

DORCHESTER COUNTY

AN ORDINANCE TO AMEND THE CODE OF ORDINANCES, DORCHESTER COUNTY, SOUTH CAROLINA, TO REPEAL CHAPTER 2, ARTICLE VI, DIVISIONS 1 THROUGH 10 AND SUBSTITUTE IN LIEU THEREOF NEW DIVISIONS 1 THROUGH 10

WHEREAS, Dorchester County Council wishes to amend the Code of Ordinances, Dorchester County, South Carolina, to repeal Chapter 2, Article VI, Divisions 1 through 10 and to substitute in lieu thereof new Divisions 1 through 10.

NOW, THEREFORE, be it ordained by Dorchester County Council, duly assembled, that Chapter 2, Article VI, Divisions 1 through 10 are hereby deleted in their entirety and the below Divisions 1 through 10 are hereby substituted in lieu thereof:

ARTICLE VI. – PROCUREMENT
DIVISION 1. – GENERALLY

Sec. 2-521. - Purposes and application.

- (A) Purpose. The purpose of this article is to provide for the fair and equitable treatment of all activities involved in public purchasing by Dorchester County, to maximize the purchasing value of public funds in procurement, and to provide safeguards for maintaining a procurement system of quality and integrity.
(B) Application. This article applies to contracts for the procurement of supplies, services, and construction, entered into by Dorchester County after the effective date of the ordinance from which this article derives 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. It shall also apply to the disposal of County equipment and/or supplies. Nothing in this article shall prevent any County department or agency from complying with the terms and conditions of any grant, gift or bequest which are otherwise consistent with law.
(C) Specific repealer. All previously issued Ordinances pertaining to public procurement for Dorchester County are hereby repealed.
(D) Effective Date. This article shall become effective upon 3rd and final reading.
(E) Obligation of Good Faith. Every contract, duty, or responsibility within this Ordinance imposes an obligation of good faith in its negotiation, performance, or enforcement. "Good Faith" means honesty in fact in the conduct or transaction concerned and the observance of reasonable commercial standards of fair dealing.

Sec. 2-522. - Definitions of terms used in this article.

The following words, terms, or phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Architect-engineer and land surveying services. Those professional services within the scope of the practice of architecture, professional engineering, or land surveying.

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

Change order (unilateral). A written order approved by the County Administrator or his designee and issued by the director of procurement, directing the contractor to make changes which the "changes" clause of the contract authorized the director of procurement to order without the consent of the contractor.

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

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

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

Contractor. Any person having a contract with the County.

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

Cost effectiveness. The ability of a particular product or service to efficiently provide goods or services to the County. In determining the cost effectiveness of a particular product or service, the appropriate procurement officer shall list the relevant factors in the bid notice or solicitation and use only those listed relevant factors in determining the award.

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 article, and a fee, if any.

Data. Recorded information, regardless of form or characteristic.

Days. Days shall mean calendar days.

Designee. A duly authorized representative of a person with formal responsibilities under the ordinance.

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.

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

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.

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

Expendable supplies. All tangible supplies other than nonexpendable supplies.

Governmental body. Any department or agency of Dorchester County.

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.

Information Technology (IT). Data processing, telecommunications, and office systems technologies and services:

- a. "Data processing" means the automated collection, storage, manipulation, and retrieval of data including: central processing units for micro, mini, and mainframe computers; related peripheral equipment such as terminals, document scanners, word processors, intelligent copiers, off-line memory storage, printing systems, and data transmission equipment; and related software such as operating systems, library and maintenance routines, and applications programs.

- b. "Telecommunications" means voice, data, message, and video transmissions, and includes the transmission and switching facilities of public telecommunications systems, as well as operating and network software.
- c. "Office systems technology" means office equipment such as typewriters, duplicating and photocopy machines, paper forms, and records; microfilm and microfiche equipment and printing equipment and services.
- d. "Services" means the providing of consultant assistance for any aspect of information technology, systems, and networks.

Invitation for bids. All documents, whether attached or incorporated by reference, utilized for soliciting bids.

May. Denotes the permissive.

Nonexpendable supplies. All tangible supplies having an original acquisition cost of over \$500 per unit and a probable useful life of more than one year.

Offeror. Any person, business, or entity who is responding to a formal or informal solicitation made by the county.

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

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

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

Public 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.

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.

Purchasing Agent. 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.

Purchasing Services Manager. The Chief Procurement Official of the County. The person holding the position created in subsection 2-531 (A) as the head of the central procurement office.

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

Request for proposals. All documents whether attached or incorporated by reference, utilized for soliciting proposals.

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.

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

Responsive offeror. A person who has submitted a proposal which conforms to all requirements in the request for proposals.

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.

Shall. Denotes the imperative.

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

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.

Supplies. All property including but not limited to equipment, materials, printing, insurance, information technology equipment and software packages, and lease of real property, excluding land or a permanent interest in land. For the purpose of Division 6, supplies owned by County.

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

Using agency. Any governmental body of Dorchester County which utilizes any supplies, services, or construction procured under this article.

Sec. 2-523. – Public Access to Procurement Information.

- (A) Procurement information must be a public record to the extent required by SC Code, Title 30, Chapter 4 (The Freedom of Information Act), with the exception that commercial or financial information obtained in response to a request for proposals or any type of bid solicitation that is privileged and confidential need not be disclosed.
- (B) Privileged and confidential information is information in specific detail not customarily released to the general public, the release of which might cause harm to the competitive position of the party supplying the information. Examples of this type of information include:
 - 1. customer lists;
 - 2. design recommendations and identification of prospective problem areas under a Request for Proposals;
 - 3. design concepts, including methods and procedures;
 - 4. biographical data on key employees of the bidder.
- (C) For all documents submitted in response or with regard to a solicitation or other request, the documents need not be disclosed if an award is not made.
- (D) Evaluative documents pre-decisional in nature, such as inter-agency or intra-agency memoranda containing technical evaluations and recommendations, are exempted so long as the contract award does not expressly adopt or incorporate the inter-agency or intra-agency memoranda reflecting the pre-decisional deliberations.
- (E) For all documents submitted in response or with regard to any solicitation or other request, the person submitting the documents shall comply with instructions provided in the solicitation for marking information exempt from public disclosure. Information not marked as required by the applicable instructions may be disclosed to the public.

HISTORY: 1981 Act No. 148, Section 1; 1997 Act No. 153, Section 1; 2006 Act No. 376, Section 9.

Sec. 2-524 – Authorization for the Use of Electronic Transmissions.

The use of electronic or digital media is authorized consistent with the State and County’s applicable statutory, regulatory or other guidance for such media, so long as such guidance provides for the following:

- 1. appropriate security to prevent unauthorized access to the bidding, approval, and award processes; and
- 2. accurate retrieval or conversion of electronic forms of such information into a medium which permits inspection and copying

Secs. 2-525—2-530. - Reserved.

DIVISION 2. – PROCUREMENT ORGANIZATION

Sec. 2-531. – Purchasing Services Manager.

- (A) *Establishment of the position of Purchasing Services Manager.* Except as otherwise provided in this Ordinance, the authority relating to the procurement of supplies, services, and construction is hereby vested in the Purchasing Services Manager of this County, who shall report to the Director of Business Services.
- (B) *Appointment.* In consultation with the County Administrator, the Deputy County Administrator/CFO shall appoint the Purchasing Services Manager, as recommended by the Director of Business Services. The Purchasing Services Manager shall have a minimum of three years' experience, at least two years of which shall have been in procurement within ten years preceding the date of appointment. These requirements diminish in accordance with education. The Purchasing Services Manager shall employ such staff as may be necessary to perform the functions of the Purchasing Services Division.
- (C) *Tenure.* The Purchasing Services Manager shall be a full-time public employee of the County, and subject to the Dorchester County Human Resources policies.
- (D) *Authority.* The Purchasing Services Manager shall serve as the principal public procurement official of the County, and shall be responsible for the procurement of supplies, services, and construction in accordance with this article, as well as the management and disposal of supplies.
- (E) *Duties.* The Purchasing Services Manager shall organize and execute all purchasing activities for the County, acting under the direction of the Director of Business Services, the Deputy County Administrator/CFO, and the County Administrator. He shall coordinate with department officials in establishing specifications for use in the procurement of all materials, supplies, equipment, construction, or services, including directing the bidding process of appropriate purchases, supervising the evaluation of bids, and participating in contract negotiations. He shall award contracts and purchases within the confines of the procurement ordinance and ensure compliance with local, state, and federal guidelines. The Purchasing Services Manager shall be responsible for developing a competent staff and establishing and maintaining an effective professional working relationship between all purchasing personnel and suppliers, department heads, contractors, and other governmental units and the public. Working with the Director of Fleet Maintenance and other using departments, he shall also manage the disposal of surplus supplies.
- (F) *Delegation of authority by the Purchasing Services Manager.* The Purchasing Services Manager may delegate authority to designees of the Purchasing Services Division.

Sec. 2-532. - Organization of public procurement.

- (A) *Centralization of procurement authority.* Except as otherwise provided in this section, the authority relating to the procurement of supplies, services, and construction is hereby vested in the Purchasing Services Manager as provided in this article.
- (B) *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 article.

2. *Contracts for legal services.* No contract for the services of legal counsel may be awarded without the approval of the County Attorney.

(C) *Exemptions.* The following supplies and services need not be procured through the Purchasing Services Division but shall nevertheless be procured by the appropriate department subject to the requirements of this article. Additions and deletions shall be made by regulation:

1. Advertising time or space in newspapers, radio, television, professional journals, publications, or social media.
2. Works of art for public display.
3. Published books, maps, periodicals, and technical pamphlets.
4. Postage stamps and postal fees and U.S. Post Office box rentals.
5. Professional training.
6. Conference facilities.
7. Maintenance on equipment that must be provided by the original equipment manufacturer or an authorized dealer.
8. Chemicals for mosquito control.
9. Maintenance services for aircraft.
10. Services provided by public utilities (gas, electricity, water and sewer) subject to rate regulation by the Public Service Commission.
11. Professional dues and registration and membership fees.
12. Attorneys and legal services.
13. License agreements for computer software, after such software has been purchased subject to the provisions of the ordinance.
14. The procurement of copyrighted educational films, filmstrips, slides and transparencies, CD ROM documents, data bases, computer assisted instructional materials, interactive video programs and other related materials made available by information technology that can only be obtained from the company providing the information or service.
15. The purchase of goods, products, and services from the South Carolina Department of Corrections, Division of Prison Industries.
16. Payment to the State against purchases made from the State.
17. All insurance premium and self-insurance claims.
18. Monthly fees for Medical Director for Fire Department and EMS.
19. Hospital fees.
20. All payments to Federal and State agencies, (e.g., unemployment taxes, fees to Coastal Council).
21. Travel and lodging that adheres to established Human Resources policies.
22. Medical services, including hospitals, drug screening, primary and urgent care, and physicals. This does not include procurement of services, goods, or other equipment in the Fire Department or EMS.

23. Financial advisory services for the purposes of monitoring the county's financial condition and supervising the issuance of debt.

Sec. 2-533. - County procurement regulations.

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

Sec. 2-534. - Coordination, training, and education.

(A) *Collection of data concerning public procurement.* The Purchasing Services Manager shall cooperate with county 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 Purchasing Services Manager may require concerning authority to prescribe forms to be used by the using departments in requisitioning, ordering, and reporting of supplies, services, and construction.

(B) *Procurement advisory groups.* The Purchasing Services Manager 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 Purchasing Services Manager, utilizing department heads and vendors.

(C) *Procurement training.* The Purchasing Services Manager shall establish and maintain a procurement training program for procurement personnel.

Secs. 2-535—2-541. - Reserved.

DIVISION 3. – SOURCE SELECTION AND CONTRACT FORMATION

Sec. 2-542. - Methods of source selection.

Unless otherwise required by law, all county contracts shall be awarded by competitive sealed bidding, pursuant to subsection 2-542(A) (competitive sealed bidding), except as provided in:

1. Subsection 2-532(C) (Exemptions)
2. Subsection 2-542(B) (Competitive Sealed Proposals);
3. Subsection 2-542(C) (Small purchases);
4. Subsection 2-542(D) (Sole source procurement);
5. Subsection 2-565(E) (Architect-engineer and land surveying services);
6. Subsection 2-542(E) (Energy Efficiency Performance Contracting);
7. Subsection 2-542(F) (Competitive Online Bidding);
8. Subsection 2-542(G) (Emergency procurement)

Cancellation of solicitations. An invitation for bids, 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 county. The reason therefore shall be made part of the contract file.

(A) *Competitive sealed bidding.*

1. *Conditions for use.* Contracts greater than \$75,000 shall be awarded by competitive sealed bidding except as otherwise provided in subsection 2-542 (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 days prior to the date set forth therein for the opening of bids. The notice must include publications in the County's central electronic advertising and 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 for public inspection after award.
5. *Procedure when only one bid or proposal received in response to invitation for bids.* If only one responsive bid is received in response to an invitation for bids (including Multistep bidding), an award may be made to the single bidder if the Purchasing Services Manager finds that the price submitted is fair and reasonable, and that either other prospective bidders had reasonable opportunity to respond, or there is not adequate time for re-solicitation. Otherwise the bid may be rejected and either:
 - a. New bids or offers may be solicited;
 - b. The proposed procurement may be canceled;
 - c. Or, if the purchasing services manager determines in writing that the need for the supply or service continues, but that the price of the one bid is not fair and reasonable and there is no time for re-solicitation or re-solicitation would likely be futile, the procurement may be completed as a sole source purchase or an emergency purchase if all the requirements are met for sole source or emergency purchase.
6. *Bid acceptance and bid evaluation.* Bids shall be unconditionally accepted without alteration or correction, except as authorized in this article. Bids 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 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.
7. *Correction or withdrawal of bids; cancellation of awards.* Corrections or withdrawals 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 to bids prejudicial to the interest of the County or fair competition shall be permitted. Except as otherwise provided by regulation, all decisions to permit the correction or withdrawal of bids, or to cancel awards of contracts based on bid mistakes, shall be supported by a written determination made by the Purchasing Services Manager.

8. *Discussion with Bidders.* As provided in the invitation for bids, discussions may be conducted with apparent responsive bidders for the purpose of clarification to assure full understanding of the requirements of the invitation for bids. All bids, in the procuring agency's sole judgment, needing clarification must be accorded that opportunity. Clarification of a bidder's bid must be documented in writing by the Purchasing Services Manager or designee and must be included with the bid. Documentation concerning the clarification must be subject to disclosure upon request as required by Section 2-523.
9. *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 than five percent, the Purchasing Services Manager is authorized in situations where time or economic considerations preclude re-solicitation 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.
10. *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 qualified under the criteria set forth in the first solicitation.
11. *Tie Bids.* In the event of a tie bid, the Purchasing Services Manager is authorized to make awards on any reasonable basis subject to the governing rules and regulations to prevent identical bidding, and in instances where that does not provide a solution, to reject all bids.
 - a. If there is a Dorchester County firm tied with an out-of-county firm, the award must be made automatically to the Dorchester County firm.
 - b. Tie bids involving South Carolina produced or manufactured products, when known, and items produced or manufactured out of the State must be resolved in favor of the South Carolina commodity.
 - c. Tie bids involving a business certified by the South Carolina Office of Small and Minority Business Assistance as a Minority Business Enterprise must be resolved in favor of the Minority Business Enterprise.
 - d. In all other situations in which bids are tied, the award must be made to the tied bidder offering the quickest delivery time, or if the tied bidders have offered the same delivery time, the tie must be resolved by the flip of a coin witnessed by the Purchasing Services Manager. All responding vendors must be invited to attend.

- e. *Request for Qualifications.* Before soliciting bids, the Purchasing Services Division may issue a request for qualifications from prospective bidders.
- f. The request must contain, at a minimum, a description of the scope of work to be solicited by the invitation for bids, the deadline for submission of information, and how prospective bidders may apply for consideration. The request must require information concerning the prospective bidders' product specifications, qualifications, experience, and ability to perform the requirements of the contract. Adequate public notice of the request for qualifications must be given in the manner provided in Section 2-542(A)(3).
- g. After receipt of the responses to the request for qualifications from prospective bidders, the rank of the prospective bidders must be determined in writing from most qualified to least qualified on the basis of the information provided. Bids then must be solicited from at least the top two prospective bidders by means of an invitation for bids. The determination regarding how many bids to solicit is not subject to review.

(B) *Competitive Sealed Proposals.*

1. *Conditions for use.* When the Purchasing Services Manager determines in writing that the use of competitive sealed bidding is either not practical or not advantageous to the county, 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 subsection 2-542(A)(3).
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 as provided in Sec.2-523 after contract award.
5. *Discussion with responsible and responsive offerors and revisions to proposals prior to selection of preferred offeror/proposal.* As provided in the request for proposals, discussions may be conducted with responsible and responsive 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 except as required by law.
6. *Procedure when only one proposal is received in response to request for proposals.* If only one proposal is received in response to a request for proposals, the Purchasing Services Manager may, as such officer deems appropriate, either make an award or, if time permits, resolicit for the purpose of obtaining competitive sealed proposals.
7. *Evaluation factors.* The request for proposals shall state the evaluation factors in relative order of importance. Unless directed otherwise in writing by the County Administrator, cost must be included as an evaluation factor. Other factors may include, but are not limited to, any of the following as determined by the Purchasing Services Manager and requesting department:

- a. operational costs the County would incur if the bid is accepted;
- b. quality of the product or service or its technical competency;
- c. reliability of delivery and implementation schedules;
- d. maximum facilitation of data exchange and systems integration;
- e. warranties, guarantees, and return policy;
- f. vendor financial stability;
- g. consistency of the proposed solution with the state's planning documents and announced strategic program direction;
- h. quality and effectiveness of business solution and approach;
- i. industry and program experience;
- j. prior record of vendor performance;
- k. vendor expertise with engagement of similar scope and complexity;
- l. extent and quality of the proposed participation and acceptance by all user groups;
- m. proven development methodologies and tools;
- n. and innovative use of current technologies and quality results.

8. *Award.* Award shall be made to the responsible and responsive offeror whose proposal is determined in writing to be most advantageous to the county. Proposals shall be evaluated by a selection committee, consisting of the Purchasing Services Manager, the Deputy County Administrator/CFO or designee, and at least one other person designated by the Purchasing Services Manager. Proposals shall be scored or ranked, whichever is most effective for the solicitation, 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.

(C) *Small purchases.* Any procurement not exceeding \$5,000 may be made in accordance with small purchase procedure promulgated by the Purchasing Services Manager, provided, however, that procurement requirements shall not be artificially divided so as to constitute a small purchase under this subsection.

- 1. For those procurements greater than \$5,000 but less than \$25,000, three quotes must be obtained. In the event that a department is unable to obtain three quotes, the Purchasing Services Manager may allow an exception to this requirement if he feels it is warranted. However, an informal request for quotes must also be published for a minimum of five business days.
- 2. For those procurements greater than \$25,000 but less than \$75,000, three quotes must be obtained and an informal request for quote must be advertised on the County's electronic bidding site for a period of not less than five business days.

(D) *Sole source procurement.*

- 1. *Conditions for use.* A contract may be awarded for a supply, service, or construction item without competition when the Purchasing Services Manager determines in writing that there is only one source for the required supply, service, or construction item. The Deputy County Administrator/CFO or his designee shall approve the request for a sole

source purchase. Any request by an agency or department head that procurement be restricted to one potential source shall be accompanied by a justification form provided by the Purchasing Services Manager and signed by the department head stating why no other source will be suitable or acceptable to meet the needs. A contract of less than or equal to \$75,000.00 may be awarded for a supply, service or construction item without competition when the *Deputy County Administrator/CFO*, or designee, and the Purchasing Services Manager, or designee determine in writing that there is either only one source for the required supply, service or construction item or that the proposed award to a sole source is permitted, non-competitive procurement as set forth herein. After verification of a sole source vendor, or the justification of a sole source purchase is warranted, the Purchasing Services Manager, or designee, has the authority to negotiate the price, terms and conditions of the procurement. A sole source or non-competitive contract award greater than \$75,000.00, for supply, service or construction item is subject to approval by County Administrator.

2. *Term.* Sole source authorization forms expire two (2) years from initial approval. At that time, an exploration will need to be conducted to determine whether the vendor is still the sole source provider of the products or services.

(E) *Energy Efficiency Performance Contracting.* The Purchasing Services Manager is authorized to enter guaranteed energy, water, wastewater savings contracts as referenced under Section 48-52-660 under the South Carolina Code of Laws.

(F) *Competitive Online Bidding.* Competitive online bidding includes, but is not limited to reverse auctions. When the Purchasing Services Manager determines that online bidding is more advantageous than other procurement methods, he is authorized to solicit bids through competitive online bidding.

(G) *Emergency procurement.* Notwithstanding any other provision of this article, the Purchasing Services Manager 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.

Sec. 2-543. - Qualifications and duties.

(A) *Responsibility of bidders and offerors.*

1. *Determination of non-responsibility.* A written determination of non-responsibility of a bidder shall be made in accordance with regulations promulgated by the Purchasing Services Manager. 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 non-responsibility with respect to such bidder or offeror.
2. *Bid Security and Bonds.* Except as prescribed in Section 2-563 for construction and engineering contracts, all contracts for equipment, supplies, and services may require bid security and performance bonds at the discretion of the Purchasing Services Manager, as recommended by the head of the requesting user department. Bid security, when required, shall be in an amount equal to at least five percent of the amount of the

bid. Performance bonds, when required, will normally be equal to one hundred percent of the contract. A determination regarding bids received for equipment, supplies, and services without required bid security will be made by the Purchasing Services Manager in the same manner as provided in Section 2-563. A cashier's/bank check made payable to the county may be submitted in lieu of a bond.

(B) *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.

(C) *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 (\$40,000) and is to be awarded under subsection 2-542(B) (competitive sealed proposals), subsection 2-542(D) (sole source procurement), or section 2-565 (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 Purchasing Services Manager that the requirements of subsection 2-543(C)(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 or the contract.
 - a. *Exceptions.* The submission of cost or pricing data relating to the pricing of a change order or contract modification is not required where:
 - i. Unrelated and separately priced adjustments for which cost or pricing data would not be required are consolidated for administrative convenience; or
 - ii. It is determined in writing by the Purchasing Services Manager that the requirements of subsection 2-543(C)(1) may be waived, and the determination states the reasons for such waiver.
4. *Certification required.* A contractor, actual or prospective, required to submit cost or pricing data in accordance with this subsection 2-543(C), shall certify that, 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.
5. *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 county, including profit or fee, shall be adjusted to exclude any significant sums by which the county finds that such price was increased because the contractor- furnished cost or pricing data was inaccurate, incomplete, or not current as the date agreed upon between the county and the contractor.

Sec. 2-544. - Types of contracts.

(A) *Types of contracts.* Subject to the limitations of this section, any type of contract which will promote the best interest of the county may be used; provided that the use of a cost-plus-a-percentage-of-cost contract is prohibited. A cost-reimbursement contract may be used only when a determination by the Purchasing Services Manager is made in writing that such contract is likely to be less costly to the county than any other type or that it is impracticable to obtain the supplies, services, or construction required except under such a contract. Whatever the contract document selected, the county's best interest shall be served by contracts originated by using competitive prices obtained by itemized unit measurement with cost; itemized project description breakdown with costs itemized; and lump sum project cost.

(B) *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 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 county by encouraging effective competition or otherwise promoting economies in county 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.

Sec. 2-545. - Inspection of plant and audit of records.

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

(B) *Right to audit records.*

1. *Audit of cost or pricing data.* The county may, at reasonable times and places, audit the books and records of any person who has submitted cost or pricing data pursuant to subsection 2-543(C) (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 years from the date of final payment under the contract, unless a shorter period is otherwise authorized in writing.

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

Sec. 2-546. - Reports and records.

- (A) *Reporting of anticompetitive practices.* When for any reason collusion or other anticompetitive practices are suspected among any bidder or offerors, a notice of the relevant facts shall be transmitted to the county attorney.
- (B) *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 Purchasing Services Manager.
 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 county. If a contract is being funded in whole or in part by assistance from a federal agency, then all procurement records pertaining to the contract shall be maintained for three years from the closeout date of the assistance agreement or the final disposition of any controversy arising out of the assistance agreement.

Sec. 2-547— Unauthorized Procurements.

Purchases made contrary to the provisions of this Ordinance shall be considered as unauthorized procurements and shall become the responsibility of the person making the procurement unless waived by the County Administrator.

Secs. 2-548 - 2-551. - Reserved.

DIVISION 4. – SPECIFICATIONS

Sec. 2-552. – Specifications.

- (A) *Duties of the Purchasing Services Manager.* It shall be the primary responsibility of the requesting department head to furnish adequate specifications for the product or service being procured. Specifications should be adequately detailed, precise, clear but simply worded, and not unduly restrictive to permit competitive bidding and promote cost-effective procurement. The Purchasing Services Manager may assist in the preparation and issuance of specifications for supplies, services, and construction required by the county. The Purchasing Services Manager may return specifications to the requesting department for further information or if the specifications appear too restrictive for competitive bidding.

- (B) *Exempted items.* Specifications for supplies, services, or construction items exempted in subsection 2-532(C) (Exemptions), may be prepared by the using department in accordance with the provisions of this division.
- (C) *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 county's needs and shall not be unduly restrictive.
- (D) The county reserves the right to specify brand names if it is in its best interest based on past experience, standardization, current inventory, or other qualifications specified by the requesting department and approved by the Purchasing Services Manager.

Secs. 2-553 – 2-560. – Reserved.

DIVISION 5. – CONTRACT MANAGEMENT

Sec. 2-561. – Execution Authority.

- (A) *Contracts negotiated and entered into on behalf of the County.* Any contract for goods, services or construction shall be executed by the County Administrator or his designee. Any contract executed by an unauthorized authority shall constitute an Unauthorized Procurements under Section 2-547.
- (B) *Contract modifications.* Any contract modifications, change orders or adjustments must be executed by the requisite authority as defined by Section 2-564(D). Those which are executed outside of the scope of this section constitute an Unauthorized Procurements under Section 2-547.
- (C) *Payment applications.* An application for payment submitted by a contractor holding a valid contract for goods, services or construction executed by the County may be approved by the Department Head holding responsibility for management and administration of the contract with provided recommendation from the project manager or engineer.
- (D) *Task Orders.* A task order less than \$5,000 should be executed by the Department Head. Task Orders exceeding \$5,000 must be executed by the County Administrator as recommended by the Department Head.
- (E) *Sales Agreements.* A sales order may be executed by the Department Head for quantities of specific goods and services as allowed under Section 2-592 where the actual terms and conditions of the contract are agreed upon by a third party. Funds must be available in the budget for the specified scope of goods or services as approved by County Council.

Sec. 2-562 – Selection of Method of Construction Contract Management.

- (A) *Responsibility for Selection of Method of Construction Contract Management.* The Purchasing Services Manager, with approval of the County Administrator or his designee, shall have discretion to select the appropriate method of construction contracting for a particular project. In determining which method to use, the Purchasing Services Manager shall consider the County's requirements, the scope of the project, its resources, and the potential Contractor's capabilities. The Department Head responsible for management of the project, along with the Director of Public Works, Director of Water & Sewer, or lead departmental engineer, shall advise the Purchasing Services Manager on all matters related

to the selection of contracting method.

(B) *Construction Management Services, Design-Build Services, Turnkey Management Services.*

County Council finds that certain non-traditional means of public construction project management can be in the best interests of Dorchester County in certain circumstances. Therefore, the following methods may be employed under the following circumstances:

1. The Purchasing Services Manager, with approval of the County Administrator, or his designee, shall have the discretion to designate construction management services, design-build services, or turnkey management services as alternatives for construction contracting. In exercising such discretion, the County Administrator, or his designee, shall consider the method which is the most advantageous to the County and will result in the most timely, economical, and successful completion of the construction project. The determination for the method of source selection utilized shall be stated in writing and included as part of the contract file.
2. If the Purchasing Services Manager, with approval of the County Administrator or his designee, determines that the use of construction management services, design-build services, or turnkey management services is the most advantageous means of securing the construction contracting set forth in this Section, and the amount of services to be secured thereby exceeds \$5 million, the selection of this method set forth in this Section shall be submitted to County Council at a special meeting, or at its next scheduled meeting and if County Council does not reject the selection of this method, the construction contracting shall be secured in the manner set forth in Subsection (C) below.
3. If the Request for Proposals method of source selection is determined to be the most advantageous to the County, the County shall use the competitive sealed proposal method set forth above for the purposes of procuring construction management services, design-build services, or turnkey management services.

(C) *Contract Administration System Required.* The designated project manager shall maintain a contracts administration system designed to ensure that a Contractor is performing in accordance with the solicitation under which the contract was awarded, and the terms and conditions of the contract. The Purchasing Services Division shall maintain hard copies of all documents pertaining to the contract.

Sec. 2-563. – Bonds.

(A) *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 Purchasing Services Manager to exceed \$75,000. 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 the form satisfactory to the county. Nothing herein prevents the requirement of such bonds on construction contracts under \$75,000 when the circumstances warrant.
2. *Amount of bid security.* Bid security shall be in an amount equal to at least five percent 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. However, if

the failure to comply is determined by the Purchasing Services Manager to be insubstantial in that only one (1) bid is received and time is of the essence, or if none of the Bidders provide bid security and the requirement for the bid security is determined by the Purchasing Services Manager to have become insubstantial, then the bid or bids may be accepted.

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 subsection 2-542(A)(7) (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.

(B) *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 county, executed by a surety company authorized to do business in this State or otherwise secured in a manner satisfactory to the county, in amount equal to 100 percent of the price specified in the contract; and
 - b. A payment bond satisfactory to the county, executed by a surety company authorized to do business in this state or otherwise secured in a manner satisfactory to the county, for the protection of all 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 percent of the price specified in the contract.
2. *Reduction of bond amounts.* The Purchasing Services Manager is authorized to reduce the amount of performance and payment bonds to 50 percent of the contract price for each bond, when it has been determined in writing such reduction is necessary or warranted.
3. *Authority to require additional bonds.* Nothing in this section shall be construed to limit the authority of the county to require a performance bond or other security in addition to those bonds, or in circumstances other than specified in subsection 2-563(B)(1).

(C) *Bond forms and copies.* The Purchasing Services Manager shall promulgate by regulations the form of bonds required for this section.

(D) *Right to Institute Suits on Payment Bonds.* 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, before the expiration of a period of ninety (90) days of 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 such 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 expressed or implied with the Contractor furnishing the 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 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 with postage prepaid, in an envelope addressed to the Contractor at any place the Contractor maintains an office or conducts its business.

- (E) *Time and Place of Payment Bond Suits.* Every suit instituted upon payment bond shall be brought in a court of competent jurisdiction in the County, but no such suit shall be commenced after the expiration of one (1) 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.

Sec. 2-564. – Construction contract clauses and fiscal responsibility.

(A) *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 Purchasing Services Manager may issue clauses appropriate for supply, service, or construction contracts, addressing at least the following subjects:
 - a. The unilateral right of the county to order in writing changes in the work within the scope of the contract;
 - b. The unilateral right of the county to order in writing temporary stoppage of the work or delaying performance that does not alter the scope of the contract;
 - c. Variations occurring between estimated quantities of work in a contract and actual quantities;
 - d. Defective pricing;
 - e. Liquidated damages;
 - f. Specified excuses for delay or non-performances;
 - g. Termination of the contract for default;
 - h. Termination of the contract in whole or in part for the convenience of the county;
 - i. Suspension of work on a construction project ordered by the county; and
 - j. Site conditions differing from those indicated in the contract, or ordinarily encountered, except that differing site 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.

k. Incentives for contract completion under budget and/or ahead of schedule.

(B) *Price adjustments.*

1. Adjustments in price resulting from the use of contract clauses required in subsection 2-564(A)(1) shall be computed in one or more of the following ways:

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

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

c. By the cost attributable to the events or situations under such clauses with adjustment of profit or fee, all as specified in the contract or subsequently agreed upon;

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

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

i. A contractor shall be required to submit cost or pricing data if any adjustment in contract price is subject to the provisions of subsection 2-543(C) (cost or price data).

(C) *Standard clauses and their modification.* The Purchasing Services Manager may establish standard contract clauses for use in county contracts. If the Purchasing Services Manager establishes any standard clauses addressing the subjects set forth in subsection 2-564(A), such clauses may be varied provided that any variations are supported by a written determination that states the circumstances justifying such variations and provided that notice of any such material variation be stated in the invitation for bids or request for proposals.

(D) *Fiscal responsibility.* Every contract modification, change order, or contract price adjustment under a construction contract with the County shall be subject to prior approval by the Deputy County Administrator/CFO. The Deputy County Administrator/CFO may approve such modifications, change orders, or adjustments that increase the contract value by \$25,000 or less. In the instance that the price adjustment exceeds \$25,000 subsequent approval must also be received by the County Administrator. The County Administrator may approve such modifications, change orders, or adjustments that do not exceed the budgeted amount approved by County Council. Any increase over the budgeted amount must be approved by the County Council.

Sec. 2-565. - Architect-engineer and land surveying services.

(A) *Public announcement required.* It is the policy of the county to publicly announce all requirements for architect-engineer and land surveying services, except those falling under subsection (D) below, and to negotiate such contracts on the basis of demonstrated competence and qualification at fair and reasonable prices. In the procurement for architect-engineer and land surveying services, the Purchasing Services Manager shall request firms

to submit a statement of qualifications and performance data.

- (B) *Selection process.* A selection committee shall be comprised of not less than three or more than five members. One member shall be the county department head or his designee who is directly affected by the procurement, one member shall be the Deputy County Administrator/CFO of the county or his designee, and one member shall be the Director of Public Works, Director of Water & Sewer, or his designee. Should these three members believe that additional members should be on the selection committee, the Purchasing Services Manager, in consultation with the County Administrator, shall appoint up to two additional members who shall be members of the county staff. The selection committee shall conduct discussions with no less than three firms, except when fewer respond. They shall select from among them 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 Purchasing Services Manager. The Purchasing Services Manager shall facilitate the selection process. Following the ranking of the firms by the selection committee, the Purchasing Services Manager shall report the rankings to the County Administrator prior to the conducting of negotiations as set forth below.
- (C) *Negotiation.* The selection committee in consultation with the Purchasing Services Manager and county attorney, shall negotiate 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 this negotiation, the committee shall take into account the established value, the scope, the complexity, and the professional nature of the services to be rendered. If the committee is unable to negotiate a satisfactory contract to recommend to the County Administrator for execution by him, with the firm considered to be most qualified, negotiations with the firm shall be formally terminated. The committee shall then undertake negotiations with the second most qualified firm. Failing negotiation with the second most qualified firm, the committee shall then undertake negotiations with the third most qualified firm. If the committee is unable to negotiate a satisfactory contract to recommend to the County Administrator, with any of the selected firms, the committee may select additional firms in order of their competence and qualifications, and the committee shall continue negotiations in accordance with this section until it has negotiated a satisfactory contract to recommend to the County Administrator for execution by him.
- (D) *Exception for small architectural, engineering, and land surveying services contracts.*
1. The county may secure architectural, engineering, or land surveying services, which are estimated not to exceed \$25,000 by direct negotiation and selection, taking in account:
 - a. The nature of the project;
 - b. The proximity of the architectural, engineering, or land surveying services to the project;
 - c. The capability of the architect, engineer, or land surveyor to produce the required service within a reasonable time;
 - d. Past performance; and
 - e. Ability to meet project budget requirements.
 2. *Maximum fees payable to one firm.* Fees paid during the 24-month period immediately preceding negotiation of the contract for professional services

performed by architectural, engineering, or land surveying firm pursuant to subsection 2-565(D)(1) may not exceed \$75,000. Firms seeking to render professional services pursuant to this section shall furnish the county with a list of any services and fees provided to the county during the fiscal year immediately preceding the current fiscal year in which the negotiations are occurring and during the fiscal year in which the negotiations are occurring.

3. *Splitting of larger projects prohibited.* A governmental body may not break a project into small projects for the purpose of circumventing the provisions of S.C. Code 1976, § 11-35-3220 and S.C. Code 1976, § 11-35-3230.

Secs. 2-566—2-571. – Reserved.

DIVISION 6. - SUPPLY MANAGEMENT

Sec. 2-572. - Supply management regulations required.

The Purchasing Services Manager shall promulgate regulations governing:

1. The management of supplies during their entire life cycle;
2. 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
3. Transfer of excess supplies.

Sec. 2-573. – Allocation of proceeds from sale or disposal of surplus supplies.

The Purchasing Services Manager shall deposit proceeds from the sale, lease, or disposal of surplus supplies in the appropriate county fund.

Secs. 2-574 - 2-580. – Reserved.

DIVISION 7. – LEGAL AND CONTRACTUAL REMEDIES

Sec. 2-581. - Pre-litigation resolution of controversies.

(A) 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 Purchasing Services Manager. The protest shall be submitted in writing within 14 days after such aggrieved person knows or should have known of the facts giving rise thereto.
2. *Authority to resolve protests.* The Purchasing Services Manager 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 Purchasing Services

Manager shall issue a decision in writing within ten 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 division.
4. *Notice of decision.* A copy of the decision under subsection 2-583(A)(3) shall be mailed or otherwise furnished immediately to the protestant and any other party intervening.
 5. *Finality of decision.* A decision under subsection 2-583(A)(3) of this section shall be final and conclusive, unless fraudulent, or:

(B) *Authority to debar or suspend.* Any person adversely affected by the decision appeals administratively to the procurement appeals board in accordance with this division.

1. *Authority.* After reasonable notice to the person involved and reasonable opportunity for that person to be heard, the Purchasing Services Manager, after consultation with the county 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 (3) years. The same officer, after consultation with the county 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 (3) 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 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 which is regarded by the Purchasing Services Manager 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 Purchasing Services Manager determines to be so serious and compelling as to affect responsibility as a county 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 Purchasing Services Manager shall issue a written decision within 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 division.
4. *Notice of decision.* A copy of the decision under subsection 2-581(B)(3) 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 2-581(B)(3) 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 division.

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

1. *Applicability.* This subsection (C) 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. Using departments shall have responsibility for daily contract administration in consultation with the Purchasing Services Division and the County Attorney's Office. This Section shall not be deemed to supersede the using department's daily contract administration but shall apply in cases of significant controversies where the using department is not successful in resolution.
2. *Authority.* The Purchasing Services Manager is authorized, prior to commencement of an action in a court concerning the controversy, to settle and resolve a controversy described in subsection 2-581(C)(1).
3. *Decision.* If such a controversy is not resolved by mutual agreement, the Purchasing Services Manager shall promptly issue a decision in writing within 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 division.
4. *Notice of decision.* A copy of the decision under subsection 2-581(C)(3) shall be mailed or otherwise furnished immediately to the contractor.
5. *Finality of decision.* The decision under subsection 2-581(C)(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 division.
6. *Failure to render timely decision.* If the Purchasing Services Manager does not issue the written decision required under subsection 2-581(c)(3) within 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.

Sec. 2-582. – Solicitations or awards in violation of law.

- (A) *Applicability of this section.* The provisions of this section apply where it is determined administratively, or upon administrative review, that a solicitation or award of a contract is in violation of law.
- (B) *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:
 - 1. Cancelled; or
 - 2. Revised to comply with the law.
- (C) *Remedies after an award.* If after an award it is determined that a solicitation or award of a contract is violation of law, then:
 - 1. If the person awarded the contract has not acted fraudulently or in bad faith:
 - a. The contract may be ratified and affirmed, provided it is determined that doing so is in the best interest of the county; or
 - b. 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.
 - 2. If the person awarded the contract has acted fraudulently or in bad faith:
 - a. The contract may be declared null and void; or
 - b. The contract may be ratified and affirmed if such action is in the best interests of the county, without prejudice to the (county's) right to such damages as may be appropriate.

Sec. 2-583. – Procurement appeals board.

- (A) *Creation of the procurements appeals board.* There is hereby established a procurement appeals board, hereinafter referred to as the "board", to be composed of seven members appointed by County Council as provided in the Code of Ordinances. The chairperson and members of the board shall be appointed by the county council.
- (B) *Term of office.* The term of office of the members of the procurement appeals board shall be for a term of four years. This term of office shall commence upon appointment by a member. Each member of county council shall be responsible for making one appointment to the procurement appeals board.
- (C) *Authority of the chairperson.* The chairperson may adopt operational procedures and issue such orders, not inconsistent with this article, 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.
- (D) *Quorum.* A majority of those members appointed to the board shall constitute a quorum.
- (E) *Administrative support.* The Chief Financial Officer shall provide such services as the chairperson requests, on such basis as may be required.
- (F) *Qualification for board membership.* The chairperson shall be a member in good standing of the State Bar of South Carolina, but shall not be the county attorney for at least five years, and experienced in contract or commercial matters. The remaining members of the board appointed by county council 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:

1. Goods and services, two members.
2. Construction, two members.
3. Architect/engineer, one member
4. Procurement, one member.

(G) *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:

1. 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
2. Any appeals by an aggrieved party from a determination by the Purchasing Services Manager which is authorized in subsections 2-581(A), (B) and (C) of this division.

(H) *Rules of procedures.* The procurement appeals 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 subsection 2-581(A)(3), the aggrieved person shall file an appeal with the board within seven days of receipt of a decision. For an appeal under subsections 2-581(B)(3) and 2-581(C), the aggrieved person shall file its appeal with the board within 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 days to conduct an administrative review of the appeal. The board within ten 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 or 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 county, 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.

(I) *Finality of decision of procurement appeals board.*

1. No determination by the procurement appeals board concerning an issue of law shall be final or conclusive.
2. 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.

Secs. 2-584 - 2-591. – Reserved.

DIVISION 8. – INTERGOVERNMENTAL RELATIONS

Sec. 2-592. – Cooperative purchasing.

- (A) *Cooperative purchasing authorized.* The Purchasing Services Manager 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.
- (B) *Sale, acquisition, or use of supplies.* The Purchasing Services Manager may sell to, acquire from, or use any supplies belonging to another public procurement unit independent of the requirements of division 3 and division 6 of this article.
- (C) *Cooperative use of supplies or services.* The Purchasing Services Manager may enter into an agreement, independent of the requirements of division 3 and division 6 of this article, with any public procurement unit for the cooperative use of supplies or services under the terms agreed upon between the parties.
- (D) *Joint use of facilities.* The Purchasing Services Manager 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.
- (E) *Use of state contracts.* The Purchasing Services Manager may, independent of the requirements of division 3 of this article, 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.
- (F) *Use of federal contracts.* The Purchasing Services Manager may, independent of the requirements of Article 3 of this Ordinance, procure supplies, services, or construction items through the contracts established by the federal government and administered by the General Services Administrations (GSA).

Secs. 2-593 - 2-601. – Reserved.

DIVISION 9. – ASSISTANCE TO SMALL AND DISADVANTAGED BUSINESS; FEDERAL ASSISTANCE OR CONTRACT PROCUREMENT REQUIREMENTS

Sec. 2-602. - Assistance to small and disadvantaged businesses; solicitation of small and disadvantaged businesses.

The Purchasing Services Manager shall maintain bidders list of small and disadvantaged business and shall solicit those firms on such list for each procurement for which they are qualified.

Secs. 2-603 - 2-610. – Reserved.

DIVISION 10. - DORCHESTER COUNTY VENDOR PREFERENCE

Sec. 2-611. – Eligibility for Vendor Preference.

A vendor shall be deemed a Dorchester County vendor for the purposes of this division if such vendor be an individual, partnership, association or corporation that is authorized to transact business within the state, has a physical business address located within the County of Dorchester, has had a valid Dorchester County business license or a valid business license issued by one of the municipalities located within Dorchester County for a period of 12 months or more prior to the bid opening date, and provides proof of payment of all applicable Dorchester County taxes and fees.

Sec. 2-612. – Dorchester County vendor preference.

The lowest responsive and responsible Dorchester County vendor, if any, who is within five percent (5%) of the lowest non-Dorchester County vendor which would be awarded the bid may be given the opportunity to match the bid submitted by the non-Dorchester County vendor and thus be awarded the bid for the provision of goods, supplies or construction services. This preference shall be applicable only to solicitations by Dorchester County for goods, supplies, and construction services which are \$75,000 or more in value. Should the lowest responsive and responsible Dorchester County vendor not exercise its right to match the bid as granted herein, the next lowest Dorchester County vendor shall have that right and so on. The right to exercise the right to match the bid shall be exercised within 24 hours of notification of the right to match the non-Dorchester County vendor's bid.

Sec. 2-613. – Vendor preference affidavit.

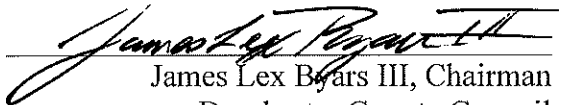
In order for a Dorchester County vendor to assert its right to the preference created in this article, the Dorchester County vendor must fully complete the affidavit claiming such preference, which is located online as well as published bid documents, at the time that its bid is submitted. Failure to provide such affidavit at the time the vendor submits its bid shall constitute a waiver of any claim for preference.

Sec. 2-614. – Conditions and authorizing signatures.

Should a solicitation, procurement, or request for bids be made by Dorchester County for goods, supplies, or construction services, which by state or federal guidelines prohibit or restrict the type of preference created in this division, this division granting such preference shall not apply to such solicitation, procurement, or request for bids. Likewise, should any solicitation, procurement, or request for bids by Dorchester County for goods, supplies, or construction services be funded in whole or in part with state or federal monies, the receipt of which by the county prohibits or restricts the use of the type of preference created in this division, this division granting such preference shall not apply to such solicitation, procurement, or request for bids. For example, 45 C.F.R. Section 92.36 (Code of Federal Regulations) generally requires that grantees and sub-grantees of federal funds conduct procurements in a manner that prohibits the use of statutorily or administratively imposed geographical preferences in the evaluation of bids

or proposals. Thus, in such circumstances, this division granting the preference will not apply.

Except as specifically amended herein, the Dorchester County Code of Ordinances shall remain in full force and effect.


James Lex Byars III, Chairman
Dorchester County Council


Tracey L. Langley
Clerk to Council

1ST READING: September 4, 2018
2ND READING: September 17, 2018
3RD READING: October 1, 2018