P. O. Box 10289
Greenville, South Carolina 29603
March 10, 1982

The Honorable Richard W. Riley
Chairman, Budget and Control Board
State House
Columbia, South Carolina 29201

Dear Governor Riley:

In accordance with Section 11-35-50 of the South Carolina Consolidated Procurement Code, Act 148 of 1981, the Task Force as appointed by the Budget and Control Board on November 23, 1981, has completed a model procurement ordinance for consideration by all political subdivisions of the State. As mandated in the aforementioned code section, the charge of the Task Force was to complete a model ordinance embodying sound principles of appropriately competitive procurement which will be submitted for consideration by the political subdivisions. In turn, the political subdivisions of the State by mandate of the Procurement Code shall adopt procurement ordinances or procedures no later than July 1, 1983.

Having completed their work, the Task Force now respectfully submits to you the enclosed model procurement ordinance. This ordinance is a recommended model and in no way is to be construed as a document which must be mandatorily adopted by any political subdivision. The intent of the Task Force was to create guidelines which are subject to whatever changes the particular entity deems appropriate or necessary. There is no requirement that the political subdivision would even have to consider this particular model. It is to be used for assistance and information only.

In submitting this to you as Chairman of the Budget and Control Board and Governor of this State, we request that you review this document and take whatever action you deem appropriate to have the local political subdivisions receive and adopt any portions as applicable to their particular operations.

Sincerely,

Preston Bell

Preston Bell
Chairman, Task Force

TRE:rms

MODEL PROCUREMENT ORDINANCE

Local Governments

Prepared by

Special Task Force on Local Government Procurement
S. C. Budget and Control Board

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ARTICLE 1 - GENERAL PROVISIONS

Part A - Purposes and Application

1-101 Purpose.

The purpose of this Ordinance is to provide for the fair and equitable treatment of all purposes involved in public purchasing by this ( ), to maximize the purchasing value of public funds in procurement, and to provide safeguards for maintaining a procurement system of quality and integrity.

1-102 Application.

This Ordinance applies to contracts for the procurement of supplies, services, and construction, entered into by this ( ) after the effective date of this Ordinance unless the parties agree to its application to contracts entered into prior to the effective date. It shall apply to every expenditure of public funds irrespective of their source. Nothing in this Ordinance shall prevent any ( ) department or agency from complying with the terms and conditions of any grant, gift or bequest which are otherwise consistent with law.

1-103 Specific Repealer.

This Ordinance repeals all previously issed Ordinances, Rules or Regulations pertaining to public procurement for this ( ).

1-104 Effective Date.

This Ordinance shall become effective at 12:01 A.M. on _____ _____, 1982.

Part B - Definitions of Terms Used in this Ordinance

1-201 Definitions.

(1) Business. Any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or any other private legal entity.

(2) Change Order (unilateral). A written order signed and unilaterally issued by the Director of Procurement, directing the contractor to make changes which the "Changes" clause of the contract authorizes the Director of Procurement to order without the consent of the contractor.

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

(4) Contract. All types ( ) agreements, regardless of what they may be called, for the procurement of supplies, services, or construction.

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

(6) Contractor. Any person having a contract with the ( ).

(7) Data. Recorded information, regardless of form or characteristic.

(8) Days. Days shall mean calendar days.

(9) Director of Procurement. The person holding the position created in Section 2-201 (Establishment, Appointment, and Tenure), as the head of the central procurement office of the ( ).

(10) Designee. A duly authorized representative of a person holding a superior position.

(11) Employee. An individual drawing a salary from this ( ), whether elected or not, and any noncompensated individual performing personal services for the ( ).

(12) Governmental Body. Any department or agency of this ( ).

(13) Grant. The furnishing of assistance, whether financial or otherwise, to any person to support a program authorized by law. It does not include an award whose primary purpose is to procure an end product, whether in the form of supplies, services, or construction; a contract resulting from such an award is not a grant but a procurement contract.

(14) May. Denotes the permissive.

(15) Person. Any business, individual, union, committee, club, other organization, or group of individuals.

(16) Procurement. Buying, purchasing, renting, leasing, or otherwise acquiring any supplies, services, or construction. It also includes all funtions that pertain to the obtaining of any supply, service, or construction, including description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration.

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

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

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

(20) Shall. Denotes the imperative.

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

(22) Using Agency. Any governmental body of this ( ) which utilizes any supplies, services, or construction procured under this Ordinance.

Part C - Compliance with State and Federal Requirements

1-301 Public Access to Procurement Information.

Procurement information shall be a public record to the extent required by Chapter 3 of Title 30 (The Freedom of Information Act), South Carolina Code of Laws, 1976, with the exception that commercial or financial information obtained in response to a 'Request for Proposals' which is privileged and confidential not be disclosed.

1-302 Compliance with Federal Requirements.

Where a procurement involves the expenditure of federal assistance or contract funds, the Director of Procurement shall comply with such federal law and authorized regulations which are mandatorily applicable and which are not presently reflected in this Ordinance.

1-303 Standards of Conduct.

In all actions involving the procurement of supplies, services, or construction for this ( ), the provisions of Chapter 13 of Title 8 (State Ethics Act), South Carolina Code of Laws, 1976, shall be complied with.

ARTICLE 2 - PROCUREMENT ORGANIZATION

Part A - Director of Procurement

2-101 Establishment, Appointment, and Tenure.

(1) Establishment of the Position of Director of Procurement. There is hereby created the position of Director of Procurement, who shall be the (principal public procurement official. The Director of Procurement shall report to the ( ).

(2) Appointment. The ( ) shall appoint the Director of Procurement. The Director of Procurement shall have a minimum of seven (7) years experience, at least five (5) years of which shall have been in public procurement within ten (10) years preceding the date of appointment.

(3) Tenure. The Director of Procurement shall be a full-time public employee of the ( ), and may be removed from office only upon a showing of just cause.

2-102 Authority and Duties

(1) Principal Public Procurement Official. The Director of Procurement shall serve as the principal public procurement official of the ( ), and shall be responsible for the procurement of supplies, services, and construction in accordance with this Ordinance, as well as the management and disposal of supplies.

(2) Duties. In accordance with this Ordinance, the Director of Procurement shall:

(a) procure or supervise the procurement of all supplies, services, and construction needed by the ( );

(b) exercise general supervision and control over all inventories and supplies belonging to the ( );

(c) sell, trade, or otherwise dispose of surplus supplies belonging to the ( ), and

(d) establish and maintain programs for the inspection, testing, and acceptance of supplies, services, and construction.

(3) Operational Procedures. Consistent with this Ordinance, the Director of Procurement shall adopt operational procedures relating to the execution of his duties.

2-103 Delegation of Authority By the Director of Procurement

The Director of Procurement may delegate authority to designees of the Office of the Director of Procurement.

Part B - Organization of Public Procurement

2-201 Centralization of Procurement Authority.

Except as otherwise provided in this Part, the authority relating to the procurement of supplies, services, and construction is hereby vested in the Director of Procurement as provided in this Ordinance.

2-202 Authority to Contract for Certain Services.

(1) General Authority. For the purposes of procuring professional services normally obtained on a fee basis, e.g., clergy, physicians, or dentists, those departments utilizing such services may contract on their own behalf for such services in accordance with this Ordinance.

(2) Contracts for Legal Services. No contract for the services of legal counsel may be awarded without the approval of ( ).

2-203 Exemptions.

The following supplies and services need not be procured through the Office of the Director of Procurement, but shall nevertheless be procured by the appropriate department subject to the requirements of this Ordinance:

(a) works of art for museum and public display;

(b) published books, maps, periodicals, and technical pamphlets; and

(c) postage stamps and postal fees.

Part C - ( ) Procurement Regulations

2-301 ( ) Procurement Regulations.

The Director of Procurement shall promulgate regulations pertaining to procurement by the (County). The Director of Procurement shall not delegate his authority to promulgate such regulations. No regulation shall change any commitment, right, or obligation of the ( ) or of a contractor under a contract in existence on the effective date of such regulation.

Part D - Coordination, Training, and Education

2-401 Collection of Data Concerning Public Procurement.

The Director of Procurement shall cooperate with ( ) Auditors in the preparation of statistical data concerning the procurement, usage, and disposition of all supplies, services, and construction, and employ such trained personnel as may be necessary to carry out this function. All using departments shall furnish such reports as the Director of Procurement may require concerning usage, needs, and stocks on hand, and the Director of Procurement shall have authority to prescribe forms to be used by the using departments in requisitioning, ordering, and reporting of supplies, services, and construction.

2-402 Procurement Advisory Groups.

The Director of Procurement may appoint Procurement Advisory Groups to assist with respect to specifications or procurement in specific areas, and with respect to any other matters within the authority of the Director of Procurement.

2-403 Procurement Training.

The Director of Procurement shall establish and maintain a procurement training program for procurement personnel of the Office of the Director of Procurement.

Part E - Duties of the ( ) Attorney

2-501 Duties of the (County) Attorney.

The ( ) Attorney, or such officer as the ( ) Attorney may designate, shall serve as legal counsel and provide necessary legal services to the Director of Procurement.

ARTICLE 3 - SOURCE SELECTION AND CONTRACT FORMATION

Part A - Definitions

3-101 Definitions of Terms Used in this Article.

(1) Cost-Reimbursement Contract. A contract under which a contractor is reimbursed for costs which are allowable and allocable in accordance with the contract terms and the provisions of this Ordinance, and a fee, if any.

(2) Established Catalogue Price. The price included in a catalogue, price list, schedule, or other form that:

(a) is regularly maintained by a manufacturer or contractor;

(b) is either published or otherwise available for inspection by customers; and

(c) States prices at which sales are currently or were last made to a significant number of any category of buyers or buyers constituting the general buying public for the supplies or services involved.

(3) Invitation for Bids. All documents, whether attached or incorporated by reference, utilized for soliciting bids.

(4) Purchase Description. The words used in a solicitation to describe the supplies, services, or construction to be purchased, and includes specifications attached to, or made a part of, the solicitation.

(5) Request for Proposals. All documents whether attached or incorporated by reference, utilized for soliciting proposals.

(6) Responsible Bidder or Offeror. A person who has the capability in all respects to perform fully the contract requirements, and the integrity and reliability which will assure good faith performance.

(7) Responsive Bidder. A person who has submitted a bid which conforms in all material respects to the Invitation for Bids.

Part B - Methods of Source Selection

3-201 Methods of Source Selection

Unless otherwise required by law, all ( ) contracts shall be awarded by competitive sealed bidding, pursuant to Section 3-202 (Competitive Sealed Bidding), except as provided in:

(a) Section 3-203 (Competitive Sealed Proposals);

(b) Section 3-204 (Small Purchases);

(c) Section 3-205 (Sole Source Procurement);

(d) Section 3-206 (Emergency Procurement); or

(e) Section 5-501 (Architect-Engineer and Land Surveying Services).

3-202 Competitive Sealed Bidding.

(1) Conditions for Use. Contracts shall be awarded by competitive sealed bidding except as otherwise provided in Section 3-201 (Methods of Source Selection).

(2) Invitation for Bids. An Invitation for Bids shall be issued and shall include a purchase description, and all contractual terms and conditions applicable to the procurement.

(3) Public Notice. Public notice of the Invitation for Bids shall be given not less than seven (7) days prior to the date set forth therein for the opening of bids. Such notice may include publication in a newspaper of general circulation a reasonable time prior to bid opening.

(4) Bid Opening. Bids shall be opened publicly in the presence of one or more witnesses at the time and place designated in the Invitation for Bids. The amount of each bid, and such other relevant information as may be specified by regulation, together with the name of each bidder shall be recorded; the record and each bid shall be open to the public inspection after award.

(5) Bid Acceptance and Bid Evaluation. Bids shall be unconditionally accepted without alteration or correction, except as authorized in this Ordinance. Bids shall be evaluated based on the requirements set forth in the Invitation for Bids, which may include criteria to determine acceptability such as inspection, testing. quality, workmanship, delivery, and suitability for a particular purpose. Those criteria that will affect the bid price and be considered in evaluation for award shall be objectively measurable, such as discounts, transportation costs, and total or life cycle costs. The Invitation for Bids shall set forth the evaluation criteria to be used. No criteria may be used in bid evaluation that are not set forth in the Invitation for Bids.

(6) Correction or Withdrawal of Bids; Cancellation of Awards. Corrections or withdrawal of inadvertently erroneous bids before or after award, or cancellation of awards or contracts based on such bid mistakes, may be permitted where appropriate. After bid opening no changes in bid prices or other provisions of bids prejudicial to the interest of the ( ) or fair competition shall be permitted. Except as otherwise provided by regulation, all decisions to permit the correction or withdrawal of bids, or to cancel awards or contracts based on bid mistakes, shall be supported by a written determination made by the Director of Procurement.

(7) Award. The contract shall be awarded with reasonable promptness by written notice to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the Invitation for Bids. In the event all bids for a construction project exceed available funds as certified by the fiscal officer, and the low responsive and responsible bid does not exceed such funds by more that five (5) percent, the Director of Procurement is authorized in situations where time or economic considerations preclude resolicitation of work of a reduced scope to negotiate an adjustment in the bid price, including changes in the bid requirements, with the low responsive and responsible bidder, in order to bring the bid within the amount of available funds.

(8) Multi-Step Sealed Bidding. When it is considered impractical to initially prepare a purchase description to support an award based on price, an Invitation for Bids may be issued requesting the submission of unpriced offers to be followed by an Invitation for Bids limited to those bidders whose offers have been qualified under the criteria set forth in the first solicitation.

3-203 Competitive Sealed Proposals.

(1) Conditions for Use. When the Director of Procurement determines in writing that the use of competitive sealed bidding is either not practicable or not advantageous to the ( ), a contract may be entered into by competitive sealed proposals.

(2) Request for Proposals. Proposals shall be solicited through a Request for Proposals.

(3) Public Notice. Public notice of the Request for Proposals shall be given in the same manner as provided in Section 3-202(3) (Competitive Sealed Bidding, Public Notice).

(4) Proposal Opening. Proposals shall be publicly opened and only the names of the offerors disclosed at the proposal opening. Contents of competing offerors shall not be disclosed during the process of negotiation. Proposals shall be open for public inspection after contract award. Proprietary or confidential information marked as such in each proposal shall not be disclosed without written consent of the offeror.

(5) Discussion with Responsible Offerors and Revisions to Proposals. As provided in the Request for Proposals, discussions may be conducted with responsible offerors who submit proposals determined to be reasonably susceptible of being selected for award for the purpose of clarification to assure full understanding of, and responsiveness to, the solicitation requirements. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals, and such revisions may be permitted after submissions and prior to award for the purpose of obtaining best and final offers. In conducting discussions, there shall be no disclosure of any information derived from proposals submitted by competing offerors.

(6) Evaluation Factors. The Request for Proposals shall state the evaluation factors in relative order of importance.

(7) Award. Award shall be made to the responsible offeror whose proposal is determined in writing to be most advantageous to the ( ) taking into consideration the evaluation factors set forth in the Request for Proposals. No other factors or criteria shall be used in the evaluation. The contract file shall contain the basis on which the award is made.

3-204 Small Purchases.

Any procurement not exceeding the amount established by regulations may be made in accordance with small purchase procedures promulgated by the Director of Procurement, provided, however, that procurement requirements shall not be artificially divided so as to constitute a small purchase under this Section.

3-205 Sole Source Procurement.

A contract may be awarded for a supply, service, or construction item without competition when the Director of Procurement determines in writing that there is only one source for the required supply, service, or construction item.

3-206 Emergency Procurement.

Notwithstanding any other provision of this Ordinance, the Director of Procurement may make or authorize others to make emergency procurements when there exists a threat to public health, welfare, or safety under emergency conditions, or where normal daily operations are affected; provided that such emergency procurements shall be made with such competition as is practicable under the circumstances.

3-207 Cancellation of Invitation for Bids or Requests for Proposals.

An Invitation for Bids, a Request for Proposals, or other solicitation may be cancelled, or any or all bids or proposals may be rejected in whole or in part as may be specified in the solicitation, when it is in the best interest of the ( ). The reason therefor shall be made part of the contract file.

Part C - Qualifications and Duties

3-301 Responsibility of Bidders and Offerors.

(1) Determination of Nonresponsibility. A written determination of nonresponsibility of a bidder or offeror shall be made in accordance with regulations promulgated by the Director of Procurement. The unreasonable failure of a bidder or offeror to promptly supply information in connection with an inquiry with respect to responsibility may be grounds for a determination of nonresponsibility with respect to such bidder or offeror.

3-302 Prequalification of Suppliers.

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

3-303 Cost or Price Data.

(1) Required Submissions Relating to the Award of Contracts. A prospective contractor shall submit cost or pricing data when the contract is expected to exceed ($100,000) and is to be awarded under Section 3-203 (Competitive Sealed Proposals), Section 3-205 (Sole Source Procurement), or Section 5-501 (Architect-Engineer and Land Surveying Services).

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

(a) the contract price is based on adequate price competition;

(b) the contract price is set by law or regulation; or

(c) it is determined in writing by the Director of Procurement that the requirements of Section 3-302(1) may be waived, and the determination states the reasons for such waiver.

(3) Required Submissions Relating to Change Orders or Contract Modifications. A contractor shall submit cost or pricing data prior to the pricing of any change order or contract modification, including adjustments to contracts awarded by Competitive Sealed Bidding, whether or not cost or pricing data were required in connection with the initial pricing of the contract, when the modification involves aggregate increases or aggregate decreases in costs plus applicable profits that are expected to exceed ($100,000).

(4) Exceptions. The submission of cost or pricing data relating to the pricing of a change order or contract modification is not required where:

(a) unrelated and separately priced adjustments for which cost or pricing data would not be required are consolidated for administrative convenience; or

(b) it is determined in writing by the Director of Procurement that the requirements of Section 3-302(3) may be waived, and the determination states the reason for such waiver.

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

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

Part D - Types of Contracts

3-401 Types of Contracts.

Subject to the limitations of this Section, any type of contract which will promote the best interest of the ( ) may be used; provided that the use of a cost-plus-a-percentage-of-cost contract is prohibited. A cost-reimbursement contract may be used only when a determination by the Director of Procurement is made in writing that such contract is likely to be less costly to the ( ) than any other type or that it is impracticable to obtain the supplies, services, or construction required except under such a contract.

3-402 Multi-Term Contracts.

(1) Specified Period. A contract for supplies or services may be entered into for a period of time not to exceed five (5) years, provided the term of the contract and the conditions of renewal or extension, if any, are included in the solicitation and funds are available for the first fiscal period at the time of contracting. Payment and performance obligations for succeeding fiscal periods shall be subject to the availability and appropriation of funds therefor.

(2) Determination Prior to Use. Prior to the utilization of a multi-term contract, it shall be determined in writing:

(a) that estimated requirements cover the period of the contract and are reasonably firm and continuing; and

(b) that such a contract will serve the best interest of the ( ) by encouraging effective competition or otherwise promoting economies in ( ) procurement.

(3) Cancellation Due to Unavailability of Funds in Succeeding Fiscal Periods. All multi-term contracts shall contain a clause stating that when funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the contract shall be cancelled.

Part E - Inspection of Plant and Audit of Records

3-501 Right to Inspect Plant.

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

3-502 Right to Audit Records.

(1) Audit of Cost or Pricing Data. The ( ) may, at reasonable times and places, audit the books and records of any person who has submitted cost or pricing data pursuant to Section 3-303 (Cost or Pricing Data) to the extent that such books and records relate to such cost or pricing data. Any person who receives a contract, change order, or contract modification for which cost or pricing data is required, shall maintain such books and records that relate to such cost or pricing data for three (3) years from the date of final payment under the contract, unless a shorter period is otherwise authorized in writing.

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

Part F - Reports and Records

3-601 Reporting of Anticompetitive Practices.

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

3-602 Procurement Records.

(1) Contract File. All determinations and other written records pertaining to the solicitation, award, or performance of a contract shall be maintained in a contract file by the Director of Procurement.

(2) Retention of Procurement Records. All procurement records shall be retained and disposed of in accordance with records retention guidelines and schedules approved by the ( ). If a contract is being funded in whole or in part by assistance from a Federal agency, then all procurement records pertaining to that contract shall be maintained for three (3) years from the closeout date of the assistance agreement or the final disposition of any controversy arising out of the assistance agreement.

ARTICLE 4 - SPECIFICATIONS

Part A - Definitions

4-101 Definitions of Terms Used in this Article.

(1) Specification. Any description of the physical or functional characteristics, or of the nature of a supply, service, or construction item. It may include a description of any requirement for inspection, testing, or preparing a supply, service, or construction item for delivery.

Part B - Specifications

4-201 Duties of the Director of Procurement.

The Director of Procurement may prepare and issue specifications for supplies, services, and construction required by the ( ). The Director of Procurement may obtain expert advice and assistance from personnel of Using Agencies in the development of specifications and may delegate to a Using Agency the authority to prepare its own specifications.

4-202 Exempted Items.

Specifications for supplies, services, or construction items exempted in Section 2-303 (Exemptions), may be prepared by the Using Agency in accordance with the provisions of this Article.

4-203 Maximum Practicable Competition.

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

ARTICLE 5 - PROCUREMENT OF CONSTRUCTION ARCHITECT - ENGINEER AND LAND SURVEYING SERVICES

Part A - Definitions

5-101 Definitions of Terms Used in this Article.

(1) Architect-Engineer and Land Surveying Services. Those professional services within the scope of the practice of architecture, professional engineering, or land surveying.

Part B - Management of Construction Contracting

5-201 Responsibility for Selection of Method of Construction Contract Management.

The (_____)shall have discretion to select the appropriate method of construction contracting management for a particular project. In determining which method to use, the (_____) shall consider the ( ) requirements, its resources, and the potential contractors capabilities. The (_____)shall execute and include in the contract file a written statement setting forth the facts which led to the selection of a particular method of construction contracting management for each project.

5-202 Contract Administration.

The (_____)shall maintain a contract administration system designed to insure that a contractor is performing in accordance with the solicitation under which the contract was awarded, and the terms and conditions of the contract.

Part C - Bonds

5-301 Bid Security.

(1) Requirement for Bid Security. Bid security shall be required for all competitive sealed bidding for construction contracts when the price is estimated by the Director of Procurement to exceed ($10,000). Bid security shall be a bond provided by a surety company authorized to do business in this State, or the equivalent in cash, or otherwise supplied in a form satisfactory to the (County). Nothing herein prevents the requirement of such bonds on construction contracts under ($10,000) when the circumstances warrant.

(2) Amount of Bid Security. Bid security shall be in an amount equal to at least (5%) of the amount of the bid.

(3) Rejection of Bid for Noncompliance with Bid Security Requirements. When the Invitation for Bids requires security, noncompliance requires that the bid be rejected.

(4) Withdrawal of Bids. After the bids are opened, they shall be irrevocable for the period specified in the Invitation for Bids, except as provided in Section 3-202(6) (Competitive Sealed Bidding, Correction or Withdrawal of Bids; Cancellation of Awards). If a bidder is permitted to withdraw its bid before award, no action shall be had against the bidder or the bid security.

5-302 Contract Performance and Payment Bonds.

(1) Required Amounts. When a construction contract is awarded in excess of ($25,000), the following bonds or security shall be delivered to the (County) and shall become binding on the parties upon the execution of the contract:

(a) a performance bond satisfactory to the ( ), executed by a surety company authorized to do business in this State or otherwise secured in a manner satisfactory to the (County), in an amount equal to 100% of the price specified in the contract; and

(b) a payment bond satisfactory to the ( ), executed by a surety company authorized to do business in this State or otherwise secured in a manner satisfactory to the ( ), for the protection of all persons supplying labor and materials to the contractor or its subcontractors for the performance of the work provided for in the contract. The bond shall be in an amount equal to 100% of the price specified in the contract.

(2) Reduction of Bond Amounts. The Director of Procurement is authorized to reduce the amount of performance and payment bonds to (50%) of the contract price for each bond, when it has been determined in writing such reduction is necessary or warranted.

(3) Authority to Require Additional Bonds. Nothing in this Section shall be construed to limit the authority of the ( ) to require a performance bond or other security in addition to those bonds, or in circumstances other than specified in Subsection (1) of this Section.

(4) Suits on Payment Bonds - Right to Institute. Every person who has furnished labor or materials to the contractor or its subcontractors for the work provided in the contract, in respect of which a payment bond is furnished under this Section, and who has not been paid in full therefor before the expiration of a period of ninety (90) days after the day on which the last of the labor was done or performed by such person or material was furnished or supplied by such person for which such claim is made, shall have the right to sue on the payment bond for the amount, or the balance thereof, unpaid at the time of institution of such suit and to prosecute said action for the sum or sums justly due such person; provided, however, that any person having a direct contractual relationship with a subcontractor of the contractor, but no contractual relationship express or implied with the contractor furnishing said payment bond, shall have a right of action upon the payment bond upon giving written notice to the contractor within ninety (90) days from the date on which

such person did or performed the last of the labor or furnished or supplied the last of material upon which such claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the material was furnished or supplied or for whom the labor was done or performed. Such notice shall be personally served or served by mailing the same by registered or certified mail, postage prepaid, in an envelope addressed to the contractor at any place the contractor maintains an office or conducts its business.

(5) Suits on Payment Bonds - Where and When Brought. Every suit instituted upon a payment bond shall be brought in a court of competent jurisdiction for the ( ), but no such suit shall be commenced after the expiration of one year after the day on which the last of the labor was performed or material was supplied by the person bringing suit. The obligee named in the bond need not be joined as a party in such suit.

5-303 Bond Forms and Copies.

(1) Bond Forms. The Director of Procurement shall promulgate by regulation the form of bonds required by this Part.

(2) Certified Copies of Bonds. Any person may request and obtain from the ( ) a certified copy of a bond upon payment of the cost of reproduction of the bond and postage, if any. A certified copy of a bond shall be prima facie evidence of the contents, execution, and delivery of the original.

Part D - Construction Contract Clauses and Fiscal Responsibility

5-401 Contract Clauses and Their Administration.

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

(a) the unilateral right of the ( ) to order in writing changes in the work within the scope of the contract;

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

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

(d) defective pricing;

(e) liquidated damages;

(f) specified excuses for delay or nonperformance;

(g) termination of the contract for default;

(h) termination of the contract in whole or in part for the convenience of the ( );

(i) suspension of work on a construction project ordered by the ( ); and

(j) site conditions differing from those indicated in the contract, or ordinarily encountered, except that differing site conditions clauses need not be included in a contract:

(i) when the contract is negotiated;

(ii) when the contract provides the site or design; or

(iii) when the parties have otherwise agreed with respect to the risk of differing site conditions.

(2) Price Adjustments.

(a) Adjustments in price resulting from the use of contract clauses required in Subsection (1) of this Section shall be computed in one or more of the following ways:

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

(ii) by unit prices specified in the contract or subsequently agreed upon;

(iii) by the cost attributable to the events or situations under such clauses with adjustment of profit or fee, all as specified in the contract or subsequently agreed upon;

(iv) in such other manner as the contracting parties may mutually agree; or

(v) in the absence of agreement by the parties, by unilateral determination by the ( ) of the reasonable costs allocable, either directly or indirectly, to the events or situations under such clauses as accounted for in accordance with generally accepted accounting principles, and with adjustment of profit or fee, as appropriate, and subject to the provisions of Article 7 (Legal and Contractual Remedies).

(b) A contractor shall be required to submit cost or pricing data if any adjustment in contract price is subject to the provisions of Section 3-303 (Cost or Pricing Data).

(3) Standard Clauses and Their Modification. The Director of Procurement may establish standard contract clauses for use in ( ) contracts. If the Director of Procurement establishes any standard clauses addressing the subjects set forth in Subsection (1) of this Section, such clauses may be varied provided that any variations are supported by a written determination that states the circumstances justifying such variations, and provided that notice of any such material variation be stated in the Invitation for Bids or Request for Proposals.

5-402 Fiscal Responsibility.

Every contract modification, change order, or contract price adjustment under a construction contract with the (County) in excess of ($100,000) shall be subject to prior approval by the ( ) after receiving a report from the fiscal officer of the ( ) as to the effect of the contract modification, change order, or contract price adjustment on the total project budget or the total contract budget.

Part E - Architect-Engineer and Land Surveying Services

5-501 Public Announcement and Selection Process.

(1) Public Announcement. It is the policy of the ( ) to publicly announce all requirements for architect-engineer and land surveying services and to negotiate such contracts on the basis of demonstrated competence and qualification at fair and reasonable prices. In the procurement of architect-engineer and land surveying services, the Director of Procurement shall request firms to submit a statement of qualifications and performance data.

(2) Selection Process. The Director of Procurement and the (_____) shall conduct discussions with no less than three firms regarding the contract and shall select from among them no less than three of the firms deemed most qualified to provide the required services. The selection shall be made in order of preference, based on criteria established and published by the Director of Procurement and the (_____).

(3) Negotiation. The Director of Procurement shall negotiate a contract with the highest qualified firm for architect-engineer or land surveying services at a compensation which is considered to be fair and reasonable to the (County). In making this decision, the Director of Procurement shall take into account the established value, the scope, the complexity, and the professional nature of the services to be rendered. Should the Director of Procurement be unable to negotiate a satisfactory contract with the firm considered to be most qualified, negotiations with that firm shall be formally terminated. The Director of Procurement shall then undertake negotiations with the second most qualified firm. Failing accord with the second most qualified firm, the Director of Procurement shall formally terminate negotiations. The Director of Procurement shall then undertake negotiations with the third most qualified firm. Should the Director of Procurement be unable to negotiate a contract with any of the selected firms, the Director of Procurement and the (_____) shall select additional firms in order of their competence and qualifications, and the Director of Procurement shall continue negotiations in accordance with this Section until an agreement is reached. The duties of the Director of Procurement and the (_____) in regards to this Section shall not be delegated.

ARTICLE 6 – SUPPLY MANAGEMENT

Part A – Definitions

6-101 Definitions of Terms Used in this Article.

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

(2) Expendable Supplies. All tangible supplies other than nonexpendable supplies.

(3) Nonexpendable Supplies. All tangible supplies having an original acquisition cost of over ($100) per unit and a probable useful life of more than one year.

(4) Supplies. For the purpose of this Article, supplies owned by the (County).

(5) Surplus Supplies. Any supplies other than expendable supplies no longer having any use to the ( ). This includes obsolete supplies, scrap materials, and nonexpendable supplies that have completed their useful life cycle.

Part B – Regulations Required

6-201 Supply Management Regulations Required.

The Director of Procurement shall promulgate regulations governing:

(a) the management of supplies during their entire life cycle;

(b) the sale, lease, or disposal of surplus supplies by public auction, competitive sealed bidding, or other appropriate method designated by regulation, provided that no employee of the owning or disposing agency shall be entitled to purchase any such supplies; and

(c) transfer of excess supplies.

Part C – Proceeds

6-301 Allocation of Proceeds from Sale or Disposal of Surplus Supplies

The Director of Procurement shall deposit proceeds from the sale, lease, or disposal of surplus supplies in the ( ) general fund.

ARTICLE 7 - LEGAL AND CONTRACTUAL REMEDIES

Part A - Pre-Litigation Resolution of Controversies

7-101 Authority to Resolve Protested Solicitations and Awards.

(1) Right to Protest. Any actual or prospective bidder, offeror, or contractor who is aggrieved in connection with the solicitation or award of a contract may protest to the Director of Procurement. The protest shall be submitted in writing within fourteen (14) days after such aggrieved person knows or should have known of the facts giving rise thereto.

(2) Authority to Resolve Protests. The Director of Procurement shall have authority, prior to the commencement of an action in court concerning the controversy, to settle and resolve a protest of an aggrieved bidder, offeror, or contractor, actual or prospective, concerning the solicitation or award of a contract.

(3) Decision. If the protest is not resolved by mutual agreement, the Director of Procurement shall issue a decision in writing within ten (10) days. The decision shall:

(a) state the reasons for the action taken; and

(b) inform the protestant of its right to administrative review as provided in this Article.

(4) Notice of Decision. A copy of the decision under Subsection (3) of this Section shall be mailed or otherwise furnished immediately to the protestant and any other party intervening.

(5) Finality of Decision. A decision under Subsection (3) of this Section shall be final and conclusive, unless fraudulent, or:

(a) any person adversely affected by the decision appeals administratively to the Procurement Appeals Board in accordance with this Article.

7-102 Authority to Debar or Suspend.

(1) Authority. After reasonable notice to the person involved and reasonable opportunity for that person to be heard, the Director of Procurement, after consultation with the ( ) Attorney, shall have authority to debar a person for cause from consideration for award of contracts. The debarment shall not be for a period of more than (three years). The same officer, after consultation with the ( ) Attorney, shall have authority to suspend a person from consideration for award of contracts if there is probable cause for debarment. The suspension shall not be for a period exceeding (three months). The authority to debar or suspend shall be exercised in accordance with regulations.

(2) 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 ( ) 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 which is regarded by the Director of Procurement to be so serious as to justify debarment action:

(i) deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or

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

(e) any other cause the Director of Procurement determines to be so serious and compelling as to affect responsibility as a ( ) contractor, including debarment by another governmental entity for cause.

(f) for violation of the ethical standards set forth in South Carolina State Ethics Act.

(3) Decision. The Director of Procurement shall issue a written decision within thirty (30) days to debar or suspend. The decision shall:

(a) state the reasons for the action taken; and

(b) inform the debarred or suspended person involved of its rights to administrative review as provided in this Article.

(4) Notice of Decision. A copy of the decision under Subsection (3) of this Section shall be mailed or otherwise furnished immediately to the debarred or suspended person and any other party intervening.

(5) Finality of Decision. A decision under Subsection (3) of this Section shall be final and conclusive, unless fraudulent, or

(a) the debarred or suspended person appeals administratively to the Procurement Appeals Board in accordance with this Article.

7-103 Authority to Resolve Contract and Breach of Contract Controversies.

(1) Applicability. This Section applies to controversies between the (County) and a contractor and which arise under, or by virtue of, a contract between them. This includes without limitation controversies based upon breach of contract, mistake, misrepresentation, or other cause for contract modification or rescission.

(2) Authority. The Director of Procurement is authorized, prior to commencement of an action in a court concerning the controversy, to settle and resolve a controversy described in Subsection (1) of this Section.

(3) Decision. If such a controversy is not resolved by mutual agreement, the Director of Procurement shall promptly issue a decision in writing within thirty (30) days. The decision shall:

(a) state the reason for the action taken; and

(b) inform the contractor of its right to administrative review as provided in this Article.

(4) Notice of Decision. A copy of the decision under Subsection (3) of this Section shall be mailed or otherwise furnished immediately to the contractor.

(5) Finality of Decision. The decision under Subsection (3) of this Section shall be final and conclusive, unless fraudulent, or:

(a) the contractor appeals administratively to the Procurement Appeals Board in accordance with this Article.

(6) Failure to Render Timely Decision. If the Director of Procurement does not issue the written decision required under Subsection (3) of this Section within thirty (30) days after written request for a final decision, or within such longer period as may be agreed upon by the parties, then the contractor may proceed as if an adverse decision had been received.

Part B - Solicitations or Awards in Violation of Law

7-201 Applicability of this Part.

The provisions of this Part apply where it is determined administratively, or upon administrative review, that a solicitation or award of a contract is in violation of law.

7-202 Remedies Prior to an Award.

If prior to award it is determined that a solicitation or proposed award of a contract is in violation of law, then the solicitation or proposed award shall be:

(a) cancelled; or

(b) revised to comply with the law.

7-203 Remedies After an Award.

If after an award it is determined that a solicitation or award of a contract is violation of law, then:

(a) if the person awarded the contract has not acted fraudulently or in bad faith:

(i) the contract may be ratified and affirmed, provided it is determined that doing so is in the best interest of the ( ); or

(ii) the contract may be terminated and the person awarded the contract shall be compensated for the actual expenses reasonably incurred under the contract, plus a reasonable profit, prior to the termination;

(b) if the person awarded the contract has acted fraudulently or in bad faith:

(i) the contract may be declared null and void; or

(ii) the contract may be ratified and affirmed if such action is in the best interests of the ( ), without prejudice to the ( ) right to such damages as may be appropriate.

Part C - Procurement Appeals Board

7-301 Creation of the Procurement Appeals Board.

There is hereby established a Procurement Appeals Board, hereinafter referred to as the "Board", to be composed of a chairperson and at least two other members, but not more than six (6) members. The chairperson and members of the Board shall be appointed by ( ).

(1) Term. The term of office of the chairperson and each member of the Board shall be two years, except that in making the initial appointments, three members shall be appointed for a term of one year, and two members and the chairperson shall be appointed for a term of two years, so that half of the terms of office shall

expire every year. Thereafter, their successors shall be appointed for terms of two years, or for the balance of any unexpired term. Members may be reappointed for succeeding terms, but not for more than two consecutive terms. Reappointments may be made two years after expiration of the last served term of office. (, may terminate for just cause any Board members term of office.

(2) Authority of the Chairperson. The chairperson may adopt operational procedures and issue such orders, not inconsistent with this Ordinance, as may be necessary in the execution of the Board's functions. The chairperson's authority may be delegated to any of the Board members, and only members of the Board may issue decisions on appeals.

(3) Quorum. Two-thirds of those members appointed to the Board shall constitute a quorum.

(4) Administrative Support. The (Director of Administration) shall provide such services as the chairperson requests, on such basis as may be required.

(5) Qualification for Board Membership. The chairperson shall be a member in good standing of the State Bar of South Carolina for at least five (5) years, and experienced in contract or commercial matters. The remaining members of the Board appointed by ( ) shall be representative of, but not limited to, the below listed professions, and shall be qualified in terms of experience and education to examine facts and apply legal principles to the controversies falling within the Board's jurisdiction:

(i) Goods and services

(ii) Construction

(iii) Architect/Engineer

(iv) Information technology

7-302 Jurisdiction of the Procurement Appeals Board.

Unless an action has been initiated previously in the courts for essentially the same cause of action, the Board shall have authority to review and determine:

(a) any protest of a solicitation or award of a contract addressed to the Board by an aggrieved actual or prospective bidder or offeror, or a contractor; and

(b) any appeal by an aggrieved party from a determination by the Director of Procurement which is authorized in Sections 7-101, 7-102, and 7-103 of this Article.

7-303 Rules of Procedures.

The Procurement Appeal Board shall adopt rules of procedure which, to the fullest extent possible, will provide for the expeditious resolution of controversies.

(1) Time Limit for Filing an Appeal. For an appeal under Section 7-101(3), the aggrieved person shall file an appeal with the Board within seven (7) days of receipt of a decision. For an appeal under Section 7-102(3), and 7-103, the aggrieved person shall file its appeal with the Board within thirty (30) days of the receipt of decision.

(2) Decision. Upon receipt of an appeal from an aggrieved party, the chairperson shall convene the Board within ten (10) days to conduct an administrative review of the appeal. The Board within ten (10) days of hearing such appeal shall affirm, alter, or deny the decisions rendered by the Director of Procurement. The Board shall promptly decide whether the:

(a) solicitation or award being appealed was in accordance with regulations, and the terms and conditions of the solicitation;

(b) debarment or suspension being appealed was in accordance with regulations, and in the best interest of the (County), and was fair;

(c) Contract and Breach of Contract Controversy settlement being appealed was in accordance with regulations, and in the best interest of the ( ), and was proper.

(3) Standard of Review for Factual Issues. A determination of an issue of fact by the Board shall be final and conclusive unless arbitrary, capricious, fraudulent, or clearly erroneous.

7-304 Finality of Decision of Procurement Appeals Board.

No determination by the Procurement Appeals Board concerning an issue of law shall be final or conclusive.

(1) Appeal. Any person receiving an adverse decision, the (County), or both may appeal from a decision by the Procurement Appeals Board to the courts of the State of South Carolina.

ARTICLE 8 - INTERGOVERNMENTAL RELATIONS

Part A - Definitions

8-101 Definitions of Terms Used in this Article.

(1) Cooperative Purchasing. Procurement conducted by, or on behalf of, more than one Public Procurement Unit.

(2) Public Procurement Unit. Any county, city, town, and any other subdivision of the State or public agency of any such subdivision, public authority, educational, health, or other institution, any other entity which expends public funds for procurement of supplies, services, or construction.

Part B - Cooperative Purchasing

8-201 Cooperative Purchasing Authorized.

The Director of Procurement may either participate in, sponsor, conduct, or administer a cooperative purchasing agreement for the procurement of supplies, services, or construction with one or more Public Procurement Units in accordance with an agreement entered into between the participants. Such cooperative purchasing may include, but is not limited to, joint or multi-party contracts between Public Procurement Units.

8-202 Sale, Acquisition, or Use of Supplies.

The Director of Procurement may sell to, acquire from, or use any supplies belonging to another Public Procurement Unit independent of the requirements of Article 3 and Article 6 of this Ordinance.

8-203 Cooperative Use of Supplies or Services.

The Director of Procurement may enter into an agreement, independent of the requirements of Article 3 and Article 6 of this Ordinance, with any Public Procurement Unit for the cooperative use of supplies or services under the terms agreed upon between the parties.

8-204 Joint Use of Facilities.

The Director of Procurement may enter into agreements for the common use or lease of warehousing facilities, capital equipment, and other facilities with another Public Procurement Unit under the terms agreed upon between the parties.

8-205 Use of State Contracts.

The Director of Procurement may, independent of the requirements of Article 3 of this Ordinance, procure supplies, services, or construction items through the contracts established by the Purchasing Division of the State of South Carolina as provided in Chapter 35 of Title 11 (State Consolidated Procurement Code), South Carolina Code of Laws, 1976.

ARTICLE 9 - ASSISTANCE TO SMALL AND DISADVANTAGED BUSINESS; FEDERAL ASSISTANCE OR CONTRACT PROCUREMENT REQUIREMENTS

Part A - Definitions

9-101 Definitions of Terms Used in this Article.

(1) Disadvantaged Business. A small business which is owned or controlled by a majority of persons, not limited to members of minority groups, who have been deprived of the opportunity to develop and maintain a competitive position in the economy because of social disadvantages.

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

Part B - Assistance to Small and Disadvantaged Businesses

9-201 Solicitation of Small and Disadvantaged Businesses.

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