

# James Island Public Service District

## *Procurement & Disposition of Assets Resolution*

### ARTICLE I

#### GENERAL

##### **SECTION 1-101. PURPOSE**

To provide for the fair and equitable treatment of all persons involved in public purchasing by James Island Public Service District (District), to maximize the purchasing value of public funds in procurement, and to provide safeguards for maintaining a procurement system of quality and integrity.

Nothing in this Resolution shall prohibit a higher level, more stringent procurement method being used if it is determined that the District's best interest would be better served.

##### **SECTION 1-102. APPLICABILITY**

This Resolution applies to contracts for the procurement of supplies, services, and construction entered into by the District after the effective date. It shall apply to every expenditure of public funds irrespective of their source. It applies to all methods of payment including paper checks, electronic funds transfers, and credit cards. Nothing in this Resolution shall prevent any District department from complying with the terms and conditions of any grant, gift or request, which is otherwise consistent with law.

This Resolution repeals and replaces all previously issued ordinances, policies, rules, resolutions or customs pertaining to public procurement for the District.

##### **SECTION 1-103. DEFINITIONS**

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

**Best Interests of James Island Public Service District** shall mean advantageous to the District.

**Bid Sample** shall mean an item furnished by a Bidder to show the characteristics of the item offered in the bid.

**Business** shall mean any corporation, partnership, individual, sole proprietorship, joint-stock company, joint venture, or any other private legal entity.

**Capability** shall mean Contractor capability at the time of contract award.

**Change Directive** is an order to a Contractor directing a change in the work where there is a lack of total agreement on the terms of a change order, or insufficient time to execute a bilateral change order. A change directive will set forth the change in the work and the change, if any, in the contract price or time for performance for subsequent inclusion in a change order. Change directives shall include a not-to-exceed preliminary price against which the Contractor may begin billing (subject to the requirements set forth in the contract) as the work is performed. See also Change Order (unilateral).

**Change Order (bilateral)** shall mean an agreed-upon written order to a Contractor executed by the District and the Contractor after execution of the base contract, directing a change in the work which may include a change in the contract price, the time for the Contractor's performance, or any combination thereof.

**Change Order (unilateral)** (also known as Change Directive) shall mean a written order unilaterally issued by the District Manager, or their designee, directing the Contractor to make changes which the contract authorizes the District to order without the consent of the Contractor.

**Commission** shall mean the James Island Public Service District Commission, as defined in Act 498 of the

Acts of the General Assembly for the year 1961 and subsequent acts amendatory.

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

**Construction Management Services, Design-Build Services, Construction Manager at Risk, or Turnkey Management Services** are approaches to construction contract management that allow for the selection of a single firm to perform and/or manage the complete design and construction of a project.

**Contract** shall mean all types of District agreements, regardless of what they may be called, for the procurement of supplies, services or construction.

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

**Contractor** shall mean any person having a contract with the District.

**Cost Analysis** shall mean 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** shall mean information concerning the actual or estimated cost of labor, materials, overhead, and other cost elements that have been actually incurred, or that are expected to be incurred, by the Contractor in performing the contract.

**Cost-Plus-A-Percentage-Of-Cost-Contract** shall mean a cost reimbursement contract that, prior to completion of the work, the parties agree that the profit fee will be a predetermined percentage of the total cost of the work.

**Cost-Plus-Fixed-Fee-Contract** shall mean a cost reimbursement that provides for the payment of a fixed fee to the Contractor. The fixed fee, once negotiated, does not vary with the actual cost but may be adjusted as a result of any subsequent changes in the Scope of Work or services to be performed.

**Data** shall mean recorded information, regardless of form or characteristic.

**Days** shall mean calendar days.

**Department Head** shall mean the person in charge of any department or who occupies the position of head of a department on a temporary basis.

**Director of Finance** shall mean the person who is responsible for the overall financial operations of the District.

**Description** shall mean information available in the ordinary course of business that shows the characteristics, construction, or operation of an item offered in a Bid or Proposal.

**Designee** shall mean a duly authorized representative of a person holding a superior position.

**Design Specifications** shall mean a specification that sets forth physical characteristics in definitive terms.

**Discussions**, as used in the source selection process, shall mean an exchange of information or other manner of negotiation during which the Offeror and the District may alter or otherwise change the conditions, terms, and price of the proposed contract.

**District** shall mean the James Island Public Service District as defined in Act 498 of the Acts of the General Assembly for the year 1961 and subsequent acts amendatory thereof.

**District Manager** shall mean the person who is appointed by the Commission to occupy the position of Chief Executive Officer of the District.

**Electronic** means electrical, digital, magnetic, optical, electromagnetic, or any other similar technology.

**Fixed-Price Contract** shall mean a price not subject to any adjustments by reason of the cost experience of the Contractor in the performance of the contract.

**Functional Specification** shall mean a specification that sets forth the specific operations, actions, or results for which it is to be used.

**Grant** shall mean the furnishing of assistance, whether financial or otherwise, to any person to support a

program authorized by Law. It does not include an award whose primary purpose is to procure an end product, whether in the form of supplies, services, or construction. A contract resulting from such an award is not a grant but a procurement contract.

**May** denotes the permissive.

**Minor Informality** shall mean mistakes, excluding judgmental errors, that have negligible effect on price, quantity, quality, delivery, or other contractual terms, and the waiver or correction of such mistakes does not prejudice other Bidders or Offerors, or the District.

**Performance Specification** shall mean a specification that sets forth a capacity/objective that had been determined necessary for the item involved.

**Person** shall mean any corporation, business, individual, union, committee, club, other organization, or group of individuals.

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

**Public Notice** means the distribution or dissemination of information using methods that are reasonably available to interested parties. Such methods will often include publication in newspapers of general circulation, electronic or paper mailing lists, and web site(s) designated by the District and maintained for that purpose.

**Regulation** shall mean a statement having general or particular applicability and future effect designed to implement, interpret, or describe organization procedures, or practice requirements, which have been promulgated in accordance with existing procedures.

**Request for Proposals** shall mean a published solicitation for proposals to provide goods or services. Evaluation factors upon which the proposals will be evaluated for the award of the contract shall be stated in the request for proposals. Price shall be one of the evaluation factors but it shall not be the sole basis for the award of the contract.

**Request for Qualifications** shall mean formal solicitation for professional/technical capabilities.

**Request for Quotations** shall mean informal solicitations obtaining written quotations without formal advertising and receipt of sealed bids.

**Selection Committee** shall consist of the District Manager and their designees, for a minimum of three members. One member shall be the Department Head or their designee for which the item being discussed relates.

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

**Shall** always means mandatory.

**Signature** means any identifier or authentication technique attached to or logically associated with an electronic record that is intended by the party using it to have the same force and effect as a manual signature, as provided in the "Uniform Electronic Transactions Act", S.C. Code Section 26-6-10 *et seq.* **Supplies** shall mean all property including but not limited to equipment, materials, printing, insurance, information technology equipment software packages, and leases of real property, excluding land or a permanent interest in land.

**Written or In Writing** means the product of any method of forming characters on paper, other materials, or viewable screen, which can be read, retrieved, and reproduced, including information that is electronically transmitted and stored.

**Written Determination** shall mean a written decision resolving a question or controversy or finalizing a position within the limits of authority under this Resolution.

## **ARTICLE II**

### **GENERAL PROVISIONS**

#### **SECTION 2-201. PUBLIC ACCESS TO PROCUREMENT INFORMATION**

- (a) Procurement information shall be a public record to the extent required by Chapter 4 of Title 30 (The Freedom Of Information Act) with the exception that commercial or financial information obtained in response to a Request for Proposals, or any type of bid solicitation, or Request for Quotations which is privileged and confidential, shall not be disclosed as well as other information which may be exempt from disclosure. Privileged and confidential information is information in specific detail not customarily released to the general public, the release of which might cause harm to the competitive position of the party supplying the information. Examples of this type of information would include, without limitation:
  - (1) Customer lists.
  - (2) Design recommendations and identification of prospective problem areas under an RFP.
  - (3) Design concepts, including methods and procedures.
  - (4) Biographical data on key employees of the Bidder.
- (b) Evaluative documents pre-decisional in nature, such as, but not limited to inter- or intra- departmental memoranda containing technical evaluations and recommendations, are exempted so long as the contract award does not expressly adopt or incorporate the inter- or intra-departmental memoranda reflecting the pre-decisional deliberations.
- (c) Commercial or financial information, which an Offeror seeks to protect from disclosure, will not be disclosed provided it is marked "CONFIDENTIAL" by Offeror on the proposal document. Before submittal, all Offerors must visibly mark as "CONFIDENTIAL" each part of their proposal by page, paragraph, section or line, as appropriate, which they consider to contain proprietary information. The District will not assume responsibility for any information, which is disclosed as a result of Offeror's failure to visibly mark it as "CONFIDENTIAL." In all solicitations, the District shall reserve the right to review marked items to determine whether they meet South Carolina Freedom Of Information Act (FOIA) requirements for exemption from disclosure. The District shall not bear liability for any information which is disclosed as a result of Offeror's failure to visibly mark it as "CONFIDENTIAL", or for releasing information which it in good faith has determined to be subject to disclosure under applicable law.

#### **SECTION 2-202. COMPLIANCE WITH FEDERAL REQUIREMENTS; COMPLIANCE WITH DISBURSEMENT AND MANAGEMENT REQUIREMENTS OF FINANCING DOCUMENTS**

Where procurement involves the expenditure of federal assistance or contract funds, the District shall comply with such federal law and authorized regulations which are mandatorily applicable, and which are not presently reflected in this Resolution. Where a procurement involves the expenditure of funds, which are the proceeds of bonds or certificates of participation, or other financing instruments or documents, all District personnel shall comply with the terms of such financing as they relate to the disbursement of funds and/or management of projects, insofar as such terms are mandatorily applicable and which are not presently reflected in this Resolution.

#### **SECTION 2-203. STANDARDS OF CONDUCT**

In all actions involving the procurement of supplies, services, or construction for the District, the provisions of Chapter 13 of Title 8 (State Ethics Act) of the South Carolina Code of Laws, as it may be amended from time to time, shall be complied with. This includes a prohibition of all employees and their immediate family members from receiving gifts, gratuities, or benefits from vendors and those vendors submitting bids or proposals. Additionally, no employee shall accept vendor provided lodging, transportation, meals, or entertainment.

## **SECTION 2-204. ORGANIZATION**

Except as otherwise provided in this Resolution, the authority relating to procurement is hereby vested in the District Manager and Department Head. It is the responsibility of the District Manager and Department Head to cooperate with the Director of Finance in the preparation of statistical data concerning the procurement, usage, disposition of all supplies, services and construction. The Director of Finance, or designee, shall have authority to prescribe forms to be used by the using departments in requisitioning, ordering, and reporting of supplies, services and construction.

## **SECTION 2-205. AUTHORIZATION FOR THE USE OF ELECTRONIC TRANSMISSIONS**

Responses to bid and proposal solicitations, requests for qualifications, etc. may be received electronically. For competitively sealed solicitations, the bids/proposals must remain sealed until the opening date and time.

## **SECTIONS 2-206. EXEMPTIONS**

The following supplies and services are exempt from the procurement procedures outlined in this Article. Additions and deletions shall be made by regulation:

1. Advertising time or space in newspapers, radio, television, professional journals or publications
2. Published books, maps, periodicals, and technical pamphlets
3. Postage stamps and postal fees and U.S. Post Office box rentals
4. Professional Training
5. Conference facilities
6. Maintenance on equipment that must be provided by the original equipment manufacturer or an authorized dealer
7. Services provided by public utilities (gas, electricity, water and sewer) subject to rate regulation by the Public Service Commission
8. Professional dues and registration and membership fees
9. Attorneys and legal services
10. License agreements for computer software, after such software has been purchased subject to the provisions of the resolution
11. The procurement of copyrighted educational films, filmstrips, slides and transparencies, CD ROM documents, data bases, computer assisted instructional materials, interactive video programs and other related materials made available by information technology that can only be obtained from the company providing the information or service
12. All insurance premiums
13. Monthly fees for nonstandard services
14. Physician fees
15. All payments to Federal and State agencies, (e.g., unemployment taxes)
16. Travel and Lodging
17. Other items, not listed above, less than \$5,000.00 in total.

The District Manager, Finance Director or their designee with approval may participate in, sponsor, conduct, or administer a cooperative purchasing agreement for the procurement of products, supplies, or services with one or more Public Procurement Units, as defined in Article VII herein, in accordance with an agreement entered into between the participants. Such cooperative procurement may include, but is not limited to, joint or multiparty contracts between Public Procurement Units.

The District Manager, Finance Director or their designee with approval may procure goods or services pursuant to an existing contract held by another Public Procurement Unit, upon a determination that such contract was awarded pursuant to appropriately competitive procedures. Without limiting the generality of the foregoing, it is hereby declared that contracts held by the State of South Carolina for the purchase of goods or supplies were awarded pursuant to appropriately competitive procedures.

**SECTION 2-207. PURCHASING LIMITATIONS AND AUTHORIZATION**

Upon verification of available funds, purchases of goods and/or services shall be executed as follows except those items listed in Section 2-206:

	<u>Approval</u>	<u>Required Documents</u>
Less than \$5,000	Department Head or authorized designee	No Purchase Order required. Departments to determine if price is fair & reasonable.
\$5,000.00 - \$14,999.99	Department Head and Director of Finance	Purchase Order required with supporting price justification from three (3) sources.
\$15,000.00 – \$49,999.99	Department Head and District Manager, or authorized designee	Purchase Order with written comparative pricing from three (3) alternate sources which could provide the like or similar goods and/or services.
Over \$49,999.99	Commission	Request formal bids or proposals, District contract or agreement. Advertise in SCBO*.

\*SCBO – South Carolina Business Opportunities (SC Budget & Control Board Procurement Department)

**SECTION 2-208. EMPLOYEE REIMBURSEMENT PROCEDURE**

When an employee of the District has used personal funds to pay for a valid expenditure of the District, not exceeding \$200.00, the employee shall submit their receipt to their department’s director who will code, approve, and submit to Finance for reimbursement.

**ARTICLE III**

**SOURCE SELECTION AND CONTRACT FORMATION**

**SECTION 3-301. DEFINITIONS**

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

**Cost Reimbursement Contract** shall mean a contract under which a Contractor is reimbursed for costs which are allowable and allocable in accordance with the contract terms and the provisions of this Article, and a fee, if any.

**Established Catalogue Price** shall mean the price included in a catalogue, price list, schedule, or other form that:

- (a) Is regularly maintained by a manufacturer or contractor.
- (b) Is either published or otherwise available for inspection by customer.
- (c) States prices at which sales are currently or were last made to a significant number of any category of buyers, or buyers constituting the general buying public for the supplies or services involved.

**Invitation for Bid (IFB)** A written or published solicitation issued by the District, for bids to contract for the procurement or disposal of stated supplies, services, or construction, which will ordinarily result in the award of the contract of the responsible bidder making the lowest responsive bid.

**Purchase Description** shall mean the words used in a solicitation to describe the supplies, services, or construction to be purchased, and includes specifications attached to, or made a part of, the solicitation.

**Request for Proposals (RFP)** A written or published solicitation issued by the District, for proposals to provide goods or services. Evaluation factors upon which the proposals will be evaluated for award of the contract shall be stated in the request for proposals.

**Responsible Bidder, or Offeror**, shall mean a person who has the capability in all respects to perform fully the contract requirements and the integrity and reliability, which will assure good faith performance. Past experience between the District and a Bidder may be considered in making the determination of responsibility.

**Responsive Bidder, or Offeror** shall mean a person who has submitted a bid or proposal, which conforms in all material respects to the Invitation For Bid or Request for Proposal.

### SECTION 3-302. METHODS OF SOURCE SELECTION

Unless otherwise required by Law, all District contracts shall be awarded by competitive sealed bidding pursuant to Section 3-304 (competitive sealed bidding), except as provided in:

- (a) Section 3-305, Competitive Sealed Proposals
- (b) Section 3-306, Small Purchases
- (c) Section 3-307, Sole Source Procurement
- (d) Section 3-308, Emergency Procurement
- (e) Section 4-402, Selection of Method of Construction Contract Management
- (f) Section 4-409, Architect-Engineer and Land Surveying Services

### SECTION 3-303. SOURCE SELECTION AND CONTRACT APPROVAL BY DISTRICT COMMISSION

The Commission shall retain the authority to establish or approve a method of source selection other than those specified in Sections 3-304 through 3-308, 4-402 and 4-409. The Commission shall further retain the authority to give final approval to any procurement authorized under this Article.

### SECTION 3-304. COMPETITIVE SEALED BIDDING

- (a) **Conditions For Use.** Contracts shall be awarded by competitive sealed bidding except as otherwise provided in Section 3-302 (*Methods of Source Selection*).
- (b) **Invitation for Bid.** An Invitation for Bid shall be issued and shall include a purchase description, and all contractual terms and conditions applicable to the procurement.
- (c) **Public Notice.** Public notice of the Invitation For Bid shall be given not less than seven (7) days prior to the date set forth therein for the opening of bids. Such notice may include publication in a newspaper of general circulation.
- (d) **Prebid Conference.** Conferences/site visits may be conducted with potential bidders when issuing solicitations for large or complex requirements. Attendance at conferences/site visits may be optional or mandatory at the discretion of the District. When attendance is mandatory, only bids from attending bidders will be accepted.
- (d) **Bid Opening.** Bids shall be opened publicly by the District Manager or designee in the presence of 1 or more witnesses at the time and place designated in the Invitation for Bid. The amount of each bid and other such relevant information as may be specified by regulation, together with the name of each Bidder, shall be tabulated. The record and each bid shall be open for public inspection after award. All bids received will be stamped with current time and date and signature of person who accepted the bid document on behalf of the District. Late bids shall not be opened and considered for award, but the name of the late Bidder(s) and the time of the attempted delivery shall be recorded in the bid file wherever possible.
- (e) **Bid Acceptance and Evaluation.** Bids shall be unconditionally accepted without alteration or correction, except as authorized in this Article. Bids shall be evaluated based on the requirements set forth in the Invitation For Bid, 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 Bid shall set forth the evaluation criteria to be used. No criteria may be used in bid evaluations that are not set forth in the Invitation For Bid.
- (f) **Correction or Withdrawal of Bids, Cancellation of Awards.** Corrections or withdrawal of inadvertently erroneous bids, before or after award or cancellation of awards or contracts based on such bid mistakes, may be permitted in accordance with Regulations. After bid opening, no changes in bid prices or other provisions of bids prejudicial to the interest of the District or fair competition shall be permitted. Except as otherwise provided by Regulation, all decisions to permit the correction or withdrawal of bids, or to cancel awards or contracts based on bid mistakes, shall be supported by a written determination made by the District Manager.
- (g) **Award.** Except as hereinafter prescribed, all contracts shall be awarded with reasonable promptness by written notice to the lowest responsible and responsive Bidder whose bid meets the requirements and criteria set forth in the Invitation For Bid.
  - (1) Bids of \$50,000.00 or more on construction projects (to be performed by outside Contractors) shall be subject to review and approval by the Commission.
  - (2) In other than construction projects, if all bids exceed available funds and no additional monies can be appropriated, then the bid will be canceled.

- (3) In the event all bids for a construction project exceed available funds, and the lowest responsive and responsible bid does not exceed such funds by more than five percent (5%), the District Manager is authorized in situations where time or economic considerations preclude re-solicitation of work of a reduced scope, to negotiate an adjustment in the bid price including changes in the bid requirements with the lowest responsive and responsible Bidder in order to bring the bid within the amount of available funds.
- (h) **Tied Bids.** The District Manager is authorized in the case of tie bids of less than \$50,000 to make awards on any reasonable basis subject to governing rules and regulations intended to prevent identical bidding, including selecting bidders who qualify for the local preference option, flipping a coin, and in instances where that does not provide a solution, to reject all bids and either issue a new solicitation or if time and economic considerations do not allow, negotiate a more favorable purchase.
- (i) **Disclosure of Bid Information** prior to award for goods and services, excluding construction:
  - (1) All estimates of costs prepared, by or for the District, shall remain confidential prior to execution of a contract.
  - (2) The names of those persons who receive bid packages will not be revealed.
  - (3) The number of Bidders will not be revealed.
- (j) **Disclosure of Bid Information** for construction projects prior to award:
  - (1) A bid range based on estimated project costs may be disclosed.
  - (2) Names of potential Bidders may be released to the extent known.

### SECTION 3-305. COMPETITIVE SEALED PROPOSALS

- (a) **Conditions for Use.** Subject to Section 4-402, when the District Manager determines in writing that the use of competitive sealed bidding is either not practicable or not advantageous to the District, a contract may be entered into by competitive sealed proposals.
- (b) **Request For Proposals.** Proposals shall be solicited through a Request for Proposals.
- (c) **Public Notice.** Public notice of the Request For Proposals shall be given in the same manner as provided in Section 3-304(c).
- (d) **Proposal Opening.** Proposals shall be publicly opened by the District Manager or Designee in the presence of one (1) or more witnesses and only the names of the Offerors disclosed at the proposal opening. Contents of competing Offerors shall not be disclosed during the process of review and discussions. Proposals shall be for public inspection after contract award. Proprietary or confidential information marked as such in each proposal shall not be disclosed without written consent of the Offeror as provided for in Section 2-201 of this Resolution. All proposals received will be stamped with current time and date and signature of person who accepted the proposal on behalf of the District. Late proposals shall neither be opened nor considered for award; however, the name and address of the late Offeror and the time of attempted delivery shall be recorded wherever practicable.
- (e) A proposal evaluation committee, made up of no fewer than three employees, including the District Manager, the soliciting department director, and one other agreed upon by the two preceding directors, shall rank the proposals from most qualified to least qualified based on the information received. The District Manager, or their designee, shall record the ranking in a matrix to be saved in the purchasing files.
- (f) **Clarifications with Responsible Offerors and Revisions to Proposals Prior to Selection of Preferred Offeror/Proposal.** As provided in the Request For Proposals, discussions may be conducted with responsible Offerors who submit proposals determined to be reasonably susceptible of being selected for award for the purpose of clarification to assure full understanding of, and responsiveness to, the solicitation requirements. Offerors shall be accorded fair and equal treatment with respect to any opportunity for submissions, and prior to award for the purpose of obtaining best and final offers. In conducting such discussions, there shall be no disclosure of any information derived from proposals submitted by competing Offerors.
- (g) **Evaluation Factors.** The Request for Proposals shall state the evaluation factors in relative order of importance, unless otherwise noted.
- (h) **Discussions with Preferred Offeror.** After proposals have been evaluated, discussions may be held with the preferred Offeror in an effort to reach terms advantageous to the District. Notwithstanding this provision, solicitations may incorporate contract terms to which all Offerors shall be expected to adhere.
- (i) **Award.** Except as hereinafter prescribed, the award shall be made to the responsible Offeror



whose proposal is determined, in writing, to be most advantageous to the District taking into consideration the evaluation factors set forth in the Request For Proposals. No other factors or criteria shall be used in the evaluation. The contract file shall contain the basis on which the award is made. Proposed awards fifty thousand dollars (\$50,000.00) or greater on construction projects (to be performed by outside Contractors) shall be subject approval by Commission.

### **SECTION 3-306. SMALL PURCHASES**

Any procurement not exceeding the amount established by regulations may be made in accordance with small purchase procedures promulgated by the District Manager provided, however, that procurement requirements shall not be artificially divided so as to constitute a small purchase under this Resolution.

### **SECTION 3-307. SOLE SOURCE PROCUREMENT/NON-COMPETITIVE PROCUREMENT**

- (a) Subject to the direct purchases permitted elsewhere in this Resolution, any request by a Department Head that procurement be restricted to one potential source shall be accompanied by a justification form provided to the District Manager and signed by the Department Head stating why no other source will be suitable or acceptable to meet the needs. A contract of less than \$50,000.00, may be awarded for a supply, service, or construction item without competition when the District Manager and the Director of Finance, determine in writing that there is either only one source for the required supply, service, or construction item, or that the proposed award to a single source is a permitted, non-competitive procurement as set forth herein. After verification of a sole source vendor, or the justification of a sole source purchase is warranted, the District Manager, has the authority to negotiate the price, terms, and conditions of the procurement. A sole source or non-competitive contract award of at least \$50,000.00 for a supply, service, or construction item is subject to Commission approval.
- (b) Examples of permissible, non-competitive procurements include, but are not limited to:
  - (1) Where the District Manager has deemed the compatibility of equipment, accessories, services, systems, software or replacement parts is of paramount importance.
  - (2) Where an item is required for trial use or testing.
  - (3) Where public utility services are to be procured.

### **SECTION 3-308. EMERGENCY PROCUREMENT**

Notwithstanding any other provisions of this Resolution, the Department Head, subject to approval by the District Manager, or in the District Manager's absence Director of Finance, may make or authorize others to make emergency procurements when there exists a threat to public health, welfare, or safety under emergency conditions, or where normal daily operations are substantially affected provided that such procurements shall be made with such competition as is practical under the circumstances. These actions shall be documented on an Emergency Procurement Justification Form as provided by the Director of Finance and placed in the procurement files.

If an emergency procurement costs greater than \$25,000.00, but less than \$50,000.00, the Commission shall be informed at the next commission meeting. If an emergency procurement costs \$50,000.00 or greater, then it must be approved by the Commission before the procurement is made.

### **SECTION 3-309. CANCELLATION OF INVITATION FOR BID OR REQUESTS FOR PROPOSALS**

An Invitation For Bid, a Request For Proposal, or other solicitation may be canceled, or any or all bids or proposals may be rejected in whole or in part when it is in the best interest of the District in accordance with regulations. The reasons therefore shall be made part of the solicitation file.

### **SECTION 3-310. RESPONSIBILITY OF BIDDERS AND OFFERORS**

A written determination of non-responsibility of a Bidder or Offeror shall be made in accordance with Regulations promulgated by the District Manager. The unreasonable failure of a Bidder or Offeror to promptly supply information in connection with an inquiry, with respect to responsibility, may be grounds for a determination of non-responsibility with respect to such Bidder or Offeror, as well as other factors as determined by the District Manager in applying sound public purchasing principles.

### SECTION 3-311. BID SECURITY AND BONDS

Except as prescribed in Sections 4-404 and 4-405 for construction contracts, all contracts for equipment, supplies, and services may require bid security and performance bonds at the discretion of the District Manager. Bid security, when required, shall be in an amount equal to at least five percent (5%) of the amount of the bid. Performance bonds, when required, will normally be equal to one hundred percent (100%) of the contract. A determination regarding bids received for equipment, supplies, and services without required bid security will be made by the District Manager in the same manner as provided for in Section 4-404(c). A cashier's/bank check made payable to the District may be submitted in lieu of a bond, or a letter of credit under circumstances deemed acceptable by the District Manager.

### SECTION 3-312. PRE-QUALIFICATION OF SUPPLIERS

Prospective suppliers may be pre-qualified by the Department Head, Director of Finance and District Manager for particular types of supplies, services and construction. Solicitation mailing lists of potential Contractors shall include, but shall not be limited to, such pre-qualified suppliers, unless determined in writing that a specific project warrants limitation of Offerors to the pre-qualified list, and public notice of pre-qualification is given.

### SECTION 3-313. COST OR PRICE DATA

- (a) **Required Submissions Relating to the Award of Contracts.** A prospective Contractor shall submit cost or pricing data when the contract is expected to exceed to be at least \$50,000.00 and is to be awarded under Section 3-105 *Competitive Sealed Proposals*, Section 3-107 *Sole Source/Non-Competitive Procurement*, or Section 3-209 *Architect-Engineer and Land Surveying Services*. Prospective Contractors may be required to provide cost or pricing data on contracts of lesser amounts, or contracts to be awarded by all other means of solicitation when in the best interest of the District.
- (b) **Exceptions to Submissions Relating to Awarding of Contracts.** The submission of cost or pricing data relating to the award of a contract is not required where:
  - (1) The contract price is based on adequate price competition.
  - (2) The contract price is set by law or regulation.
  - (3) It is determined in writing by the District Manager that the requirements of Subsection (a) of this Section may be waived, and the determination states the reasons for such waiver.
- (c) **Required Submissions Relating to Change Orders or Contract Modifications.** A Contractor shall submit cost or pricing data prior to the pricing of any change order or contract modification, including adjustments to contracts awarded by competitive sealed bidding, whether or not cost or pricing data was required in connection with the initial pricing of the contract.
- (d) **Exceptions to Submissions Relating to Change Orders or Modifications.** The submission of cost or pricing data relating to the pricing of a change order or contract modification is not required where:
  - (1) Unrelated and separately priced adjustments, for which cost or pricing data would not be required, is consolidated for administrative convenience, or
  - (2) It is determined in writing by the District Manager that the requirements of Subsection (c) of this Section may be waived, and the determination states the reason for such waiver.
- (e) **Certification Required.** A Contractor, actual or prospective, required to submit cost or pricing data in accordance with this Section, shall certify that to the best of their knowledge and belief, the cost or pricing data submitted was accurate, complete, and current as of a mutually specified date prior to the award of the contract, or the pricing of the change order or contract modification.
- (f) **Price Adjustment Provision Required.** Any contract awarded, change order or contract modification under which submission and certification of cost or pricing data is required, shall contain a provision stating that the price to the District, including profit or fee, shall be adjusted to exclude any significant sums by which the District finds that such price was increased because the Contractor-furnished cost or pricing data was inaccurate, incomplete, or not current as the date agreed upon between the District and the Contractor.

### SECTION 3-314. CHANGE ORDERS

The District Manager shall have the authority to approve all change orders and modifications of contracts and purchase orders whose ending contract value is less than fifty thousand dollars (\$50,000.00), with the exception of construction modifications or change orders, which shall be approved as provided in Section 4-408.

### SECTION 3-315. TYPES OF CONTRACTS

Subject to the limitations of this Resolution any type of contract, which will promote the best interest of the District, may be used provided that the use of a cost-plus-a-percentage-of-cost contract is prohibited. A cost-reimbursement contract may be used only when a determination by the District Manager is made, in writing, with review and recommendation by the Director of Finance, that such contract is likely to be less costly to the District than any other type, or that it is impractical to obtain the supplies, services or construction required except under such a contract.

### SECTION 3-316. MULTI-TERM CONTRACTS

- (a) **Specified Period.** A contract for supplies or services may be entered into for renewable periods of time, or until completion of the project(s) which was described in the original solicitation, whichever is later, not to exceed a total of five (5) years, provided the term of the contract and the conditions of renewal or extension, if any, are included in the solicitation and funds are available for the first fiscal period at the time of contracting. Payment and performance obligations of the District for each succeeding fiscal period shall be subject to the availability and appropriation of funds thereof.
- (b) **Determination Prior to Use.** Prior to the utilization of a multi-term contract, it shall be determined in writing:
  - (1) That estimated requirements cover the period of the contract and are reasonably firm and continuing, and
  - (2) That such a contract will serve the best interests of the District by encouraging effective competition or otherwise promoting economies in District procurement.
- (c) **Cancellation Due to Unavailability of Funds in Succeeding Fiscal Periods.** All multi-term contracts shall contain a clause stating that when funds are not appropriated, or otherwise made available to support continuation of performance in a subsequent fiscal period, the contract shall be canceled.

### SECTION 3-317. LEASES OF BUSINESS PERSONAL PROPERTY

- (a) **Definition.** A lease is a contract for the use of equipment or other supplies, under which Title does not pass to the District unless there is a purchase option, where Title may pass to the District at some future time.
- (b) **Conditions.** A lease may be entered into provided:
  - 1. It is in the best interest of the District,
  - 2. All conditions for renewal and costs of termination are set forth in the lease, and
  - 3. The lease is not used to circumvent normal procurement procedures.
- (c) **Lease With Purchase Option.** A purchase option in a lease may be exercised only if the lease containing the purchase option was awarded under competitive sealed bidding, or competitive sealed proposal, or the leased supply or equipment is the only supply or equipment that can meet the District's requirements as determined, in writing, by the Department Head of the requesting department and the District Manager.
- (d) **Option Provisions.** When a contract is to contain an option for renewal, extension, or purchase, notice of such provision shall be included in the solicitation. Exercise of the option is always at the District's discretion only, and not subject to agreement or acceptance by the Contractor.

### SECTION 3-318. MAINTENANCE CONTRACTS

All maintenance contracts and agreements may be procured by the Department. The District Manager, or the Director of Finance, in consultation with any required legal advice, will review the contract for proper terms and conditions as well as for fair pricing. Maintenance contracts may only be approved by the District Manager or the /Director of Finance. Wherever practical, the terms of maintenance contracts shall be resolved in connection with the original solicitation for the item or equipment, which is the subject of the maintenance contract.

### SECTION 3-319. RIGHT OF INSPECTION

The District may, at reasonable times, inspect the part of the plant or place of business of a Contractor or any Subcontractor, which is related to the performance of any contract awarded or to be awarded by the District.

### SECTION 3-320. AUDITING

- (a) **Audit of Cost or Pricing Data.** The District may, at reasonable times and places, audit the books and records of any person who has submitted cost or pricing data pursuant to Section 3-313 to the extent that such books and records relate to such cost or pricing data. Any person who receives a contract, change order, or contract modification for which cost or pricing data is required shall maintain such books and records that relate to such cost or pricing data for

three (3) years from the date of final payment under the contract, unless a shorter period is otherwise authorized in writing.

- (b) **Contract Audit.** The District shall be entitled to audit the books and records of a Contractor or Subcontractor under any negotiated contract subcontract other than a firm fixed-price contract to the extent that such books and records relate to the performance of such contract or subcontract. Such books and records shall be maintained by the Contractor for a period of three (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, unless a shorter period is otherwise authorized in writing.

### SECTION 3-321. RECORDS

- (a) **Contract File Required.** All determinations and other written records pertaining to the solicitation, award or performance of a contract shall be maintained in a contract file by the District Manager, or their designee in the Central Files. After award of construction contracts, contract files reflecting daily administration shall be maintained in the department responsible for overall administration of the project. Copies of change directives and executed change orders to the contract shall also be maintained in the Central File contract file.
- (b) **Retention.** All procurement records shall be retained and disposed of in accordance with record retention guidelines and schedules approved by the District. If a contract is being funded in whole or in part by assistance from a Federal agency, then all procurement records pertaining to that contract shall be maintained for three (3) years from the closeout date of the assistance agreement, or the final disposition of any controversy arising out of the assistance agreement.

## ARTICLE IV

### **CONSTRUCTION, ARCHITECT-ENGINEER AND LAND SURVEYING SERVICES**

#### **SECTION 4-401. DEFINITION**

As used in this Article “architect-engineer and land surveying services” shall mean those professional services within the scope of the practice of architecture, professional engineering or land surveying.

#### **SECTION 4-402. SELECTION OF METHOD OF CONSTRUCTION CONTRACT MANAGEMENT**

- (a) The District Manager shall have discretion to select the appropriate method of construction contracting for a particular project. In determining which method to use, the District Manager shall consider the District’s requirements, the scope of the project, its resources, and the potential Contractors’ capabilities. The Department Head responsible for management of the project shall advise the District Manager on all matters related to the selection of contracting method.
- (b) **Construction Management Services, Construction Manager at Risk, Design-Build Services, Turnkey Management Services.** District Commission finds that certain non-traditional means of public construction project management can be in the best interest of the District in certain circumstances. Therefore, the following methods may be employed under the following circumstances:
- (1) The District Manager shall have the discretion to designate construction management services, design-build services, or turnkey management services as alternatives for construction contracting. In exercising such discretion the District Manager shall consider the method which is the most advantageous to the District and will result in the most timely, economical, and successful completion of the construction project. The determination for the method of source selection utilized shall be stated in writing and included as part of the contract file.
  - (2) If the District Manager determines that the use of construction management services, construction manager at risk, design-build services, or turnkey management services is the most advantageous means of securing the construction contracting set forth in this Section, and the amount of services to be secured thereby exceeds \$500,000, the selection of this method set forth in this Section shall be submitted to the Commission at a special meeting, or at its next scheduled meeting and if Commission does not reject the selection of this method, the construction contracting shall be secured in the manner set forth in Subsection (3).
  - (3) If the Request for Proposals or Request for Qualifications method of source selection is determined to be the most advantageous to the District, the District shall use the appropriate proposal method set forth above for the purposes of procuring construction management services, construction manager at risk, design-build services, or turnkey management services.

#### **SECTION 4-403. CONTRACT ADMINISTRATION SYSTEM REQUIRED**

The District Manager shall maintain a contracts administration system designed to ensure that a Contractor is performing in accordance with the solicitation under which the contract was awarded, and the terms and conditions of the contract.

#### **SECTION 4-404. BID SECURITY FOR CONSTRUCTION CONTRACTS**

- (a) **Requirement.** Bid security shall be required for all competitive sealed bidding for construction contracts when the price of the contract is estimated by the District Manager and the Director of Finance to warrant bid security. Bid security shall be a bond provided by a surety company authorized to do business in this state, or the equivalent in cash, or otherwise supplied in a form satisfactory to the District.

- (b) **Amount.** Bid security shall be in an amount equal to at least five percent (5%) of the amount of the bid, and will remain in place until completion of construction or posting of performance/payment bonds.
- (c) **Rejection of Bid for Non-Compliance with Bid Security Requirements.** When the Invitation for Bid requires security, non-compliance requires that the bid be rejected. However, if the failure to comply is determined by the District Manager to be insubstantial in that only one (1) bid is received and time is of the essence, or if none of the Bidders provide bid security and the requirement for the bid security is determined by the District Manager to have become insubstantial, then the bid or bids may be accepted.
- (d) **Withdrawal of Bids.** After the bids are opened, they shall be irrevocable for the period specified in the Invitation For Bid, except as provided in Section 3-304(f). If a Bidder is permitted to withdraw their bid before award, no action shall be had against the Bidder or the bid security.

#### **SECTION 4-405. CONSTRUCTION CONTRACT PERFORMANCE AND PAYMENT BONDS – GENERAL**

- (a) **Required Amounts.** When a construction contract is awarded at the discretion of the District Manager, the following bonds or security shall be delivered to the District and shall become binding on the parties upon the execution of the contract:
  - (1) **A Performance Bond** satisfactory to the District executed by a surety company authorized to do business in the state, or otherwise secured in a manner satisfactory to the District in an amount equal to one hundred percent (100%) of the price specified in the contract, and
  - (2) **A Payment Bond** satisfactory to the District executed by a surety company authorized to do business in the state, or otherwise secured in a manner satisfactory to the District for the protection of all persons supplying labor and materials to the Contractor, or its Subcontractors, for the performance of the work provided for in the contract. The bond shall be in an amount equal to one hundred percent (100%) of the price specified in the contract.
- (b) **Reduction of Amounts.** The District Manager is authorized to reduce the amount of performance and payment bonds to fifty (50%) percent of the contract price for each bond when it has been determined, in writing, such reduction is necessary or warranted.
- (c) **Authority to Require Additional Bonds.** Nothing in this Section shall be construed to limit the authority of the District 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.
- (d) **Right to Institute Suits on Payment Bonds.** Every person who has furnished labor or materials to the Contractor, or its Subcontractors, for the work provided in the contract in respect of which a payment bond is furnished under this Section, and who has not been paid in full, therefore before the expiration of a period of ninety (90) days of the day on which the last of the labor was done or performed by such person or material was furnished or supplied by such person for which such claim is made, shall have the right to sue on the payment bond for the amount, or the balance thereof, unpaid at the time of institution of such suit and to prosecute such action for the sum or sums justly due such person, provided, however, that any person having a direct contractual relationship with a Subcontractor of the Contractor, but no contractual relationship expressed or implied with the Contractor furnishing the payment bond, shall have a right of action upon the payment bond upon giving written notice to the Contractor within ninety (90) days from the date on which such person did or performed the last of the labor, or furnished or supplied the last of material which such claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the material was furnished, or supplied, or for whom the labor was done or performed. Such notice shall be personally served, or served by mailing the same by registered or certified mail with postage prepaid, in an envelope addressed to the Contractor at any place the Contractor maintains an office or conducts its business.
- (e) **Time and Place of Payment Bond Suits.** Every suit instituted upon a payment bond shall be brought in a court of competent jurisdiction in Charleston County, but no such suit shall be commenced after the expiration of one (1) year after the day on which the last of the labor was performed or material was supplied by the person bringing suit. The obligee named in the bond need not be joined as a party in such suit.

## SECTION 4-406. SAME – FORMS AND CERTIFIED COPIES

- (a) **Forms.** The District Manager shall promulgate by Regulation the form of bonds required by this Article.
- (b) **Certified Copies.** Any person may request and obtain from the District a certified copy of a bond upon payment of the cost of reproduction of the bond and postage, if any. A certified copy of a bond shall be prima facie evidence of the contents execution and delivery of the original.

## SECTION 4-407. CONTRACT CLAUSES

- (a) **Required Provisions; Additional Provisions.** All contracts for supplies, services, and construction shall include provisions necessary to define the responsibilities and rights of the parties to the contract. The District Manager may also issue clauses appropriate for supply, service or construction contracts, which may address the following subjects:
  - (1) The unilateral right of the District to order, in writing, changes in the work within the scope of the contract,
  - (2) The unilateral right of the District to order, in writing, temporary stoppage of the work or delaying performance that does not alter the scope of the contract,
  - (3) Variations occurring between estimated quantities of work in a contract and actual quantities,
  - (4) Defective pricing,
  - (5) Liquidated damages,
  - (6) Specified excuses for delay or non-performance,
  - (7) Termination of the contract for default,
  - (8) Termination of the contract in whole, or in part, for the convenience of the District,
  - (9) Suspension of work on a construction project ordered by the District,
  - (10) Site conditions differing from those indicated in the contract or ordinarily encountered, except that differing site conditions clauses need not be included in a contract:
    - (a) When the contract is negotiated,
    - (b) When the contract provides the site or design, or
    - (c) When the parties have otherwise agreed with respect to the risk of differing site conditions, and
  - (11) Types and amounts of insurance coverage, which are prudent and required for the protection of the District.
- (b) **Price Adjustments.** Adjustments in price resulting from the use of contract clauses required in Subsection (a) of this Section shall be computed in one or more of the following ways:
  - (1) By agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practical,
  - (2) By unit prices specified in the contract or subsequently agreed upon,
  - (3) By the cost attributable to the events or situations under such clauses with adjustment of profit or fee, all as specified in the contract or subsequently agreed upon,
  - (4) In such other manner as the contracting parties may mutually agree, or
  - (5) In the absence of agreement by the parties, by unilateral determination by the District, of the reasonable costs allocable either directly or indirectly to the events or situations under such clauses as accounted for in accordance with generally accepted accounting principles, and with adjustment of profit or fee, as appropriate, and subject to the provisions of Article 6.
- (c) A Contractor shall be required to submit cost or pricing data if any adjustment in contract price is subject to the provisions of Section 3-313.

## SECTION 4-408. APPROVAL OF CONSTRUCTION CONTRACT MODIFICATIONS, CHANGE ORDERS OR PRICE ADJUSTMENTS

Every contract modification, change order, or contract price adjustment under a construction contract with the District shall be subject to prior approval by the District Manager. The District Manager may approve such modifications, change orders, or adjustments that do not exceed the budgeted amount approved by the District Commission. Any increase over the budgeted amount must be approved by the District Commission.

## SECTION 4-409. ARCHITECT-ENGINEER AND LAND SURVEYING SERVICES

- (a) **Public Announcement Required.** It is the policy of the District to publicly announce all requirements for architect-engineer and land surveying services, and to negotiate such contract on the basis of demonstrated competence and qualification at fair and reasonable prices. In the procurement of architect-engineer and land surveying services, the District Manager shall request firms to submit a statement of qualifications and performance data.
- (b) **Selection Process.** The Selection Committee shall discuss with no less than three (3) firms regarding the contract and shall select from among them no less than three (3) 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 District Manager for the solicitation in question. The selections shall be submitted to the District Manager for final approval.
- (c) **Negotiation.** The selection committee shall negotiate a contract with the highest qualified firm for architect-engineer or land surveying services at a compensation, which is considered to be fair and reasonable to the District. In making this decision, the selection committee shall take into account the established value, the scope, the complexity, and the professional nature of the services to be rendered. Should the selection committee be unable to negotiate a satisfactory contract with the firm considered to be most qualified, negotiations with that firm shall be formally terminated. The selection committee shall then undertake negotiations with the second most qualified firm. Failing accord with the second most qualified firm, the selection committee shall formally terminate negotiations. The selection committee shall then undertake negotiations with the third most qualified firm. Should the selection committee be unable to negotiate a contract with any of the selected firms, the selection committee shall select additional firms in order of their competence and qualifications, and the selection committee shall continue negotiations in accordance with this Section until an agreement is reached unless it is determined by the committee that in the best interest of the District, the process should be terminated or modified.

## ARTICLE V

### SUPPLY MANAGEMENT

#### SECTION 5-501. REGULATIONS.

The management of supplies and inventories, and the disposal of excess supplies and fixed assets, shall be accomplished pursuant to regulations promulgated by the District Manager.



## ARTICLE VI

### LEGAL AND CONTRACTUAL REMEDIES

#### SECTION 6-601. RESOLUTION OF PROTESTED SOLICITATIONS AND AWARDS

- (a) **Right to Protest.** Any actual or prospective Bidder, Offeror or Contractor who is aggrieved in connection with the solicitation, or award of a contract, may protest to the District Manager. The protest shall be submitted in writing within seven (7) days after such aggrieved person knows, or should have known, of the facts giving rise thereto.
- (b) **Authority to Resolve Protests.** The District Manager, after consultation with the District Attorney, shall have authority prior to the commencement of an action in court concerning the controversy to settle and resolve a protest of an aggrieved Bidder, Offeror or Contractor, actual or prospective, concerning the solicitation or award of a contract other than an act of District Commission.
- (c) **Decision.** If the protest is not resolved by mutual agreement, the District Manager shall issue a decision in writing within ten (10) days. The decision shall:
  - (1) State the reasons for the action taken, and
  - (2) Inform the protestant of its right to administrative review as provided in this Article.
- (d) **Notice of Decision.** A copy of the decision under Subsection (c) of this Section shall be mailed or otherwise furnished immediately to the protestant and any other party intervening.
- (e) **Finality of Decision.** A decision under Subsection (c) of this Section shall be final and conclusive, unless fraudulent, or unless the person adversely affected by the decision appeals administratively to the Commission in accordance with the provisions of this Article.

#### SECTION 6-602. DEBARMENT OR SUSPENSION

- (a) **Authority.** After reasonable notice to the person involved and reasonable opportunity for that person to be heard, the District Manager, after consultation with the District Attorney, shall have authority to debar a person for cause from consideration for award of contracts. The debarment shall not be for a period of more than three (3) years. The same officer, after consultation with the District Attorney, shall have authority to suspend a person from consideration for award of contracts if there is probable cause for debarment. The suspension shall not be for a period exceeding three (3) months. The authority to debar or suspend shall be exercised in accordance with regulations.
- (b) **Causes.** The causes for debarment or suspension include, but are not limited to, the following:
  - (1) Conviction for commission of a criminal offense as an incident to obtain, or attempting to obtain, a public or private contract or subcontract, or in the performance of such Contractor subcontract,
  - (2) Conviction under State or Federal statutes or embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which currently, seriously, and directly affects responsibility as a District Contractor,
  - (3) Conviction under State or Federal antitrust statutes arising out of the submission of bids or proposals,
  - (4) Violation of contract provisions, as set forth below, of a character which is regarded by the District Manager to be so serious as to justify debarment action:
    - (a) Deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract, or
    - (b) A recent record of failure to perform, or of unsatisfactory performance, in accordance with the terms of one (1) or more contracts provided that failure to perform, or unsatisfactory performance caused solely by acts beyond the control of the Contractor, shall not be considered to be a basis for debarment.
  - (5) Any other cause the District Manager determines to be so serious and compelling as to affect responsibility as a District Contractor, including debarment by another governmental entity for cause.
  - (6) For violation of the ethical standards set forth in the State Ethics Act.
  - (7) Failure to pay uncontested or unappealed, but delinquent, real or personal property taxes. These taxes are meant to include those taxes, assessments and penalties for

which the County Treasurer has issued his tax execution to the Delinquent Tax Department. However, this is not deemed to include tax assessments that are actually under formal appeal, or in litigation, at the time the debarment or suspension decision is made.

- (c) **Decision.** The District Manager shall issue a written decision to debar or suspend. The decision shall:
  - (1) State the reasons for the action taken, and
  - (2) Inform the debarred or suspended person involved of its rights to administrative review as provided in this Article.
- (d) **Notice of Decision.** A copy of the decision under Subsection (c) of this Section shall be mailed or otherwise furnished immediately to the debarred or suspended person, and any other party intervening.
- (e) **Finality of Decision.** A decision under Subsection (c) of this Section shall be final and conclusive unless fraudulent, or the debarred or suspended person appeals administratively to the District Commission in accordance with the provisions of this Article.
- (f) **Time of Decision, Prohibition From Accepting Bids or Offers From Person(s) Where Contract is Terminated.** In addition to their authority to suspend or debar at any appropriate time, the District Manager is expressly authorized to suspend a Bidder or Offeror after submittal of a bid or response to a solicitation where the Bidder/Offeror is not determined to be subject to debarment or suspension until after the bid or response has been filed. Where the District has terminated a contract, or contracts, with a person for cause, or due to the failure or inability of the person to properly perform, the District may not accept a bid or proposal for goods or services from such a person for a solicitation which, either in whole or in part, seeks a replacement or substitute for the goods or services which were the subject of the terminated contract. For purposes of this Section, the District may not accept a bid or offer from a person or company that is an affiliate, successor or assignee of the defaulting company or person, or which has an element of common management, ownership, or control with the terminated company.

## SECTION 6-603. RESOLUTION OF CONTRACT CONTROVERSIES

This Section shall apply in cases of significant controversies where the District is not successful in resolution.

- (a) **Applicability.** This Section applies to controversies between the District and a Contractor, and which arise under or by virtue of a contract between them. This includes, without limitation, controversies based upon breach of contract, mistake, misrepresentation or other cause for contract modification or rescission.
- (b) **Authority.** The District Manager, after consultation with the District Attorney, is authorized prior to commencement of an action in a court concerning the controversy to settle and resolve a controversy described in Subsection (a) of this Section.
- (c) **Decision.** If such a controversy is not resolved by mutual agreement, the District Manager shall promptly issue a decision in writing. The decision shall:
  - (1) State the reason for the action taken, and
  - (2) Inform the Contractor of its right to administrative review as provided in this Article.
- (d) **Notice of Decision.** A copy of the decision under Subsection (c) of this Section shall be made or otherwise furnished immediately to the Contractor.
- (e) **Finality of Decision.** The decision under Subsection (c) of this Section shall be final and conclusive, unless fraudulent, or the Contractor appeals administratively to the District Commission in accordance with the provisions of this Article.
- (f) **Failure to Render Timely Decision.** If the District Manager does not issue the written decision required under Subsection (c) of this Section within thirty (30) days after written request for a final decision, or within such longer period as may be agreed upon by the parties, then the Contractor may proceed as if an adverse decision had been received.

#### **SECTION 6-604. REMEDIES PRIOR TO AN AWARD**

- (a) **Applicability.** The provisions of this Section apply where it is determined by the District Manager, or upon administrative review, that a solicitation or award of a contract is in violation of Law.
- (b) **Established.** If prior to award it is determined that a solicitation or proposed award of a contract is in violation of law, then the solicitation or proposed award shall be:
  - (1) Canceled, or
  - (2) Revised to comply with the law.

#### **SECTION 6-605 REMEDIES AFTER AN AWARD**

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

- (a) If the person awarded the contract has not acted fraudulently or in bad faith:
  - (1) The contract may be ratified and affirmed, provided it is determined that doing so is in the best interest of the District, or
  - (2) The contract may be terminated and the person awarded the contract shall be compensated for the actual expenses reasonably incurred under the contract, plus a reasonable profit, prior to the termination.
- (b) If the person awarded the contract has acted fraudulently or in bad faith:
  - (1) The contract may be declared null and void, or
  - (2) The contract may be ratified and affirmed if such action is in the best interest of the District, without prejudice to the District's right to such damages, as may be appropriate.

#### **SECTION 6-606. STAY OF PROCUREMENT DURING PROTEST OR APPEAL**

- (a) In the event of a timely protest under Section 6-601, the District shall not proceed further with the solicitation or with the award of the contract unless the District Manager makes a written determination that the award of the contract, without delay, is necessary to protect substantial interests of the District.
- (b) **Entitlement to Costs.** In addition to any other relief, when a protest is sustained and the protesting Bidder or Offeror should have been awarded the contract under the solicitation but is not, then the protesting Bidder or Offeror shall be entitled to only the reasonable costs incurred in connection with the solicitation, including bid preparation costs, other than attorney's fees.

## **ARTICLE VII**

### **INTERGOVERNMENTAL RELATIONS**

#### **SECTION 7-701. DEFINITIONS**

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

***Cooperative Purchasing*** shall mean procurement conducted by, or on behalf of more than one (1) public procurement unit.

***Public Procurement Unit*** shall mean any county, city, town, and any other subdivision of the State or public agency of any such subdivision, public authority, educational, health or other institution, and any other entity which expends public funds for procurement of supplies, services, or construction.

#### **SECTION 7-702. COOPERATIVE PURCHASING AUTHORIZED**

The District Manager may either participate in, sponsor, conduct or administer a cooperative purchasing agreement for the procurement of supplies, services, or construction with one (1) or more public procurement units in accordance with an agreement entered into between the participants. Such cooperative purchasing may include, but is not limited to, joint or multi-party contracts between public procurement units.

#### **SECTION 7-703. SALE, ACQUISITION OR USE OF SUPPLIES**

The District Manager may sell to, acquire from, or use any supplies belonging to another public procurement unit independent of the requirements of Article 3 and Article 5 of this Resolution.

#### **SECTION 7-704. COOPERATIVE USE OF SUPPLIES OR SERVICES**

The District Manager may enter into an agreement, independent of the requirements of Article 3 and Article 5 of this Resolution, with any public procurement unit for the cooperative use of supplies or services under the terms agreed upon between the parties.

#### **SECTION 7-705. JOINT USE OF FACILITIES**

The District Manager may enter into agreements for the common use or lease of warehousing facilities, capital equipment, and other facilities with another public procurement unit under the terms agreed upon between the parties.

#### **SECTION 7-706. USE OF STATE CONTRACTS**

The District Manager may, independent of the requirements of Article 3 of this Article, procure supplies, services or construction items through the contracts established by the Purchasing Division of the State as provided in Chapter 35 of Title II (*State Consolidated Procurement Code*) of the South Carolina Code of Laws, 1976 [1135-10-11-35-5270].

## ARTICLE VIII

### SMALL AND DISADVANTAGED BUSINESSES

#### **SECTION 8-801. DEFINITIONS**

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

***Disadvantaged Business*** shall mean a small business, which is owned or controlled by a majority of persons, not limited to members of minority groups, who have been deprived of the opportunity to develop and maintain a competitive position in the economy because of social disadvantages.

***Small Business*** shall mean a business which is independently owned and which is not dominant in its field of operation, or an affiliate or subsidiary of a business dominant in its field of operation.

#### **SECTION 8-802. SOLICITATION BY DISTRICT MANAGER**

The District Manager, or designee, shall review governmental published lists of small and disadvantaged businesses in South Carolina, and shall solicit those firms on such lists for each procurement for which they are qualified.

#### **SECTION 8-803 LOCAL PREFERENCE OPTION**

This option allows the lowest local Bidder (defined as a Bidder whose Business is physically located and operating within the limits of Charleston County) who is within 5% or \$10,000 of the lowest non-local Bidder, to match the bid submitted by the non-local Bidder and thereby be awarded the contract. This preference shall apply only when (a) the total dollar purchase is \$50,000 or more; (b) the vendor has a valid Charleston County business license or valid business license issued by one of the municipalities within Charleston County, which was issued at least twelve (12) months prior to bid opening date; (c) the vendor has a physical business address located and operating within the limits of Charleston County and has been doing business in the County for a period of twelve (12) months or more; and (d) the vendor provides proof of payment of all applicable Charleston County taxes and fees.

## **ARTICLE IX**

### REAL PROPERTY

#### **SECTION 9-901. REAL PROPERTY TRANSACTIONS**

- (a) The following rules shall apply to the purchase and sale of District-owned real property:
- (1) District Manager shall sell, contract to sell, acquire by purchase, exchange or gift, real property only upon recommendation and approval of the Commission. At least one appraisal by a certified appraiser shall be received.
  - (2) A public hearing must be held, after reasonable public notice, prior to final Commission action being taken to sell or contract to sell property owned by the District. Sale of property may not occur until approval of a resolution directing the same. The sale of property requires two readings of the resolution.
  - (3) Subject to (6) below, the sale or other disposal of real property owned by the District shall be made pursuant to the Request For Proposals method.
  - (4) Notwithstanding (1) above, the exchange of real property is to be permitted only after appraisal of both properties by two (2) certified appraisers.
  - (5) The foregoing requirements shall not pertain to the sale of property rehabilitated by use of HUD funds.
  - (6) Commission shall retain the authority to determine an appropriate alternative method for offering any District-owned property for sale.

(b) The following rules shall apply to the lease of real property by the District:

- (1) Subject to (2) below, the District shall contract to lease, sublease, or cause to be leased by the District, real property for a definite period of more than one year only upon the recommendation and approval of a resolution by District Commission. The District Manager may enter into leases, extensions or modifications of equal to or less than one year's duration.
- (2) A public hearing must be held, after reasonable public notice, prior to final Commission action being taken to lease or contract to lease property owned by the District.

## **ARTICLE X**

### **SECTION 10-1001. SALE AND DISPOSITION OF SURPLUS ASSETS**

The Director of Finance, with the approval of the District Manager, shall have the authority to sell and/or dispose of all supplies, equipment and/or vehicles which have become unsuitable for District use, or are being replaced with new District assets as approved in the budget. Such sales shall be made to the highest bidder through public auction and all monies received from such sales shall be paid into the appropriate fund of the District.

For items that are broken beyond repair, and the District Manager determines that a salvage value is nonexistent, or the proceeds from the sale of such items would not likely offset the cost incurred to sell, then such items may be disposed of with a method that best serves the interest of the District.

The Commission shall retain the authority to determine an appropriate alternative method for disposing of any District owned supplies, equipment and/or vehicles.