



# **Richland County Office of Procurement & Contracting**

## **Procedures Manual**

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# SECTION 1

## PREFACE- INTRODCUTION & BACKGROUND

# Introduction and Background

The Richland County Code and the *Richland County Office of Procurement & Contracting Procedures Manual* provides for procurement of goods and services in support of both non-federal and federal contracts. In addition to local and state law, procurement for federal grant programs is governed by federal regulations under 24 CFR Part 570, 24 CFR Part 85, and 2 CFR 200.318-200.326. The Richland County Office of Procurement and Contracting is currently following the Richland County Code and the following procedures contained in this procedures manual. Where these standards are equally or more restrictive as the federal requirements. However, where the local procurement standards are less restrictive, the more stringent federal requirements will be followed for CDBG-DR programs.

The Procurement Manager for Richland County is responsible for the information contained herein and may be contacted by phone (803)576-2130 or email [procurement@richlandcountysc.gov](mailto:procurement@richlandcountysc.gov).

## Federal Contracting, specifically CDBG-DR

In addition to local and state law, procurement for CDBG-DR programs is governed by federal regulations under 24 CFR Part 570, 24 CFR Part 85, and 2 CFR 200.318-200.326.

### **1. Contracting Oversight**

Contracting oversight is provided in the *Contracting Officer's Representative (COR) Operating Procedure*. This procedure is attached to this *Procedures Manual*.

### **2. Contracting Mechanisms**

#### ***a. Time and material***

Time and material contracting vehicles are discouraged and should only be used after a determination that no other contract type is suitable. If a time and material contract must be used, it must include a ceiling price that the contractor exceeds at its own risk. Any time and material contract that is issued will require additional oversight in order to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls.

#### ***b. Prohibition against cost plus contracts***

Cost plus a percentage of cost and percentage of cost methods of contracting may not be used.

### **3. Federal Awarding Agency or Pass-through Entity Review**

The County is complying with the standards set forth in 2 CFR 200 and will make available all procurement policies for review. The County will make available to the Federal awarding agency, technical specifications on proposed procurements where the Federal awarding agency believes such review is needed to ensure that the item or service specified is the one being proposed for acquisition. The County will make available, upon Federal awarding agency request, pre-procurement documents, independent cost estimates, and other documentation to demonstrate the County's controls and procedures.

### **4. Federal Contact Provisions**

All contracts made under the CDBG-DR award must contain provisions contained in Appendix II to 2 CFR 200, covering the following, if applicable:

- (A) Contracts in excess of the simplified acquisition threshold of \$150,000 must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.
- (B) Contracts in excess of \$10,000 must address termination for cause and for convenience by the County including the manner by which such termination will be effected and the basis for settlement.

(C) Equal Employment Opportunity.

Compliance with the:

(D) Davis Bacon Act, as amended (40 USC 3141-3148).

(E) Contract Work Hours and Safety Standards Act (40 USC 3701-3708) and the Anti-Kickback Act (40 USC 3145).

(F) Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements (37 CFR 401).

(G) Clean Air Act (42 USC 7401-7671q.) and the Federal Water Pollution Control Act, as amended (33 USC 1251-1387).

(H) Energy Policy and Conservation Act (42 USC 6201).

(I) Executive Orders 12549 and 12689 Debarment and Suspension

(J) Byrd Anti-Lobbying Amendment (31 USC 1352).

(K) Procurement of recovered materials.

SECTION 2  
ACQUISITION PLANS

## **Acquisition Plans**

a. The Procurement Department performs acquisition planning and market research for all acquisitions in order to promote and provide for:

- (1) Acquisition of items suitable to meet the County's needs; and
- (2) Full and open competition

b. This planning shall integrate the efforts of all personnel responsible for significant aspects of the acquisition. The purpose of this planning is to ensure that the County meets its needs in the most effective, economical, and timely manner.

## ***Procurement Director Responsibilities***

The director or a designee shall prescribe procedures for:

- a. Promoting and providing for full and open competition.
- b. Encouraging offerors to supply needed items.
- c. Ensuring that requisitioners address the requirement to specify needs, develop specifications and scope of work in such a manner to promote and provide for full and open competition with due regard to the nature of the supplies and services to be acquired.
- d. Ensuring that requisitioners avoid unnecessary and unjustified bundling that precludes disadvantaged business participation.
- e. Ensuring that the principles of this section are used, as appropriate, for those acquisitions.
- f. Designating buyers for acquisitions.
- g. Reviewing and approving acquisition plans and revisions to these plans.
- h. Establishing criteria and thresholds.
- i. Establishing standard acquisition plan formats, if desired, suitable to department needs.
- j. Waiving requirements of detail and formality, as necessary, in planning for acquisitions having compressed delivery or performance schedules because of the urgency of the need.
- k. Ensuring that department planners include use of the system of measurement in proposed acquisitions.
- l. Ensuring that knowledge gained from prior acquisitions is used to further refine requirements and acquisition strategies.

## ***Procedures***

a. Acquisition planning should begin as soon as the department need is identified, preferably well in advance of the fiscal year in which contract award or order placement is necessary.

In developing the plan, as necessary, the buyer may form a team consisting of all those who will be responsible for significant aspects of the acquisition, such as contracting, fiscal, legal, and technical personnel. Early in the planning process, the buyer should consult with the requisitioner to determine type, quality, quantity, and delivery requirements.

c. The buyer shall coordinate with and secure the concurrence of the Contracting Officer in all acquisition planning.

## ***Contents of Acquisition Plan***

(a) State all significant conditions affecting the acquisition, such as-

- (1) Requirements for compatibility with existing or future systems or programs; and
- (2) Any known cost, schedule, and capability or performance constraints.

(b) Specify the required capabilities or performance characteristics of the supplies or the performance standards of the services being acquired and state how they are related to the need.

(c) Describe the basis for establishing delivery or performance-period requirements. Explain

and provide reasons for any urgency if it results in concurrency of development and production or constitutes justification for not providing for full and open competition.

(d) Discuss technical, cost, and schedule risks and describe what efforts are planned or underway to reduce risk and the consequences of failure to achieve goals. If concurrency of development and production is planned, discuss its effects on cost and schedule risks.

(e) Indicate the prospective sources of supplies or services that can meet the need. Consider required sources of supplies or services. Include consideration of small business, and disadvantaged business concerns and the impact of any bundling that might affect their participation in the acquisition. Describe how competition will be sought, promoted, and sustained throughout the course of the acquisition. If full and open competition is not contemplated, cite the authority, discuss the basis for the application of that authority, identify the source(s), and discuss why full and open competition cannot be obtained.

(f) Discuss the source-selection procedures for the acquisition, including the timing for submission and evaluation of proposals, and the relationship of evaluation factors to the attainment of the acquisition objectives.

(g) Include budget estimates. Explain how they were derived, and discuss the schedule for obtaining adequate funds at the time they are required.

(h) Indicate any property to be furnished to contractors, including material and facilities, and discuss any associated considerations, such as its availability or the schedule for its acquisition. Discuss any County information, such as manuals, drawings, and test data, to be provided to prospective offerors and contractors.

## SECTION 3

# SOURCE SELECTION

## **Source Selection**

This section prescribes the policy and procedures that are to be used to promote and provide for full and open competition.

### ***Policy***

(a) The Procurement Director, with certain limited exceptions, shall promote and provide for full and open competition in soliciting offers and awarding contracts.

(b) The Director shall provide for full and open competition through use of the competitive procedure(s) that are best suited to the circumstances of the contract action and consistent with the need to fulfill the County's requirements efficiently.

### ***Methods of Source Selection***

The methods of source selection to attain competition are accomplished through the formal and informal solicitation process:

(a) Formal solicitations must be advertised at a minimum in a publication of general circulation in the county, giving a brief description of the things to be purchased, the time and place where solicitations will be accepted or opened, and a location or telephone number where solicitations and complete specifications may be secured.

(b) Informal solicitations are usually not advertised and are usually solicited by telephone or other electronic or print medium.

(c) These method of solicitations are also determined by competitive threshold;

### ***Competitive Procedures***

The competitive procedures available for use in fulfilling the requirement for full and open competition are as follows:

(a) Sealed bids.

- 1) Fixed price bidding;

(b) Combination of competitive procedures. If sealed bids are not appropriate, the director may use any of the following competitive procedures:

- 1) Two-step bidding;
- 2) Best value bidding;
- 3) Negotiations after unsuccessful competitive sealed bidding

(c) Competitive Request for Proposals (RFP). If sealed bids are not appropriate the director may request competitive proposals or use other competitive negotiated procedures.

(d) Request for Qualifications (RFQ). Although not a competitive procedure, it is used for determining the qualifications of participants for competitive or negotiated requirements.

(e) Blanket Purchase Order (BPO). A blanket purchase order shall be utilized as a simplified method of filling anticipated repetitive needs for supplies, goods or services by establishing "charge accounts" with qualified sources of supply. BPO(s) are normally established for supplies, goods, or services for which the price and required specifications are determined and remains consistent, for a pre-determined amount and a pre-determined timeframe.

(f) Quotes. A quote is not an offer or a binding contract. Therefore, issuance of a purchase order (PO) in response to a vendor's quotation does not establish a binding contract. The purchase order is an offer by the County to the vendor to make certain purchases for goods, supplies or services upon specified terms and conditions. A contract is established when the vendor accepts the offer in writing or delivers the supplies, goods or services. If the County issues an order resulting from a quotation, the County may (by written notice to the vendor, at any time before acceptance occurs) withdraw, amend, or cancel its offer.

(g) Sole Source Purchase. A sole source is when only one vendor possesses unique and singularly available capacity to meet the requirements such as technical qualifications, ability to deliver at and in a particular time. When the required supplies or services are available from only one source and no other type of property or services will satisfy the need. Sole Source is when the product is available from only one source, often determined by patent or copyright protection, proprietary rights and capacity of one supplier to provide superior capabilities unobtainable from any other supplier for similar products.

Sole Source must be justified with information of efforts undertaken to locate possible alternative supplier. An explanation of the reason that specifications suitable for full and open competition could not be developed and that it is necessary and in the county's best interest to use Sole Source rather than full and open competition. Sole Source addresses the source of a product or services not the item itself.

(h) Emergency Purchase. An emergency is when there is an unexpected situation or sudden occurrence of a serious and urgent nature that causes an immediate threat to public health, welfare, critical economy and efficiency, or safety under emergency conditions and any other reason as defined in the laws and regulations of the state, and proclaimed by the County Council, County Administrator or authorized representative.

The occurrence of emergency conditions must create an immediate and serious need which cannot be met through normal procurement methods and the lack of which would seriously threaten:

- (1) the functioning of the County government;
- (2) the preservation or protection of property; and
- (3) the health, welfare, or safety of any person

SECTION 4  
ADVERTISEMENT

## **Advertisement**

This part prescribes policies and procedures for advertising formal solicitations opportunities and information.

### **a. Policy**

The Director of Procurement must advertise all formal solicitations in order to-

- (1) Increase competition;
- (2) Broaden business participation in meeting requirements; and
- (3) Assist small, minority, disadvantaged and women-owned business concerns in obtaining contracts and subcontracts.

### **b. Dissemination of Information**

Advertisements of formal solicitation will be disseminated through a publication of general Circulation; Other advertising initiative shall be utilized like the County Webpage, purchasing professional associations and trade journals to include any other medium necessary to reach businesses. Advertisements published in newspapers must be under proper written authority.

Advertisements shall contain at a minimum the following information:

- 1) Brief description of goods, equipment, services or construction to be purchased;
- 2) Address, date and time of public conferences, openings or acceptance;
- 3) Type of bonds required, if applicable;
- 4) Where solicitation documents can be obtained;
- 5) Any required deposits, if applicable;
- 6) Qualification provisions, if applicable;
- 7) County, Department or office.

## SECTION 5

# REQUESTS FOR BIDS (RFB)

## Requests For Bids (RFB)

Request for bids is a formal process consisting of the following elements: competition, public opening, and awards.

The RFB process consists of the following steps:

(a) Preparation of RFB. Bids must describe the requirements of the County clearly, accurately, and completely.

- 1) Developing specifications or requirements that will not limit the number of competitors.
- 2) Developing price schedule, general and special conditions
- 3) The RFB also includes all documents (whether attached or incorporated by reference) furnished prospective bidders for the purpose of bidding.

(b) Publicizing the request for bids.

- 1) Bids must be advertised through a publication of general circulation in the County.
- 2) The advertisement shall detail the time, day, date, and place of opening.
- 3) It must have a brief description of items to be purchased, a place of distribution to prospective bidders, posting in an accessible location in the office of procurement, and such other means as may be appropriate.
- 4) The advertisement must be published in sufficient time before public opening of bids to enable prospective bidders to prepare and submit bids.

(c) Submission of bids. Bidders must submit sealed bids to be opened at the time and place stated in the solicitation for the public opening of bids.

(d) Evaluation of bids. Bids will be evaluated for material compliance with the specifications and scope of work, responsiveness, and responsibility and they shall be evaluated without discussions.

(e) Contract award. After bids are publicly opened, an award will be made with reasonable promptness to the lowest, responsible, responsive bidder whose bid, materially conforms to the request for bids, which will be most advantageous to the County, considering only the price and the other-related factors included in the solicitation.

(f) Sealed bids. The procurement director shall solicit sealed bids if-

- 1) Time permits the solicitation, submission, and evaluation of sealed bids;
- 2) The award will be made on the basis of price and other-related factors;
- 3) It is not necessary to negotiate or conduct discussions with respondents in reference to their bids; and
- 4) There is a reasonable expectation of receiving more than one sealed bid.

(g) Solicitation Mailing List. The company name, e-mail address, telephone, fax number and mailing address, when available, of prospective bidders who requested the RFB shall be added to a solicitation mailing list and made a part of the record.

(h) Fixed Price Contract. Firm-fixed-price contracts shall be used when the method of contracting is sealed bidding.

(i) Bidding time.

- 1) Policy. A reasonable time for prospective bidders to prepare and submit bids shall be allowed in all requests for bids, consistent with the needs of the County. The time

between issuance and opening of the solicitation should be at least 30 calendar days.  
2) Factors to be considered. To avoid unduly restricting competition or paying higher-than-necessary prices, consideration shall be given to such factors as the following in establishing a reasonable bidding time:

- i) Degree of urgency; and
- ii) Complexity of requirement.

### ***Pre-bid conference***

A pre-bid conference may be used, generally in a complex solicitation, as a means of briefing prospective bidders and explaining complicated specifications and requirements to them as early as possible after the solicitation has been issued and before the bids are opened. It shall never be used as a substitute for amending a defective or ambiguous solicitation.

### ***Release of solicitation information***

(a) Before solicitation. Information concerning proposed acquisitions shall not be released outside the County before solicitation. Releases of information shall be made to:

- (1) To all prospective bidders, and
- (2) As nearly as possible at the same time, so that one prospective bidder shall not be given unfair advantage over another.

(b) After solicitation. Discussions with prospective bidders regarding a solicitation shall be conducted and technical or other information shall be transmitted only by the Procurement Director or superiors having contractual authority or by others specifically authorized. Such personnel shall not furnish any information to a prospective bidder that alone or together with other information may afford an advantage over others. More specific information or clarifications may be furnished by amending the solicitation

### ***Amendment of solicitation for bids***

(a) If it becomes necessary to make changes in quantity, specifications, delivery schedules, opening dates, etc., or to correct a defective or ambiguous solicitation, such changes shall be accomplished by amendment of the solicitation for bids. The fact that a change was mentioned at a pre-bid conference does not relieve the necessity for issuing an amendment. Amendments shall be sent, before the time for bid opening, to everyone to whom solicitations have been furnished and shall be posted on the Procurement Department website.

(b) Before amending a solicitation for bids, the period of time remaining until bid opening and the need to extend this period shall be considered. When only a short time remains before the time set for bid opening, consideration should be given to notifying bidders of an extension of time by email. Such extension must be confirmed in the amendment.

(c) Any information given to a prospective bidder concerning a solicitation for bids shall be furnished promptly to all other prospective bidders as an amendment to the solicitation-

- (1) if such information is necessary for bidders to submit bids or
- (2) if the lack of such information would be prejudicial to uninformed bidders.

### ***Electronic bids***

The Procurement Director may authorize use of electronic submission of bids. If electronic bids are authorized, the solicitation shall specify the electronic commerce method(s) that bidders may use.

## ***Bid samples***

### (a) Policy.

(1) Bidders shall not be required to furnish bid samples unless there are characteristics of the product that cannot be described adequately in the specification or purchase description.

(2) Bid samples will be used only to determine the responsiveness of the bid and will not be used to determine a bidder's ability to produce the required items.

(3) Bid samples may be examined for any required characteristic, whether or not such characteristic is adequately described in the specification.

(4) Bids will be rejected as non-responsive if the sample fails to conform to each of the characteristics listed in the solicitations.

(b) *When to use.* The use of bid samples would be appropriate for products that must be suitable from the standpoint of balance, facility of use, general "feel," color, pattern, or other characteristics that cannot be described adequately in the specification.

### (c) *Requirements for samples in solicitations for bids.*

(1) Request for Bids shall-

(i) State the number and, if appropriate, the size of the samples to be submitted and otherwise fully describe the samples required; and

(ii) List all the characteristics for which the samples will be examined.

(d) *Waiver of requirement for bid samples.* The requirement for furnishing bid samples may be waived when a bidder offers a product previously or currently being contracted for or tested by the County and found to comply with specification requirements conforming in every material respect with those in the current solicitation.

(e) *Unsolicited samples.* Bid samples furnished with a bid that are not required by the solicitation generally will not be considered as qualifying the bid and will be disregarded. However, the bid sample will not be disregarded if it is clear from the bid or accompanying papers that the bidder's intention was to qualify the bid.

### (f) *Handling bid samples.*

(1) Samples that are not destroyed in testing shall be returned to bidders at their request and expense, unless otherwise specified in the solicitation.

(2) Disposition instructions shall be requested from bidders and samples disposed of accordingly.

(3) Samples will be disposed of within 30 days of Award if disposition instructions are not given with bid.

(4) Samples that are to be retained for inspection purposes in connection with deliveries shall be transmitted to the inspecting activity concerned, with instructions to retain the sample until completion of the contract or until disposition instructions are furnished.

(5) Where samples are consumed or their usefulness is impaired by tests, they will be disposed of as scrap unless the bidder requests their return.

## ***Descriptive Literature.***

(a) Descriptive literature is needed before award to determine whether the products offered meet the specification and to establish exactly what the bidder proposes to furnish.

### (b) *Requirements of solicitation for bids.*

(1) The solicitation must clearly state-

(i) What descriptive literature the bidders must furnish;

- (ii) The purpose for requiring the literature; and
- (iii) The rules that will apply if a bidder fails to furnish the literature before bid opening or if the literature provided does not comply with the requirements of the solicitation.

(c) *Waiver of requirement for descriptive literature.*

(1) The Procurement Director may waive the requirement for descriptive literature if-

- (i) The bidder states in the bid that the product being offered is the same as a product previously or currently being furnished to the contracting activity; and

(2) When descriptive literature is not necessary and a waiver of literature requirements of a specification has been authorized, the Procurement Director must include a statement in the solicitation that, despite the requirements of the specifications, descriptive literature will not be required.

(3) If the solicitation provides for a waiver, a bidder may submit a bid on the basis of either the descriptive literature furnished with the bid or a previously furnished product. If the bid is submitted on one basis, the bidder may not have it considered on the other basis after bids are opened.

(e) *Unsolicited descriptive literature.* If descriptive literature is furnished when it is not required by the solicitation for bids, it will not be considered and will be disregarded. However, the bid literature will not be disregarded if it is clear from the bid or accompanying papers that the bidder's intention was to qualify the bid.

### ***Final review of solicitations***

Each solicitation shall be thoroughly reviewed before issuance to detect and correct discrepancies or ambiguities that could limit competition or result in the receipt of non-responsive bids. The Procurement Director is responsible for the reviews.

### ***Records of solicitations and records of bids***

(a) The Procurement Office shall retain a record of each solicitation that it issues and each abstract or record of bids.

(b) The file for each solicitation shall show the distribution that was made and the date the solicitation was issued. The names and addresses of prospective bidders who requested the solicitation must be included in the solicitation and shall be added to the list and made a part of the record.

### ***Solicitation mailing lists***

(a) Establishment of lists.

(1) All eligible and qualified vendors that have submitted a request for the solicitation shall be placed on the appropriate solicitation mailing list.

(2) The names of prospective bidders who are furnished solicitations in response to their requests shall be added to the list so that they will be furnished copies of any solicitation amendments, etc.

(b) Removal of names from solicitation mailing lists.

(1) The name of each Vendor failing to either

- (i) submit a bid,
- (ii) respond to a mandatory pre-solicitation conference, or
- (iii) otherwise respond to a solicitation for bids may be removed from the County Vendor listing without notice to the Vendor. However, the removal shall be limited to the items involved in the solicitation or notice.

(2) Vendors that have been debarred or suspended from doing business with the County or otherwise determined to be ineligible to receive an award shall be removed from solicitation mailing lists to the extent required by the debarment, suspension, or other determination of ineligibility.

### ***Release of solicitation mailing lists***

(a) The Procurement Office shall make the mailing lists available in response to written request from those having a bona fide interest. When solicitations for bids for construction have been issued, trade journals, prospective subcontractors, material suppliers, etc., will be supplied upon request with a list of all prospective bidders who were furnished copies of the plans and specifications. The Procurement Office may require a written request.

### ***Cancellation of solicitations before opening***

(a) Solicitations may cancelled if it is clearly in the County best interest; *e.g.*

- (1) Where there is no longer a requirement for the supplies or services; or
- (2) Where amendments to the solicitation would be of such magnitude that a new solicitation is desirable.
- (3) Where the County has elected to renegotiate with incumbent;
- (4) Non-availability of funds.

(b) When a solicitation issued is cancelled, bids that have been received shall be returned unopened to the bidders and notice of cancellation shall be sent to all prospective bidders to whom solicitations were issued.

(c) When a solicitation issued electronically is cancelled, a general notice of cancellation shall be posted electronically.

(d) The notice of cancellation shall-

- (1) identify the solicitation for bids by number and short title or subject matter,
- (2) briefly explain the reason the solicitation is being cancelled, and
- (3) where appropriate, assure prospective bidders that they will be given an opportunity to bid on any re-solicitation of bids or any future requirements for the type of supplies or services involved.

### ***Amendments to Bids***

(a) When solicitation is amended, then all terms and conditions not modified shall remain unchanged.

(b) Bidders shall acknowledge receipt of any amendment to this solicitation:

- (1) by signing and returning the amendment;
- (2) by identifying the amendment number and date in the space provided for this purpose on the form for submitting a bid;
- (3) by letter or telegram; or
- (4) by facsimile;
- (5) The Procurement Office must receive the acknowledgment of amendment by the time

and at the place specified for receipt of bids.

### ***Bids Preparation***

(a) Bidders are expected to examine the drawings, specifications, Schedule, and all instructions.

(b) Each bidder shall furnish the information required by the solicitation. The bidder shall sign the bid and print or type its name on the Schedule and each continuation sheet on which it makes an entry.

(c) The person signing the bid must initial erasures or other changes. Bids signed by an agent shall be accompanied by evidence of that agent's authority.

(d) For each item offered, bidders shall

(1) Show the unit price, including, unless otherwise specified, packaging, packing, and preservation; and

(2) enter the extended price for the quantity of each item offered in the "Amount" column of the Schedule. In case of discrepancy between a unit price and an extended price, the unit price will be presumed to be correct, subject, however, to correction to the same extent and in the same manner as any other mistake

(e) Bids for supplies or services other than those specified will not be considered unless authorized by the solicitation.

(f) Bidders must state a definite time for delivery of supplies or for performance of services, unless otherwise specified in the solicitation.

(g) Time, if stated as a number of days, will include Saturdays, Sundays, and holidays (calendar days).

### ***Submission of Bids***

a. Bids and bid modifications shall be submitted in sealed envelopes or packages

(1) Addressed to the office specified in the solicitation; and

(2) Showing the time and date specified for receipt, the solicitation number, and the name and address of the bidder.

b. All bids must be addressed and marked on the outermost envelope or packages.

c. Offers submitted in response to solicitations shall be in terms of U.S. dollars and in English. Offers received in other than U.S. dollars or in English shall be rejected.

### ***Responsiveness of bids***

a. To be considered for award, a bid must comply in all material respects with the request for bids. Such compliance enables bidders to stand on an equal footing and maintain the integrity of the sealed bidding system.

b. Electronic bids shall not be considered unless permitted by or specifically stipulated by the solicitation.

c. Facsimile bids shall not be considered.

d. Bids should be filled out, executed, and submitted in accordance with the instructions in the

solicitation. If a bidder uses its own bid form or a letter to submit a bid, the bid will not be considered.

### ***Submission, modification, and withdrawal of bids***

a. Bidders are responsible for submitting bids, and any modifications or withdrawals, so as to reach the Procurement Office address as designated in the request for bid (RFB) by the time specified in the RFB. They may use any transmission method authorized by the RFB (*i.e.*, regular mail, electronic, or facsimile). If no time is specified in the RFB, the time for receipt is 2:00p.m., local time, on the date that bids are due.

b. Any bid, modification, or withdrawal of a bid received at the Procurement Office after the exact time specified for receipt of bids is "late" and will not be considered unless it is received before award is made, the Contracting Officer determines that it was due to no fault of the bidder; and-

(1) There is acceptable evidence to establish that it was received at the Procurement Office and was under the Procurement Office control prior to the time set for receipt of bids.

2) A late receipt of modification of an otherwise successful bid, that makes its terms more favorable to the County, may be accepted if the Contracting Officer determines that it was due to no fault of the bidder.

c. Acceptable evidence to establish the time of receipt at the Procurement Office includes the time/date stamp of the office on the bid container, other documentary evidence of receipt maintained by the Procurement Office, or testimony or statements of Procurement personnel.

d. If an emergency or unanticipated event interrupts normal county processes so that bids cannot be received at the Procurement Office by the exact time specified in the RFB, and urgent County requirements preclude amendment of the bid opening date, the time specified for receipt of bids will be deemed to be extended to the date and time specified in an amendment to the solicitation.

e. Bids may be withdrawn by written notice received at any time before the exact time set for receipt of bids. A bid may be withdrawn in person by a bidder or its authorized representative if, before the exact time set for receipt of bids, the identity of the person requesting withdrawal is established and the person signs a receipt for the bid. Upon withdrawal of an electronically transmitted bid, the data received shall not be part of the solicitation record. However, the withdrawal request will be maintained in the bid files.

f. The contracting officer must promptly notify any bidder if its bid, modification, or withdrawal was received late, and must inform the bidder whether its bid will be considered.

g. Late bids and modifications that are not considered must be held unopened, unless opened for identification, until after award and then retained with other unsuccessful bids. However, any bid bond or guarantee must be returned.

h. If available, the following must be included in the contract files for each late bid, modification, or withdrawal:

1) The date and hour of receipt.

2) A statement, with supporting rationale, regarding whether the bid was considered for award.

3) The envelope, wrapper, container, or other evidence of the date of receipt.

### ***Failure to Respond to a Bid***

Recipients of the solicitation not responding with a bid should not return the solicitation, unless it specifies otherwise. Instead, they should advise the Procurement Office by submitting the "No

Bid Response" letter or established electronic commerce methods, whether they want to receive future solicitations for similar requirements. If a Vendor does not submit a bid and does not notify the Procurement Office that future solicitations are desired, the Vendor's name may be removed from the applicable mailing list.

### ***Opening of Bids and Award of Contract***

This section contains procedures for the receipt, handling, opening, and disposition of bids including mistakes in bids, and subsequent award of contracts.

### ***Receipt and Safeguarding of Bids***

a. All bids (including modifications) received before the time set for the opening of bids shall be kept secure. Except as provided in paragraph (b) of this section, the bids shall not be opened or viewed, and shall remain in a locked bid box, a safe, or in a secured, restricted-access electronic bid box. If an invitation for bids is cancelled, bids shall be returned to the bidders. Necessary precautions shall be taken to ensure the security of the bid box or safe. Before bid opening, information concerning the identity and number of bids received shall be made available only to County employees. Such disclosure shall be only on a "need to know" basis. When bid samples are submitted, they shall be handled with sufficient care to prevent disclosure of characteristics before bid opening.

b. Envelopes marked as bids but not identifying the bidder or the solicitation may be opened solely for the purpose of identification, and then only by an employee assigned to Procurement or designated for this purpose. Sealed bid opened by mistake, the envelope shall be signed by the opener, whose position shall also be written thereon. This person who opened the sealed bid shall immediately write a memorandum for record with the following:

- (1) an explanation of the opening,
- (2) the date and time opened, and
- (3) the request for bids number, and sign the memorandum,
- (4) Place the original of the memorandum in the bid file,
- (5) Immediately reseal the envelope.

### ***Opening of Bids***

a. The Procurement Official responsible for the opening of the bid shall decide when the time set for opening bids has arrived and shall inform those present of that decision. The Procurement Official shall then:

- (1) publicly open all bids received before that time,
- (2) if practical, read the bids aloud to the persons present, and
- (3) have the bids recorded. The original of each bid shall be carefully safeguarded, particularly until the abstract of bids has been made and its accuracy verified.

b. Procedure in paragraph (a) of this section may be delegated to an assistant, but the Procurement Official remains fully responsible for the actions of the assistant.

c. Original bids shall not be allowed to leave the Procurement Office. The original bid may be examined by the public only under the immediate supervision of a Procurement official and under conditions that preclude possibility of a substitution, addition, deletion, or alteration in the bid.

### ***Postponement of Openings***

a. A bid opening may be postponed even after the time scheduled for bid opening when-

- (1) The Procurement Director has reason to believe that the bids have been delayed for

causes beyond their control and without their fault or negligence (e.g., flood, fire, accident, weather conditions, strikes, or the County equipment malfunction when bids are due); or

(2) Emergency or unanticipated events interrupt normal processes so that the conduct of bid opening as scheduled is impractical.

b. At the time of a determination to postpone a bid opening under paragraph (a) (1) of this section, an announcement of the determination shall be publicly posted. If practical before issuance of a formal amendment of the invitation, the determination shall be otherwise communicated to prospective bidders who are likely to attend the scheduled bid opening.

c. In the case of paragraph (a) (2) of this section, and when urgent requirements preclude amendment of the solicitation, the time specified for opening of bids will be deemed to be extended until an amendment is issued detailing the time of day, day, month, date and year. A memorandum should be made of the events and added to the file explaining the circumstances of the postponement.

### ***Recording of bids***

a. Bid tabulations must be completed and certified as to its accuracy by the Procurement Official as soon after bid opening as practicable. Where bid items are too numerous to warrant complete recording of all bids, recording of the bids may be limited to item numbers and bid prices.

b. Bid tabulations shall be available for public inspection. The tabulation shall not contain information regarding failure to meet minimum standards of responsibility; apparent collusion of bidders, or other none required notations.

c. If a request for bids is cancelled before the time set for bid opening, this fact shall be recorded together with a statement of the number of bidders solicited and the number of bids received.

### ***Cancellation of invitations after opening***

a.

(1) Preservation of the integrity of the competitive bid system dictates that, after bids have been opened, award must be made to that responsible bidder who submitted the lowest responsive bid, unless there is a compelling reason to reject all bids and cancel the invitation.

(2) Every effort shall be made to anticipate changes in a requirement before the date of opening and to notify all prospective bidders of any resulting modification or cancellation. This will permit bidders to change their bids and prevent unnecessary exposure of bid prices.

(3) As a general rule, after the opening of bids, an invitation should not be cancelled and resolicited due solely to increased requirements for the items being acquired. Award should be made on the initial invitation for bids and the additional quantity should be treated as a new acquisition.

b. When it is determined before award but after opening that the requirements of the specifications have not been met, the bid shall be cancelled.

c. Request for Bids may be cancelled and all bids rejected before award but after opening when, consistent with sub-paragraph (a) (1) of this section, and the Procurement Director determines in writing that-

- (1) Inadequate or ambiguous specifications were cited in the invitation;
- (2) Specifications have been revised;
- (3) The supplies or services being contracted for are no longer required;
- (4) The bid did not provide for consideration of all factors of cost to the County, such as cost of transporting property to bidders';
- (5) Bids received indicate a less expensive article than can satisfy the needs of the county, differing from that for which the bids were invited;
- (6) Only one bid is received and the Procurement Official cannot determine the reasonableness of the bid price;
- (7) Bids are collusive, or were submitted in bad faith;
- (8) No responsive bid has been received from a responsible bidder;
- (9) For other reasons, cancellation is clearly in the public's interest.

d. Should administrative difficulties be encountered after bid opening that may delay award beyond bidders' acceptance periods, the several lowest bidders whose bids have not expired (irrespective of the acceptance period specified in the bid) should be requested, before expiration of their bids, to extend in writing the bid acceptance period (with consent of sureties, if any) in order to avoid the need for re-soliciting.

e. Under some circumstances, completion of the acquisition after cancellation of the invitation for bids may be appropriate.

### ***Rejection of Individual Bids***

a. Any bid that fails to conform to the essential requirements of the request for bids shall be rejected.

b. Any bid that does not conform to the applicable specifications shall be rejected unless the solicitation authorized the submission of alternate bids and the supplies offered as alternates meet the requirements specified in the invitation.

c. Any bid that fails to conform to the delivery schedule or permissible alternates stated in the solicitation shall be rejected.

d. A bid shall be rejected when the bidder imposes conditions that would modify requirements of the RFB or limit the bidder's liability to the County, since to allow the bidder to impose such conditions would be prejudicial to other bidders. For example, bids shall be rejected in which the bidder-

- (1) Protects against future changes in conditions, such as increased costs, if total possible costs to the County cannot be determined;
- (2) Fails to state a price and indicates that price shall be "price in effect at time of delivery; "
- (3) States a price but qualifies it as being subject to "price in effect at time of delivery; "
- (4) When not authorized by the RFB, conditions or qualifies a bid by stipulating that it is to be considered only if, before date of award, the bidder receives (or does not receive) award under a separate solicitation;
- (5) Requires that the County is to determine that the bidder's product meets applicable specifications; or
- (6) Limits rights of the County under any contract clause.

e. A low bidder may be requested to delete objectionable conditions from a bid provided the conditions do not go to the substance, as distinguished from the form, of the bid, or work an injustice on other bidders. A condition goes to the substance of a bid where it affects price, quantity, quality, or delivery of the items offered.

f. Any bid may be rejected if the Procurement Official determines in writing that it is unreasonable as to price. Unreasonableness of price includes not only the total price of the bid,

but the prices for individual line items as well.

g. Any bid may be rejected if the prices for any line items or sub-line items are materially unbalanced.

h. Bids received from any person or concern that is suspended, debarred, proposed for debarment or declared ineligible as of the bid opening date shall be rejected unless a compelling reason determination is made

i. Low bids received from concerns determined to be not responsible shall be rejected.

j. When a bid guarantee is required and a bidder fails to furnish the guarantee in accordance with the requirements of the request for bids, the bid shall be rejected.

k. The originals of all rejected bids, and any written findings with respect to such rejections, shall be preserved with the papers relating to the acquisition.

l. After submitting a bid, if all of a bidder's assets or that part related to the bid is transferred during the period between the bid opening and the award, the transferee may not be able to take over the bid. Accordingly, the Procurement Official shall reject the bid unless the transfer is effected by merger, operation of law, or other means not barred by law.

#### ***Notice to bidders of rejection of all bids***

When it is determined necessary to reject all bids, the Procurement Official shall notify each bidder that all bids have been rejected and shall state the reason for such action.

#### ***Minor informalities or irregularities in bids***

A minor informality or irregularity is one that is merely a matter of form and not of substance. It also pertains to some immaterial defect in a bid or variation of a bid from the exact requirements of the solicitation that can be corrected or waived without being prejudicial to other bidders. The defect or variation is immaterial when the effect on price, quantity, quality, or delivery is negligible when contrasted with the total cost or scope of the supplies or services being acquired. The Procurement Official either may give the bidder an opportunity to cure any deficiency resulting from a minor informality or irregularity in a bid or waive the deficiency, whichever is to the advantage of the best interest of the County.

Examples of minor informalities or irregularities include failure of a bidder to-

- (a) Return the number of copies of signed bids required by the invitation;
- (b) Furnish required information concerning the number of its employees;
- (c) Sign its bid, but only if-

- (1) The unsigned bid is accompanied by other material indicating the bidder's intention to be bound by the unsigned bid (such as the submission of a bid guarantee or a letter signed by the bidder, with the bid, referring to and clearly identifying the bid itself); or
- (2) The firm submitting a bid has formally adopted or authorized, before the date set for opening of bids, the execution of documents by typewritten, printed, or stamped signature and submits evidence of such authorization and the bid carries such a signature;

- (d) Acknowledge receipt of an amendment to a request for bids, but only if-

- (1) The bid received clearly indicates that the bidder received the amendment, such as where the amendment added another item to the solicitation and the bidder submitted a bid on the item; or

(2) The amendment involves only a matter of form or has either no effect on price, quantity, or merely a negligible effect on quality, or delivery of the item bid.

### ***Mistakes in Bids***

After the opening of bids, the Procurement Official shall examine all bids for mistakes. In cases of apparent mistakes and in cases where the Procurement Official has reason to believe that a mistake may have been made, the Procurement Official shall request from the bidder a verification of the bid, calling attention to the suspected mistake.

### ***Apparent Clerical Mistakes***

(a) Clerical mistake may be corrected by the Procurement Official before award. The Procurement Official first shall obtain from the bidder a verification of the bid intended. Examples of apparent mistakes are-

- (1) Obvious misplacement of a decimal point;
- (2) Obviously incorrect discounts (for example. 1 percent 10 days, 2 percent 20 days, 5 percent 30 days);
- (3) Obvious reversal of the price f.o.b. destination and price f.o.b. origin; and
- (4) Obvious mistake in designation of unit.

### ***Other mistakes disclosed before award***

In order to minimize delays in contract awards, administrative determinations may be made in connection with mistakes in bids alleged after opening of bids and before award. The authority to permit correction of bids is limited to bids that, as submitted, are responsive to the solicitation and may not be used to permit correction of bids to make them responsive.

(a) If a bidder requests permission to correct a mistake and clear and convincing evidence establishes both the existence of the mistake and the bid actually intended, the Procurement Director may make a determination permitting the bidder to correct the mistake; provided, that if this correction would result in displacing one or more lower bids, such a determination shall not be made unless the existence of the mistake and the bid actually intended are ascertainable substantially from the solicitation and the bid itself.

(b) If-

- (1) A bidder requests permission to withdraw a bid rather than correct it;
- (2) The evidence is clear and convincing both as to the existence of a mistake and as to the bid actually intended; and
- (3) The bid, both as uncorrected and as corrected, is the lowest received; the agency Procurement Director may make a determination to correct the bid and not permit its withdrawal.

(c) If, under paragraph (a) or (b) of this subsection,

- (1) the evidence of a mistake is clear and convincing only as to the mistake but not as to the intended bid, or
- (2) the evidence reasonably supports the existence of a mistake but is not clear and convincing, and with the approval of the Procurement Director, may make a determination permitting the bidder to withdraw the bid.

(d) If the evidence does not warrant a determination under paragraph (a), (b), or (c) of this section, the Procurement Director may make a determination that the bid be neither withdrawn nor corrected.

(e) Each proposed determination must have the concurrence of the County Attorney.

(f) Suspected or alleged mistakes in bids shall be processed as follows. A mere statement by the Procurement Director that they are satisfied that an error was made is insufficient.

(1) The Procurement Director shall immediately request the bidder to verify the bid. Action taken to verify bids must be sufficient to reasonably assure the Procurement Director that the bid as confirmed is without error, or to elicit the allegation of a mistake by the bidder. To assure that the bidder will be put on notice of a mistake suspected by the Procurement Director the bidder should be advised as appropriate-

- (i) That its bid is so much lower than the other bids or the County's estimate as to indicate a possibility of error;
- (ii) Of important or unusual characteristics of the specifications;
- (iii) Of changes in requirements from previous purchases of a similar item; or (iv) Of any other information, proper for disclosure, that leads the Procurement Official to believe that there is a mistake in bid.

(2) If the bid is verified, the Procurement Director shall consider the bid as originally submitted. If the time for acceptance of bids is likely to expire before a decision can be made, the Procurement Director shall request all bidders whose bids may become eligible for award to extend the time for acceptance of their bids. If the bidder whose bid is believed erroneous does not (or cannot) grant an extension of time, the bid shall be considered as originally submitted. If the bidder alleges a mistake, the Procurement Director shall advise the bidder to make a written request to withdraw or modify the bid. The request must be supported by statements (sworn statements, if possible) and shall include all pertinent evidence such as the bidder's file copy of the bid, the original worksheets and other data used in preparing the bid, subcontractors' quotations, if any, published price lists, and any other evidence that establishes the existence of the error, the manner in which it occurred, and the bid actually intended.

(3) When the bidder furnishes evidence supporting an alleged mistake, the Procurement Official shall refer the case to the Procurement Director together with the following data:

- (i) A signed copy of the bid involved.
- (ii) A copy of the request for bids and any specifications or drawings relevant to the alleged mistake.
- (iii) An abstract or record of the bids received.
- (iv) The written request by the bidder to withdraw or modify the bid, together with the bidder's written statement and supporting evidence.
- (v) A written statement by the Procurement Official setting forth-

- (A) A description of the supplies or services involved;
- (B) The expiration date of the bid in question and of the other bids submitted;
- (C) Specific information as to how and when the mistake was alleged;
- (D) A summary of the evidence submitted by the bidder;
- (E) In the event only one bid was received, a quotation of the most recent contract price for the supplies or services involved or, in the absence of a recent comparable contract, the Procurement Official's estimate of a fair price for the supplies or services;
- (F) Any additional pertinent evidence; and
- (G) A recommendation that either the bid is considered for award in the form submitted, or the bidder be authorized to withdraw or modify the bid.

(4) Where the bidder fails or refuses to furnish evidence in support of a suspected or alleged mistake, the Procurement Official shall consider the bid as submitted unless

- (i) the amount of the bid is so far out of line with the amounts of other bids

received, or with the amount determined by the Procurement Official to be reasonable, or  
(ii) there are other indications of error so clear, as to reasonably justify the conclusion that acceptance of the bid would be unfair to the bidder or to other bona fide bidders.

### ***Mistakes after award***

If a contractor's discovery and request for correction of a mistake in bid is not made until after the award, it shall be processed under the following:

(a) When a mistake in a contractor's bid is not discovered until after award, the mistake may be corrected by contract modification if correcting the mistake would be favorable to the County without changing the essential requirements of the specifications.

(b) In addition, as otherwise authorized by law, the Contracting Officer is authorized to make a determination-

- (1) To rescind a contract;
- (2) To reform a contract-

- (i) To delete the items involved in the mistake; or
- (ii) To increase the price if the contract price, as corrected, does not exceed that of the next lowest acceptable bid under the original invitation for bids; or

(3) That no change shall be made in the contract as awarded, if the evidence does not warrant a determination under subparagraph (b) (1) or (2) of this section.

(c) Determinations under paragraph (b) (1) and (2) of this section may be made only on the basis of clear and convincing evidence that a mistake in bid was made. In addition, it must be clear that the mistake was-

- (1) Mutual; or
- (2) If unilaterally made by the contractor, so apparent as to have charged the Procurement Official with notice of the probability of the mistake.

(d) Each proposed determination shall be coordinated with the county attorney.

(e) Mistakes alleged or disclosed after award shall be processed as follows:

(1) The procurement official shall request the contractor to support the alleged mistake by submission of written statements and pertinent evidence, such as-

- (i) The contractor's file copy of the bid,
- (ii) The contractor's original worksheets and other data used in preparing the bid,
- (iii) Subcontractors' and suppliers' quotations, if any,
- (iv) Published price lists, and
- (v) Any other evidence that will serve to establish the mistake, the manner in which the mistake occurred, and the bid actually intended.

(2) The file concerning an alleged mistake shall contain the following:

- (i) All evidence furnished by the contractor in support of the alleged mistake.
- (ii) A signed statement by the procurement official-

- (A) Describing the supplies or services involved;
- (B) Specifying how and when the mistake was alleged or disclosed;
- (C) Summarizing the evidence submitted by the contractor and any additional evidence considered pertinent;
- (D) Quoting, in cases where only one bid was received, the most recent contract price for the supplies or services involved, or in the absence of a recent comparable contract, the procurement official's estimate of a fair price for the supplies or services and the basis for the estimate;
- (E) Setting forth the procurement official's opinion whether a bona fide mistake was made and whether the procurement official was, or should have been, on constructive notice of the mistake before the award, together with the reasons for, or data in support of, such opinion;
- (F) Setting forth the course of action with respect to the alleged mistake that the procurement official considers proper on the basis of the evidence, and if other than a change in contract price is recommended, the manner by which the supplies or services will otherwise be acquired; and
- (G) Disclosing the status of performance and payments under the contract, including contemplated performance and payments.

- (iii) A signed copy of the bid involved.
- (iv) A copy of the request for bids and any specifications or drawings relevant to the alleged mistake.
- (v) An abstract of written record of the bids received.
- (vi) A written request by the contractor to reform or rescind the contract, and copies of all other relevant correspondence between the procurement official and the contractor concerning the alleged mistake.
- (vii) A copy of the contract and any related change orders or supplemental agreements.

(f) Each procurement official shall include in the contract file a record of-

- (1) All determinations made;
- (2) The facts involved; and
- (3) The action taken in each case.

### **Award**

(a) The procurement official shall make a contract award

- (1) by written or electronic notice,
- (2) within the time for acceptance specified in the bid or an extension, and
- (3) to that responsible bidder whose bid, conforming to the solicitation, will be most advantageous to the County. Award shall not be made until all required approvals have been obtained and the award otherwise conforms with the solicitations requirements

(b) If less than three bids have been received, the procurement official shall examine the situation to ascertain the reasons for the small number of responses. Award shall be made notwithstanding the limited number of bids. However, the procurement official shall initiate, if appropriate, corrective action to increase competition in future solicitations for the same or similar items, and include a notation of such action in the records of the request for bids.

(c)

- (1) Award shall be made by mailing or otherwise furnishing a properly executed award document to the successful bidder.
- (2) When a notice of award is issued, it shall be followed by the formal award no less than ten days after.
- (3) When more than one award results from any single invitation for bids, separate award documents shall be suitably numbered and executed.
- (4) When an award is made to a bidder for less than all of the items that may be

awarded to that bidder

and additional items are being withheld for subsequent award; the award shall state that the County may make subsequent awards on those additional items within the bid acceptance period.

(5) All provisions of the invitation for bids, including any acceptable additions or changes made by a bidder in the bid, shall be clearly and accurately set forth (either expressly or by reference) in the award document. The award is an acceptance of the bid, and the bid and the award constitutes the contract.

- (d) (1) Award is generally made by using Richland County's Purchase Orders, or a written agreement.
- (2) Awards are also made through Notice to Proceed.

(e) *Forfeiture of bid surety.* If the successful vendor or contractor does not *enter into* a contract within the required days stipulated in the notice to proceed, he/she shall forfeit any surety that accompanied the bid, unless the county is responsible for the delay. Vendor or contractor shall also be held liable for any cost in excess of his bid price which the county incurs in purchasing the goods or services elsewhere.

### ***Purchases through central state purchasing office***

As an alternative to the procedures described elsewhere in this article, the director of procurement may purchase any supplies, materials, equipment or contractual services through the central state purchasing office of the division of general services.

### ***Responsible bidder-reasonableness of price***

(a) The procurement official shall determine that a prospective contractor is responsible and that the prices offered are reasonable before awarding the contract. Price analysis techniques must be used, as guidelines particular care must be taken in cases where only a single bid is received.

(b) The price analysis shall consider whether bids are materially unbalanced.

### ***Economic price adjustment***

(a) Bidder proposes economic price adjustment.

(1) When a solicitation does not contain an economic price adjustment clause but a bidder proposes one with a ceiling that the price will not exceed, the bid shall be evaluated on the basis of the maximum possible economic price adjustment of the quoted base price.

(2) If the bid is eligible for award, the Procurement Official shall request the bidder to agree to the inclusion in the award of an approved economic price adjustment clause that is subject to the same ceiling. If the bidder will not agree to an approved clause, the award may be made on the basis of the bid as originally submitted.

(3) Bids that contain economic price adjustments with no ceiling shall be rejected unless a clear acceptable basis for evaluation exists.

(b) County proposes economic price adjustment.

(1) When a solicitation contains an economic price adjustment clause and no bidder takes exception to the provisions, bids shall be evaluated on the basis of the quoted prices without the allowable economic price adjustment being added.

(2) When a bidder increases the maximum percentage of economic price adjustment stipulated in the solicitation or limits the downward economic price adjustment provisions

of the solicitation, the bid shall be rejected as non-responsive.

(3) When a bid indicates deletion of the economic price adjustment clause, the bid shall be rejected as non-responsive since the downward economic price adjustment provisions are thereby limited.

(4) When a bidder decreases the maximum percentage of economic price adjustment stipulated in the invitation, the bid shall be evaluated at the base price on an equal basis with bids that do not reduce the stipulated ceiling. However, after evaluation, if the bidder offering the lower ceiling is in a position to receive the award, the award shall reflect the lower ceiling.

### ***Equal or tied low bids***

The director of procurement shall specify a method for awarding contracts if the lowest responsive and responsible bids are identical in material detail. Such method shall be approved by the director of procurement but shall otherwise remain confidential pending the opening of bids. Such method shall be designed to discourage collusion and restrictions on competition; provided, however, that, if time and the public interest permit, the director of procurement may readvertise for bids instead of deciding among identical bids. If the director of procurement does not suspect that the bids are a result of collusion, he may award the contract to the firm located, or to the vendor offering goods produced, in the county.

### ***Documentation of award***

(a) The procurement official shall document compliance with solicitation in the contract file.

(b) The documentation shall either state that the accepted bid was the lowest bid received, or list all lower bids with reasons for their rejection in sufficient detail to justify the award.

(c) When an award is made after receipt of equal low bids, the documentation shall describe how the tie was broken.

### ***Information to bidders***

(a) The procurement official shall as a minimum-

(1) Publish notification of Intent to Award and provide copy to all participants in the solicitation;

(2) Extend appreciation for the interest the unsuccessful bidder has shown in submitting a bid; and

(3) When award is made to other than a low bidder, state the reason for rejection in a notice to each of the unsuccessful low bidders.

(b) When a request is received concerning a solicitation from an inquirer who is neither a bidder nor a representative of a bidder, the procurement official should make *every* effort to furnish the names of successful bidders and, if requested, the prices at which awards were made. However, when such requests require so much work as to interfere with the normal operations of the Procurement office, the inquirer will be advised where a copy of the abstract of offers may be seen or a timeframe as to when the information will be available.

(c) The Freedom of Information Act will govern all requests for solicitation records.

## SECTION 6

### OTHER TYPES OF BIDS

## **Other Types of Bids**

### ***Best Value Bid***

The best value bid is a concept where the low-bid is still part of the bid selection process, but it is weighted with other elements to determine a best value that reflects quality, as well as cost issues. The low bid process is a valid strategy for buying most products. However, the best value bid is the best approach for purchasing high-tech equipment or instrumentation and for competing highly technological and complex projects. The goal is to contract for a lower long-term cost that includes such variables as superior service/support, greater reliability and uptime, better accuracy and precision of results, more efficient user interface/ease of use/automation, longer useful life, and higher resale/salvage value as the systems approaches the end of its useful life. These entire key differentiators are only known through user experience and "common" knowledge. Specifications and scope of service for highly technological and complex projects shall be solicited requiring and establishing criteria's that offer the best technical solution and/or the overall "Best value" for the taxpayer's dollar. The mechanisms for making a "Best value" acquisition should include few requirements or processes, purchasing procedures and limitations.

### ***Policy***

(a) When it is determined in writing that the acquisition is for high-tech equipment or instrumentation or for highly technological and complex projects and the use of competitive sealed bidding is either not practicable or not advantageous to the County, competitive best value bidding subject to the provisions of these regulations may be used to enter into a contract.

(b) The purpose of best value bidding is to allow factors other than price to be considered in the determination of award for highly technological and complex purchase and contracting for goods, services or construction based on pre-determined criteria identified by the County.

(c) The solicitation of a best value bid will be in accordance with advertising requirements set for sealed bids with the following exceptions:

1) At bid opening, the only information that will be released is the names of the participating bidders. Cost information will be provided after the ranking of bidders and the issuance of award.

(d) The best value bid should make allowances for awarding contracts to the best-performing contractors who deliver the highest quality service, projects or products. Various elements are considered in selecting a contractor on the basis of performance. Objective elements include contractor experience with similar projects, completion within schedule, compliance with material and workmanship requirements, timeliness and accuracy of submittals, and record of safety. Subjective elements include effective management of subcontractors, proactive measures to mitigate impacts to the environment, training and employee development programs, commitment to achieving customer satisfaction, and client relations

(e) The evaluation elements not only affect the ultimate performance and overall cost of the completed project or purchase, but also contribute to the efficient execution of the work. Under a "Best-Value" selection process, quality issues will be added to the bid evaluation process.

(f) Evaluation Factors. The best value bid shall state the factors to be used in determination of award and the numerical weighting for each factor. Cost must be a factor in determination of award and cannot be weighted at less than sixty percent. Best value bid evaluation factors may include, but are not limited to, any of the following as determined by the County in its sole discretion and not subject to protest:

- (1) Operational costs that the County would incur if the bid were accepted;
- (2) Quality of the product or service, or its technical competency;
- (3) Reliability of delivery and implementation schedules;

- (4) Maximum facilitation of data exchange and systems integration;
- (5) Warranties, guarantees, and return policy;
- (6) Vendor financial stability;
- (7) Consistency of the proposed solution with the state's planning documents and announced strategic program direction;
- (8) Quality and effectiveness of business solution and approach;
- (9) Industry and program experience;
- (10) Prior record of vendor performance;
- (11) Vendor expertise with engagement of similar scope and complexity;
- (12) Extent and quality of the proposed participation and acceptance by all user groups;
- (13) Proven development methodologies and tools; and
- (14) Innovative use of current technologies and quality results.

(g) Discussions may be conducted with apparent responsive bidders to assure understanding of the best value bid. All bidders whose bids, in the County's sole judgment, need clarification shall be accorded such an opportunity.

(h) Bids shall be evaluated by using only the criteria stated in the best value bid and by adhering to the weighting as assigned. All evaluation factors, other than cost, will be considered prior to determining the effect of cost on the score for each participating bidder. Once the evaluation is complete, all responsive bidders shall be ranked from most advantageous to least advantageous to the County, considering only the evaluation factors stated in the best value bid.

(i) Award must be made to the responsive and responsible bidder whose bid is determined, in writing, to be most advantageous to the County, taking into consideration all evaluation factors set forth in the best value bid.

### ***Two-Step Sealed Bidding***

Two-step sealed bidding is a combination of competitive procedures designed to obtain the benefits of sealed bidding when adequate specifications are not available. An objective is to permit the development of a sufficiently descriptive and not unduly restrictive statement of the County's requirements, including an adequate technical data package, so that subsequent acquisitions may be made by conventional sealed bidding. This method is especially useful in acquisitions requiring technical proposals, particularly those for complex items. It is conducted in two steps:

(a) Step one consists of the request for, submission, evaluation, and (if necessary) discussion of a technical proposal. No pricing is involved. The objective is to determine the acceptability of the supplies or services offered. As used in this context, the word "technical" has a broad connotation and includes, among other things, the engineering approach, special manufacturing processes, and special testing techniques. It is the proper step for clarification of questions relating to technical requirements. Conformity to the technical requirements is resolved in this step, but not responsibility.

(b) Step two involves the submission of sealed priced bids by those who submitted acceptable technical proposals in step one. Bids submitted in step two are evaluated and the awards made in accordance with the bid requirements.

### ***Conditions for use***

(a) Unless other factors require the use of sealed bidding, two-step sealed bidding may be used in preference to negotiation when all of the following conditions are present:

- (1) Available specifications or purchase descriptions are not definite or complete or may be too restrictive without technical evaluation, and any necessary discussion, of the technical aspects of the requirement to ensure mutual understanding between each source and the County.

- (2) Definite criteria exist for evaluating technical bids.
- (3) More than one technically qualified source is expected to be available.
- (4) Sufficient time will be available for use of the two-step method.
- (5) A firm-fixed-price contract will be used.

**Step one**

(a) The request must include, as a minimum, the following:

- (1) A description of the supplies or services required.
- (2) A statement of intent to use the two-step method.
- (3) The requirements of the technical bid.
- (4) The evaluation criteria, to include all factors and any significant sub-factors.
- (5) A statement that the technical bids shall not include prices or pricing information.
- (6) The date, or date and hour, which bid must be received,
- (7) A statement that-

(i) In the second step, only bids based upon technical proposals determined to be acceptable, either initially or as a result of discussions, will be considered for awards, and

(ii) Each bid in the second step must be based on the bidder's own technical proposals.

(8) A statement that-

(i) Offerors should submit proposals that are acceptable without additional explanation or information,

(ii) The County may make a final determination regarding a proposal's acceptability solely on the basis of the proposal as submitted; and

(iii) The County may proceed with the second step without requesting further information from any offeror; however, the County may request additional information from offerors of proposals that it considers reasonably susceptible of being made acceptable, and may discuss proposals with their offerors.

(9) A statement that a notice of unacceptability will be forwarded to the offeror upon completion of the proposal evaluation and final determination of unacceptability.

(10) A statement either that only one technical proposal may be submitted by each offeror or that multiple technical proposals may be submitted. When specifications permit different technical approaches, it is generally in the County's interest to authorize multiple proposals.

(b) Information on delivery or performance requirements may be of assistance to bidders in determining whether or not to submit a proposal and may be included in the request. The request shall also indicate that the information is not binding on the County and that the actual delivery or performance requirements will be contained in the invitation issued under step two.

(c) Upon receipt, the procurement director shall-

- (1) Safeguard proposals against disclosure to unauthorized persons; conditions; and
- (2) Remove any reference to price or cost.

(d) The Procurement director shall establish a time period for evaluating technical proposals. The period may *vary with* the complexity and number of proposals involved. However, the evaluation should be completed quickly.

(e) Evaluations shall be based on the criteria in the request for bids and shall be categorized as-

- (1) Acceptable;
- (2) Reasonably susceptible of being made acceptable; or
- (3) Unacceptable.
- (4) Proposal that modifies, or fails to conform to the essential requirements or specifications of, the request for technical proposals shall be considered non-responsive and categorized as unacceptable.

(f) The Procurement director may proceed directly with step two if there are sufficient acceptable proposals to ensure adequate price competition under step two.

(g) When a technical proposal is found unacceptable (either initially or after clarification), the Procurement director shall promptly notify the offeror of the basis of the determination.

(h) Late technical proposals shall not be accepted.

### ***Step two***

(a) Sealed bidding procedures shall be followed except that Request for Bids shall-

- (1) Be issued only to those offerors submitting acceptable technical proposals in step one;
- (2) Bidders that has submitted multiple technical proposals in step one of this acquisition may submit a separate bid on each technical proposal that was determined to be acceptable to the County.
- (3) State that the bidder shall comply with the specifications and the bidder's technical proposal.

SECTION 7  
REQUEST FOR INFORMATION &  
COMPETITIVE PROPOSALS

## **Request For Information and Competitive Proposals**

This section prescribes policies and procedures for-

- (a) Exchanging information with industry prior to receipt of proposals;
- (b) Preparing and issuing requests for proposals (RFP(s) and requests for information (RFI(s); and
- (c) Receiving proposals and information.

### ***Request for Information before receipt of proposals***

(a) Request for information from all interested parties, from the earliest identification of a requirement for a request for proposals, are encouraged. Any exchange of information must be consistent with procurement integrity requirements. Interested parties include potential offerors, end users, County acquisition and supporting personnel, and others involved in the conduct or outcome of the acquisition.

(b) The purpose of exchanging information is to improve the understanding of the County requirements and industry capabilities, thereby allowing potential offerors to judge whether or how they can satisfy the County's requirements, and enhancing the County's ability to obtain quality supplies and services, including construction, at reasonable prices, and increase efficiency in proposal preparation, proposal evaluation, negotiation, and contract award.

(c) Departments shall promote early exchanges of information about future acquisitions. An early exchange of information among industry and the contracting officer, project manager, and other participants in the acquisition process can identify and resolve concerns regarding the acquisition strategy, including proposed contract type, terms and conditions, and acquisition planning schedules; the feasibility of the requirement, including performance requirements, statements of work, and data requirements; the suitability of the proposal instructions and evaluation criteria, including the approach for assessing past performance information; the availability of reference documents; and any other industry concerns or questions. Some techniques to promote early exchanges of information are-

- 1) Industry or small business conferences;
- 2) Public hearings;
- 3) Market research;
- 4) One-on-one meetings with potential offerors (any that are substantially involved with potential contract terms and conditions should include the contracting officer; also see paragraph (f) of this section regarding restrictions on disclosure of information);
- 5) Pre-solicitation notices;
- 6) Draft RFP(s);
- 7) RFI(s);
- 8) Pre-solicitation or pre-proposal conferences; and
- 9) Site visits.

(d) The special notices or electronic notices may be used to publicize the County's requirement or request for information.

(e) RFI(s) may be used when the County does not presently intend to award a contract, but wants to obtain price, delivery, other market information, or capabilities for planning purposes. Responses to these notices are not offers and cannot be accepted by the County to form a binding contract. There is no required format for RFI(s).

(f) General information about the County mission needs and future requirements may be disclosed at any time. After release of the solicitation, the contracting officer must be the focal point of any exchange with potential offerors. When specific information about a proposed

acquisition that would be necessary for the preparation of proposals is disclosed to one or more potential offerors, that information must be made available to the public as soon as practicable, in order to avoid creating an unfair competitive advantage. Information provided to a potential offeror in response to its request must not be disclosed if doing so would reveal the potential offeror's confidential business strategy. When conducting a pre-solicitation or pre-proposal conference, materials distributed at the conference should be made available to all potential offerors, upon request.

### ***Multi-step process***

(a) The County may publish a pre-solicitation notice that provides a general description of the scope or purpose of the acquisition and invites potential offerors to submit information that allows the County to advise the offerors about their potential to be viable competitors. The pre-solicitation notice should identify the information that must be submitted and the criteria that will be used in making the initial evaluation. Information sought may be limited to a statement of qualifications and other appropriate information (e.g., proposed technical concept, past performance, and limited pricing information). At a minimum, the notice shall contain sufficient information to permit a potential offeror to make an informed decision about whether to participate in the acquisition. This process should not be used for multi-step acquisitions where it would result in offerors being required to submit identical information in response to the notice and in response to the initial step of the acquisition.

(b) The procurement director shall evaluate all responses in accordance with the criteria stated in the notice, and shall advise each respondent in writing either that it will be invited to participate in the resultant acquisition or, based on the information submitted, that it is unlikely to be a viable competitor. The director shall advise respondents considered not to be viable competitors of the general basis for that opinion. The director shall inform all respondents that, notwithstanding the advice provided in response to their submissions; they may participate in the resultant acquisition at the risk of being non-responsive.

### ***Requests for proposals (RFP(s))***

Competitive sealed requests for proposals may be used in the procurement of goods, services, and construction in the manner provided for herein.

(a) Conditions for use, When the county administrator 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 director of procurement or such other persons or entities as designated by the county council to utilize the competitive sealed proposals procedure established herein to contract for and procure the particular goods, services or construction required by the county.

(b) Proposals shall be solicited from at least three (3) qualified sources, when such sources are reasonably available.

A "request for proposal" 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 or cost shall be one of the evaluation factors but it shall not be the sole basis for award of the contract.

(c) Requests for proposals are used in negotiated acquisitions to communicate the County requirements to prospective contractors and to solicit proposals. RFP(s) for competitive acquisitions shall, at a minimum, describe the-

- (1) County's requirement;
- (2) Anticipated terms and conditions that will apply to the contract:
  - (i) The solicitation may authorize offerors to propose alternative terms and conditions, and
- (3) Information required to be in the offeror's proposal; and

(4) Factors and significant sub-factors that will be used to evaluate the proposal and their relative importance.

(d) Electronic commerce may be used to issue RFP(s) and to receive proposals, modifications, and revisions. In this case, the RFP shall specify the electronic commerce method(s) that offerors may use.

(e) Letter RFP(s) may be used in sole source acquisitions and other appropriate circumstances. Use of a letter RFP does not relieve the contracting officer from complying with other code requirements. Letter RFP(s) should be as complete as possible and, at a minimum, should contain the following:

- (1) RFP number and date;
- (2) Name, address (including electronic address and facsimile address, if appropriate), and telephone number of the contracting officer;
- (3) Type of contract contemplated;
- (4) Quantity, description, and required delivery dates for the item;
- (5) Applicable certifications and representations;
- (6) Anticipated contract terms and conditions;
- (7) Instructions to offerors and evaluation criteria for other than sole source actions;
- (8) Proposal due date and time; and
- (9) Other relevant information; e.g., incentives, variations in delivery schedule, cost proposal support, and data requirements.

(f) 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 the vendors' list or publication in a newspaper of general circulation in the county.

### ***Responsibilities***

(a) The contracting officer is designated as the source selection authority.

(b) The contracting officer shall-

- 1) After release of a solicitation, serve as the focal point for inquiries from actual or prospective offerors;
- 2) After receipt of proposals, control exchanges with offerors.

### ***Handling proposals and information***

(a) Upon receipt at the location specified in the solicitation, proposals and information received in response to a request for information (RFI) shall be marked with the date and time of receipt.

(b) Proposals shall be recorded publicly in the presence of one (1) or more witnesses at the time and place designated in the request for proposals. Only the names of the offering participants 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 offering vendor shall not be disclosed without written consent of the offering vendor.

(c) Proposals shall be safeguarded from unauthorized disclosure throughout the source selection process. Information received in response to an RFI shall be safeguarded adequately from unauthorized disclosure.

(d) If any portion of a proposal received by the contracting officer electronically is unreadable, the contracting officer immediately shall notify the offeror and permit the offeror to resubmit the unreadable portion of the proposal. The method and time for resubmission shall be prescribed by the contracting officer after consultation with the offeror, and documented in the file. The resubmission shall be considered as if it were received at the date and time of the original

unreadable submission for the purpose of determining timeliness, provided the offeror complies with the time and format requirements for resubmission prescribed by the contracting officer.

### ***Submission, modification, revision, and withdrawal of proposals***

(a) Offerors are responsible for submitting proposals, and any revisions, and modifications, so as to reach the procurement office address as designated in the solicitation by the time specified in the solicitation. Offerors may use any transmission method authorized by the solicitation (*i.e.*, regular mail or electronic commerce). If no time is specified in the solicitation, the time for receipt is 4:00 p.m., local time, at the procurement office on the date that proposals are due.

(b) Any proposal, modification, or revision, that is received at the designated procurement office after the exact time specified for receipt of proposals is "late" and will not be considered unless it is received before award is made and the contracting officer determines that accepting the late proposal would not unduly delay the acquisition; and-

(1) If it was transmitted through an electronic commerce method authorized by the solicitation, it was received at the initial point of entry to the county's main administration building not later than 5:00 p.m. one working day prior to the date specified for receipt of proposals; or

(2) There is acceptable evidence to establish that it was received at the procurement office or location designated for receipt of proposals and was under the county's control prior to the time set for receipt of proposals; or

(3) It was the only proposal received.

However, a late modification of an otherwise successful proposal, that makes its terms more favorable to the county, will be considered at any time it is received and may be accepted.

(c) Acceptable evidence to establish the time of receipt at the procurement office includes the time/date stamp of the procurement office on the proposal wrapper, other documentary evidence of receipt maintained by the installation, or oral testimony or statements of county personnel.

(d) If an emergency or unanticipated event interrupts normal Government processes so that proposals cannot be received at the procurement office designated for receipt of proposals by the exact time specified in the solicitation, and urgent Government requirements preclude amendment of the solicitation closing date, the time specified for receipt of proposals will be deemed to be extended to the same time of day specified in the solicitation on the first work day on which normal Government processes resume.

(e) Proposals may be withdrawn by written notice at any time before award. The contracting officer must document the contract file when withdrawals are made. One copy of withdrawn proposals should be retained in the contract file. Extra copies of the withdrawn proposals may be destroyed or returned to the offeror at the offeror's request and cost. Where practicable, electronically transmitted proposals that are withdrawn must be purged from primary and backup data storage systems after a copy is made for the file. Extremely bulky proposals must only be returned at the offeror's request and expense.

(f) The contracting officer must promptly notify any offeror if its proposal, modification, or revision was received late, and must inform the offeror whether its proposal will be considered; unless contract award is imminent then public notices would suffice.

(g) Late proposals and modifications that are not considered must be held unopened, unless opened for identification, until after award and then retained with other unsuccessful proposals.

(h) If available, the following must be included in the contracting office files for each late proposal, modification, revision, or withdrawal:

(1) The date and hour of receipt.

- (2) A statement regarding whether the proposal was considered for award, with supporting rationale.
- (3) The envelope, wrapper, or other evidence of date of receipt.

### ***Evaluation factors and significant sub-factors***

- (a) The award decision is based on evaluation factors and significant sub-factors that are tailored to the acquisition.
- (b) Evaluation factors and significant sub-factors must-
  - 1) Represent the key areas of importance and emphasis to be considered in the source selection decision; and
  - 2) Support meaningful comparison and discrimination between and among competing proposals.
- (c) The evaluation factors and significant sub-factors that apply to an acquisition and their relative importance are within the broad discretion of county procurement officials, subject to the following requirements:
  - (1) Price or cost to the county shall be evaluated in every source selection,
  - (2) The quality of the product or service shall be addressed in every source selection through consideration of one or more non-cost evaluation factors such as past performance, compliance with solicitation requirements, technical excellence, management capability, personnel qualifications, and prior experience; and
  - (3) Past performance shall be evaluated in all source selections for negotiated competitive acquisitions.
  - (4) Past performance need not be evaluated if the contracting officer documents the reason past performance is not an appropriate evaluation factor for the acquisition.
- (d) All factors and significant sub-factors that will affect contract award and their relative importance shall be stated in the solicitation. The rating method need not be disclosed in the solicitation. The general approach for evaluating past performance information shall be described.

### ***Proposal evaluation***

- (a) Proposal evaluation is an assessment of the proposal and the offeror's ability to perform the prospective contract successfully. An evaluation team shall evaluate competitive proposals and then assess their relative qualities solely on the factors and sub-factors specified in the solicitation.
- (b) Evaluation factors. Proposals shall be evaluated using only the criteria stated in the request for proposals and there must be adherence to any weighing that has been previously assigned. The request for proposals shall state the relative importance of each evaluation 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.
- (c) Discussions may be conducted with any with responsive and responsible vendors 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. A contract may be negotiated after an unsuccessful request for proposal at any time before an award is made provided that:
  - 1) The negotiated price must be fair and within the limits of available funds as determined by the county council or its designee.
- (d) Offering vendors shall be accorded fair and equal treatment with respect to any 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 offering vendors.

### ***Oral presentations***

(a) Oral presentations by offerors may augment written information. Use of oral presentations to augment a written proposal can be effective in streamlining the source selection process. Oral presentations may occur at any time in the acquisition process, and are subject to the same restrictions as written information, regarding timing and content. Oral presentations provide an opportunity for dialogue among the evaluation team and the presenter. Pre-recorded presentations will not be accepted.

(b) The information pertaining to an Offeror's methodology, capability, past performance, approaches, staffing resources, transition plans, or sample tasks (or other types of tests) may be suitable for oral presentations. In deciding what information to obtain through an oral presentation, the following will be considered:

- (1) The evaluation team ability to adequately evaluate the information;
- (2) The complexity of the project;
- (3) The impact on the efficiency of the acquisition.

(c) The Contracting Officer will also consider alternatives to on-site oral presentations (*e.g.*, teleconferencing, video teleconferencing).

(d) When oral presentations are required, the Contracting Officer shall provide offerors with sufficient information to prepare them. Accordingly, the Contracting Officer may describe-

- (1) The types of information to be presented orally and the associated evaluation factors that will be used;
- (2) The qualifications for personnel that will be required to provide the oral presentation(s);
- (3) The requirements for, and any limitations and/or prohibitions on, the use of written material or other media to supplement the oral presentations;
- (4) The location, date, and time for the oral presentations;
- (5) The restrictions governing the time permitted for each oral presentation; and
- (6) The scope and content of exchanges that may occur between the evaluators and the Offeror's representatives as part of the oral presentations, including whether or not discussions will be permitted during oral presentations.

(e) The contracting officer shall maintain a record of oral presentations to document what the County relied upon in making the source selection decision. The method and level of detail of the record (*e.g.*, videotaping, audio tape recording, written record, notes, and copies of offeror briefing slides or presentation notes) shall be at the discretion of the Contracting Officer. A copy of the record placed in the file may be provided to the offeror.

(f) When an oral presentation includes information that the parties intend to include in the contract as material terms or conditions, the information shall be put in writing. Incorporation by reference of oral statements is not permitted.

(g) The evaluation team must not conduct discussion(s) during an oral presentation.

(h) The contracting Officer's opportunity to re-score and consolidate the new scores.

(i) Ranking process is considered the highest score received.

(j) A Notice of Ranking memo will be generated and sent to the Administrator for approval.

## **Documenting the negotiation**

(a) The contracting officer shall document in the contract file the principal elements of the negotiated agreement. The documentation (*e.g.*, price negotiation memorandum (PNM)) shall include at a minimum the following:

- 1) The purpose of the negotiation.
- 2) A description of the acquisition, including appropriate identifying numbers (*e.g.*, RFP No.).
- 3) The name, position, and organization of each person representing the contractor and the county in the negotiation.
- 4) A summary of the contractor's proposal
- 5) Documentation of fair and reasonable pricing

(b) Projects under \$100,000. you can proceed with negotiation and award

(c) Projects over \$100,000. requires County Council approval for negotiation and award

(d) Issue Intent to award notice

(e) After protest period, process the requisition and award

## **Award**

Subject to any exceptions found in this article, the award shall be made to the responsive and responsible offering vendor, whose proposal is determined to be the most advantageous to the county, taking into consideration price or cost and the other evaluation factors set forth in the request for proposals. If the county council or its designee should determine that none of the proposals is 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.

## SECTION 8

# SELECTION OF FIRMS FOR PROFESSIONAL & CONSULTING SERVICES

## **Selection of Firms for Professional and Consulting Services**

### ***Selection criteria***

(a) The director of procurement (Director) shall evaluate each potential company, firm, person or entity in terms of its-

- (1) Professional qualifications necessary for satisfactory performance of required services;
- (2) Specialized experience and technical competence in the type of work required;
- (3) Capacity to accomplish the work in the required time;

(4) Past performance on contracts with Government agencies and private industry in terms of cost control, quality of work, and compliance with performance schedules;

(5) Location in the general geographical area of the project and knowledge of the locality of the project; provided, that application of this criterion leaves an appropriate number of qualified firms, given the nature and size of the project; and

(6) Acceptability under other appropriate evaluation criteria.

### ***Evaluation team***

(a) When acquiring professional services, the Director or shall establish an evaluation team of three or more individuals (preferably odd numbers) to be composed of members who, collectively, have experience in the areas of professional services requested, architecture, engineering, construction, information technology, finance, procurement, Government and related acquisition matters. Members shall be appointed from among qualified employees of the county and if authorized by the Administrator (Administrator) other agencies, private practitioners, professionals and any related professions or any citizen deemed qualified to perform such services.

(b) No firm shall be eligible for award of a professional services contract during the period in which any of its principals or associates are participating as members of the evaluation team.

### ***Evaluation team functions***

(a) Under general direction, an evaluation team shall perform the following functions:

(1) Review the current data submitted and responses to a public notice concerning the particular request for qualifications.

(2) Evaluate the firms in accordance with the criteria in the request for qualifications.

(3) Hold discussions (if required) with at least three of the most highly qualified firms regarding concepts and the relative utility of alternative methods of furnishing the required services.

(4) Prepare a selection/evaluation report for the Director recommending, in order of preference, the firms that are considered to be qualified to perform the required services. The report shall include a description or narrative of the evaluation conducted.

### ***Selection authority***

(a) The Administrator shall make decision.

(b) The Administrator shall review the recommendations of the evaluation team and with the advice of appropriate technical and staff representatives, make a recommendation. The recommended shall be on a listing of firms considered qualified. All firms on the selection list are considered "selected firms" with which the contracting officer may negotiate.

### ***Collecting data on and appraising firms qualifications***

(a) *Data files and the classification of firms.* The Office of Procurement shall maintain professional services qualifications data file and shall review the qualifications filed, and shall classify each firm with respect to-

- (1) Location;
- (2) Specialized experience;
- (3) Professional capabilities; and
- (4) Capacity, with respect to the scope of work that can be undertaken. A firm's ability and experience in computer-assisted design should be considered, when appropriate.

(b) *Current files.* Qualifications data files shall be reviewed and updated at least once every two years. This process should include:

- (1) Encouraging firms to submit a biennial updated statement of qualifications and performance data.
- (2) Reviewing the qualification data files.
- (3) Recording any contract awards made to the firm in the past year.
- (4) Assuring that the file contains a copy of each pertinent performance report.
- (5) Discarding any material that has not been updated within the past two years, if it is no longer pertinent.
- (6) Posting the date of the review in the file.

### ***Performance evaluation***

(a) *Preparation of performance reports.* For each contract of more than \$15,000, performance evaluation reports shall be prepared. Performance evaluation reports may also be prepared for contracts of \$15,000 or less.

- (1) A report shall be prepared after final acceptance of the contract work or after contract termination.
- (2) A report may also be prepared after completion of the actual construction of the project.
- (3) In addition to the reports in paragraphs (a) { 1) and (2) of this section, interim reports may be prepared at any time.
- (4) If the evaluating official concludes that a contractor's overall performance was unsatisfactory, the contractor shall be advised in writing that a report of unsatisfactory performance is being prepared and the basis for the report. If the contractor submits any written comments, the evaluating official shall include them in the report, resolve any alleged factual discrepancies, and make appropriate changes in the report.

(b) *Review of performance reports.* Each performance report shall be reviewed to ensure that it is accurate and fair. The reviewing official should have knowledge of the contractor's performance.

### ***Government cost estimate for professional service work***

(a) An independent estimate of the cost of professional services shall be prepared prior commencing negotiations for each proposed contract or contract modification. The estimate shall be prepared on the basis of a detailed analysis of the required work.

(b) Access to information concerning the county estimate shall be limited to county personnel whose official duties require knowledge of the estimate. An exception to this rule may be made during contract negotiations to allow identification of a specialized task and disclose the

associated cost breakdown figures in the county estimate, but only to the extent deemed necessary to arrive at a fair and reasonable price. The overall amount of the county's estimate shall not be disclosed.

### ***Negotiations***

(a) Unless otherwise specified the Director shall conduct negotiations. Negotiations shall be conducted beginning with the firm providing the most responsible and responsive proposal and or the selected firm which meets all the requirements and is most advantageous to the county.

(b) The Director should request a proposal from the firm

(c) The selected firm shall be advised that no construction contract may be awarded to the firm that designed the project unless it's a Design Build project.

(d) If mutually satisfactory terms and conditions cannot be negotiated, the Director shall obtain a written final proposal revision from the firm, and notify the firm that negotiations have been terminated. The contracting officer shall then initiate negotiations with another qualified firm on the qualification list. This procedure shall be continued until a mutually satisfactory contract has been negotiated. If negotiations fail the Director shall provide the Administrator a memorandum as to why a contract cannot be negotiated, and may recommend negotiating with additional firm(s) on the list.

### ***Release of information on firm selection***

(a) After final selection has taken place, the Director may release information identifying only the firm with which a contract will be negotiated for certain work. The work should be described in any release only in general terms, unless information relating to the work is classified. If negotiations are terminated without awarding a contract to the highest rated firm, the contracting officer may release that information and state that negotiations will be undertaken with another (named) firm.

(b) Debriefings of successful and unsuccessful firms may be held after final selection has taken place only as requested.

### ***Liability for Government costs resulting from design errors or deficiencies***

Professionals shall be responsible for the professional quality, technical accuracy, and coordination of all services required under their Agreement with the county. A firm may be liable for costs resulting from errors or deficiencies in designs furnished under its contract. Therefore, when a modification to a contract is required because of an error or deficiency in the services provided under a contract, the Director (with the advice of technical personnel and legal counsel) shall consider the extent to which the contractor may be reasonably liable. The Director shall enforce the liability and collect the amount due, if the recoverable cost will exceed the administrative cost involved or is otherwise in the county's interest. The Director shall include in the contract file a written statement of the reasons for the decision to recover or not to recover the costs from the firm.

### ***Design within funding limitations***

(a) The county may require the professional service firm to design the project so that costs will not exceed a contractually specified dollar limit (funding limitation). If the price proposed in response to a county solicitation exceeds the funding limitation in the professional service contract, the firm shall be solely responsible for redesigning the project within the funding limitation if an amendment as not been agreed to by both parties in writing by the authorized agents. These additional services shall be performed at no increase in the price of this contract. However, if the cost of proposed project is affected by events beyond the firm's reasonable control (e.g., if there is an increase in material costs which could not have been

anticipated, or an undue delay by the county in issuing a solicitation), the firm shall not be obligated to redesign at no cost to the county. If a firm's design fails to meet the contractual limitation on project cost and the county determines that the firm should not redesign the project, a written statement of the reasons for that determination shall be placed in the contract file.

(b) The amount of the project funding limitation is to be established during negotiations between the contractor and the county. This estimated project contract price should take into account any statutory or other limitations and exclude any allowances for county supervision and overhead and any amounts set aside by the county for contingencies. In negotiating the amount, the Director may make available to the contractor the information upon which the county has based its initial project estimate and any subsequently acquired information that may affect the project costs.

### ***Redesign responsibility for design errors or deficiencies***

(a) Under professional service contracts, contractors shall be required to make necessary corrections at no cost to the county when the designs, drawings, specifications, or other items or services furnished contain any errors, deficiencies, or inadequacies. If, in a given situation, the county does not require a firm to correct such errors, the Director shall include a written statement of the reasons for that decision in the contract file.

### ***Architects***

Contracting with an architect for professional services on any basis must be done by direct negotiations. Prior to selection of an architect for conducting business with the county and to negotiate; the architect must meet the pre-qualification criteria's for consulting and professional services. The architect must understand, show and meet the following minimum criteria's prior to selection for negotiations:

- (a) understands the nature of the project,
- (b) the proximity (location) of the architect to the project,
- (c) the capability of the architect, engineer to produce the required service within a reasonable time,
- (d) past performance, and
- (e) ability to meet project budget requirements,
- (f) shows creativity and insight to the project
- (g) meets any electronic and technically advance requirements of the project,
- (h) ability to provide the most current and latest process available in the industry.

## **SECTION 9**

### **CONTRACTING OFFICER'S REPRESENTATIVE**

## **Contracting Officer's Representative (COR)**

### ***Objective***

To provide necessary guidelines for Contracting Officer's Representatives (COR) to effectively monitor contractor performance. The only way we can be sure that we are getting a dollar's worth of service for every dollar paid is by tough and fair COR monitoring of contractor performance.

### ***Instruction***

It is the goal of Richland County to have successful contract performance, which means completion of work or service on time, within budget, with a quality of product or services. The COR is the key to making this happen.

### ***Responsibilities***

**Contracting Officer** for the County is the Director of Procurement. He/she is responsible for all contracts from the point of advertising of a contract to completion of the services requested.

**Contract Administrator** is the individual who administers the contract from the time of award to the completion of the services requested.

**Contracting Officer's Representative (COR)** is an individual, appointed in writing, to monitor contractor performance during the life of a specific contract.

### ***Duties of the COR***

A COR is an expert in the area that he is appointed to monitor contract(s). Once the COR is assigned the responsibility to monitor a contract(s), she/he should immediately read and understand the scope of work; i.e. exactly what are we paying the contractor to do.

The COR must read, understand, and be able to quote exactly what we are expecting to receive from the contractor line by line, specification by specification.

The COR must establish, with the assistance of the Contracting Officer, a surveillance plan which details the monitoring methods which will insure compliance with the contract specifications and scope of work/service. The following tools are available to monitor contractor performance.

Contractor Failure to Perform  
Check List  
Record of Inspections

All instances of failure to perform in accordance with the specifications and scope of work of the contract must be reported by the COR. These instances of failure to perform will allow the Contract Administrator to counsel the contractor about the failure to perform. Further reports from the COR of failure to perform will result in penalties or ultimately termination of the contract. In order for the COR to report instances of failure to perform, the COR must know exactly what the contract calls for.

The COR does not confront the contractor when failures are discovered. The COR is a scout who reports deficiencies to the Contract Administrator. This is the person who confronts the contractor.

The COR must maintain records, as instructed by the Contract Administrator and upon completion of the contract shall forward the closed-out file to the Office of Procurement for retention in the contract file. As a minimum, The COR file shall include:

- a. Copy of COR appointment letter;
- b. Copy of contract with all modifications;
- c. Notice of Award and/or Notice to Proceed;
- d. Statement indicating that COR understands and is aware of the ethical standards required; and
- e. Copy of records of COR inspections and conferences.

We always hope that contractors who are given awards to provide services to Richland County are willing and capable of providing a dollar's worth of service for every tax dollar paid. As the COR you are the key person in making sure that happens. Don't let the citizens of our County down. Help make Richland County, South Carolina's County of Excellence.

## **DO'S AND DON'TS**

### a. GENERAL

Chapter 2, Article IV, Code of Ethics, Richland County Code of Ordinances, is applicable to all County officials and employees, especially those officials and employees involved in contract dealings with private industry. As such, each designated contracting and related activities must conduct business dealings with industry in a manner above reproach in every respect and must protect the County's interest and maintain its reputation of fair dealings with contractors.

### b. GUIDANCE FOR CONTRACTING OFFICER'S REPRESENTATIVES

When the Contracting Officer determines that a COR will be appointed for a specific contract, the Contracting Officer shall prepare an appointment letter which delineates the COR on the extent of the delegation of authority. Some of the more common requirements and limitations for the COR are given below:

1. retain the appointment letter. The letter defines the delegation of authority to the COR.
2. understand the limits of authority delegated to the COR.
3. keep a copy of the contract, change orders and other contract documents available.
4. become familiar with the terms and conditions of the contract.
5. establish and maintain a project file for all documents and correspondence pertaining to the contract. The file is to be forwarded to the Contracting Officer for inclusion in the official contract file after the contract is completed.
6. ensure that a Notice-to-Proceed is issued on a timely basis by the Contracting Officer to the selected contractor.
7. ensure that a pre-construction conference is held to discuss contract provisions and requirements, and to clarify any issues of concern to the contractor.
8. give prompt attention to correspondence requiring COR action.
9. spot check the contractor's work to ensure that it meets contract requirements. This includes the work of subcontractors.
10. follow up to have deficient work corrected. However, the COR is not to give instructions to or supervise the contractor's employees or subcontractors.
11. maintain a log (record) of inspections.
12. complete required reports in a timely and accurate manner.
13. make certain that all emergency situations are attended to and resolved as quickly as possible. DO keep the Contracting Officer advised of the emergency and actions taken to correct the situation.
14. inform the contractor immediately when unsatisfactory performance is noted. Differences of opinion or interpretation of contract requirements between the COR and the contractor which cannot be mutually resolved will be referred to the Contracting Officer.
15. report to the Contracting Officer any problem that has the potential of causing delay or increasing the cost of the project.
16. give instructions to the contractor in writing, first ensuring that they are within the scope of the COR's authority.
17. obtain as-built drawings, technical bulletins, operational and maintenance manuals, warranties, keys, and other related data prior to making final payment to the contractor. The COR will make appropriate distribution of these documents.
18. **DON'T** tell the contractor how to run his business or resolve problems. This is his responsibility.
19. **DON'T** get involved with the contractor's personnel procedures or give instructions to the contractor's employees.
20. **DON'T** let personalities enter into discussions with the contractor.
21. **DON'T** request the contractor to do work outside the scope of the contract.
22. **DON'T** permit the contractor to proceed on his own with work outside the contract. The contractor may claim additional payment for the extra work. Immediately advise the Contracting Officer if the contractor persists in proceedings with the unauthorized work.
23. **DON'T** commit the use of County personnel, equipment or supplies to assist the contractor, unless the County furnished support is specifically provided for in the contract.

## SECTION 10

# BLANKET PURCHASE ORDERS (BPO)

## **Blanket Purchase Orders, (BPO(s))**

### ***General***

(a) A blanket purchase order (BPO) is a simplified method of filling anticipated repetitive needs for supplies, goods or services by establishing "charge accounts" with qualified sources of supply. BPO(s) are agreements normally established for supplies, goods, or services for which the price is determined and remains consistent, for a pre-determined amount and a pre-determined timeframe.

(b) BPO(s) are established for use by County departments responsible for providing supplies for its own operations or for other offices, projects, or functions.

(c) The use of BPO(s) does not exempt a department from the responsibility for keeping obligations and expenditures within available funds.

### ***Establishment of BPO(s)***

(a) The following are circumstances under which contracting officers may establish BPO(s):

- 1) There are a wide variety of items in a broad class of supplies or services that are generally purchased, but the exact items, quantities, and delivery requirements are not known in advance and may vary considerably;
- 2) There is a need to provide sources of supply for one or more departments;
- 3) The use of this procedure would avoid the writing of numerous purchase orders;
- 4) There is no existing requirements contract for the same supply or service that Procurement is required to use;
- 5) Recurring requirements for the same or similar supplies or services seem likely;

- i) Qualified sources are willing to accept BPO(s); and
- ii) It is otherwise practical to do so.

6) Limit documentation of purchases to essential information and forms.

(b) After determining a BPO would be advantageous, Procurement shall-

- 1) Conduct a solicitation for the required goods, supplies or service;
- 2) Establish the parameters to limit purchases to individual items or commodity groups or classes, and
- 3) Consider vendors whose past performance has shown them to be dependable, who offer quality supplies or services at consistently lower prices.

(c) BPO(s) may be established with-

- 1) More than one supplier for supplies or services of the same type to provide maximum practicable competition;
- 2) A single firm from which numerous individual purchases at or below the informal purchasing threshold will likely be made in a given period.

(d) BPO(s) should be prepared with a purchase order and a requisition and only after contacting suppliers to make the necessary arrangements for-

- 1) Securing maximum discounts and prices;
- 2) Periodic billings and payments;
- 3) Shipping and delivery;
- 4) Warranties;
- 5) Scope of Work/Service;
- 6) Specifications; and
- 7) Additional terms and conditions.

***The following terms and conditions are mandatory***

*(a) Description of agreement:* A statement that the vendor shall furnish supplies or services, described in general terms, if and when requested by an authorized representative of the County during a specified period and within a stipulated aggregate amount, if any.

*(b) Extent of obligation:* A statement that the County is obligated only to the extent of authorized purchases actually made under the BPO by County employees.

*(c) Delivery/Receiving Report.* A requirement that all shipments under the agreement, except those for newspapers, magazines, or other periodicals, shall be accompanied by delivery/receiving report, tickets, or sales slips that shall contain the following minimum information:

- 1) Name of supplier
- 2) BPO number
- 3) Date of purchase
- 4) Purchase number
- 5) Itemized list of supplies or services furnished
- 6) Quantity, unit price, and extension of each item, less applicable discounts
- 7) Date of delivery or shipment

*(d) Invoices.* A summary invoice shall be submitted at least monthly or upon expiration of the BPO, whichever occurs first, for all deliveries made during a billing period, identifying the delivery tickets covered therein, stating their total dollar value, and supported by receipt copies of the delivery tickets.

*(e)* Individual purchases shall not exceed the BPO(s) threshold.

*(f)* The existence of a BPO does not justify purchasing from only one source or avoiding small, woman, disabled, and minority owned business.

*(g)* Use a BPO only for purchases that are otherwise authorized by law or regulation. If, for a particular purchase greater than the authorized purchase threshold, Procurement must solicit quotations from other sources and make the purchase as appropriate; and

***Review procedures***

*(a)* The procurement official placing orders under a BPO, or the designated representative of the Director, shall review a sufficient random sample of the BPO files at least annually to ensure that authorized procedures are being followed.

SECTION 11  
QUOTATIONS

## Quotations

A quote is not an offer or a binding contract. Therefore, issuance of a purchase order (PO) in response to a vendor's quotation does not establish a binding contract. The purchase order is an offer by the County to the vendor to make certain purchases for goods, supplies or services upon specified terms and conditions. A contract is established when the vendor accepts the offer in writing or delivers the supplies, goods or services.

If the County issues an order resulting from a quotation, the County may (by written notice to the vendor, at any time before acceptance occurs) withdraw, amend, or cancel its offer.

The Procurement official must ask the vendor to indicate acceptance of an order by notification to the County, preferably in writing. All PO's resulting from a quote must have an acceptance from an authorized person from the vendor from whom we are purchasing. In other circumstances, the vendor may indicate acceptance by furnishing the goods, supplies or services ordered or by proceeding with the work to the point where substantial performance has occurred.

When soliciting quotes, the Procurement official must notify vendors of the basis on which award will be made (price alone or price and other factors, e.g., past performance and quality). Procurement officials are encouraged to use best value. When performing informal solicitations the procurement official is not required to state the relative importance assigned to each evaluation factor and sub-factor, nor are they required to include sub-factors.

The director of procurement must promote competition to the maximum extent practicable to obtain supplies, goods, and services from the source whose offer is the most advantageous to the County, considering the administrative cost of the purchase.

(a) The procurement official must not-

- (1) Solicit quotations based on personal preference; or
- (2) Restrict solicitation to suppliers of well-known and widely distributed makes or brands.

(b) Soliciting from a single source.

- (1) For purchases not exceeding the informal solicitation threshold, procurement official may solicit from one source if the procurement official determines (in writing) that the circumstances of the contract action deem only one source reasonably available (e.g., urgency, exclusive licensing agreements, or industrial mobilization).

(c) Price Reasonableness.

- (1) Procurement officials may make purchases not exceeding one thousand five hundred dollars without Soliciting competitive quotations if the prices are considered to be fair and reasonable. Distribution of purchases must be made equitably among qualified Vendors.
- (2) Procurement officials must solicit from other than the previous supplier before placing a repeat order, whenever practical in order to accomplish equity.
- (3) Procurement officials must take action to verify the fairness and reasonableness of the price quoted.

(d) Soliciting orally.

- (1) Small purchases not exceeding \$1,500.00 (excluding tax, shipment and handling charges):

- (i) The procurement official must solicit quotations orally to the maximum extent practicable, if- the purchase does not exceed the one thousand five hundred (\$1,500.00) small purchase threshold; all construction purchases must be in

writing.

(ii) The procurement official should establish and maintain records of oral quotes in order to have a record of placing the order at the price paid with the vendor concerned. The record must consist of showing the vendors contacted, names of the person who made the quote, prices quoted, and other terms and conditions quoted.

(iii) The procurement official shall solicit quotations orally to the maximum extent practicable if-

(A) The purchase does not exceed the \$1,500.00 acquisition threshold;

(B) Oral solicitation is more efficient than soliciting through electronic mail or fax;

(C) The purchase is for emergency purpose.

(e) For purchases from \$1,500.01 to \$15,000.00 (excluding tax, shipment and handling charges):

(i) Solicitations of written quotes from a minimum of three (3) qualified sources of supply shall be made and documented. Such documentation shall be written and attached to the purchase order.

(f) Evaluation of quotes

Procurement officials shall evaluate informal solicitations in an impartial manner; and must include transportation charges and delivery timeframe. The informal solicitation shall be evaluated on the basis established in the solicitation.

(1) Evaluation procedures. Each procurement official must use evaluation procedures relative to the solicitation such as price, shipping cost, delivery timeframe, warranty, and past performance.

(i) The procurement official shall use his or her discretion in fashioning suitable evaluation procedures.

(ii) If using price and other factors, insure that quotations or offers can be evaluated in an efficient and minimally burdensome fashion. Formal evaluation plans and establishing a competitive range, conducting discussions, and scoring quotations or offers are not required. Procurement officials may conduct comparative evaluations of offers. Evaluation of other factors, such as past performance-

(A) Does not require the creation or existence of a formal data base; and

(B) May be based on information such as the procurement official's knowledge of and previous experience with the supply or service being acquired, customer surveys, or other reasonable basis.

(2) For acquisitions conducted using electronic mail or a method that permits electronic response to the solicitation, the contracting officer may-

(i) After preliminary consideration of all quotations or offers; identify from all quotations or offers received one that is suitable to the user, such as the lowest priced brand name product. and quickly screen all lower priced quotations or offers based on readily discernible value indicators, such as past performance, warranty conditions, and maintenance availability; or

(ii) Where an evaluation is based only on price and past performance, make an award based on whether the lowest priced of the quotations or offers having the highest past performance rating possible represents the best value when compared to any lower priced quotation or offer.

(g) Special situations. Include additional statements explaining the absence of competition if only one source is solicited.

(h) Formal solicitations. For purchases above \$15,000.01 (excluding tax, shipment and handling charges):

- (1) Formal solicitation from a minimum of three (3) qualified sources of supply shall be made and documented. Such documentation shall be written and attached to the purchase order of record.
- (2) Procurement Officials shall issue a written solicitation for all construction.

i) Award and documentation

(1) *Basis for award.* Before making award, the contracting officer must determine that the proposed price is fair and reasonable, by:

- (i) Whenever possible, insuring base price reasonableness on competitive quotations or offers;
- (ii) If only one response is received, include a statement of price fairness and reasonableness in the contract file. The Procurement Official may base the statement on-

- (A) Market research;
- (B) Comparison of the proposed price with prices found reasonable and fair on previous purchases;
- (C) Current price lists, catalogs, or advertisements. However, inclusion of a price in a price list, catalog, or advertisement does not, in and of itself, establish fairness and reasonableness of the price;
- (D) A comparison with similar items in a related industry;
- (E) The Procurement Official's personal knowledge of the item being purchased;
- (F) Comparison to an independent Government estimate; or
- (G) Any other reasonable basis.

(iii) Occasionally an item can be obtained only from a supplier that quotes a minimum order price or quantity that either unreasonably exceeds stated quantity requirements or results in an unreasonable price for the quantity required. In these instances, the Procurement Official should inform the requiring department of all facts regarding the quotation or offer and ask it to confirm or alter its requirement. The file shall be documented to support the final action taken.

j) File documentation and retention.

Keep documentation to a minimum. Purchasing offices shall retain data supporting purchases (paper or electronic) to the minimum extent and duration necessary for management review purposes. The following illustrate the extent to which quotation or offer information should be recorded:

(1) *Written solicitations.* For acquisitions not exceeding the simplified acquisition threshold, limit written records of solicitations or offers to notes or abstracts to show prices, delivery, references to printed price lists used, the supplier or suppliers contacted, and other pertinent data.

(3) Special situations. Include additional statements-

- (i) Explaining the absence of competition if only one source is solicited and the acquisition does not exceed the threshold, or
- (ii) Supporting the award decision if other than price-related factors were considered in selecting the supplier.

## SECTION 12

# SOLE SOURCE PROCEDURES

## Sole Source Procedures

(a) Sole Source Procurement is when only one vendor possesses unique and singularly available capacity to meet the requirements such as technical qualifications, ability to deliver at and in a particular time. When the required supplies or services are available from only one source and no other type of property or services will satisfy the need.

(b) A true Sole Source product is available from only one source, often determined by patent or copyright protection, proprietary rights and capacity of one supplier to provide superior capabilities unobtainable from any other supplier for similar products.

(c) Sole Source must be justified with information of efforts undertaken to locate possible alternative supplier. Provide explanation of the reason that specifications suitable for full and open competition could not be developed and that it is necessary and in the county's best interest to use Sole Source rather than full and open competition. Sole Source addresses the source of a product or services not the item itself.

(d) The following examples describing minimum circumstances, which could necessitate "Sole Source" procurement:

- (1) Where the compatibility of equipment, accessories, or replacement parts is the paramount consideration;
- (2) Where a sole supplier's item is needed for trial use or testing;
- (3) Where a sole source supplier's item is to be procured for resale;
- (4) Where public utility services are to be procured;
- (5) Where the item is one of a kind; and
- (6) Printed forms, pamphlets, brochures, exclusive of printing equipment.

(e) Explanation of Sole Source Circumstances

(1) Sole Source Justification Requirements:

- (i) Explain why the item is needed and what will happen if it's not received by the Required Delivery Date (ROD). Describe impact on overhaul/availability schedules, to support, personnel safety issues, potential environmental damages, etc., and include the dollar value associated with late delivery.
- (ii) Explain the unique features/function of the item and why only one manufacturer can provide it. Discuss why a similar product from another manufacturer will not work.
- (iii) If the item can only be obtained from the OEM (Original Equipment Manufacturer), discuss the proprietary (i.e. owned by the company, not for public release) design/drawing/specification requirements.
- (iv) If there is a higher order requirement mandating a particular manufacturer (Public Safety equipment, goods and services), cite the requirement and who approved or required its usage. For component repair or replacement parts, explain any compatibility requirements, including a description of the existing equipment and the interface requirements.

(2) A contract may be awarded for a supply, service, or construction item without competition when, under the code of ordinances, the procurement director, determines in writing that there is only one source for the required supply, service, or construction item. Written documentation must include the determination and basis for the proposed sole source procurement. In cases of reasonable doubt, competition must be solicited. A determination by a department that a purchase be restricted to one potential vendor must be accompanied by an explanation as to why no other will be suitable or acceptable to meet the need.

## SECTION 13

# EMERGENCY PURCHASING

## Emergency Purchasing

### (a) Definitions that should be used when determining a true Emergency Purchases:

(1) Emergency procurement is when there is an unexpected situation or sudden occurrence of a serious and urgent nature that causes an immediate threat to public health, welfare, critical economy and efficiency, or safety under emergency conditions and any other reason as defined in the laws and regulations, and proclaimed by the County Council, County Administrator or authorized representative.

(2) The occurrence of emergency conditions must create an immediate and serious need which cannot be met through normal procurement methods and the lack of which would seriously threaten:

- (i) the functioning of the County government;
- (ii) the preservation or protection of property; and
- (iii) the health, welfare, or safety of any person

(3) Emergency procurements are limited to purchases necessary to alleviate the emergency and only those conditions that create a serious need that must be fulfilled immediately and the Department cannot follow the normal procurement procedures. Taking this into account, whatever competition, as is practicable and required, should be obtained. The Director of Procurement must approve all emergency purchases \$30,000.00 or less. The County Administrator or authorized representative must approve emergency purchases of \$30,000.01 through \$100,000.00, and purchases of \$100,000.01 or more require approval of the County Council.

(4) Whenever possible the Department must obtain approval prior to making purchases. If not possible (such as weekends and after normal hours) the department must report the circumstances and obtain approval on the next working day. To a practical extent, under the circumstances emergency purchases should be made competitively to attain the best value and cost.

(5) Emergency requisitions will be accepted via e-mail, fax, or telephonically from authorized department personnel. These requisitions will be processed as expeditiously as possible contingent on receiving all required information and having sufficient funds to make the purchase.

(6) Failure to anticipate normal needs does not constitute an emergency

### (b) Disaster or Emergency Assistance Activities

(1) When contracting under this section for major disaster or emergency assistance activities, such as debris clearance, distribution of supplies, or reconstruction, preference shall be given, to the extent feasible and practicable, to those organizations, firms, or individuals residing or doing business primarily in the area affected by such major disaster or emergency.

(2) The authority to provide preference applies only to those acquisitions conducted during the term of a major disaster or emergency declaration made by the County Council.

## SECTION 14

# GENERAL TERMS & CONDITIONS

## GENERAL CONDITIONS

### 1. ACCIDENTS

The Offeror shall take all precautions necessary to protect the public against injury

### 2. ACTS, LAWS, AND REGULATIONS

The Offeror will comply with "all applicable federal, state and local acts, laws, and regulations" and must at a minimum comply with:

- Americans with Disabilities Act (ADA);
- Community Development Block Grant Program;
- Contract Work Hours and Safety Standards Act;
- Davis – Bacon Wage Requirements (when required for federal grant projects)
- Department of Health and Environmental Control (DHEC)
- Disabled and Vietnam veteran employment;
- Drug Free Workplace Act;
- Eligibility for employment under United States immigration laws;
- Employment Eligibility Verification: prescribes policies and procedures requiring participants to utilize the Department of Homeland Security (DHS), United States Citizenship and Immigration Service's employment eligibility verification program (E-Verify) as the means for verifying employment eligibility of certain employees.
- Employment of the handicapped;
- Employment of Workers with Disabilities;
- Equal Employment Opportunity;
- Environmental Protection Agency (EPA) regulations;
- Fair Labor Standards (FLSA) Act;
- Governmental price regulations/orders (as required by law, Offeror will deliver proof that materials sold or installed and services rendered comply with price regulations) if a federal grant project.
- Maximum hours and minimum wages
- Nondiscrimination Because of Age;
- Occupational Safety and Health Administration (OSHA), (e.g., all materials and services furnished meet or exceed OSHA safety standards);
- Prompt Payment 31 USC Chapter 39 and [S.C. Code Ann §§ 29-6-10 through 29-6-60](#).
- Statutes regarding qualification to do business;
- Statutes prohibiting employment discrimination;

- Walsh-Healey Public Contracts Act;
- 49 CFR PART- 26, 23, 21  
Disadvantaged Business Enterprise  
(DBE) Program

### 3. ADVICE

No official or employee of the County shall participate personally through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise in a proceeding, application, request for a ruling or other determination, contract, grant cooperative agreement, claim, controversy, or other particular matter in which these funds are used, where to his/her knowledge he/she or her/his immediate family, partners, organization, other than a public office in which he/she is serving as an officer, director, trustee, partner, or employee or any person or organization with which he/she is negotiating or has any arrangement concerning prospective employment, has a financial interest.

### 4. AFFIRMATIVE ACTION

The Offeror shall take affirmative action in complying with all Federal, State and County requirements concerning fair employment, employment of the handicapped, and concerning the treatment of all employees, without regard or discrimination by reasons of race, color, sex, religion, national origin and/or physical handicap

### 5. AMBIGUOUS OFFERS

Offers that are uncertain as to terms, delivery, compliance requirement, and/or specifications, may be rejected or otherwise disregarded.

## 6. AMENDMENTS

All amendments to and interpretations of this solicitation shall be in writing. Any amendments or interpretations that are not in writing shall not be recognized by the County or its agents. It is the Offeror's responsibility to acknowledge receipt of amendments either by signing and returning one (1) copy of the amendment or by letter.

## 7. ANTI-COMPETITIVE PRACTICE

Offerors that developed or drafted specifications, requirements, statement of work, Request for Bids, or Request for Proposals from this solicitation shall be prohibited from participation in this proposed procurement.

## 8. ANTI-KICKBACK PROCEDURES

### a) *Definitions.*

"Kickback," as used in this clause, means any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind, which is provided, directly or indirectly, to any prime Offeror, general Offeror employee, subcontractor, or subcontractor employee for the purpose of improperly obtaining or rewarding favorable treatment in connection with a contract or in connection with a subcontract relating to a contract.

"Person," as used in this clause, means a corporation, partnership, and business association of any kind, trust, joint-stock company, or individual.

"Prime contract," as used in this clause, means a contract or contractual action entered into by the County for the purpose of obtaining goods, supplies, materials, equipment, vehicles, construction or services of any kind.

"General Contractor/Vendor" as used in this clause, means a person who has entered into a contract with the County.

"General Contractor/Vendor employee," as used in this clause, means any officer, partner, employee, or agent of a prime Offeror.

"Subcontract," as used in this clause, means a contract or contractual action entered into by a general Offeror or subcontractor for the purpose of obtaining supplies, materials, equipment, or services of any kind under a prime contract.

"Subcontractor," as used in this clause, (1) means any person, other than the General Contractor/Vendor, who offers to furnish or furnishes any supplies, materials, equipment, or services of any kind under a Prime Contractor/Vendor a subcontract entered into in connection with such prime contract, and (2) includes any person who offers to furnish or furnishes general supplies to the prime Offeror or a higher tier subcontractor.

b) The Anti-Kickback Act of 1986 (41 U.S.C. 51-58) (the Act), prohibits any person from.

(1) Providing or attempting to provide or offering to provide any kickback;

(2) Soliciting, accepting, or attempting to accept any kickback; or

(3) Including, directly or indirectly, the amount of any kickback in the contract price charged by a general Offeror to the County or in the contract price charged by a subcontractor to a general Offeror or higher tier subcontractor.

c) (1) The Offeror shall have in place and follow reasonable procedures

designed to prevent and detect possible violations described in paragraph (b) of this clause in its own operations and direct business relationships.

(2) When the Offeror has reasonable grounds to believe that a violation described in paragraph (b) of this clause may have occurred, the Offeror shall promptly report in writing the possible violation. Such reports shall be made to the Contracting Officer and the County Attorney.

(3) The Offeror shall cooperate fully with any Federal agency investigating a possible violation described in paragraph (b) of this clause.

(4) The Contracting Officer may

(i) Offset the amount of the kickback against any monies owed by the County under the prime contract and/or

(ii) Direct that the General Contractor/Vendor withhold from sums owed a subcontractor under the prime contract the amount of the kickback. The Contracting Officer may order that monies withheld under subdivision (c) (4) (ii) of this clause be paid over to the County unless the County has already offset those monies under subdivision (c) (4) (i) of this clause. In either case, the general Offeror shall notify the Contracting Officer and the County Attorney when the monies are withheld.

(5) The Offeror agrees to incorporate the substance of this clause, including paragraph (c) (5) but excepting paragraph (c) (1), in all subcontracts under this contract which exceed \$100,000.

## 9. ASSIGNMENT OF CONTRACT

No contract may be assigned, sublet, or transferred without a written consent of the Director of Procurement. The solicitation, specifications, scope of work, proposal and negotiated results between the County and Offeror shall constitute the entire contract.

## 10. AUDIT AND RECORDS

(a) As used in this clause, "records" includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form.

(b) *Cost or pricing data.* If the Offeror has been required to submit cost or pricing data in connection with the pricing of any modification to this solicitation, the Contracting Officer, or an authorized representative, in order to evaluate the accuracy, completeness, and currency of the cost or pricing data, shall have the right to examine and audit all of the Offeror's records, including computations and projections, related to—

- (1) The proposal for the modification;
- (2) The discussions conducted on the proposal(s), including those related to negotiating;
- (3) Pricing of the modification; or
- (4) Performance of the modification.

(c) *Availability.* The Offeror shall make available at its office at all reasonable times the materials described in paragraph (b) of this clause, for

examination, audit, or reproduction, until 3 years after final payment under this contract, or for any other period specified, Offeror Records Retention, in effect on the date of this contract, is incorporated by reference in its entirety and made a part of this contract.

(1) If this contract is completely or partially terminated, the records relating to the work terminated shall be made available for 3 years after any resulting final termination settlement.

(2) Records pertaining to appeals under the Disputes clause or to litigation or the settlement of claims arising under or relating to the performance of this contract shall be made available until disposition of such appeals, litigation, or claims.

(d) The Offeror shall insert a clause containing all the provisions of this clause, including this paragraph (e), in all subcontracts.

## 11. CHANGES

All changes and claims for extra cost shall be in writing. The parties have right to make changes by written change order, with contract price and the time for completion being adjusted accordingly; and with the mutual acceptance by both parties

## 12. COMPLIANCE

Offeror shall comply with all laws, ordinances, rules and regulations applicable to the work. If specifications or drawings are at variance therewith, Offeror shall

promptly notify Buyer in writing and any necessary change shall be appropriately modified. Offeror shall bear all costs for any work it reasonably should have known was contrary to laws, ordinances, rules or regulations.

### 13.COMplete DOCUMENTS

Plans, Specifications, General Conditions, Special Conditions, Requirements and all Supplementary Documents, will be essential parts of agreed on Contract and requirements occurring in one are as binding as though occurring in all.

### 14.CONSEQUENTIAL DAMAGES

In no event shall the County, or any of its affiliates, representatives or any directors, officers, or employees or any of their respective parents of any of the foregoing be liable to Offeror or any of its Sub-suppliers, whether based on any theory whatsoever for any consequential, special, incidental, indirect, exemplary, multiple or punitive damages. Offeror hereby releases the County and each of its affiliates, representatives or any directors, officers and employees from any such liability.

### 15.CONTRACT ADMINISTRATION

The Contracting Officer shall have the authority to act on the behalf of the County to make binding decisions with respect to this solicitation. Questions or problems arising after award of this contract shall be directed to the Director of Procurement, 2020 Hampton Street, Suite 3064, Columbia, South Carolina 29204.

Contract (s) awarded for this solicitation will be for a non-exclusive one year (twelve months) contract that may be renewed by written agreement by both

parties for one year at a time not to exceed five years (sixty months).

### 16.COVENANTS AGAINST CONTINGENT FEES

The Offeror warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Offeror for the purpose of securing business. For breach or violation of this warranty, the County shall have the right to annul this contract without liability or in its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

### 17.DEFINITIONS

a) Richland County Government hereinafter will be referred to as "County" or "OWNER"

b) "Contracting Officer" shall be the person occupying the position of the Director of Procurement.

c) All references to days in this solicitation mean calendar days.

d) All references to "shall", "must", and "will" are to be interpreted as mandatory language.

e) Request for proposals, bids, and request for qualifications are solicitation methods selected for pending acquisition and may be referred to as "RFP", "RFB" or "RFQ".

f) "Person," as used in this solicitation, means a firm, company, entity, corporation, partnership, and business association of any kind, trust, joint-stock company, or individual.

g) "Prime contract," as used in this solicitation, means an Agreement or contractual action entered into by the County with Offeror for the purpose of obtaining supplies, goods, materials, equipment, construction or services of any kind.

h) "Offeror" as used in this clause, means a person, firm, company, entity, corporation, partnership, and business association of any kind; trust, joint-stock company, or individual who has made an offer to provide goods, supplies, materials, equipment, construction or services of any kind and submitting a proposal or bid for the pending acquisition.

i) "Offeror's Employee," as used in this clause, means any officer, partner, employee, or agent of an Offeror.

j) "Confidential Information" as used in this solicitation shall mean any and all technical and non-technical information and proprietary information of the COUNTY (whether oral or written), scientific, trade, or business information possessed, obtained by, developed for, or given to OFFEROR which is treated by COUNTY as confidential or proprietary including, without limitation, Research Materials and Developments (defined below), formulations, techniques, methodology, assay systems, formulae, procedures, tests, equipment, data, reports, know-how, sources of supply, patent positioning, relationships with OFFERORS and employees, business plans and business developments, information concerning the existence, scope or activities of any research,

development, manufacturing, marketing, or other projects of COUNTY, and any other confidential information about or belonging to COUNTY'S suppliers, licensors, licensees, partners, affiliates, customers, potential customers, or others.

k) "Subcontract," as used in this clause, means an Agreement or contractual action entered into by the OFFEROR with Subcontractor or any third party for the purpose of obtaining supplies, materials, equipment, construction or services of any kind under this Solicitation.

l) "Subcontractor," as used in this clause, (1) means any third party, person, firm, company, entity, corporation, partnership, and business association of any kind, trust, joint-stock company, or individual other than the OFFEROR, who offers to furnish or furnishes any supplies, materials, equipment, construction or services of any kind under this Solicitation or a subcontract entered into in connection with OFFEROR and the Solicitation with the COUNTY and (2) includes any third party, person, firm, company, entity, corporation, partnership, and business association of any kind, trust, joint-stock company, or individual who offers to furnish or furnishes services or general supplies to the OFFEROR or a higher tier Subcontractor.

## 18.DISCUSSIONS

Offeror shall not attempt to negotiate with the using department or other parties, and shall not discuss any aspects of the solicitation without prior written approval of the Director of Procurement.

## 19.DISPUTE RESOLUTION

The parties agree to utilize the "escalation clause" by elevating the

dispute upward in the County and utilizing the requirements established by the County.

## 20. DOCUMENTATION AND PROJECT COMPLETION

Upon completion of the project, Offeror shall furnish, at no extra charge all closeout documentation as agreed to and as it relates to the project and the solicitation, including at a minimum the following:

Warranties and/or guarantees,  
Final affidavit or release and waiver of all liens from subcontractors  
Consent of Surety for final payment  
Minority Reports (when required);  
Project-related training materials and/or training plan;  
Any licensing;  
Contracted or plan for tech support, when appropriate;  
Statement of project final completion and acceptance;  
All required deliverables.

Contracting Officer (CO) and the Contracting Officer's Representative (COR) will recognize each project as complete only upon physical and written confirmation. County may assess project completeness using contemporary best (practical) and professional practices and evaluation criteria.

## 21. DRUG FREE WORKPLACE ACT

The Offeror and the County agrees to comply with the requirements set forth in Title 44, Code of laws of South Carolina, 1976, Chapter 107, and shall apply to all procurement actions involving an award for FIFTY THOUSAND dollars, (\$50,000.00) or more. The Offeror is required to execute a statement certifying that they understand and are

in full compliance with the Drug Free Workplace Act. Failure to comply with this requirement shall result in termination of any agreement.

## 22. EQUAL EMPLOYMENT OPPORTUNITY

Offeror agrees not to discriminate against any employee or applicant on the basis of age, race, color, religion, sex, or national origin; and to take affirmative action to employ and treat employees without regard to such factors. Offeror will provide information and submit reports on employment as County requests.

## 23. FORCE MAJEURE

The Offeror shall not be liable for any excess costs if the failure to perform the contract arises out of cause beyond the control and without the fault or negligence of the Offeror. Such causes may include, but are not restricted to acts of God or of the public enemy, acts of the Government in its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes and unusually severe weather. In every case the failure to perform must be beyond the control of both the Offeror and subcontractor and without fault or negligence of neither of them. The Offeror shall not be liable for any excess costs for failure to perform, unless supplies or services to be furnished by subcontractor were obtainable from other sources in sufficient time to permit the Offeror to meet the required delivery schedule.

## 24. FURNISHED DATA

All data and materials, negatives, photographs, engineering data, maps, plans, specifications, drawings, or other County furnished property shall remain the exclusive property of County.

Offeror agrees by executing an agreement that such County property will be used for no purpose other than for work for County under this solicitation. Offeror shall sign and deliver a written itemized receipt for all such property and shall be responsible for its safekeeping. Upon conclusion of the work/services hereunder, all such property shall be returned to the County.

## 25. GOVERNING LAWS/DISPUTES

Notwithstanding any other provision of this solicitation, any dispute concerning any question of fact or law arising under this Solicitation that is not disposed of between Offeror and the County shall be decided by a court of competent jurisdiction of the County of Richland in the State of South Carolina, in accordance with the laws of the state of South Carolina.

## 26. GRATUITIES

County prohibits its employees from using their official position for personal financial gain, or from accepting any personal advantage from anyone under circumstances which might reasonably be interpreted as an attempt to influence the recipients in the conduct of their official duties. The Offeror or its employees shall not, under circumstances which might reasonably be interpreted as an attempt to influence the recipients in the conduct of their duties, extend any gratuity or special favor to employees of County.

## 27. GUARANTEE

Offeror shall guarantee all workmanship and materials utilized in and for this contract being furnished for a period of not less than the contract term after the final inspection and acceptance of the deliverables. When defects of faulty

material is discovered during the guaranteed period, the Offeror shall, immediately, upon notification by the County, proceed at own expense, to repair or replace the same, together with any damage to all the finished deliverables that may have been damaged as a result of omission and/or workmanship.

## 28. IMPROPER INFLUENCE

The Contracting officer is the person occupying the position of the Director of Procurement. He is the only authorized "Agent" of the County, and he is responsible for all contractual affairs of the contract to include service delivery. The Contracting Officer shall appoint, in writing, a technical representative to help him monitor performance. This individual shall be a County employee and hereinafter referred to as the Contracting Officer Representative (COR). The Offeror must use this chain of communications at all times on all aspects of this contractual relationship.

Soliciting of special interest groups or appointed and elected officials with the intent to influence contract awards or to overturn decisions of the Contracting Officer is hereby prohibited. Violation of this provision may result in suspension or debarment. Aggrieved Offerors are encouraged to use the County policy on any matter related to this contract.

## 29. INDEMNIFICATION

Offeror shall indemnify, defend and hold harmless the County, its employees, and directors, each from and against all loss, damage, claims, and actions, and all expenses incidental to such claims or actions, including but not limited to liability as a result of injury to or death of any person, based upon or arising out of damage to property or injuries to

persons or other tortuous acts caused or contributed to by the Offeror or anyone acting under its direction or control or in its behalf in the course of its performance under this any agreement reach through this solicitation, and directly or indirectly caused, in whole or in part, by acts or omissions, negligence or otherwise, of Offeror or subcontractor or an agent of the Offeror or an employee of anyone of them, regardless of the negligence of the County or its employees, be it active or passive, except where such loss, cost, damage, claim, expense, or liability arises from the sole negligence or willful misconduct. Upon request of the County, Offeror shall, at no cost or expense to the County, defend any suit asserting a claim for any loss, damage or liability specified above, and Offeror shall pay any cost and attorneys' fees that may be incurred by the County in connection with any such claim or suit or in enforcing the indemnity granted above.

### 30.INSURANCE

Offeror shall be accountable for any damages resulting from his/her activities. Offeror shall pay for all such damage. Prior to commencing work hereunder, Offeror, at their own expense, shall obtain and maintain, throughout the duration of any agreement awarded through this solicitation, all such insurance as required by the State of South Carolina Statute, and minimally the below listed coverage's. Such insurance shall be issued by a company or companies authorized to do business in the State of South Carolina, Richland County, and any City in Richland County where any of the work is performed and must have a Best Rating of A-, VII or higher. The form and limits of such insurance, together with the underwriter thereof in each case, shall be acceptable to the

County, but regardless of such acceptance, it shall be the responsibility of Offeror to maintain adequate insurance coverage at all times. Failure of Offeror to maintain insurance coverage shall not relieve Offeror of their contractual obligation or responsibility hereunder. The information described herein sets forth-minimum coverages and limits and is not to be construed in any way as a limitation of liability on Offeror.

Offeror shall obtain and maintain such Public Liability and Property Damage insurance as shall protect Offeror, their subcontractors, and the County from claims for damages for personal injury, including accidental death, as well as for claims for property damage which might arise from operations under an award from this solicitation, whether such operations be by Offeror, or its subcontractors, or by any one directly or indirectly employed by them. The County shall be named as a Certificate Holder.

The Offeror's contractual liability insurance need not cover bodily injury or property Damage resulting from the sole negligence of the County

*Workers Compensation Insurance including Statutory Workers' Compensation* Amounts as required under South Carolina law for Benefits, and Employer's Liability. The Policy shall include an "all states" endorsement.

Comprehensive Automobile Liability Insurance to protect Offeror against claims for damages from:

\*Bodily injury, including wrongful death; and

\*Property damage, which may arise from the operations of any owned, hired, or

non-owned automobiles used by or for him/her in any capacity in connection with fulfillment of obligations under this contract. Minimum acceptable limits shall be: As required by the state of South Carolina to properly provide insurance for Bodily Injury in the amounts required per person and per occurrence; and Property Damage with Combined Single Limit.

30 days cancellation, non-renewal, material change or coverage reduction notice is required. The words "endeavor to" and", but failure to mail such notice shall impose no obligation or liability or any kind upon the company its agents or representatives" should be eliminated from the Notice of Cancellation provision.

The Certificate should state, "The insurance evidenced hereon applies to work performed by or on behalf of (*Contractor's or Vendor's name*) for Richland County South Carolina.

A. Commercial General Liability Insurance:

Offeror shall provide a liability policy written under Commercial General Liability form with limits of a minimum as required by law per occurrence on a location basis for each coverage and annual aggregate as required by law. The required basic coverage is for bodily injury and property damage and for personal injury. The policy shall also include:

- (1) Certificate of Liability Coverage:  
The certificate of liability coverage shall provide evidence of the following:
  - a) The certificate of liability coverage shall verify compliance with the preceding requirements under "INSURANCE" and in addition it shall

state bodily injury and property damage are covered and state the retroactive date for claims-made coverage. If the retroactive date has been advanced it must supply satisfactory evidence of an extended reporting period for the prior policy;

B. Automobile liability

The county requires automobile liability insurance for all non-business automobile coverage written on the comprehensive form of policy. The policy shall provide for bodily injury and property damage liability covering the operation of all automobiles used in connection with performing the contract. Policies covering automobiles operated in South Carolina shall provide coverage of at least \$25,000 per person and \$30,000 per occurrence for bodily injury and \$25,000 per occurrence for property damage or as required by current South Carolina legal requirements. The amount of liability coverage on other policies shall be commensurate with any legal requirements of the state of South Carolina sufficient to meet normal and customary claims.

C. Business Auto Coverage:

Offeror shall provide the County with a business auto policy written on Business Auto Policy Coverage Form CA 00 01 that has limits required by South Carolina law per occurrence. The business liability coverage should be "Any Auto" (ISO Symbol 1). Physical damage coverage is at the option of the Offeror. The policy shall also include:

D. Workers Compensation and Employers Liability Insurance:

A workers compensation policy that specifies South Carolina coverage ("Other States" only is unacceptable), and an employer's liability policy with limits of per accident/per disease. It shall waive subrogation against the County, its officials, employees, temporary and leased workers and volunteers.

- (1) Certificate of Workers Compensation and Employers Liability Insurance:

The certificate shall indicate South Carolina coverage and the limits of the employer's liability coverage. It shall affirm the policy contains a waiver of subrogation against the County, its officials, employees, temporary and leased workers and volunteers. It shall provide evidence of compliance with the requirements in cancellation.

E. Cancellation, Non-renewal, Reduction in Coverage and Material Change:

The insurer and Offeror shall provide the County thirty (30) calendar days notice in writing of any cancellation, non-renewal or reduction in coverage or any other material change in the policy.

- (1) *Words indicating failure to provide notice or imposition of no liability are unacceptable.*
- (2) Each certificate must state the insurance evidence thereon applies to work performed by or on behalf of the Offeror.
- (3) Certificate Recipient: original certificates of insurance shall be sent to:

Richland County Government  
Procurement and Contracting  
2020 Hampton Street, Suite 3064  
Columbia, SC 29204-1002  
Attn: Rodolfo Callwood, Director

31. LICENSES, PERMITS AND CERTIFICATES

The Offeror at their own expense shall secure all licenses, permits, variances and certificates required for and in connection with any and all parts of the work to be performed under the provisions of this solicitation.

32. MATERIALS REQUIRED

Materials required must be in conformity with the specifications and shall be subject to inspection and approval after delivery, and shall comply in quality and type of material and method of manufacturer with all applicable local and state laws pertaining hereto. The right is reserved to reject and return at the risk and expense of the Offeror such portion of any shipment, which may be defective or fail to comply with specifications, and without validating the remainder of the order.

Material Requirements

(a) *Definitions.*

As used in this clause—

"New" means composed of previously unused components, whether manufactured from virgin material, recovered material in the form of raw material, or materials and by-products generated from, and reused within, an original manufacturing process; *provided* that the supplies meet contract requirements, including but not limited

to, performance, reliability, and life expectancy.

“Virgin material” means—

(1) Previously unused raw material, including previously unused copper, aluminum, lead, zinc, iron, other metal or metal ore; or

(2) Any undeveloped resource that is, or with new technology will become, a source of raw materials.

(b) Unless this contract otherwise requires virgin material or supplies composed of or manufactured from virgin material, the Offeror shall provide supplies that are new.

### 33. NON-APPROPRIATIONS

Any contract entered into by the County shall be subject to cancellation without damages or further obligations when funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period or appropriated year.

### 34. NOTICES

Unless otherwise provided herein, all notices or other communications required or permitted to be given under this Solicitation shall be in writing and shall be deemed to have been duly given if delivered personally in hand and signed for or sent by certified mail, return receipt requested, postage prepaid, and addressed to the appropriate party at the following address or to any other person at any other address as may be designated in writing by the parties:

- Notice may be by means other than those listed, other than oral;
- Parties must acknowledge the receipt of any notice delivered in person;
- Date of notice shall be the date of delivery or date signed for on certified registered mail by the U.S. mail; and
- Either party may change its address by written notice within ten calendar days to the other.

County:

*Richland County Government  
Office of Procurement and Contracting  
2020 Hampton Street, third Floor, Suite  
3064, Columbia, SC 29204-1002  
Attn: Rodolfo Callwood, Director*

### 35. OR APPROVED EQUAL” CLAUSE:

Certain processes, type of equipment or kinds of material are described in the specifications and/or on the drawings by means of trade names and catalog numbers. In each instance where this occurs, it is understood and inferred that such description is followed by the word “or approved equal.” Such method of description is intended merely as a means of establishing a standard of comparability. However, the County reserves the right to select the items, which, in the judgment of the County, are best suited to the needs of the County based on price, quality, service, availability and other relative factors. Bidders must indicate brand names, model, model numbers, size, type, weight, color, etc., of the item bid. If not exactly the same as the item specified, Bidder’s stock number or catalog number is insufficient to meet this requirement. If any Bidder desires to

furnish an item different from the specifications, he/she shall submit, along with the bid; information, data, pictures, designs, cuts, etc. of the material he/she plans to furnish that will enable the County to compare the material specified; and, such material shall be given due consideration. The County reserves the right to insist upon and receive items as specified, if the submitted items do not meet the County's standards for acceptance.

#### Brand Name or Equal

(a) If an item in this solicitation is identified as "brand name or equal," the purchase description reflects the characteristics and level of quality that will satisfy the County's needs. The salient physical, functional, or performance characteristics that "equal" products must meet are specified in the solicitation.

(b) To be considered for award, offers of "equal" products, including "equal" products of the brand name manufacturer, must—

(1) Meet the salient physical, functional, or performance characteristic specified in this solicitation;

(2) Clearly identify the item by—

(i) Brand name, if any; and

(ii) Make or model number;

(3) Include descriptive literature such as illustrations, drawings, or a clear reference to previously furnished descriptive data or information available to the Contracting Officer; and

(4) Clearly describe any modifications the Offeror plans to make in a product to make it conform to the solicitation requirements. Mark any descriptive material to clearly show the modifications.

(c) The Contracting Officer will evaluate "equal" products on the basis of information furnished by the Offeror or identified in the offer and reasonably available to the Contracting Officer. The Contracting Officer is not responsible for locating or obtaining any information not identified in the offer.

(d) Unless the Offeror clearly indicates in its offer that the product being offered is an "equal" product, the Offeror shall provide the brand name product referenced in the solicitation.

#### 36. OTHER WORK

The County shall have the right to perform or have performed similar or such other work, as it may desire while Offeror is performing work. The Offeror shall perform its work in a manner that enables completion of other work without hindrance or interference (or shall properly connect and coordinate its work with that of others when required). Any claim of interference due to other work must be made to County within ten (10) calendar days of its occurrence or it is deemed waived.

#### 37. OWNERSHIP

Except for the County's proprietary software and materials, and the proprietary Operating System Software,

all original data, spatial data, aspatial data plans, drawings, images, material, documentation (including electronic files or documents), and application software generated and prepared by or exclusively for the County pursuant to any agreement shall belong to the County. Offeror shall not sell, give loan nor in any other way provide such to another person or organization, nor otherwise utilize any commercially valuable data, images, or developments created specifically by or for the County under this agreement, without the written consent of the Contracting Officer. Any external requests to procure these data or materials must be forwarded to the County.

### 38.PACKAGING AND DELIVERY

All shipments shall be FOB to the County's location, as cited on the purchase order(s) and/or contract(s). Purchase order and/or contract number shall be clearly displayed on the shipping container. Furthermore, the parties agree hereto, that delivery by the Offeror to the common carrier does not constitute delivery to the County. Any claims for loss or damage, shall be between the Offeror and the carriers.

### 39.PATENT

The Offeror shall hold the County, its officers, employees, and agents, harmless from liability of any nature or kind whatsoever, on account of use by the publisher or authorized agent or manufacturer, and any copyrighted/un-copyrighted composition, secret process, article or application furnished or used under this solicitation.

### 40.PAYMENT

Offeror will invoice County under provisions of the Prompt Payment Act for

which payment terms are "Net 30 days" the County will make every attempt to satisfy the payment request within thirty- (30) calendar days as of receipt of invoice by the Contracting Officer for deliveries confirmed as accepted and meeting the standard of quality by that profession or industry or to which agreed. The County may pay interest at a rate equal to **one percent** on sums, which the County fails to remit on any undisputed portions within thirty - (30) days from date of Contracting Officer receipt of a valid and correct invoice on any unpaid amount for each month or fraction thereof, that such payment is delinquent due no fault of Offeror. Invoices shall be submitted periodically for the amount of work carried out and approved as accepted in that period. Invoices submitted for payment for services provided under this contract, shall contain as a minimum:

- Name of business concern;
- Contract; Purchase Order or Project number;
- Complete description of purchases or services;
- Cost/price of deliveries;
- Name; title; telephone number and complete mailing address of responsible official to whom payment is to be sent;
- shall be sent at least two weeks prior to desired payment date by electronic mail at ***Invoices@rcgov.us*** and hardcopy originals to attention the assigned Contracting Officer Representative (COR) or assigned point of contact (POC);

- Balance shall be paid upon completion of all work and County's final acceptance of all work;
- Payment does not constitute acceptance of defective or nonconforming for work, vehicle, equipment, goods or supplies or otherwise relieve Offeror of any obligation under the contract;
- The County may disputes the value and quality of the work, vehicle, equipment, goods or supplies in question
- The County shall have the right to withhold payments from the Offeror due to actual or prospective loss due to defective or nonconforming work, damaged or loss for which Offeror is liable;
- The County shall have the right to withhold from the Offeror amounts representing Offeror's inability to complete the work, deliver or breach or due to actual or prospective loss under any terms or conditions of the contract,

#### 41.PERMITS

The Offeror will comply with "all applicable federal, state and local laws, regulations and permits" and agrees to at a minimum comply with:

- The Offeror shall obtain all permits or licenses required in connection with the work, give all notices, pay all fees, etc., to ensure compliance with law (unless County elects to procure and pay for same), and shall deliver all proof of compliance

to County upon the County's final acceptance of the work.

- Offeror shall report to County any aspect of noncompliance of specifications, drawings, and other contract documents with the law.
- If Offeror cannot procure necessary permits, County may cancel the contract without liability or may procure the permits and deduct the cost thereof from the contract price (only at the discretion of the Director of Procurement.

#### 42.PRIME OFFEROR, ASSIGNMENT AND SUBCONTRACTING

The Offeror shall be the "Prime Offeror", and the agreement shall be the primary agreement. All other agreements between the County and Offeror shall be subordinate to the primary agreement in the event of conflict between the primary agreement and any other agreements unless, otherwise specifically stated herein, or by mutually executed Amendment hereto. The County shall consider the Offeror to be sole point of contact with regard to all contractual matters of this project.

Offeror hereto without the express written consent of the Contracting Officer shall not assign obligation under this solicitation to another party.

If any part of the work covered by the solicitation is to be subcontracted, the Offeror shall submit the qualifications of the subcontracting organization and the proposed contractual arrangements to the County for approval prior to execution of the contract. The approved Offeror-subcontractor contractual agreement, excluding financial information, shall be provided to the

County. Approval by the County of such subcontract shall not in any way relieve Offeror of any of their obligations, responsibilities, or liabilities, under this solicitation, regardless of the nature and conditions of such subcontractor services and actions on Offeror's behalf.

#### 43. PROHIBITION OF GRATUITIES:

Amended Section 8-13-720 of the 1976 Code of Laws of South Carolina states:

"WHOEVER gives or offers to any public official or public employee any compensation including a promise of future employment to influence his action, vote, opinion or judgment as a public official or public employee or such public official solicits or accepts such compensation to influence his action, vote, opinion, or judgment shall be subject to the punishment as provided by Section 16-9-210 and Section 16-9-220. The provisions of this section shall not apply to political contributions unless such contributions are conditioned upon the performance of specific actions of the person accepting such contribution nor shall they prohibit a parent, grandparent or relative from making a gift to a child, grandchild or other close relative for love and affection except as hereinafter provided."

#### 44. PROJECT ORGANIZATION

It is expected that Offeror will be dealing with various members of the County's Staff during the course of an award of an agreement from this solicitation. To establish a clear line of communications, a Contracting Officer Representative (COR), acting as Project Manager, shall be appointed to oversee and coordinate all aspects of the work. He/she shall be the focal point of contact with the Offeror.

#### 45. PROPRIETARY INFORMATION:

Offeror(s) shall visibly mark as "Confidential" each part of their proposals which they consider proprietary information that could be exempt from disclosure under Section 30-4-40, Code of Laws of South Carolina, 1976 (1986 Cum. Supp.) Freedom of Information Act (FOIA); if any part is designated as "Confidential," there must be attached to that part an explanation of how the information fits within one or more categories listed in Section 30-4-40. The County reserves the right to determine whether this may be brought against the County or its agent for its determination in this regard.

#### 46. PUBLICITY RELEASES:

Offeror agrees not to refer to award of this contract in commercial advertising in such manner as to state to imply that the products or services provided are endorsed or preferred by the County.

#### 47. QUALIFICATIONS:

Offeror must be regularly established in the business called for, and who by executing this solicitation certifies that they are financially capable and responsible; is reliable and has the ability and experience, to include, the facility and personnel directly employed or supervised by them to complete this contract. Offeror certifies that they are able to render prompt and satisfactory service in the volume called for under this contract.

County may make such investigation, as he deems necessary to determine the ability of the Offeror to perform the work. The Offeror shall furnish to the County all such information and data as the County may request, including, if requested, a detailed list of the

equipment which the Offeror proposes to use, and a detailed description of the method and program of the work he proposes to follow. The County reserves the right to terminate, if anytime throughout the term of an agreement the evidence submitted by, or investigation of, the Offeror fails to meet all requirements as stipulated or satisfy the County that the Offeror is properly qualified to carry out the obligations of the contract and to complete the work agreed on therein.

#### 48. QUALITY OF PRODUCT:

Offeror shall render the services consistent with the standard of care, skill and diligence exercised by members of the same profession providing similar services under similar conditions at the time the services are to be performed. Offeror standard of care shall not be altered by the application, interpretation or construction of any other provision of this Solicitation.

#### 49. REJECTION

(a) Any Submittal that fails to conform to the essential requirements of the Request for Multi-Step Bid (RFMSB) shall be rejected.

(b) Any Submittal that does not conform to the applicable *requirements and specifications* shall be rejected unless the RFMSB authorized the submission of alternate Submittals and the Submittal offered as alternates meet the requirements specified in the invitation.

(c) Any Submittal that fails to conform to the delivery schedule or permissible alternates stated in the RFMSB shall be rejected.

(d) A Submittal shall be rejected when the Bidder imposes conditions that would

modify requirements of the invitation or limit the Bidder's liability to the County, since to allow the Bidder to impose such conditions would be prejudicial to other Bidder's. For example, Submittals shall be rejected in which the Bidder-

1) Protects against future changes in conditions, such as increased costs, if total possible costs to the County cannot be determined;

2) Fails to state a price and indicates that price shall be "price in effect at time of delivery;"

3) States a price but qualifies it as being subject to "price in effect at time of delivery;"

4) Requires that the County is to determine that the Bidder's product meets applicable County requirements and specifications or limits rights of the County under any contract clause.

A Bidder may be requested to delete objectionable conditions from a Submittal provided the conditions do not go to the substance, as distinguished from the form of the Submittal, or work an injustice on other Bidder's. A condition goes to the substance of a Submittal where it affects price, quantity, quality, or delivery of the items offered.

Any Submittal may be rejected if the Contracting Officer determines in writing that it is unreasonable as to price. Unreasonableness of price includes not only the total price of the Submittal, but the prices for individual line items as well.

Any Submittal may be rejected if the prices for any line items or sub-line items are materially unbalanced.

Submittals received from any person or concern that is suspended, debarred, proposed for debarment or declared ineligible as of the Submittal opening date shall be rejected unless a compelling reason determination is made.

The Contracting Officer must reject Submittals received from concerns determined to be non-responsible.

When a Submittal guarantee is required and a Bidder fails to furnish the guarantee in accordance with the requirements of the Submittals, the Submittal shall be rejected.

The originals of all rejected Submittals, and any written findings with respect to such rejections, shall be preserved with the papers relating to the acquisition.

After submitting a Submittal, if all of a Bidder's assets or those parts related to the Submittal are transferred during the period between the Submittal opening and the award, the transferee may not be able to take over the Submittal. Accordingly, the Contracting Officer shall reject the Submittal unless merger, operation of law affects the transfer or other means not barred by law.

#### 50. RESPONSIBILITY

The Offeror certifies that it has fully acquainted itself with conditions relating to the scope, specifications, and restrictions attending the execution of the work under the conditions of this solicitation.

The failure or omission of the Offeror to acquaint itself with existing conditions shall in no way relieve the Offeror of any obligation with respect to the offer and any subsequent agreement.

Neither partial or final inspection, nor approval by Owner, Buyer or their representatives, shall relieve the Offeror of responsibility to make the work and/or equipment comply with purchase requirements.

#### 51. SECURITY – COUNTY'S RULES:

In consideration of the security responsibility of the County, the Contracting Officer or designee reserves the right to observe Offeror's operations and inspect the related areas. Moreover, Offeror agrees to abide by any and all of the County's rules and regulations, procedures and General Orders, as well as any directives by the County Administrator, Contracting Officer or designee regarding Offerors performance when operating on or in County's property under the terms and conditions of this solicitation. Offeror agrees to provide the names of employees assigned to work in and on the County's property and that the County may make criminal background record checks, and County may require Offeror to provide criminal background record checks. Offeror is also required to provide a certified medical certificate stating that each proposed employee is free from communicable diseases. The Contracting Officer or designee reserves the right to require all of Offeror's employees, Offerors, and sub-Offerors accessing County property to have the company's identification with photograph, name, and position of the employee at the Offeror's sole expense. The Offeror must issue photo identification cards if requested by County and require it to be worn by its employees whenever they are present on or in the County's property. Persons not previously screened for admittance shall not be admitted on or in the County's property without proper notification and

authorization from the Contracting Officer or designee.

The County reserves the right upon showing of probable cause, to search the employees of Offeror while in or on County's property;

Offeror is responsible for identifying fire escape routes in County facilities.

Offeror's employees shall comply with the County's written policies and procedures relating to County's security. Offeror's employees shall also comply with all of the County's rules concerning the use of the working areas.

Offeror's representative shall report any unusual occurrences immediately to the Contracting Officer or designee. It shall be the responsibility of Offeror to secure any assigned areas before exiting the County's facilities, unless notified in writing by the Contracting Officer or designee to do otherwise.

#### 52. SEVERABILITY:

If any term of provision of any contract resulting from this solicitation shall be found to be illegal or enforceable, notwithstanding any such legality or enforceability, the remainder of said contract shall remain in full force and effect, and such term or provision shall be deemed to be deleted and severable there from.

#### 53. SOUTH CAROLINA LAW CLAUSE:

The Offeror must comply with the laws of South Carolina, which require such person or entity to be authorized and/or licensed to do business in this state. Notwithstanding the fact, that applicable statutes may be authorized and/or licensed to do business in this state, by signing this solicitation, the Offeror

agrees to subject itself to the jurisdiction and process of the courts of the State of South Carolina, as to all matters and disputes arising or to arise under the contract and the performance thereof, including any questions as to the liability of taxes, licenses or fees levied by the State/County.

#### 54. SPECIFICATIONS

Any deviation from the specifications indicated herein must be clearly pointed out, otherwise, it will be considered that items offered are in strict compliance with these specifications, and successful Bidder shall be held responsible therefore. Deviations must be explained in detail on separate sheets and be attached to the submitted bid.

#### 55. STATEMENT OF COMPLIANCES AND ASSURANCES

Offeror(s) to be eligible for consideration shall be required to certify in writing, that the firm or agency represented in the proposal submitted, complies with all applicable federal and state laws/regulations and County ordinances.

a. Offeror(s) shall be required to provide with each bid, a written assurance of noncollusion and understanding and acceptance of any and all provisions stated in this contract.

b. A statement of Compliance and Assurance, along with other statements and certification shall be provided to Offerors and be part of each solicitation.

#### 56. SUBCONTRACTS:

Offeror shall not subcontract work hereunder without the prior written consent of the County, and any such subcontract without consent of the County shall be null and void. If Offeror

proposes to subcontract any of the work hereunder, it shall submit to the County the name of each proposed subcontractor(s), with the proposed scope of work, which its subcontractor is to undertake. The County shall have the right to reject any

Subcontractors which it considers unable or unsuitable to satisfactorily perform; Offeror shall not enter into any cost reimbursable contracts with any proposed subcontractor without County's prior written authorization.

Notwithstanding any consent by the County to a proposed subcontract, Offeror shall remain responsible for all subcontracted work and services. Offeror agrees it shall be as fully responsible to the County for the acts and omission of its subcontractors, their agents, representatives, and persons either directly or indirectly employed by them as it is for the acts and omissions of persons directly employed by Offeror.

Neither this provision, this contract, the County's authorization of Offeror's agreement with subcontractor, County's inspection of subcontractor's facilities, equipment or work, or any other action taken by the County in relation to subcontractor shall create any contractual relationship between any subcontractor and the County.

Offeror shall include in each of its subcontracts a provision embodying the substance of this article and shall exhibit a copy thereof to the County before commencement of any work by subcontractor. Offeror's violation of this provision shall be grounds for the County's termination of this contract for default, without notice or opportunity for cure.

In addition, Offeror indemnifies and holds the County harmless from and against any claims (threatened, alleged, or actual) made by any subcontractor (of any tier) for compensation, damages, or otherwise, including any cost incurred by the County to investigate, defend, or settle any such claim.

## 57. TAXPAYER IDENTIFICATION

### (a) *Definitions.*

"Common parent," as used in this provision, means that corporate entity that owns or controls an affiliated group of corporations that files its Federal income tax returns on a consolidated basis, and of which the Offeror is a member.

"Taxpayer Identification Number (TIN)," as used in this provision, means the number required by the Internal Revenue Service (IRS) to be used by the Offeror in reporting income tax and other returns. The TIN may be either a Social Security Number or an Employer Identification Number.

(b) All Offerors must submit the information required in paragraphs (d) through (f) of this provision to comply with debt collection requirements, reporting requirements of, and implementing regulations issued by the IRS. If the resulting contract is subject to the payment reporting requirements of the State of South Carolina failure or refusal by the Offeror to furnish the information may result in a 31 percent reduction of payments otherwise due under the contract.

(c) The TIN may be used by the Government to collect and report on any delinquent amounts arising out of the Offeror's relationship with the Government. If the resulting contract is subject to the payment reporting requirements of the IRS, the TIN provided hereunder may be matched with IRS records to verify the accuracy of the Offeror's TIN.

(d) *Taxpayer Identification Number (TIN).*

o TIN:

\_\_\_\_\_.

- o TIN has been applied for.
- o TIN is not required because:
  - o Offeror is an agency or instrumentality of a foreign government;
  - o Offeror is an agency or instrumentality of the Federal Government.

(e) *Type of organization.*

- o Sole proprietorship;
- o Partnership;
- o Corporate entity (not tax-exempt);
- o Corporate entity (tax-exempt);
- o Government entity (Federal, State, or local);
- o Other

(f) *Common parent.*

- o Offeror is not owned or controlled by a common parent as defined in paragraph (a) of this provision.
- o Name and TIN of common parent:  
Name

TIN \_\_\_\_\_

## 58. TERMINATION:

County shall have the right to terminate any agreement in whole or in part for its convenience at any time during the course of performance by giving thirty-(30) day's written or telegraphic notice. Upon receipt of any termination notice, Offeror shall immediately discontinue services on the date and to the extent specified in the notice.

Offeror shall be paid the actual written approved costs incurred during the performance hereunder to the time specified in said notice, not previously reimbursed by County to the extent such costs are actual, necessary, reasonable, and verifiable costs and have been incurred by Offeror prior to and in connection with discontinuing the work hereunder. In no event shall such costs include unabsorbed overhead or anticipatory profit, nor shall such costs exceed the total price of any individual supplement or Project Release.

County may also cancel or terminate for default any agreement in whole or in part by thirty (30) days written, electronic or telegraphic notice to Offeror:

if Offeror shall become insolvent or make a general assignment for the benefit of creditors; or

if a petition under the Bankruptcy Act is filed by Offeror; or

if Offeror becomes involved in some legal proceedings that in the opinion of County interfere with the diligent, efficient performance and satisfactory completion of the services; or

if Offeror fails to make delivery of the supplies or to perform the services within the time specified or any authorized extension thereof.

**59. TIME OF COMPLETION:**

Date of delivery shall be a consideration factor in the awarding process. The Bidder shall include with this bid delivery dates for each item as requested, and shall furnish all items in accordance with the bid solicitation unless an extension was granted by the Director of Procurement, in writing

**60. TIME OF DELIVERY**

(a) The County requires delivery to be made according to the following schedule:

REQUIRED DELIVERY SCHEDULE		
ITEM No.	QUANTITY	WITHIN DAYS AFTER DATE OF CONTRACT

The County will evaluate equally, as regards time of delivery, offers that propose delivery of each quantity within the applicable delivery period specified above. Offers that propose delivery that will not clearly fall within the applicable required delivery period specified above will be considered nonresponsive and

(b) Attention is directed to the Contract Award provision of the solicitation that provides that a written award or acceptance of offer mailed, or otherwise furnished to the successful Offeror, results in a binding contract. The County will mail or otherwise furnish to the Offeror an award or notice of award not later than the day award is dated. Therefore, the Offeror should compute the time available for performance beginning with

rejected. The County reserves the right to award under either the required delivery schedule or the proposed delivery schedule, when an Offeror offers an earlier delivery schedule than required above. If the Offeror proposes no other delivery schedule, the required delivery schedule above will apply.

**Desired and Required Time of Delivery**

(a) The County may desire delivery to be made according to the following schedule:

DESIRED DELIVERY SCHEDULE		
ITEM No.	QUANTITY	WITHIN DAYS AFTER DATE OF CONTRACT

If the Offeror is unable to meet the desired delivery schedule, it may, without prejudicing evaluation of its offer, propose a delivery schedule. However, the Offeror's proposed delivery schedule must not extend the delivery period beyond the time for delivery in the County's required delivery schedule.

OFFEROR'S PROPOSED DELIVERY SCHEDULE		
ITEM No.	QUANTITY	WITHIN DAYS AFTER DATE OF CONTRACT

the actual date of award, rather than the date the written notice of award is received from the Contracting Officer through the ordinary mails. However, the County will evaluate an offer that proposes delivery based on the Offeror's date of receipt of the contract or notice of award by adding (1) five calendar days for delivery of the award through the ordinary mails, or (2) one working day if the contract or notice of award will be transmitted electronically. (The term "working day" excludes weekends and U.S. Federal holidays.) If, as so computed, the offered delivery date is later than the required delivery date; the offer will be considered nonresponsive and rejected.

#### 61.WAIVER

The County reserves the right to waive any provisions of the General or Special Conditions, or specification deviations.

#### 62.WARRANTIES

Offeror must obtain all possible manufacturers' warranties for equipment, materials, etc., and to assign such warranties to the County upon acceptance of the work. Other typical warranties and guarantees given by the Offeror should include the following:

All materials and equipment shall be new, unused and free from defects in design, workmanship and material. Offeror must provide written guarantee and warranties that all materials and equipment is new (unless otherwise specified), and free from defects in titles.

All work by Offeror will be done in a competent, workmanlike manner and remain free of defects in workmanship and materials for a period of one year or agreed on warranty period from the date of acceptance (or such other date as agree on in writing). Work found to be defective within one year (or agreed on written period) after acceptance shall be promptly corrected within thirty calendar days after written notice from the County.

Offeror warrants that:

The work, material and/or equipment, when completed, will meet or exceed the performance and other requirements set forth in the Order.

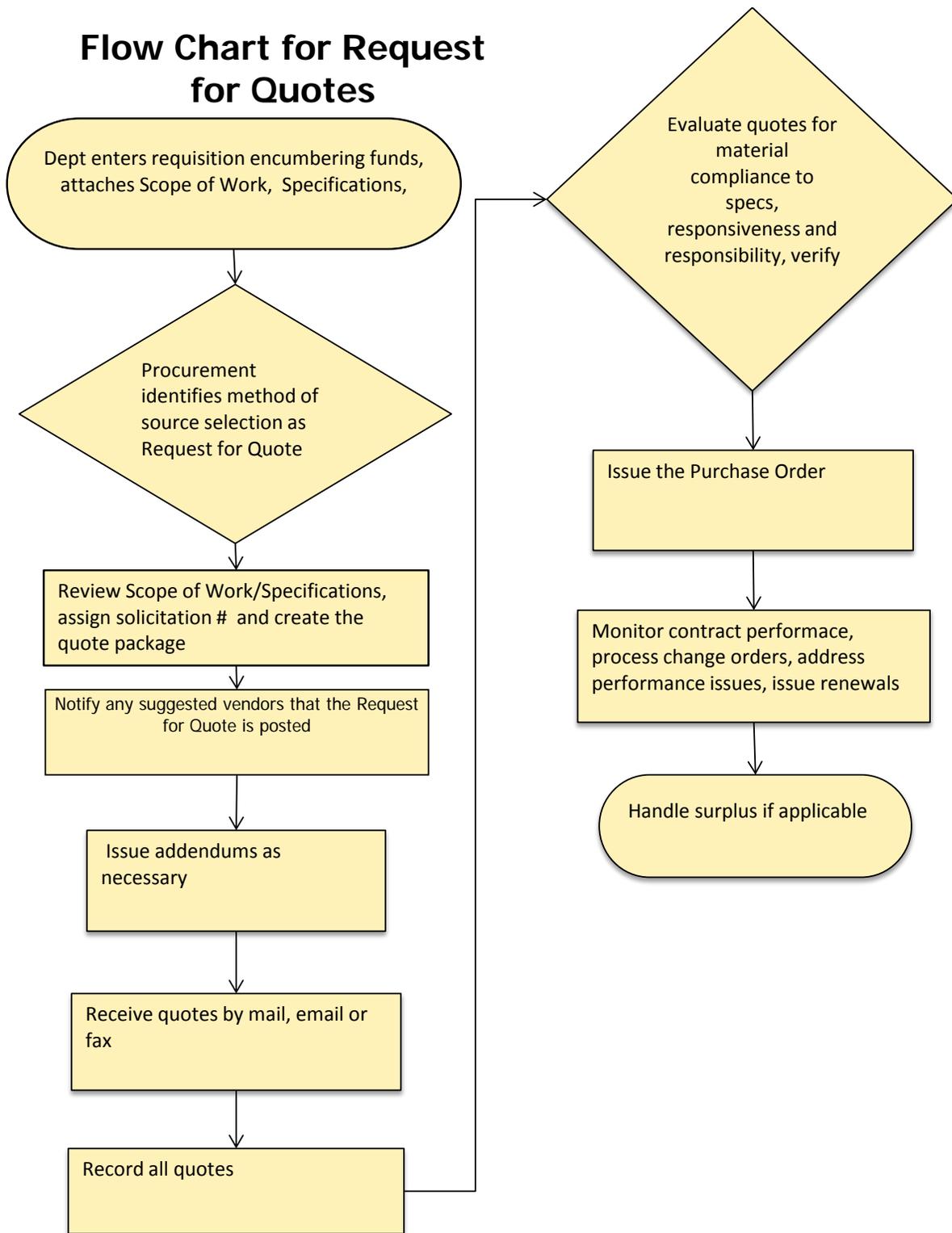
The Offeror guarantees to repair, replace or otherwise correct any defect in design, workmanship and/or material appearing in the work, material, and/or equipment, and further guarantees to correct any further defects appearing in such repaired, replaced or otherwise corrected work,

#### 63.WITHDRAWAL OF BIDS

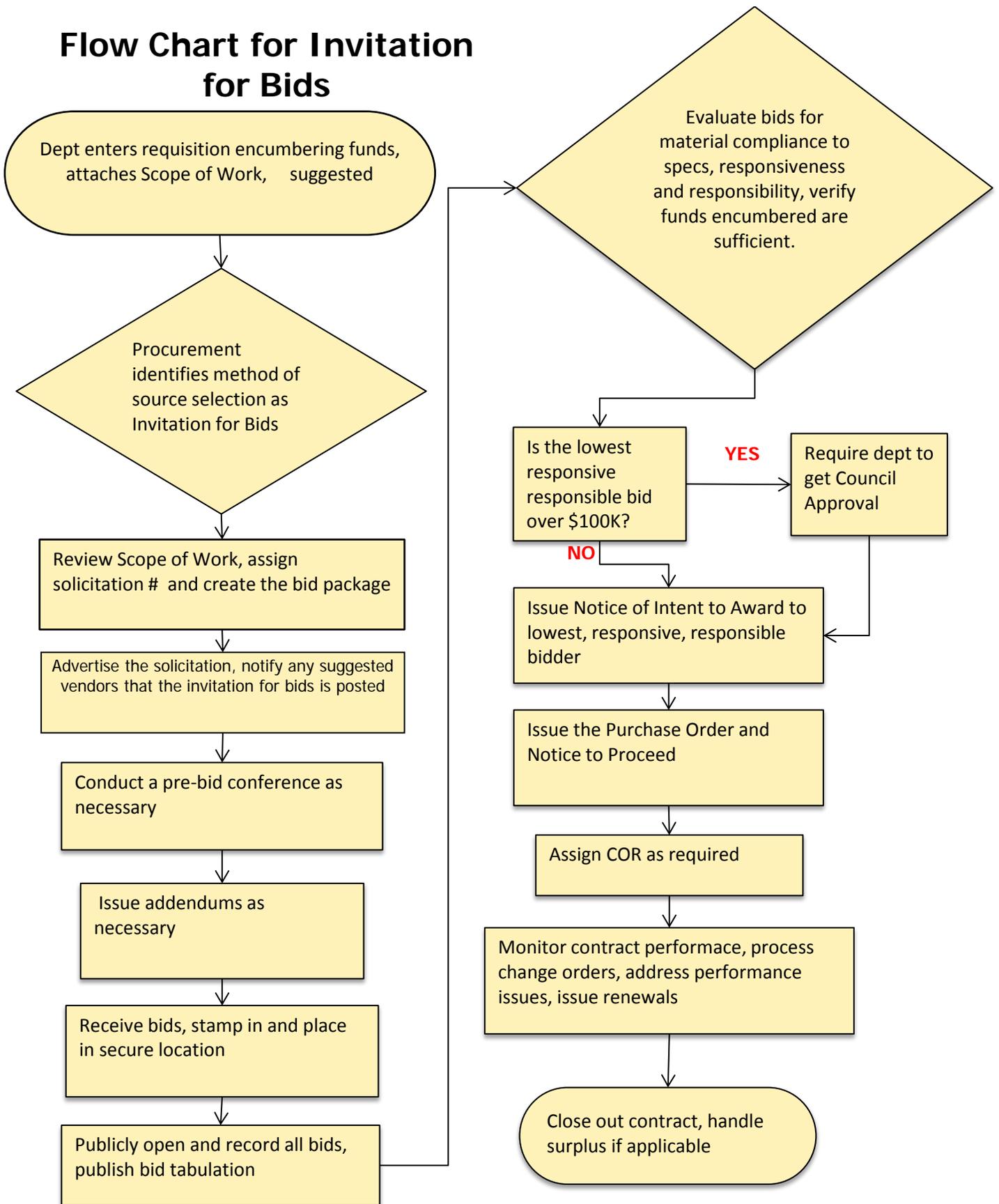
Any Offeror may withdraw their Bid prior to the closing time schedules for the receipt of Bids.

SECTION 15  
FLOWCHARTS

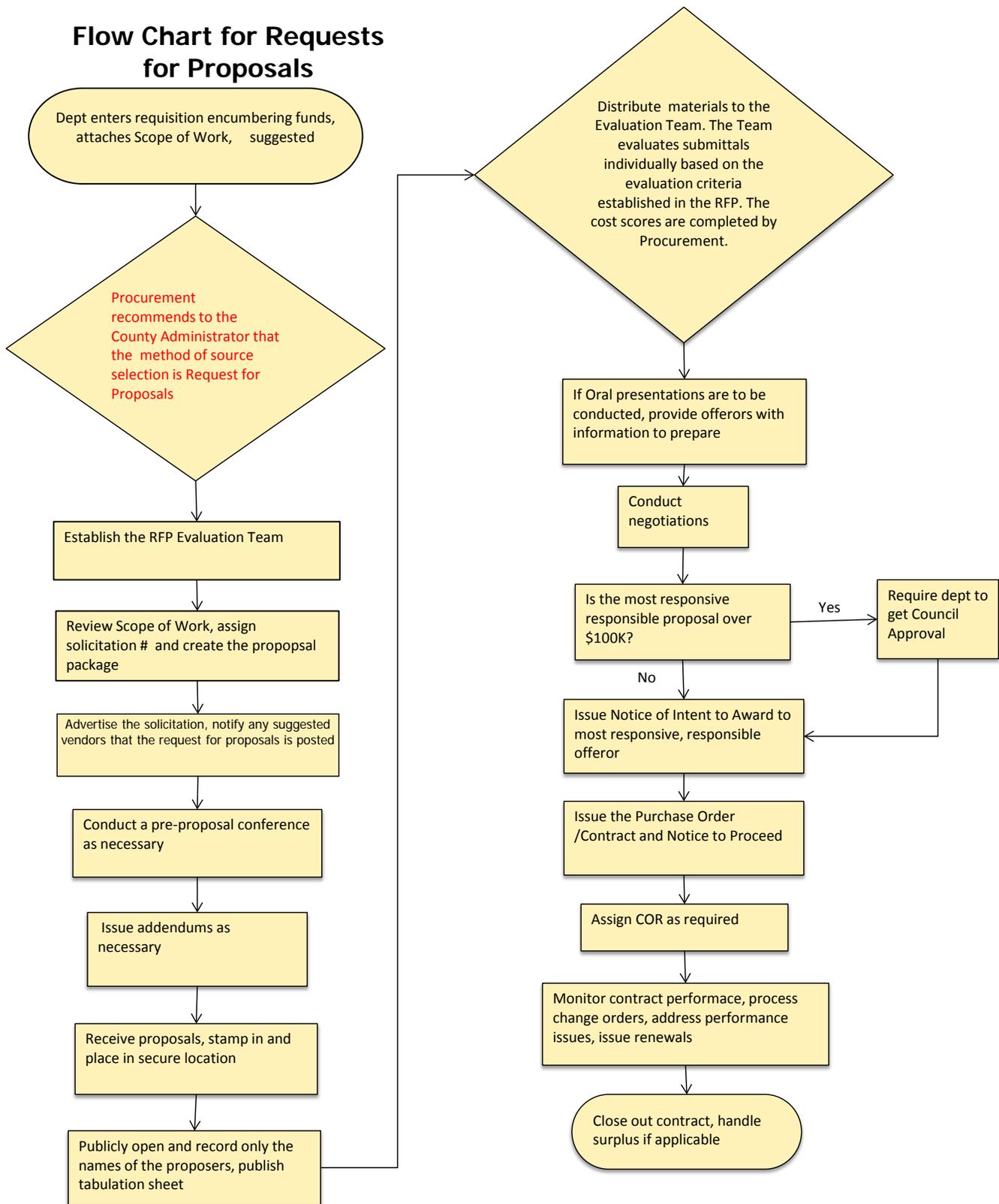
# Flow Chart for Request for Quotes



# Flow Chart for Invitation for Bids



# Flow Chart for Requests for Proposals



# Contract Controversies

