

**STATE OF GEORGIA
COUNTY OF CHEROKEE**

ORDINANCE NO. 2024-O-001

AN ORDINANCE OF THE CHEROKEE COUNTY BOARD OF COMMISSIONERS AMENDING ARTICLE V OF CHAPTER 2 OF THE CODE OF ORDINANCES OF CHEROKEE COUNTY, GEORGIA TO REFLECT ORGANIZATIONAL CHANGES AND ADMINISTRATIVE UPDATES TO THE PROCUREMENT POLICY; TO REPEAL CONFLICTING ORDINANCES; TO PROVIDE AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

WHEREAS, the Constitution of the State of Georgia, approved by the voters of the State in November of 1982, and effective as of July 1, 1983, provides in Article IX, Section II, Paragraph I thereof, that the governing authority of a county may adopt clearly reasonable ordinances, resolutions, and regulations; and

WHEREAS, Article V of Chapter 2 of the Cherokee County Procurement Ordinance codifies the requirements for the procurement of goods and services acquired or sought by Cherokee County, Georgia; and

WHEREAS, minor administrative amendments are needed to the aforementioned ordinances in order to reflect updated titles/positions within the administration of Cherokee County, Georgia and to update incidental provisions as needed; and

WHEREAS, Exhibit A has been attached hereto to show the additions and deletions to the aforementioned ordinances; and

WHEREAS, this Ordinance change will benefit the safety and welfare of the citizens of Cherokee County; and

WHEREAS, the governing authority of Cherokee County, to wit, the Board of Commissioners, desires to exercise its authority in adopting this Ordinance; and

NOW, THEREFORE, BE IT ORDAINED by the Cherokee County Board of Commissioners, and it is hereby so ordained by authority of the same that:

Section 1

Section 2-5-1.02 (b), Section 2-5-2.01 (b), Section 2-5-2.02 (b) and Section 2-5-2.12 of Chapter 2, Article V – Procurement of the Cherokee County Code of Ordinances shall be

amended in order to reflect updated provisions related to the procurement of goods and services by local governments in Georgia and to update incidental provisions as needed. Said Ordinances shall read as follows:

CHAPTER 2 - ADMINISTRATION

ARTICLE V. - PROCUREMENT

SECTION 2-5-1.02 (b) –Application, Definitions.

Large procurements are those exceeding \$100,000. Large procurements are subject to competitive formal sealed bid or proposal processes. Purchases of less than \$100,000 may also utilize these formal processes when determined by the Purchasing Agent to be in the best interest of the County.

CHAPTER 2 - ADMINISTRATION

ARTICLE V. - PROCUREMENT

SECTION 2-5-2.01 (b) – Appointment.

- (b) *Appointment.* The Director of Procurement shall be appointed by the County Finance Director and confirmed by the County Manager. This action may take place through the standard County employment process whereby the position of the Procurement Director is filled, or through separate formal written appointment.

CHAPTER 2 - ADMINISTRATION

ARTICLE V. - PROCUREMENT

SECTION 2-5-2.02 (b) – Authority and duties.

- (b) Duties. In accordance with this Article and subject to the supervision of the County Finance Director, the Purchasing Agent shall:
 - (7) have the discretion in determining whether an offer, bid, quotation or proposal is from a “responsible bidder or offeror”, a “responsible” business or is a “responsible” offer, bid, quotation or proposal, by evaluating factors that may include, but are not limited to: a) the past contracting history, performance and experience with the County or any County Authority, County Office or County Agency of the prospective contractor or person, or any identified subcontractor of the prospective contractor or person; b) whether that prospective contractor or person, or any identified subcontractor of the prospective contractor or person, is currently on a Federal, State of Georgia or County’s list of suspended or debarred suppliers or otherwise ineligible contractors; and/or c) whether the

prospective contractor or person, or any identified subcontractor of the prospective contractor or person, has sufficient experience, financial ability or credit, judgment, reliability, integrity, trustworthiness, facilities, equipment, perseverance and skill which will assure good faith performance.

CHAPTER 2 - ADMINISTRATION

ARTICLE V. - PROCUREMENT

SECTION 2-5-3.12 – Disadvantaged Business Enterprise (DBE).

The Board of Commissioners has established a Disadvantaged Business Enterprise (DBE) program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26. The County has received Federal financial assistance from the Georgia Department of Transportation, and as a condition of receiving this assistance, the County has signed an assurance that it will comply with 49 CFR Part 26.

It is the policy of Cherokee County to ensure that DBEs, as defined in 49 CFR Part 26, have an equal opportunity to receive and participate in DOT–assisted contracts. It is also the County’s policy:

1. To ensure nondiscrimination in the award and administration of DOT – assisted contracts;
2. To create a level playing field on which DBEs can compete fairly for DOT-assisted contracts;
3. To ensure that the DBE Program is narrowly tailored in accordance with applicable law;
4. To ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBEs;
5. To help remove barriers to the participation of DBEs in DOT assisted contracts;
6. To assist the development of firms that can compete successfully in the marketplace outside the DBE Program.

The Community Development Director, or designee as confirmed by the County Manager, is designated as the DBE Officer of the County.

Section 2.

It is hereby ordained that the provisions of this Ordinance shall become a part of the Code of Ordinances of Cherokee County, Georgia, and the sections of this ordinance may be renumbered to accomplish such intention.

Section 3.

- (a) It is hereby declared to be the intention of the Cherokee County Board of Commissioners that

all sections, paragraphs, sentences, clauses, and phrases of this Ordinance are and were, upon their enactment, believed by the Cherokee County Board of Commissioners to be fully valid, enforceable, and constitutional.

(b) It is hereby declared to be the intention of the Cherokee County Board of Commissioners that, to the greatest extent allowed by law, each and every section, paragraph, sentence, clause or phrase of this Chapter is severable from every other section, paragraph, sentence, clause or phrase of this Ordinance. It is hereby further declared to be the intention of the Cherokee County Board of Commissioners that, to the greatest extent allowed by law, no section, paragraph, sentence, clause, or phrase of this Ordinance is mutually dependent upon any other section, paragraph, sentence, clause or phrase of this Ordinance.

(c) In the event that any phrase, clause, sentence, paragraph or section of this Ordinance shall, for any reason whatsoever, be declared invalid, unconstitutional or otherwise unenforceable by the valid judgment or decree of any court of competent jurisdiction, it is the express intent of the Cherokee County Board of Commissioners that such invalidity, unconstitutionality or unenforceability shall, to the greatest extent allowed by law, not render invalid, unconstitutional or otherwise unenforceable any of the remaining phrases, clauses, sentences, paragraphs or sections of the Ordinance and that, to the greatest extent allowed by law, all remaining phrases, clauses, sentences, paragraphs, and sections of the Ordinance shall remain valid, constitutional, enforceable, and of full force and effect.

Section 4.

All Ordinances or parts of Ordinances in conflict with this Ordinance are, to the extent of such conflict, hereby repealed or set aside.

Section 5.

This Ordinance shall become effective immediately upon its adoption.

SO ORDAINED, APPROVED, AND ADOPTED this 6th day of February 2024.

By: 
HARRY B. JOHNSTON, Chairman

Attest: 
CHRISTY BLACK, County Clerk



**CHEROKEE COUNTY, GEORGIA
CHAPTER 2, ADMINISTRATION
ARTICLE V - PROCUREMENT**

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**SUB-ARTICLE 1
GENERAL**

§ 2-5-1.01 Purpose/Repeal Provisions.

- (a) The purpose of this Article is to provide for the fair and equitable treatment of all businesses involved in public purchasing by the 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) Any and all Ordinances or parts of Ordinances in conflict herewith, including but not limited to Section 2-4 of the Code of Ordinances, Cherokee County, Georgia, shall be, and the same are, hereby repealed to the extent of such conflict.

§ 2-5-1.02 Application, Definitions.

- (a) This Article applies to contracts for the procurement of supplies, services and construction entered into by the County after the effective date of the Ordinance from which this section derives, unless the parties agree to its application to contracts entered into prior to the effective date. It shall apply to every expenditure of public funds by the County for public purchasing from businesses, irrespective of the source of the funds. When the procurement involves the expenditure of federal or State assistance or contract funds, the procurement shall be conducted in accordance with any mandatory applicable federal or State laws and regulations. Nothing in this Article shall prevent any public agency from complying with the terms and conditions of any grant, gift, or bequest that is otherwise consistent with law.
- (b) For the purposes of this Article, the following terms shall be defined as follows:

Adequate evidence means information sufficient to support the reasonable belief that a particular act or omission occurred.

Architectural-Engineering services means those professional services within the scope of the practice of architecture, professional engineering or other such professional services, as defined by the laws of the State of Georgia.

Brand name or equal specification means a specification limited to one or more items by manufacturers' names or catalogue numbers to describe the standard of quality, performance, and other salient characteristics needed to meet County requirements, and which specification provides for the submission of equivalent or fungible products.

Brand name specifications mean a specification limited to one or more items by manufacturers' names or catalogue numbers.

Business means any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, limited liability company, or any other private legal commercial entity.

Change order means a written order signed and issued by the Purchasing Agent, directing the contractor to make changes in the scope of work of the contract and typically involving a price modification.

Confidential information means any information that is available to an employee solely because of the employee's status as an employee of the County and is not a matter of public knowledge or available to the public on request.

Conflict of interest means any situation resulting in a violation of O.C.G.A. § 36-1-14.

Construction (public works) means the building, altering, repairing, improving, or demolishing of any public structure or building or other public improvements of any kind to any real property other than those projects covered by Chapter 4, Article 3, Part 2 of Title 32 of the O.C.G.A. Such term does not include the routine operation, repair or maintenance of existing structures, buildings or real property or any energy saving performance contract or any improvements or installations performed as part of an energy savings contract. See O.C.G.A. § 36-91-2(12).

Contract means all types of County agreements, regardless of what they may be called, for the procurement of supplies, services and/or construction.

Contractor means any person having a contract with the County or an agency thereof.

Cost analysis means the evaluation of cost data for the purpose of arriving at costs actually incurred or estimates of costs to be incurred, prices to be paid, and costs to be reimbursed.

Cost data means factual information concerning the cost of labor, material, overhead and other cost elements that are expected to be incurred or that have been actually incurred by the contractor performing the contract.

Cost reimbursement contract means a contract under which a contractor is reimbursed for costs which are allowable and allocable in accordance with the contract terms and the provisions of this Article, and a fee or profit, if any.

Employee means an individual drawing a salary or wages from the County, whether elected or not, but does not include independent contractors, members of the County Board of Commissioners, or the County Manager.

Fair and Reasonable is generally the term used to indicate that the purchase price of specific goods and/or services associated with a procurement action are consistent with those that a prudent businessperson would pay under current competitive market conditions and given a reasonable knowledge of the marketplace. The County's Procurement Office shall evaluate proposed pricing for supplies or services by applying one or more price or cost analysis techniques.

Gratuity means a payment, loan, subscription, advance, or deposit of money, service or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is received in return.

Immediate family means an individual's spouse, children, parents, and siblings.

Invitation for bids means all documents, whether attached or incorporated by reference, utilized for soliciting sealed bids.

Lowest proposed price means the lowest bid price of all offerors, or if the lowest proposed price was not from a Cherokee County-based business (as that term is defined in Section 2-5-3.01(1(d))), any Cherokee County-based business with a bid price within five percent (5%) of the lowest bid price from an offeror deemed by the Purchasing Agent to be responsive and responsible, if such Cherokee County-based business agrees to reduce its bid price to match such lowest bid price.

Large procurements are those exceeding \$100,000. Large procurements are subject to competitive formal sealed bid or proposal processes. Purchases of less than \$100,000 may also utilize these formal processes when determined by the Purchasing Agent to be in the best interest of the County.

Motor vehicle means every vehicle which is self-propelled other than an electric personal assistive mobility device, as contemplated by O.C.G.A. § 40-1-1(33).

Person means any individual, corporation, partnership, company, proprietorship, professional corporation, or any other legal entity.

Price analysis means the evaluation of pricing data, without analysis of the separate cost components and profit as in cost analysis, which evaluation may assist in arriving at prices to be paid and costs to be reimbursed.

Pricing data means factual information concerning prices for items substantially similar to those being procured. "Prices" in this definition refers to offered or proposed selling prices, historical selling prices, and current selling prices. The term "pricing data" refers to data relevant to both prime and subcontract prices.

Procurement means the buying, purchasing, renting, leasing or otherwise acquiring of any supplies, services or construction, including description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration.

Procurement summary means a form that has been approved by the County Manager that adequately summarizes the important aspects of Procurement Actions greater than \$25,000 and as defined herein as well as when deemed appropriate by the Purchasing Agent. This form shall address, at a minimum, the value of the action, if the action was an "Emergency Procurement" pursuant to Section 2-5-3.08 below, the scoring of proposals, the evaluated pricing proposal totals from responsive and responsible bidders (including the number of updates quoted by each bidder), the rationale for determining the selected Supplier and a determination of how (or if) the pricing was determined to be fair

and reasonable.

Professional services means the professional services rendered by attorneys at law and any type of professional service that may be legally performed only pursuant to a license from a board pursuant to Title 43 of the O.C.G.A., for example, the personal services rendered by certified public accountants, chiropractors, dentists, osteopaths, physicians and surgeons, and podiatrists (chiropractists) as described in O.C.G.A. § 14-10-2(2) or real estate services provided by a licensed real estate broker as described in Chapter 37, Title 36 of the O.C.G.A.

Qualified products list means an approved list of supplies, services or construction items described by model or catalogue numbers that, prior to competitive solicitation, the County has determined will meet the applicable specification requirements.

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

Responsible bidder or offeror means a person or entity that has the capability in all respects to perform fully and reliably the contract requirements.

Responsive bidder or offeror means a person or entity that has submitted a bid or proposal that conforms in all material respects to the requirements set forth in the invitation for bids or request for proposals.

Services means the furnishing of labor, time or effort by a contractor, not involving the delivery of a specific end tangible product other than reports that are merely incidental to the required performance, including, without limitation, a professional or consulting service. This term shall not include employment agreements or collective bargaining agreements.

Significant financial interest means anything of monetary value, including, but not limited to, salary or other payments for services (e.g., consulting fees); equity interests (e.g., stocks, stock options or other ownership interest); and intellectual property rights (e.g., patents, trademarks, copyrights and royalties from such rights). The term does not include:

- Salary, royalties or other remuneration from Cherokee County; or
- Income from seminars, lectures, or teaching engagements sponsored or approved by the County.

Specification means any description of the physical or functional characteristics or of the nature of a supply, service or construction item. It may include a description of any requirement for inspecting, testing, or preparing a supply, service or construction item for delivery.

Subcontractor means any person with whom a contractor contracts with or intends to contract with for the performance of services on any contract with the County or any agency thereof.

Supplies means all personal property, including but not limited to equipment, materials, printing, insurance, and leases of real property, excluding a permanent interest in land.

Using agency means any department, commission, board or public agency of the County requiring supplies, services and/or construction procured pursuant to this Article.

§ 2-5-1.03 Public access to procurement information.

Procurement information shall be a public record to the extent required by law and shall be available to the public upon written request.

§ 2-5-1.04 E-Verification

E-Verification. All contracts for the "physical performance of services," as defined in O.C.G.A. Sec. 13-10-90(4), shall be procured and administered in compliance with the requirements of O.C.G.A. Sec. 13-10-91.

SUB-ARTICLE 2
OFFICE OF PURCHASING AGENT

§ 2-5-2.01 Establishment, appointment.

- (a) *Establishment of the position of Director of Procurement (Purchasing Agent).* There is hereby created the position of Director of Procurement, who shall be the County's principal public purchasing official and agent ("Purchasing Agent").
- (b) *Appointment.* The Director of Procurement shall be appointed by the ~~Administrative Services Agency Director~~ County Finance Director and confirmed by the County Manager. This action may take place through the standard County employment process whereby the position of the Procurement Director is filled, or through separate formal written appointment.

§ 2-5-2.02 Authority and duties.

- (a) *Principal public purchasing official.* Except as otherwise provided herein, the Purchasing Agent shall serve as the principal public purchasing official for the County and shall be responsible for the procurement of supplies, services, and/or construction, as well as the management and disposal of supplies, in accordance with this Article.
- (b) *Duties.* In accordance with this Article and subject to the supervision of the ~~Administrative Services Agency Director~~ County Finance Director, the Purchasing Agent shall:
 - 1. Purchase all supplies, equipment and services needed by any and all departments, boards, commissions and other agencies of the County regardless of the source of funds. Agencies empowered by state statute to purchase independently may have the Purchasing Agent appointed as their agent for these purposes upon relinquishing of such independence by the proper authority.
 - 2. Keep complete and adequately detailed records of all purchases and disbursements, including purchase orders issued, quotations received, basis for bid awards, and any and all documents required for audit of purchase activity.
 - 3. Ensure that purchases or contracts for goods and services shall be reviewed the Purchasing Agent.
 - 4. Have the discretion to reject any or all bids, or waive informalities in the bidding process.
 - 5. Have the discretion to purchase from or in cooperation with other governmental agencies and purchase cooperatives with or without competitive bids to the extent allowed by law.
 - 6. Be responsible for developing and administering such other policies, rules and regulations, not inconsistent with this section or state statutes, that he or she deems necessary for the efficient and effective procurement of goods and services. A copy of such policies, rules and regulations shall be filed with the County Clerk.
 - 7. have the discretion in determining whether an offer, bid, quotation or proposal is from a "responsible bidder or offeror", a "responsible" business or is a "responsible" offer, bid, quotation or proposal, by evaluating factors that may include, but are not limited to: a) the past contracting history, performance and experience with the County or any County Authority, County Office or County Agency of the prospective contractor or person, or any identified subcontractor of the prospective contractor or person; b) whether that prospective contractor or person, or any identified subcontractor of the prospective contractor or person, is currently on a Federal, State of Georgia or County's list of suspended or debarred suppliers or ~~othersise otherwise~~ ineligible contractors; and/or c) whether the prospective contractor or person, or any identified subcontractor of the prospective contractor or person, has sufficient experience, financial ability or credit, judgment, reliability, integrity, trustworthiness, facilities, equipment, perseverance and skill which will assure good faith performance.

§ 2-5-2.03 Delegations to other County officials.

The Purchasing Agent may delegate authority to purchase certain supplies, services or construction items to other County officials, if such delegation is deemed necessary for the effective procurement of those items.

SUB-ARTICLE 3
SOURCE SELECTION

§ 2-5-3.01 Cherokee County-based Preference.

In addition to the Georgia Purchasing Preferences mandated by O.C.G.A. § 36-84-1, Cherokee County based businesses may be awarded a contract as the lowest responsive and responsible bidder under the circumstances specified herein. This Section 2-4-3.01 shall only be applicable: 1) to purchases funded exclusively by County funds; and 2) regarding purchases funded in whole or in part by funds other than County funds, where the applicable funding regulations authorize the use of the local preference provisions of this Section.

(1) *Definitions.*

- (a) *Good faith effort* means those demonstrable activities supported by documentation and results that verify the bidder's attempts to reach the established goal.
- (b) *Implementing Department* means the County Department or Agency that has responsibility for oversight of a contract.
- (c) *Joint venture* means cooperation between two or more corporate bodies for a particular project in which they share the responsibilities and profits associated with the project.
- (d) *Cherokee County-based business* means a business with a physical and economic relationship to Cherokee County as evidenced by a building or office physically located in the County and the payment of (1) Cherokee County Occupational Taxes (Business License), and (2) County property taxes on a plant or office and equipment such as is ordinarily required for the performance of the contract bid.
- (e) *Subcontractor* means a person or company that assumes, by secondary contract, some or all of the obligations of an original contractor.
- (f) *Construction.* For the purposes of this Sub-Article, the term "Construction" shall exclude public works construction purchases of \$100,000.00 or more and road construction purchases, as discussed in subsection (4) below.

(2) *Preference for Cherokee County-based businesses on contracts under \$100,000.00 when sealed bids (pursuant to § 2-5-3.02 Competitive sealed bidding of this Ordinance) are received for architectural, engineering, purchases, supplies and construction contracts greater than \$100,000.00, the following shall apply:*

- (a) The person or business submitting the lowest bid that has been deemed responsive and responsible shall be deemed the lowest qualified bidder. If, however, the lowest qualified bidder is not a Cherokee County-based business, any Cherokee County-based business with a bid within five percent (5%) of the lowest dollar bid that has been deemed responsive and responsible in all respects to the requirements set forth in the invitation for bids/proposals shall be deemed the lowest qualified bidder if it agrees to reduce its bid price to match the bid price of the lowest price bidder. The percentage difference may be revised from time to time as the Board of Commissioners deems appropriate.
- (b) If a Cherokee County-based business that has been deemed responsive and responsible refuses to reduce its price bid to match the lowest price bidder, then the next lowest responsible Cherokee County-based business with a bid within the established percentage of the lowest bid shall be given the opportunity to reduce its bid to match the bid of the lowest bidder. If the Cherokee County-based bidder deemed responsive and responsible agrees to reduce its bid to match the bid of the lowest non-Cherokee County bidder, it will be deemed the lowest bidder and awarded the bid.
- (c) If no responsive and responsible Cherokee County-based business within the established percentage of the lowest bid agrees to reduce its bid to that of the lowest bidder, then the contract shall be awarded to the person or business with the lowest, most responsive and responsible bid.

- (d) No contract awarded pursuant to this Section shall be sublet in any manner that permits 50 percent or more of the dollar value of the contract to be performed by a subcontractor or subcontractors who do not meet the definition of Cherokee County-Based Business.
- (e) Any Cherokee County-based business awarded a contract pursuant to this Section shall agree to make available to the County all records necessary to establish its eligibility and compliance with all County, State and local laws.

(3) *Affirmative measures for enhancing Cherokee-based businesses.*

The County may allow for joint ventures or other documented business arrangements to enable Cherokee County-based businesses to meet bonding requirements for contracts greater than \$100,000.00.

(4) *Construction.*

Public works construction purchases of \$100,000.00 or more shall be made in compliance with Title 36, Chapter 91 of the Official Code of Georgia Annotated and shall not be subject to this Section. Road construction purchases shall be made in compliance with Title 32, Chapter 4, Article 3, Part 2 of the Official Code of Georgia Annotated and shall not be subject to this Section.

§ 2-5-3.02 Competitive sealed bidding.

- (a) *Conditions for use.* All contracts of the County shall be awarded by competitive sealed bidding, except as otherwise provided in this Article, or as provided by general law.
- (b) *Invitation for bids.* An invitation for bids shall be issued for the procurement of each contract and shall include specifications and all contractual terms and conditions applicable for the procurement.
- (c) *Public notice* for all purchases exceeding \$100,000, except as otherwise provided in this Article, advertisements for formal sealed bids shall be first be posted on the County website for two consecutive weeks prior to the week of bid opening as well as posted on the Georgia Procurement Registry pursuant to O.C.G.A. § 36-80-26. Regular bid openings shall be conducted by the Purchasing Agent or his/her designee at the offices of the purchasing department or other designated location. Immediately after opening all bids, the Purchasing Agent or his/her designee shall record and certify each and every bid. The date, time and place of bid opening shall be included in the specifications or invitations to bid and in the published advertisement therefore.
- (d) *Bid acceptance and bid evaluation.* Bids shall be accepted without alteration or correction, except as authorized in this Article. Bids in the County's possession may be withdrawn: 1) prior to official opening; or 2) prior to award, upon approval of the County Manager or the Purchasing Agent, where errors are identified, provided that such request is made in writing from an appropriately authorized agent of the bidder. Bids shall be evaluated, except as otherwise provided in this Article, based on the requirements set forth in the invitation for bids, which may include criteria to determine acceptability such as inspection, testing, quality, workmanship, delivery and suitability for a particular purpose. Those criteria that will affect the bid price and be considered in evaluation for award shall be objectively measurable, such as discounts, transportation costs and total or life cycle costs. The invitation for bids shall set forth the evaluation criteria to be used.
- (e) *Award.* The contract shall be awarded to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the invitation for bids; provided, however, that if the bid from the lowest responsible and responsive bidder exceeds the funds budgeted for the contract, the County may negotiate with such apparent low bidder to obtain a contract price within the budgeted amount. Such negotiations may include changes in the scope of work and other bid requirements. In the event that two or more bids are determined to be identical in price or otherwise of clearly equal merit, the County Manager shall determine which of such bids shall be selected.
- (f) *Acceptance of low bid not required.* The award of a contract to a prospective contractor or person based on lowest evaluated bid price alone can be a false economy if there is subsequent default, late deliveries, or other unsatisfactory performance resulting in additional contractual or administrative costs. While it is important that County purchases and contracts be made at the lowest possible bid price, this does not require an award to a prospective contractor or person solely because that prospective contractor or person submits the lowest bid. A prospective contractor or person must

affirmatively demonstrate his, her or its responsibility. In evaluating the responsibility of a prospective contractor or person submitting a bid or whether the bid has been submitted by the “lowest responsible and responsive bidder”, the Purchasing Agent or his/her designee shall have the discretion to evaluate factors that may include, but are not limited to: a) the past contracting history, performance and experience with the County or any County Authority, County Office or County Agency of the prospective contractor or person, or any identified subcontractor of the prospective contractor or person; b) whether that prospective contractor or person, or any identified subcontractor of the prospective contractor or person, is currently on the State of Georgia’s suspended or debarred suppliers list, the Federal government’s list of any debarred, suspended or ineligible contractors and/or any list of suspended, debarred or ineligible contractors maintained by another governmental entity including any other local government; and/or c) whether the prospective contractor or person, or any identified subcontractor of the prospective contractor or person, has sufficient experience, financial ability or credit, judgment, reliability, integrity, trustworthiness, facilities, equipment, perseverance and skill which will assure good faith performance.

§ 2-5-3.03 Competitive sealed proposals.

- (a) *Conditions for use.* When the Purchasing Agent determines that the use of competitive sealed bidding is either not practicable or not advantageous to the County, a contract may be entered into by use of the competitive sealed proposals method.
- (b) *Request for proposals.* Proposals shall be solicited through a request for proposals.
- (c) *Public notice.* Adequate public notice of the request for proposals shall be given in the same manner as provided in section 2-5-3.02(c).
- (d) *Receipt of proposals.* To the extent allowed by law, no proposals shall be handled so as to permit disclosure of the contents of any proposals to competing offerors received in response to a solicitation or during the process of negotiation. The Purchasing Agent may request from bidders such clarifications and/or minor modifications regarding their proposals as may be necessary to ensure compliance with this Article. Subsequent to award, a Proposal Summary, which shall include a register of proposals, shall be prepared containing the name of each offeror, the number of modifications received, if any, and a description sufficient to identify the item offered. The register of proposals shall be open for public inspection, except as otherwise allowed pursuant to O.C.G.A. § 50-18-72(a)(10).
- (e) *Evaluation factors.* The request for proposals shall state the relative importance of price and other evaluation factors. The Purchasing Agent or County Manager shall preapprove any bid that considers the relative importance of price in the source selection process to be less than 50%.
- (f) *Discussion with responsible offerors and revisions to proposals.* Discussions may be conducted with responsible offerors who submit proposals determined to be reasonably susceptible of being selected for award for the purpose of clarification to assure full understanding of, and conformance to, the solicitation requirements. Offerors shall be provided equal opportunity for discussion and revision of proposals, and such revisions may be permitted after submissions and prior to award for the purpose of obtaining updated offers.
- (g) Once updated offers have been obtained from all offerors reasonably susceptible of being selected for award, they shall be rescored. The updated scores shall result in a determination as to which suppliers are considered responsive and responsible and qualified to perform the work and a ranking shall be prepared in order of qualifications based upon the scoring values.
- (h) The top ranked offeror’s price(s) for goods and/or services shall be evaluated by the Purchasing Agent or County Manager as to the fairness and reasonableness of the proposed price and regarding the value provided to the County. If such evaluation reveals that the pricing of the highest ranked offeror is not fair and reasonable, the Purchasing Agent shall initiate negotiations with the top ranked offeror. Should these negotiations fail to result in an acceptable price for the County, the Purchasing Agent shall formally terminate these negotiations. Should the second and third highest ranked offerors be considered qualified and acceptable, then the Purchasing Agent shall make a determination regarding their price reasonableness and negotiate as necessary with one supplier at a time in the ranked order until either an acceptable price is obtained or negotiations are formally terminated. The availability of an approved budget adequate to cover the price of any of the acceptable offeror’s prices is not an indication of a fair and reasonable price. For the purposes of this

Article, a determination of a “fair and reasonable” price shall occur before the Purchasing Agent may award contracts or place orders, with any exceptions to this requirement to be approved by the County Manager or Board of Commissioners.

- (i) *Award.* The contract shall be awarded with reasonable promptness by appropriate written notice to the responsible and responsive offeror whose proposal is determined in writing to be the most advantageous to the County. This determination shall take into consideration both the evaluation factors set forth in the request for proposals and the determination that the contracted price is fair and reasonable.
- (j) *Acceptance of low proposal not required.* The award of a contract to a prospective contractor, person or entity based on lowest evaluated proposal price alone can be a false economy if there is subsequent default, late deliveries, or other unsatisfactory performance resulting in additional contractual or administrative costs. While it is important that County purchases and contracts be made at the lowest possible purchase price, this does not require an award to a prospective contractor, person or entity solely because that prospective contractor, person or entity submits the lowest proposal. A prospective contractor, person or entity must affirmatively demonstrate his, her or its responsibility. In evaluating the responsibility of a prospective contractor, person or entity submitting a proposal or whether the proposal has been submitted by the “lowest responsible and responsive bidder”, the Purchasing Agent or his/her designee shall have the discretion to evaluate factors that may include, but are not limited to: a) the past contracting history, performance and experience with the County or any County Authority, County Office or County Agency of the prospective contractor or person, or any identified subcontractor of the prospective contractor or person; b) whether that prospective contractor or person, or any identified subcontractor of the prospective contractor or person, is currently on the State of Georgia’s suspended or debarred suppliers list, the Federal government’s list of any debarred, suspended or ineligible contractors and/or any list of suspended, debarred or ineligible contractors maintained by another governmental entity including any other local government; and/or c) whether the prospective contractor or person, or any identified subcontractor of the prospective contractor or person, has sufficient experience, financial ability or credit, judgment, reliability, integrity, trustworthiness, facilities, equipment, perseverance and skill which will assure good faith performance.

§ 2-5-3.04 Contracting for designated professional services.

- (a) *Applicability.* Regarding the provision of professional services costing less than or equal to \$100,000.00, no less than three (3) businesses shall be solicited to submit quotations, and award shall be made to the responsible business offering the lowest quotation conforming to the standards of this Article. The names of the businesses submitting quotations, and the date and amount of each quotation, shall be recorded and maintained as a public record. Professional services costing \$100,000.00 or more shall conform to the procedure set forth in subsections (b) through (e) below.
- (b) *Public announcement and form of request for proposals.* When seeking proposals for professional services, adequate notice of the need for such services shall be given through a request for proposals posted on the County website, and those professional services vendors registered with the County to receive such notices shall be notified by email upon the posting of any such notice. The request for proposals shall describe the services required, list the types of information and data required of each offeror, and state the relative importance of particular qualifications.
- (c) *Statement of qualifications.* When seeking proposals for professional services, the Purchasing Agent shall develop a uniform format for statements of qualifications to be made a part of the proposal. Businesses engaged in providing professional services may submit statements of qualifications and expressions of interest in providing such professional services. Businesses may amend these statements at any time by filing a new statement.
- (d) *Discussions.* The head of a using department procuring the professional services or a designee of such officer may conduct discussions with any offeror who has submitted a proposal to determine such offeror's qualifications for further consideration. Discussions shall not disclose any information derived from proposals submitted by other offerors, to the extent allowed by law.
- (e) *Award.* Award shall be made to the offeror determined by the Board of Commissioners or its designee to be best qualified, based on the evaluation factors set forth in the request for proposals, and where the negotiated compensation is determined to be fair and reasonable. If compensation cannot be agreed upon with the best qualified offeror, then negotiations will be formally terminated with the selected offeror. If proposals were submitted by one or more other offerors determined to be qualified, negotiations may be conducted with such other offeror or offerors, in the order of the respective qualification ranking, and the contract may be awarded to the offeror then ranked best qualified if the negotiated amount of compensation is determined to be fair and reasonable.

§ 2-5-3.05 Purchases exceeding \$25,000.00.

- (a) The following policy and procedures with respect to certain purchases exceeding \$25,000.00 shall be construed and interpreted as, and have the effect of, the exercise of the authority of the Board of Commissioners to make these specific purchases.
- (b) The adoption of the budget containing line item expenditures for purchases normally made through the County purchasing department shall be approved by the Board of Commissioners for the purchase of those line items by the purchasing department without further action of the Board of Commissioners, subject to and upon compliance with the following provisions:
 - 1. The items to be purchased must be items included as line items in the approved budget.
 - 2. There must be full compliance with all requirements of this Article with regard to advertisement and bidding prior to any such purchase.
 - 3. The purchase must be within the budgeted amount which has been approved by the Board of Commissioners.
 - 4. The purchase must be made from the lowest responsive and responsible bidder or the proposer determined to have submitted the proposal in the best interest of the County.
- (c) The procedure outlined in subsection (b) of this section shall not apply to purchases which are not normally made through the County purchasing department, nor shall it affect the County Manager's authority to make purchases under or equal to \$25,000.00.
- (d) The procedure outlined in subsection (b) of this section shall not apply to or supersede the County's policy for the procurement of professional services in Section 2-5-3.04.

§ 2-5-3.06 Small purchases.

- (a) *General.* Any contract not exceeding \$100,000.00 may be made in accordance with the small purchase procedures authorized in this section. Contract requirements shall not be artificially divided so as to constitute a small purchase under this section.
- (b) *Small purchases.* Insofar as it is practical for small purchases, in excess of \$5,000.00 but less than or equal to \$100,000.00, no less than three businesses shall be solicited to submit quotations, and public notice may be accomplished in accordance with § 2-5-3.02(c). Award shall be made to the business offering the lowest acceptable quotation. The names of the businesses submitting quotations, and the date and amount of each quotation, shall be recorded and maintained as a public record.
- (c) *Small purchases of \$5,000.00 or less.* The County Manager, or designee, shall adopt operational procedures for making small purchases of \$5,000.00 or less. Contract requirements shall not be artificially divided so as to constitute a small purchase under this section.

§ 2-5-3.07 Sole source of procurement.

- (a) *Generally.* A contract may be awarded without competition when the Purchasing Agent determines, after conducting a good faith review of available sources, that there is only one source for the required supply, service, or construction item. The Purchasing Agent shall conduct negotiations, as appropriate, as to price, delivery, and terms. The Purchasing Agent shall maintain a list of sole source procurements by each contractor's name, the amount and type of each contract, a listing of the items procured under each contract, and the identification number of each contract file.
- (b) Public works construction contracts shall be governed by the provisions of Title 36, Chapter 91 of the Official Code of Georgia Annotated, and road construction contracts shall be governed by Title 32, Chapter 4, Article 3, Part 2 of the Official Code of Georgia Annotated.
- (c) *State contracts for procurement.* Where the state takes bids on certain items and it is determined that the purchase of these items is to the best advantage of the County, then it shall be the duty of the Purchasing Agent to use such bids.

§ 2-5-3.08 Emergency procurements.

- (a) Notwithstanding any other provisions of this Article, the Purchasing Agent may make or authorize others to make emergency procurements of supplies and/or services when there exists a threat to the health, welfare or safety of the public or County employees; provided that such emergency procurements shall be made with such competition as is practicable under the circumstances. A written determination of the basis for the emergency and for the selection of the particular contractor shall be documented in the Procurement Summary.
- (b) Public works construction contracts shall be governed by the provisions of Title 36, Chapter 91 and Chapter 10 of Title 13 of the Official Code of Georgia Annotated, and road construction contracts shall be governed by Title 32, Chapter 4, Article 3, Part 2 of the Official Code of Georgia Annotated.

§ 2-5-3.09 Cancellation of invitations for bids or requests for proposals.

An invitation for bids, a request for proposals, or other solicitation may be canceled, or any or all bids or proposals may be rejected in whole or in part as may be specified in the solicitation, when it is in the best interests of the County. The reasons therefore shall be made part of the contract file. Each solicitation issued by the County shall state that the solicitation may be canceled and that any bid or proposal may be rejected in whole or in part when in the best interests of the County. Notice of cancellation shall be sent to all businesses solicited. The notice shall identify the solicitation, explain the reason for cancellation and, where appropriate, explain that an opportunity will be given to compete on any re-solicitation or any future procurement of similar items. Reasons for rejection shall be provided upon request by unsuccessful bidders or offerors.

§ 2-5-3.10 Cost or pricing data.

- (a) *Required submissions relating to the award of contracts.* A prospective contractor shall submit cost or pricing data, when requested by the Purchasing Agent, and where the contract is expected to exceed \$100,000.00 and awarded by competitive sealed proposals or by sole source procurement authority.
- (b) *Required submissions relating to change orders.* A contractor shall submit cost or pricing data prior to the pricing of any change order, including adjustments to contracts awarded by competitive sealed bidding, whether or not cost or pricing data was required in connection with the initial pricing of the contract, when the change order involves aggregate increases or aggregate decreases in costs plus applicable profits that are expected to exceed \$100,000.00, unless included in county controlled contingency approved by the Board of Commissioners. In such event, the County Manager at his/her discretion, may elect to re-bid the contract.
- (c) *Certification required.* A contractor, actual or prospective, required to submit cost or pricing data in accordance with this section, shall conform to the general format and instructions as contained in *Federal Acquisition Regulation Subpart 15.4, Table 15-2* and certify that, to the best of its knowledge and belief, the cost or pricing data submitted was accurate, complete and current as of the date(s) executed prior to the award of the contract or the pricing of the change order. Other formats for the submission of cost data may be approved by the Purchasing Agent.
- (d) *Price adjustment provision required.* Any contract award or change order under which the submission and certification of cost or pricing data are required shall contain provisions stating that the price to the County, including profit or fee, shall be adjusted to exclude any significant sums by which the County finds that such price was increased because the contractor-furnished cost or pricing data was inaccurate, incomplete or not current as of the date agreed upon between the County and the contractor.

§ 2-5-3.11 Bid and performance bonds on supply or service contracts.

Bid and performance bonds or other security may be requested for supply contracts or service contracts as the Purchasing Agent or head of a using agency deems advisable to protect the County's interests. Any such bonding requirements shall be set forth in the solicitation. Bid or performance bonds shall not be used as a substitute for a determination of a bidder's or offeror's responsibility. Any such bond shall be: 1) on the bond form provided by the County; 2) properly executed by the contractor and surety; and 3) issued by a surety company determined to be: a) in good standing with the office of the Georgia Insurance and Fire Safety Commissioner; and b) listed in U.S. Treasury Department Circular 570 (Federal Register Vol. 62, No. 126) among companies holding certificates of authority as acceptable sureties on Federal bonds.

§ 2-5-3.12 Disadvantaged Business Enterprise (DBE)

The Board of Commissioners has established a Disadvantaged Business Enterprise (DBE) program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26. The County has received Federal financial assistance from the Georgia Department of Transportation, and as a condition of receiving this assistance, the County has signed an assurance that it will comply with 49 CFR Part 26.

It is the policy of Cherokee County to ensure that DBEs, as defined in 49 CFR Part 26, have an equal opportunity to receive and participate in DOT–assisted contracts. It is also the County’s policy:

1. To ensure nondiscrimination in the award and administration of DOT – assisted contracts;
2. To create a level playing field on which DBEs can compete fairly for DOT-assisted contracts;
3. To ensure that the DBE Program is narrowly tailored in accordance with applicable law;
4. To ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBEs;
5. To help remove barriers to the participation of DBEs in DOT assisted contracts;
6. To assist the development of firms that can compete successfully in the marketplace outside the DBE Program.

The ~~Public Works Agency~~ Community Development Director, or designee as confirmed by the County Manager, is designated as the DBE Officer of the County.

§2-5-3.13 Procurement of Green Products and Technologies

- (a) *Preference for Purchase of Recycled Paper.* The Purchasing Agent shall establish and maintain procedures and specifications for the purchase of paper and paper products which give preference, whenever feasible, to the purchase of recycled paper, and paper products containing recycled paper. Products that do not meet the definition of 50 percent recycled material content, but do contain some percentage of recycled material, shall be preferred over virgin materials.

The Purchasing Agent and department heads, under the oversight of the Purchasing Agent, may purchase recycled paper and paper products, instead of unrecycled paper or paper products, whenever such recycled paper and paper products are available at a comparable cost to unrecycled paper and paper products, and when fitness and quality are similar.

- (b) *Preference for ENERGY STAR Qualified Products.* The Purchasing Agent and department heads, under the oversight of the Purchasing Agent, shall select, where life-cycle and cost-effective, ENERGY STAR and other energy efficient products, when acquiring energy-using products. This information will be required by the bidder in their bid submittal.
- (c) *Preference for High Efficiency Plumbing Fixtures in County Facilities.* All new County buildings should have high efficiency plumbing fixtures that meet the following standards: toilets (1.28 gpf or less), urinals (0.5 gpf or less) and faucets (1.5 gpm or less). This information will be required by the bidder in their bid submittal.
- (d) It is the goal of the County to integrate green and/or sustainable building principles and practices into the design, construction, and operations of all County facilities to the fullest extent possible in which the total project square footage includes 5,000 gross square feet of occupied space or the total project cost exceeds two million dollars.
- (e) The LEED™ rating system and reference guide shall be used as guidance for design and a measuring tool to determine what constitutes sustainable building by national standards.
- (f) *LED Traffic Signals.* It is the policy of the County that all traffic signals be equipped with LED bulbs meeting Institution of Transportation Engineers (ITE) and Department of Energy (DOE) standards.

§2-5-3.14 Motor Vehicle Purchases

- (a) Regarding the procurement of motor vehicles other than as provided in subsections (b) through (f) below, no less than three (3) businesses shall be solicited to submit quotations, and public notice shall be accomplished in accordance with § 2-5-3.02(c). Award shall be made to the business offering the lowest acceptable quotation. The names of the businesses submitting quotations, and the date and amount of each quotation, shall be recorded and maintained as a public record.
- (b) Purchases of State Vehicles, as defined below from manufacturers operating nationwide dealership networks and meeting all of the criteria of subsections (b) through (f) may be accomplished notwithstanding the requirements of

subsection (a) above:

1. For purposes of subsections (b) through (f), the term “State Vehicle” shall mean any motor vehicle identified in a competitive bid process by the State of Georgia or any of its departments, agencies, or other governmental entities and regarding which a contract is awarded by such State entity.
 2. The State Vehicle is either a standard model sold to the general public or a model specifically modified for law enforcement or fire safety purposes; examples of the latter category include, but are not limited to: heavy duty suspension, increased horsepower, and a modified dashboard.
 3. The State Vehicle options specified shall be standard manufacturer options as would typically be defined on the manufacture’s official web site or as managed and maintained by the manufacturer on a national or regional basis for government specific applications. Examples of standard manufacturer options include, but are not limited to, Power Steering, Electronic Windows, Colors, Engine Size, and Trim Packages, to include law enforcement or fire safety special service packages. Examples of non-standard manufacturer options include, but are not limited to the addition of agency specific decals, emergency lighting equipment and/or electronics and other similar aftermarket conversions.
- (4) The State Vehicle manufacturer’s dealer network can provide price quotes for and take orders for the State Vehicle.
- (c) The Agency or Department requesting such a State Vehicle shall specify the make, model and all required manufacturer options. The defined product would include make, model, trim and all required manufacturer options (by way of example: Ford F-150, XLT, Ingot Silver, SuperCab with 8 Foot Box, 3.7L V6 FFVEM, 3.55 Non-Limited Slip Axle Ratio, Equipment Group 300A, P235/75R17 BSW All-Terrain Tires).
- (d) Written competitive bids with the exact State Vehicle specifications shall be obtained as follows:
1. A minimum of three (3) written bids shall be required where the total vehicle purchase will equal or exceed \$100,000.
 2. For purchases less than \$100,000, while reasonable attempts should be made to procure three (3) written bids, a minimum of two (2) bids shall be acceptable where bids are requested from at least five (5) dealers.
 3. At least one (1) of the minimum number of required bids must be obtained from a dealer holding a contract for the State Vehicle with a State entity.
 4. The successful bidder shall agree in writing to the County’s standard purchase order terms and conditions.
- (e) A written procurement summary, on a form prepared by the Purchasing Agent, will be used to document each State Vehicle purchase, and for State Vehicle purchases greater than \$25K, the procurement summary shall accompany the department/agency generated Board of Commissioners’ agenda request for the proposed State Vehicle purchase.
- (f) Purchase requisitions with the complete State Vehicle description will be generated by the Department or Agency requesting the State Vehicle.

SUB-ARTICLE 4 CONTRACTS

§ 2-5-4.01 Types of contracts.

- (g) *General authority.* Subject to the limitations of this section and applicable law, any type of contract that is appropriate for procurement and will promote the best interests of the County, as determined by the County in its sole discretion, may be used. A cost reimbursement contract may be used only when a determination is made by the Purchasing Agent in writing that such contract is likely to be less costly to the County than any other type or that it is impracticable to obtain the supply, service, or construction item required except under such a contract. A standard contract for services has been adopted by the Board of Commissioners. Any consultant (service provider) doing business with the County must enter into this standard contract, unless modifications are agreed to by the County Manager and the Purchasing

Agent after consultation with the County Attorney.

(b) *Multi-term contracts.*

1. *Specified period.* Unless otherwise provided by law, a contract for supplies or services may be entered into for any period of time deemed to be in the best interests of the County, provided the term of the contract and conditions of renewal or extension, if any, are included in the solicitation and funds are available for the first fiscal period at the time of contracting. Payment and performance obligations for succeeding calendar/fiscal periods shall be subject to the availability and appropriation of funds therefore. All multi-year contracts shall comply with the applicable requirements of O.C.G.A. § 36-60-13.
2. *Determination prior to use.* Prior to the utilization of a multi-term contract, the Purchasing Agent shall determine in writing:
 - a. That contract requirements cover the period of the contract and are reasonably firm and continuing; and
 - b. That such a contract will serve the best interests of the County by encouraging effective competition or otherwise promoting economies in County procurement.
3. *Cancellation due to unavailability of funds in succeeding calendar/fiscal periods.* When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent calendar/fiscal period, the contract shall be cancelled.

(c) *Multiple source contracting.*

1. *General.* A multiple source award is an award of a contract for one or more similar supplies or services to more than one bidder or offeror.
2. *Limitations on use.* A multiple source award may be made when award to two or more bidders or offerors for similar products is necessary for adequate delivery, service or product compatibility. Any multiple source awards shall be made in accordance with the provisions of other sections as applicable. Multiple source awards shall not be made when a single award will meet the County's needs without sacrifice of economy or service. Multiple source awards shall not be made for the purpose of dividing the business, making available product or supplier selection to allow for user preference unrelated to utility or economy, or avoiding the resolution of tie bids. Any such awards shall be limited to the least number of suppliers necessary to meet the valid requirements.
3. *Intent to use.* If a multiple source award is anticipated prior to issuing a solicitation, the County shall reserve the right to make such an award, and the criteria for award shall be stated in the solicitation.
4. *Determination required.* The Purchasing Agent shall make written determination setting forth the reasons for a multiple source award, which shall be made a part of the procurement file.

§ 2-5-4.02 Contract clauses and administration.

- (a) *Contract clauses.* All County contracts for supplies, services, and construction shall include provisions necessary to define the responsibilities and rights of the parties to the contract. A standard contract for services has been adopted by the Board of Commissioners. Any consultant (service provider) doing business with the County must enter into this agreement, unless the County Manager and Purchasing Agent determine otherwise in writing in their sole discretion and after consultation with the County Attorney.
- (b) *Standard clauses and their modification.* The Purchasing Agent, after consultation with the County Attorney and County Manager, may recommend modifications to standard contract clauses for use in County contracts. If the Purchasing Agent recommends modifications to the standard contract for services adopted by the Board of Commissioners, such clauses may be varied, provided that any variations are supported by a written explanation that states the circumstances justifying such variations.

§ 2-5-4.03 Contract administration.

The Purchasing Agent shall maintain a supplier evaluation system designed to ensure that contractors are evaluated according to their performance in accordance with the contract terms and conditions. All supplier performance problems that cannot be effectively resolved by those departments receiving the goods or services are to be promptly reported to the Purchasing Agent for appropriate action.

§ 2-5-4.04 Right to inspect plant.

The County may, at reasonable times, inspect the part of the plant, place of business or work site of a contractor or subcontractor at any tier that is pertinent to the performance of any contract awarded or to be awarded by the County.

§ 2-5-4.05 Right to audit records.

(a) *Audit of cost or pricing data.* The County may, at reasonable times and places, audit the books and records of any contractor who has submitted cost or pricing data pursuant to section 2-5-3.10 to the extent that such books, documents, papers, and records are pertinent to such cost or pricing data. Any business that receives a contract or change order for which cost or pricing data is required, shall maintain such books, documents, papers and records that are pertinent to such cost or pricing data for three years from the date of final payment under the contract.

(b) *Contract audit.* The County shall be entitled to audit the books, documents and records of a contractor or a subcontractor at any tier under any negotiated contract or subcontract, other than a firm fixed-price contract, to the extent that such books, documents, papers, and records are pertinent to the performance of such contract or sub-contract. Unless a longer retention period is specified by the County, such books, documents and records shall be maintained by the contractor for a period of three (3) years from the date of final payment under the prime contract and by the subcontractor for a period of three (3) years from the date of final payment under the subcontract.

§ 2-5-4.06 Reporting of anti-competitive practices.

When for any reason collusion or other anti-competitive practices are suspected among any bidders or offerors, or individual(s) responsible for rating proposals, a notice of the relevant facts shall be transmitted to the state attorney general and the district attorney, County solicitor, or other appropriate legal officer.

§ 2-5-4.07 County procurement records.

(a) *Contract file.* All determinations and other written records pertaining to the solicitation, award or performance of a contract shall be maintained for the County in a contract file by the Purchasing Agent.

(b) *Retention of procurement records.* All procurement records shall be retained and disposed of by the County in accordance with records retention guidelines and schedules approved by the Board of Commissioners in Section 2-7 of the County Code.

§ 2-5-4.08 Change orders.

Any change order materially altering the terms of a contract or increasing the total amount to be paid under a contract in excess of \$25,000.00 must be approved by resolution of the Board of Commissioners. The County Manager is authorized to execute all other change orders.

**SUB-ARTICLE 5
SPECIFICATIONS**

§ 2-5-5.01 Maximum practicable competition.

All specifications shall be drafted by the requesting department and reviewed by the Purchasing Agent so as to promote overall economy for the purposes intended and to encourage competition in satisfying the County's needs and shall not be unduly restrictive. The policy enunciated in this section applies to all specifications including, but not limited to, those prepared for the County by architects, engineers, designers and draftsmen.

§ 2-5-5.02 Brand name or equal specification.

- (a) *Use.* Brand name or equal specifications may be used when the Purchasing Agent determines that:
1. No other design or performance specification or qualified products list is available;
 2. Time does not permit the preparation of another form of purchase description, not including a brand name specification;
 3. The nature of the product or the nature of the County's requirements makes use of a brand name or equal specification suitable for the procurement; or
 4. Use of a brand name or equal specification is in the County's best interest.
- (b) *Designation of several brand names.* Brand name or equal specifications shall seek to designate three, or as many different brands as are practicable, as "or equal" (i.e. fungible) references and shall further state that substantially equivalent products to those designated will be considered for award.
- (c) *Required characteristics.* Unless the Purchasing Agent determines that the essential characteristics of the brand names included in the specifications are commonly known in the industry or trade, brand name or equal specifications shall include a description of the particular design, functional and/or performance characteristics which are required.
- (d) *Nonrestrictive use of brand name or equal specifications.* Where a brand name or equal specification is used in a solicitation, the solicitation shall contain explanatory language that the use of a brand name is for the purpose of describing the standard of quality, performance, and/or characteristics desired and is not intended to limit or restrict competition.

§ 2-5-5.03 Brand name specification.

- (a) *Use.* Since use of a brand name specification is restrictive of product competition, such specifications may be used only when the Purchasing Agent makes a written determination that only the identified brand name item or items will satisfy the County's needs.
- (b) *Competition.* The Purchasing Agent shall seek to identify sources from which the designated brand name item or items can be obtained and shall solicit such sources to achieve whatever degree of price competition is practicable. If only one source can supply the requirement, the procurement shall be made under section 2-5-3.07.

**SUB-ARTICLE 6
PROCUREMENT OF CONSTRUCTION AND ARCHITECTURAL - ENGINEERING SERVICES**

§ 2-5-6.01 Responsibility for selection methods of construction contracting management.

The County Manager shall have discretion to recommend to the Board of Commissioners the appropriate method of construction contracting management for a particular project. In determining which method to recommend, the County Manager shall consider the County's requirements, its resources, and the potential contractor's capabilities. The County Manager shall execute, and include in the contract file a written statement setting forth the facts which led to the recommendation of a particular method of construction contracting management for each project. All public works construction bidding and contracting, including but not limited to bid security and payment and performance bonds, shall conform to the applicable requirements of Title 36, Chapter 91 of the Official Code of Georgia Annotated. All contracts for the construction, reconstruction, or maintenance of County roads, including but not limited to bid security and payment and performance bonds, shall conform to the applicable requirements of Title 32, Chapter 4, Article 3, Part 2 of the Official Code of Georgia Annotated.

§ 2-5-6.02 Bid security - Construction.

- (a) *Requirement for bid security.* Bid security shall be required for all competitive sealed bidding for construction contracts when the price is estimated by the Purchasing Agent to equal or exceed \$100,000.00. Bid security shall be: 1) on the

bond form provided by the County; 2) properly executed by the contractor and surety; and 3) issued by a surety company determined to be: a) in good standing with the office of the Georgia Insurance and Fire Safety Commissioner; and b) listed in U.S. Treasury Circular 570 (Federal Register Vol. 62, No. 126) among companies holding certificates of authority as acceptable sureties on Federal bonds, or the equivalent in cash, or otherwise supplied in a form satisfactory to the County. Nothing in this section shall prevent the requirement of such bonds on construction contracts under \$100,000.00 when the circumstances so warrant as determined by the Purchasing Agent.

- (b) *Amount of bid security.* Bid security shall be in an amount equal to at least five percent of the amount of the bid.
- (c) *Withdrawal of bids.* If a bidder is permitted to withdraw its bid before award, as provided in section 2-4-3.02(d), no action shall be had against the bidder or the bid security.

§ 2-5-6.03 Contract performance and payment bonds.

- (a) *When required; amounts.* When a public works construction contract is awarded equal to or in excess of \$100,000.00, the following bonds or security shall be delivered to the County and shall become binding on the contractor upon the execution of the contract:
 - 1. A performance bond shall be: 1) on the bond form provided by the County; 2) properly executed by the contractor and surety; and 3) issued by a surety company determined to be: a) in good standing with the office of the Georgia Insurance and Fire Safety Commissioner; and b) listed in U.S. Treasury Circular 570 (Federal Register Vol. 62, No. 126) among companies holding certificates of authority as acceptable sureties on Federal bonds or otherwise secured in a manner satisfactory to the County, in an amount equal to 100 percent of the price specified in the contract; and
 - 2. A payment bond shall be: 1) on the bond form provided by the County; 2) properly executed by the contractor and surety; and 3) issued by a surety company determined to be: a) in good standing with the office of the Georgia Insurance and Fire Safety Commissioner; and b) listed in U.S. Treasury Circular 570 (Federal Register Vol. 62, No. 126) among companies holding certificates of authority as acceptable sureties on Federal bonds or otherwise secured in a manner satisfactory to the County, for the protection of all businesses supplying labor and material to the contractor or its subcontractors for the performance of the work provided for in the contract. The bond shall be in an amount equal to 100 percent of the price specified in the contract.
- (b) *Reduction of bond amounts.* After notice to the Board of Commissioners, the Purchasing Agent, except when prohibited by Title 36, Chapter 91 of the Official Code of Georgia Annotated, is authorized to reduce the amount of performance and payment bonds to 50 percent of the contract price for each bond when a determination is made that is in the best interest of the County to do so.
- (c) *Authority to require additional bonds.* Nothing in this section shall be construed to limit the authority of the County to require a performance bond or other security in addition to those bonds or in circumstances other than specified in subsection (a) of this section.

§ 2-5-6.04 Fiscal responsibility.

Every change order in excess of \$25,000.00 under a public works construction contract with the County shall be subject to prior approval by the Board of Commissioners after receiving a report from the County Manager as to the effect of the change order on the total project budget or the total contract budget. The County Manager is authorized to execute all other change orders.

§ 2-5-6.05 Architect-Engineering services.

- (a) *Public announcement.* It is the policy of the County to announce publicly all requirements for Architect-Engineering services where the cost of the service shall exceed \$100,000.00, and to negotiate such contracts on the basis of demonstrated competence and qualifications at fair and reasonable prices. In the procurement of architect-engineering services, the Purchasing Agent shall request firms to submit a statement of qualifications and performance data.
- (b) *Selection process.* A selection committee composed of three members designated by the County Manager (or another officer with appropriate professional qualifications) and the head of the using agency, or his designee, in need of the

architect-engineering services shall conduct discussions with no less than three firms (unless only one firm responds) regarding the proposed contract and the relative utility of alternative methods of approach for furnishing the required services and shall select from among them no less than three of the firms deemed most qualified to provide the required services. The selection shall be made in order of preference, based on criteria established and published by the selection committee.

- (c) *Negotiation.* The Purchasing Agent or County Manager shall negotiate a contract with the firm considered by the selection committee to be the most qualified (responsible and responsive) for architect-engineering services at compensation which the Purchasing Agent determines to be fair and reasonable to the County. In making this decision, the Purchasing Agent or County Manager shall take into account the estimated value, the scope, the complexity and the professional nature of the services to be rendered. In determining whether a firm is responsible, the Purchasing Agent or County Manager may consider factors including but not limited to: a) the past contracting history, performance and experience with the County or any County Authority, County Office or County Agency of the firm or any identified subcontractor of the firm; b) whether the firm, or any identified subcontractor of the firm, is currently on the State of Georgia's suspended or debarred suppliers list, the Federal government's list of any debarred, suspended or ineligible contractors and/or any list of suspended, debarred or ineligible contractors maintained by another governmental entity including any other local government; and/or c) whether the firm, or any identified subcontractor of the firm, has sufficient experience, financial ability or credit, judgment, reliability, integrity, trustworthiness, facilities, equipment, perseverance and skill which will assure good faith performance. Should the Purchasing Agent or County Manager be unable to negotiate a satisfactory contract with the firm considered to be the most qualified at a price the Purchasing Agent determines to be fair and reasonable to the County, negotiations with that firm shall be formally terminated. The Purchasing Agent or County Manager shall then undertake negotiations with the second most qualified firm submitting a price determined to be fair and reasonable to the County. If no satisfactory contract can be reached, the Purchasing Agent or County Manager shall formally terminate negotiations. The Purchasing Agent or County Manager shall then undertake negotiations with the third most qualified firm submitting a price determined to be fair and reasonable to the County. Should the Purchasing Agent or County Manager be unable to negotiate a satisfactory contract at a fair and reasonable price with any of the selected firms, and if the County wishes to continue with the pending solicitation, the selection committee shall select additional firms in order of their competence and qualifications considered in relation to the fairness and reasonableness of their price, and the Purchasing Agent or County Manager shall continue negotiations in accordance with this section until an agreement is reached. If no satisfactory agreement is reached with any firm, the selection process may be terminated and a new selection process may be initiated.

SUB-ARTICLE 7 DEBARMENT OR SUSPENSION

§ 2-5-7.01 Authority.

After reasonable written notice to the business involved and reasonable opportunity for that business to be heard, the Board of Commissioners, after consultation with the County Attorney, is authorized to suspend a business from consideration for award of future contracts upon a finding, based upon adequate evidence, that the business has engaged in any activity that might lead to debarment. The suspension shall be for a period in the discretion of the Board of Commissioners and not to exceed three (3) years.

The causes for debarment shall be limited to:

- (1) Conviction under state or federal statutes for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract;
- (2) Conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, or receiving stolen property;
- (3) Conviction under state or federal antitrust statutes arising out of the submission of bids or proposals;
- (4) Violation, within the preceding three (3) years, of contract provisions, as set forth below, of a character that is regarded by the Purchasing Agent to be so serious as to justify debarment action:

- a. failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or
 - b. A record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts; provided that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be a basis for debarment;
- (5) A record of failing to pay employees and/or subcontractors in the performance of a contract with the County, a County Authority, a County Office and/or a County Agency;
 - (6) A record of dishonesty or inaccuracy in its dealings and contract performance with the County, a County Authority, a County Office and/or a County Agency, including but not limited to a record of duplicate invoicing for invoices already paid, inaccuracies in invoice descriptions, inaccurate documentation supporting invoices, excessive change notices, unreasonable difficulty in reaching an agreement on the value of change notices, and threats to stop work that are without merit;
 - (7) Where there is a pending bankruptcy proceeding of a prospective contractor or of any person that owns, controls or manages in whole or in part a prospective contractor
 - (8) Where there is a pending lawsuit filed by a prospective contractor or by any person that owns, controls or manages a prospective contractor against the County, a County Authority, a County Office and/or a County Agency;
 - (9) Where the County, a County Authority, a County Office and/or a County Agency has a pending lawsuit against a prospective contractor or any person that owns, controls or manages in whole or in part a prospective contractor;
 - (10) Where there is a pending lawsuit against a prospective contractor or any person that owns, controls or manages a prospective contractor by any Federal, State or local government with regard to contractual performance, bid irregularities, false representations, false statements or false claims, or violations of International Traffic in Arms Regulations (ITAR);
 - (11) Where a prospective contractor or any person that owns, controls or manages a prospective contractor is currently on the State of Georgia's suspended or debarred suppliers list, the Federal government's list of any debarred, suspended or ineligible contractors, or any suspended or debarred contractor or supplier list of another government entity including any local government;
 - (12) Any other cause the Board of Commissioners determines to be so serious and compelling as to affect responsibility as a County contractor, including debarment by another governmental entity for any cause listed in this Article; or
 - (13) For violation of the ethical standards set forth in Sub-Article 9 of this Article, Ethics in Public Contracting.

§ 2-5-7.02 Decision - Issuance, contents.

The Purchasing Agent and County Attorney shall, when appropriate under this Sub-Article, issue a written decision to debar or suspend a business. The decision shall state the reasons for the action taken and inform the debarred or suspended business involved of its right of appeal pursuant to section 2-5-7.04.

§ 2-5-7.03 Same-Notice.

A copy of the decision required by section 2-5-7.02 shall be mailed or otherwise furnished immediately to the debarred or suspended business.

§ 2-5-7.04 Finality of decision.

A decision under section 2-5-7.02 shall be final and conclusive, unless the debarred or suspended business within ten (10) calendar days after receipt of the decision files a writ of certiorari with the Cherokee County Superior Court.

SUB-ARTICLE 8

APPEALS AND REMEDIES

§ 2-5-8.01 Bid protests.

- (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 Agent. Protestors are required to seek resolution of their complaints initially with the Purchasing Agent. A protest with respect to an invitation for bids or request for proposals shall be submitted in writing to the Purchasing Agent prior to the opening of bids or the closing date of proposals, unless the aggrieved business did not know and should not reasonably have known of any of the facts giving rise to such protest prior to bid opening or the closing date for proposals. The protest shall be submitted within five (5) calendar days after such aggrieved business knows or reasonably should have known of any of the facts giving rise thereto.
- (b) *Stay of procurements during protests.* In the event of a timely protest under subsection (a) of this section, the Purchasing Agent shall not proceed further with the solicitation or award of the contract until all administrative and judicial remedies have been exhausted or until the Board of Commissioners makes a determination on the record that the award of a contract without delay is necessary to protect substantial interests of the County. Notice of any such stay shall be provided to all prospective bidders, offerors or contractors. The stay provisions of this subsection shall not apply where a contract has actually been awarded.

§ 2-5-8.02 Contract claims.

- (a) *Decision of Purchasing Agent.* All claims by a contractor against the County relating to a contract shall be submitted in writing to the Purchasing Agent for a decision. The contractor may request a conference with the Purchasing Agent on the claim. Claims include, without limitation, disputes arising under a contract or change order, and those based upon breach of contract, mistake, misrepresentation, rescission, or other cause related to a contract.
- (b) *Notice to contractor of Purchasing Agent's decision.* The decision of the Purchasing Agent shall be promptly issued in writing, and shall be immediately mailed or otherwise furnished to the contractor. The decision shall state the reasons for the decision reached, and shall inform the contractor of its appeal rights under section (c) of this section.
- (c) *Finality of Purchasing Agent's decision; contractor's right to appeal.* The Purchasing Agent's decision shall be final and conclusive unless, within ten calendar days from the date of receipt of the decision, the contractor delivers a written appeal to the Board of Commissioners.
- (d) *Failure to render timely decision.* If the Purchasing Agent does not issue a written decision regarding any contract controversy within 15 days after written request for a final decision, or within such longer period as may be agreed upon between the parties, then the aggrieved party may proceed to appeal as if an adverse decision had been received.

§ 2-5-8.03 Remedies for solicitations or awards in violation of law.

- (a) *Prior to bid opening or closing date for receipt of proposals.* If the Purchasing Agent, after consultation with the County Attorney, determines that a solicitation is in violation of federal, state or County law, the solicitation shall be cancelled or revised to comply with applicable law.
- (b) *Prior to award.* If, after bid opening or the closing date for receipt of proposals and after consultation with the County Attorney, the Purchasing Agent determines that a solicitation is in violation of federal, state or County law, then the solicitation or proposed award shall be cancelled.
- (c) *After award.* If, after an award of a contract and after consultation with the County Attorney, the Purchasing Agent determines that the solicitation or award of a contract was in violation of applicable law, then the contract shall be declared null and void.

§ 2-5-8.04 Appeal to Superior Court.

Any final decision under this Article may be appealed to the Superior Court of Cherokee County by petition for writ of certiorari.

**SUB-ARTICLE 9
ETHICS IN PUBLIC CONTRACTING**

§ 2-5-9.01 Criminal penalties.

To the extent that violations of the ethical standards of conduct set forth in this Sub-Article constitute criminal violations, such violations shall be punishable as provided under applicable law. Such criminal penalties shall be in addition to the civil sanctions set forth in this Sub-Article.

§ 2-5-9.02 Employee conflict of interest.

(a) It shall be a prohibited conflict of interest for any County employee to violate the Conflicts of Interest, Gifts, Nepotism, or Outside Employment provisions of the Cherokee County Personnel Policies.

(b) For purposes of this Sub-Article, the term "County employee" shall exclude independent contractors.

§ 2-5-9.03 Business violations.

It shall be a prohibited conflict of interest for any business to aid any County employee in a violation of § 2-5-9-.02

§ 2-5-9.04 Use of confidential information.

It shall be unethical for any employee knowingly to use confidential information for actual or anticipated personal gain.

§ 2-5-9.05 Sanctions.

(a) *Employees.* The County Manager may impose any one or more of the following sanctions on a County employee for violations of the ethical standards in this Sub-Article:

1. Oral or written warnings or reprimands.
2. Suspension with or without pay for specified periods of time.
3. Termination of employment

(b) *Non-employees.* The Board of Commissioners may impose any one or more of the following sanctions on a non-employee for violations of the ethical standards of this Sub-Article.

1. Written warning or reprimand.
2. Termination of contracts
3. Debarment or suspension as provided in Sub-Article 7

§ 2-5-9.06 Conflict of Interest-Elected Officials

Public Service is a public trust, requiring all officials to place loyalty to the law and ethical principles above private gain. To that end, the Board of Commissioners prohibit the County from transacting business for procurement of goods and services from any elected official, or through a firm, corporation, partnership or business entity in which they or any member of their immediate family has a financial interest, direct or indirect.

(End)

**Appendix A – Federal Grant Procurement Requirements
Cherokee County Procurement Ordinance**

Date of Revision: February 1, 2022

1. GENERAL PRINCIPLES

I. Procurement Policy

This Appendix A applies to the procurement of all goods and services funded in part or in whole by federal funds. This Appendix does not address the requirements of FTA purchases.

It is the policy of the Cherokee County Board of Commissioners herein referred to as the County to:

- i. Ensure compliance with the Cherokee County Purchasing Ordinance as well as other applicable state and federal purchasing laws;
- ii. Ensure that purchases are made in a cost effective and timely manner;
- iv. Provide equal access to all vendors participating through competitive acquisition of goods and services;
- v. Protect the interests of taxpayers without regard to any undue influence or political pressures; and
- vi. Reasonably utilize the requirements of County's procurement processes in conjunction with the funding source's informal procurement methods to expedite completion of transactions and minimize the associated administrative burden and cost to the County.

II. Purpose

The purpose of this Appendix is to provide specific procurement guidance when the County uses federal funds. This Appendix is a supplement to County's Procurement Ordinance, Policies and Procedures.

When the procurement transaction involves the expenditure of State or Federal funds, the transaction shall be conducted in accordance with applicable and mandatory requirements of the funding entity.

III. Applicability

The proceeding Ordinance requirements and modifications are based on 2 CFR 200.317 through 200.327 and are intended to be used as allowed by general Federal Grants only and not FTA procurements.

2. ROLES, RESPONSIBILITIES & DELEGATION OF AUTHORITY

I. Roles, Responsibilities and Delegation of Authority

The Procurement Department as a part of the Administrative Services Agency serves as the centralized unit for all County purchasing activities. The Finance Department, also a part of the Administrative Services Agency, shall approve the account numbers provided by the Agency Directors to ensure that the funding sources are identified prior to procurement planning. Agency Directors shall be responsible for maintaining oversight of the vendor's performance to ensure the terms and conditions of the agreement are met.

II. Standard of Conduct/Conflict of Interest

It is the policy of the County to seek the best overall value when procuring goods and services. No preferential treatment may be given to any contractor. The County's Code of Ethics, contained in section 7 of the Personnel Policy Manual and Sub-Article 9 Ethics in Public Contracting in the Cherokee County Procurement Ordinance as approved by the Board of Commissioners shall be consulted for requirements related to personal conflicts of interests, gifts, and violations on County contracts and individuals and firms who do business with the County.

Any violation of these standards may be cause for disciplinary action in accordance with state, and local laws. The County's Code of Ethics describes penalties and actions for employees, officials and private firms who may be involved in any breach of the Code of Ethics.

III. Disadvantaged Business Enterprise Program

The County maintains a Disadvantaged Business Enterprise program that was developed in compliance with federal policy 49 CFR Part 26. The County will endeavor to implement its DBE program so to ensure federal compliance and to facilitate DBE participation.

3. GENERAL PROCUREMENT PRACTICES

I. Award to Responsible and Responsive Contractors

The County's user Agencies will assist the Procurement Department in ensuring that all procurement activities are entered into with responsible and responsive businesses, persons, and contractors. A responsible contractor will be determined based on integrity, compliance with public policy, record of past performance, and financial and technical resources. Meanwhile, a responsive offer/bid is one that conforms in all material aspects to the requirements of the solicitation at the time of submission.

II. Review of Procurement Requests to Avoid Duplicate or Unnecessary Purchases

The County limits the acquisition of federally assisted property and services to the amount it needs to support the delivery of federally funded services. The County will only contract for its current and reasonably expected needs and does not add quantities or options to third party contracts. The applicable Agency Director shall work with finance to ensures that purchases are consistent with, and supports the current approved budget prior to the commitment of funds.

III. Organizational Conflicts of Interests

A. An "organizational conflict of interest" means that because of other activities or relationships with other persons, a person is unable or potentially unable to render impartial assistance or advice to the County, or the person's objectivity in performing the contract work is or might be otherwise impaired, or a person has an unfair competitive advantage. An organizational conflict of interest occurs when any of the following circumstances arise:

- i. Lack of Impartiality or Impaired Objectivity: When the contractor is unable, or potentially unable, to provide impartial and objective assistance or advice to the recipient due to other activities, relationships, contracts, or circumstances. Such an organizational conflict of interest would occur, for example, if the service the contractor is to perform under a contract with the County might involve that contractor in evaluating its own performance or the performance of an affiliate under another County contract.

- ii. Unequal Access to Information: The contractor has an unfair competitive advantage through obtaining access to nonpublic information during the performance of an earlier contract. Such an organizational conflict of interest would occur, for example, if the contractor's service under a prior contract gave it access to nonpublic, proprietary information of a company competing with it for a subsequent contract. The County is under no obligation to equalize other offerors with an incumbent by providing information in the hands of the incumbent due to prior performance of the requirement.
 - iii. Biased Ground Rules: During the conduct of an earlier procurement, the contractor has established the ground rules for a future procurement by developing specifications, evaluation factors, or similar documents. To ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, invitations for bids and/or requests for proposals shall be excluded from competing for such procurements without an approved waiver of this requirement.
- B. Prohibition Against Organizational Conflicts of Interest: The County Procurement Director shall analyze each federally funded planned acquisition in order to identify and evaluate potential organizational conflicts of interest as early in the procurement process as possible, and avoid, neutralize, or mitigate potential conflicts before contract award. In any instance in which the County first becomes aware of an organizational conflict of interest after contract award, it shall conduct a review to determine whether the organizational conflict of interest was reasonably foreseeable and should have been identified by the contractor prior to award. In an instance where the County first becomes aware of an organizational conflict of interest after award, the Procurement Director may in his/her discretion terminate the contract or, if reasonably possible, take appropriate steps to avoid, neutralize or mitigate such organizational conflict of interest.
- C. Identifying and Addressing Organizational Conflicts of Interest: The Procurement Department and designated officials shall analyze every planned federally funded procurement to determine whether there is an opportunity for an actual or apparent conflict of interest. Offerors are required to execute a Code of Ethics Affidavit certifying that no direct or indirect pecuniary interest in the business entity, its affiliates, or its subcontractor exists. Failure to submit the affidavit during the bid or proposal process shall render the bid or proposal non-responsive. In any instance where a potential or actual organizational conflict of interest is identified, the procurement shall be reviewed by the Procurement Director and legal counsel. The Procurement Director shall be responsible for ensuring that such organizational conflict of interest is appropriately avoided, neutralized or mitigated. The Procurement Director shall not act to address an organizational conflicts of interest without concurrence from the legal counsel.

4. NO RESTRICTIONS OF FULL AND OPEN COMPETITION

The County ensures full and open competition in the solicitation of all goods and services. Full and open competition ensures that the County receives the best quality and service for the best value. Some of the situations that are considered to be impermissibly restrictive of competition include but are not limited to:

- i. Unnecessary experience requirements;
- ii. Bonding requirements that exceed the requirements described in state or local law or those described in 2 CFR Part 200;
- iii. Improper Prequalification procedures that conflict with the prequalification standards established in Section IX of this manual and in 2 CFR Part 200;
- iv. Retainer Contracts which make a noncompetitive award to a person or firm if that award is not for the goods or services specified under the retainer contract;
- v. Specifying in-State or local geographical preferences, or evaluating bids or proposals in light of in-State or local geographical preferences, even if those preferences are imposed by State or local laws or regulation, except as permitted by applicable Circulars;
- vi. Supporting or acquiescing in non-competitive pricing practices between firms or between affiliated companies. Questionable practices would include, but not be limited to, submission of identical bid prices for the same products by the same group of firms, or an unnatural pattern of awards that had the cumulative effect of apportioning work among a fixed group of bidders or offerors;
- vii. Non-competitive awards to any person or firm on retainer contracts;
- viii. Excessively specific qualifications or evaluation criteria which favor a particular contractor;
- ix. Splitting larger procurements into multiple smaller procurements to evade competition requirements at certain ordering thresholds;
 - x. The specification of only a brand name product without listing its salient characteristics and not allowing "an equal" product to be offered; and
 - xi. Any arbitrary action in the procurement process.
- xii. Prohibiting potential bidders or proposers from being allowed to qualify during the solicitation period, which is from the date the solicitation is issued until the time for the receipt of bids or proposals.

5. NON-COLLUSIVE BIDS AND PROPOSALS

Each bidder/offeror shall certify in writing that such bidder/offeror has not engaged in any collusive or anti-competitive practices in responding to a solicitation for bids or proposals.

6. METHODS OF PROCUREMENT

- I. Micro Purchases
 - A. Micro-purchases are purchases or contracts that does not exceed \$2,500 and are managed by the user Agency. The threshold value established by the Federal Acquisition Regulation at 48 CFR 2 and is periodically adjusted for inflation is currently \$10,000. Applicable federally funded purchases shall follow the County's threshold, as long as there is a determination by the Procurement Director that the price is fair and reasonable.
 - i. Davis-Bacon prevailing wage requirements will apply to non-ARPA funded construction contracts exceeding \$2,000.
 - ii. The County ensures that these purchases are distributed equitably among qualified suppliers and are not split to circumvent procedures for higher dollar amounts.

- B. All micro-purchases must include the 'Fair and Reasonable Price Determination' statement and be signed, dated and the reason checked off. Supporting documentation should be attached to the shopping cart/purchase requisition. Copies of purchasing documents will be maintained within MUNIS.
- C. All federally funded purchases are reviewed by the Procurement Department to ensure compliance with applicable federal regulations prior to solicitation.

II. Small Purchases

- A. Small purchases are defined by 48 CFR Part 2 as acquisitions for services, supplies or property that exceed the micro-purchase amount (\$10,000) but less than the Federal Simplified Acquisition Threshold (SAT) currently set at \$250,000 and does not exceed the County's Procurement Ordinance which sets requirements for 'Small Purchases' at \$100,000 or less. A minimum of three written quotes are required for small purchases.
- B. Grant purchases \$25,000 and greater but \$100,000 or less are required to be made through the Procurement Department unless the Agency has had procurement training on delegation of authority and the procurement is of low complexity – which will be subject to the Procurement Director's judgement.
- C. All Federally funded purchases are reviewed by the Procurement Director to ensure compliance with applicable federal regulations prior to solicitation and award.

III. Large Purchases

- A. Purchases greater than \$100,000 are managed by the Procurement Department in accordance with the County's Procurement Ordinance as modified herein. User Departments recognize the need for purchases and is responsible for; initiating purchases, detailing specifications and preparing federal compliance documentation for the Procurement Director's review and approval.
- B. Goods, services and construction where the cost is greater than \$100,000 shall be acquired through the competitive sealed bid process unless the procurement is an emergency, sole source, request for proposal, cooperative purchase, and governmental and affiliated purchase. The County's procurement selection procedures for purchases greater than \$100,000 are described in the Procurement Standard Operating Procedures and are dependent upon the procurement type selected.
- C. For procurements funded by the Federal Government, the County shall comply with Buy America federal requirements as described in 49 CFR Part 661 for all applicable procurements. The provisions require contractors to utilize steel, iron and manufactured products that are produced in the United States of America and apply to third party contracts irrespective of whether the County decides to locally fund part of the project. The applicable User Department and the Procurement Department shall ensure that Buy America requirements are observed in accordance with the following prior to solicitation and award:
 - i. All applicable federally funded County solicitations shall include the requirement for bidders to certify they will comply with the Buy America regulations as a measure for responsiveness, as amended.

- ii. The Procurement Director shall ensure that County requests for Buy America waivers shall meet the conditions required by 49 CFR Part 661.7
- iii. Authority solicitations and contracts shall include the appropriate certifications and contract provisions required by the above referenced laws and regulations, as may be amended.

7. COMPETITIVE SEALED BID (FORMAL ADVERTISING)

- A. The County's procurement selection procedures for competitive sealed bids are described in this Appendix. Goods, services and construction where the cost is greater than \$100,000 shall be acquired through the competitive sealed bid process in which bids are solicited, and a firm fixed price contract (lump sum or unit cost) is awarded to the responsible bidder whose bid, conforming to all the material terms and conditions of the invitation for bids, is lowest in prices, except as otherwise provided in the Cherokee County Purchasing Ordinance.
- B. When appropriate, the sealed bid process for federally funded procurements shall be used when the following circumstances are present:
 - i. A complete, adequate, and realistic specification or purchase description is available;
 - ii. An award could be made on the basis of price and price related factors;
 - iii. It is not necessary to conduct discussions with responding sources about their bids;
 - iv. Two or more responsible bidders are willing and able to compete effectively for the business; and
 - v. A complete, adequate, and realistic specification or purchase description is available.
- C. Firm fixed price contracts shall be used when the method of procurement is sealed bidding, except when economic price adjustments may be necessary due to the nature of the commodity being purchased not being conducive to long-term price commitment. Invitation for bids will be publicly advertised, and bids must be solicited from an adequate number of known suppliers, providing them sufficient response time prior to the date set for opening the bids.

8. COMPETITIVE SEALED PROPOSAL (FORMAL ADVERTISING)

- A. The County's procurement selection procedures for competitive sealed proposals are described in this manual. When appropriate, competitive proposals for federally funded procurements should be used when the following circumstances are present:
 - i. The property or services to be acquired are described in a performance or functional section;
 - ii. Uncertainty exists about whether more than one bid will be submitted in response to an invitation for bids;
 - iii. Due to the nature of the procurement, contract award need not be based exclusively on price or price related factors; and

- iv. Separate discussions with individual offeror (s) are expected to be necessary after they have submitted their proposals.
- v. The request for proposals is publicly advertised;
- vi. All evaluation factors/criteria and their relative importance are developed by the User Department and specified in the solicitation;
- vii. General and specific evaluation factors are considered by a Proposal Evaluation Team as the evaluation method to determine the most qualified offeror;
- viii. Proposals are solicited from an adequate number of qualified vendors;
- ix. Awards are made to the responsible offeror that provides the highest scoring proposal with price and other factors considered; and
- x. Awards to the offeror whose proposal is in the best interest or provides the best value to the County.

9. SOLE SOURCE AND OTHER NON-COMPETITIVE PURCHASES

- A. The County's Procurement Ordinance and Administrative Policy PUR-05 Single/Sole Source Procurements provides guidance and an approval process for situations where solicitations may be made from only one source. An amendment to an existing contract that is beyond or out of scope of the original procurement, including any negotiated options, or that increases the contract amount over the small purchase threshold is subject to the requirements of the Procurement Ordinance. Non-competitive procurements include: sole source, emergency purchases and single response.
- B. A sole source award will be made when the County determines that a particular good or service is only available from one responsible source and this must be justified. A sole source justification must be completed for existing contract changes beyond the scope of the awarded contract.
- C. In addition to the local requirements described in this Appendix; a cost analysis will be performed if required by the funding source. A cost analysis may be prepared if the County is unable to determine price reasonableness based on a catalog or market price of a commercial product sold in substantial quantities to other than the Federal Government or price history, if previously determined fair and reasonable. When determining whether there is only one source for the requirement, the County shall consider whether there is a reasonable basis to conclude that:
 - i. The requirements cannot be modified to allow a competitive procurement; and
 - ii. The existence of ownership or control of limited rights in data, patent rights, copyrights, trade secrets, secret processes, or similar circumstances preclude more than one source for the required goods or services, including construction.
- D. The Procurement Department will review all single bid or single solicitation responses to determine if competition was adequate. Proposal or bid specifications will be reviewed for undue restrictiveness and potential vendors may be surveyed. An award to single bid or proposal can be made if competition can be determined to be adequate; where a single bid or proposal was caused by external factors beyond the County's control. All efforts of which must be documented and included in the procurement file.

10. QUALIFICATIONS- BASED PURCHASES

- A. Professional services shall be solicited, evaluated, ranked, selected and negotiated in compliance with the qualifications-based section process for architectural and engineering services in accordance with 40 U.S.C. Sections 1101 through 1104, commonly referred to as the Brooks Act.
- B. The County shall publicly announce requirements for engineering and design services and negotiate contracts for these services based on the demonstrated competence and qualifications of prospective contractors to perform the services required at fair and reasonable prices. Procurement may involve a single step process with issuance of a request for proposal (RFP) to all interested contractors or a multiphase process with issuance of a request for statements or letters of interest or qualifications (RFQ) whereby responding contractors are evaluated based on qualifications and request for proposals are then provided to the most highly qualified contractors.
- C. The County's competitive proposal process shall provide all information and requirements necessary for interested consultants to provide a response to the RFP and compete for the solicited services.
 - i. Evaluation Factors: The County shall evaluate each potential contractor in terms of its:
 - Professional qualifications necessary for satisfactory performance of required services;
 - Specialized experience and technical competence in the type of work required;
 - Capacity to accomplish the work in the required time;
 - Past performance on contracts with the County, quality of work, and compliance with performance schedules;
 - Proposed or past DBE participation (for responsiveness and responsibility determinations only);
 - Acceptability under other appropriate evaluation criteria and;
 - Price is excluded as an evaluation factor.
 - ii. Evaluation, Ranking and Selection: A Technical Evaluation Team (TET) must be convened for the purpose of selecting proposed contractors for the performance of A-E or related services:
 - Proposals shall be evaluated based on the criteria established and published within the public solicitation;
 - While the contract will be with the prime consultant, proposal evaluations shall consider qualifications of the prime and any subcontractors;
 - Following the submission and evaluation of proposals, the TET shall conduct interviews or other types of discussions with the three highest scoring firms to

clarify the technical approach, qualifications, and capabilities as provided in the RFP;

- From the proposal evaluation and any subsequent discussions which have been conducted, the TET shall rank, in order of preference, at least three firms determined most highly qualified to perform the solicited services based on the established and published criteria; and
 - Notification must be provided to responding firms of the final ranking of the three highest scoring firms.
- iii. Negotiation: The final selection authorizes the Procurement Department to begin the final selection.
- If concealed cost proposals were submitted in conjunction with technical/qualifications proposals, only the cost proposal of the firm with which negotiations are initiated may be considered. Concealed cost proposals of firms with which negotiations are not initiated should be returned to the respective organization.
 - If the mutually satisfactory contract with a fair and reasonable price cannot be negotiated after the Procurement Department has obtained a written best and final offer, the firm will be notified in writing that negotiations have been terminated. The Procurement Department shall then initiate negotiations with the next firm on the final selection list. If a satisfactory agreement cannot be reached with the next most qualified firm after the Procurement Department has obtained a written best and final offer that firm will be notified in writing that negotiations have been termination. Then, if necessary, negotiations with successive firms in descending order of qualifications may be conducted until contract award can be made to the firm whose price the County believes is fair and reasonable; and
 - The County shall retain documentation of negotiation activities and resources used in the analysis of costs to establish elements of the contract in accordance with the provisions set forth in 49 CFR 18.42.
- iv. Small Purchases: The simplified procedures as described in this manual may be used in selecting prospective contractors to perform architecture-engineering and related services estimated within the County's simplified threshold of \$100,000.
- v. The Procurement Department must conduct a cost analysis of pricing proposals during the negotiations of any contract or modification, but prior to award.

11. PIGGYBACKING

- A. Piggybacking is the post-award use of a contract allowing a party who was not contemplated in the original procurement to purchase the goods or services included in the contract at the same prices contained in the contract. Piggybacking is allowed when the solicitation document and contract contain an assignability clause that provides for the assignment of all or part of the specified deliverable(s) or stated minimum or maximum quantities of goods to be purchased as originally advertised, evaluated, and awarded. Piggybacking applies to both the base and option quantities included in a contract. The User Agency and the Procurement Department shall not inflate the order quantities of material or services to facilitate Piggybacking by other agencies. When utilizing contract options and assignments to meet federally funded requirements, the

Procurement Department must not negotiate a separate contract based on the terms and conditions of the original.

- B. If the supplies or services were solicited, competed and awarded through the use of an indefinite-delivery – indefinite-quantity (IDIQ) contract, then both the solicitation and contract award must contain both a minimum and a maximum quantity that represent the reasonably foreseeable needs of the parties to the solicitation and contract.
- C. Where the County obtains these contractual rights through assignment, it may exercise them after first determining the contract price remains fair and reasonable, and all federal requirements have been addressed in the contract's clauses.

12. STATE OR LOCAL COOPERATIVE PURCHASING CONTRACTS

The County may purchase from a State or local cooperative procurement contracts that were competitively awarded as well as well as being subject to federal requirements, including, but not limited to, full and open competition, no geographic preferences, Buy America, and required clauses and certifications with its purchase orders issued under the State or local contract.. State or Local Government Purchasing Schedule or Purchasing Contract means an arrangement that a State or local government has established with multiple vendors in which those vendors agree to provide an option to the State or local government.

13. DESIGN- BID- BUILD & DESIGN-BUILD PURCHASE

Design Bid- Build and Design Build are construction methods that may be used by the County when applicable. Before choosing the construction contracting method to use, a careful assessment must be made of the requirements the project must satisfy and those other characteristics that would be desirable.

- A. The Design Build method gives the contractor maximum control of the design and construction project consistent with the County's needs. This method requires a set of performance specifications including functional criteria, any life-cycle cost considerations, and other evaluation factors. The contractor is selected on the basis of its design proposal, proposed price, and other stated evaluation criteria and the design-build method, a fixed or target price for the project is established at time of contract and the contractor designs and builds the project with its own forces.
- B. The Design Bid-Build method requires separate contracts for design services and for construction. For the design services, the qualifications-based procurement procedures must be used. Qualifications-based procurement process and shall not be used for the procurement of the construction. A project using design-bid-build construction proceeds in clearly defined steps which may aid in financing and gaining any necessary approvals as well as aid in managing the entire project. Complex or unique projects can be completely thought through and planned before construction begins. Also, before any construction begins, a fixed price for the project can be established.

14. PROTESTS AND DISPUTES

- I. Protests

Protests are addressed in the Procurement Ordinance sub-article 8. Protest concerning the County's purchasing policies, contract requirements, specifications, the bidding procedure, or the contract award, or any other request for explanation or clarification must be submitted in writing to the attention of the Procurement Director and must include the following information:

- The name and address of the protester.
- The name and telephone number of the protester's contact person having responsibility.
- A complete statement of the grounds of the protest with full documentation of the protester's claim.

The Purchasing Director will notify the Legal Counsel of all protests related to federally funded purchases and follow the Ordinance requirements.

II. Disputes

Disputes are addressed in the Procurement Ordinance, article 2-5-8.02. It is the responsibility of the County to settle contract issues and disputes including resolving all contractual and administrative issues arising from third party contractors. The County shall utilize good administrative practices and sound business judgement in resolving contract disputes.

15. CONTRACT ADMINISTRATION & RECORD KEEPING

I. Contract Administration

The User Agency, in coordination with the Procurement Department, will actively manage all contracts and establish and maintain contract files. The User Agency will maintain oversight of contractors to ensure that work is performed in accordance with the terms, conditions, and specifications of their contracts or purchase orders. These files will contain documentation necessary for compliance with federal, state, and local administration including:

The executed contract and notice of award;

- Performance and payment bonds, bond-related documentation, and correspondence with any sureties;
- Contract-required insurance documentation;
- Applicable federal compliance documentation e.g. federal certifications, bus testing, federal clauses, debarment and suspension verification (<http://sam.gov> check);
- Post-award (pre-performance) correspondence from or to the contractor or other Government agencies;
- Notice to proceed;
- Approvals or disapprovals of contract submittals required by the contract and requests for waivers or deviations from contractual requirements;
- Modifications/changes to the contracts including the rationale for the change, change orders issued, and documentation reflecting any time and or increases to or decreases from the contract price as a result of those modifications;
- Documentation regarding settlement of claims and disputes including, as appropriate, results of audit and legal reviews of the claims and approval by the proper authority of the settlement amount;
- Documentation regarding stop work and suspension of work orders and termination actions (convenience as well as default); and

- Documentation relating to contract closeout.

II. Record Keeping

The User Department, in coordination with the Procurement Department, will keep and maintain, in accordance with the County's retention policy, a file or record for each federally funded procurement.

The record at a minimum should include:

- Rationale for the method of procurement;
- Selection of contract type;
- Procurement file checklist and all applicable documentation
- Contractor selection or rejection and;
- Justification for contract price.

Where appropriate, the procurement documentation file should contain:

- Purchase request, acquisition planning information,
- Rationale for the method of procurement (negotiations, formal advertising);
- List of sources solicited;
- Independent Cost Estimate;
- Statement of Work/Scope of Services;
- Copies of published notices of proposed contract action;
- Copy of the solicitation, all addenda, and all amendments;
- Liquidated damages determination;
- An abstract of each offer or quote;
- Contractor's contingent fee representations and other certifications and representations;
- Source selection documentation, if applicable;
- Contracting Officer's determination of contractor responsiveness and responsibility;
- Cost or pricing data;
- Determination that price is fair and reasonable, including an analysis of the cost and pricing data;
- Required internal approvals for award;
- Notice of award;
- Notice to unsuccessful bidders or offerors and record of any debriefing;
- Record of any protest;
- Bid, Performance, Payment, or other bond documents, and notices to sureties;
- Best and Final Offer;
- Required insurance documents, if any;
- Notice to proceed; and
- Negotiation Memorandum.

16. CONTRACT CLAUSES

I. Required Contract Clauses

- A. The User Agency (through guidance provided by the Procurement Department) will include and provide to the Procurement Department all appropriate clauses stating the

contractor's responsibilities under applicable federal laws and regulations, in accordance with applicable federal directives, except to the extent the federal agency determines otherwise in writing.

- B. At a minimum the contracts will all include Required Contract Provisions for Non- Federal Entity Contracts Under Federal Awards (Appendix II to 2 CFR Part 200).
- C. The County requires that all third-party contracts include provisions adequate to form a sound and complete agreement. The County reserves the right to seek clarification from any bidder or offeror about any statement in its bid or proposal that the County finds ambiguous.

II. Procuring Equipment or Materials Using Option Clauses

Definition of Option Contract

An option is a unilateral right in a contract by which, for a specified time, the County may elect to purchase additional equipment, supplies, or services called for by the contract, or may elect to extend the term of the contract.

17. CONTRACT GUIDANCE

I. Contract Type

The User Agency in coordination with the Procurement Department will select the contract method that will provide a product or service that best meets the County's needs at a reasonable price without undue risks to the contractor and without excessive contract administration costs and contractor claims. The County will apply federal requirements related to all projects for each federally funded contract by type of project and contracting method.

II. Contract Provision

A. Maximum Length of Service and/or Supply Contracts

The County will not enter into either service or supply contracts utilizing federal funds with a period of performance exceeding five (5) years, inclusive of options, without prior written approval from the applicable federal agency.

Revenue Contracts

B. Revenue contracts are contracts whose primary purpose is to generate revenues or to create business opportunities for a County Agency.

i. Competition is not required when a business opportunity (such as running utility cables through tunnels or allowing the installation of transmission towers or antennas on property) is made available on an equal basis to all qualified applicants; and

ii. The contract file for a revenue contract should include an economic analysis justifying the contract term.

C. Final Payment

Final payment will be made to the contractor when it has satisfied all of the deliverable requirements called for by all provisions of the contract, including all required documentation. Before making final payment, the County may obtain a signed release from the contractor releasing it from further claims by the contractor.

III. Remedies for Non-Conformance

A. Liquidated Damages

- i. The User Agency and Procurement Department must consider the potential impact on pricing, competition, costs and difficulties of contract administration, and similar matters before including a liquidated damages clause in contracts. A liquidated damages clause should only be used when:
 1. The time delivery or timely performance is so important that the County may reasonably expect to suffer damages if the delivery or performance is delinquent; and
 2. The extent or amount of damages would be difficult or impossible to ascertain or prove.
- ii. Liquidated damages must be stated clearly in the solicitation. Liquidated damages are not punitive nor are they negative performance incentives. Liquidated damages are used to compensate the County for probable damages. Therefore, the liquidated damages rate must be a reasonable forecast of just compensation for the harm that is caused by late delivery or untimely performance of the particular contract.
 1. Liquidated damages shall not be fixed without reference to probable actual damages and shall be established on a unit of time and amount basis. The assessment for damages shall be established at a specific rate per day, or another period of time, for each day or other unit of time beyond the contractor's delivery date or performance period. A unit of measurement other than time may be used, if appropriate, such as weight requirements in a rolling stock procurement. The procurement file must include a record of the calculation and rationale for the amount of damages established;
 2. The County may use more than one liquidated damage rate when probable damage to the County is expected to change over the contract period of performance;
 3. The Procurement Department shall determine a reasonable rate of liquidated damages on a case by case basis, and shall set the rate of liquidated damages based on the recommendations and justifications provided by the User Agency initiating the procurement request and the Procurement Department assessment of all applicable factors;
 4. The User Agency in coordination with the Procurement Department shall document the justification of the rate of liquidated damages in the contract file and shall take all reasonable steps to mitigate these damages; and

5. A contract may include an overall maximum dollar amount or period of time during which liquidated damages may be assessed, or both, to prevent an unreasonable assessment of liquidated damages.
- B. Termination for Default and Convenience
- All federally funded contracts exceeding \$10,000 must contain provisions enabling the County to terminate such contracts for the convenience of the County. These provisions shall specify the manner in which such termination will be affected and the basis for settlement. There shall also be included in such contracts appropriate provisions specifying causes for which the contracts may be terminated for default.
- i. Termination for Default: Provides the County with the ability to cancel a contract, either in whole or in part, due to the contractor's failure to perform satisfactorily.
 - If a contractor's right to proceed is terminated for default, the County may take over and complete the work or cause it to be completed, and the contractor and his sureties, if any, shall be liable to the County for any increased costs caused. The contractor and his sureties shall, in addition to increased costs in completing the work, be liable for liquidated damages or for actual damages if liquidated damages are not so provided.
 - If the Procurement Department determines that the contractor's failure to perform arises from causes which are excusable under the terms of the contract, the Procurement Department shall not terminate the contractor's right to proceed. Neither shall damages (liquidated or actual) be imposed on the contractor because of any delays occasioned by such causes.
 - Termination for Convenience: The Procurement Department may, when the interests of the County so require, terminate a contract, in whole or in part, for the convenience of the County.
 - The Procurement Department shall give written notice of the termination to the contractor, based on written recommendation from the User Agency, specifying the part of the contract terminated and when termination becomes effective.
 - The Procurement Department will attempt to negotiate a no-cost settlement with the contractor. Otherwise, the Contracting Officer will negotiate an appropriate settlement agreement with the contractor pursuant to the provisions of the Termination for Convenience clause of the contract.
- C. Violation or Breach
- The County will include contract provisions that include administrative, contractual, or legal remedies for violations or breach of the contract by the third-party contractor for federally funded contracts exceeding \$100,000 and include in Appendix 2 to part 200 of the FAR.

18. PERFORMING INDEPENDENT COST ESTIMATE, COST AND/PRICE ANALYSIS

- I. Independent Cost Estimate

An independent cost estimate is especially critical whenever there is no price competition (e.g., for architect-engineer procurements where only one price proposal is received), or where offerors are submitting price proposals for goods or services that are not exactly comparable (e.g., for procurements of high-technology items or professional services). It is also useful in competitive procurements to alert the County when all competitors are submitting unreasonably high-cost proposals.

II. Cost or Price Analysis

The User Agency will prepare a cost or price analysis in connection with every federally funded procurement action in excess of the Simplified Acquisition Threshold, including contract modifications. The method and degree of analysis depends on the facts and circumstances of the procurement, but as a starting point, the recipient must make independent estimates before receiving bids or proposals. The cost or price analysis serves as a tool to ensure that the County does not pay unreasonably high prices to third party contractors.

A price analysis is the preferred method in determining whether a price is fair and reasonable. The User Agency will evaluate prices based on; adequate price competition, prices set by law, established catalog price, comparison to previous purchases or other acceptable methods.

A cost analysis will be conducted when a price analysis is not sufficient in determining whether a price is fair and reasonable. A cost analysis will be performed to compare individual cost elements that make up the total purchase price. The Procurement Department bid or cost tabulation form may also serve as the cost analysis when applicable. In addition, the User Department may seek the technical experience of the County's locally funded Engineering contractor in the analysis of hours, quantities, tooling, testing, head counts, and similar factors.

19. DISADVANTAGED BUSINESS ENTERPRISE (DBE)

I. DBE Program

The County maintains a Disadvantaged Business Enterprise program that was developed in compliance with federal policy 49 CFR Part 26.

The County will make reasonable, race neutral efforts to promote the potential utilization of DBE firms and small business enterprises (SBEs) when utilizing federal funds. The County will engage in procurement practices that support participation of DBE and SBE firms.

II. DBE Liaison Officer

The County has designated a DBE Liaison Officer who is responsible for developing, implementing and monitoring the DBE program.

III. Bidder's List

The DBE Liaison Officer, with assistance from the Procurement Department staff, will identify potential DBE firms that may be interested in providing a bid/quote.

IV. Good Faith Efforts

In accordance with the County's DBE Program, the County will continue to maintain a Race-Neutral procurement process.

20. PROHIBITED PRACTICES

The County must comply with the following prohibitions and requirements related to selecting the type of contract or basis for reimbursement for Federally funded procurements.

- The County must not utilize the "cost-plus-a-percentage-of-cost" or "percentage of construction cost" methods of contracting.
- The County must not utilize the "time and materials" contract unless the County determines that no other contract type is suitable and the contract explicitly specifies a ceiling price that the bidder or offeror may only exceed at its own risk.
- Where the County chooses to enter a "cost reimbursement" contract, its employees, officers, and agents must comply with the applicable provisions of Federal Acquisition Regulation (FAR). Specifically, the County must utilize the guidelines in FAR Part 31 to determine whether the contractor's proposed costs are reasonable, allowable, and allocable.
- The County must not enter into a tag-on contract without making an acceptable non-competitive procurement finding.
- Advance payments of federal funds are prohibited unless prior written concurrence is obtained from the federal funding agency.
- If progress payments are used for a selected contract, such payments must be made on the basis of costs incurred or, for construction contracts only, on the basis of percentage of completion of the relevant project. The County must obtain adequate security (i.e., title to work in progress; letter of credit) for any progress payments made.
- The County must not contract with parties debarred or suspended as listed on the List of Parties Excluded from Federal Procurement as verified at <http://www.sam.gov>.
- The County must not specify in state or local geographic preference, except to comply with State licensing requirements or in the case of procuring architectural engineering or disaster relief services.