

**Appendix H: County Procurement Ordinance**



ARTICLE VII. - PURCHASING<sup>[10]</sup>

Footnotes:

--- (10) ---

**Cross reference**— Any ordinance or resolution approving, authorizing or otherwise relating to any contract, agreement, lease, deed or other instrument saved from repeal, § 1-10(9).

**State Law reference**— Counties required to develop and adopt procurement procedures, S.C. Code 1976, § 11-35-50.

Sec. 2-331. - Purpose of article.

The purpose of this article is to secure for the county taxpayers the advantages and economies which will result from centralized control over the expenditures of county funds for supplies, materials, equipment and contractual services; from the application of modern, business-like methods to such expenditures; and from better utilization of the articles procured at public expense.

(Ord. No. 93-6, § 2-78, 1-24-94)

Sec. 2-332. - Definitions.

The following words, terms and 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:

*Agency* and *using agency* mean any of the departments, offices or other organizational units of the county government, and any special district whose affairs and funds are under the supervision and control of the county council and for which the county is ex-officio the governing body.

*Bidders' list* means a current file of sources of supply of articles for each category of commodities repetitively purchased for county use.

*Contractual services* means any and all telephone, gas, water, electric light and power services; towel, window washing and cleaning service; the rental of equipment and machinery; and all other types of agreements under which the contractor provides services which are required by the county government but not furnished by its own employees; provided, however, that contractual services shall not include legal advertising, and purchases of space for legal advertising shall not be subject to the provisions of this article.

*Irresponsible bidder* means a bidder or prospective bidder who fails to furnish, upon written request, proof of his responsibility; who has, as a vendor or contractor with the county, repeatedly made slow or unsatisfactory deliveries; or who has violated, or attempted to violate, the provisions of this article.

*Personal services* means the service of attorneys, physicians, architects, engineers, consultants or other individuals or organizations possessing a high degree of technical skill.

*Responsible bid* means an offer submitted by a responsible bidder in ink or typewritten form, to furnish supplies, materials, equipment or contractual services in conformity with the specifications, delivery terms and conditions, and other requirements included in the invitation for bids.

*Responsible bidder* means a bidder who submits a responsible bid; who has furnished, when requested, information and data to prove that his financial resources, production or service facilities, service reputation and experience are adequate to make satisfactory delivery of the supplies, materials,

equipment or contractual service on which he bids; and who has not violated, or attempted to violate, any provisions of this article.

*Supplies, materials and equipment* means any and all articles or things which shall be furnished to or used by any agency, including any and all printing, binding, or publication of stationery, forms, laws, journals and reports, but excluding services or materials furnished in kind, in lieu of cash to indigents.

(Ord. No. 93-6, § 2-79, 1-24-94)

**Cross reference**— Definitions generally, § 1-2.

Sec. 2-333. - Powers and duties of county purchasing agent.

Pursuant to section 13, paragraph 15, subparagraph B of Act 1067 (1972), as amended, the county purchasing agent shall, subject to the provisions of this article and applicable provisions of state law:

- (1) Purchase all supplies, materials, equipment and contractual services required by the agencies in amounts or estimated amounts of \$15,000.00 or less; and submit to the county administrator for award, and thereafter execute contracts for all purchases of supplies, materials, equipment and contractual services in amounts or estimated amounts greater than \$15,000.00 and less than \$25,000.00; and submit to the county council for award and thereafter execute contracts for all purchases of supplies, materials, equipment and contractual services in amounts or estimated amounts in excess of \$25,000.00. In order to procure supplies, materials, equipment and services in such a manner as to promote competition while considering the administrative cost of such procurements, the following methods of source selections are described:
  - a. *Small purchases.* Repetitive type items can be procured on an informal basis addressing competition as follows:
    1. Purchases not exceeding \$1,500.00 no competition required if price is fair and reasonable;
    2. Purchases of \$1,501.00 to \$5,000.00 require three verbal or written bids; or
    3. Purchases of \$5,001.00 to \$15,000.00 require three written bids.
  - b. *Competitive sealed bidding.* Procurements above \$15,000.00 shall be based upon formal bid requirements for which bid specifications can be developed to ensure adequate competition. An award shall be made to the lowest responsive and responsible bidder.
  - c. *Competitive sealed proposals.* Procurements can be made by competitive sealed proposals that are highly technical, complex in nature and do not lend themselves to formal competitive sealed bidding. Competitive sealed proposals shall be used in accordance with section 2-350. An award shall be made to the offeror whose proposal is considered to be most advantageous to the county.
  - d. *Sole source procurements.* A procurement can be made from a sole source without competition based upon a written determination, approved by the county administrator, that there is only one source for the required supply, service or equipment.
- (2) Negotiate contracts for personal services and submit them for approval and award as provided in subsection (1)a of this section;
- (3) Use standard specifications wherever they are applicable to purchase orders and contracts; and ensure compliance with such specifications through adequate inspection of deliveries;
- (4) Transfer between agencies supplies, materials and equipment which are no longer needed by a holding agency but which can be used by the receiving agency;
- (5) Exchange, trade in or sell those supplies, materials and equipment which are surplus, obsolete or unused and which are found by the county administrator not to be required for public use;

- (6) Develop, with the approval of the county attorney as to legal sufficiency, standard forms and conditions of invitations to bid and purchase orders and contracts; develop, and prescribe the use by agencies of other forms required in carrying out the provisions of this article; and amend or eliminate any such forms;
- (7) Upon request of the county council, and subject to its approval of each transaction, perform all delegable functions in connection with acquisition and disposal of real property;
- (8) Purchase, or perform other supply functions prescribed in this article, when requested to do so by school districts, special districts or other governmental units of the county whose affairs and funds are exempt from the supervision and control of the county council;
- (9) Ensure procurement information is public record to the extent required by S.C. Code 1976, § 30-4-10 et seq. (the Freedom of Information Act), with the exception that commercial or financial information obtained in response to a request for proposals which is privileged and confidential need not be disclosed;
- (10) Where a procurement involves the expenditure of federal assistance or contract funds, the purchasing agent shall comply with such federal law and authorized regulations which are mandatorily applicable and which are not presently reflected in the article;
- (11) Ensure the provisions of S.C. Code 1976, § 8-13-100 et seq. (State Ethics Act) are complied with in all actions involving the procurement of supplies, services or construction for the county;
- (12) Report any collusion or other anticompetitive practices suspected among any bidders or offerors to the state attorney general;
- (13) Promulgate regulations concerning vendor or contractor complaints or grievances. The regulations shall provide for a complete and unbiased hearing of vendor complaints and grievances within a reasonable time period. Complaints and grievances that are not resolved satisfactorily by the purchasing agent may be reviewed by the county administrator or by persons designated by the county administrator; and
- (14) Promulgate regulations concerning debarment or suspension of vendors. The decision to debar or suspend shall not be made without allowing the vendor reasonable opportunity to present information concerning the debarment or suspension to the purchasing agent and/or the county administrator.

(Ord. No. 93-6, § 2-80, 1-24-94)

Sec. 2-334. - Procedural regulations.

- (a) The county purchasing agent is hereby authorized to prepare procedural regulations to amplify the provisions of this article; to submit such regulations and amendments thereto to the county administrator for approval; and to promulgate and enforce compliance with such regulations, including, but not limited to:
  - (1) The procedure for handling bids, including their custody and safeguarding; opening and tabulation; rejection and readvertising; and the procedure for determining the lowest responsible bidder;
  - (2) The procedure for securing from bidders and prospective bidders the data necessary to determine whether or not they are responsible;
  - (3) The procedure for inspection of deliveries of supplies, materials, equipment and contractual services;
  - (4) The procedure for reporting receipt of deliveries of supplies, materials, equipment and contractual services;

- (5) The procedure for submitting requisitions for the supplies, materials, equipment and contractual services required by the using agencies;
  - (6) The procedure for making emergency purchases; and
  - (7) Such matters as may be necessary to give effect to provisions of this article and any amendments thereto.
- (b) A copy of such regulations shall be available in the county purchasing agent's office and shall be open to public inspection during regular business hours.

(Ord. No. 93-6, § 2-81, 1-24-94)

Sec. 2-335. - Exemptions from centralized purchasing.

With the approval of the county administrator, the county purchasing agent may, and where legally required to do so, shall authorize, in writing, any agency to purchase or contract for certain specified classes of supplies, materials, equipment or contractual services, independently of the county purchasing agent's office; but such purchases or contracts shall be made in conformity with the applicable provisions of this article. The county purchasing agent may also rescind such authorization to purchase independently, by written notice to the agency or agencies concerned unless otherwise prohibited by law.

(Ord. No. 93-6, § 2-82, 1-24-94)

Sec. 2-336. - Emergency purchases.

- (a) An emergency procurement shall be authorized only when there exists an immediate threat to public health, welfare, critical economy and efficiency, or safety under emergency conditions; a breakdown in machinery or an essential service occurs; or when unforeseen circumstances arise, including delays by contractors, delays in transportation and unanticipated volume of work; and provided that such emergency procurements shall be made with as much competition as is practicable under the circumstances. A written determination of the basis for the emergency and for the selection of the particular contractor shall be included in the contract file.
- (b) If an emergency occurs during regular business hours, the head or designee of the using agency shall immediately notify the purchasing agent who shall either make the purchase or authorize the using agency to do so. If the purchasing agent is unavailable, the head of the using agency shall notify the county administrator before making the purchase. If an emergency occurs at times other than regular business hours, the using agency may purchase directly the commodity or commodities required. If the estimated cost of the emergency purchase exceeds \$1,500.00, the head of such agency shall, whenever possible, secure competitive telephone bids and order delivery to be made by the lowest responsible bidder. On every emergency purchase made, the agency head shall, not later than one week thereafter, submit to the purchasing agent a requisition, a tabulation of bids received, if any, a delivery receipt and a written explanation of the circumstances of the emergency. The record of such emergency transactions shall be open to public inspection during regular business hours.

(Ord. No. 93-6, § 2-83, 1-24-94)

Sec. 2-337. - Requisitions and estimates of future requirements.

- (a) All agencies shall submit to the county purchasing agent requisitions for the supplies, materials, equipment and contractual services as required for their operations and for the purposes and within the limits of funds appropriated therefor. The county purchasing agent, after reviewing any such



prices, may require from the head of the requesting agency a justification of the quantity or quality requisitioned.

- (b) All agencies shall also file with the county purchasing agent estimates of their requirements for supplies, materials, equipment and contractual services in such form, at such time, and for such future periods as the county purchasing agent shall prescribe.

(Ord. No. 93-6, § 2-84, 1-24-94)

Sec. 2-338. - Contract, purchases and sales.

- (a) All purchases of, and contracts for supplies, materials, equipment and contractual services, and all sales of personal property which have been found by the county administrator not to be required for public use, shall be based, wherever possible, on competitive bids. If the amount of the expenditure for a contractual service or for a commodity, or for a class of commodities normally obtainable from the same sources of supply, or for a sale of personal property which has been found by the county administrator not to be required for public use, is estimated to exceed \$15,000.00, contract bids shall be solicited by public notice and written contracts shall be awarded. The method and extent of public notice shall be prescribed by the county council. If newspaper advertisements are employed as public notice, such notice shall include a general description of the commodities or services to be purchased or the commodities to be sold; shall state where contract bids and specifications may be secured; and shall specify the time and place for the opening of bids.
- (b) The county purchasing agent shall, in addition, solicit bids from prospective bidders for the class of commodities being purchased or sold as listed on the bidders' list by sending them copies of the newspaper notice or such other notice as will acquaint them with the proposed purchase or sale. All pending purchases or sales shall also, in all cases, be advertised by posting a copy of the contract bid form on a public bulletin board in or adjacent to the office of the county purchasing agent.
- (c) All bids shall be submitted sealed to the county purchasing agent on the official contract bid form, furnished by the county, which will have indicated thereon the class of commodities to be purchased and the established time for opening of bids. When required, each bid shall be accompanied by surety in the form of a certified or cashier's check or bid bond in such amount as shall be prescribed in the public notice inviting bids and in the contract bid form. A tabulation of all bids received, whether accepted or rejected, shall be open for public inspection during regular business hours for a period of not less than 30 calendar days after the bid opening. The county purchasing agent shall submit a copy of the tabulation and all bids received to the county administrator, together with his recommendation for awards. The county purchasing agent may reject any and all bids for any or all commodities or contractual services included in the bid form and may readvertise for bids when the public interest will be served thereby; but will report such action and the reasons therefor to the county administrator. If all bids received are for the same total amount or unit price, and if the public interest will not permit the delay of readvertising for bids, the county administrator may authorize the county purchasing agent to award the contract to one of the tie bidders by drawing lots in public, or to purchase the commodities or contractual services in the open market, provided the price paid in the open market shall not exceed the lowest contract bid price submitted for the same commodity or contractual service. In all other cases, the contract shall be awarded by the county administrator to the lowest responsible bidder. In determining the lowest responsible bidder, the county purchasing agent and the county administrator shall take into consideration the quality offered and its conformity with the specifications, the delivery and discount terms and conditions of the bid, the service reputation of the bidder, and other information and data required to prove his responsibility.
- (d) Contracts for personal property sales shall be awarded by the county administrator to the highest responsible bidder and shall be subject to all other applicable requirements of this section.
- (e) It shall be the duty of the county purchasing agent to discourage uniform bidding by every possible means and to endeavor to obtain as full and open competition as possible on all purchases and sales. Accordingly, the county purchasing agent shall require each bidder to accompany his bid with

a statement made under oath that he has not been a party with other bidders to an agreement to bid a fixed or uniform price. Violation of such statement shall render void the bid of such bidders. Any disclosure to, or acquisition by, a competitive bidder, in advance of the opening of the bids, of the terms and conditions of the bid submitted by another competitor shall render the proceedings void and shall require readvertising for bids.

- (f) If the successful bidder does not enter into a contract within ten days after mailing of notice of award of contract, he shall forfeit in cash an amount equivalent to the amount of any surety which accompanied his bid, unless the county is responsible for the delay. He shall also be held liable for any cost in excess of his bid price which the county incurs in purchasing the commodities or services elsewhere.
- (g) When required, the successful bidder shall furnish surety in the form of a certified or cashier's check or bond for the faithful performance of the contract in the amount specified in the contract bid form.
- (h) Bidders who regularly do business with the county shall be permitted to file with the county purchasing agent an annual bid bond and an annual performance bond in an amount established by the county purchasing agent. Such annual bonds shall be acceptable as surety in lieu of the furnishing of surety with each individual transaction.
- (i) All contract bid forms and all contracts shall be approved by the county attorney as to form and legality. Following such approval, all contracts shall be signed in behalf of the county by the county purchasing agent. Contracts shall be maintained in the purchasing office and the director of finance shall be notified of the terms of each contract.

(Ord. No. 93-6, § 2-85, 1-24-94)

Sec. 2-339. - Open market purchases and sales.

- (a) If the amount of the expenditure for a contractual service or for a class of commodities normally obtainable from the same sources of supply, or for a sale of personal property which has been found by the county administrator not to be required for public use, is estimated to be less than \$15,000.00, it shall be an open market transaction and shall not be subject to the sealed bid requirements of section 2-338.
- (b) The purchasing agent may solicit bids by direct mail requests to prospective bidders for the class of commodities being purchased or sold as listed on the bidders' list and by posting a copy of such invitation to bid on a public bulletin board in or adjacent to his office, or bids may be solicited by telephone. No competition is required for purchases not exceeding \$1,500.00 if the price is fair and reasonable. Purchases in amounts between \$1,501.00 to \$5,000.00 require three verbal or written bids. Purchases in amounts between \$5,001.00 to \$15,000.00 require three written bids.
- (c) The county purchasing agent shall make a tabulation or other record of all written and telephone bids, and such records shall be open to public inspection during regular business hours for at least 30 days after the date of the bid opening or telephone transaction.
- (d) All open market purchases shall be awarded to the lowest responsive/responsible bidder and all open market sales shall be made to the highest responsive/responsible bidder.
- (e) Notwithstanding any other provisions of this article, if the expenditure for purchase of supplies, materials, equipment or contractual services or for a sale of personal property which has been found by the county administrator not to be required for public use is less than \$5,000.00, the county purchasing agent, in his sole discretion, may waive the competitive bidding requirements of this article and may make such purchase or sale without calling for bids. The county purchasing agent shall not delegate to any other county officer or employee the discretion of determining whether a purchase or sale involving an expenditure of less than \$5,000.00 shall be based on competitive bid. However, price and quality being equal, preference may be given to responsible local bidders.



(Ord. No. 93-6, § 2-86, 1-24-94)

Sec. 2-340. - Types of contracts and purchases.

- (a) It shall be the responsibility of the county purchasing agent to:
- (1) Reduce, to the maximum extent possible, the number of purchase transactions by combining into bulk orders and contracts the requirements of agencies for common use items or items repetitively purchased;
  - (2) Develop and use those types of contracts and purchase orders which will reduce to the minimum the accompanying paperwork and which, in other respects, will be most advantageous to the county; and
  - (3) The greatest extent possible, to make full utilization of the purchasing services provided by the division of general services of the state.
- (b) In carrying out the provision of subsection (a) of this section, the county purchasing agent is authorized to prescribe in the procedural regulations adopted pursuant to section 2-334 the use of various types of contracts and orders including, but not limited to, the following:
- (1) Definite quantity contracts, whereby the contractor agrees to furnish a specified quantity of supplies, materials or equipment at a specified time.
  - (2) Indefinite quantity contracts, whereby the county agrees to obtain from the contractor all its requirements for specified supplies, materials or equipment in an estimated but indeterminate amount during a prescribed period of time at a definite unit price or at a specified discount from list or posted prices.
  - (3) Price agreements, whereby the contractor agrees to supply the county requirements for items, such as replacement parts for different makes of mechanical or automotive equipment during a prescribed period of time and within a designated geographical area of the county at a definite unit price or at a specified discount from list or posted prices.
  - (4) Order books to be prenumbered and issued by the county purchasing agent in pocket size to properly authorized officials, for use in securing over-the-counter delivery of miscellaneous hardware, repair parts and similar items when the need arises in the vicinity of a source of supply. The use of such orders shall be limited to purchases in amounts not to exceed \$100.00. All such orders shall be issued without regard to the requirements of section 2-342 for availability of funds. All order books and all order blanks shall be properly accounted for by the official to whom they have been issued.

(Ord. No. 93-6, § 2-87, 1-24-94)

Sec. 2-341. - Purchase of patented or proprietary articles.

- (a) When the county requires supplies, materials or equipment which are produced by only one manufacturer, the county purchasing agent shall specify such manufacturer's make or brand in the invitations to bid and shall obtain competitive bids from authorized dealers or distributors of such manufacturer. If such manufacturer is the sole bidder and sole source of supply, the county purchasing agent is authorized to negotiate an open market order or contract with the manufacturer at prices and on terms most advantageous to the county.
- (b) When the county requires supplies, materials or equipment which are patented or proprietary and which are obtainable in two or more equally satisfactory and competitive makes, brands or types, the county purchasing agent shall list such acceptable and competitive makes, brands or types in the invitations to bid. Such lists shall also include the phrase "or equal" to permit bidders to bid on alternate or additional makes, brands or types. It shall be incumbent on each such bidder to prove to

the satisfaction of the county that the alternate or additional make, brand or type which he offers is equal in quality or performance to those listed in the invitation to bid.

- (c) When the county requires supplies, materials or equipment which are patented or proprietary and are not obtainable in other competitive makes or brands, it is appropriate to use a proprietary specification when the desired product must be compatible with or is an integral component of existing equipment or products, or when prequalification of products is necessary to support a specific need of a program; is covered by a patent or copyright; must yield absolute continuity of results; or is one with which a user has had extensive training and experience; and the use of any other similar piece of equipment would require considerable reorientation and training. Upon solicitation, every effort must be made to obtain full competition among the distributors which carry the manufacturer's product. The determination for the use of a proprietary specification shall be made in writing and submitted with the requisition, and must be included in the procurement file.

(Ord. No. 93-6, § 2-88, 1-24-94)

Sec. 2-342. - Availability of funds.

Except in emergencies as defined in section 2-336(a), no notice of award of contract shall be issued, no contract shall be signed, and no open market purchase order shall be issued, until the director of finance shall have certified that the unexpended balance in the appropriation or appropriations concerned is sufficient to defray the amount of such contract or purchase order.

(Ord. No. 93-6, § 2-89, 1-24-94)

Sec. 2-343. - Unlawful purchases.

- (a) If any agency purchases or contracts for any supplies, materials, equipment or contractual services contrary to the provisions of this article, such purchase order or contract shall be void and of no effect. The head of the agency making such purchase transaction shall be personally liable for the amount of such purchase order or contract, and, if already paid for out of county funds, the amount thereof may be recovered in the name of the county in an appropriate action therefor.
- (b) It shall be unlawful for any agency to split its requirements for supplies, materials, equipment and contractual services into estimated amounts of less than \$15,000.00 in order to evade the provisions of section 2-339.

(Ord. No. 93-6, § 2-90, 1-24-94)

Sec. 2-344. - Personal purchases.

Purchases of supplies or equipment for the personal use of an official or employee of the county shall be made by the county purchasing agent, or by an agency to which he has voluntarily given an exemption in accordance with section 2-335, only when the item or items are required parts of a worker's equipment and are necessary to the successful performance of the duties of such county official or employee.

(Ord. No. 93-6, § 2-91, 1-24-94)

Sec. 2-345. - Gratuities.

- (a) The acceptance of any gratuity in the form of cash, merchandise or any other thing by an official or employee of the county from any vendor or contractor shall be deemed to be a violation of this article, and shall be cause for removal or other disciplinary action.
- (b) The offer of any gratuity to an official or employee of the county by any vendor or contractor, or prospective vendor or contractor, shall be cause for declaring such individual or firm to be an irresponsible bidder and for debarring him from bidding, as provided by section 2-346.

(Ord. No. 93-6, § 2-92, 1-24-94)

Sec. 2-346. - Debarment of irresponsible bidders.

The county purchasing agent may determine and declare a bidder to be irresponsible for the reasons cited in the definition of the term "irresponsible bidder" found in section 2-332 and section 2-347; may remove his name from the bidders' list; and may debar him from bidding for a reasonable period, or not less than one year. Such debarred bidder shall be furnished with a statement of the reasons therefor.

(Ord. No. 93-6, § 2-93, 1-24-94)

Sec. 2-347. - Inspection.

- (a) The receiving agencies shall inspect deliveries of supplies, materials and equipment or the furnishing of contractual services to ensure their conformance with the specifications set forth in the purchase order or contract.
- (b) Any agency which has the necessary facilities and staff for adequate inspection may be authorized and directed by county council, on the recommendation of the county purchasing agent, to inspect deliveries made to other agencies.
- (c) The county purchasing agent shall have authority to require chemical and physical tests of samples submitted with bids and samples of deliveries to the extent necessary to determine their quality and conformance with the specifications. For such tests, the county purchasing agent shall have authority to make use of laboratory facilities of any agency or to engage the services of any outside laboratory.

(Ord. No. 93-6, § 2-94, 1-24-94)

Sec. 2-348. - Storerooms.

The county warehouse supervisor shall operate central stores/warehouse which contains common use items. He shall be charged with safekeeping, proper storage and handling of all supplies, materials and equipment therein. He shall maintain a perpetual inventory system showing the quantitative amounts and monetary value. A fixed asset inventory of each department shall be conducted within a three-year period. Operating procedures for the central stores/warehouse operation will be prepared for control and safeguarding of supplies, materials and equipment in the central warehouse, including the maintenance of a perpetual inventory system showing the quantitative amounts and monetary values of the inventories.

(Ord. No. 93-6, § 2-95, 1-24-94)

Sec. 2-349. - Surplus, obsolete and waste commodities.

- (a) All agencies shall submit to the county purchasing agent at such times and in such form as he shall prescribe, reports showing stocks of all supplies, materials and equipment which are no longer used or which have become obsolete, worn out or scrapped. The county purchasing agent shall have

authority to transfer any such commodities which are usable to another or other agencies in lieu of filling requisitions for the purchase of new and additional stock of the same or similar articles.

- (b) The county purchasing agent shall have authority to sell all such supplies, materials and equipment which cannot be used by any agency or which have been found by the county administrator not to be required for public use; or to exchange or trade in such articles in part or full payment for new supplies, materials or equipment of a similar nature. Any such sale, exchange or trade in shall be made in accordance with section 2-338 or 2-339, whichever is applicable.
- (c) The county sheriff's department shall be responsible for the sale of all confiscated equipment, automobiles, bikes, etc., pursuant to applicable state law. However, upon request of the sheriff's department, the purchasing agent may sell such confiscated property during any auction sale being sponsored by the county.

(Ord. No. 93-6, § 2-96, 1-24-94)

Sec. 2-350. - Competitive sealed proposals.

Notwithstanding any other provisions of this article, competitive sealed proposals may be used in the procurement of goods, services and construction in the manner provided for in this section:

- (1) *Conditions for use.* When the county council determines that the use of competitive sealed bidding in procurement of particular goods, services or construction is either not practicable or not advantageous to the county, it shall instruct the county administrator, or such other persons or entities as designated by the county council, to utilize the competitive sealed proposals procedure established in this section to contract for and procure the particular goods, services or construction required by the county.
- (2) *Request for proposals.* Proposals shall be solicited from at least three qualified sources, when such sources are reasonably available, through a request for proposals. A request for proposals is a written or published solicitation for proposals to provide goods, services or construction, as described therein. Evaluation factors upon which the proposals will be evaluated for award of the contract shall be stated in the request for proposals. Price shall be one of the evaluation factors, but it shall not be the sole basis for award of the contract.
- (3) *Public notice.* Public notice of the request for proposals shall be given at a reasonable time prior to the date set forth therein for the receipt of proposals. Such notice may include utilization of bidders' lists or publication in a newspaper of general circulation in the county.
- (4) *Receipt of proposals.* Proposals shall be opened publicly in the presence of one or more witnesses at the time and place designated in the request for proposals. Only the names of the offerors shall be disclosed at the proposal opening. Contents of the proposals shall not be disclosed during the negotiation process. Proposals shall be open for public inspection after contract award, except that proprietary or confidential information in any proposal that is clearly marked "confidential" by the offeror shall not be disclosed without written consent of the offeror.
- (5) *Evaluation factors.* The request for proposals shall state the relative importance of price and of each other evaluation factor but shall not require numerical weightings of each factor. The evaluation factors shall be examined with respect to each proposal in determining which proposal is most advantageous to the county. There are no restrictions on the kind or number of evaluation factors that may be used, as long as they are stated in the request for proposals and relate to the purpose of the procurement.
- (6) *Negotiation with responsible offerors and revisions to proposals.* Negotiations may be conducted with any offerors submitting a proposal that appears eligible for contract award (based upon the evaluation factors) for the purpose of clarification to assure full understanding of and responsiveness to the requirements of the request for proposals. Offerors shall be accorded fair and equal treatment with respect to opportunity for discussion and revision of proposals. Revisions in proposals may be permitted after their submission and prior to contract

award for the purpose of obtaining best and final offers. In conducting negotiations, there must be no disclosure of any information derived from proposals submitted by competing offerors.

- (7) *Award.* Award shall be made to the responsive offeror whose proposal is determined to be the most advantageous to the county, taking into consideration price and the other evaluation factors set forth in the request for proposals. No other factors or criteria may be used in evaluation and there must be adherence to any weightings specified for each factor in the request for proposals. If the county council or its designee should determine that none of the proposals are advantageous to the county, the county shall have the absolute right to reject any and all proposals. The contract file shall contain the basis on which the award is made and be sufficient to satisfy external audit.
- (8) *Negotiations after unsuccessful competitive proposals.* When the price of all proposals received pursuant to a request for proposals appears to be unreasonable, or the price of the lowest proposal exceeds available funds as determined by the county council or its designee, and time or other circumstances do not permit the delay required to resolicit for competitive sealed proposals, a contract may nevertheless be negotiated, provided that:
  - a. Each offeror who submitted a proposal under the original solicitation is notified and given reasonable opportunity to negotiate; and
  - b. The negotiated price must be within the limits of available funds as determined by the county council or its designee.

(Ord. No. 93-6, § 2-97, 1-24-94)

