or execute a contract when there is evidence of a conflict of interest.

(5) In instances when a conflict of interest may exist, but its existence is not clearly established, the director shall refer the matter to the county attorney, whose opinion will be final in the absence of specific instructions from the county manager.

(E) *Minority vendor procurement.*

(1) *Non-discrimination.*

(a) The county will make every reasonable effort not to discriminate in its purchasing practices because of race, creed, sex or origin, and will generally promote equality of opportunity for minority vendors who may desire to do business with the county.

(b) A **MINORITY VENDOR** means a vendor that owns a business individually and is a member of a minority group; or a vendor that owns a business through partnership, joint venture, or association, at least 51% owned or controlled by members of a minority group; or a vendor that owns a business in corporate form that is certified to be wholly, or at least 51% owned or controlled by members of a minority group.

(c) Minority groups include, but are not limited to, African American/Black, Hispanic American, female, Aleut, Eskimo, East Indian, Native American, Asian and other.

(2) *Non-discriminatory efforts.* In furtherance of the county's non-discrimination in its procurement processes, the purchasing department shall:

(a) Maintain a list of minority-owned vendors eligible to contract with the county.

(b) Seek to locate minority vendors to provide goods and services.

(c) Ensure that there are no barriers in purchasing procedures that will prohibit full participation of minority-owned vendors from doing business with the county.

(d) Submit regular reports to county management on the status of minority purchasing activities.

(3) *DBE/SBE/MBE/WBE utilization.* The county wishes to ensure that qualified and duly certified Disadvantaged Business Enterprises (“DBEs”), Small Business Enterprises (“SBEs”), Minority Business Enterprises (“MBEs”), and Women’s Business Enterprises (“WBEs”) are afforded the opportunity to fully participate in the overall procurement process of the county. In addition to any requirements set forth in state or federal mandates, the purchasing director may include qualified DBEs, SBEs, MBEs, and WBEs on solicitation lists.

(F) *Public information.*

(1) *Public access to procurement information.*

(a) The county is subject to the South Carolina Freedom of Information Act. As a result, every person submitting information or documents to the county in connection with matters governed by this code is on notice that the county may disclose such submitted information or documents. By submitting information or documents to the county, the submitting person assumes the risk and bears sole responsibility for any damage that may arise from disclosure.

(b) The county may, at its sole discretion, assert any relevant and applicable exemption to disclosure allowed by the South Carolina Freedom of Information Act.

(c) Unless contrary to the South Carolina Freedom of Information Act, the county shall not be required to disclose the following:

1. Evaluative documents, pre-decisional in nature, containing technical evaluations and recommendations; or

2. Documents submitted in response or with regard to an Invitation for Bids or solicitation of proposals or other request in instances in which a contract is not made.

(d) To the extent a person provides the county with documents that contain what the person deems to be confidential proprietary information, the person has a duty to mark such documents “CONFIDENTIAL.” In that instance, the person must mark “CONFIDENTIAL” each part, by page, paragraph, section or line, as appropriate, in such manner that it is clear to a reasonable person making a cursory review of the document as a whole that the relevant part has been marked confidential. Under those circumstances, the county will endeavor to take reasonable steps to keep those portions confidential, unless a Freedom of Information Act request is received. Under the latter circumstances, the county will endeavor to take reasonable steps to notify the person of the Freedom of Information Act request so that the person may take, at its sole expense, whatever steps, if any, it deems necessary to protect its assertion that the information is confidential and exempt from disclosure.

(2) *General provisions.*

(a) Procurement information shall be public record to the extent required by Chapter 4 of Title 30 (The Freedom of Information Act) of the South Carolina Code of Laws.

(b) Certain commercial, financial or trade secret information, set forth in any type bin or within any response to a Request for Qualifications or a Request for Proposals, and designated by a responder as privileged and confidential, may not be disclosed.

(3) *Privileged and confidential information.*

(a) *Designation.*

1. At the time of submitting a proposal or bid, the party supplying a bid or proposal must identify any portion of the proposal or bid considered by the party to be privileged and confidential commercial, financial or trade secret information, and thus eligible to be withheld from public inspection and copying.

2. If the information identified by the party is commercial information, financial information, or a trade secret, it may be withheld from public inspection and copying.

3. If the party fails to identify information as privileged and confidential commercial, financial, or trade secret information, the entire bid or proposal is to be made available for public inspection and copying.

(b) *Definition and examples.*

1. **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.

2. Examples of this type of information would include:

- a. Customer lists;
- b. Design recommendations and identification of prospective problem areas under an RFP;
- c. Design concepts, including methods and procedures;
- d. Biographical data on key employees of the bidder.

(4) *Pre-decisional evaluative documents.* Evaluative documents pre-decisional in nature, such as inter- or intra-departmental memoranda containing technical evaluations and recommendations, are exempted so long as the contract award does not expressly adopt or incorporate the inter- or intra-departmental memoranda reflecting the pre-decisional deliberations.

(Ord. 1006, passed 4-17-06; Am. Ord. 2014, passed 6-2-14; Am. Ord. 4316, passed 9-19-16)

## **§ 35.008 PURCHASING PROCEDURES.**

(A) *General purchasing procedures.*

(1) *Maximum practical competition.* All specifications shall be drafted so as to assure cost effective procurement for the purposes intended, and to encourage competition in satisfying the county's needs, and shall not be unduly restrictive. Any use of characteristics that serves 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.

(2) *Duties of the purchasing director and the using departments.* The purchasing director may prepare or review, issue, revise and maintain the specifications for property, supplies, services, and construction required by the county. The purchasing 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 may be prepared by the using department.

(3) *Brand name or equal specification.* 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 purchase description not including a brand name specification;

(c) The nature of the product or the nature of the county's requirements makes use of a brand name or equal specifications suitable for the procurement; or

(d) Use of a brand name or equal specification is in the county's best interests.

(4) *Required characteristics.* Unless the purchasing 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 required.

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

(6) *Brand name only specification.* Since use of a "brand name only" specification is restrictive of product competition, it may be used only when the using agency makes a written determination that only the identified brand name item or items will satisfy the county's needs and such determination is approved, in writing, by the purchasing director.

(7) *Competition.* The purchasing 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.

(B) *Completing purchase transactions.* All purchases of goods, services, materials, supplies or equipment made for or on behalf of the county, as set out below, shall be authorized by the issuance of a purchase order by the county manager, the purchasing director, or someone designated by the purchasing director. In completing purchase transactions, the following policies, procedures and guidelines shall be observed.

(1) Small purchases not exceeding \$2,500, per transaction, may be accomplished without securing competitive quotations if the prices are considered to be fair and reasonable. Action to obtain competitive quotations need only be taken when the purchasing 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. Every effort should be made to distribute such purchases equitably among qualified suppliers.

(a) In most instances, a county issued purchasing ("P") card may be used to procure items totaling \$2,500 or less per transaction, as herein described.

1. *Purchasing Card Program.* The purchasing director is authorized to establish a purchasing card program ("P-Card" or "P-Card Program"). The P-Card is a master charge card issued to county employees to make small value purchases of supplies, materials, equipment, and services for county business use.

2. The procedures for this program shall be promulgated and amended as needed by the purchasing director and approved by the County Manager.

3. This program shall be discontinued at any time as recommended by the purchasing director and approved by the County Manager.

4. The cardholder shall use the purchasing card for legitimate business purposes only. Misuse of the card will subject the cardholder to disciplinary action in accordance with county personnel policies and/or applicable criminal laws.

(b) Permitted P-Card purchases include, but are not limited to:

1. Airline tickets;
2. Hotel accommodations for travel;
3. Car rental for travel;
4. Registrations for conferences;
5. Ground transportation for travel;
6. Facsimile charges when traveling;
7. Business meals; must attach agenda or meeting minutes to receipt;
8. Authorized memberships or subscriptions; and

9. Supplies.

(c) In addition to the goods and services listed in division (b), the P-Card administrator may designate other goods and services that may be purchased with a P-Card.

(d) Prohibited P-Card purchases include, but are not limited to:

1. Personal purchases of any kind;
2. Cash advances;
3. Gift cards, calling cards, pre-paid cards of any type or similar products;
4. Entertainment, including in-room movies;
5. Alcoholic beverages;
6. Tobacco products;
7. Fuel (in most instances, consult with Purchasing Department);
8. Professional services;
9. Food for consumption by county employees;
10. Computers, unless purchased by IT; and
11. Services conducted on county-owned property.

(e) In addition to the goods and services listed in division (d), the P-Card administrator may designate other goods and services that may not be purchased with a P-Card.

(2) Single purchase orders exceeding \$2,500, but less than \$10,000 may be awarded by the purchasing director, or someone designated by the purchasing director, to the vendor or supplier of such goods or services whose quotation is most advantageous to the county, after the county has received telephone, oral, or fax or written (letter or e-mail) quotations from at least two vendors or suppliers of such goods or services, when practicable and feasible.

(3) Single purchase orders exceeding \$10,000, but less than \$30,000 may be awarded by the purchasing director, or someone designated by the purchasing director, after telephone, oral, facsimile, or written (letter or e-mail) quotations have been received from at least three vendors or suppliers of such goods and services, when practicable and feasible, and the purchase order has been approved by the County Manager or purchasing director.

(4) Single purchase orders of \$30,000 or more shall be publicly advertised for bids (Invitation for Bids) or proposals (Request for Proposals or Request for Qualifications) at least once in a newspaper having a general circulation in the county, at least 15 days prior to the date set for formal opening of written bids or proposals.

(a) Bids or proposal responses provided in writing, based on written specifications furnished to prospective vendors, shall be received and publicly opened by the purchasing director and the head of the department requiring the goods and services, at a date and hour to be specified in the advertisement for the solicitation.

(b) The County Council shall award the contract for the furnishing of such goods and services to the vendor or supplier of such goods and services submitting the bid, proposal or response, which is determined most advantageous to the county.

(c) Nothing contained in these procedures shall be construed to require the county manager, purchasing director or County Council to accept the apparent low bid, when it shall appear that the acceptance of some other bid shall be most advantageous to, or in the best interest of, the county.

(5) In the event that the bid or proposal selected as most advantageous is not the low bid (or least expensive proposal), the purchasing director or department head, at the direction of the County Council, shall prepare a full and complete statement of the reasons for recommending that the Council accept the bid or award a contract to the vendor or supplier of goods and services other than the apparent low bidder or least expensive proposer. Information provided by the purchasing director or department head shall be included in the minutes of the Council meeting at which final selection and approval is made.

(C) *Cooperative purchasing.*

(1) **COOPERATIVE PURCHASING** is a procurement activity conducted by, or on behalf of, more than one public entity, where the aggregation of volumes by more than one buyer achieves better pricing, administrative savings, or broader delivery and installation options.

(2) Depending upon the commodity or services being sought, the purchasing director may pursue cooperative purchasing arrangements with the advice and approval of county management and the County Council.

(D) *Improper or unauthorized purchases.*

(1) It shall be considered improper, for the purpose of evading the requirements of this subchapter, to split or separate any purchase covered by this subchapter into smaller units of purchase.

(2) Purchases made by county staff or county officials that are not in accordance with the policies provided within this subchapter may be considered improper or unauthorized purchases.

(3) Purchases made in violation of the current county purchasing policies or rules established by the County Council may be considered improper or unauthorized purchases.

(4) Any attempt or intent to circumvent this subchapter shall be considered improper or unauthorized.

(5) Purchases made for the purpose of retirement parties, food for birthdays, Thanksgiving and Christmas gatherings, plaques, or gifts, unless otherwise approved by the County Manager, may be considered improper or unauthorized purchases.

(E) *Reimbursement for purchases.*

(1) In such instances, county employees will be permitted to seek reimbursement for this purchase by submitting the appropriate documentation and request to the county's finance office.

(2) Under no circumstances is this type of purchasing intended to replace the procedures provided in this subchapter requiring the submission of a purchase requisition and the procurement activities of the county's purchasing department.

(F) *Purchase requisition.*

(1) In most instances, county officers, employees, agencies and departments subject to the financial authority of the County Council will be required to submit a requisition to the purchasing department for purchase of supplies, equipment, materials and services.

(2) Before submission, all requisitions should be signed and approved by the department head or supervisory official of the office, agency, board or department.

(3) The requisition serves to inform the purchasing department of the needs of the using department, and also to correctly define the goods and/or services that are being requested.

(4) An approved requisition signifies authority to charge against a specific budget account number(s), and to verify that there are sufficient funds available in the account specified.

(5) A requisition is not an order; rather, it is a request that begins the procurement process.

(G) *Adequate funds to purchase.*

(1) In order for services, supplies, equipment or materials to be purchased, there must be adequate funds available in the appropriate budget account, which has previously been appropriated by the County Council and is unencumbered.

(2) No purchases can be made without verification that adequate funds are present in the appropriate budget account.

(3) Expenditures (purchases) cannot exceed the allocated budgeted amount without proper administrative approvals.

(4) Departments and agencies making use of procurement services provided by the purchasing department are responsible for insuring that approved and adequate funds are available to cover the full cost of a given purchase.

(H) *Types of purchase orders.*

(1) A purchase order provides the documentation of procurement activity, including a means for encumbering all funds pledged towards a given purchase.

(2) The purchasing department utilizes four types of purchase orders designed for specific situations: basic, blanket, open, and partial payment.

(a) *Basic purchase orders.*

1. All purchase orders are created primarily from the information provided on a purchase requisition.

2. Requisitions should include an order date, description of the product(s) or services, quantity information, budget account numbers, pricing information, payment terms, and delivery information.

3. A purchase order is a legally binding contract, which authorizes the vendor to ship and invoice for the materials and/or services specified.

4. Only the purchasing department is authorized to issue purchase orders, and only the purchasing director, County Manager or their designee is authorized to sign and approve purchase orders.

(b) *Blanket purchase orders.*

1. The intent of a blanket purchase order is to reduce administrative costs associated with routinely creating small purchase orders.

2. A blanket purchase order number is issued to suppliers who can furnish goods and services, based upon prearranged conditions on a demand-type basis, typically for a maximum dollar limit or for a limited period of time.

3. No payments are deducted from the line item listed on a blanket purchase order, nor is the total value of the purchase order encumbered on a blanket purchase order until the county's finance department receives an invoice.

4. A blanket purchase order is not transferable from one fiscal year to the next.

(c) *Open purchase orders.*

1. Open purchase orders are similar to blanket purchase orders, except they have a specific dollar amount assigned to them, and funds are encumbered when the purchase order is created.

2. Open purchase orders are used for work services provided by a contract, such as maintenance of county-owned equipment, uniform rental or waste removal at county buildings.

3. An open purchase order is not transferable from one fiscal year to the next.

(d) *Partial payment purchase orders.*

1. Partial payment purchase orders have a specific amount of money assigned to them.

2. Funds referenced on a partial payment purchase order are encumbered.

3. Usually, a partial payment purchase order is used for construction and/or consulting projects.

(I) *Receipt of purchased items.*

(1) Shipments of supplies, materials and equipment will be coordinated by the purchasing department.

(2) In some cases, partial shipments may arrive in lieu of the complete order.

(3) In most cases, deliveries will be made to the purchasing offices.

(4) In some cases, a payment may be requested for the items that have been delivered.

(J) *Cancellation of orders.*

(1) All cancellations of orders shall be made by the purchasing department.

(2) An order may be canceled due to an unexpected price increase, inability of the vendor to supply, or an unacceptable delay in delivery.

(K) *Changes to an order/updating purchase orders.*

(1) Sometimes a purchase order requires updating because of a price change, partial payment request, freight charge, undetermined expense, or the deletion or addition of a commodity.

(2) Only the purchasing department can alter a purchase order.

(3) An updated purchase order must be approved by the purchasing director, and documentation explaining the change must be attached to the revised purchase order.

(Ord. 1006, passed 4-17-06; Am. Ord. 1008, passed 4-7-08; Am. Ord. 2014, passed 6-2-14; Am. Ord. 3817, passed 7-17-17)

**§ 35.009 METHODS OF SOURCE SELECTION.**

(A) *General provisions.*

(1) Generally, there are three methods of source selection for completing single purchase orders of \$30,000 or more. These methods are:

- (a) Invitation for Bid;
- (b) Request for Proposals; and
- (c) Request for Qualifications.

(2) All bid/proposal documents shall include, but not be limited to:

- (a) Instructions to bidders and/or offerors;
- (b) General conditions;

- (c) Bid and/or proposal forms;
- (d) Special and/or supplemental conditions;
- (e) Affidavits or certificates required by statute;
- (f) Language indicating specific state statutes that may be related to the procurement function; and
- (g) Bonds and insurance requirements.

(3) *Splitting prohibited.* It is unlawful, for the purpose of evading the requirements of this subchapter, to split or separate into smaller units of purchase any purchase covered by this subchapter.

(B) *Invitation for Bids.*

(1) *Definition.* An **INVITATION FOR BID** is a formal procedure for obtaining supplies, materials, equipment and some services, in which sealed competitive bids are submitted in response to specifications provided by the county.

(a) This method is used when the using department or office is capable of specifically defining the scope of work for which a contractual or general service is required, or when the using department is capable of establishing precise specifications defining the actual commodity or group of commodities required.

(b) This method of procurement does not typically include negotiation with bidders after receipt and opening of bids.

(c) An Invitation for Bid shall include all relevant documents, whether attached or incorporated by reference, including specifications, contractual terms and conditions applicable to the procurement.

(2) *Conditions for use.*

(a) All purchases of the county equal to or over the mandatory bid amount shall be solicited by a formal, competitive, sealed bidding process, except as otherwise provided in this subchapter.

(b) 1. Specifications and bid requirements may be mutually developed by the using department and purchasing staff to assure accuracy and completeness.

2. All specifications shall be drafted so as to promote overall economy for the purpose intended, and to encourage maximum free and open competition in satisfying the county's needs, and shall not be unduly restrictive.

(c) Invitation for Bids documents shall be issued for each solicitation and shall include a detailed description of the item or items being bid, bid submission procedures and requirements, the county's process for bid evaluation, delivery requirements, performance expectations, specifications and any other terms and conditions and contract requirements applicable to the procurement.

(3) *Public notice.*

(a) Adequate public notice of the Invitation for Bids shall be given, not less than 15 calendar days prior to the date set forth for the opening of bids.

(b) Such notice shall include publication in a newspaper of general circulation within the county, SCBO, Bid Net, or comparable agency.

(c) The public notice shall state the place, date and time of the bid opening.

(d) Notice of Invitation for Bids shall also be placed on the county's web site, and provided through any other means of making requirements known to a large number of potential vendors, at a reasonable time prior to bid opening.

(4) *Bid terms and conditions.* After consulting with the requesting department and the county attorney, the purchasing director may establish standard bid terms and conditions and/or contract clauses to be included in any bid documents. Examples of some of these terms and conditions may include, but are not limited to, the following:

(a) The bid identification number and bidder's license number (if applicable) should be shown on the front of the sealed envelope.

(b) Unmarked envelopes sent as a bid response will not be opened.

(c) The county reserves the right to reject all bids and to waive any and all formalities.

(d) Unit prices provided in a bid response will always govern.

(e) The bidder shall pay all current and applicable city, county, state and federal taxes, licenses or assessments, including federal excise tax.

(f) In evaluating bids, the county will consider the bidder's qualifications, delivery, terms and conditions, bid compliance, and price.

(g) Alternate bids will not be considered unless specifically requested.

(h) All proposed materials and products must meet the requirements of the bid specifications.

(i) Unless otherwise indicated in the bid, specifications must be met and prices must be firm.

(j) The successful bidder shall indemnify and hold harmless the county and all county officials, agents and employees, from all suits or claims of any character brought by reason of infringing on any patent, trademark or copyright.

(k) Bids shall be made on the provided unaltered bid form.

1. Bids must be signed with the name printed below the signature.
2. Submitted bids should be either typewritten or handwritten in black ink only.
3. Facsimiles are not acceptable.

(l) If county offices are closed due to inclement weather on a scheduled day to open bids, the bids shall be opened at the same scheduled hour on the third working day (excluding county-observed holidays) after the scheduled bid opening date. In the event an act of God occurs, the county reserves the right to accept late bids or pre-bid attendance.

(m) Before a bid is awarded, the county reserves the right to conduct an investigation to establish the bidder's qualifications and work performance.

(n) Bids may not be modified after submittal.

(o) A bidder may provide the purchasing director written notice that he or she intends to withdraw his or her bid if he or she is unable to honor the bid specifications.

(p) The county reserves the right to disqualify bids, before or after opening, upon evidence of collusion with intent to defraud or other illegal practice on the part of the bidder.

(q) No contract will be awarded to any contractor or subcontractor who has not been properly licensed by the South Carolina Licensing Board for Contractors.

(r) It is the bidder's responsibility to examine all bid documents and obtain first-hand knowledge of existing conditions where the work is to be performed.

(5) *Bid bonds.*

(a) Bid security in the amount of 5% of the total bid amount shall be required for all competitive sealed bidding for construction contracts when the total price is expected to be \$30,000 or greater.

(b) The bid bond shall guarantee that the principal will not withdraw his or her bid during the period of 30 days following the opening of bids.

(c) Bid security shall be a bond provided by a surety company authorized to do business in the state, or otherwise supplied in a form satisfactory to the county.

(d) Nothing herein shall prevent the requirement of such bonds or other security, in addition to or in lieu of those bonds, on construction contracts under \$30,000 or other contracts when the circumstances warrant.

(6) *Payment and performance bonds.*

(a) Before entering into a contract, the purchasing director may require a faithful payment and performance bond, written by a corporate surety company holding a certificate of authority from the Secretary of the Treasury of the United States as acceptable sureties on federal bonds, and executed and issued by a resident agent licensed by and having an office in the state, representing such a corporate surety in such amount equal to the contract amount or an amount as is reasonably necessary to protect the best interests of the county.

(b) The payment provision shall assure that the contractor provides suitable evidence of his or her financial condition, to protect the interests of claimants supplying labor and/or materials to the contractor or his or her subcontractors.

(c) The performance provision shall assure that the contractor provides suitable evidence of his or her financial condition and his or her ability to complete the work without financial difficulty.

(d) 1. In place of a bond, cash or certified check in the amount of the contract may be deposited.

2. Such deposit will be filed with the executed contract documents and made a part thereof, all within 30 days from date of awarding a contract.

(e) Failure of the contractor to satisfactorily fulfill his or her obligations shall be cause for the forfeiture of his or her guaranty.

1. In such a case, the purchasing director shall document the circumstances and file such document with the related contract documents.

2. This provision shall not apply to procurement involving completion of reports, studies, plans, and the like, such as the county audit.

(f) A performance bond shall always be required on construction projects that exceed \$50,000.

(7) *Liquidated damages.* Liquidated damages may be provided in an amount specified under a contract, in a sum certain to be awarded to the county if a contractor fails to perform as agreed.

(8) *Time of receipt.*

(a) It is each bidder's responsibility to see that his or her bid is delivered at the time and place specified.

(b) 1. The purchasing department must receive bids no later than the time and date identified in the Invitation for Bids.

2. Bids received after this date or time will not be considered and will be marked as a "Late Bid".

(c) All bid responses received prior to the time of opening shall be date stamped by the purchasing staff and kept in a secure location.

(d) Unidentified bids may be opened solely for the purpose of identification, then properly marked, re-sealed and secured in the bid box.

(e) 1. Faxed, computer-generated, or electronically mailed bids are not acceptable.

2. Only original bids, signed by an officer of the bidding firm on an official bid submittal form provided by the county in the Invitation for Bids, will be accepted.

(9) *Pre-bid conferences.*

(a) 1. Some bids may require a pre-bid conference to be held with interested bidders.

2. These meetings may be held in order to clarify specifications, answer supplier questions regarding specific bid requirements, or to allow the bidder to perform an on-site review and inspection.

(b) Some pre-bid conferences may be mandatory (where all interested parties must send a representative in order to be considered responsive) and others may be voluntary.

(c) Any changes to the original solicitation documents will be made in writing in the form of addenda, and will be mailed, faxed or e-mailed to all bidders known to have originally received or requested the solicitation.

(d) In the event an act of God occurs, the county reserves the right to accept late or non-attendance at pre-bid conferences.

(10) *Pre-qualification of suppliers, bidders, proposers.*

(a) Prospective suppliers, bidders or proposers may be pre-qualified by the purchasing director for particular types of supplies, equipment, services and construction.

(b) Solicitation mailing lists of potential vendors or contractors shall include, but shall not be limited to, such pre-qualified suppliers, bidders or proposers; unless it has been determined in writing that a specific project warrants limitation of offerors to the pre-qualified list, and public notice of the pre-qualification is given.

(c) Vendors may also be asked to respond to an Invitation or a Request and offer a "fixed price" or "fixed proposal" for a given product or service.

1. In that instance, the county may elect to pre-select a number of responding vendors to provide the specified product(s) or service(s) (e.g., property assessment services used when the county acquires rights-of-way).

2. The establishment of a source or sources to be used at a later time for the fixed price can provide the county with cost and scheduling benefits.

3. Being placed on a pre-selection listing does not guarantee that a specific vendor will be used in the future.

(11) *Bid opening procedure.*

(a) Unless otherwise specified, bids are opened at the time and place specified in the Invitation for Bids.

(b) At the announced time of bid opening, the purchasing director shall acknowledge the receipt of all bids and proclaim the bid opening closed to any other bids received.

(c) A bid tabulation identifying all bids submitted will be prepared after all bids are opened and received.

(d) Sealed bid responses must be submitted in writing and shall be randomly and publicly opened by the purchasing director in the presence of one or more witnesses.

(e) The amount of each bid, the name of the vendor offering the bid, and any other relevant information determined to be appropriate by the purchasing director will be read aloud.

(12) *Postponement of bid opening.* The purchasing director may issue an announcement postponing a bid opening, when there is due cause beyond the county's control such as inclement weather, fire, power failure, county emergency, or other cause necessitating such a postponement.

(13) *Bid acceptance, evaluation, and recommendation.*

(a) Bids shall be unconditionally accepted without alteration or correction, except as authorized in this subchapter.

(b) 1. Bids shall be evaluated based upon the requirements set for in the Invitation for Bids, which may include criteria to determine suitability for a particular purpose.

2. Those criteria that will affect the bid price and be considered in evaluation for award may include transportation costs, and total or life cycle costs.

(c) Alternative bids may be considered and accepted, provided they are specifically provided for in the Invitation for Bids and meet the evaluation criteria specified.

(d) All bids accepted will be evaluated using the criteria specified by the using department.

1. In cooperation with the department head or a representative of the using department and the purchasing director, a written recommendation for making a bid award will be prepared, stating all reasons and justification for the award.

2. Additional written explanation and justification will be required if the low bidder is not recommended.

3. The purchasing director will forward the department's recommendation, the bid tabulation and any other pertinent bid information to the county manager for review and future consideration and award by the County Council.

(e) Unless otherwise specified, the items offered must be new, unused and the latest model or manufacture.

(f) 1. Unless otherwise provided in the bid information, the price of each item offered must be kept firm for at least 90 days after the bid opening date.

2. A bidder may specify the price will remain firm for a longer period than required by the bid information or this rule.

(14) *Waiver of technicality.*

(a) A bid shall be considered responsive only if it substantially conforms to the requirements of the Invitation for Bids as it relates to pricing, performance, specifications, delivery requirements, and any other matter unequivocally stated therein as a determinant of responsiveness.

(b) 1. A minor or non-substantive lack of conformity on these matters may be considered a technicality or irregularity, which may be waived by the official(s) empowered to make an award.

2. A **MINOR INFORMALITY** or **TECHNICAL IRREGULARITY** is a variation from the bid or proposal that does not affect the price of the bid.

(15) *Correction, cancellation or withdrawal of a bid.*

(a) After bids are opened, they shall be irrevocable.

(b) If the bidder cannot, for whatever reason, honor his or her bid, then he or she shall request in writing that it be withdrawn.

(c) 1. After bid opening, no changes in bid prices or other provisions of bids prejudicial to the interest of the county or fair competition shall be permitted.

2. If a bidder cannot, for whatever reason, honor his or her bid, then he or she may request in writing to have it withdrawn.

(16) *Bid award.*

(a) 1. The procurement shall be awarded with reasonable promptness, by written notice to the lowest responsive and responsible bidder, whose bid meets the requirements and criteria set forth in the Invitations for Bids, or to that bidder who offers the bid considered most advantageous to the county.

2. Nothing contained in this subchapter shall be construed to require the purchasing director, county manager or County Council to accept the apparent low bid, when it appears that the acceptance of some other bid shall be most advantageous to the county and in the best interest of county government.

(b) In determining the lowest responsive and responsible bidder most advantageous to the county, in addition to price, the following shall be considered:

1. The ability, capacity and skill of the bidder to perform the contract.

2. Whether the bidder can perform the contract within the time specified, without delay or interference.

3. The character, integrity, reputation, judgment, experience and efficiency of the bidder.

4. The quality of performance on previous contracts.

5. The previous and existing compliance by the bidder with laws and ordinances relating to the contract.

6. The sufficiency of the financial resources to perform the contract to provide the service.

7. The quality, availability and adaptability of the supplies or contractual services to the particular use required.

8. The ability of the bidder to provide future maintenance and service.

9. The discount terms and conditions of the bid.

10. Delivery time.

(c) When necessary for the best interest of the county, bid criteria to determine acceptability may include, but not limited to, inspection, testing, quality, workmanship, delivery and suitability for a particular purpose.

(d) The county manager or purchasing director shall have the authority to make awards of bids that are less than the mandatory bid amount.

1. Upon presentation and recommendation by the county manager of a selected bid, the County Council shall authorize and approve, by a simple majority vote, the bid award in excess of the mandatory bid amount set forth in the RFP.

2. The contract file shall contain the basis on which the award is made.

(e) 1. Bid threshold amounts shall include the values associated with potential options of renewal, provided those options were both requested within the original solicitation and provided by the responder.

2. After review of past performance under contract, the purchasing director, county manager or County Council may determine, at their discretion, to exercise the option of renewal if in the best interest of the county.

(17) *Tie bids.* The County Council may consider awarding a tie bid, based upon the following:

(a) The bidder who is the most capable in honoring the county's desired completion or delivery time.

(b) The bidder whose service availability, quality of service, managerial and organizational support appear to be the most advantageous to the county.

(c) The bidder who is in closest proximity and/or is the most convenient to the county.

(18) *Single bid responses.*

(a) Even though multiple sources have been solicited, there are occasions when only one bid response is received.

(b) When this happens, the purchasing director may contact the non-responsive vendors to establish why there was a lack of response, and to determine whether to recommend an award or to reject the lone bid and re-bid.

(c) If only one bid has been submitted, the purchasing director will determine whether to open the bid or return the bid to the bidder via certified mail and re-issue the bid notice or use a different method to make the procurement.

(19) *Rejection of bids.*

(a) Every effort will be made to anticipate changes in requirements prior to the date of opening, and to notify all prospective bidders of any resulting modifications through an addendum.

(b) If for some reason it is found that the specifications have been misconstrued, misleading or ambiguous, and have caused confusion in bidder pricing, the purchasing director may ask the County Council to reject all bids, then revise the specifications, publicly advertise and re-bid.

(c) If the low bid is under \$30,000, the purchasing director or county manager shall have the authority to reject all bids without seeking the County Council's approval.

(20) *Unsigned bids.*

(a) In most cases, an authorized vendor representative is required to sign his or her name in ink on the provided space of the bid document.

(b) It shall be the purchasing director's responsibility to determine if an unsigned bid was an oversight, and to take appropriate measures to validate or reject the bid response.

(C) *Request for Proposals.*

(1) *Definition.*

(a) **REQUEST FOR PROPOSALS (RFP)** refers to all documents, whether attached or incorporated by reference, utilized for soliciting competitive sealed proposals for goods and/or services.

(b) Evaluation of a proposal response is based on prior established criteria, wherein the RFP shall state the relative importance of price and other evaluation factors.

(2) *Conditions for use.*

(a) Competitive sealed proposals furnished as a result of a Request for Proposals shall be used in those circumstances in which it is both practicable and advantageous for the county to consider a range of competing plans, specifications, standards, terms and conditions or solutions to problems or needs, so that adequate competition will result and award will be made not principally on the basis of price, but to the respondent whose proposal contains the most advantageous combinations of price, quality or other features.

(b) When the complex nature of technical details of a particular procurement make the use of competitive sealed bidding either not practicable or reasonable, or not advantageous to the county, or when qualifications and the quality of the service to be

delivered can be considered more important than price, a Request for Proposals may be used.

(3) *Public notice.* Public notice of the Request for Proposals shall be given in the same manner as an Invitation for Bid.

(4) *Pre-proposal conferences.*

(a) As with Invitations for Bids, some Requests for Proposals may require a pre-proposal meeting to be held with interested responders.

(b) These meetings may be held in order to explain the requirements of the proposed procurement, clarify specifications, answer supplier questions regarding specific bid requirements, or to allow the vendor to perform an on-site review and inspection.

(c) Some pre-proposal conferences may be mandatory (where all interested parties must send a representative in order to be considered responsive) and others may be voluntary. In the event an act of God occurs, the county reserves the right to accept late or non-attendance at a pre-proposal conference.

(d) Any changes to the original solicitation documents will be made in writing in the form of addenda, and will be mailed, faxed or e-mailed to all proposers known to have originally received or requested the solicitation.

(5) *Proposal acceptance, opening, evaluation and recommendation.*

(a) Proposal responses shall be publicly opened.

1. Only the names of the offerors will be disclosed at the proposal opening.

2. Late proposals shall neither be opened nor considered for award.

3. Proposal responses shall be unconditionally accepted without alteration or correction, except as authorized in this subchapter.

(b) 1. Contents of competing offerors shall not be disclosed during the process of review and discussions.

2. Responses shall be evaluated based upon the requirements set forth in the Request for Proposals, which may include criteria to determine suitability for a particular purpose.

(c) In the event only one proposal response is received, the county may elect to continue with the evaluation of that response, or recommend that the County Council reject all proposals, whichever is in the best interests of the county.

(d) Price, experience, professionalism, business qualifications, completion time and expertise are all pertinent evaluation factors that may be weighed by a staff pre-selected evaluation team.

1. Proposals may be sought on a **PERFORMANCE SPECIFICATION BASIS** , where a respondent is offering to provide a service or solve a problem, and where the specification sets forth a predefined criteria or objective to be met.

2. An evaluation of competitive proposal responses of this type will typically be based upon the “best value” or return as opposed to total cost or price.

(e) Alternative proposal options may be considered and accepted, provided they are specifically provided for in the RFP and meet the evaluation criteria specified.

(f) 1. As provided for in the Request for Proposals, discussions may be conducted with responsible offerors who submit proposals for the purpose of clarification, to assure full understanding of, and responsiveness to, the solicitation requirements.

2. Offerors shall be accorded fair and equal treatment with respect to any opportunity for submissions.

(g) All RFP responses accepted will be evaluated using the criteria the using department specified in the solicitation document.

1. Upon review of each proposal response, the evaluation team made up of county staff may eliminate non-qualified proposers and develop a short list to interview (usually two to four proposers), determined by analyzing their qualifications.

2. In cooperation with the department head or a representative of the using department and the purchasing director, a written recommendation for making a proposal award will be prepared, stating all reasons and justification for the award.

3. The purchasing director will forward the department’s recommendation, the RFP tabulation and any other pertinent information to the county manager for review and future consideration and award by the County Council.

(7) *Award.*

(a) An award shall be made to the responsive and responsible offeror whose proposal is determined to be most advantageous to the county, taking into consideration the evaluation factors set forth in the Request for Proposals.

(b) Upon presentation and recommendation by the county manager of a selected proposal, the County Council shall authorize and approve, by a simple majority vote, the proposal award in excess of the mandatory bid amount set forth in the RFP.

1. The contract file shall contain the basis on which the award is made.

2. The purchasing director or county manager may approve awards whose total value is less than the mandatory bid limit.

(c) The County Council has the option of accepting the staff recommendation and authorizing contract negotiations, making an award to another firm offering a proposal response and authorizing contract negotiation, or rejecting all proposals and

requesting that the proposal specifications be re-developed and a new RFP be prepared for solicitation.

(d) Prior to being executed, all contract documents will be reviewed and approved by the county attorney as to form, content and legality.

1. Contracts awarded by the County Council will be executed and signed, on behalf of the County Council, by its chairperson or acting chairperson.

2. The county manager shall attest to the signature of the chairperson or acting chairperson on all contracts approved by the Council.

(e) 1. RFP proposal threshold amounts shall include the values associated with potential options of renewal, provided those options were both requested within the original solicitation and provided by the RFP responder.

2. After review of past performance under contract, the purchasing director, county manager or County Council may determine, at their discretion, whether the exercise of an option of renewal is in the best interest of the county.

(D) *Competitive sealed proposals.*

(1) *Conditions for use.* If the Purchasing Director determines that the use of competitive sealed bidding is either not practicable or not advantageous to the county, a contract may be entered into by competitive sealed proposals. Contracts for the design-build entity must be entered into by competitive sealed proposals.

(2) *Public notice.* Adequate public notice of the request for proposals must be given.

(3) *Receipt of proposals.* Proposals must be opened publicly. A tabulation of proposals must be prepared and must be open for public inspection after contract award.

(E) *Request for Qualifications.*

(1) *Definition.* **REQUEST FOR QUALIFICATIONS (RFQ)** refers to a solicitation of responses from interested and prospective proposers/consultants, in which factors other than price, including but not limited to, professional qualifications and related experiences, financial capability, reputation and professional competencies, are considered and evaluated in order to develop a list of qualified respondents.

(2) *Conditions for use.*

(a) Competitive sealed proposals furnished as a result of a Request for Qualifications shall be used in those circumstances in which:

1. It is both practicable and advantageous for the county to procure the professional services of an outside firm; and

2. An award will be made not principally on the basis of price, but to the respondent whose professional or technical knowledge, skills, abilities or experiences are determined best suited to accomplish a proposed scope of work.

(b) Professional services may include, but are not limited to, architects, project managers, engineers, land surveying, and auditing services.

(c) When the complex nature of technical details of a particular procurement make the use of competitive sealed bidding either not practicable or reasonable, or not advantageous to the county, or when qualifications and the quality of the service to be delivered can be considered more important than price, a Request for Qualifications may be used.

(3) *Public notice.* Public notice of the Request for Qualifications shall be given in the same manner as an Invitation for Bid.

(4) *Pre-proposal conferences.*

(a) As with Invitations for Bids and Requests for Proposals, some Requests for Qualifications may require a pre-proposal meeting to be held with interested responders.

(b) These meetings may be held in order to explain the requirements of the proposed procurement, clarify specifications, answer supplier questions regarding specific bid requirements, or to allow the vendor to perform an on-site review and inspection. In the event an act of God occurs, the county reserves the right to accept late or non-attendance at a pre-proposal conference.

(c) Some pre-proposal conferences may be mandatory (where all interested parties must send a representative in order to be considered responsive) and others may be voluntary.

(d) Any changes to the original solicitation documents will be made in writing in the form of addenda, and will be mailed, faxed or e-mailed to all proposers known to have originally received or have requested the solicitation.

(5) *Proposal acceptance, opening, evaluation and recommendation.*

(a) Proposal responses shall be publicly opened.

1. Only the names of the offerors will be disclosed at the proposal opening.
2. Late proposals shall neither be opened nor considered for award.
3. Proposal responses shall be unconditionally accepted without alteration or correction, except as authorized in this subchapter.

(b) Contents of competing offerors shall not be disclosed during the process of review and discussions.

1. Responses shall be evaluated based upon the requirements set forth in the Request for Qualifications, which may include criteria to determine suitability for a particular purpose.

2. Proprietary or confidential information marked as such in each proposal response shall not be disclosed without written consent of the offeror.

(c) The department head or staff selection committee may conduct interviews with some or all of the respondents to the RFQ.

1. Upon completion of personal interviews, the committee may negotiate with the finalist and select the firm deemed the most qualified, based upon references, qualifications, experience, location and price.

2. Upon completion of the negotiations, a letter of recommendation and the offer's contract shall be forwarded through the purchasing director to the county manager for presentation to the County Council and county attorney for their review and approval.

(6) *Award.*

(a) An award shall be made to the responsive and responsible offeror whose RFQ response is determined to be most advantageous to the county, taking into consideration the evaluation factors set forth in the Request for Qualifications.

(b) Upon presentation and recommendation by the county manager of a selected RFQ response, the County Council shall authorize and approve, by a simple majority vote, the award in excess of the mandatory bid amount set forth in the RFQ.

1. The contract file shall contain the basis on which the award is made.

2. The purchasing director or county manager may approve an award whose total value is less than the mandatory bid limit.

(c) The County Council has the option of accepting the staff recommendation and authorizing contract negotiations, making an award to another firm offering a RFQ response and authorizing contract negotiation, or rejecting all proposals and requesting that the proposal specifications be re-developed and a new RFQ be prepared for solicitation.

(d) Prior to being executed, all contract documents will be reviewed and approved by the county attorney as to form, content and legality.

1. Contracts awarded by the County Council will be executed and signed, on behalf of the County Council, by its chairperson or acting chairperson.

2. The county manager shall attest to the signature of the chairperson or acting chairperson on all contracts approved by the Council.

(e) 1. RFQ proposal threshold amounts shall include the values associated with potential options of renewal, provided those options were both requested within the original solicitation and provided by the RFQ responder.

2. After review of past performance under contract, the purchasing director, county manager or County Council may determine, at their discretion, whether the exercise of the option of renewal is in the best interest of the county.

(F) *Approved contracting relationship formats.*

(1) The purchasing director, with approval of the county manager, shall have the discretion to use construction management services, design-build services, or design-bid-build services as alternatives for construction contracting administration. In exercising such discretion, the county manager shall consider the method that, at the purchasing 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. However, nothing ultimately prohibits York County from rejecting all responses to a solicitation for services.

(2) The following relationship formats may be used in any contract or agreement for construction projects or tasks.

(a) **DESIGN-BID-BUILD.** A project delivery method that includes three linear phases for completing a construction project - engineering and/or architectural design, bidding, and construction. As part of the **DESIGN-BID-BUILD** project delivery method, the county awards two separate contracts - the first for architectural and or engineering design and bid phase services, and the second for construction according to the design. Under this project delivery approach, the architect/engineer is selected through a qualification-based or competitive best value bidding approach, and the contractor is selected through competitive sealed bidding. This type of construction contract relationship format is one in which one contractor contracts with York County to accomplish an entire construction project or task pursuant to specifications or designs provided by the county, pursuant to the specifications or designs produced for the county by an architectural firm under contract with the county.

(b) **DESIGN-BUILD.** The **DESIGN-BUILD** type of construction contract relationship format is one in which one contractor supplies all of the work involved in the project, including the design. York County provides the performance specifications and the contractor designs and constructs the project consistent with those performance specifications. In a **DESIGN-BUILD** type of contract relationship format, the contractor may even provide the site as part of the construction contract.

(c) **CONSTRUCTION MANAGER.** Under a **CONSTRUCTION MANAGER** type of construction contract relationship format, York County contracts with an individual or entity to serve as its agent in managing the construction process on behalf of its interests throughout the construction project. There are two types of relationship formats - one is a pure agency relationship, and the other is a relationship in which the construction manager is "at risk."

1. *Types of construction manager relationships.*

a. **PURE AGENCY.** Under a **PURE AGENCY** arrangement, the construction manager acts only as the agent of the owner. In this arrangement, the only contractual relationship the construction manager has is with York County. While the pure agency construction manager administers the construction project throughout the planning, design, and actual construction phases of the project, the construction manager is not responsible for the means and methods of the project and does not

guarantee that the project will meet the expectations of the county in terms of cost, timeliness, and quality.

b. **AT RISK.** Under an **AT RISK** relationship, the construction manager provides advice and leadership on a project during the planning and design phases of the project and has control, under the direction of the county, during the construction phase. While the county will generally contract separately for the design portion of the project, the at risk construction manager will contract with the construction trade contractors. Because the at risk construction manager has control over the means and methods of construction portion of the project, the at risk manager will be responsible for the completion of the project consistent with the expectations of the county in terms of cost, timeliness, and quality.

## 2. *Duties of construction managers.*

a. *Procurement process.* Whether the relationship formed with the construction manager is pure agency or at risk, the construction manager should play a role in the procurement process used to contract with the contractors that will have contractual relationships with York County during the project. During the procurement process, the construction manager should assist York County with tasks, including but not limited to:

- i. The Request for Qualification process (if prequalification is used).
- ii. The Request for Proposals.
- iii. Creation and completion of sealed bidding or negotiated procurement packages.
- iv. Review of bids or offers.
- v. Shaping and honing the scope or scopes of work.
- vi. Assisting in the evaluation and award decisions.

### b. *Construction process.*

#### i. *Pure agency.*

A. Act on York County's behalf in overseeing the design and construction phases of a construction project.

B. Transact any other such business on behalf of and as directed by York County during the construction project.

#### ii. *At risk.*

A. Act on York County's behalf during the design phase of a construction project.

B. Assume total responsibility for the construction phase of the project.

### (G) *Procurement exceptions.*

(1) *Non-negotiable purchases.* The following non-negotiable purchases may be considered exceptions to the purchasing procedures described in this subchapter; however, the purchasing director or county manager can limit or withdraw the exception as necessary.

- (a) Works of art for museum and public display;
- (b) Published books, library books, maps, periodicals and pamphlets;
- (c) Copyrighted educational films, videos, slides or transparencies;
- (d) Postage stamps and postal fees;
- (e) Professional dues, membership fees and seminar registration fees;
- (f) Utilities, including gas, electricity, water and sewer, and telephone utilities;
- (g) Advertisements in professional publications and newspapers;
- (h) Credit cards;
- (i) Travel;
- (j) Bank payments;
- (k) Legal services;
- (l) Special fund purchases;
- (m) Maintenance on purchased equipment that must be provided by the original equipment manufacturer or authorized dealer;
- (n) License agreement for computer software;
- (o) All insurance premiums;
- (p) All contractual consultant services necessary to provide professional instruction for seminars, put on by and/or for department/agencies and/or their personnel;
- (q) Computer programmers and software analysts engaged to modify county data processing system software, or to develop new software for the county's computer system;
- (r) Medicine and drugs;
- (s) Conference facilities;
- (t) Professional training;
- (u) Purchases utilizing gifts, grants, or certain special funds that may be the result of designated appropriations of the County Council (e.g., operating funds for the county's library system or Culture and Heritage Commission) or unique funds entirely controlled by an elected official (e.g., Sheriff's Drug Funds). Purchases utilizing such funds will not be based upon the procedures and policies contained within this

subchapter, when there are other organizational controls (or officials) in place for the management and expenditure of these special funds;

(v) Certain funds received from the United States Department of Homeland Security, which may be designated to be utilized in a specific capacity.

(w) Purchases for information technology equipment in cases where additional software modules are required and the county has made an investment in the company or technology (e.g., purchase of additional modules for the county's public safety software or additional modules are available for City Works, the county's work order software utilized by multiple York County departments). Also in cases where specific technology hardware has been purchased, the county has made a substantial investment, and additional hardware components are required (e.g., additional storage for the county's storage area network, or additional/replacement batteries for the existing uninterrupted power supply in the data center). In case of extreme emergency, purchases for information technology equipment where such delays may seriously affect the health, welfare, safety of the citizens of the county and/or potentially halt county services, an authorized purchase where funding has been appropriated must be approved by the county manager, purchasing director and the Chairman of the County Council.

(x) Financial advisors and services.

(2) *Purchases unsuitable for competitive bidding.* Some purchases, by their very nature, are not suitable or practicable for seeking competitive pricing, such as acquisition of real property, certain emergency purchases or repairs, unique or one-of-a-kind items only available from a single source, purchases for repair or additions to existing equipment or systems already in service, and certain products offered by vendors protected by established industry distribution rights or territory rights.

(3) *Emergency purchases.*

(a) Notwithstanding any other provisions of this subchapter, the county manager or the purchasing director may make or authorize, subject in certain circumstances to the approval of the County Council, emergency procurements of supplies, services or construction items, when there exists a threat to the functioning of county government; such as the need to meet certain deadlines established by courts or other parties outside the control of the county; the preservation or protection of property; or the health, welfare or safety of any person; provided such emergency procurements shall be made with such competition as soon as is practicable under these circumstances.

(b) A written determination of the basis for the emergency and for the selection of the particular contractor shall be made, and shall set forth the contractor's name, amount, and a listing of the item(s) procured under the contract.

(c) In case of an emergency, the county manager or purchasing director shall have the authority to waive the competitive procurement process, and authorize the purchase of supplies and services up to \$20,000 in value, to prevent significant delays in the work of any using department, where such delays may seriously affect the health, welfare or safety of the citizens of the county.

1. Emergency purchases of greater value shall require the prior approval of the County Council.

2. Only in cases of an emergency shall an exception to the purchasing policy be made, with the understanding that the person authorized to obtain the emergency purchase will personally assume the responsibility of immediately following up the verbal order with proper justification in written form, and the proper requisition to the purchasing director.

3. In cases of emergency, the requestor shall, when possible, contact the purchasing director prior to placement of the order with the vendor.

(4) *Sole source, brand name, patented, and other non-competitive procurement.*

(a) A contract to purchase may be awarded without competition with the approval of County Council, when it is determined, after conducting a good faith effort by reviewing available sources, that the purchase, by its very nature, is not suitable to seeking competitive bids or proposals, or affords the county some unique beneficial or economically advantageous service, commodity, and/or property to the county or its economic development pursuits.

(b) When county officials determine that an award of contract for purchasing should be made by non-competitive means, they should submit copies of the determining factors in writing to the purchasing director.

(c) Examples of contracts, which may not be suitable for competitive bids or proposals, may include the following:

1. The product has patented or proprietary rights that provide superior capabilities unobtainable from similar products, and is not marketed through other wholesalers, jobbers or distributors whose competition could be encouraged.

2. When the county requires supplies, materials or equipment produced by only one manufacturer, the purchasing director shall specify such manufacturer's make or brand in the Invitations to Bid, and shall obtain competitive bids from authorized dealers or distributors of such manufacturer.

3. If such manufacturer is the sole bidder and/or the sole source of supply, the purchasing director is authorized to negotiate an open market order or contract with the manufacturer, for pricing and terms that are the most advantageous to the county.

4. When the county requires supplies, materials or equipment that are patented or proprietary, but are obtainable from two or more equally satisfactory and/or competitive makes, brands or types, the acceptable and competitive makes, brands or types shall be noted in the bid invitation.

5. Specifications may refer to one or more brand name products followed by the words "or equal."

a. The burden of proof that the product is equal for the intended use is on the bidder.

b. When any bidder offers an alternate item for consideration, the bidder will complete specifications, name the brand and demonstrate that the alternate is equal.

c. It shall be incumbent on each bidder to prove to the satisfaction of the county that the alternate is equal, in quality or performance, to the commodities listed in the Invitation For Bids.

6. There is a lack of competition for a product or service.

7. It is a unique, one-of-a-kind service offer, or a unique offer that supports a beneficial or economically advantageous service, commodity, and/or property to the county and/or its economic development pursuits.

8. Where the items are needed for trial use or testing.

(Ord. 1006, passed 4-17-06; Am. Ord. 6408, passed 10-20-08; Am. Ord. 3411, passed 10-17-11; Am. Ord. 613, passed 3-18-13; Am. Ord. 2014, passed 6-2-14; Am. Ord. 3817, passed 7-17-17)

### **§ 35.010 CONTRACTS.**

#### *(A) General provisions.*

(1) In general terms, a **CONTRACT** refers to all types of legally binding agreements, regardless of what they may be called, for the procurement or disposal of supplies, materials, equipment and services or construction.

(a) All contracts for the procurement of supplies, materials, equipment and services shall be subject to the availability and the annual appropriation of sufficient funds by the County Council.

(b) When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, a contract may be considered canceled.

(2) (a) Subject to the limitations of this section, any type of contract appropriate to the procurement, and which will promote the best interest of the county, may be used; provided the use of a cost-plus-a-percentage-of-cost contract is prohibited.

(b) 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 impractical to obtain the supply, service, or construction item required except under such a contract.

(3) (a) All contracts will be drafted, negotiated or approved by the county attorney as to form, content and legality.

(b) Provisions that may appear within a contract with the county include, but are not limited to: assumption of risk by successful bidder, proposer or responder; indemnification by successful bidder, proposer or responder; non-assignment; provision requiring mandatory mediation prior to initiation of legal action; termination provision; and clause indicating contract to be governed by state laws.

(4) (a) All contracts whose total value is in excess of the mandatory bid limit will be signed by the chairman of the County Council, or in the appropriate case, the chairman's designee, and receive attestation by the County Manager.

(b) The county manager or purchasing director is authorized to approve and execute contracts whose total value does not exceed the mandatory bid amount. Contracts not involving bid amounts, or involving de-minimis amounts, such as non-reimbursable utility agreements, other county utility agreements, NPDES permits, encroachment permits, and permits to construct are expressly authorized to be executed by the county manager or his or her designee.

(B) *Fixed-price or specified-period contracts.*

(1) *Fixed-price contracts.*

(a) Fixed-price contracts shall ordinarily be used for those purchases of goods and services or sales and leases where the terms, conditions, specifications and other factors of the contract can be specified with a high degree of certainty, and where use of a fixed-price contract will result in substantial competition between bidders or offerors willing to compete for the contract.

(b) Escalation clauses or other economic adjustments may be included as appropriate to serve the best interests of the county in achieving the most economical contract performance.

(2) *Specified-period contracts.* Specified-period contracts may be used for the procurement of supplies or services, and may be entered into for a specific period of time that does not exceed a total of three years, with renewal options that may be requested for up to two additional years; provided the terms of the contract, and the conditions of renewal or extension, if any, were included during solicitation; and funds are available for the first fiscal period at the time of contracting.

(C) *Multi-term contracts.*

(1) A contract for supplies or services may be entered into for renewable periods of time, or until completion of the project(s) described in the original solicitation, whichever is later, not to exceed a total of three years, with renewal options that may be requested for up to two additional 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.

(2) (a) Payment and performance obligations of the county for each succeeding fiscal period shall be subject to the availability and appropriation of funds therefor.

(b) All multi-term contracts shall contain a clause stating that, when funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the contract shall be canceled.

(3) Prior to the utilization of a multi-term contract, it shall be determined in writing by the purchasing director and/or the County Manager that estimated requirements cover the period of the contract and are reasonably firm and continuing; and that such a

contract will serve the best interests of the county by encouraging effective competition or otherwise promoting economies in county procurement.

(4) Certain bids may be solicited and contracts issued with renewal clauses to bind the contractor to a renewal period at the sole option of the county.

(a) In such cases, bidders will be asked to bid a firm price to be applicable during the renewal period.

(b) If the county chooses to renew, or in the alternative, to bid prices geared to pertinent commodity price indexes to be applicable in renewal periods, if the county chooses to renew.

(c) In all cases where the renewal option is involved, the bid information will state that the county reserves the right to renew the contract, if awarded, in accord with prices (firm or geared to pertinent price indexes) included in bids received, and that renewal on such terms is at its sole option.

(d) No contract may be issued for periods exceeding one year.

(e) However, the renewal option may be requested for up to two additional years.

(D) *State contracts.*

(1) The state has established a system of competitive procurement for a number of services, supplies, equipment and materials needed for the operation and maintenance of state government and the services it provides.

(2) Provision has been made within the state's procurement system rules and procedures for units of local government to also procure certain services, supplies, equipment and materials acquired through competitive contracts, which have been negotiated and established by the state.

(3) County procurement from contracts negotiated and established by the state may be determined to be in the best interest of the county and therefore use of the state contract by the county will be authorized; however, such authorization does not otherwise relieve county officials from any of the other procedures or policies contained in this subchapter.

(E) *Construction contracts.*

(1) (a) Construction contracts provide an agreement for the building, repair, alteration, improvement, installation, or demolition of any public improvement of any kind on public real property.

(b) Construction contracts provide a means for documenting the terms and conditions for construction activity to take place within the following agreed-upon areas: scope of work, schedule of activities, and amount of compensation.

(2) All contracts for construction shall be awarded based upon competitive sealed bidding described elsewhere in this subchapter.

(a) Amendments or change orders to construction contracts, which do not alter the original scope or intent of the project, and which do not exceed the previously approved project budget, may be approved by the County Manager, or by the employee designated in the construction contract with authority to approve such amendments or change orders.

(b) Every contract modification, change order, or contract price adjustment under a construction contract with the county of \$30,000 or greater, shall be subject to prior approval by the County Council.

(c) Written justification shall be prepared and added to the project file for all change orders in excess of 2% of the total original bid or contract price.

(d) The County Manager, purchasing director or designated employee assigned to represent the county in the construction project may approve such modifications, change orders, or adjustments less than \$30,000; provided the additional cost has been included in the overall budget for the project that was approved by the County Council.

(F) *Renewal and cancellation of contracts.*

(1) The purchasing director shall have the authority to cancel contracts under \$30,000, when the vendor is found to have violated, or attempted to violate, the provisions of this subchapter.

(2) The purchasing director shall also have the authority to cancel contracts under \$30,000 in any of the following instances:

- (a) If the vendor fails to make delivery within the specified time.
- (b) If the vendor fails to provide service when service is part of the contract.
- (c) If the supplies, materials or equipment are inferior to the specifications.
- (d) If the vendor agrees to cancel.
- (e) If the contract is fraudulent, and conspiracy or conflict of interest is detected.
- (f) If the vendor is not properly licensed.

(3) In each of the foregoing instances, the purchasing director shall award the contract to the next responsive bidder.

(G) *Leases.*

(1) Prior to execution, all leases resulting from actions of the purchasing department to procure supplies, materials, equipment and services shall be reviewed and approved for form and content by the county attorney.

(a) Procurement decisions resulting in leasing arrangements must follow the specific procedures established in this subchapter for competitive solicitation based upon the total amount of the lease cost.

(b) The purchasing director shall be authorized to approve leases involving procured services, supplies, materials and equipment for which the total cost of the lease is less than the mandatory bid amount.

(c) Upon recommendation by the purchasing director or department head, the County Council must approve all leasing arrangements in excess of the mandatory bid amount.

(d) Threshold amounts referenced herein shall include the values associated with potential options of renewal; provided those options were both requested and part of the original solicitation; and provided, after review of past performance under contract, the purchasing director, county manager or County Council may determine, at their discretion, that exercise of the option of renewal is in the best interest of the county.

(2) A lease may be entered into; provided all conditions for renewal and costs of termination are set forth in the lease, and the lease is not used to circumvent normal procurement procedures.

(3) A purchase option in a lease may be exercised only if the lease containing the purchase option was awarded under competitive sealed bidding, or competitive sealed proposal, or the leased supply or equipment is the only supply or equipment that can meet the county's requirements, as determined, in writing, by the department head of the requesting department and the purchasing director.

(4) (a) When a contract is to contain an option for renewal, extension or purchase, notice of such provision shall be included in the solicitation.

(b) Exercise of such an option is always at the county's discretion only, and not subject to agreement or acceptance by the contractor.

(5) *Terms and conditions.*

(a) The purchasing director shall not allow any contract for the rental or lease of personal property, or for the acquisition of services by an independent contractor, to exceed a term of three years, with the option to renew for an additional two years.

(b) Contracts for leasing shall not exceed three years, unless the purchasing director finds that a term longer than three years is required in order to promote efficiency and economy, or for other reasons that a three-year term is otherwise impractical.

(Ord. 1006, passed 4-17-06; Am. Ord. 2014, passed 6-2-14; Am. Ord. 4316, passed 9-19-16; Am. Ord. 3817, passed 7-17-17)

### **§ 35.011 ADDITIONAL REQUIREMENTS.**

(A) *Certificates of insurance.*

(1) (a) A **CERTIFICATE OF INSURANCE** is a standard insurance industry document issued by an insurer, which demonstrates that an insurance policy exists and provides additional insurance information that is important in holding a vendor accountable.

(b) By obtaining an appropriate certificate of insurance form from the vendor, the county is able to verify that specific insurance coverages and protections are in place, and will legally transfer the risks associated with the business relationship with a vendor from the county to a third party insurer.

(2) Vendors shall provide proof of coverage on a prepared form that verifies that they are covered against loss or damages by a reputable insurance company authorized to do business in the state.

(3) The county's goal in requiring certificates of insurance is to protect the county from all loss or exposure resulting from negligence on the part of an uninsured or underinsured vendor that furnishes the county with materials, equipment, supplies or services.

(4) The purchasing department is assigned responsibility for making sure all vendors doing business with the county provide adequate proof of their insurance coverages prior to any procurement activity. If a vendor cannot provide proof of insurance, the purchasing department shall require the execution of an indemnity form from vendor prior to any procurement activity. Upon the purchasing department obtaining proof of insurance or indemnity forms, the purchasing department shall catalogue those filings in its software; and, thereafter, convey copies of the forms for retention and audit purposes.

(5) In cooperation with the county's risk management department and the county attorney, purchasing staff also continually review potential contracts for purchase or services to make sure appropriate coverages are in place.

(6) (a) As a general rule, for most contracts entered into by the county, vendors are required to furnish proof of workers compensation and employer's liability (statutory limits), general liability and automobile liability.

(b) For certain "high risk" contracts, where it could be assumed the county's exposure may exceed the minimum insurance limits, higher limits of coverage or additional specialized coverages (such as professional liability, medical liability or an umbrella liability policy) are required before the county can conduct business with that vendor.

(7) All vendors doing business with the county will be advised that their contract to do business with the county can be terminated if that vendor fails to maintain and keep in place any required insurance coverage(s).

(8) When practicable, all county contracts shall include hold harmless and indemnification language to protect the county from negligence or fault of the vendor or contractor.

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

(1) *Right to inspect plant.* The county may, at reasonable times, inspect the part of the plant or place of business of a contractor or any subcontractor related to the performance of any contract awarded or to be awarded by the county.

(2) *Right to audit records.*

(a) The county may, at reasonable times and places, audit the books and records of any person who has submitted cost or pricing data to the extent that such books and records relate to such cost or pricing data.

(b) Any person who receives a contract, change order, or contract modification for which cost or pricing data is required, shall maintain such books and records that relate to such cost or pricing data for three years from the date of final payment under the contract, unless a shorter period is otherwise authorized in writing.

(C) *Controversy arising from the bid process.*

(1) *Disclaimers.*

(a) An Invitation for Bids, a Request for Proposals, or a Request for Qualifications does not bestow a property interest in, or beneficial right to, any dissatisfied respondent, bidder, offeror, contractor or subcontractor, or to any other business, contractor, subcontractor or entity proposed to be utilized by any respondent or dissatisfied respondent.

(b) The county does not recognize any such property interest in, beneficial right to, or entitlement to any prospective bid award in the county procurement process.

(c) Remedies available to any dissatisfied respondent are limited to the right to protest and remedies as expressed herein below.

(2) *Right to protest; protest procedure; review and decision/resolution; appeal.*

(a) *Right to protest.*

1. Any prospective bidder, offeror, contractor or subcontractor aggrieved in connection with the solicitation of a contract shall protest to the purchasing director within seven days, but not thereafter, of the date of issuance of the invitation for bids, request for proposals or other solicitation documents, whichever is applicable, or any amendment thereto, if the amendment is at issue.

2. Any actual bidder, offeror, contractor or subcontractor aggrieved in connection with the intended award or award of a contract shall protest to the appropriate purchasing officer within seven days, but not thereafter, of the date notification of award is posted in accordance with this subchapter.

3. The rights and remedies granted in this subchapter to a disappointed respondent, bidder, offeror, contractor or subcontractor are the sole rights and remedies provided herein against the county for the loss or potential loss of an award of a contract under this subchapter.

(b) *Protest procedure.* A protest shall be in writing, submitted to the purchasing director, and shall set forth the grounds of the protest and the relief requested with enough particularity to give notice of the issues to be decided, with the approval of the county manager.

(c) *Duty and authority to attempt to settle protests.*

1. Prior to commencement of an administrative review, the purchasing director, or designees thereof, shall attempt to settle by mutual agreement a protest of an aggrieved bidder, offeror, contractor or subcontractor, actual or prospective, concerning the solicitation or award of the contract.

2. The purchasing director, or designees thereof, shall have the authority to approve any settlement reached by mutual agreement, with approval of the county manager.

(d) *Administrative review and decision.*

1. If, in the opinion of the purchasing director, after a reasonable attempt, a protest cannot be settled by mutual agreement, the purchasing director shall promptly conduct an administrative review, and shall issue a decision in writing within ten days of completion of the review.

2. The decision shall state the reason for the action taken.

(e) *Notice of decision.*

1. A copy of the decision, along with a statement of appeal rights hereunder, shall be mailed or otherwise furnished immediately to the protestant and any other party that may intervene in the process.

2. The purchasing director shall also post a copy of the decision at a date and place communicated to all parties participating in the administrative review, and such posted decision shall indicate its date of posting, and be accompanied by a statement of the right to appeal.

(f) *Finality of decision and appeal.*

1. A decision shall be final and conclusive, unless fraudulent, or unless any person adversely affected by the decision requests a further administrative review by the County Council within ten days of posting of the decision.

2. The request for review shall be directed to the county manager, who shall forward the request for placement on the Council agenda.

3. The request shall be in writing, setting forth the reasons why the person disagrees with the decision of the purchasing director, or his or her designee.

(g) *No automatic stay of procurement during protests.* In the event of a timely protest under division (2)(a)1. and 2. above, the county shall not automatically stay the solicitation or award of the contract under this subchapter; provided, however, that solicitation or award of a protested contract may be stayed if the purchasing director, after consultation with the head of the using agency and/or county manager, makes a written determination that the solicitation or award of the contract should be stayed in order to protect the best interest of the county.

(3) *Remedies.*

(a) *Remedies prior to an award.* In the case of a protest under division (2) above, if prior to award of a contract, it is determined that the solicitation or award is in violation of law, then the solicitation or proposed award may be:

1. Canceled;
2. Stayed pending review;
3. Revised to comply with the law and re-bid; or
4. Awarded in a manner that complies with the provisions of this subchapter.

(b) *Remedies after an award.* In the case of a protest under division (2), if after an award it is determined that a solicitation or award of a contract is in violation of law, then:

1. If the person awarded the contract has not acted fraudulently or in bad faith, the contract may be ratified and affirmed; provided it is determined that doing so is in the best interest of the county.

2. If the person awarded the contract has not acted fraudulently or in bad faith, the contract may be terminated and the person awarded the contract may be compensated for actual expenses reasonably incurred under the contract prior to termination.

3. If the person awarded the contract has acted fraudulently or in bad faith, then the contract may be declared null and void.

4. If the person awarded the contract has acted fraudulently or in bad faith, the contract may be ratified; if such action is in the best interest of the county, without prejudice to the county's right to such damages as may be appropriate.

(4) *Frivolous protests.*

(a) *Signature on protest constitutes certificate.* The signature of an attorney or party on a protest or other document for appeal and/or review constitutes a certificate by the signer that the signer has read such document, that to the best of the signer's knowledge, information and belief formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law, or a good faith argument for the protest or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass, limit competition, or to cause unnecessary delay or needless increase in the cost of the procurement that is the subject of the litigation.

(b) *Sanctions for violations.* If a protest or other document for appeal and/or review is signed, or found to be signed, in violation of this division, the purchasing director, county manager or County Council are hereby authorized, upon their own initiative or upon a motion of an intervening party, to impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include debarment and/or an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the protest, pleading, motion or other paper, including a reasonable attorney's fee.

(D) *Debarment.*

(1) *Authority.* The purchasing director is authorized to take actions to provide for the “debarment” of a vendor, person, contractor or business from participating in any future procurement with the county.

(2) *Procedure.*

(a) After reasonable notice to the person involved and reasonable opportunity for that person to be heard, the purchasing director, after consultation with the county manager, the using agency and the county attorney, shall have authority to debar a person for cause from consideration for award of contracts.

(b) The debarment shall not be for a period of more than three years.

(c) After consultation with the county manager, the using agency and the county attorney, the same director shall have authority to suspend a person from consideration for award of contracts if there is probable cause for debarment.

(d) The suspension shall not be for a period exceeding three months.

(e) The authority to debar or suspend shall be exercised in accordance with these regulations.

(3) *Causes for debarment or suspension.* The causes for debarment or suspension include the following:

(a) Conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract;

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

(c) Conviction under state or federal antitrust statutes arising out of the submission of bids or proposals;

(d) Violation of contract provisions, as set forth below, of a character so serious as to justify debarment action:

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

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

(e) Any other cause determined to be as serious and compelling as to affect responsibility as a county contractor, including debarment by another governmental entity for any cause;

- (f) Financial infirmity;
- (g) The initiation of a frivolous protest under this subchapter; and
- (h) For violation of the ethical standards set forth in applicable state or federal law or this subchapter.

(4) *Decision.*

- (a) The purchasing director shall issue a written decision to debar or suspend.
- (b) The decision shall:
  - 1. State the reasons for the action taken; and
  - 2. Inform the debarred or suspended person involved of its rights to judicial review as provided in this subchapter.
- (c) A copy of the decision shall be mailed or otherwise furnished immediately to the debarred or suspended person and any other party intervening.

(5) *Finality of decision and appeal.*

- (a) A decision under division (4) above shall be final and conclusive, unless fraudulent, or unless the debarred or suspended person, contractor, vendor or business appeals administratively within 14 days, but not thereafter, to the county manager, setting forth with particularity why the decision to debar or suspend is in error.
- (b) An appeal to the county manager does not stay the effect of the debarment or suspension decision appealed.
- (c) The county manager shall rule upon the appeal within 14 days of its receipt.

(Ord. 1006, passed 4-17-06; Am. Ord. 2014, passed 6-2-14)

## **§ 35.012 SUPPLY MANAGEMENT.**

(A) *Fixed assets.*

- (1) Any tangible item that costs a minimum of \$5,000 and has a minimum life expectancy of one year is considered to be a **FIXED ASSET**.
- (2) For accountability, all fixed assets can be tracked via permanent, sequentially-numbered identification tags placed on the item or associated with the item.
- (3) The number is unique to the item and remains assigned to the item for its useful life.
- (4) The purchasing department shall maintain an inventory of the county's fixed assets.

(5) For internal control purposes, fixed assets, such as buildings, other improvements and land, are assigned fixed asset control numbers in the accounting records.

(B) *Disposition of county property.*

(1) The purchasing director shall have the authority and responsibility to promulgate regulations governing the procurement, management control, and disposition of any and all property, supplies, services, and/or construction to be procured to the county.

(a) All items of personal property belonging to the county may be declared surplus or "excess fixed asset," and authorized to be sold, transferred, traded, gifted, dismantled or placed in storage by the county.

(b) To facilitate this process, each department shall inventory and report to the purchasing department all surplus personal property that:

1. Is not in actual public use;
2. Has become obsolete or worn out; and
3. Is being held by that department for sale or disposition.

(c) The purchasing director shall ensure that one of the procedures described below is followed for the disposal of the surplus property or excess fixed asset designated for sale, transfer, trade-in, gift, dismantling or storage:

1. *Sale.*

a. The sale, lease or disposal of surplus supplies or excess fixed asset by public auction, competitive sealed bidding to the highest bidder, or other appropriate methods (GovDeals).

b. County-owned personal property should be disposed of through public auction or publicly advertised sealed bids, with approval of County Council where feasible.

c. The sale of all county-owned equipment, materials, supplies or other personal property not in actual public use shall be conducted and directed by the purchasing department and its director.

d. Sales shall be held at such places and in such manner as, in the judgment of the purchasing director, shall be most advantageous to the county.

e. Auctions should be held on an annual basis or whenever the purchasing director deems it will be in the best interest of the county.

f. The purchasing director shall deposit the proceeds from such sales, less expense of the sales, in the fund where the item originated or as otherwise directed by the finance director.

2. *Transfer.*

a. Surplus supplies or excess fixed assets may be transferred between agencies and departments.

b. The purchasing director has the authority to transfer items no longer usable by one department which may be usable by another department.

c. The purchasing director shall maintain records of all such interdepartmental transfers.

3. *Trade-in sales and value.*

a. Unless otherwise provided by law, governmental bodies may trade in personal property, the trade-in value of which may be applied to the procurement or lease of like items.

b. The purchasing director shall have the authority to determine whether the subject property shall be traded in, and the value applied to the purchase of new like items; or whether the property shall be classified as surplus and sold in accordance with the provisions of this subchapter.

4. *County property gift.* Certain county property may be donated to a non-profit organization or other governmental agency or department, upon approval by the County Council, if the item(s) have been determined to have no further value to the county. County property of de minimis value to the county, such as used furniture or kitchen equipment, may be donated by the purchasing department to a non-profit organization.

5. *Dismantling.* Certain property, deemed by the purchasing director and using agency to be of no value and not suitable for sale, transfer, trade-in or gift, may be dismantled and disposed of permanently and in an appropriate fashion.

6. *Storage.* Certain personal property may be held in storage until an appropriate time for disposal, in accordance with this subchapter.

7. *Weapons.* If the sheriff desires to give a law enforcement officer his or her service revolver upon the officer's retirement, the sheriff must receive approval from the County Council during a regularly scheduled Council meeting.

(2) *Disposal of county real estate or real property.*

(a) *General provisions.*

1. It shall be the policy of the county to offer for sale, at fair market value, all surplus real property owned by the county.

2. Surplus real property shall be sold exclusively to adjacent property owners only when, as determined by the appraiser's report, such property is usable only by the adjacent property owner(s).

3. When property is sold, adequate legal provisions shall be made so that no owner will be denied access to his or her property as a result of the sale.

(b) *Appraisal of property.* All surplus real property must be appraised to determine fair market value.

(c) *Management review and recommendation.*

1. When it is determined that real property is no longer needed for current or future use by a department, it shall be considered surplus.

2. Following review, the county manager will request authorization from the County Council to sell those county-owned real properties deemed to be surplus.

(d) *County Council authorization.*

1. The County Council must authorize the sale of any surplus real property.

2. Authorization may be in the form of direction to the County Manager, after being placed on the Council agenda regarding the specific property to be offered for sale.

(e) *Procedures for sale of real property.* Subject to the public hearing requirements expressed herein, after County Council authorization, real property deemed surplus will be sold according to the following procedures:

1. *Properties valued at \$10,000 or less.*

a. The county manager shall make arrangements for the sale of surplus real properties valued at \$10,000 or less, through negotiation at not less than the minimum selling price, or if less than fair market value upon approval of the County Council.

b. If negotiations are not completed within one year from the date of County Council authorization, a new appraisal must be made.

2. *Properties valued at more than \$10,000.*

a. The purchasing director will advertise surplus real properties valued at more than \$10,000 at least twice in local newspapers, with the advertisement containing the minimum selling price and a request for offers-to-buy on a given date, no less than 30 days nor more than 75 days after the first publication.

b. Sealed offers-to-buy will be submitted to the purchasing director, to be opened on the specified date and time.

3. *Acceptance or rejection of offers-to-buy.*

a. On all sealed offers-to-buy (bids) only the highest net offer, after deducting any broker's commission, will be considered.

b. The County Council will have up to 60 days to accept or reject an offer-to-buy through the public hearing requirements expressed herein.

c. The County Council may, by motion, extend the time for considering the offer to 90 days.

d. Offers not accepted by ordinance as required herein shall be deemed rejected.

4. *When no reasonable offers-to-buy are received.*

a. In the event that no reasonable offers-to-buy are received, the selling price of such property will be negotiable.

b. The county manager shall represent the county in any subsequent negotiation.

5. *Certain exceptions.*

a. Certain real property acquired through condemnation proceedings may require expedited disposition to protect its value, rather than leaving property vacant and unattended.

b. In those situations, the County Council may take all reasonable measures to expedite the sale and transfer of such properties.

6. *Other methods permitted.* Notwithstanding the criteria set forth herein, the County Council may dispose of real property by other legal methods.

(f) *Public hearing required.* After reasonable notice to the public, the sale or contract for sale of specific real property owned by the county must be made by ordinance requiring three readings and a public hearing, before final County Council action can be undertaken to sell or contract to sell real property owned by the county.

(Ord. 1006, passed 4-17-06; Am. Ord. 2014, passed 6-2-14)