

Ordinance No. 278.2016 – Procurement
As Amended and Restated

Kershaw County Procurement Code

Article III Procurement

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JOYCE MCNEEL
CLERK OF COURT
KERSHAW COUNTY, S.C.

Section 2-26 Purpose, applicability and effective date.

- a) *Purpose.* The purpose of this article is to provide for the fair and equitable treatment of all involved in public purchasing by Kershaw County, to maximize the purchasing value of public funds in procurement, and to provide safeguards for maintaining a procurement system of quality and integrity.
- b) *Application.* This article applies to contracts for the procurement of supplies and services entered into by Kershaw County after the effective date of this article. It shall apply to every expenditure of public funds irrespective of their source. Nothing in this article shall prevent any Kershaw County department or agency from complying with the terms and conditions of any grant, gift or bequest which are otherwise consistent with law.
- c) *Effective date.* This article shall become effective after the third reading of the ordinance.

Section 2-27 Definitions.

Unless otherwise expressly stated or the context clearly indicates a different intention, the following terms shall be the meanings indicated in this section.

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

Change Order (unilateral) – A written order signed and unilaterally issued by either the purchasing officer or chief administrative officer, directing the contractor to make changes which the “changes” clause of the contract authorizes the purchasing officer or chief administrative officer to order without consent of the contractor.

Contract – Any written agreement Kershaw County may enter into, regardless of what it is called, for the procurement of supplies or services.

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

Chief Administrative Officer – Chief Administrative Officer is the County Administrator or such other chief administrative officer as may be designated by state law.

Contractor – Any person having a written contract with Kershaw County.

Cost-reimbursement contract – A contract under which a contractor is reimbursed for costs which are allowable in accordance with the contract terms and the provisions of this article, and a fee, if any.

Data – Recorded information.

Days – Calendar days.

Designee – A duly authorized representative of a person holding a superior position.

Employee – Any individual drawing a salary from and representing Kershaw County.

Established Catalog Price – The price included in a catalog, price list, schedule or other form that is regularly maintained by a manufacturer or contractor, and is either published or otherwise available for inspection by customers, and sales prices at which sales are currently or were last made to a significant number of buyers.

Government Body – Any department or agency of Kershaw County.

Grant – The furnishing of assistance, whether financial or otherwise, to any person to support a program authorized by law. This does not include an award whose primary purpose is to procure an end product.

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

May – Denotes the permissive.

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

Procurement – Buying, purchasing, renting, leasing or otherwise acquiring any supplies or services. It also includes all functions to obtain any supply or service, including description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration.

Purchase Description – The words used in a solicitation to describe the supplies or services to be purchased and includes specification attached to, or made part of, the solicitation.

Purchasing Officer – The person holding the position as head of the central procurement function of Kershaw County.

Purchase Order – Authorization to commit county funds to a particular vendor, after meeting all requirements of the purchasing code.

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

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

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

Service – The furnishing of labor, time or effort by a contractor not involving the delivery of a specific end product other than reports which are merely incidental to the required performance.

Shall – Denotes the imperative.

Supplies – All property including, but not limited to, equipment, materials, printing, and other consumable commodities.

Using Agency – Any governmental agency of Kershaw County which utilizes supplies or services procured under this article.

Section 2-28 Compliance with state and federal regulations.

- a) *Public access to procurement information.* Procurement information shall be public record to the extent required by Chapter 4, Title 30, South Carolina Code of Laws, 1976, as amended, with the exception that commercial or financial information obtained in response to an “RFP” which is privileged and confidential and not to be disclosed.
- b) *Compliance with federal requirements.* Where a procurement involves the expenditure of federal assistance or contract funds, the purchasing officer shall comply with such federal law and authorized regulations which are mandatorily applicable and which are not presently reflected in this article.
- c) *Standard of conduct.* In all actions involving the procurement of supplies or services for Kershaw County, the provisions of Chapter 13, Title 8 of the South Carolina Code of Laws, 1976, as amended, shall be complied with.

Section 2-29 Purchasing officer.

- a) *Establishment of position.* There is hereby created the position of purchasing officer who shall be Kershaw County’s principal public procurement official. The purchasing officer shall be employed by the chief administrative officer.

- b) *Authority and duties.* The purchasing officer shall serve as the principal public procurement official for Kershaw County and shall be responsible for the procurement of supplies and services in accordance with this article, as well as the disposal of supplies.

Section 2-30 Organization of public procurement.

- a) *Centralization of procurement authority.* Except as otherwise provided in this section, the authority relating to the procurement of supplies and services is hereby vested in the purchasing officer as provided in the article.

- b) *Authority to contract for certain services:*

- 1) *General Authority.* For the purpose of procuring professional services normally obtained on a fee basis (clergy, physicians, engineers, architects, etc.), those departments utilizing such services may seek contracts in accordance with this article and those operating procedures established by the public procurement office.
- 2) *Contracts for service.* No contract for services of any kind may be awarded without the approval of the chief administrative officer.

- c) *Exemptions.* The following supplies or services need not be procured through the public procurement office, but may be procured by the appropriate department pursuant to the applicable requirements of this article:

- 1) Works of art for museum and public display;
- 2) Information technology and software;
- 3) Real property;
- 4) Postage stamps and postal fees;
- 5) Conference fees;
- 6) Training and dues; and
- 7) Professional services where the person engaged is customarily employed on a fee rather than competitive bidding including, but not limited to, appraiser, architect, auditor, consultant, engineer, legal services, and physician/medical services.

- d) *Procurement regulations and operating procedures.* The purchasing officer shall promulgate regulations and procedures pertaining to procurement by Kershaw County. No regulation shall change any commitment, right or obligation of Kershaw County or of a contractor under contract in existence on the effective date of such regulation.

- e) *Collection of data concerning public procurement.* The purchasing officer shall prepare statistical data concerning the procurement, usage and disposition of all supplies and services. All using departments shall furnish reports as the purchasing officer may require. The purchasing officer shall be responsible for prescribing the forms to be used by the departments in requisitioning, ordering and reporting of supplies and services.

Section 2-31 Duties of county attorney.

The county attorney, or his designee, shall serve as legal counsel and provide necessary legal services to the purchasing officer.

Section 2-32 Methods of source selection.

Unless otherwise required by law, all Kershaw County contracts shall be awarded by competitive sealed bidding, pursuant to Section 2-33, except as follows:

- 1) Professional services where the person engaged is customarily employed on a fee basis rather than competitive bidding (e.g. appraiser, architect, auditor, actuary, consultant, engineer, legal services, physician);
- 2) Proposals invited on a competitive sealed basis;
- 3) Negotiations after unsuccessful competitive sealed bidding;
- 4) Small purchases \$1,500 and under;
- 5) Procurements \$5,000 and under documented by two (2) telephone quotations from two qualified sources of supply and verification of funding by the purchasing officer;
- 6) Procurements for \$5,001 to \$25,000 documented by two written quotations from two qualified sources of supply and verification of funding by the purchasing officer;
- 7) Blanket purchase agreements approved by the purchasing officer for repetitive small purchases on a charge account basis not requiring a purchase order for each purchase;
- 8) Sole source and single source procurements approved by the purchasing agent when there is only a single or sole supplier, compatibility of equipment or parts or sole manufacturer is the paramount consideration or the item is one of a kind;
- 9) Emergency procurements; (Purchase Order is required);
- 10) Procurement of information technology;
- 11) Leasing or purchasing of real property; or
- 12) Purchasing through state contracts.

Competitive sealed bidding and its alternatives are presented and discussed further in the subsequent sections of this article.

Section 2-33 Competitive sealed bidding.

- a) *Invitation for bids.* An invitation for bids shall be issued and shall include specifications or description, and all contractual terms and conditions applicable to the procurement. Notice will be placed in the State Budget and Control publication, *Business Opportunities*, and on the Kershaw County Web Site for all supplies over \$25,000.
- b) *Bid opening.* Bids shall be opened publicly in the presence of one (1) or more witnesses at the time and place designated in the invitation for bids. The amount of each bid, and such other relevant information as may be specified by regulation, together with the name of each bidder shall be recorded; the record of each bid shall be open to public inspection upon award.

- c) *Bid acceptance and bid evaluation.* Bids shall be unconditionally accepted without alteration or correction, except as authorized in this article. Bids shall be evaluated based on the requirements set forth in the invitation for bids, which may include criteria to determine acceptability such as inspection, testing, quality, workmanship, delivery and suitability for a particular purpose. Those criteria that will affect the bid price and be considered in evaluation for award shall be objectively measurable, such as discounts,
- d) transportation costs and total life cycle costs. The invitation for bids shall set forth the evaluation criteria to be used.
- e) *Bid award by Kershaw County Council.* Any single item, good or service, whose value exceeds twenty-five thousand dollars (\$25,000), with the exception of replacement parts, shall be awarded by Kershaw County Council. The purchasing officer will make a recommendation to the chief administrative officer, who will advise County Council.
- f) *Correction or withdrawal of bids; cancellation of awards.* Corrections or withdrawal of inadvertently erroneous bids before or after award, or cancellation of awards or contracts based on such bid mistakes, may be permitted where appropriate. After bid opening, no changes in bid prices or other provision of bids prejudicial to the interest of Kershaw County or fair competition shall be permitted.
- g) *Award.* The contract shall be awarded with reasonable promptness by written notice to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the invitation for bids. This is not necessarily to be construed to mean the lowest dollar figure but is to mean that bidder which in the judgment of the purchasing officer offers the best overall value to Kershaw County.

Section 2-34 Request for proposals.

- a) *Conditions for use.* When the purchasing officer determines that the use of competitive sealed bidding is either not practical or not advantageous to Kershaw County, a contract may be entered into using a Request for Proposals procurement or a Request for Qualifications.
- b) *Requests for Proposals and Qualifications.* Proposals shall be solicited through a Request for Proposals while Statements of Qualifications shall be solicited through a Request for Qualifications. Notice will be placed in the State Budget and Control publication, *Business Opportunities*, and on the Kershaw County Web Site for all requests with an estimated cost over \$25,000.
- c) *Proposal opening.* Proposals shall be opened publicly by the procurement officer or designee in the presence of one or more witnesses at the time and place designated in the request for proposals. After the date established for receipt of proposals, a Register of Proposals shall be prepared which shall include for all proposals the name of each offeror and a description sufficient to identify the item offered. The Register of Proposals shall be certified in writing as true and accurate by the person opening the proposals and the witness.

The Register of Proposals shall be open to public inspection only after the issuance of an award or notification of intent to award, whichever is earlier. Contents and the identity of competing offers shall not be disclosed during the process of opening.

- d) *Discussion with responsible offerors and revisions to proposals.* As provided in the request for proposals, discussions may be conducted with responsible offerors who submit proposals determined to be reasonable susceptible of being selected for award for the purpose of clarification to assure full understanding of and responsiveness to the solicitation requirements. While conducting discussions, there shall be no disclosure of any information derived from proposals submitted by competing offerors.
- e) *Evaluation factors.* The request for proposals shall state the evaluation factors in order of importance, but excluding the weight of each factor.
- f) *Award.* Award shall be made to the responsible offeror whose proposal is determined in writing to be the most advantageous to Kershaw County.

Section 2-35 Small purchases.

For purposes of this section, supplies and/or services under twenty-five thousand dollars (\$25,000) in cost are exempt from competitive source selection. However, supplies and/or services costing one thousand five hundred one dollars (\$1,501) to five thousand dollars (\$5,000) shall require a minimum of two (2) telephone quotations. Supplies and/or services costing five thousand one dollars (\$5,001) to twenty-five thousand dollars (\$25,000) shall require a minimum of two (2) written quotations.

Section 2-35-A Procurement of used equipment.

Kershaw County may procure used equipment only at public auction, licensed dealership or another government entity. The department proposing to make such procurement must present satisfactory information to the purchasing officer or chief administrative officer to illustrate that the procurement of said equipment is cost effective to the county.

Approved equipment: Fire trucks, dump trucks, motor graders, backhoes, pans, bull dozers, cranes, paving machines, vehicles, and other satisfactory items on an as-needed basis by Kershaw County.

The comparison value of the used equipment must be verified with other like equipment on the basis of age, condition and comparable sales.

The equipment must be inspected by a qualified mechanic on behalf of the county, who shall have made a detailed inspection of each major working or major functional part and certified the working condition of each.

The requesting department must complete and present the Equipment Evaluation/Appraisal Form attached as Appendix A to the following:

Chief Financial Officer for certification of funding, and

Purchasing Officer for verification that all evaluation procedures were followed and the price comparison / value is reasonable; and

County Administrator for final review and approval or disapproval.

Section 2-36 Sole procurement.

A contract may be awarded for a supply or service without competition when the purchasing officer or chief administrative officer determines that there is only one (1) source for the required supply or service.

When the county requires supplies, materials or equipment which are produced by only one manufacturer or supplier, the county purchasing officer may specify such manufacturer's make or brand or designate the supplier in the invitations to bid and may obtain competitive bids from authorized dealers or distributors of such manufacturer or supplier. If such manufacturer is the sole bidder and sole source of supply, the county purchasing agent is authorized to negotiate an order or contract with the manufacturer or supplier at prices and on terms most advantageous to the county.

Section 2-37 Emergency procurement.

- a) An emergency shall be deemed to exist when a breakdown in machinery or in an essential service occurs; or when unforeseen circumstances arise, including delays by contractors, delays in transportation and unanticipated volume of work.
- b) If an emergency occurs during regular business hours, the department head or designee shall immediately notify the purchasing agent who shall either make the purchase or authorize the user to do so. If the purchasing officer is unavailable, the department head shall notify the chief administrative officer before making the purchase. If an emergency occurs at times other than regular business hours, the using agency may purchase directly the commodity or commodities required. If the estimated cost of the emergency purchase exceeds one thousand five hundred dollars (\$1,500), the head of such agency shall, whenever possible, secure competitive telephone bids and order delivery to be made by the lowest responsible bidder. On every emergency purchase made, the agency head shall, not later than two (2) working days thereafter, submit to the purchasing officer a requisition, a tabulation of bids received, if any, a delivery receipt and a written explanation of the circumstances of the emergency for issuance of a purchase order.
- c) The purchasing agent shall submit to the chief administrative officer a report of all emergency purchases made with an explanation of the circumstances of each and a purchase order obtained. The purchasing agent and/or the chief administrative officer shall also inform members of county council of any purchases in excess of Six Thousand and no/100

(\$6000.00) Dollars pursuant to this provision with an explanation of the circumstance of each.

Section 2-38 Cancellation of invitation for bids or requests for proposals.

An invitation for bids, a request for proposals, or other solicitation may be cancelled, or any or all bids or proposals rejected in whole or in part when it is in the best interest of Kershaw County.

Section 2-39 Qualifications and duties.

- a) *Determination of non-responsibility of bidders and offerors.* The unreasonable failure of a bidder or offeror to promptly supply information in connection with an inquiry with respect to responsibility may be grounds for a determination of non-responsibility and disqualification.
- b) *Pre-qualifications of suppliers.* Prospective suppliers may be pre-qualified for particular types of supplies and services. The purchasing officer will maintain a list of qualified bidders for commonly procured items, to be updated periodically.

Section 2-40 Types of contracts – generally.

Subject to the limitations of this section, any type of contract which will promote the best interest of Kershaw County may be used; provided that the use of cost-plus-percentage-of-cost is prohibited unless there is a cap in the dollar amount rather than a percentage of the contract.

Section 2-41 Multi-term contracts.

- a) *Specified period.* A contract for supplies and services may be entered into for a period of time not to exceed five (5) years. The term of a contract may be extended if conditions of renewal or extension are included in the solicitation. Funds must be available for the first fiscal year at the time of contracting.
- b) A multi-term contract exceeding five (5) years is appropriate when it is in the best interest of the county to obtain uninterrupted services for a period in excess of five (5) years. It is appropriate where the performance of such services involves high start up costs, or when a changeover of service contracts involves high phase in/phase out costs during a transition period.
- c) Multi-term contracts may provide that in the event of cancellation due to non-appropriation, the contractor will be reimbursed the unamortized, reasonably incurred, nonrecurring costs.
- d) *Lease purchase agreements.* Lease purchase agreements for personal property may be entered into for a specified term pursuant to this article.

- e) *Cancellation due to non-appropriation of funds in succeeding fiscal periods.* All multi-year contracts shall contain a clause stating that when funds are not appropriated or otherwise made unavailable to support continuation of performance in a subsequent fiscal year, the contract shall be cancelled.

Section 2-42 Inspection of plant and audit of records.

- a) *Right to inspect plant.* Kershaw County may, at reasonable times, inspect the plant or place of business of a contractor, or any subcontractor which is related to the performance of any contract awarded or to be awarded by Kershaw County.
- b) *Right to audit records.* Kershaw County shall be entitled to audit the books and records of a contractor or subcontractor under any negotiated contract or subcontract other than a firm fixed-price contract to the extent that such books and records relate to the performance of such contract or subcontract. Such records shall be maintained by the contractor or subcontractor for a period of three (3) years from the date of final payment.

Section 2-43 Reports and records.

- a) *Reporting of anticompetitive prices.* When for any reason collusion or other anticompetitive practices are suspected among any bidder or offerors, a notice of relevant facts shall be provided to the chief administrative officer.
- b) *Procurement records.* All determinations and other written records pertaining to the solicitation, award or performance of a contract shall be maintained in accordance with procurement regulations for two years unless the federal or state regulations specify the time limit.

Section 2-44 Specifications.

- a) *Duties of the purchasing officer.* The purchasing officer may prepare or cause to be prepared and issue specifications for supplies and services for Kershaw County. The purchasing officer may obtain expert advice and assistance from personnel of using agencies in the development of specifications and may delegate to a using agency the authority to prepare its own specifications subject to review and approval by the purchasing officer. The purchasing officer may also obtain specifications pursuant to this article from other sources.
- b) *Exempted items.* Specifications for suppliers and services exempted in Sections 2-30 and 2-32 may be prepared by the using agency in accordance with the provisions of this article.

Section 2-45 Pre-litigation resolution of controversies – Authority to resolve protested solicitations and awards.

- a) *Right to protest.* Any actual or prospective bidder, offeror or contractor who is aggrieved in connection with the solicitation or award of a contract may protest to the purchasing officer. The protest shall be submitted in writing within fourteen (14) days after the aggrieved person knows or should have known of the facts giving rise thereto.
- b) *Authority to resolve protests.* The purchasing officer shall have authority, prior to the commencement of an action in court concerning the controversy, to settle and resolve a protest of an aggrieved bidder, offeror or contractor, actual or prospective, concerning the solicitation or award of a contract.
- c) *Decision.* If the protest is not resolved by mutual agreement, the purchasing officer shall issue a decision in writing within ten (10) days.
- d) *Notice of decision.* A copy of the decision under paragraph (c) of this section shall be mailed or otherwise furnished immediately to the protestant and any other party intervening.
- e) *Finality of decision.* A decision under paragraph (c) of this section shall be final and conclusive, unless appealed to the chief administrative officer of Kershaw County. The appeal must be received by the chief administrative officer within seven (7) working days from the date of the purchasing officer's decision.

Section 2-46 Authority to debar or suspend.

- a) *Authority.* After reasonable notice to the person involved and reasonable opportunity for that person to be heard, the purchasing officer, after consultation with the chief administrative officer, shall have the authority to debar a person for cause from consideration for award of contract for a period of up to five (5) years. The same officer, after consideration with the chief administrative officer, shall have the authority to suspend a person from consideration of award of contract if there is probable cause for debarment. The suspension shall not be for a period exceeding one (1) year.
- b) *Causes for debarment or suspension.* The causes for debarment or suspension are as follows:
 - 1) Conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract.
 - 2) Conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property or any other offense indicating a lack of business integrity or honesty.
 - 3) Conviction under state or federal antitrust statutes.
 - 4) Violation of contract provisions, as set forth below, of a character which is regarded by the purchasing officer to be so serious as to justify debarment action:
 - a) Deliberate failure without good cause to perform in accordance with the specification or time limit provided in the contract; or
 - b) A recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one (1) or more contracts.

- 5) Any other cause the purchasing officer determines to be so serious and compelling as to affect responsibility of a contractor, including debarment by another governmental entity for cause.
- c) *Decision.* The purchasing officer shall issue a written decision within thirty (30) days to debar or suspend. The decision shall state the reasons for the action taken. A copy of this decision shall be mailed or otherwise furnished immediately to the debarred or suspended person.
- d) *Finality of decision.* A decision under paragraph (c) of this section shall be final and conclusive, unless the debarred or suspended person appeals administratively to the chief administrative officer in accordance with this article within thirty (30) days of the receipt of decision.

Section 2-47 Authority to resolve contract and breach of contract controversies.

- a) *Applicability.* **Unless the terms of the contract provide otherwise,** this section applies to controversies between Kershaw County and a contractor which arise under, or by virtue of, a contract between them. This includes, without limitation, controversies based on breach of contract, mistake, misrepresentation or other cause for contract modification or rescission.
- b) *Authority.* The purchasing officer is authorized, prior to the commencement of an action in a court concerning the controversy, to settle and resolve a controversy described in paragraph (a) of this section.
- c) *Decision.* If such a controversy is not resolved by mutual agreement, the purchasing officer shall promptly issue a decision in writing within thirty (30) days. The decision shall state the reason for action taken. A copy of this decision shall be mailed or otherwise immediately furnished to the contractor.
- d) *Finality of decision.* The decision of under paragraph (c) of this section shall be final and conclusive unless the contractor appeals administratively to the chief administrative officer in accordance with this article within thirty (30) days of the receipt of the decision.
- e) *Failure to render a timely decision.* If the purchasing officer does not issue the written decision under paragraph (c) of this section within thirty (30) days after written request for a final decision, or within such longer period as may be agreed upon by the contractor, the contractor may proceed as if an adverse decision had been received.

Section 2-48 Solicitations or awards in violation of law – Applicability.

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

Section 2-49 Remedies prior to an award.

If prior to award it is determined that a solicitation or proposed award of a contract is in violation of law, then the solicitation or proposed award shall be either cancelled or revised to comply with law.

Section 2-50 Remedies after an award.

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

- a) If the person awarded the contract has not acted fraudulently or in bad faith:
 - 1) The contract may be ratified and affirmed, provided it is determined that doing so is in the best interest of Kershaw County; or
 - 2) The contract may be terminated and the person awarded the contract may be compensated for actual expenses incurred under the contract prior to termination.
- b) If the person awarded the contract has acted fraudulently or in bad faith, the contract may be declared null and void.

Section 2-51 Appeal to the chief administrative officer – Jurisdiction.

Unless an action has been in the courts for essentially the same cause of action, the chief administrative officer shall have authority to review and determine:

- a) Any protest of a solicitation or award of a contract addressed to the chief administrative officer by an actual or prospective bidder or offeror or a contractor;
- b) Any appeal by an aggrieved party from determination by the purchasing officer authorized in Sections 2-45(c), 2-46(c) or 2-47(c); and
- c) Direct appeal of any award made under Section 2-33 (d).

Section 2-52 Rules of procedure.

- a) *Time limit for filing an appeal.* For an appeal under Section 2-45 (c), the aggrieved person shall file an appeal with the chief administrative officer within seven (7) working days of receipt of a decision. For an appeal under Section 2-46 (c) and 2-47 (c), the aggrieved person shall file its appeal with the chief administrative officer within thirty (30) days of the receipt of decision.
- b) *Decision.* Upon receipt of an appeal from an aggrieved party, the chief administrative officer shall conduct an administrative review of the appeal and within twenty (20) days shall affirm, alter or deny the decisions rendered by the purchasing officer and render a final decision.

- c) *Appeal of chief administrative officer's decision.* Any person receiving an adverse decision may appeal to the courts of the State of South Carolina.

Section 2-53 Intergovernmental relations.

- a) *Definitions.* Terms used in this section shall have the following definitions:
- 1) *Cooperative purchasing.* Procurement conducted by or on behalf of more than one public procurement unit.
 - 2) *Public procurement unit.* Any county, city, town and any other subdivision of the state or public agency of any such subdivision, public authority, education, or any entity which expends public funds for procurement of supplies or services.
- b) *Cooperative purchasing authorized.* The purchasing officer may participate in, sponsor, conduct or administer a cooperative purchasing agreement for the procurement of supplies or services with one or more public procurement unit in accordance with an agreement entered into between the participants.
- c) *Use of state contracts.* The purchasing officer may, independent of the requirements of Sections 2-32 through 2-42 of this article, procure supplies or services through the contracts established by the purchasing division of the State of South Carolina as provided in Chapter 35 Title 11 (State Consolidated Procurement Code), South Carolina Code of Laws, 1976, as amended.

Section 2-54 Local preference.

- a) Competitive procurement made by Kershaw County shall be made from responsive and responsible resident vendors with facilities in Kershaw County for procurement if such bid does not exceed the lowest qualified bid for a nonresident vendor by more than four (4%) percent of lowest bid for procurements under \$100,000 and by more than three (3%) percent of the lowest bid for procurements of \$100,000 or more.
- b) A vendor shall be deemed to be a resident of this county if such vendor is an individual, partnership, association or corporation that is authorized to transact business within the state, maintains an office in Kershaw County, and maintains a representative inventory or commodities within the county in which the bid is submitted and has paid all taxes duly assessed.
- c) In the event the procurement is to be made pursuant to state or federal guidelines that shall prohibit or restrict local preference, then in such circumstances there shall be no local preference.

Section 2-55 Availability of funds.

Except in emergencies as defined in Section 2-37(a) of this article, no purchasing shall be authorized until it has been certified that the funds are appropriated and available for the contract or purchase order.

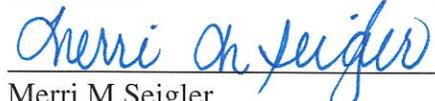
Section 2-56 Unlawful purchases.

- a) If any agency purchases or contracts for any supplies, materials, equipment or contractual services contrary to the provisions of this article, such purchase order or contract shall be void and of no effect. The head of the agency making such purchase transaction shall be personally liable for the amount of such purchase order or contract.
- b) It shall be unlawful for any agency to split its requirements for supplies and services, to evade the provisions of Section 2-33 and 2-34 of this article.

Section 2-57 Waiving of technicalities.

Kershaw County reserves the right to waive any technicalities and make any award in its own best interest.

ATTEST:


Merri M Seigler
Clerk to County Council


Kershaw County Council

First Reading: 01/13/2009
Second Reading: 01/27/2009
Third Reading: 02/10/2009

AMENDED:
First Reading: 03/19/2010
Second Reading: 03/23/2010
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First Reading: 07/09/2013
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Third Reading: 08/13/2013

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