



Administrative Services Committee Commission Chamber- 6/13/2011- 1:00 PM
Meeting

ADMINISTRATIVE SERVICES

1. An Ordinance to amend the Augusta, GA. Code Title One Chapter Four Article Six Sections 1-4-81 through 1-4-94 relating to the Creation and Duties of the Planning Commission and Zoning Board of Appeals; to repeal all Code Sections and Ordinances and part of Code Sections and Ordinances in conflict herewith; to provide an effective date and for other purposes. ☐ [Attachments](#)

2. An Ordinance to amend the Augusta, Georgia Code, Article One, Chapter Ten, relating to the procurement of goods and services, the Local Small Business Opportunities Program and the DBE Program for federally assisted projects so as to provide updates and to establish policies, procedures and guidelines regarding the procurement process and the Local Small Business Opportunities Program; to repeal all Ordinances and parts of Ordinances in conflict herewith; to provide an effective date and for other purposes. ☐ [Attachments](#)

3. Motion to deny bid protest of Johnson Laschober and Associates in reference to RFQ 10-173 Professional Design Services for Municipal Building. ☐ [Attachments](#)

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**Administrative Services Committee Meeting
6/13/2011 1:00 PM**

An Ordinance to Amend the Augusta, GA. Code Sections 1-4-81 through 1-4-94 Relating to the Creation and Duties of the Planning Commission and Zoning Board of Appeals.

Department: Administrator

Caption: An Ordinance to amend the Augusta, GA. Code Title One Chapter Four Article Six Sections 1-4-81 through 1-4-94 relating to the Creation and Duties of the Planning Commission and Zoning Board of Appeals; to repeal all Code Sections and Ordinances and part of Code Sections and Ordinances in conflict herewith; to provide an effective date and for other purposes.

Background: On March 30, 2011, the Augusta Georgia Commission approved the Administrator's reorganization plan as described in the Augusta, Georgia Proposed Government Reorganization Draft Project Plan. This Project Plan requires the creation of an Augusta, Georgia Planning and Development Department which is to assume certain duties of the Planning Commission.

Analysis: This ordinance updates and amends the Code as related to the duties of the Augusta, Georgia Planning Commission and the Augusta, Georgia Planning and Development Department to be consistent with the Proposed Government Reorganization Draft Project Plan.

Financial Impact: N/A.

Alternatives: Decline to amend code at this time.

Recommendation: Approve.

**Funds are Available
in the Following
Accounts:** N/A.

REVIEWED AND APPROVED BY:

Cover Memo

Item # 1

Finance.
Law.
Administrator.
Clerk of Commission

ORDINANCE NO. _____

An Ordinance to Amend the Augusta, GA. Code Title One Chapter Four Article Six Sections 1-4-81 through 1-4-94 Relating to the Creation and Duties of the Planning Commission and Zoning Board of Appeals; To Repeal All Code Sections and Ordinances and Part of Code Sections and Ordinances in Conflict Herewith; To Provide an Effective Date and for Other Purposes.

WHEREAS, on March 30, 2011, the Augusta Georgia Commission approved the Administrator's reorganization plan as described in the Augusta, Georgia Proposed Government Reorganization Draft Project Plan; and

WHEREAS, such Proposed Government Reorganization Draft Project Plan requires the creation of an Augusta, Georgia Planning and Development Department which is to assume certain duties of the Planning Commission; and

WHEREAS, Augusta, Georgia desires to update and amend the Code as related to the duties of the Augusta, Georgia Planning Commission and the Augusta, Georgia Planning and Development Department to be consistent with the Proposed Government Reorganization Draft Project Plan;

WHEREAS, 1997 Ga. Laws p. 4024 designates the name of the consolidated government as "Augusta, Georgia"; and

WHEREAS, Augusta, Georgia seeks to update the Code to reflect the name of the consolidated government.

THE AUGUSTA, GEORGIA COMMISSION, ordains as follows:

SECTION 1. AUGUSTA, GA. CODE Sections 1-4-81 through 1-4-94 as set forth in the Augusta, Ga. Code, re-adopted July 10, 2007, are hereby amended by striking these sections in their entirety as set forth in "Exhibit A" hereto and inserting in lieu thereof new Code Sections 1-4-81 through 1-4-94, restated as set forth in "Exhibit B" hereto.

SECTION 2. This ordinance shall become effective the first day of November, 2011.

SECTION 3. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

Adopted this _____ day of _____, 2011.

David S. Copenhaver
As its Mayor

Attest:

Lena J. Bonner, Clerk of Commission

Seal:

CERTIFICATION

The undersigned Clerk of Commission, Lena J. Bonner, hereby certifies that the foregoing Ordinance was duly adopted by the Augusta, Georgia Commission on_____, 2011 and that such Ordinance has not been modified or rescinded as of the date hereof and the undersigned further certifies that attached hereto is a true copy of the Ordinance which was approved and adopted in the foregoing meeting(s).

Lena J. Bonner, Clerk of Commission

Published in the Augusta Chronicle.

Date: _____

First Reading _____

Second Reading _____

Exhibit A

~~Sec. 1-4-81. Creation.~~

~~There is hereby created a planning commission with the membership, powers and duties as set forth herein. The commission created herein shall be known as the Augusta Richmond County Planning Commission.~~

~~Sec. 1-4-82. Membership, terms of office and compensation.~~

~~(a) The Augusta Richmond County Planning Commission (hereinafter referred to as the Planning Commission) shall consist of ten (10) members (plus an additional two members should the Richmond County Legislative Delegation choose to appoint two members) to be appointed for the terms of four (4) years; provided, however, the initial appointments shall be made as follows:~~

~~(1) There shall be one (1) member who resides in each of the ten (10) districts of Augusta Richmond County appointed by the Augusta Richmond County Commission.~~

~~(2) Except as provided herein, members of the Planning Commission of Richmond County and the City of Augusta who were serving on said boards on January 1, 1997, having had no fixed terms, shall served until their successors are appointed and qualified.~~

~~(3) Members of the Planning Commission serving as of January 1, 1997, shall continue to serve until their successors are appointment by the Commissioner representing the respective District and qualified and are to represent the districts as herein set forth, to wit:~~

		Term Expires
a.	Patricia Jefferson	District 1 2/1/99
b.	Thelma Mack	District 2 3/31/2000
c.	Nick Dickinson	District 3 3/31/98
d.	Richard Colclough	District 4 4/1/99
e.	Frank Knapp, III	District 5 3/31/98
f.	Appointment TBA	District 6 3/31/2000
g.	James Randall Hall	District 7 3/31/98
h.	Hugh Fulcher, Jr.	District 8 3/31/2000
i.	Margaret Armstrong	District 9 3/31/98
j.	Ed Dickerson	District 10 2/1/98

- ~~(4) The successor to the member representing District 1 shall serve until March 31, 2002, or until his successor is appointment and qualified.~~
- ~~(5) The successors to the member representing District 4 and 10 shall serve until March 31, 2000, or until their successors are appointed and qualified.~~
- ~~(6) Members of the board appointed by the Commissioner of the respective Districts to succeed those in subsections 3, 4 and 5 hereof shall serve for terms of office of four (4) years and until their successors are appointed and qualified.~~
- ~~(7) Should the Richmond County Legislative Delegation choose to appoint two (2) members as provided in the Consolidation Act, such members shall serve for a term of four (4) years and until their successors are appointed and qualified. In the event the appointed authority of the Legislative Delegation is removed from the Consolidation Act, this subsection shall automatically be repealed.~~
- ~~(8) All terms shall expire on March 31 of the applicable year, and new terms shall begin on April 1 of the applicable year.~~
- ~~(b) In the event of a vacancy by reason of a death, disqualification, resignation or other reason, the Augusta Richmond County Commission shall appoint a person to serve the remainder of the term of such member.~~
- ~~(c) No vacancy on the Planning Commission shall impair the right of the quorum to exercise all of their rights and perform all of the duties of the Planning Commission.~~
- ~~(d) The Chairman of the Planning Commission shall not be entitled to vote upon any issue, motion or resolution, except where his vote will change the result on said motion, resolution or question.~~
- ~~(e) Members of the Planning Commission shall serve for such compensation as shall be established by the Augusta Richmond County Commission.~~
- ~~(f) No member of the Planning Commission may be removed from office prior to the expiration of his term except for cause after having been given notice and afforded a hearing before the Augusta Richmond County Commission. Prior to said hearing, said member shall be served by registered or certified mail addressed to his residence as shown in the files of the Planning Commission, at least ten (10) days before the date set for said hearing with written specifications of the charges against him.~~

~~Sec. 1-4-83. Organization, rules, staff, finances.~~

- ~~(a) The Planning Commission shall elect a Chairman and Vice Chairman from its members. The terms of office of the Chairman and Vice Chairman shall be one (1) year with eligibility for reelection to no more than two (2) consecutive terms.~~
- ~~(b) The Planning Commission may appoint a secretary who may be an official or employee of the Planning Commission, or the Augusta-Richmond County Commission.~~
- ~~(c) The Planning Commission shall make its own rules of procedure in accordance with the general provisions of this ordinance and determine its time and place of meeting. All meetings of the Planning Commission, at which official actions are taken, shall be a public record.~~
- ~~(d) The Planning Commission is empowered to appoint such employees, consultants, legal counsel, and staff as it may deem necessary for its work and may contract with municipal planning and other consultants for such services as it may required for the performance of its work.~~
- ~~(e) The Planning Commission may purchase such equipment and supplies as it may deem necessary.~~
- ~~(f) The expenditures of the Planning Commission, exclusive of gifts and grants, shall be within the amounts approved for it by the Augusta-Richmond County Commission.~~

~~Sec. 1-4-84. Principal powers and duties.~~

~~—— It shall be the function and duty of the Planning Commission to make such careful and comprehensive surveys and studies of existing conditions and probably future developments and to prepare such plans for physical, social and economic growth as will best promote the public health, safety, morals, convenience, prosperity, or the general welfare as well as efficiency and economy in the development of Augusta-Richmond County. In particular, the Planning Commission shall have the power and duty to:~~

- ~~(a) Prepare a master plan or parts thereof for the development of Augusta-Richmond County.~~
- ~~(b) Prepare and recommend for adoption to the Augusta-Richmond County Commission a zoning ordinance and map or maps.~~
- ~~(c) Prepare and recommend for adoption to the Augusta-Richmond County Commission regulations for the subdivision of land within its political jurisdiction.~~

~~Sec. 1-4-85. Miscellaneous powers and duties.~~

~~— In addition to the principal powers and duties set forth above, the Planning Commission may:~~

- ~~(a) Cooperate with, contract with, or accept funds from Federal, State or local governments, public or semipublic agencies or private individuals or corporations; expend such funds; and carry out such cooperative undertakings and contracts may be necessary for the performance of its duties and to promote the planning of Augusta-Richmond County, including the authority to enter into agreements with jurisdictions and agencies in adjacent counties and states.~~
- ~~(b) Prepare, publish and distribute maps, plans, reports and recommendations relating to the planning and development of Augusta-Richmond County.~~
- ~~(c) Recommend to the Augusta-Richmond County Commission programs for public improvements and the financing thereof.~~
- ~~(d) Secure, within a reasonable time, from all public officials such available information as it may require for its work.~~
- ~~(e) In the performance of its functions, enter upon land, make examinations and surveys, and place and maintain necessary signs, monuments or markings thereon.~~
- ~~(f) Any other function or duty which may from time to time be delegated to the Planning Commission by order, directive, ordinance or resolution of the Commission of Augusta-Richmond County, or officials thereof.~~

~~Sec. 1-4-86. Performance of duties — Master Plan.~~

- ~~(a) It shall be the duty of the Planning Commission to make a master plan of Augusta-Richmond County and to perfect it from time to time.~~
- ~~(b) Such master plan may show, among other things, the following:~~
 - ~~(1) Existing and proposed streets, highways, expressways, bridges, tunnels and viaducts and approaches thereto; routs of railroads and transit lines; terminals, ports and airports.~~
 - ~~(2) Parks, playgrounds, forests and other public open spaces.~~
 - ~~(3) Sites for public buildings, structures and facilities.~~
 - ~~(4) Land areas for residential, business, industrial, recreational, agricultural, forestry, and special purposes and uses.~~
 - ~~(5) Limited development areas for purposes of conservation, water supply, sanitation, drainage, historic preservation, protection against flooding and similar environmental considerations.~~

- ~~(6) Areas for housing development, slum clearance, and urban renewal and redevelopment.~~
- ~~(7) Location of public utilities whether publicly or privately owned, including but not limited to sewerage and water supply systems.~~
- ~~(8) Zoning districts and other planning features.~~
- ~~(9) Time and priority schedules and cost estimates for the accomplishment of the proposals.~~
- ~~(c) The master plan shall be based upon and include appropriate studies of the location and extent of present and anticipated other pertinent data.~~
- ~~(d) Such plan may be adopted, added to and changed from time to time by the Augusta-Richmond County Commission. It shall be a public record, but its purpose and effect shall be solely to aid the Planning Commission in the performance of its duties.~~

Sec. 1-4-87. Performance of duties — Zoning ordinance and maps.

- ~~(a) It shall be the duty of the Planning Commission to prepare and recommend for adoption to the Augusta-Richmond County Commission a zoning ordinance and map or maps. The purpose of such ordinance and map or maps shall be to regulate:~~
 - ~~(1) The location, height, bulk, number of stories, and size of buildings and other structures.~~
 - ~~(2) The percentage of lot which may be occupied, the sizes of yards, courts, and other open areas.~~
 - ~~(3) The density and distribution of population and dwelling units.~~
 - ~~(4) Land areas designated for business and industrial use, residences, recreation, agriculture, forestry, conservation, historic preservation, water supply, sanitation, protection against floods, governmental activity and other special purposes.~~
- ~~(b) The map or maps shall divide Augusta-Richmond County into districts of such number, shape and size as the Planning Commission may determine; and within such districts it may regulate the erection, construction, reconstruction, alteration, and use of buildings and structures and uses of land. All such regulations shall be uniform for each class or kind of building throughout each district, but the regulations in one district may differ from those in other districts.~~
- ~~(c) At such time the Commission of Augusta-Richmond County deems it necessary to enact an entirely new zoning ordinance and map or maps, the governing bodies shall hold a public hearing thereon, at least fifteen (15) days notice of the time and place of which shall be published in a newspaper of general circulation in Augusta-Richmond County. All procedural standards set forth in the Official Code of Georgia shall be complied with.~~

- ~~(1) No change or departure from the text or maps, as certified by the Planning Commission, shall be made unless such change or departure is first submitted to the Planning Commission for review and recommendation.~~
- ~~(2) The Planning Commission shall have thirty (30) days within which to submit its report. If the Planning Commission fails to submit a report within a thirty-day period, it shall be deemed to have approved the change or departure.~~
- ~~(d) The zoning ordinance, including the map or maps, may be amended from time to time; but no amendment shall become effective unless it shall have been proposed by or shall have first been submitted to the Planning Commission for review and recommendation.~~
- ~~(1) The Planning Commission shall conduct, on behalf of the Augusta-Richmond County Commission, all public hearings on proposed amendments to the zoning ordinance and maps.~~
- ~~(2) Policies and procedures as specified by the Official Code of Georgia shall be followed by the Planning Commission in considering such public hearings.~~

~~Sec. 1-4-88. Zoning board of appeals.~~

- ~~(a) The City Council of Augusta and the Board of Commissioners of Richmond County has heretofore created and appointed a Zoning Board of Appeals for Augusta-Richmond County. Said Board is hereby continued and shall be known as the Augusta-Richmond County Board of Zoning Appeals and is hereinafter referred to as the Appeals Board as is hereinafter provided. At their discretion, the Augusta-Richmond County Commission may, by ordinance, designate the Planning Commission to act as the Appeals Board of Augusta-Richmond County.~~
- ~~(b) If the Planning Commission is designated to act as the Appeals Board of Augusta-Richmond County, then:~~
 - ~~(1) Such authority shall be in addition to the powers and duties of the Planning commission set forth herein and shall be carried out in accordance with the provisions of this Section; and~~
 - ~~(2) Section 1-4-82 of this article shall apply to the membership, terms of office and compensation and section 1-4-83 of this article shall apply to the organization, rules, staff and finances of the Appeals Board in the event that the Planning Commission is designated by ordinance to act as the Board of Zoning Appeals.~~
- ~~(c) If said Appeals Board is separate from the Planning Commission, then said Appeals Board shall consist of ten (10) members (plus an additional two members should the Richmond County Legislative Delegation choose to appoint two (2) members) to be~~

~~appointed for terms of four (4) years, provided, however, the initial appointments shall be made as follows:~~

~~(1) There shall be one (1) member who resides in each of the ten (10) districts of Augusta-Richmond County appointed by the Augusta-Richmond County Commission.~~

~~(2) Except as provided herein, members of the Planning Commission of Richmond County and the City of Augusta who were serving on said boards on January 1, 1997, having had no fixed terms, shall served until their successors are appointed and qualified.~~

~~(3) Members of the Planning Commission serving as of January 1, 1997, shall continue to serve until their successors are appointment by the Commissioner representing the respective District and qualified and are to represent the districts as herein set forth, to wit:~~

~~Term Expires~~

a.	_____	Jacqueline Fason	_____	District 1	_____	3/31/98
b.	_____	Dr. I. E. Washington	_____	District 2	_____	4/4/98
c.	_____	Jewell Childress	_____	District 3	_____	3/31/98
d.	_____	Emmerstine Mackie	_____	District 4	_____	3/31/2000
e.	_____	George Mitchell	_____	District 5	_____	3/31/98
f.	_____	Appointment TBA	_____	District 6	_____	3/31/2000
g.	_____	K. Glenn Watson	_____	District 7	_____	3/31/98
h.	_____	Hardie Davis, Jr.	_____	District 8	_____	3/31/2000
i.	_____	Thelonius Jones	_____	District 9	_____	3/31/98
j.	_____	Don Grantham	_____	District 10	_____	3/31/1000

~~(4) The successor to the member representing District 2 shall serve until March 31, 2000, or until his successor is appointment and qualified.~~

~~(5) Members of the board appointed by the Commissioner of the respective Districts to succeed those appointed in subsections 3 and 4 hereof shall serve for terms of office of four (4) years and until their successors are appointed and qualified.~~

~~(6) Should the Richmond County Legislative Delegation choose to appoint two (2) members as provided in the Consolidation Act, such members shall serve for a term of four (4) years and until their successors are appointed and qualified. In the event the appointed authority of the Legislative Delegation is removed from the Consolidation Act, this subsection shall automatically be repealed.~~

- ~~(7) All terms shall expire on March 31 of the applicable year, and new terms shall begin on April 1 of the applicable year.~~
- ~~(8) Thereafter, members appointed by the Commission of Augusta-Richmond County shall serve a term of four (4) years.~~
- ~~(9) All members shall be eligible for reappointment to said Appeals Board upon expiration of their terms.~~
- ~~(10) Any vacancy in membership shall be filled for the unexpired term by the Augusta-Richmond County Commission.~~
- ~~(11) Any member may be removed for cause, on written charges, after a public hearing by the Augusta-Richmond County Commission.~~
- ~~(12) All members of the Appeals Board shall serve for such compensation as shall be established by the Commission.~~
- ~~(13) None of the members shall hold any other public office or position with Augusta-Richmond County, except that one (1) member may also be a member of the Planning Commission.~~
- ~~(d) The Board of Zoning Appeals shall elect one (1) of its members as chairman, who shall serve a one (1) year term or until reelected or a successor is elected.~~
 - ~~(1) The Chairman shall have the power to vote on matters before the Appeals Board only where his vote will change the result.~~
 - ~~(2) The Appeals Board shall appoint a secretary who may be an official or employee of Augusta-Richmond County or the Planning Commission.~~
 - ~~(3) The Appeals Board shall adopt rules in accordance with the provisions of this ordinance.~~
 - ~~(4) Meetings of the Appeals Board shall be held at the call of the Chairman and at such other times as the Appeals Board may determine.~~
 - ~~(5) The Chairman, or in his absence the acting Chairman, may administer oaths and compel the attendance of witnesses by subpoena.~~
 - ~~(6) The Appeals Board shall keep minutes of its proceeding, showing the vote of each member upon each question or, if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which~~

~~shall be immediately filed in the office of the secretary of the Appeals Board and shall be a public record.~~

~~(e) Appeals to the Board of Zoning Appeals may be taken by any person aggrieved, or by any official, department head, board or bureau of Augusta-Richmond County affected by a decision of an administrative officer. Such appeal shall be taken within a reasonable time, as provided by the rules of the Appeals Board, by filing with the secretary of the Appeals Board a notice of appeal specifying the grounds thereof.~~

~~(1) Upon notice by the secretary of a filing of appeal, the official from whom the appeal is taken shall forthwith transmit to the Appeals Board all papers constituting a record upon which the action appealed was taken.~~

~~(2) An appeal stays all legal proceedings in furtherance of action appealed from, unless the official from whom the appeal is taken certifies to the Appeals Board, after notice of appeal shall have been filed with him, that by reason of facts stated in the certificate, a stay would, in his opinion, cause imminent peril to life and property. In such a case, proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Appeals Board or by a court on application, on notice to the officer from whom the appeal is taken, and on due cause shown.~~

~~(3) Upon receipt of notice of appeal in a form prescribed by the Appeals Board, the Board of Zoning Appeals shall:~~

~~a. Fix a reasonable time for the hearing of the appeal or other matter referred to it.~~

~~b. Publish once in a newspaper of general circulation in Augusta-Richmond County a notice of public hearing on the appeal. Such notice shall be published at least fifteen (15) days prior to the date of the hearing and shall indicate the time and place of the hearing and the nature of the appeals to be considered by the Appeals Board.~~

~~c. Send postal cards or letters to property owners of record whose property lies within a 300-foot radius of the property subject to the appeal, giving notice of the time, place and nature of appeal.~~

~~(f) The Appeals Board shall have the following powers:~~

~~(1) To hear and decide appeals where it is alleged that there is error in any order, requirement, decision or determination made by an administrative official in the~~

~~enforcement of the zoning ordinance adopted by Augusta-Richmond County pursuant to this division;~~

~~(2) To hear and decide special exceptions to the terms of the zoning ordinance upon which the Appeals Board as required to pass under such ordinance.~~

~~(3) To authorize upon appeal in specific cases such variance from the terms of the zoning ordinance as will not be contrary to the public interest where, owing to special conditions, literal enforcement of the provisions of the zoning ordinance will, in an individual case, result in an unnecessary hardship, so that the spirit of the zoning ordinance shall be observed, public safety and welfare secured, and substantial justice done. Such variance may be granted in such individual case of unnecessary hardship upon finding by the Appeals Board that:~~

~~a. There are extraordinary and exceptional conditions pertaining to the particular piece of property in question because of its size, shape or topography; and~~

~~b. The application of the zoning ordinance to this particular piece of property would create an unnecessary hardship; and~~

~~c. Such conditions are peculiar to the particular piece of property involved; and~~

~~d. Relief, if granted, would not cause substantial detriment to the public good or impair the purposes and intent of the zoning ordinance; however, no variance may be granted for the use of land or building or structure which is prohibited by the zoning ordinance.~~

~~(4) In exercising the above powers, the appeals board may, in conformity with the provisions of this section, reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination; and to that end, the board shall have all of the powers of the officer from whom the appeal is taken and may issue or direct the issuance of a permit.~~

~~(g) Any person or persons severally or jointly aggrieved by any decision of the Appeals Board or with any official charged with the enforcement of any order, requirement or decision of said board may take an appeal to the Superior Court of Richmond County, Georgia. Said appeal shall be the same as an appeal to the superior court from any decision made by the probate court, except that said appeal shall be filed within thirty (30) days from the date of the decision of the Appeals Board or of any official charged with the enforcement of any order, requirement or decision in connection therewith; and upon failure to file said appeal within thirty (30) days, the decision of the Appeals Board shall be final.~~

Sec. 1-4-89. ~~Performance of duties, subdivision regulations.~~

- ~~(a) From and after the time that the Augusta Richmond County Planning Commission established in accordance with this article shall have prepared and adopted a master plan or at least the major street portion of such master plan and shall have recommended to the governing body of Augusta Richmond County regulations for the subdivision of land within Augusta Richmond County, which regulations shall have been adopted by the governing bodies, then no plat of subdivision of land within Augusta Richmond County shall be filed or recorded in the office of the Clerk of the superior court of the county until it shall have been submitted to and approved by the Planning Commission and such approval entered in writing on the plat by the secretary of the Planning Commission. The clerk of the superior court shall not file or record a plat of a subdivision which does not have the approval of the Planning Commission as required by the division.~~
- ~~(b) The Planning Commission shall prepare and recommend to the Augusta Richmond County Commission for adoption regulations governing the subdivision of land within Augusta Richmond County. At their discretion, the Commission may readopt such subdivision regulations, along with any amendments, which may have been adopted prior to and were superseded by the ratification of the home rule provisions of the Constitution of the State of Georgia; however, such regulations shall generally conform to the provisions of this division.~~
- ~~(c) Subdivision regulations prepared by the Planning Commission and recommended to the Augusta Richmond County Commission for adoption may provide, in whole or in part, for:
 - ~~(1) The harmonious development of Augusta Richmond County;~~
 - ~~(2) The coordination of streets within subdivisions with other existing or planned streets;~~
 - ~~(3) The size of blocks and lots;~~
 - ~~(4) The dedication or reservation of land for streets, school sites, and recreation areas and easements for utilities and other public services and facilities; and~~
 - ~~(5) A distribution of population, dwelling units and traffic control which will tend to create conditions favorable to health, safety, convenience, prosperity or general welfare.~~~~
- ~~(d) Such regulations may include requirements as to the extent to which and the manner in which streets shall be graded, surfaced and improved; and water, sewers, septic tanks and other utility mains, piping, connections, or other facilities shall be installed as a condition precedent to the approval of a subdivision plat. Such regulations may provide that, in lieu of the completion of such work and installations previous to the final approval of a plat, the Augusta Richmond County Commission may accept a bond, in an amount and with surety and conditions satisfactory to it or a valid contract~~

- ~~for the performance of the work and installations along with a letter of guarantee for the subdivider, providing for and securing to Augusta Richmond County the actual construction and installation of improvements and utilities within a period specified by the Planning Commission and expressed in the bond or letter of guarantee.~~
- ~~(e) The subdivision regulations may be amended from time to time; but no amendment shall become effective until it shall have been proposed by or shall have first been submitted to the Planning Commission for review and recommendation.~~
- ~~(1) The Planning Commission shall conduct, on behalf of the Augusta Richmond County Commission all public hearings on proposed amendments to the subdivision regulations.~~
- ~~(2) The Planning Commission shall hold such hearings after giving at least fifteen (15) days' notice of the time and place in a newspaper of general circulation in Augusta Richmond County. The Planning Commission shall have thirty (30) days within which to submit its report; and, if the planning commission fails to submit a report within the thirty (30) day period, it shall have deemed to approve the proposed amendment.~~
- ~~(3) The Planning Commission is hereby given the authority to give tentative approval or disapproval to preliminary plats and to approve or disapprove final plats, but in each case their action shall be taken within thirty (30) days after such submission thereof, otherwise, such plat shall be deemed to have been approved and a certificate to that effect shall be issued by the Planning Commission on demand; however, the applicant for the Planning Commission's approval may waive this requirement and consent to the extension of such period. The ground for disapproval of any plat shall be stated upon the records of the Planning Commission.~~
- ~~(f) The approval of a plat by the Planning Commission shall not be deemed to constitute or effect an acceptance by Commission or the public of the dedication of any street or other ground upon the plat.~~
- ~~(g) From and after the time Augusta Richmond County have adopted subdivision regulations in accordance with this article:~~
- ~~(1) Unless provided for by exemption within said regulations, an owner or agent of an owner of any land to be subdivided who transfers or sells or agrees to sell or negotiate to sell such land by reference to or exhibition of or by other use of a plat of subdivision of such land before such plat has been approved by the Planning Commission and recorded in the office of the clerk of Superior Court in Richmond County shall be in violation of this division; and the Augusta Richmond County Commission, through the Augusta Richmond County attorney, may enjoin or set aside such transfer, sale or agreement by appropriate action.~~
- ~~(2) The Augusta Richmond County Commission or other public authority shall not accept, lay out, open, improve, grade, pave or light any street or lay or authorize the~~

~~laying of any water mains, sewers, connections, or other facilities or utilities in any street within Augusta Richmond County unless such street shall have been accepted or opened as, or shall otherwise have received the legal status of, a public street prior to the adoption of said subdivision regulations, or unless such street corresponds in its location and lines with a street shown on a subdivision plat approved by the Planning Commission or on a street plat prepared for and adopted by the Planning Commission.~~

- (3) ~~No building permit shall be issued for and no building or other structure shall be erected on any lot within Augusta Richmond County unless the street giving access to the lot shall be accepted or opened as, or shall otherwise have received the legal status of, a public street prior to that time, or unless such street corresponds in its location and lines with a street shown on a subdivision plat approved by the Planning Commission or on a street plat prepared for and adopted by the Planning Commission or with a street located and accepted by the governing body of Augusta Richmond County. Any building erected in violation of this division or the duly adopted subdivision regulations shall be deemed an unlawful structure; and the chief building inspection official, Augusta Richmond County attorney, or other official designated by the governing body may bring appropriate action to enjoin such erection or cause it to be vacated or removed.~~

~~Sec. 1-4-90. Cumulative powers.~~

~~All powers and authority granted by this division to the Augusta Richmond County Planning Commission shall be cumulative and in addition to all other powers and authority said Planning Commission now has or may later have under other laws.~~

~~Sec. 1-4-91. Amendments to zoning ordinance, map and subdivision regulations.~~

~~Any amendments to the Augusta Richmond County Comprehensive Zoning Ordinance, the zoning maps, and any amendments to the subdivision regulations of land shall only require the approval of the Augusta Richmond County Commission when the property is located in Augusta Richmond County and does not lie within the incorporated area of City of Hephzibah or the Town of Blythe. The Commission of Augusta Richmond County may make amendments to the comprehensive zoning ordinance and subdivision regulations of land when the governing body of Augusta Richmond County determines that such a change would be in the best interest of their respective political subdivision.~~

~~Secs. 1-4-92 — 1-4-94. Reserved.~~

Exhibit B

Sec. 1-4-81. Creation.

There is hereby created a planning commission with the membership, powers and duties as set forth herein. The commission created herein shall be known as the Augusta, Georgia Planning Commission.

Sec. 1-4-82. Membership, terms of office and compensation.

- (a) The Augusta, Georgia Planning Commission (hereinafter referred to as the Planning Commission) shall consist of ten (10) members (plus an additional two members should the Augusta, Georgia Legislative Delegation choose to appoint two members) to be appointed for the terms of four (4) years; provided, however, the initial appointments shall be made as follows:

- (1) There shall be one (1) member who resides in each of the ten (10) districts of Augusta, Georgia appointed by the Augusta, Georgia Commission.
- (2) Except as provided herein, members of the Planning Commission of Richmond County and the City of Augusta who were serving on said boards on January 1, 1997, having had no fixed terms, shall served until their successors are appointed and qualified.
- (3) Members of the Planning Commission serving as of January 1, 1997, shall continue to serve until their successors are appointment by the Commissioner representing the respective District and qualified and are to represent the districts as herein set forth, to wit:

Term Expires

a.	<u>Patricia Jefferson</u>	<u>District 1</u>	<u>2/1/99</u>
b.	<u>Thelma Mack</u>	<u>District 2</u>	<u>3/31/2000</u>
c.	<u>Nick Dickinson</u>	<u>District 3</u>	<u>3/31/98</u>
d.	<u>Richard Colclough</u>	<u>District 4</u>	<u>4/1/99</u>
e.	<u>Frank Knapp, III</u>	<u>District 5</u>	<u>3/31/98</u>
f.	<u>Appointment TBA</u>	<u>District 6</u>	<u>3/31/2000</u>
g.	<u>James Randall Hall</u>	<u>District 7</u>	<u>3/31/98</u>
h.	<u>Hugh Fulcher, Jr.</u>	<u>District 8</u>	<u>3/31/2000</u>
i.	<u>Margaret Armstrong</u>	<u>District 9</u>	<u>3/31/98</u>
j.	<u>Ed Dickerson</u>	<u>District 10</u>	<u>2/1/98</u>

- (4) The successor to the member representing District 1 shall serve until March 31, 2002, or until his successor is appointment and qualified.

- (5) The successors to the member representing District 4 and 10 shall serve until March 31, 2000, or until their successors are appointed and qualified.
- (6) Members of the board appointed by the Commissioner of the respective Districts to succeed those in subsections 3, 4 and 5 hereof shall serve for terms of office of four (4) years and until their successors are appointed and qualified.
- (7) Should the Augusta, Georgia Legislative Delegation choose to appoint two (2) members as provided in the Consolidation Act, such members shall serve for a term of four (4) years and until their successors are appointed and qualified. In the event the appointed authority of the Legislative Delegation is removed from the Consolidation Act, this subsection shall automatically be repealed.
- (8) All terms shall expire on March 31 of the applicable year, and new terms shall begin on April 1 of the applicable year.
- (b) In the event of a vacancy by reason of a death, disqualification, resignation or other reason, the Augusta, Georgia Commission shall appoint a person to serve the remainder of the term of such member.
- (c) No vacancy on the Planning Commission shall impair the right of the quorum to exercise all of their rights and perform all of the duties of the Planning Commission.
- (d) The Chairman of the Planning Commission shall not be entitled to vote upon any issue, motion or resolution, except where his vote will change the result on said motion, resolution or question.
- (e) Members of the Planning Commission shall serve for such compensation as shall be established by the Augusta, Georgia Commission.
- (f) No member of the Planning Commission may be removed from office prior to the expiration of his term except for cause after having been given notice and afforded a hearing before the Augusta, Georgia Commission. Prior to said hearing, said member shall be served by registered or certified mail addressed to his residence as shown in the files of the Planning Commission, at least ten (10) days before the date set for said hearing with written specifications of the charges against him or her.

Sec. 1-4-83. Organization, rules, finances

- (a) The Planning Commission shall elect a Chairman and Vice-Chairman from its members. The terms of office of the Chairman and Vice-Chairman shall be one (1) year with eligibility for reelection to no more than two (2) consecutive terms.
- (b) The Director of Planning and Development may appoint a secretary who may be an official or employee of Augusta, Georgia.
- (c) The Planning Commission shall make its own rules of procedure in accordance with the general provisions of this ordinance and shall determine the time and place of Planning Commission meetings. All meetings of the Planning Commission shall be public meetings in accordance with the Georgia Open Meetings Act.
- (d) The expenditures of the Planning Commission, exclusive of gifts and grants, shall be within the amounts approved for it by the Augusta, Georgia Commission.
- (e) Staff functions for the Planning Commission shall be performed by the Planning and Development Department. The Secretary appointed by the Planning Commission shall be the liaison to the Planning and Development Department.

Sec. 1-4-84. Principal powers and duties.

- (a) It shall be the duty of the Planning Commission to review and formulate a recommendation on all amendments to the text of the Comprehensive Zoning Ordinance that are proposed by the Augusta, Georgia Planning and Development Department. The Planning Commission shall hold a public hearing on each proposed text amendment after proper notice per Georgia law and the Augusta, Georgia Code has been given. The recommendation of the Planning Commission shall be submitted in writing to Augusta, Georgia, along with the recommendation of the Planning and Development Department, within thirty (30) days after such hearing has been held. No changes to the text of the Comprehensive Zoning Ordinance shall be made unless such changes are first submitted to the Planning Commission for review and recommendation.
- (b) It shall be the duty of the Planning Commission to review and formulate a recommendation on all amendments to the zoning map and Special Exceptions. Such map amendments and/or Special Exceptions may be proposed by private property owners or the Planning and Development Department. The Planning Commission shall hold a public hearing on each proposed map amendment after proper notice per Georgia law and the Augusta, Georgia Code has been given. The recommendation of the Planning Commission, along with the recommendation of the Planning and Development Department, shall be submitted in writing to the Augusta, Georgia Commission within thirty (30) days after such hearing has been held. No change to the zoning maps shall be made unless such change is first submitted to the Planning Commission for review and recommendation.

- (c) It shall be the duty of the Planning Commission to perform certain activities specifically assigned to it by the Augusta, Georgia Commission. Such duties shall include, but are not limited to, making decisions regarding certain types of determinations and variances. Such decisions shall be made after a public hearing has been held on each proposed issue after proper notice per Georgia law and the Augusta, Georgia Code has been given. Notice of such decisions shall be given in writing to the Planning and Development Department.
- (d) The Planning Commission shall conduct such public hearings as are required in the development of or revision to Master Plans, Comprehensive Plans, or similar planning processes. Input on such planning processes shall be provided by the Planning Commission in consultation with the Planning and Development Department, to the Augusta, Georgia Commission.
- (e) The Planning Commission may initiate such text or map amendments to the Comprehensive Zoning Ordinance as it deems necessary in consultation with the Planning and Development Department.

Sec. 1-4-85 through 1-4-87. Reserved.

Sec. 1-4-88. Zoning board of appeals.

- (a) The City Council of Augusta and the Board of Commissioners of Richmond County has heretofore created and appointed a Zoning Board of Appeals for Augusta, Georgia. Said Board is hereby continued and shall be known as the Augusta, Georgia Board of Zoning Appeals and is hereinafter referred to as the Appeals Board as is hereinafter provided. At their discretion, the Augusta, Georgia Commission may, by ordinance, designate the Planning Commission to act as the Appeals Board of Augusta, Georgia.
- (b) If the Planning Commission is designated to act as the Appeals Board of Augusta, Georgia, then:
 - (1) Such authority shall be in addition to the powers and duties of the Planning commission set forth herein and shall be carried out in accordance with the provisions of this Section; and
 - (2) Section 1-4-82 of this article shall apply to the membership, terms of office and compensation and section 1-4-83 of this article shall apply to the organization, rules, and finances of the Appeals Board in the event that the Planning Commission is designated by ordinance to act as the Board of Zoning Appeals.
- (c) If said Appeals Board is separate from the Planning Commission, then said Appeals Board shall consist of ten (10) members (plus an additional two members should the Augusta, Georgia Legislative Delegation choose to appoint two (2) members) to be

appointed for terms of four (4) years, provided, however, the initial appointments shall be made as follows:

- (1) There shall be one (1) member who resides in each of the ten (10) districts of Augusta, Georgia appointed by the Augusta, Georgia Commission.
- (2) Except as provided herein, members of the Augusta, Georgia Planning Commission who were serving on said boards on January 1, 1997, having had no fixed terms, shall served until their successors are appointed and qualified.
- (3) Members of the Planning Commission serving as of January 1, 1997, shall continue to serve until their successors are appointment by the Commissioner representing the respective District and qualified and are to represent the districts as herein set forth, to wit:

Term Expires

a.	<u>Jacqueline Fason</u>	<u>District 1</u>	<u>3/31/98</u>
b.	<u>Dr. I. E. Washington</u>	<u>District 2</u>	<u>4/4/98</u>
c.	<u>Jewell Childress</u>	<u>District 3</u>	<u>3/31/98</u>
d.	<u>Emmerstine Mackie</u>	<u>District 4</u>	<u>3/31/2000</u>
e.	<u>George Mitchell</u>	<u>District 5</u>	<u>3/31/98</u>
f.	<u>Appointment TBA</u>	<u>District 6</u>	<u>3/31/2000</u>
g.	<u>K. Glenn Watson</u>	<u>District 7</u>	<u>3/31/98</u>
h.	<u>Hardie Davis, Jr.</u>	<u>District 8</u>	<u>3/31/2000</u>
i.	<u>Thelonius Jones</u>	<u>District 9</u>	<u>3/31/98</u>
j.	<u>Don Grantham</u>	<u>District 10</u>	<u>3/31/1000</u>

- (4) The successor to the member representing District 2 shall serve until March 31, 2000, or until his successor is appointment and qualified.
- (5) Members of the board appointed by the Commissioner of the respective Districts to succeed those appointed in subsections 3 and 4 hereof shall serve for terms of office of four (4) years and until their successors are appointed and qualified.
- (6) Should the Augusta, Georgia Legislative Delegation choose to appoint two (2) members as provided in the Consolidation Act, such members shall serve for a term of four (4) years and until their successors are appointed and qualified. In the event the appointed authority of the Legislative Delegation is removed from the Consolidation Act, this subsection shall automatically be repealed.
- (7) All terms shall expire on March 31 of the applicable year, and new terms shall begin on April 1 of the applicable year.

- (8) Thereafter, members appointed by the Commission of Augusta, Georgia shall serve a term of four (4) years.
 - (9) All members shall be eligible for reappointment to said Appeals Board upon expiration of their terms.
 - (10) Any vacancy in membership shall be filled for the unexpired term by the Augusta, Georgia Commission.
 - (11) Any member may be removed for cause, on written charges, after a public hearing by the Augusta, Georgia Commission.
 - (12) All members of the Appeals Board shall serve for such compensation as shall be established by the Commission.
 - (13) None of the members shall hold any other public office or position with Augusta, Georgia, except that one (1) member may also be a member of the Planning Commission.
- (d) The Board of Zoning Appeals shall elect one (1) of its members as chairman, who shall serve a one (1) year term or until reelected or a successor is elected.
- (1) The Chairman shall have the power to vote on matters before the Appeals Board only where his vote will change the result.
 - (2) The Appeals Board shall appoint a secretary who may be an official or employee of Augusta, Georgia.
 - (3) The Appeals Board shall adopt rules in accordance with the provisions of this ordinance.
 - (4) Meetings of the Appeals Board shall be held at the call of the Chairman and at such other times as the Appeals Board may determine.
 - (5) The Chairman, or in his absence the acting Chairman, may administer oaths and compel the attendance of witnesses by subpoena.
 - (6) The Appeals Board shall keep minutes of its proceeding, showing the vote of each member upon each question or, if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the secretary of the Appeals Board and shall be a public record.

(e) Appeals to the Board of Zoning Appeals may be taken by any person aggrieved, or by any official, department head, board or bureau of Augusta, Georgia affected by a decision of an administrative officer. Such appeal shall be taken within a reasonable time, as provided by the rules of the Appeals Board, by filing with the secretary of the Appeals Board a notice of appeal specifying the grounds thereof.

(1) Upon notice by the secretary of a filing of appeal, the official from whom the appeal is taken shall forthwith transmit to the Appeals Board all papers constituting a record upon which the action appealed was taken.

(2) An appeal stays all legal proceedings in furtherance of action appealed from, unless the official from whom the appeal is taken certifies to the Appeals Board, after notice of appeal shall have been filed with him, that by reason of facts stated in the certificate, a stay would, in his opinion, cause imminent peril to life and property. In such a case, proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Appeals Board or by a court on application, on notice to the officer from whom the appeal is taken, and on due cause shown.

(3) Upon receipt of notice of appeal in a form prescribed by the Appeals Board, the Board of Zoning Appeals shall:

- a. Fix a reasonable time for the hearing of the appeal or other matter referred to it.
- b. Publish once in a newspaper of general circulation in Augusta, Georgia a notice of public hearing on the appeal. Such notice shall be published at least fifteen (15) days prior to the date of the hearing and shall indicate the time and place of the hearing and the nature of the appeals to be considered by the Appeals Board.
- c. Send postal cards or letters to property owners of record whose property lies within a 300-foot radius of the property subject to the appeal, giving notice of the time, place and nature of appeal.

(f) The Appeals Board shall have the following powers:

(1) To hear and decide appeals where it is alleged that there is error in any order, requirement, decision or determination made by an administrative official in the enforcement of the zoning ordinance adopted by Augusta, Georgia pursuant to this division.

- (2) To hear and decide special exceptions to the terms of the zoning ordinance upon which the Appeals Board as required to pass under such ordinance.
- (3) To authorize upon appeal in specific cases such variance from the terms of the zoning ordinance as will not be contrary to the public interest where, owing to special conditions, literal enforcement of the provisions of the zoning ordinance will, in an individual case, result in an unnecessary hardship, so that the spirit of the zoning ordinance shall be observed, public safety and welfare secured, and substantial justice done. Such variance may be granted in such individual case of unnecessary hardship upon finding by the Appeals Board that:
- a. There are extraordinary and exceptional conditions pertaining to the particular piece of property in question because of its size, shape or topography; and
 - b. The application of the zoning ordinance to this particular piece of property would create an unnecessary hardship; and
 - c. Such conditions are peculiar to the particular piece of property involved; and
 - d. Relief, if granted, would not cause substantial detriment to the public good or impair the purposes and intent of the zoning ordinance; however, no variance may be granted for the use of land or building or structure which is prohibited by the zoning ordinance.
- (4) In exercising the above powers, the appeals board may, in conformity with the provisions of this section, reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination; and to that end, the board shall have all of the powers of the officer from whom the appeal is taken and may issue or direct the issuance of a permit.
- (g) Any person or persons severally or jointly aggrieved by any decision of the Appeals Board or with any official charged with the enforcement of any order, requirement or decision of said board may take an appeal to the Superior Court of Richmond County, Georgia. Said appeal shall be the same as an appeal to the superior court from any decision made by the probate court, except that said appeal shall be filed within thirty (30) days from the date of the decision of the Appeals Board or of any official charged with the enforcement of any order, requirement or decision in connection therewith; and upon failure to file said appeal within thirty (30) days, the decision of the Appeals Board shall be final.

Sec. 1-4-89. Performance of duties, subdivision regulations.

- (a) From and after the time that the Augusta, Georgia Planning Commission established in accordance with this article shall have prepared and adopted a master plan or at least the major street portion of such master plan and shall have recommended to the governing body of Augusta, Georgia regulations for the subdivision of land within Augusta, Georgia, which regulations shall have been adopted by the governing bodies, then no plat of subdivision of land within Augusta, Georgia shall be filed or recorded in the office of the Clerk of the Superior Court of the county until it shall have been submitted to and approved by the Augusta, Georgia Commission and such approval entered in writing on the plat by the Director of the Planning and Development Department. The Clerk of the Superior Court shall not file or record a plat of a subdivision which does not have the approval of the Augusta, Georgia Commission as required by the division.
- (b) The Planning Commission shall prepare and recommend to the Augusta, Georgia Commission for adoption regulations governing the subdivision of land within Augusta, Georgia. At their discretion, the Commission may readopt such subdivision regulations, along with any amendments, which may have been adopted prior to and were superseded by the ratification of the home rule provisions of the Constitution of the State of Georgia; however, such regulations shall generally conform to the provisions of this division.
- (c) Subdivision regulations prepared by the Planning Commission and recommended to the Augusta, Georgia Commission for adoption may provide, in whole or in part, for:
 - (1) The harmonious development of Augusta, Georgia;
 - (2) The coordination of streets within subdivisions with other existing or planned streets;
 - (3) The size of blocks and lots;
 - (4) The dedication or reservation of land for streets, school sites, and recreation areas and easements for utilities and other public services and facilities; and
 - (5) A distribution of population, dwelling units and traffic control which will tend to create conditions favorable to health, safety, convenience, prosperity or general welfare.
- (d) Such regulations may include requirements as to the extent to which and the manner in which streets shall be graded, surfaced and improved; and water, sewers, septic tanks and other utility mains, piping, connections, or other facilities shall be installed as a condition precedent to the approval of a subdivision plat. Such regulations may provide that, in lieu of the completion of such work and installations previous to the final approval of a plat, the Augusta, Georgia Commission may accept a bond, in an amount and with surety and conditions satisfactory to it or a valid contract for the performance of the work and installations along with a letter of guarantee for the subdivider, providing for and securing to Augusta, Georgia the actual construction and installation of improvements

and utilities within a period specified by the Planning Commission and expressed in the bond or letter of guarantee.

- (e) The subdivision regulations may be amended from time to time; but no amendment shall become effective until it shall have been proposed by or shall have first been submitted to the Planning Commission for review and recommendation.
 - (1) The Planning Commission shall conduct, on behalf of the Augusta, Georgia Commission all public hearings on proposed amendments to the subdivision regulations.
 - (2) The Planning Commission shall hold such hearings after giving at least fifteen (15) days' notice of the time and place in a newspaper of general circulation in Augusta, Georgia. The Planning Commission shall have thirty (30), days within which to submit its report; and, if the planning commission fails to submit a report within the thirty (30) day period, it shall have deemed to approve the proposed amendment.
 - (3) The Planning and Development Department is hereby given the authority to give tentative approval or disapproval to preliminary plats and the Augusta, Georgia Commission is hereby given the authority to approve or disapprove final plats, but in each case their action shall be taken within thirty (30) days after such submission thereof, otherwise, such plat shall be deemed to have been approved and a certificate to that effect shall be issued by the Director of the Planning and Development Department on demand; however, the applicant for the Director of Planning and Development Department or the Augusta, Georgia Commission's approval may waive this requirement and consent to the extension of such period. The ground for disapproval of any plat shall be stated upon the records of the Augusta, Georgia Commission.
- (f) The approval of a plat by the Augusta, Georgia Commission shall not be deemed to constitute or effect an acceptance by Commission or the public of the dedication of any street or other ground upon the plat.
- (g) From and after the time Augusta, Georgia have adopted subdivision regulations in accordance with this article:
 - (1) Unless provided for by exemption within said regulations, an owner or agent of an owner of any land to be subdivided who transfers or sells or agrees to sell or negotiate to sell such land by reference to or exhibition of or by other use of a plat of subdivision of such land before such plat has been approved by the Augusta, Georgia Commission and recorded in the office of the Clerk of Superior Court in Richmond County shall be in violation of this division; and the Augusta, Georgia Commission, through the Augusta, Georgia attorney, may enjoin or set aside such transfer, sale or agreement by appropriate action.
 - (2) The Augusta, Georgia Commission or other public authority shall not accept, lay out, open, improve, grade, pave or light any street or lay or authorize the laying of

any water mains, sewers, connections, or other facilities or utilities in any street within Augusta, Georgia unless such street shall have been accepted or opened as, or shall otherwise have received the legal status of, a public street prior to the adoption of said subdivision regulations, or unless such street corresponds in its location and lines with a street shown on a subdivision plat approved by the Augusta, Georgia Commission or on a street plat prepared for and adopted by the Augusta, Georgia Commission.

- (3) No building permit shall be issued for and no building or other structure shall be erected on any lot within Augusta, Georgia unless the street giving access to the lot shall be accepted or opened as, or shall otherwise have received the legal status of, a public street prior to that time, or unless such street corresponds in its location and lines with a street shown on a subdivision plat approved by the Augusta, Georgia Commission or on a street plat prepared for and adopted by the Augusta, Georgia Commission or with a street located and accepted by the governing body of Augusta, Georgia. Any building erected in violation of this division or the duly adopted subdivision regulations shall be deemed an unlawful structure; and the chief building inspection official, Augusta, Georgia attorney, or other official designated by the governing body may bring appropriate action to enjoin such erection or cause it to be vacated or removed.

Sec. 1-4-90. Cumulative powers.

All powers and authority granted by this division to the Augusta, Georgia Planning Commission shall be cumulative and in addition to all other powers and authority said Planning Commission now has or may later have under other laws.

Sec. 1-4-91. Amendments to zoning ordinance, map and subdivision regulations.

Any amendments to the Augusta, Georgia Comprehensive Zoning Ordinance, the zoning maps, and any amendments to the subdivision regulations of land shall only require the approval of the Augusta, Georgia Commission when the property is located in Augusta, Georgia and does not lie within the incorporated area of City of Hephzibah or the Town of Blythe. The Commission of Augusta, Georgia may make amendments to the comprehensive zoning ordinance and subdivision regulations of land when the governing body of Augusta, Georgia determines that such a change would be in the best interest of their respective political subdivision.

Secs. 1-4-92 – 1-4-94. Reserved.



Administrative Services Committee Meeting

6/13/2011 1:00 PM

An Ordinance to amend the Augusta, Georgia Code, Article 1, Chapter 10, relating to the procurement of goods and services, the Local Small Business Opportunities Program and the DBE Program for federally assisted projects

Department: Administrator

Caption: An Ordinance to amend the Augusta, Georgia Code, Article One, Chapter Ten, relating to the procurement of goods and services, the Local Small Business Opportunities Program and the DBE Program for federally assisted projects so as to provide updates and to establish policies, procedures and guidelines regarding the procurement process and the Local Small Business Opportunities Program; to repeal all Ordinances and parts of Ordinances in conflict herewith; to provide an effective date and for other purposes.

Background: See attached.

Analysis: See attached.

Financial Impact: N/A.

Alternatives: Amend the Consolidation Act to separate the Equal Employment Function from the local small business and DBE functions and update the Procurment Code to reflect such changes.

Recommendation: Adopt the proposed amendments and begin the process of Amending the Consolidation Act as shown in the alternative above.

**Funds are Available
in the Following
Accounts:** N/A.

REVIEWED AND APPROVED BY:

**Administrator
Clerk of Commission**

ORDINANCE NO. _____

AN ORDINANCE TO AMEND THE AUGUSTA, GEORGIA CODE, ARTICLE ONE, CHAPTER TEN, RELATING TO THE PROCUREMENT OF GOODS AND SERVICES, THE LOCAL SMALL BUSINESS OPPORTUNITIES PROGRAM AND THE DBE PROGRAM FOR FEDERALLY ASSISTED PROJECTS SO AS TO PROVIDE UPDATES AND TO ESTABLISH POLICIES, PROCEDURES AND GUIDELINES REGARDING THE PROCUREMENT PROCESS AND THE LOCAL SMALL BUSINESS OPPORTUNITIES PROGRAM; TO REPEAL ALL ORDINANCES AND PARTS OF ORDINANCES IN CONFLICT HERewith; TO PROVIDE AN EFFECTIVE DATE AND FOR OTHER PURPOSES.

WHEREAS, it is the desire of the Augusta, Georgia Commission to update Code provisions relating to the procurement of goods and services so as to reflect changes in Georgia law and to improve the efficiency of the procurement process;

WHEREAS, it is the desire of the Augusta, Georgia Commission to increase the effectiveness of the Local Small Business Opportunities Program and to broaden the number of businesses eligible to participate in the program and to implement race and general neutral measures to reduce discrimination in Augusta, Georgia;

WHEREAS, it is the desire of the Augusta, Georgia Commission to update and improve its DBE Program for Department of Transportation (DOT), Federal Transportation Administration (FTA), Federal Aviation Administration (FAA) and other federally funded projects and to ensure full compliance with state and federal regulations;

WHEREAS, the DBE Program for DOT, FTA and FAA funded projects is to be approved by the Department of Transportation before it is effective;

WHEREAS, based on the foregoing, the Augusta, Georgia Commission recommends amending Article one, Chapter ten of the AUGUSTA, GA CODE.

THE AUGUSTA, GEORGIA COMMISSION ordains as follows:

SECTION 1. AUGUSTA, GA. CODE Article one, Chapter ten as set forth in the AUGUSTA, GA. CODE, re-adopted July 10, 2007, is hereby amended by striking this

chapter in its entirety. A new Chapter ten is hereby inserted to replace the repealed Code Chapter ten as set forth in "Exhibit A" hereto.

SECTION 2. This ordinance shall become effective upon its adoption in accordance with applicable laws. Article 13 (DBE Program) shall be effective only following approval of the Department of Transportation.

SECTION 3. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

Adopted this ____ day of _____, 2011.

David S. Copenhaver
As its Mayor

Attest:

Lena J. Bonner, Clerk of Commission

Seal:

CERTIFICATION

The undersigned Clerk of Commission, Lena J. Bonner, hereby certifies that the foregoing Ordinance was duly adopted by the Augusta, Georgia Commission on _____, 2011 and that such Ordinance have not been modified or rescinded as of the date hereof and the undersigned further certifies that attached hereto is a true copy of the Ordinance which was approved and adopted in the foregoing meeting(s).

Lena J. Bonner, Clerk of Commission

Published in the Augusta Chronicle.

Date: _____

Exhibit A

Article 1 General Provisions and Definitions

Sec. 1-10-1. Purpose.

Sec. 1-10-2. Application of this chapter.

Sec. 1-10-3. Supplementary laws.

Sec. 1-10-4. Good faith provision.

Sec. 1-10-5. Public access to procurement information.

Sec. 1-10-6. Preference for local suppliers, professional services and contractors.

Sec. 1-10-7. Value analysis.

Sec. 1-10-8. Compliance with state and federal requirement.

Sec. 1-10-9. Definitions-generally.

Article 2 Sec. 1-10-10 through Sec. 1-10-22. Reserved.

Article 3 Office of the Procurement Director

Sec. 1-10-23. Authority and responsibility of procurement director.

Sec. 1-10-24. Centralization of procurement function.

Sec. 1-10-25. Contract administration.

Sec. 1-10-26. Unauthorized contracts.

Sec. 1-10-27. Conflicts of interests.

Sec. 1-10-28. Gratuities and kickbacks.

Sec. 1-10-29. Contingent Fees.

Sec. 1-10-30. Penalties.

Sec. 1-10-31. Reporting of anti-competitive practices to state.

Article 4 Product Specifications

Sec. 1-10-32. Purpose.

Sec. 1-10-33. Types of specifications.

Sec. 1-10-34. Maximum practicable competition.

Sec. 1-10-35. Qualified products list.

Sec. 1-10-36. Background information on vendors.

Sec. 1-10-37. Product references in specifications.

Sec. 1-10-38. Responsibility for specifications.

Sec. 1-10-39. Inspection of purchases.

Article 5 Requirements for Bidding or Proposing on Augusta, Georgia Contracts

Sec. 1-10-40. Responsibility of bidders and proposers.

Sec. 1-10-41. Cost or pricing data.

Sec. 1-10-42. Cost or price analysis.

Sec. 1-10-43. Bid and performance bonds when required.

Sec. 1-10-44. Bid bonds.

Sec. 1-10-45. Payment and performance bonds.

Sec. 1-10-46. Insurance requirements.

Sec. 1-10-47. Pre-qualifications of contractors.

Article 6 Procurement Source Selection Methods and Contract Awards

Sec. 1-10-48. Generally.

Sec. 1-10-49. Purchase order.

Sec. 1-10-50. Sealed bids selection method.

Sec. 1-10-51. Request for proposals.

Sec. 1-10-52. Sealed proposals.

Sec. 1-10-53. Competitive selection procedures for professional and consultant services.

Sec. 1-10-54. Informal bids selection methods (standard and small purchases) and authority of Administrator and General Counsel.

Sec. 1-10-55. Banking services.

Sec. 1-10-56. Sole source procurement.

Sec. 1-10-57. Emergency procurement selection method.

Sec. 1-10-58. Annual contracts

Sec. 1-10-59. Specific requirements/options for source selection method.

Sec. 1-10-60. Rejection or cancellation of solicitations; negotiating; re-advertisement.

Sec. 1-10-61. Multi-term contract.

Sec. 1-10-62. Right to inspect facilities.

Sec. 1-10-63. Right to audit records and contracts and collection of statistical data.

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Chapter 10

PROCUREMENT AND EQUAL OPPORTUNITY

ARTICLE 1

GENERAL PROVISIONS AND DEFINITIONS

Sec. 1-10-1. Purpose.

The purpose of the Procurement and Equal Opportunity Chapter of the AUGUSTA, GA. CODE is to provide detailed procedures for implementation of procurement requirements for Augusta, Georgia, to provide for a DBE Program for federally assisted contracts and to provide for a local small business opportunity program. Further, the purpose of this Chapter is to:

- (a) Simplify and consolidate procurement procedures;
- (b) Provide for centralized procurement;
- (c) Ensure fair and equitable treatment of all persons involved in the procurement process;
- (d) Foster competition in the public procurement process; and
- (e) Ensure compliance with all federal, state and local laws.

This chapter shall contain all of the rules, regulations, and procedures needed to purchase goods and services and provide other procurement services for the Augusta, Georgia government.

Sec. 1-10-2. Application of this chapter.

- (a) Except as otherwise provided herein, the requirements of this chapter apply to contracts for the procurement of supplies, commodities, services, construction, professional, and consultant service products solicited or entered into by Augusta, Georgia. It shall apply to the expenditure of public funds irrespective of the source of the funds. It shall also apply to the disposal of Augusta, Georgia's supplies and personal assets.

- (b) Nothing in this chapter shall preclude Augusta, Georgia from complying with the terms and conditions of any grant, gift, donation or bequest that are otherwise consistent with state and federal laws.

Sec. 1-10-3. Supplementary laws.

The principles of law and equity, including those relative to contract, agency, fraud, duress, coercion, mistake, bankruptcy, and the Uniform Commercial Code of Georgia (O.C.G.A. 11-1-101 et. seq. as amended) and all other applicable federal, state and local laws shall apply, as appropriate, to the procurement process.

Sec. 1-10-4. Good faith provision.

All parties involved in the negotiation, performance, or administration of Augusta, Georgia contracts shall act in good faith. Good faith means honesty in fact in the conduct or transaction concerned and the observance of reasonable commercial standards of fair dealing. See O.C.G.A. § 11-2-201.

Sec. 1-10-5. Public access to procurement information.

- (a) Contract files. Written records pertaining to a solicitation, award or performance of a contract or purchase order shall be maintained by the Procurement Director.
- (b) Retention. All procurement records shall be maintained and disposed of in accordance with the Records Retention schedule as established by the Augusta, Georgia Commission.
- (c) Public access. Procurement information shall be considered public records to the extent required by the Georgia Open Records Act. A Request for Proposals (RFP) shall not become public record until the final contract is negotiated and awarded. Any financial, trade secrets or commercial data contained in Request for Proposals shall be considered privileged and confidential and shall not be disclosed.
- (d) Procurement opportunities will be posted on the Augusta, Georgia internet website under the Procurement Department: <http://www.augustaga.gov>

Sec. 1-10-6. Preference for local suppliers, professional services and contractors.

- (a) Augusta, Georgia encourages the use of local suppliers of goods, services and construction products whenever possible. Augusta, Georgia also vigorously supports the advantages of an open competitive market place. Nothing in this Section shall be interpreted to mean that the Augusta, Georgia Administrator or Procurement Director are restricted in any way from seeking formal bids or proposals from outside the Augusta market area.
- (b) When the quotation or informal bids selection method is used by the Procurement Director or using agency head to seek firms to quote on Augusta, Georgia commodities, services and construction products, local firms should be contacted, if possible, first. Where the Procurement Director or using agency head ascertains that there may not be at least three (3) qualified informal bidders, quotes may be sought from outside the Augusta, Georgia market.
- (c) In the event of a tie bid (see Section 1-10-50 (h)), when all other factors are equal, the Augusta, Georgia Administrator shall select the bid from within the local market area, except that the Administrator shall retain the flexibility to make the award of contract to a bidder outside of the local market area if there is sufficient evidence to support collusive bidding in favor of a local source.
- (d) The Local Vendor Preference policy shall only be applied to projects of one-hundred thousand dollars (\$100,000) or less and only when the lowest local qualified bidder is within 10% or \$10,000, whichever is less of the lowest non-local bidders. The lowest local qualified bidder will be allowed to match the bid of the lowest non-local bidder and, if matched, the lowest local qualified bidder will be awarded the contract.
- (e) For the purposes of this section, "local bidder" shall mean a business which:
 - (1) Has had a fixed office or distribution point in and having a street address within the geographic limits of Richmond County, Georgia for at least six (6) months immediately prior to the issuance of the request for bids or quotes by Augusta; and
 - (2) Holds any business license required by the AUGUSTA, GA. CODE; and

- (3) Employees at least one full-time employee, or two part-time employees whose primary residence is within the geographic limits of Richmond County, Georgia or if the business has no employees, the business shall be at least fifty percent (50%) owned by one or more persons whose primary residence is within the geographic limits of Richmond County, Georgia.
- (f) The Procurement Director shall develop a program to routinely search out local firms that offer products or services which Augusta, Georgia may purchase and encourage such firms to place themselves on the local bidder's list.
- (g) Registration as a local bidder. In order to be registered as a local bidder, a bidder must submit a completed application to the Procurement Department, and the applicant must be approved and registered by the Procurement Department. An eligible bidder must submit a completed and signed written application to become a local bidder at least thirty (30) days prior to the date bids are received on an eligible local project. An eligible bidder who fails to submit an application for approval as a local bidder at least thirty (30) days prior to the date bids are received on an eligible local project, and who otherwise meets the requirements for approval as a local bidder, will not be qualified for a bid preference on such eligible local project.
- (h) Criteria. To be registered as a local bidder, the eligible bidder must satisfy the criteria set forth in subsection (e) above.
- (i) Term. The certification as a local bidder shall expire two (2) years from the date of the approval of the application. Following the expiration date, a business is no longer a local bidder. An eligible bidder must submit a new application for certification as a local bidder to the Procurement Director and establish that it continues to meet the requirements contained in subparagraph (e) of this section in order to receive a bid preference on eligible local projects.
- (j) Continuing obligations of eligible bidders registered as local bidders. Eligible bidders registered as local bidders shall be under a continuing duty to immediately inform the Department of Procurement in writing of any

changes in the eligible bidder's business if, as a result of such changes, the eligible bidder no longer satisfies the requirements of subparagraph (e) of this section.

- (k) Nothing in this section shall be interpreted to mean that the Augusta, Georgia Administrator or Commission may decline to follow the provisions of O.C.G.A. §§ 36-91-1 through 36-91-95, Public Works Contracts. O.C.G.A. § 36-91-22 requires that all Augusta, Georgia public works contracts of one-hundred thousand dollars (\$100,000) or more, as defined therein, be publicly advertised before letting out the contract to the lowest bidder. Further, nothing in this section shall be interpreted to mean Augusta, Georgia Administrator or Board of Commissioners may decline to follow the provisions of the AUGUSTA, GA. CODE requiring public advertising before letting certain contracts.
- (l) Georgia-made Preference: Augusta, Georgia shall provide a preference for Georgia-made products on the purchase of supplies, materials, equipment and agriculture products. The Georgia-made Preference policy shall only be applied to purchases of such items costing over one-hundred thousand dollars (\$100,000) and only when the vendor seeking this preference supplies sufficient proof that their product is Georgia-made. A vendors request for the Georgia-made Preference must be placed in the vendor's response to an applicable Augusta, Georgia bid. The Administrator shall determine whether the product is a Georgia-made product. The lowest bidder of a Georgia-made product will be allowed to match the bid of the lowest non-Georgia-made bidder. If matched the lowest bidder of a Georgia-made product will be awarded the contract.

Sec. 1-10-7. Value analysis.

- (a) Purpose. A significant portion of the Augusta, Georgia Annual Budget is committed each year to various purchase contracts such as raw materials, equipment, equipment parts or components, general supplies, and professional and non-professional services. Therefore, it is essential that maximum value be obtained for every public tax dollar spent. A proven technique for obtaining this goal is value analysis.
- (b) Definition of value analysis. Value analysis is the organized and systematic study of every element of cost in a part, material, or service to make certain it fulfills its function at the best value. It employs techniques which identify

the functions the user wants from a product or service; establishes by comparison the appropriate cost for each function; then, it causes the required knowledge, creativity; and initiative to be used to provide each function for that cost.

- (c) Application of value analysis to the procurement process. Value analysis is a study of function and the value of any service, material, or product established by the minimum cost of other available alternatives, materials, products, or services that will perform the same function. To achieve high value, emphasis must be placed on obtaining high use value at low cost.

Sec. 1-10-8. Compliance with state and federal requirement.

When the procurement transaction involves the expenditure of State or Federal funds, the transaction shall be conducted in accordance with any applicable mandatory State or Federal laws and authorized regulations. Notwithstanding where State and Federal assistance or contract funds are used in procurement transaction, any applicable local requirements that are more restrictive than State or Federal requirements, but not in conflict therewith, shall be followed.

Sec. 1-10-9. Definitions-generally.

The terms, phrases, words, and their derivations set forth below shall have the meaning given herein. Words not defined herein or within the Official Code of Georgia Annotated shall be interpreted so as to give them the meaning they have in common usage and to give this chapter its most reasonable application. Words used in the singular shall include the plural, and the plural the singular; words used in the present tense shall include the future tense. The words shall, will, and must are mandatory and not discretionary. The word may is permissive.

- (1) Agreement. The bargain of the parties in fact as found in their language or by implication from other circumstances including course of dealing or usage of trade or course of performance as provided in O.C.G.A. § 11-1-205 and § 11-2-208. Whether an agreement has legal consequences is determined by the provision of this title, if applicable; otherwise, by the law of contracts, (O.C.G.A. § 11-1-103 and O.C.G.A. § 11-2-201).
- (2) Annual contract. Means any contract entered into for a period of one year or multiple one-year periods (including options to renew for

additional one year periods), with a vendor or contractor, to provide Augusta, Georgia, upon request with a specified product or service, such as paving, concrete or office supplies at a predetermined rate or price.

- (3) Award. Means when legislation authorizing the award of a contract has been adopted by the Board of Commissioners and approved the execution of the contract by the Mayor; however no liability shall attach nor shall the contract be considered binding unless it has been duly executed by the contractor and returned with all required submittals including insurance and bonding, if applicable, executed by the Mayor; attested to by the Clerk and approved by General Counsel as to form.
- (4) Bid. An offer to perform a contract for work and labor or supplying materials or goods at a specified price. Or, an offer by an intending purchaser to pay a designated price for property which is about to be sold at auction.
- (5) Bid Bond. A bond with good and sufficient surety or sureties for the faithful acceptance of the contract payable to, in favor of, and for the protection of the governmental entity for which the contract is to be awarded.
- (6) Bidders List. Augusta, Georgia's official list of qualified persons or vendors to be invited to respond to any type of invitation for bids or requests for proposals which shall be maintained by the Procurement Director.
- (7) Business. Any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, firm, or any other private legal entity.
- (8) Change Order. An alteration, addition, or deduction from the original scope of work as defined by the contract documents to address changes or unforeseen conditions necessary for project completion.
- (9) Commodities. Those things that are useful or serviceable, particularly articles of merchandise moveable in trade, goods, wares, supplies, and

merchandise of any kind.

- (10) Construction. 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 operation, routine repair, or routine maintenance of existing structures, buildings, or real property.
- (11) Contract. Means all types of Augusta, Georgia agreements, including purchase orders, regardless of what they may be called, for the procurement or disposal of supplies, services, construction, professional or consultant services and for the transfer of interests in real property.
- (12) Contract Administration. All activity necessary after award of a contract to administer a contract and to ensure full compliance with its terms, conditions, and scope of services.
- (13) Contract Documents. All documents which define the scope of the project, including but not limited to, the plans and specifications, advertisement for bids, instructions to bidders, the bid, the proposal, bonds, general conditions, special conditions, insurance and technical specifications.
- (14) Contract Modification. Any written alteration in specifications, delivery point, time and rate of delivery, period of performance, price, quantity or other provisions of any contract reached by mutual action of the parties to the contract.
- (15) Contractor and/or Sub-Contractor. Any person having a contract with Augusta, Georgia, a using agency of Augusta, Georgia, or a contractor thereof.
- (16) Cooperative Procurement. Acquiring commodities, services, and construction by, or on behalf of, more than one public procurement agency.
- (17) Cost Analysis. 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.

- (18) Cost Data. The factual information concerning the cost of labor, material, overhead, and other cost elements which are expected to be incurred or which have been actually incurred by the contractor in performing the contract.
- (19) Cost-reimbursement Contract. A contract under which a contractor is reimbursed for costs which are allowable and in accordance with the contract terms and the provisions of this chapter, and a fee or profit, if any.
- (20) Board of Commissioners. The Board of Commissioners of Augusta, Georgia which is the governing body of Augusta, Georgia.
- (21) Mayor. The chief executive officer of Augusta, Georgia who is authorized to sign all contracts for the Board of Commissioners.
- (22) Administrator. The chief appointed administrative officer of Augusta, Georgia.
- (23) Days. Days mean calendar days. In computing any period of time prescribed by the Procurement Code, the first day shall not be counted but the last day shall be counted. If the last day falls on a Saturday or Sunday, the party shall have through the following Monday. When the last day falls on a legal holiday observed by the governing authority, the party shall have through the next day.
- (24) Debarment. Exclusion from contracting and subcontracting with Augusta, Georgia for a specified period of time.
- (25) Designee. A duly authorized representative of a person holding a superior position.
- (26) Discussions. As used in the selection process, means an exchange of information or other manner of negotiation during which the offeror and Augusta, Georgia may alter or otherwise change the conditions, terms, and price of the proposed contract. Discussions may be conducted in connection with competitive sealed proposals, sole source, and emergency procurement.

- (27) Emergency. Any situation resulting in imminent danger to the public health or safety or the loss of an essential governmental service.
- (28) Employee. An individual drawing a salary or wages from Augusta, Georgia, whether elected or not; any non-compensated individual performing personal services for Augusta, Georgia or any department, agency, commission, council, board, or any other entity established by the executive, legislative or judicial branch of Augusta, Georgia; and any non-compensated individual serving as an elected official of Augusta, Georgia.
- (29) Equal Opportunity Department. The department responsible for:
 - (a) Providing Equal Employment Opportunity functions in accordance with the Augusta, Georgia Personnel Policies and Procedures Manual; and
 - (b) Operation of the Local Small Business Opportunities Program in accordance with Article 7 of this Chapter; and
 - (c) Operation of the Disadvantaged Business Enterprise (DBE) Program for DOT, FTA, FAA and other Federally Assisted Contracts in accordance with Article 13 of this Chapter.
- (30) Equal Opportunity Director. As required by 1995 Ga. Laws p. 3648, § 14, “the Commission-Council shall employ a person to serve as equal employment opportunity director and as director of minority and small business opportunities.” The person selected to serve as equal employment opportunity director and as director of minority and small business opportunities shall be the department head of the Equal Opportunity Department and shall be responsible for equal opportunity services with respect to Augusta, Georgia employees as well as minority and small business opportunities. In addition to operating the Local Small Business Opportunities Program (LSBOP), this person is the DBE Liaison officer and Chief Equal Employment officer and shall report directly to the Mayor and Commission.
- (31) Fault. Wrongful act, omission or breach.
- (32) Financial Interest. All direct ownership interests of the total assets or

capital stock of a business entity where such ownership interest is ten (10) percent or more. (O.C.G.A. § 36-67A-1).

- (33) Firm. Any individual, partnership, corporation, association, joint venture, or other legal entity permitted by law to practice or offer professional or consultant services.
- (34) Good Faith. Honesty in fact in the conduct or transaction concerned. (O.C.G.A. § 11-1-201).
- (35) Gratuity. A payment, loan, subscription, advance, deposit of money, service, or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is received.
- (36) Genuine. Free of forgery or counterfeiting. (O.C.G.A. § 11-1-210).
- (37) Immediate family. Father, mother, son, daughter, brother, sister, grandparents or grandchildren, wife or husband, or the wife or husband of any of the preceding listed persons.
- (38) Interested party. Means an actual or prospective bidder, offeror, or contractor that may be aggrieved by the solicitation or award of a contract, or by the protest.
- (39) Invitation for Bids. An advertisement for the submission of bids for a particular project, item or goods whether attached or incorporated by reference.
- (40) Let (contracts). Award to one of several persons, who have submitted proposals (bids) therefore, the contract for erecting public works or doing some part of the work connected therewith, or rendering some other service to the government for a stipulated compensation.
- (41) Responsive Bidder. 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.
- (42) May. Denotes the permissive.
- (43) Notice. Knowledge, or a notice or notification received by an

individual or organization. Notice is effective for a particular transaction from the time when it is delivered to the individual it is addressed to or is delivered to any person in the organization conducting, or seeking to conduct business with Augusta, Georgia. (O.C.G.A. § 11-1-201).

- (44) Notice to proceed. Written document issued by the Procurement Director or her designee directing the contractor to proceed with the performance of the contract.
- (45) Offer. A proposal or bid submitted in response to a request for proposal (RFP) or invitation for bid (ITB).
- (46) Offeror. Any person submitting a response to a solicitation issued, including an informal request for quotes, a request for proposal or invitation for bids.
- (47) Organization. Includes a corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest, or any other legal or commercial entity. (O.C.G.A. § 11-1-201).
- (48) Payment bond. A bond with good and sufficient surety or sureties payable to Augusta, Georgia for which the work is to be done and intended for the use and protection of all subcontractors and all persons supplying labor, materials, machinery, and equipment in the prosecution of the work provided for in the public works construction contract.
- (49) Performance bond. A bond with good and sufficient surety or sureties for the faithful performance of the contract and to indemnify Augusta, Georgia for any damages occasioned by a failure to perform the same within the prescribed time. Such bond shall be payable to, in favor of, and for the protection of Augusta, Georgia for which the work is to be done.
- (50) Person. Any business, individual, union, committee, club, other organization, or group of individuals.
- (51) Pre-qualification. The process to determine whether a prospective

bidder or proposer satisfies the criteria established for inclusion on the pre-qualified bidders or proposers list.

- (52) Price Analysis. The evaluation of price data, without analysis of the separate cost components and profit as in cost analysis, which may assist in arriving at prices to be paid and costs to be reimbursed.
- (53) Pricing Data. The factual information concerning prices for items substantially similar to those being procured. Prices in this definition refer to offered selling prices, historical selling prices, and current selling prices. The definition refers to data relevant to both prime and sub-contract prices.
- (54) Procurement. Means buying, purchasing, renting, leasing, or otherwise acquiring any supplies, services or construction. It also includes all functions that pertain to the obtaining of any supply, service, or construction, including description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration.
- (55) Procurement Department. The department responsible for the expenditure of public funds for the procurement of commodities, services, or construction products.
- (56) Procurement Director. The department head of the Procurement Department responsible for the procurement of goods and services for Augusta, Georgia.
- (57) Procurement Officer. Any person duly authorized to enter into and administer contracts and make written determinations with respect thereto. The term also includes an authorized representative acting within the limits of authority granted by this code.
- (58) Product. Something produced by physical labor or intellectual effort, commodities, supplies, equipment, materials, goods, services and construction.
- (59) Product Reference. A specification limited to one or more items by manufacturers' names or catalog numbers to describe the standard of quality, performance, and other salient characteristics needed to meet

Augusta, Georgia requirements, and which provides for the submission of equivalent products.

- (60) Professional and consultant services. Means those services within the scope of the practices of architecture, investment banking, professional engineering, planning, landscape architecture, land surveying, the medical arts, management and analysis, accounting or auditing, law, psychology or any other similar kind or type of professional practice. For purposes of this division, professional and consultant services shall not include investment management services as defined by the laws of the State of Georgia.
- (61) Proposal. Means the solicited submission of information from a prospective offeror in accordance with the terms of the applicable request for proposals and applicable law.
- (62) Protest. Means a written statement concerning any unresolved disagreement or controversy arising out of the solicitation or award of a contract filed in accordance with the requirements of this Code.
- (63) Protestor. Means any actual or prospective bidder, offeror, or contractor who is aggrieved in connection with the solicitation or the award of a contract and who files a protest.
- (64) Public procurement unit. The United States Government, any department, agency or division thereof, any city, county, town, and any subdivision of the State of Georgia or public agency of any such subdivision, public authority, educational, health, or other institution, any other non-profit entity which expends public funds for procurement or supplies, services, or construction.
- (65) Public Sale. A sale held to dispose of surplus Augusta, Georgia property.
- (66) Public Works Construction. The building, altering, repairing, improving, or demolishing of any public structure or building or other public improvements of any kind to any public real property other than those projects covered by Chapter 4 of Title 32 of the GEORGIA CODE. Such term does not include the routine operation, repair, or maintenance of existing structures, buildings, or real property.

- (67) Purchase. Includes taking by sale, discount, negotiation, mortgage, pledge, lien, issue or reissue, gift, or any other voluntary transaction creating an interest in property. (O.C.G.A. § 11-1-201).
- (68) Purchase Order. Written authorization requesting the selected vendor to deliver goods with payment to be made later.
- (69) Qualified Products List. An approved list of commodities described by model or catalog numbers, which, prior to competitive solicitation, Augusta, Georgia has determined will meet the applicable product specifications requirements.
- (70) Quotations or informal bids selection method. The method for procuring services, commodities or goods without the formality of a written proposal or sealed bid for purchases that do not exceed \$10,000.
- (71) Requisition. The document submitted by a using agency requesting that a purchase be made on its behalf. Requisition includes, but is not limited to, a description of the requested commodity, service or construction product, delivery schedule, transportation data, criteria for evaluation, suggested sources of supply, and information supplied for the working of any written determination required by law or this Code.
- (72) Request for Proposals (RFP). All documents, whether attached or incorporated by reference, utilized for soliciting proposals.
- (73) Request for Qualifications (RFQ). A method used to predetermine the capacity of prospective bidders or proposers for a specific project prior to the issuance of a solicitation.
- (74) Responsible Bidder or Proposer. A person who has the capability in all respects to perform fully and reliably the contract requirements, and the tenacity, perseverance, experience, integrity, reliability, capacity, facilities, equipment, and credit which will assure good faith performance. In considering whether a bidder is responsible, the Procurement Director, Augusta, Georgia Administrator, using agency head, or Augusta, Georgia Commission may consider the proposers or

bidder's quality of work, general reputation in the community, financial responsibility, and previous employment or use by Augusta, Georgia.

- (75) Responsive Bidder or Proposer. A person or entity that has submitted a bid or proposal which conforms in all material respects to the requirements set forth in the invitation for bids or request for proposal.
- (76) Sealed Bid. A method of soliciting public works construction contracts and other contracts, products or services whereby the award is based upon the lowest responsive, responsible bid in conformance with the provisions of Georgia Law and this Code.
- (77) Sealed Proposal. A method of soliciting public works contracts and other contracts, products or services whereby the award is based upon criteria identified in a request for proposals in conformance with the provisions of Georgia Law and this Code.
- (78) Services. The furnishing of labor, time or effort, not involving the delivery of a specific end product other than reports which are merely incidental to the required performance. This term shall not include employment agreements or collective bargaining agreements.
- (79) Small Business. A United States 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.
- (80) Solicitation. Means an invitation for bids, a request for proposals, a request for quotations or any other document issued by the Augusta, Georgia concerning its soliciting bids or proposals to perform an Augusta, Georgia contract or purchase order.
- (81) Sole Source. Those procurements made pursuant to a written determination by Augusta, Georgia that there is only one source for the required supply, service, or construction item.
- (82) Specification. Any description of the physical or functional characteristics or of the nature of commodities, services, or construction products. It may include a description of any requirement for inspecting, testing, or preparing a commodity, service, or

construction product for delivery.

- (83) Substantial Interest. The direct or indirect ownership of more than twenty-five (25) percent of the assets or stock of any business. (O.C.G.A. § 45-10-20).
- (84) Supplies. Any goods, equipment, material or other personal property owned by Augusta, Georgia and available for use by the personnel of the organization.
- (85) Surplus Supplies. Any Augusta, Georgia owned supplies no longer needed having any use to Augusta, Georgia as determined of official action of the Board of Commissioners.
- (86) Ultra Vires. In excess of legal power or authority.
- (87) Using Agency. Any department, commission, board, office, authority, or division of Augusta, Georgia requiring commodities, services or construction products or professional or other consultant services.
- (88) Using Agency Head. The director or department head of a using agency that is responsible for the administration or such using agency.
- (89) Value Analysis. An organized and systemic study of every element of cost in a part, material, or service to make certain it fulfills its function at the best value.
- (90) Warranty Period. The period following final acceptance of the project during which the contractor/vendor is responsible for repair of any product, equipment and /or work not caused by vandalism or natural disaster.

ARTICLE 2

Sec. 1-10-10 through 1-10-22

RESERVED*

* Editors Note: Ord. No. 6239, § 2, adopted Jan. 18, 2000, repealed §§ 1-10-10--1-10-22 in their entirety. See the Code Comparative Table.

ARTICLE 3

OFFICE OF THE PROCUREMENT DIRECTOR

Sec. 1-10-23. Authority and responsibility of procurement director.

- (a) Authority. The Procurement Director is designated as the principal public procurement official for Augusta, Georgia, and shall be responsible for the procurement of commodities, services, construction, and professional service products in accordance with the AUGUSTA, GA. CODE and this chapter.
- (b) Duties. The duties of the Procurement Director include but are not limited to:
 - (1) Procuring or supervising the procurement of all commodities, services, construction, and professional and consultant service products needed by Augusta, Georgia;
 - (2) Acting to procure for Augusta, Georgia the highest quality in commodities, construction and service products at the best value to Augusta, Georgia;
 - (3) Discouraging collusive bidding and endeavoring to obtain as full and open competition as possible on all purchases and sales;
 - (4) Keeping informed of current developments in the field of procurement, prices, market conditions and new products, and secure for Augusta, Georgia the benefits of research conducted in the field of procurement by other governmental jurisdictions, national technical societies, trade associations having national recognition, and by private businesses or organizations;
 - (5) Prescribing and maintaining such forms as needed to operate the procurement program;
 - (6) Preparing, recommending, and implementing standard procurement nomenclature for using agencies and product suppliers;

- (7) Preparing, adopting and properly maintaining a vendors' catalog file and qualified products list;
- (8) Exploring cooperative ventures and possibilities of buying in bulk so as to take full advantage of discounts;
- (9) Procuring for Augusta, Georgia whenever possible all tax exemptions;
- (10) Cooperating with using agencies so as to secure for Augusta, Georgia the maximum efficiency in budgeting and purchasing;
- (11) Recommending to the Administrator that product vendors who are irresponsible and non-responsive or default on contracts be debarred from receiving any business from Augusta, Georgia for an appropriate period of time;
- (12) Exercising general supervision over all other inventories of supplies belonging to Augusta, Georgia;
- (13) Establishing and maintaining programs for specifications development, contract administration, and inspecting, testing and acceptance, in cooperation with the public agencies using the commodities, services and construction products;
- (14) Working to ensure equal opportunity for all business owners;
- (15) Selling, trading, or otherwise disposing of surplus supplies belonging to Augusta, Georgia;
- (16) Prequalifying suppliers;
- (17) Prequalifying products through the study of testing data;
- (18) Maintaining the official Augusta, Georgia bidder's list;
- (19) Adopting operational procedures;
- (20) Contract administration;
- (21) Examining solicitation documents and contracts to ensure compliance

with state and federal laws as well as any court ordered injunctions;

- (22) Resolving protests except as otherwise designated by the AUGUSTA, GA. CODE; and
- (23) Any other duty assigned by the Commission or Administrator that is within the intent and scope of duties set forth in the AUGUSTA, GA. CODE.

Sec. 1-10-24. Centralization of procurement function.

- (a) Except as otherwise required by law, the Procurement Director or designee shall solicit all bids or proposals for the procurement of commodities, services, and construction products, professional or consultant service products and personal property disposition for all using agencies of Augusta, Georgia, except for certain purchases officially authorized to be made by an elected official or using agency head.
- (b) Augusta, Georgia shall not be legally bound by any purchase order or contract made contrary to the provisions of the AUGUSTA, GA. CODE and this chapter. Except as may be specifically provided herein, it shall be a violation of this chapter for any officer or employee of Augusta, Georgia or other person to order the purchase of any commodities, make contracts for any services, or dispose of any property within the purview of this chapter other than through the Augusta, Georgia Administrator or Procurement Director. Any such purchase may be considered ultra vires. Violators shall be subject to penalties provided by law and/or in the AUGUSTA, GA. CODE.

Sec. 1-10-25. Contract administration.

- (a) Using Agency requirements. The Procurement Director shall maintain a close and cooperative relationship with using agencies; and shall afford each using agency reasonable opportunity to participate in and make recommendations with respect to procurement matters affecting the agency. The Procurement Director and the Department Head of the using agency shall consult with and seek technical assistance from professionals or persons within the agency having subject matter expertise and knowledge when drafting and developing solicitation documents. If the knowledge and expertise is not available in the using agency then the Procurement Director

and/or the using agency shall consult and seek such technical skills and knowledge from other Augusta departments or professionals.

- (b) Examination of solicitation documents and contracts: Prior to the advertising of any bid, solicitation, or procurement of any type, the using agency the Procurement Director and the using agency shall review each solicitation for accuracy as well as compliance with federal laws, state laws and court ordered enjoinders. The Procurement Director and the using agency shall also review each contract to determine the accuracy of the terms, conditions, substance and the inclusion of all required documents including insurance and bonding.

Sec. 1-10-26. Unauthorized contracts

Liability of Augusta, Georgia officers and employees for unauthorized contracts. If any officer or employee of Augusta, Georgia shall create any actual legal liability against himself or herself or Augusta, Georgia under the circumstances below, or any other circumstances, such action shall not be construed as a waiver of any defenses available to Augusta, Georgia, including immunity:

- (a) Such officer or employee requests or knowingly permits any person to proceed or to continue with the performance of any construction or services for Augusta, Georgia or to provide supplies to Augusta, Georgia; and
- (b) The construction or service, or the provision of supplies was not duly authorized by the Mayor or the Mayor's designee, in accordance with Augusta, Georgia Charter and the AUGUSTA, GA. CODE, prior to the performance of the construction, service, or provision of supplies, and such officer or employee knew or should have known such fact; and
- (c) The contractor or supplier expends money, incurs liability or otherwise acts to its financial detriment in reliance upon the representation of the Augusta, Georgia's officer or employee involved; then in such event, if Augusta, Georgia Administrator and department head, in the case of an employee, or the Mayor, in the case of an appointed official, as the case may be, determines that such circumstances exist, that there are no mitigating or extenuating factors sufficient to justify the actions of the officer or employee, and that just cause exists for the discharge of the offending officer or employee of Augusta, Georgia then such offending officer or employee shall be discharged from his or her employment with Augusta, Georgia

subject to the labor-management relations ordinance where appropriate.

- (d) Augusta, Georgia prohibits any language in any solicitation, bid or contract that is inconsistent with the March 14, 2007 Court Order in the case, Thompson Wrecking, Inc. v. Augusta Georgia, civil action No. 1:07-CV-019. Any such language appearing in any Augusta, Georgia solicitation, bid or contract is void and unenforceable.
- (e) Nothing in this article or the AUGUSTA, GA. CODE shall be construed as a waiver of any defenses available to Augusta, Georgia, including immunity.

Sec. 1-10-27. Conflicts of interests.

In accordance with this division it shall be unethical for any Augusta, Georgia officer or employee to participate directly or indirectly in the procurement process except in the following circumstances:

- (a) Procurement by competitive sealed bidding. Direct or indirect financial interest in or employment by or having any other interest in a business which is involved in a procurement with Augusta, Georgia only through a competitive sealed bid shall not be a cause for a conflict of interest under this division.
- (b) Disposition of real property by competitive sealed bidding. Direct or indirect financial interest in or employment by or having any other interest in a business which is involved in the acquisition of real property disposed of by Augusta, Georgia through competitive sealed bidding shall not be a cause for a conflict of interest under this division.
- (c) Disclosure and determination of no adverse interest. Any Augusta, Georgia officer or employee who has a direct or indirect financial interest in any procurement made other than by a competitive sealed bid shall disclose the nature of the financial interest to the Procurement Director. Augusta, Georgia Administrator, in consultation with the Procurement Director and General Counsel shall make a written determination as to whether Augusta, Georgia officer or employee has a conflict of interest that would prevent participation in such procurement.

Sec. 1-10-28. Gratuities and kickbacks.

- (a) **Gratuities.** It shall be unethical for any person to offer, give or agree to give any employee or former employee or for any employee or former employee to solicit, demand, accept or agree to accept from another person a gratuity or an offer of employment in connection with any decisions, approval, disapproval, recommendation, preparation of any procurement, influencing the content of any specification or procurement standard, rendering of any advice, investigation or acting any advisory capacity or in any in any matter related to a contract, subcontract, solicitation or proposal.
- (b) **Kickbacks.** It shall be unethical for any payment, gratuity or offer of employment to be made by or on behalf of a subcontractor or contractor or any person associated therewith as an inducement for the award of a contract or subcontract. This prohibition against gratuities and kickbacks shall be contained in every solicitation and contract.
- (c) **Former Employees.** No former employee or officer shall participate directly or indirectly in an Augusta, Georgia procurement for six (6) months after termination of employment or service with Augusta, Georgia.

Sec. 1-10-29. Contingent fees.

- (a) **Prohibition.** It shall be unethical for a person to be retained or to retain a person to solicit or secure an Augusta, Georgia contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, except for retention of bona fide employees of bona fide established commercial selling agencies for the purpose of securing business.
- (b) **Contract clause required.** Every Augusta, Georgia contract or purchase order shall contain the clause prohibiting contingent fees, as follows:
“The vendor or contractor or firm warrants that it has not employed or retained any company or person, other than a bona fide employee working for the vendor or contractor or firm, to solicit or secure this contract or purchase order; and that the vendor or contractor or firm has not paid or agreed to pay any person, company, association, corporation, individual or firm other than a bona fide employee working for the vendor or contractor or firms, any fee, commission, percentage, gift or any other consideration contingent upon or resulting from the award or making of this agreement, For the breach or violation of the above warranty, and upon a finding after notice and hearing, Augusta, Georgia shall have the right to terminate the contract or purchase order without liability, and, at its discretion, to deduct

from the contract or purchase order price, or otherwise recover the full amount of such fee, commission, percentage, gift or consideration.”

Sec. 1-10-30. Penalties.

- (a) Criminal penalties. To the extent that violations of the ethical standards of conduct set forth in this division constitute violations of state law or violations of Augusta, Georgia standards of conduct set forth in section 1-1-8 of the AUGUSTA, GA. CODE, they shall be punishable as provided therein. Such penalties shall be in addition to the civil sanctions set forth in this division. Criminal, civil and administrative sanctions, against employees or non-employees which are in existence on the effective date of the ordinance from which this article derives shall not be impaired.
- (b) Sanctions. The Augusta, Georgia Board of Commissioners is permitted to impose sanctions upon any employee or non-employee for violations of these provisions.
- (c) Employees. The Administrator, upon the recommendation of a Augusta, Georgia Department Director may impose any one or more of the following sanctions on an employee for violations of the ethical standards of this division:
 - (1) Oral or written warnings or reprimands;
 - (2) Suspensions with or without pay for specified periods of time; or
 - (3) Termination of employment.
- (d) Nonemployees. The Administrator, upon recommendation and approval by the Board of Commissioners, may impose one or more of the following sanctions on a non-employee for violations of the ethical standards:
 - (1) Written warnings or reprimands;
 - (2) Termination of contracts; or
 - (3) Debarment or suspension as provided in Article 8.

Sec. 1-10-31. Reporting of anti-competitive practices to state.

Under this article, collusion and other anti-competitive practices among offerors are prohibited by local, state and federal laws, and Augusta, Georgia, therefore, establishes the following:

- (a) Certification of independent price determination. All offerors shall identify a person having authority to sign for the offeror who shall certify, in writing, as follows:
"I certify that this offer is made without prior understanding, agreement, or connection with any corporation, firm, or person submitting an offer for the same supplies, services, construction, or professional or consultant services, and is in all respects fair and without collusion or fraud. I understand collusive bidding is a violation of local, state and federal law and can result in fines, prison sentences, and civil damages awards. I agree to abide by all conditions of this solicitation and offer and certify that I am authorized to sign for this offeror."
- (b) Compliance with this subsection shall be considered met if the certification of independent price determination, as provided in this subsection, is set forth in an exhibit attached to the offer and appropriate language incorporating the exhibit into the offer is set forth therein.
- (c) Reporting of anti-competitive practices. When for any reason collusion or other anti-competitive practices are suspected among any offerors, a notice of the relevant facts shall be transmitted to the State Attorney General by the Augusta, Georgia General Counsel for investigation.

ARTICLE 4

PRODUCT SPECIFICATIONS

Sec. 1-10-32. Purpose.

The purpose of a specification is to provide a description and statement of the requirements of a product, components of a product, the capability or performance of a product, and/or the service or work to be performed to create a product.

Sec. 1-10-33. Types of specifications.

- (a) Design. This specification describes and states the required functional, physical and quality characteristics of a product, components of products, or services.
- (b) Performance. This specification describes and states the intended use, operating conditions, specific features and characteristics, and performance capability of the product. For construction or services, a performance specification states the methods to be employed and/or standards to be met, specific starting and completion schedule, and frequency of the service to be performed to develop the final product.
- (c) Design/performance. This specification is a combination of types (a) and (b) described above. It is a complete description and statement of the required physical makeup, functionality, intended use, operating conditions, specific features and characteristics, and performance capability of the product.
- (d) Service availability. If availability of service is to be a criteria for awarding a contract, the specifications shall clearly state that service availability may be considered in determining the most responsive bid, and the bidders shall be required to submit information concerning their ability to service and maintain the product or equipment.
- (e) A specification should be complete in its statement requirements. Other published specifications can be incorporated (e.g., Georgia D.O.T. Specifications, Underwriters Laboratory, etc.); however, original statements are preferable. A specification may also include provisions for testing and inspecting where necessary.

Sec. 1-10-34. Maximum practicable competition.

All specifications shall be drafted so as to promote overall economy for the purpose intended and encourage competition in satisfying Augusta, Georgia's needs, and shall not be unduly restrictive. The procedures in this Section apply to all specifications including, but not limited to, those prepared for Augusta, Georgia by architects, engineers, designers, draftsmen, and other consulting persons.

Sec. 1-10-35. Qualified products list.

- (a) Augusta, Georgia shall advertise at least once per fiscal year for vendors to register with the Procurement Department the products and services they

wish to offer Augusta, Georgia. Augusta, Georgia shall keep an index of these vendors by name and the list shall be cross referenced for products and services. The vendor's name shall be kept for two (2) years or permanently if the vendor continues to offer bids. Records shall be kept as to the number of times a vendor is contacted for informal quotes and other bids. Upon the request of a vendor, the said vendor shall be added or deleted from the list. The use of such a list is not intended to restrict competition. Any vendor may submit, prior to product solicitation, a commodity, product or service to the Procurement Director for review and possible inclusion on the qualified products list.

- (b) Vendors shall be removed from the vendor list for the reasons established by the Procurement Director, including, but not limited to:
 - (1) Declining to offer bids for a two (2) year period.
 - (2) Failing to satisfactorily meet terms, agreements, or contracts made with the procurement department or the using agency.
 - (3) Being convicted of criminal offenses in obtaining contracts or convicted of embezzlement, violation of state or federal anti-trust statutes, or any other crime which indicates a lack of business integrity or honesty.
 - (4) Violating contract provisions or failing to perform without good cause or any other cause which the Procurement Director deems to be so serious as to affect the responsiveness and responsibility of a contractor, including the disbarment or suspension from a vendor's list by another governmental entity.
 - (5) Violating the standards as set forth in Article II hereof for conflicts of interest.

Sec. 1-10-36. Background information on vendors.

The Department Head and/or the Administrator is directed to provide the bid amount as submitted, information concerning the vendor's previous performance, the service and quality of the products offered, the availability of the goods and services when needed, adherence to delivery schedules, and other criteria pertinent to that particular item, on vendors who have submitted bids, proposals, or contracts

for the Commission's consideration. The information is to be included in the backup documents for the Commission's consideration in awarding the contract.

Sec. 1-10-37. Product references in specifications.

- (a) Use. Product references may be used in specifications, in conjunction with other descriptive narrative, when:
 - (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;
 - (3) The nature of the product or the nature of Augusta, Georgia's requirements dictates the use of a brand name or equal reference in the specification; or
 - (4) The use of a brand name or equal specification is in Augusta, Georgia's best interests.
- (b) Designation of several products references. Product reference or equal specifications shall seek to identify as many different product references as are practicable, as or equal references and shall further state that substantially equivalent products to those designated will be considered for award, unless conditions warrant otherwise.
 - (1) Unless otherwise authorized by the Administrator, product reference or equal specifications shall include a description of the particular design, functional, or performance characteristics which are required.
 - (2) Where a product reference or equal specification is used in a solicitation, the solicitation shall contain explanatory language that the use of the product reference is for the purpose of describing the standard of quality, performance, and characteristics desired and is not intended to limit or restrict competition.
- (c) In all cases where brand name items are requisitioned by any department, the Procurement Director has the authority to determine whether similar products of equal quality offered for sale to Augusta, Georgia at a lower

price shall be ordered in lieu of the requisitioned brand name items.

Sec. 1-10-38. Responsibility for specifications.

The using agency shall be responsible for acquiring specifications data for its procurements. Procurement Department personnel may assist with this task by providing copies of previously used specifications, brochures, or other reference materials. However, the Procurement Director shall have the primary responsibility to develop the data provided by the using agency head into the proper format for the solicitation of bids, proposals, or quotations and ensure that all specifications comply with federal laws, state laws and court ordered enjoinders. All specifications shall be drafted so as to promote free and open competition in satisfying the using agency's needs and shall not be unduly restrictive.

Sec. 1-10-39. Inspection of purchases.

The procurement director, or his or her designee, in conjunction with the using agency or department head shall inspect, or supervise the inspection of, all deliveries of materials, supplies or contractual services to determine their conformance with the specifications set forth in the pertinent purchase order or contract. The Procurement Director may require chemical and physical tests of samples submitted with bids and samples of deliveries, which examinations are necessary to determine quality of the samples and conformance with specifications.

ARTICLE 5

REQUIREMENTS FOR BIDDING OR PROPOSING ON AUGUSTA, GEORGIA CONTRACTS

Sec. 1-10-40. Responsibility of bidders and proposers.

- (a) Determination of responsibility. The level of responsibility of the bidder or proposer shall be ascertained for each contract awarded by Augusta, Georgia based upon full disclosure to the Procurement Director concerning the person's capacity to meet the terms of the contract and based upon the person's past record of performance on similar contracts, the bidder's quality of work, general reputation in the community, financial responsibility, and previous employment or use by Augusta, Georgia. If an offeror who otherwise would have been awarded a contract is found non-responsible, a

written determination of non-responsibility, setting forth the basis of the finding, shall be prepared by the Procurement Director or the using agency and submitted to the Procurement Director. The failure of an offeror to promptly supply information in connection with an inquiry with respect to the level of responsibility may be grounds for a determination of non-responsibility with respect to such bidder or offeror or proposer. A copy of the determination shall be sent promptly to the non-responsible offeror. The final determination shall be made a part of Augusta, Georgia's contract file and be made a public record.

- (b) Right of nondisclosure. Except as required by the Open Records Act, information furnished by an offeror pursuant to this Section shall not be disclosed outside of the Procurement Department, or using agency, by Augusta, Georgia staff without prior written consent by the offeror.

Sec. 1-10-41. Cost or pricing data.

- (a) Required submissions relating to the award of contract. A prospective contractor shall submit cost or pricing data when the contract is expected to exceed five thousand dollars (\$5,000) and is to be awarded by competitive sealed proposals (section 1-10-52; Competitive Sealed Proposals), by sole source procurement authority (section 1-10-56; Sole Source Procurement), or by competitive selection procedures for professional and consultant services (section 1-10-53).
- (b) Exceptions. The submission of cost or pricing data relating to the award of a contract is not required when:
 - (1) The contract price is based on adequate price competition;
 - (2) The contract price is based on established catalogue prices or market prices;
 - (3) The contract price is set by law or regulation;
 - (4) Augusta, Georgia uses an alternative procurement method for obtaining the best value, such as Construction Management at Risk, Design/Build, etc.; or
 - (5) It is determined by the Procurement Director and approved by the

Augusta, Georgia Administrator, in writing, that the requirements 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 approval 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, whenever the change or modification involves aggregate increases or aggregate decreases of five percent (5%) or more of original bid or proposal price.
- (d) Exceptions. The submission of cost or pricing data relating to the pricing of a change order or contract modification is not required when:
 - (1) Unrelated and separately priced adjustments for which cost or pricing data would not be required are consolidated for administrative convenience; or
 - (2) It is determined in a written report by the Procurement Director and approved by the Augusta, Georgia Administrator that the requirements of subsection (c) hereof (Cost or Pricing Data; Required Submissions Relating to Change Orders or Contract Modifications) may be waived, and the determination states the reasons for such waiver.
- (e) Certification required. Any prospective or current contractor required to submit cost or pricing data in accordance with this Section shall certify that to the best of its 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 for contract modification.
- (f) Price adjustment provision required in contracts. Augusta, Georgia contracts shall include a provision stating that when detailed pricing data has been requested by Augusta, Georgia and submitted by the offeror/contractor under the terms of the contract which is later found to be in error, that the price of the products charged to Augusta, Georgia, including profit or fee, shall be appropriately adjusted. Such prices shall be accurate, complete, and current as of the date agreed upon between Augusta, Georgia and the

contractor.

Sec. 1-10-42. Cost or price analysis.

A cost analysis or a price analysis, including life cycle costing as appropriate, may be conducted prior to award of a contract. If this technique is to be used, notice shall be provided the bidder/offeror in the bid solicitation or request for proposals. A written record of such cost analysis or price analysis shall be made a part of the contract file.

Sec. 1-10-43. Bid and performance bonds when required.

Bid and performance bonds or other security shall be requested for any contract as the Procurement Director, using agency head, and/or Administrator deem advisable to protect Augusta, Georgia's interest under circumstances specified herein. Any such bonding requirements shall be set forth in the solicitation.

Sec. 1-10-44. Bid security.

- (a) Requirement for bid security. Bid security shall be required for all competitive sealed bids for construction contracts when the price is estimated by the Procurement Director to exceed one-hundred thousand dollars (\$100,000).
- (b) Bid security shall be a bond provided by a surety company authorized to do business in the State of Georgia or the equivalent in cashier's or certified check (Checks shall be made payable to Augusta, Georgia), or such other security as approved by the Augusta, Georgia General Counsel.
- (c) Nothing herein prevents the requirements of such security on construction and other purchases less than one-hundred thousand dollars (\$100,000) when the circumstances warrant such requirements as determined by the Procurement Director and using agency head.
- (d) Amount. Bid security, when required, shall be in an amount equal to at least ten percent (10%) of the amount of bid or an amount certain specified in the solicitation.
- (e) The bid security of the three (3) lowest bidders shall be held until contract award. Securities posted by others will be returned shortly after receipt of

bids. Except for the three (3) lowest bidders, unsuccessful bidders shall be entitled to the return of the bid security. Upon failure of a successful bidder to enter into a contract within an established time frame after Augusta, Georgia tenders the proposed contract, the bidder shall forfeit the bid security. Upon approval of the contract by the Commission, the remaining bid securities shall be returned.

- (f) Upon failure of an offeror to enter into a contract within ten (10) days after the contract is tendered by Augusta, Georgia, the offeror's security is subject to forfeit.
- (g) Rejection of bids/noncompliance with bid security requirement. When the procurement requires bid security, any bid or proposal submitted without such security shall be rejected and returned to the bidder with a written explanation of the action taken.
- (h) Withdrawal of bids. Withdrawal of a bid is considered cause to forfeit bid security. However, the bidder may be entitled to the return of its bid security if the bidder is permitted to withdraw its bid or proposal before award as provided in section 1-10-50(h).

Sec. 1-10-45. Payment and performance bonds.

- (a) Requirement and amount. When a contract for construction services is awarded in excess of one-hundred thousand dollars (\$100,000) the following bonds shall be delivered to Augusta, Georgia, and shall become binding on the parties upon the execution of the contract:
 - (1) A performance bond in the amount of 100% of the price specified in the contract executed by a surety company authorized to do business in the State of Georgia, and in a form and fashion satisfactory to Augusta, Georgia; and
 - (2) A payment bond in the amount of 100% of the price specified in the contract executed by a surety company authorized to do business in the State of Georgia and in a form and fashion satisfactory to Augusta, Georgia.
- (b) Nothing in this chapter shall prohibit Augusta, Georgia from requiring other contractors or suppliers of professional services to comply with one or both

bonding requirements if so determined by the Augusta, Georgia Administrator, and/or using agency head, to be necessary.

- (c) Reduction of bond amounts. Prior to the taking of bids, the Procurement Director and architect/engineer or project manager, upon approval of the Administrator, may reduce the amount of performance and payment bonds when a written determination is made that it is in the best interest of Augusta, Georgia to do so, provided Georgia law does not mandate the amount of such bond.
- (d) Authority to require additional bonds. Nothing in this Section shall be construed to limit the authority of Augusta, Georgia to require other security in addition to those bonds if warranted by the circumstances and other than specified in this Section.

Sec. 1-10-46. Insurance requirements.

Standard ranges and types of coverage shall be determined under the direction of the Augusta, Georgia Administrator and advice of the Augusta, Georgia General Counsel, Risk Management, Finance Director, Procurement Director and other appropriate staff. General requirements shall be reviewed at least once annually. Insurance shall be required within established ranges and for specific purposes for each solicitation and contract, except where otherwise provided for in the AUGUSTA, GA. CODE.

Sec. 1-10-47. Request for qualifications; pre-qualifications of contractors.

- (a) The Procurement Director, in consultation with the Administrator and using agency head may determine that it shall be in the best interest of Augusta, Georgia to pre-qualify offerors for contracts of a particular type. The imposed standards shall be met by any contractor who wishes submit a bid or proposal for the subject project. The contractor shall submit required data in order to obtain a fair and impartial determination of whether the pre-qualification standards have been met. When pre-qualification is required, only those contractors who submit the required pre-qualification information and who are actually pre-qualified to submit a bid or proposal for the proposed solicitation.
- (b) Public notice. Public notice of pre-qualification shall be given in the same manner as provided in section 1-10-50 (c).

- (c) Pre-qualification standards. The Procurement Director and affected using agency heads shall review all information submitted by the suppliers and, if necessary, require additional information. The standards set for pre-qualification shall include but not be limited to factors set forth in section 1-10-50-Sealed Bids; Bid Acceptance and Bid Evaluation or section 1-10-52-Sealed Proposals; Evaluation and Selection. If the Procurement Director and Administrator determine that the contractor meets all standards, then the contractor shall be so pre-qualified. The contractor shall be notified in writing.
- (d) Failure to pre-qualify. Should a contractor not be pre-qualified, appropriate written notice shall be sent and the contractor may appeal such determination as provided in Article 9.
- (e) In no instance shall a contract be awarded from the solicitation of request for qualifications.

ARTICLE 6

PROCUREMENT SOURCE SELECTION METHODS AND CONTRACT AWARDS

Sec. 1-10-48. Generally.

The following sections provide detailed information concerning the use of the seven (7) source selection methods available for use for the procurement of commodities, services and construction products for Augusta, Georgia. The seven methods are: (1) sealed bids, (2) sealed proposals, (3) special services, (4) quotations or informal bids, (5) sole source, (6) emergency procurement and (7) annual contracts.

Sec. 1-10-49. Purchase order.

No officer or employee of Augusta, Georgia shall request a vendor to deliver goods, merchandise, materials or supplies to Augusta, Georgia except upon a regular purchase order issued by the procurement agent; however, the provisions of this subsection shall not apply to emergency purchases provided for in this section.

Sec. 1-10-50. Sealed bids selection method.

- (a) Conditions for use. All contracts of Augusta, Georgia shall be awarded by competitive sealed bidding except as otherwise provided elsewhere in this article (see section 1-10-52-Sealed Proposals; 1-10-53-Professional Services; 1-10-54-Quotations; 1-10-56-Sole Source Procurement; and 1-10-57-Emergency Procurements, of this chapter).
- (b) Invitation for bids and specifications. An invitation for bids shall be issued by the Procurement Office and shall include specifications prepared in accordance with Article 4 (Product Specifications), and all contractual terms and conditions, applicable to the procurement. **All specific requirements contained in the invitation to bid including, but not limited to, the number of copies needed, the timing of the submission, the required financial data, and any other requirements designated by the Procurement Department are considered material conditions of the bid which are not waiveable or modifiable by the Procurement Director.** All requests to waive or modify any such material condition shall be submitted through the Procurement Director to the appropriate committee of the Augusta, Georgia Commission for approval by the Augusta, Georgia Commission.
- (c) Public notice and bidder's list. Adequate public notice of the invitation for bids shall be given in reasonable time, not less than ten (10) working days prior to the date set forth therein for the receipt of bids.
 - (1) Public works type contracts with values that equal or exceed one-hundred thousand dollars (\$100,000), shall be advertised at least once weekly for at least four (4) weeks prior to opening of bids.
 - (2) Public notice shall include publication for three (3) days within a ten (10) day period in the legal gazette or newspaper. The public notice minimally shall state the place, date, and time of pre-bid conference and/or bid opening, where specification documents may be obtained, and a brief description of the purchase or sale.
 - (3) The Procurement Director shall also directly solicit sealed bids from all responsible prospective suppliers whose names appear on the Augusta, Georgia Bidders' List which the Procurement Director shall maintain.

- (d) Pre-bid conference and addendum. A conference to be conducted by the Procurement Director and using agency head, if appropriate, hearing will be scheduled at least five (5) working days before receipt of bids. While the pre-bid conference is not a requirement, it is strongly recommended and widely used to further acquaint interested bidders with the bid requirements and items to be purchased and vendor input. Any substantive changes to specifications resulting from the pre-bid conference or other vendor/contractor sessions shall be documented in an addendum and communicated to all bidders registered for the procurement action.
- (e) Bid opening. Sealed Bids shall be opened publicly in the presence of one or more witnesses at the time and place designated in the public notice and invitation for bids. The amount of each bid, and such other relevant information as the Procurement Director deems appropriate, together with the name of each bidder shall be recorded; the record, and each bid, shall be open to public inspection in accordance with Section 1-10-5 (Public Access to Procurement Information).
- (f) Bid acceptance and bid evaluation. Provided that the bids are delivered to the Procurement Director at the time, place, and under the conditions contained in the Invitation for Bids, the bids shall be conditionally accepted without alteration or correction pending evaluation.
- (g) Bids shall be evaluated based on the requirements set forth in the invitation for bids, which may include bidder responsibility and responsiveness, capability and past performance, and 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 objective and clearly measurable, including but not limited to discounts, transportation costs, and total or life cycle costs.
- (h) Correction or withdrawal of bids. Correction or withdrawal of inadvertently erroneous bids before or after bid opening may be permitted under the circumstances described below:
 - (1) Mistakes discovered before bid opening may be modified or withdrawn by written or telegraphic notice received in the Procurement Office prior to the time set for bid opening.

- (2) The bidder may withdraw the bid, prior to bid opening, without revealing the amount of the bid, by submitting a new sealed bid and providing written notice of such withdrawal.
- (3) After the bid opening, corrections to bids shall be permitted only as to bid price and only to the extent that the bidder can show by clear and convincing evidence that a mistake of a non-judgmental character was made, the nature of the mistake, and the bid price actually intended. Otherwise, no changes in bid prices or other provisions of bids shall be permitted.
- (4) In lieu of bid correction, a low bidder alleging a material mistake of fact may be permitted to withdraw its bid if:
 - (i) Such error in the calculation of the bid can be documented by clear and convincing written evidence;
 - (ii) Such error can be clearly shown by objective evidence drawn from inspection of the original work papers, documents, or materials used in the preparation of the bid sought to be withdrawn;
 - (iii) The bidder serves written notice upon the Procurement Director either prior to the award of the contract or not later than forty-eight (48) hours after the opening of bids, excluding Saturdays, Sundays and legal holidays;
 - (iv) The bid was submitted in good faith and the mistake was due to a calculation or clerical error, an inadvertent omission or typographical error as opposed to an error in judgment; and
 - (v) The withdrawal of the bid will not result in undue prejudice to Augusta, Georgia or other bidders by placing them in a materially worse position than they would have occupied if the bid had never been submitted.
- (5) In the event that an apparent successful bidder has withdrawn his or her bid as provided in subsection (3) of this Code section, action on the remaining bids should be considered as though the withdrawn bid

had not been received. In the event the project is re-let for bids, under no circumstances shall a bidder who has filed a request to withdraw a bid be permitted to resubmit a bid for the work.

- (6) No bidder who is permitted to withdraw a bid pursuant to subsection (3) of this Code section shall for compensation supply any material or labor to, or perform any subcontract or other work agreement for, the person or firm to whom the contract is awarded or otherwise benefit, directly or indirectly, from the performance of the project for which the withdrawn bid was submitted. (O.C.G.A. § 13-10-22).
- (7) All decisions to permit the correction or withdrawal of bids, or to cancel awards or contracts based on bid mistakes, shall be supported in a written report made by the Procurement Director.
- (8) Withdrawal after receipt of bids is cause to forfeit bid security unless substantial evidence was presented clearly evidencing the mistake and hardship that would occur to either Augusta, Georgia or the bidder in the event of award.
- (h) Tie bids. In the event two or more bidders are tied in price while otherwise meeting all of the required conditions, the bid shall be awarded to the business which is located within Augusta, Georgia, or if not within the above, within the State of Georgia. Where this method does not result in the awarding of a bid, the Procurement Director shall call a public forum, cause each bidder or stand-in to write the name of the bidder on paper and placed in a container, the winner to be determined by drawing lots.
- (i) Letting the contract. The contract shall be awarded or let in accordance with procedures set forth herein. Award shall occur with reasonable promptness by appropriate written notice to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the invitation for bids.
- (j) In addition to price and other material factors, the Procurement Director, in consultation with the using agency, shall consider the following in the context of award recommendations:
 - (1) The ability, capacity, and skill of the bidder to perform the contract or provide the services required,

- (2) The capability of the bidder to perform the contract or provide the service promptly or within the time specified, without delay or interference,
 - (3) The character, integrity, reputation, judgment, experience, and efficiency of the bidder,
 - (4) The quality of performance on previous contracts,
 - (5) The previous and existing compliance by the bidder with laws and ordinances relating to the contract or services,
 - (6) The sufficiency of the financial resources of the bidder relating to his ability to perform the contract,
 - (7) The quality, availability, and adaptability of the supplies or services to the particular use required, and
 - (8) The number and scope of conditions attached to the bid by the bidder.
- (k) Award to other than low bidder. When the award is not given to the lowest most responsive and responsible bidder, a full and complete statement of the reasons for awarding the purchase order or other contract shall be prepared and signed by the Procurement Director and/or Administrator and made part of the record file.

Sec. 1-10-51. Request for proposals.

Request for proposals shall be handled in the same manner as the bid process as described above for solicitation and awarding of contracts for goods or services with the following exceptions:

- (a) Only the names of the vendors making offers shall be disclosed at the proposal opening.
- (b) Content of the proposals submitted by competing persons shall not be disclosed during the process of the negotiations.
- (c) Proposals shall be open for public inspection only after the award is made.

- (d) Proprietary or confidential information, marked as such in each proposal, shall not be disclosed without the written consent of the offeror.
- (e) Discussions may be conducted with responsible persons submitting a proposal determined to have a reasonable chance of being selected for the award. These discussions may be held for the purpose of clarification to assure a full understanding of the solicitation requirement and responsiveness thereto.
- (f) Revisions may be permitted after submissions and prior to award for the purpose of obtaining the best and final offers.
- (g) In conducting discussions with the persons submitting the proposals, there shall be no disclosure of any information derived from the other persons submitting proposals.

Sec. 1-10-52. Sealed proposals.

- (a) Conditions for use. The competitive sealed proposals method may be utilized when the Augusta, Georgia Administrator approves the written justification of the Procurement Director or using agency head that the sealed bid method is not in the best interest of Augusta, Georgia. Generally, this method may be used when competitive sealed bidding (involving the preparation of detailed and specific specifications) is either not practicable or not advantageous to Augusta, Georgia. Augusta, Georgia is not restricted from using alternative procurement methods for obtaining the best value on any procurement, such as Construction Management at Risk, Design/Build, etc.
- (b) Request for proposals. Competitive sealed proposals shall be solicited through a request for proposals (RFP).
- (c) Public notice. Adequate public notice of the request for proposals shall be given in the same manner as provided in section 1-10- 50(c)(Public Notice and Bidder's List); provided the normal period of time between notice and receipt of proposals minimally shall be fifteen (15) calendar days.
- (d) Pre-proposal conference. A pre-proposal conference may be scheduled at least five (5) days prior to the date set for receipt of proposals, and notice

shall be handled in a manner similar to section 1-10-50(c)-Public Notice and Bidder's List. No information provided at such pre-proposal conference shall be binding upon Augusta, Georgia unless provided in writing to all offerors.

- (e) Receipt of proposals. Proposals will be received at the time and place designated in the request for proposals, complete with bidder qualification and technical information. No late proposals shall be accepted. Price information shall be separated from the proposal in a sealed envelope and opened only after the proposals have been reviewed and ranked.

The names of the offerors will be identified at the proposal acceptance; however, no proposal will be handled so as to permit disclosure of the detailed contents of the response until after award of contract. A record of all responses shall be prepared and maintained for the files and audit purposes.

- (f) Public inspection. The responses will be open for public inspection only after contract award. Proprietary or confidential information marked as such in each proposal will not be disclosed without written consent of the offeror.
- (g) Evaluation and selection. The request for proposals shall state the relative importance of price and other evaluation factors that will be used in the context of proposal evaluation and contract award. (Pricing proposals will not be opened until the proposals have been reviewed and ranked). Such evaluation factors may include, but not be limited to:

- (1) The ability, capacity, and skill of the offeror to perform the contract or provide the services required;
- (2) The capability of the offeror to perform the contract or provide the service promptly or within the time specified, without delay or interference;
- (3) The character, integrity, reputation, judgment, experience, and efficiency of the offeror;
- (4) The quality of performance on previous contracts;
- (5) The previous and existing compliance by the offeror with laws and ordinances relating to the contract or services;

- (6) The sufficiency of the financial resources of the offeror relating to his ability to perform the contract;
 - (7) The quality, availability, and adaptability of the supplies or services to the particular use required; and
 - (8) Price.
- (h) Selection committee. A selection committee, minimally consisting of representatives of the procurement office, the using agency, and the Administrator's office or his designee shall convene for the purpose of evaluating the proposals.
- (i) Preliminary negotiations. Discussions with the offerors and technical revisions to the proposals may occur. Discussions may be conducted with the responsible offerors who submit proposals for the purpose of clarification and to assure full understanding of, and conformance to, the solicitation requirements. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussions and revision of proposals and such revisions may be permitted after submission and prior to award for the purpose of obtaining best and final offers. In conducting discussions, there shall be no disclosure of information derived from proposals submitted by competing offerors.
- (j) From the date proposals are received by the Procurement Director through the date of contract award, no offeror shall make any substitutions, deletions, additions or other changes in the configuration or structure of the offeror's teams or members of the offeror's team.
- (k) Final negotiations and letting the contract. The Committee shall rank the technical proposals, open and consider the pricing proposals submitted by each offeror. Award shall be made or recommended for award through the Augusta, Georgia Administrator, to the most responsible and responsive offeror whose proposal is determined to be the most advantageous to Augusta, Georgia, taking into consideration price and 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 a written report of the basis on which the award is made/recommended. The contract shall be awarded or let in accordance with the procedures set forth in this Section and the other applicable sections of this chapter.

1-10-53. Competitive selection procedures for professional and consultant services.

As used in this section professional and consultant services, such as those provided by architects, engineers, investment banking, professional engineering, planning, landscape architects, land surveying, the medical arts, management and analysis, accounting or auditing, psychology or any other similar kind or type of professional practice which are normally obtained on a fee basis. This section shall not be applicable to services provided by attorneys or other professionals retained in connection with legal services. General Counsel shall be responsible for selecting attorneys and litigation related professionals.

- (a) Conditions for use. The Procurement Director, upon the request or recommendation of the using agency, shall procure professional and consultant services, in accordance with this section.
- (b) Statement of qualifications. The Procurement Director shall request and maintain statements of interest from persons interested in providing professional and consultant services that shall include a statement of qualifications and performance data for such persons. Each using agency shall encourage professional and consultant firms, which desire to provide services to the agency, to submit statements of qualifications to Procurement Director. Procurement Director may specify a uniform format for statements of qualifications. Persons may amend these statements at any time by filing a new statement. Any person placed on the qualifications list shall be removed if found in violation of any provision of this article or if such person is found in default under any contract with Augusta, Georgia.
- (c) Public notice. When requested by the using agency, Procurement Director shall issue public notice for requests for proposals from professional and consultant offerors as provided in section 1-10-50(c).
- (d) Selection. Procurement Director, in consultation and upon the recommendation of the head of the using agency, shall select from among the offerors no less than three (3) offerors (the "short-listed offerors") deemed to be the most responsible and responsive; provided, however, that if three (3) or less offerors respond to the solicitation, this requirement will not apply. The selection of the short-listed offerors shall be made in order of preference. From the date proposals are received by Procurement Director through the date the contract is awarded, no offeror may make substitutions, deletions, additions or other changes in the configuration or structure of the offeror's teams or members of offeror's teams prior to award. The selection

criteria shall include, but not be limited to, those contained in section 1-10-52(g) and the following:

- (1) Previous experience demonstrating competence to perform work or services involved in the solicitation;
 - (2) Past performance of previous contracts with respect to time of completion and quality of work;
 - (3) The fee or compensation demanded for the services;
 - (4) The ability to comply with applicable laws;
 - (5) The ability to comply with the schedule of the commencement and completion of the services, as required by Augusta, Georgia;
 - (6) The financial ability to furnish the necessary bonds to the extent necessary;
 - (7) The financial condition of the offeror; and
 - (8) The ability to provide staffing of management personnel, satisfactory to Augusta, Georgia.
- (e) Negotiations and award. Procurement Director shall negotiate a contract with the most responsible and responsive short-listed offeror at compensation that Procurement Director determines in writing to be fair and reasonable to Augusta, Georgia. In making this decision, Procurement Director shall take into account the estimated value, the scope, the complexity and the professional nature of the services to be rendered. Should Procurement Director be unable to negotiate a satisfactory contract with the offeror considered to be the most responsible and responsive at a price for Procurement Director determines to be fair and reasonable to Augusta, Georgia; negotiations with that offeror shall be terminated. Procurement Director shall then undertake negotiations with the second most responsible and responsive short-listed offeror. If negotiations with the second most responsible and responsive short-listed offeror are unsuccessful, negotiations shall be terminated and Procurement Director shall then undertake negotiations with the third most responsible and responsive short-listed offeror. Should Procurement Director be unable to negotiate a contract with any of the short-listed offerors, Procurement Director and the using agency may select from the additional offerors that were not short-listed in order of their responsibility and responsiveness and Procurement Director may continue negotiations in accordance with this section until an agreement is reached.

Sec. 1-10-54. Informal bids selection methods (standard and small purchases) and authority of Administrator and General Counsel.

- (a) Conditions for use. Any standard or small purchase contract or purchase order for supplies, services, and construction not exceeding ten thousand dollars (\$10,000) in total value may be made in accordance with the purchase procedures authorized in this Section and other applicable provisions of this Article. Contract requirements shall not be artificially divided so as to constitute a small purchase under this Section.
- (b) Request for quotations and specifications. Requests for quotations may be issued in writing or by telephone for purchases less than ten thousand dollars (\$10,000). In either case, specifications shall be prepared describing the item or service in a form suitable for an appropriate vendor response.
 - (1) Informal oral bid quotations. Quotes from a minimum of three (3) sources shall be obtained. Maximum purchase under this system is to be five thousand dollars (\$5,000), including sales tax. Vendor quotes are to be noted on the requisition for retention. The procurement requirement shall not be artificially divided so as to constitute a purchase to be made by this method.
 - (2) Informal written bid quotations. Solicitation for written bid quotes shall be obtained from three (3) sources, if available, from the vendor list. The maximum purchase under this system is to be ten thousand dollars (\$10,000), including sales tax.
 - (3) Selection is to be made from the list in the following manner:
 - (i) Low bidder on last quote;
 - (ii) Next vendor on list;
 - (iii) Repeat procedure until all vendors have been asked to quote;
 - (iv) Begin new rotation of vendors by using the last low bidder on quote.
- (c) Public notice. Notice in the form of advertisements is not required. However, no less than three (3) vendors/contractors shall be directly

solicited, if available, to submit quotations.

- (d) Receipt of quotations. Quotations shall be scheduled for receipt at a date, time and place certain. The amount of each quote and such other relevant information as the Procurement Director deems appropriate, together with the name of each offeror shall be recorded. The record of each quote shall be open to public inspection in accordance with section 1-10-5 (Public Access to Procurement Information).
- (e) Evaluation. Quotations shall be evaluated based on the requirements set forth in the request for quotations, which may include bidder responsiveness, capability and past performance, and criteria to determine acceptability such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose. Those criteria that will affect the quoted price and be considered in evaluation forward shall be objective and clearly measurable, including but not limited to discounts, transportation costs, and total or life cycle costs. No criteria may be used in the evaluation processes that are not set forth in the request for quotations or other notice.
- (f) Correction or withdrawal of quotes. Correction or withdrawal of inadvertently erroneous quotes before or after the evaluation of the quotes may be permitted under the circumstances described in section 1-10-50(g) (Correction or Withdrawal of Bids).
- (g) Tie quotes. Shall be handled in the manner described in section 1-10-50 (h) (Tie Bids).
- (h) Award. Award shall be made to the most responsible and responsive bidder offering the lowest acceptable quotation. The names of the person submitting quotations and the date and amount of each quotation shall be recorded and maintained as a public record. Written quotations are advisable but not expressly required.
- (i) Agency purchases under one-thousand dollars (\$1,000)/authority of using agency. Procurement of an item or article which does not exceed one-thousand dollars (\$1,000.00), including any sales tax, shall be exempt from the bid process except that, where applicable, contract vendors shall be used unless substitution is approved in writing and in advance by the Procurement Director. Further, the procurement requirements shall not be artificially divided so as to constitute a small purchase. A reasonable effort shall be

made to negotiate price agreements that will cover much of the small purchase volume. For purchases of one-thousand dollars (\$1,000) or less in value the using agency head may issue a Purchase Order to acquire commodity and service products. The using agency shall obtain adequate and reasonable competition for the supply, service, or construction being purchased. Further, the using agency head shall require the preparation and maintenance of written records adequate to document the competition obtained, properly account for the funds expended, and facilitate an audit of the small purchase made. Small purchases under one-thousand dollars (\$1,000) may be made by the elected official or using agency head of all using agencies as follows:

- (1) Where the purchase does not exceed one-thousand dollars (\$1,000) and a Using Agency Purchase Order is prepared and presented to the vendor.
 - (2) A copy of the purchase order shall be forwarded to Finance and Procurement notifying the Director of Finance and Procurement of the purchase and requesting payment to be made from funds previously allocated to such using agency.
- (j) Limitations on small purchases made by using agencies. When small purchases are made by the using agency head pursuant to Subsection (i), the following requirements shall be met:
- (1) Such purchases are limited to goods and minor services where no contract exists or goods are not stocked by Augusta, Georgia. No equipment and furniture purchases are authorized under subsection (i);
 - (2) The Using Agency Purchase Orders and original invoices shall be prepared and signed by an authorized party at the using agency level and forwarded to Finance for further processing;
 - (3) Purchases shall not be divided artificially to constitute a small purchase; and
 - (4) Using agencies are responsible for checking the availability of funds prior to making any small purchase.
- (k) Authority of Administrator to make small purchases. The Administrator

shall have authority to make purchases and enter into professional services agreements without Commission approval for products or services not exceeding \$25,000.

- (l) Authority of General Counsel to settle small cases. The General Counsel shall have authority to settle pending and potential litigation not exceeding \$25,000 without Commission approval.

Sec. 1-10-55. Banking services.

- (a) Vendor and payroll accounts. Requests for Proposals shall be solicited as provided in section 1-10-52 of this chapter for each of these accounts.
- (b) Accounts other than vendor and payroll accounts.
 - (1) Requests for Proposals shall be solicited as provided in section 1-10-52 of this chapter for each such account.
 - (2) As provided in section 1-10-6, local banks shall be contacted first. For purposes of this section, local banks shall be defined as those banking institutions with a full service banking location in Augusta, Georgia.

Sec. 1-10-56. Sole source procurement.

- (a) Notwithstanding other provisions in this Article, whenever it shall be made to appear that by reason of design, capacity, compatibility with other equipment or with machinery, purpose, function or other characteristics an item of procurement required by Augusta, Georgia or one of its departments is obtainable only from one source, the item may be procured by the Procurement Department through negotiation from the source from which it is available without the necessity of bids or proposals.
- (b) Before any item may be obtained under the provisions of this section, however, the requisitioning agency must accompany its requisition for the order with a statement specifying in reasonable detail the reasons why the item should be procured by sole source. This specification of reasons shall be in writing and shall be attached to the requisition at the time it is transmitted to the procurement officer and shall demonstrate due diligence in determining if other sources exist. The due diligence review shall include the research of available sources, contact with professional and trade

associations related to the supply, service or construction item or professional or consultant service. There shall also be a written determination which states the sources reviewed, the name of the contractor and the terms of the agreement reached including terms and prices.

- (c) If the Augusta, Georgia Administrator, upon considering the requisition and the substantiation therefore, determines that the item should be purchased by sole source procurement and the cost thereof does not exceed twenty thousand dollars (\$20,000), the Administrator may approve such procurement. If the item exceeds twenty thousand dollars (\$20,000) in cost, and the Administrator determines that sole source procurement is appropriate, the requisition shall be referred to the Commission for action.
- (d) The Procurement Director shall conduct the negotiations as to the terms of the sole source.
- (e) The Procurement Director shall draft a letter of justification for the sole source procurement and place in the contract file.

Sec. 1-10-57. Emergency procurement selection method.

Notwithstanding any other provisions of this chapter, the Procurement Director, Augusta, Georgia Administrator or constitutional officer may make or authorize others to make emergency procurement of equipment, supplies, services, general construction, or public works type construction services when there exists a threat to public health, welfare, or safety, or where daily operations are affected; provided that such emergency procurement shall be made with such competition as is practicable under the circumstances. As soon as practicable, a record of each emergency procurement shall be made and shall set forth the contractor's name, the amount and type of the contract, a listing of the item(s) procured under the contract, and the identification number of the contract file. A written report explaining the determination of the basis for the emergency and for the selection of the particular contractor shall be included in the contract file, and a copy of same provided the Augusta, Georgia Commission at their next regular meeting in the case of public works contracts as defined by Georgia Law or other Augusta, Georgia purchases when the value of the purchase exceeds twenty thousand dollars (\$20,000).

In the event an emergency should arise after office hours or on holidays or weekends which requires immediate action on the part of the using agency

involved and where it is not possible or convenient to reach the Procurement Director, constitutional officer, or Administrator, the using agency head is authorized to make purchases. Such purchases shall be well documented, packaged for payment, and forwarded to the Procurement Director within twenty-four (24) hours, if possible, after occurrence.

In the event the Board of Commissioners of Augusta, Georgia determines at an open meeting of which minutes are recorded, that an emergency exists, and there is an immediate need for goods, materials or supplies to relieve said emergency, the Board of Commissioners shall be allowed to approve purchases without bids in the event the Board has determined an emergency exists, but all such declarations of emergency shall be in strict accordance with applicable State law defining "emergency." (1975 Ga. Laws p. 4334 as amended).

Sec. 1-10-58. Annual contracts.

Upon approval of an annual contract by the Augusta, Georgia Board of Commissioners for supplies and services to a particular vendor or vendors, any using agency may order supplies or services under such annual contract pursuant to an individual project or purchase order.

Sec. 1-10-59. Specific requirements/options for source selection method.

Encumbrance of funds. The Procurement Director shall not execute any contracts or purchase orders, except in the case of certain emergency purchases, until the Finance Department staff certifies, after pre-audit, that there is to the credit of the using agency concerned a sufficient unencumbered appropriation balance, in excess of all unpaid obligations, to defray the amount of the purchase.

Sec. 1-10-60. Rejection or cancellation of solicitations; negotiating; re-advertisement.

- (a) Conditions for use. An invitation for bids/quotes, a request for proposals, or other solicitation may be canceled, or any or all bids may be rejected in whole or in part as may be specified in the solicitation, when it is for good cause and in the best interest of Augusta, Georgia. The reasons thereof shall be made part of the contract file. Each solicitation issued by Augusta, Georgia shall state that the solicitation may be canceled and that any bid or proposal may be rejected in whole or in part for good cause when in the best

interest of Augusta, Georgia. 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.

- (b) Authority to reject/cancel. The Augusta, Georgia Commission has the authority to reject/cancel any and all bids, quotes and proposals. The Administrator shall also have the authority to reject/cancel any and all bids, quotes and proposals but may only do so with the authorization of the director of the effected user department.
- (c) Negotiating. If the low responsive and responsible bid for the project exceeds available funds as certified by the Finance Department staff, and such bid does not exceed such funds by more than twenty percent (20%), the Augusta, Georgia Administrator and the Procurement Director are authorized, when time permits, or economic considerations preclude further re-solicitation of work of a reduced scope, to negotiate an adjustment of the bid price with the low responsive bidder, in order to bring the bid within the amount of available funds. Any such negotiated adjustment shall be based only upon eliminating independent deductive items specified in the invitation for bids.
- (d) Re-advertisement. In the event that the negotiating process set forth in subparagraph (c), above, is unsuccessful, the Procurement Director may, in the alternative, re-advertise for the purpose of receiving a new set of bids. Therefore, if the lowest and best bid exceeds the budgeted amount and the Augusta, Georgia Commission does not appropriate additional funds, the Procurement Director may readvertise for bids after making sufficient changes in the specifications to bring the project within budget.

Sec. 1-10-61. Multi-term contract.

- (a) Maximum period. A contract for services or supplies may be entered into for a period up to five (5) years, provided that the term of the contract and the conditions for renewal or extension, if any, is included in the solicitation and funds are available for the balance of the then current fiscal year. Payment and performance obligations for succeeding fiscal periods shall be subject to the availability and appropriation of funds. All multi-year contracts shall contain a clause which terminates the contract at the beginning of a fiscal

year when funds are not appropriated by the Commission for continuation of the contract for that fiscal year.

- (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 interest of Augusta, Georgia by encouraging effective competition or otherwise promoting economies in procurement.
- (c) Cancellation due to unavailability of funds in succeeding fiscal periods. All multi-term contracts shall include provisions providing 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 with appropriate notice.
- (d) Renewal of contract. At least ninety (90) days prior to the expiration of any term of a multi-term contract, the using agency shall submit to the Augusta, Georgia Administrator, a report of the performance of the contract and the agency's recommendation as to the renewal of the contract. The Administrator, after consultation with the using agency and review of the report, and upon appropriate approval, shall renew the contract if renewal is in the best interest of Augusta, Georgia. All other requirements of this Section must be met in order to consummate a renewal.
- (e) Expiration and extension. Contracts being considered for renewal or re-bid may be extended by the Administrator for a period of time not exceeding ninety (90) days. Any extensions are subject to the availability of funds and mutual agreement of the vendor/contractor and Augusta, Georgia.

Sec. 1-10-62. Right to inspect facilities.

Official representatives of Augusta, Georgia shall have the right to inspect facilities of a vendor at any reasonable time which is related to the performance of any contract award, bid on or to be awarded by Augusta, Georgia.

Sec. 1-10-63. Right to audit records and contracts and collection of statistical

data.

- (a) Official representatives of Augusta, Georgia may, at reasonable times and upon reasonable written notice to vendor, inspect the official records of the person or firm pertaining to a contract, change order, or purchase order with Augusta, Georgia when such inspection is required by law, or is authorized by the Administrator in writing as being in the public interest.
- (b) Contract audit. Augusta, Georgia shall be entitled to audit the books and records of a contractor or subcontractor under any negotiated contract or subcontract, other than a firm fixed-price contract to the extent that such books, documents, papers 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 authorized in writing.
- (c) Collection of statistical data. Augusta, Georgia shall be entitled to collect statistical information relating to such factors to determine whether disparities exist as permitted by law. All contractors and subcontractors under any negotiated contract or subcontract shall collect such information for every Augusta, Georgia contract and shall make such information available upon request.

Sec. 1-10-64. Rebidding or cancellation of existing contract.

In the event a vendor is unwilling or unable to perform a contract or the vendor gives written notice of cancellation of an existing contract, the Procurement Director may immediately pursue a replacement of said contract either by formal or informal bid procedure as is appropriate, with the approval of the Augusta, Georgia Administrator. The Procurement Director may accept a next lowest bidder. The options selected shall be the most advantageous to Augusta, Georgia.

Sec. 1-10-65. Multiple awards; limitations on multiple awards.

- (a) Multiple awards. Unless otherwise provided in this section, or unless otherwise provided by law, two or more offerors may be awarded separate contracts, at the discretion of the Administrator, on the basis of one solicitation for the same or similar work, supplies or services if Augusta, Georgia reserves the right to do so in the solicitation. Multiple contracts may

be awarded, in the discretion of the Administrator for the procurement of annual contracts for supplies, annual contracts for construction and annual contracts for services. The solicitation shall also include a statement that Augusta, Georgia may, in its discretion, elect to award only one contract if the Procurement Director, after consultation with the head of the using agency, determines in writing that one contract is sufficient for the needs anticipated by Augusta, Georgia at the level of quality desired. Awards shall be made in accordance with the provisions of this article. Notwithstanding anything contained in this section, however, if multiple awards are not anticipated in a solicitation prior to the deadline established for receipt of bids, proposals or quotations, multiple awards shall not be made under that solicitation.

- (b) Prohibition against multiple awards for the procurement of construction or services that are not annual contracts. Except as provided in subsection (a) of this section, or unless otherwise provided by law, multiple contracts shall not be awarded under one solicitation for the procurement of construction or services which are not annual contracts.
- (c) Inapplicability. This section shall not apply to the grant agreements, inter-governmental agreements or emergency procurements.

ARTICLE 7

LOCAL SMALL BUSINESS OPPORTUNITY PROGRAM

Sec. 1-10-66. Title.

Augusta, Georgia Local Small Business Opportunities Program (“LSBOP”).

Sec. 1-10-67. Objective.

Augusta, Georgia is firmly committed to the principles of equal opportunity and in keeping with these principles, hereby sets forth a program and establishes a mechanism for developing, approving, and implementing procedures by which local small business enterprises shall be identified, informed and educated regarding opportunities for supplying goods, general services, and construction services required by Augusta, Georgia, and providing for objectives for bidders to incorporate the use of Local Small Businesses as commercially useful sub-

contractors, thereby promoting balanced economic and community growth throughout Augusta, Georgia. The LSBOP is a race and gender-neutral program.

Sec. 1-10-68. Policy, intent and purpose.

- (a) Policy. It is the policy of Augusta, Georgia that all necessary and reasonable steps shall be taken to ensure that local small business enterprises have the maximum opportunity to compete for and participate in all contracts and subcontracts funded by or through the Augusta, Georgia governing authority. Further, the Augusta, Georgia Commission has determined as a means to ensure full economic participation by small local business that a mechanism for developing, approving and implementing a LSBOP is required.

Augusta, Georgia has established the LSBOP to promote opportunities for registered Local Small Business to participate in Augusta, Georgia's contracting and procurement activities by requiring contractors to utilize registered Local Small Businesses to perform commercially useful functions to the maximum extent possible and as economically feasible, as partners or subcontractors for service delivery or as suppliers of various goods required in the performance of a contract. This LSBOP is in addition to and shall not supplant the Local Preference Ordinance, Code § 1-10-6.

- (b) Intent and Purpose. The Augusta, Georgia Local Small Business Opportunity Program is established to encourage equal opportunity, diversity, and equity in Augusta, Georgia's contracting and procurement activities. In a race and gender neutral manner, the Program will promote fair and equal opportunities for all local small businesses. It is specifically intended that the encouragement of local small businesses will allow for the development and growth of such businesses to increase competition for construction and procurement opportunities.
- (1) It is the intent and purpose of this Program to encourage equal opportunity in Augusta, Georgia's contracting and procurement and to eliminate discrimination and the effects of past discrimination therein.
- (2) It is also the intent and purpose of this Program to encourage the use of the Local Small Business Opportunity Program, which will have the benefit to Augusta, Georgia of assisting the local economy with job formation while remedying the discrimination against minority

owned business enterprises in the Augusta, Georgia contracts and procurement in a race and gender-neutral manner.

- (3) It is also the intent and purpose of the LSBOP to develop evidence relevant to whether future race and gender conscious programs are necessary to remediate the effects of past or current discrimination, as required by applicable laws.

Sec. 1-10-69. Definitions.

- (a) Generally. Those definitions set forth in this Chapter shall also apply to this Article, except as provided in this section.
- (b) Specifically.
 - (1) Citizen's Small Business Advisory Board (CSBAB). Is a council to advise the Commission and Equal Opportunity Director of matters pertaining to the LSBOP, and to meet with small businesses to review and advise as to the issues in program administration. See Consolidation Act, Ga. Laws 1995, p. 3648, § 14(d).
 - (2) Commercially Useful Function. For the purpose of determining whether a registered Local Small Business is performing a commercially useful function, the Equal Opportunity Director shall consider all of the facts in the record, viewed as a whole, including without limitation the following:
 - (i) A Local Small Business performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved.
 - (ii) To perform a commercially useful function, the Local Small Business must be responsible, with respect to material and supplies used on the contract or sub-contract for which it is engaged, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself.
 - (iii) A Local Small Business does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which

funds are passed in order to obtain the appearance of Local Small Business participation. In determining whether a Local Small Business is such an extra participant, the Equal Opportunity Director will examine similar transactions, particularly those in which Local Small Businesses do not participate.

- (3) Good Faith Efforts. Techniques used by a bidder/proposer to seek Local Small Businesses to participate as a subcontractor or supplier required to fulfill the bid/proposal request for participation. Such good faith efforts of a bidder/proposer include, but are not necessarily limited to, the following actions:
- (i) Including qualified local small businesses in the prime contractor's solicitations for subcontractors and suppliers.
 - (ii) Assuring that local small businesses are solicited whenever such business enterprises can perform a commercially useful function.
 - (iii) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation of local small businesses.
 - (iv) Establishing delivery schedules, where the requirements of the prime contract permit, which encourage participation of local small businesses.
 - (v) Using the services and the assistance of the Equal Opportunity Director in the identification of qualified local small business and negotiating subcontracts and supply contracts with such enterprises.
 - (vi) Requiring each first tier subcontractor to take the affirmative steps outlined in sub paragraphs 1 through 5 above with respect to the identification and usage of second or third tier subcontractors.
 - (vii) Placing notices of opportunities for qualified local small business to perform subcontracting work on the eligible project in newspapers, trade journals, and other relevant publications, including publications specifically targeted to local small

businesses, or communicating such notices of opportunities via the Internet or by other available media or means.

- (viii) Designating portions of the work for local small businesses subcontracting in trades with available local small business subcontractors.
- (ix) Providing a minimum of five (5) days notice to local small businesses when requesting bids or proposals for furnishing material or services as a subcontractor or supplier.
- (4) Gross Receipts. Total income or, in the case of sole proprietorship gross income, plus “cost of goods sold” as these terms are defined or reported on Internal Revenue Service (IRS) Federal tax return forms; Form 1120 for corporations; Form 1120S for Subchapter S corporations; Form 1065 for partnerships; and Form 1040, Schedule F for farm or Schedule C for sole proprietorships.
- (5) Joint Venture. An association of two or more businesses to carry out a single business enterprise for profit for which purpose they combine their property, capital, efforts, skills, and knowledge.
- (6) Local Small Business. A corporation, sole proprietorship, partnership or other business organization that meets the requirements for registration as such with Augusta, Georgia in accordance with Section 1-10-64 of this code.
- (7) Monthly Utilization Report or MUR. A memorialization by a prime contractor of all subcontracting and Local Small Business participation utilized on a contract. Contractors/vendors are required to submit the Monthly Utilization Reports on all subcontracting participation to the Equal Opportunity Director.
- (8) Non-Discrimination Statement. Written affirmation made by a bidder relating to the bidder’s conduct prior to submission of a bid as well as after award of a contract that the bidder agrees to:
 - (i) Follow the policies of Augusta, Georgia relating to the participation of local small businesses.
 - (ii) Undertake certain measures to ensure the maximum practicable participation by local small businesses; and

- (iii) Not engage in discriminatory conduct against local small businesses inconsistent with this Policy.
- (9) **Personal Net Worth.** Net value of the assets of an individual owner, after total liabilities are deducted must not exceed seven hundred and fifty thousand dollars (\$750,000). An individual's Personal Net Worth does not include the individual's ownership interest and the individual's equity in his or her primary place of residence. An individual's Personal Net Worth includes his or her share of assets held jointly with the individual's spouse. Property held by the entireties is deemed to be owned equally by the spouse.
- (10) **Prime Contractor.** A person or firm who is awarded a contract from Augusta, Georgia for provision of goods or services and has the primary responsibility for performance of the contract. The Prime Contractor may subcontract portions of the work required to Subcontractors, as indicated in the bid or solicitation documents.
- (11) **Registered Local Small Business.** Any business entity registered by the Equal Opportunity Director, providing goods or services, which has its principal office and place of doing business in Augusta, Georgia; with three (3) year average gross annual receipts being not more than one and one half million dollars (\$1,500,000); and whose owners meet the personal net worth threshold, all as defined herein. The term Local Small Business shall also include a manufacturer with seventy-five (75) employees or less or wholesaler with fifty (50) employees or less without regard to gross revenues.
- (12) **Schedule of local small business participation.** Written data sheet which is a required submittal for a bid or proposal that lists proposed local small business subcontractors and the estimated value of proposed sub-contracts.

Sec. 1-10-70. Application; effective date.

Except as otherwise provided, this ordinance shall apply to all bids, proposals, contracts, expenditures and purchases commenced by Augusta, Georgia except sole source or emergency procurements and certain federally funded projects as provided herein. The effective date of this ordinance shall be the date it is approved by the Augusta, Georgia Commission.

Sec. 1-10-71. Program administration.

- (a) Services to be provided by the Local Small Business Opportunities Program. The Equal Opportunity Director shall have the primary responsibility to assure that the LSBOP is effectively and equitably carried out in Augusta, Georgia. Other Augusta, Georgia officials, the Procurement Director, Department Directors and management personnel shall give their full cooperation towards the implementation of the LSBOP.
- (b) Program. The LSBOP administration consists of performing vendor registration, education and outreach, and review of bid and proposal documents. Specifically, the program shall consist of:
 - (1) Developing and administering local small business registration criteria and procedures.
 - (2) Establishing and maintaining a directory available to the public of registered local small businesses capable of supplying the type and quality of equipment, supplies, general services, construction, and professional services required by Augusta, Georgia.
 - (3) Regularly seeking out and registering new local small businesses to bid on Augusta, Georgia purchases and solicitations.
 - (4) Notifying vendors of their registration status and advising non-registered parties of their right to appeal the denial of registration which shall be filed with the Equal Opportunity Director within five (5) days of receipt of such notice.
 - (5) Developing annual forecasts and periodically updating same based on a review of anticipated purchases and registered local small businesses.
 - (6) Monitoring and reporting on legislative and judicial actions relevant to local, small business interests.
 - (7) Reviewing specifications and bid documents with the Procurement Department to ensure maximum opportunities for registered local small businesses to compete on an equal basis for contracting opportunities and to perform commercially useful functions.

- (8) Convening and/or participating in information sessions with local small businesses regarding bid requirements and contract performance.
- (9) Providing technical assistance, conducting seminars, visiting vendors, and performing other outreach services to encourage and increase participation in Augusta, Georgia's bidding process by local small businesses.
- (10) Exploring and developing other means of expanding the program, and attracting and increasing local small business participation including joint efforts with other governmental agencies and authorities.
- (11) Refer local small businesses to third party development assistance providers when appropriate for bonding, financial and technical assistance.
- (12) Attend pre-bid, pre-qualification or pre-proposal conferences to provide information on the LSBOP.
- (13) Preparing and presenting an annual LSBOP report to the Augusta, Georgia Commission.
- (14) Assist prime contractors and other potential bidders in identifying and contacting local small businesses.
- (15) Develop outreach programs specifically targeted to educate local small businesses about the LSBOP.
- (16) The Equal Opportunity Director shall work with User Departments to set contracting goals for each project over \$100,000 to include those with subcontracting and/or supplier possibilities. The Equal Opportunity Director and User Departments shall have the authority to reduce or eliminate such local small business goals on a project based on the type of contract, the type of subcontracting work that will be required, and the availability of local small businesses.
- (17) At Risk Management Construction Project Prime bidders will also be subject to the contract goals for subcontractors.

- (18) Augusta, Georgia shall indicate goals for local small businesses in Project Specific solicitations over \$100,000 to provide opportunities for local small business participation.
 - (19) Where a bid provides a goal for local small business participation, the Equal Opportunity Director and User Department shall recommend a bidder be awarded a contract only where the bidder has demonstrated Good Faith Efforts to meet the designated goals.
 - (20) Notify all registered vendors of formal bid opportunities through direct solicitation or public advertisement, including information on the LSBOP.
 - (21) Work with project managers or user agencies to divide larger projects into smaller projects or contracts when commercially appropriate, in order to create more opportunities for local small businesses to participate in contracts let by Augusta, Georgia.
 - (22) Provide data and technical assistance to support the outreach efforts of the LSBOP as necessary and appropriate.
 - (23) Ensure specifications are open and competitive.
 - (24) The Equal Opportunity Director, the Using Agency and the Finance Director, may make special provision for progress payments as deemed reasonable to assist local small businesses to carry out the terms of a contract.
 - (25) When a local small business is awarded a contract with Augusta, Georgia, the Procurement Director may furnish written confirmation of the same, providing the terms of the contract which may be used by the local small business in negotiating lines of credit with lending institutions.
- (c) Evaluation of the Local Small Business Opportunity Program. The LSBOP shall be evaluated on an annual basis. Each annual report shall be compiled by the Equal Opportunity Director and shall compare the fiscal year ending with the previous fiscal year. Evaluation of the program may include:
- (1) Number of local small business firms registered;

- (2) Training and technical assistance offered to local small businesses;
- (3) Dissemination of LSBOP information at pre-bid conferences; and
- (4) Evaluation of the effectiveness of the local small business in relation to the achievement of Augusta, Georgia's goals set forth under this policy, including the utilization of local small businesses on contracts.

Sec. 1-10-72. Registration and certification procedures.

- (a) Registration Criteria; acceptance of certification by other governmental agencies. The LSBOP requires prior registration or evidence of current certification by other governmental agencies Local Small Business in order to count the participation of that toward program goals. Eligibility requirements for registration are:
 - (1) Certification as to small business status may be accepted from other local governmental, state or federal agencies that apply criteria substantially similar to that imposed by this ordinance.
 - (2) Applicant firm must complete an appropriate application form obtained from the Equal Opportunity Director and must qualify as a local small business, as the term is defined in this Article as to principle place of business, gross annual receipts and personal net worth thresholds.
 - (3) Applicant firm must have its principal place of business located within the geographic limits of Richmond County. A location utilized solely as a post office box, mailbox, mail drop, virtual office, telephone message center, or any combination thereof, with no substantial work function, shall not be deemed to be a significant local presence sufficient to qualify as a local small business.
 - (4) Applicant firm must possess a valid Augusta, Georgia business license for six (6) months prior to submitting their LSBOP registration application;
 - (5) The firm's three (3) year average annual gross receipts, as defined herein, must not exceed \$1.5 million (\$1,500,000) in annual gross

receipts; the annual gross receipts limitation shall not apply to manufacturers with seventy-five (75) employees or less or wholesalers with fifty (50) employees or less.

- (6) Applicant firm owner must be a citizen or lawfully admitted permanent resident of the United States;
- (7) Applicant firm must be a business, including a sole proprietorship, partnership, corporations, limited liability company, or any other business or professional entity:
 - (i) which is at least fifty-one (51) percent owned by one (1) or more of the applicant individuals identified, and the ownership must have been in existence for one (1) year or more; and
 - (ii) in the case of a publicly-owned business, at least fifty-one (51) percent of all classes of stock which is owned by one (1) or more of such persons, each of whom meets the net worth criteria as defined herein.
- (8) No individual owner of an applicant firm, or if a sole proprietorship or partnership the individuals themselves, may have a personal net worth that exceeds \$750,000, as that term is defined in this Article.
- (9) No local small business shall be registered on the basis of the race or gender of its ownership regime.

(b) **Renewal of Registration.** Local small business registration is valid for a two-year period beginning on the date Augusta, Georgia registers the business. To re-apply, a local small business must submit a new application and evidence of continuing eligibility.

It is the responsibility of the local small business to notify the Equal Opportunity Director of any change in its circumstances affecting its continued eligibility for the program. Failure to do so may result in the firm's de-registration and preclusion from future participation in the LSBOP;

- (1) A Local Small Business that no longer meets registration criteria shall not be re-registered by the Equal Opportunity Director;

- (2) Firms that have been denied registration or re-registration may protest the denial as follows:
- (i) Within five (5) days of receipt of denial of registration or re-registration, the firm may protest such action in writing to the Equal Opportunity Director. Protests filed after the five (5) day period shall not be considered and are deemed a failure on the part of the protestor to exhaust administrative remedies.
 - (ii) A hearing shall be held by Augusta, Georgia Administrator (or his or her designee) at which time the firm may present additional facts and evidence in support of its eligibility. Augusta, Georgia Administrator (or his or her designee) shall control all aspects of the hearing, including scheduling, conduct, witnesses, and evidence, and may request the attendance of witnesses and production of particular documents.
 - (iii) Augusta, Georgia Administrator shall send written notice of the decision to the firm within thirty (30) days of the hearing.
 - (iv) A firm found to be ineligible cannot apply for registration or re-registration for a period of one year after the effective date of the final decision.
- (c) Limitations. Notwithstanding any other provision of this program except on a finding of good cause by Augusta, Georgia, a registered local small business is no longer eligible to participate in the LSBOP after being enrolled for ten (10) consecutive years regardless of whether the firm received contracts or prime contracts under the program. If a firm has been released from the program before graduation as a result of exceeding the LSBOP thresholds, it will still be eligible to receive contracts from Augusta, but such participation will not be counted toward the LSBOP goal of identifying and employing local small businesses to the greatest extent possible.

In determining whether a good cause exists for a firm to continue participation beyond ten (10) consecutive years, Augusta may review all relevant factors such as amount of business previously received by the firm, and capability of other small firms to provide goods and services, impact on

a potential contract opportunity for other local businesses to compete. In no event shall a firm's participation in the program extend beyond fifteen (15) years.

Participation or registration as a local small business in the LSBOP shall not preclude a registered firm from competing for a prime contract with Augusta, Georgia on the same basis as other prime contractors or suppliers.

- (d) Graduation. Augusta, Georgia shall graduate a local small business from eligibility as a local small business. The local small business will be graduated from local small business if any one of the following occurs:
 - (1) The local small business' gross revenues in each of the previous consecutive three (3) years exceed an average of \$1.5 million;
 - (2) The net worth of any owner of a local small business exceeds an average of \$750,000 for each of the previous consecutive three (3) years, exclusive of principal residence and the value of the local small business; or
 - (3) The local small business has participated in the LSBOP for ten (10) years and Augusta, Georgia has not approved an extension of participation based on good cause.

Sec. 1-10-73. Local small business opportunities program participation.

- (a) Sealed Bids, Sealed Proposals, Professional Services And Other Major Purchasing. The following procedures and contract requirements will be used to insure that local small businesses are encouraged to participate in Augusta, Georgia contracts, including but not limited to construction contracts, requests for professional services and the performance of public works contracts. The Augusta, Georgia user department shall indicate goals for local small business in all solicitations for contracts over \$100,000 in value:
 - (1) Bid conditions, requests for proposals, and all other specifications for contracts awarded by Augusta, Georgia will require that, where subcontracting goal is utilized in performing the contract, the bidder or proponent, will make Good Faith Efforts to subcontract with or purchase supplies from local small businesses. Bid specifications

will require the bidder or proponent to keep records of such efforts that are adequate to permit a determination of compliance with this requirement.

- (2) Each bidder shall be required to provide documentation of achieving goal or provide documentation of Good Faith Efforts to engage local small businesses as subcontractors or suppliers, the names of local small businesses and other subcontractors to whom it intends to award subcontracts, the dollar value of the subcontracts, and the scope of the work to be performed, recorded on the form(s) provided or made available as part of the bid package. If there are no sub-contracting opportunities, bidder shall so indicate on the appropriate form.
- (3) For all such contracts, the Procurement Department will provide the Equal Opportunity Director with a copy of the invitation to bid or bid specifications including scope of work. The Equal Opportunity Director will identify the existence of registered local small businesses which are qualified to submit bids as prime contractors.
- (4) The Equal Opportunity Director shall identify subcontracting opportunities and shall make available trade-specific lists of registered local small businesses to potential prime contractors. Prime contractors are encouraged to form Joint Ventures with local small businesses to perform major contracts, particularly in the areas of construction and professional services.
- (5) Within thirty (30) days of the adoption of this Ordinance, the Procurement Department will include a copy of this ordinance in each bid or proposal package or shall publish and make available an internet link at which the LSBOP Ordinance and related forms may be found on the official website of Augusta, Georgia.
- (6) All bid documents shall require bidders or proponents to submit with their bid the following written documents, statements or forms, which shall be made available by the Procurement Department.
 - (i) Non-Discrimination Statement which shall affirm the bidder's:
 - (a) adherence to the policies of Augusta, Georgia relating to equal opportunity in contracting;
 - (b) agreement to undertake certain measures as provided in this policy to ensure maximum practicable participation of local small businesses; and

(c) agreement not to engage in discriminatory conduct of any type.

- (ii) Proposed Local Small Business Subcontractor/Supplier Utilization Plan.
- (iii) Documentation of Good Faith Efforts to use local small businesses.

Failure to submit the above documentation shall result in the bid or proposal being declared non-responsive.

- (7) Before advertising and soliciting bids, the Equal Opportunity Director and using department will assess if large contracts can be segmented into multiple contracts. Methods to be considered include:
 - (i) The term of a contract may be shortened that results in a dual effect; the reduction of quantity required, and the risk inherent in guaranteeing prices over a longer period of time.
 - (ii) Work to be performed may be grouped according to geographic location within Augusta, Georgia.
- (8) When the Solicitation bid document contains a local small business goal, each Bidder must either: meet the local small business goal or comply with the Good Faith Effort requirement set for in section 1-10-69(b)(3). **Failure to do so constitutes grounds for rejecting the Bid.**
- (9) When the Solicitation bid document does not contain a local small business goal, each bidder must negotiate in good faith with each local small business that responds to the Bidder's solicitation and each local small business that contacts the Bidder on its own accord.
- (10) Self-Performance. Self performance does not exempt Bidders from the LSBOP requirements unless the self performer is a qualified and registered local small business. Bidders that do not meet the local small businesses goal and desire to self-perform all or part of the construction contract must nevertheless demonstrate that they

complied with the Good Faith Efforts requirements as set forth in section 1-10-69(b)(3).

- (b) Departmental Purchase Requirements (All Formal Bids over \$100,000). User Departments making purchases or issuing solicitations for projects over \$100,000 (including project management, contract management, and/or construction, and/or design contracts) shall have the following duties and responsibilities with regard to the LSBOP:

Departments shall:

- (1) Establish Project Specific Goals on all projects \$100,000 and above.
- (2) Submit the scope of work and cost estimate evaluations to the Equal Opportunity Director so appropriate local small business subcontracting goals may be determined.
- (3) Assist the Equal Opportunity Director with setting Project Specific Goals.
- (4) Assist in identification of available local small businesses.
- (5) Gather and maintain data for those contracts which they manage.
- (6) Submit subcontracting data to the Equal Opportunity Director within fourteen (14) days of progress payments and thirty (30) days of contract closeout.
- (7) Submit to the Equal Opportunity Director, on or before the beginning of each Fiscal year, the Department's annual list of projects, listing all upcoming projects, estimating the probable monetary value, and stating the projected bid advertisement date.
- (8) Indicate goals for local small businesses in solicitations for contracts that provide opportunities for local small business participation.
- (9) Work with User Departments to monitor contracts to facilitate prompt payments to local small business and to be in compliance with Project Specific Goals and commitments.
- (10) Track and report statistics regarding the effectiveness of the LSBOP, as measured by a review of data indicating prime and subcontractor

spending with local small business, as required by the policies and procedures.

- (c) Methodology for Setting Local Small Business Project Specific Goals. The Equal Opportunity Director in consultation with User Department shall establish a local small business goal for all contracts through rules and guidelines for the implementation of the LSBOP. Such methodology shall take into account the reasonably known availability of subcontracting opportunities that local small businesses can perform on each contract. Local small business goals should be calculated based upon specific contracting, subcontracting, and/or supplier opportunity and the availability of local small business registered in Augusta, Georgia's directory. For federally funded projects, this will be achieved by applying the Federal Guidelines for setting Goals 49 CFR Parts 26-45.
- (d) Post Contract Award Requirements. The purpose of this sub-section is to establish requirements for contractor compliance with the LSBOP after a contract has been awarded. This is incorporated into all Augusta, Georgia Contracts for which a local small business goal has been established or negotiated.
 - (1) Contractors shall have an affirmative, ongoing obligation to meet or exceed the committed local small business goal for the duration of the contract. The Augusta, Georgia may deem a contractor to be in violation of the LSBOP and in breach of its contract if at any time Augusta, Georgia determines that: (a) The contractor will not meet the committed local small business goals; and (b) the reasons for the contractor's failure are within the contractor's control. For example, if a contractor does not meet the local small business goal because the contractor terminated a local small business without cause or if the contractor caused and local small business to withdraw from the project without justification, then Augusta, Georgia is justified in finding the contractor to be in violation of the LSBOP.
 - (2) Exceptions. A contractor shall not be deemed in violation of this Program for failure to meet the committed local small business goal to the extent such failure is directly attributable to:
 - (i) Augusta, Georgia reducing the scope of a contract so as to eliminate or reduce work that was going to be performed by

- local small businesses (whether through a change order, contract amendment, force account or otherwise);
- (ii) A local small businesses voluntary withdrawal from the project, if the contract demonstrates that such withdrawal was beyond the contractor's reasonable control, so long as the contractor complied with the Good Faith Efforts to replace the local small business with another local small business; or
 - (iii) Termination or reduction in the work of a local small business, if the contractor demonstrates that such termination was consistent with the terms of this Program, and that the contractor complied with the Good Faith Efforts to replace the local small business with another local small business.
- (3) Contractors have an ongoing, affirmative obligation to ensure that local small businesses performing on the contract are performing a Commercially Useful Function. A contractor shall be in violation of the LSBOP and in breach of its contract if it lists a local small business to receive credit toward a committed local small business goal with knowledge that the local small business will be acting as a conduit or will otherwise not be performing a Commercially Useful Function reasonably commensurate with the payment amount for which the contractor will be seeking credit.
- (4) Contractors shall not terminate, replace or reduce the work of a local small business that the contractor has counted toward meeting the committed local small business unless:
- (i) The local small business refuses to enter into a contract consistent with the local small business' Letter of Intent;
 - (ii) The local small business materially breaches its contract with the contractor;
 - (iii) Augusta, Georgia reduces the contract scope of work so as to eliminate or reduce the work that the local small business was to perform; or

- (iv) The local small business voluntarily withdraws from the contract for reasons not within the contractor's reasonable control.
- (5) Contractor shall provide the User Department, the Equal Opportunity Director and the Procurement Director written notice prior to replacing or terminating a local small business on a contract. The notice shall identify the local small business and the contract; state the reason for the termination or replacement and state the proposed date on which such termination or replacement will occur. Unless the circumstances necessitate immediate termination or replacement, the contractor shall provide such notice to the User Department, and the Equal Opportunity Director at least five (5) Business Days before the contractor terminates the local small business. The contractor shall further provide written notice to the local small business stating the reasons for the termination. Unless circumstances dictate otherwise, the contractor shall provide such notice before termination is to occur.
- (6) Good Faith Efforts to replace a local small business to a contract. When a local small business withdraws or is terminated from a contract for any reason, the contractor shall comply with the Good Faith Efforts requirement to replace the departing local small business with another local small business. Likewise, when new opportunities for subcontracting arise on a contract and Augusta, Georgia sets a supplemental local small business goal, the contractors shall comply with the Good Faith Efforts set in an effort to meet the supplemental local small business goal.
- (7) Utilization Reports and Documentation of Payment. Contractors shall report to Augusta, Georgia the total dollars paid to each local small business on each contract, and shall provide such payment affidavits, regarding payment to subcontractors as may be requested by Augusta, Georgia. Such documents shall be in the format specified by the Equal Opportunity Director, and shall be submitted at such times as required by Augusta, Georgia. Failure to provide such reports within the time period specified by Augusta, Georgia shall entitle Augusta, Georgia to exercise any of the remedies set forth, including but not limited to, withholding payment from the contractor and/or collecting liquidated damages.

- (e) Departmental purchase requirements (small purchases, quotations, or informal bids). Subject to the dollar limits set forth under Augusta, Georgia ordinance, departments are authorized to make small purchases using Agency Purchase Orders. Departments shall be directed by Augusta, Georgia Administrator to utilize local small businesses on small purchases whenever possible and appropriate.
 - (1) The Equal Opportunity Director shall make available to every Augusta, Georgia department a directory of registered local small businesses and encourage their use of by departments.
 - (2) The Equal Opportunity Director shall provide annual training to all Augusta, Georgia Departments on the LSBOP.
 - (3) The Equal Opportunity Director shall ensure that all Augusta, Georgia specifications for goods and services do not contain any unnecessary impediment to local small business participation in the bid process.
 - (4) For small purchases, quotations or informal bids, the Using Department will solicit bids from registered local small businesses to supply the required materials, equipment, supplies or services using the local small business Registry created and maintained by the Equal Opportunity Director.
 - (5) The Equal Opportunity Director and Procurement Department will attempt to identify qualified local small businesses and will include such local small business in bid/quote solicitation lists.
 - (6) The Equal Opportunity Director will make recommendations to the Procurement Director and User Departments when specification appears to impede local small businesses from competitively participating in a bid.
- (f) Procurement Department and User Agency Responsibilities.
 - (1) For purchases on which written bids are sought, registered local small businesses which are ready, willing and able to perform the required services or provide the required commodity will be solicited for a written quotation or bid.

- (2) Purchases from local small businesses shall be tracked by the Equal Opportunity Director with the assistance and cooperation of the user Departments.
- (g) Maintenance of Records.
- (1) The Equal Opportunity Director, with the assistance of the Department of Information Technology, shall compile data on local small business participation as well as women and minority owned business participation. Information on prime contract awards and subcontractor utilization will be maintained by the Equal Opportunity Director which will gather information from all user Departments on a quarterly basis.
 - (2) Local small business utilization statistics shall be maintained in the following manner:
 - (i) Contracts and purchases shall be grouped into four categories: construction, professional services, general services and materials/equipment/supplies.
 - (ii) Statistics shall measure overall awards to local small businesses and to women and minority owned businesses by category of purchase (i.e. construction, professional services, general services, and materials/equipment/supplies).
 - (iii) All data necessary to evaluate the effectiveness of the LSBOP in reducing discrimination against minority and women owned businesses shall be kept and maintained by the Equal Opportunity Director.
 - (3) Data collection is an important aspect of evaluating the effectiveness of the LSBOP. The LSBOP is a race and gender neutral program and all data collection efforts shall be for evaluating purposes only. The following statistics shall be reported not less than annually to the Augusta, Georgia Commission by the Equal Opportunity Director.
 - (i) Regarding purchases of professional services, general services and material/equipment/supplies made through the competitive bid and quotation process:

- (a) Total value of purchases.
 - (b) Total value of purchases from local small businesses.
 - (c) Total value of purchases from women owned businesses.
 - (d) Total value of purchases from minority owned businesses.
- (ii) Regarding small purchases by operating department using Agency Purchase Orders:
 - (a) Total value of small purchases by Augusta, Georgia Department.
 - (b) Total value of small purchases from local small businesses by Department.
 - (c) Total value of small purchases from women owned businesses by Department.
 - (d) Total value of small purchases from minority owned businesses by Department.
- (iii) Regarding construction purchases:
 - (A) Total value of construction contract awards.
 - (B) Total value of construction contracts awarded to local small businesses as prime contractors.
 - (C) Total value of subcontracts awarded to local small businesses.
 - (D) Total value of subcontracts awarded to women owned businesses.
 - (E) Total value of subcontracts awarded to minority owned businesses.
- (h) Compliance.
 - (1) It will be the duty of the Procurement Director to ensure that bids or proposals issued from the Procurement Department adhere to the provisions set forth in this Policy.

- (2) The Equal Opportunity Director, and all department directors will assume responsibility for evaluating compliance with this program in their respective contract areas and will review, on a continuing basis, all aspects of the program's operations to assure that the purpose is being attained and reporting same to the Equal Opportunity Director for tracking and annual report purposes.
- (3) Each Augusta, Georgia contract will contain a provision requiring compliance with this policy including maintenance of records, good faith efforts, and maintenance of information necessary to document compliance with, and effectiveness of the LSBOP. This shall include the right of the Equal Opportunity Director and any compliance personnel to inspect such records. Compliance records will be a part of the official files located in the Procurement Office.
- (4) The Equal Opportunity Director shall be responsible for evaluating good faith efforts documentation and subcontractor information submitted by bidders in conformance with, the AUGUSTA, GA. CODE and any State and Federal Laws applicable to any bid specifications for competitive sealed bid or competitive sealed proposal projects prior to award of the contract.
- (5) Each Augusta, Georgia contract will contain a provision prohibiting any agreements between a contractor and a local small business in which the local small business promises not to provide subcontracting quotations to other bidders or potential bidders.

(i) Competitive Bids.

Nothing in this Policy is to be construed to require Augusta, Georgia to award a bid contract to other than the lowest responsible bidder, or to require contractors to award to subcontractors, or to make significant material purchases from local small businesses who do not submit the best overall pricing to Augusta, Georgia.

(j) Outreach.

To maximize the identification, registration and utilization of local small businesses, the following efforts will be undertaken by the Equal Opportunity Director:

- (1) Increase efforts to locate and register additional vendors, service providers, and construction contractors that can provide goods and services for Augusta, Georgia through media, vendor fairs, and electronic message boards.
- (2) As Georgia Department of Transportation, Federal Transit Administration, Department of Defense and Federal Aviation Administration certified construction contractors are located, invite local firms to register with Augusta, Georgia in accordance with the requirements of this Article in order to create an enhanced resource to using departments, buyers and prime contractors to locate registered local small businesses for projects that can utilize local small businesses for a commercially useful function.
- (3) Supply information to the Board of Commissioners regarding the LSBOP and offer opportunities for ways in which the Board of Commission can be an advocate of the LSBOP.

Sec. 1-10-74. Exceptions – federally funded projects.

In accordance with § 1-10-8 and Article 14, the LSBOP shall only be utilized with federally funded projects, solicitations or contracts as authorized by federal (and Georgia) laws, regulations and conditions applicable to such projects. To the extent that there are any conflicts between any such laws, regulations or conditions and the LSBOP, the federal (and Georgia) laws, regulations and conditions shall control.

Sec. 1-10-75. Citizens Small Business Advisory Board.

A Citizens' Small Business Advisory Board (CSBAB) shall be constituted to advise the Commission and Equal Opportunity Director on matters related to this ordinance, and to meet with local small businesses, to review and provide input as to the issues in program administration. See AUGUSTA, GEORGIA CHARTER § 1-40. Members are appointed by the Mayor, Commission and the Richmond County Legislative Delegation. A list of the appointees is maintained in the Clerk of Commission's Office and is incorporated herein by reference.

ARTICLE 8

SUSPENSION OR DEBARMENT OF BIDDER OR PROPOSER

Sec. 1-10-76. Authority to suspend or debar from qualified bidder/proposer list for consideration of contract award.

Authority to debar or suspend. The Procurement Director, after consulting with the General Counsel, is authorized to debar a person for cause from participation in any Augusta, Georgia procurements at any tier and consideration for award of contracts. The debarment shall be for a period of not more than five (5) years. The period of time during which the debarment will be imposed is to be determined by the Procurement Director based upon the severity of the causes for debarment. After consultation with the using agency and General Counsel, the Procurement Director is authorized to suspend a person from participation in any Augusta, Georgia procurement at any tier and consideration for award of contracts if there is probable cause for debarment. The suspension shall not be for a period exceeding the greater of: (1) three months; (2) the period during which administrative review of the suspension is pending; or (3) the period during which judicial review of an administrative decision that was adverse to the suspended firm is pending.

Sec. 1-10-77. Causes for debarment or suspension.

The causes for debarment or suspension include:

- (a) Conviction 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.
- (b) Conviction under state and federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property or any other offense indicating a lack of business integrity or business honesty which currently, seriously and directly affects responsibility as an Augusta, Georgia contractor.
- (c) Conviction under state or federal antitrust statutes arising out of the solicitation and submission of bids or proposals.
- (d) Violation of contract provisions, as set forth below, of a character which is regarded by the Procurement Director to be so serious as to justify debarment action:

- (1) Deliberate failure to perform in accordance with the provisions or within the time limit provided in any Augusta, Georgia contract.
 - (2) A recent 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. In the event that the contractor asserts in a suspension or debarment proceeding that such recent failure to perform or unsatisfactory performance in accordance with the terms of one or more contracts was caused by acts beyond the control of the contractor, the contractor must introduce documentation from the applicable contract/project in which it provided notice of such acts beyond its control and/or invoked its rights to equitable adjustment or other similar remedies under the applicable contract as a result of force majeure or other similar events; provided, however, that Augusta, Georgia's determination on such issue will be independent from the contract/project at issue. It is insufficient in a debarment proceeding for the contractor to raise this issue for the first time concerning a prior contract under which it failed to perform or performed unsatisfactorily.
- (e) For violation of any ethical standards set forth in Article 3, Ethics in Public Contracting.
- (f) Submission to Augusta, Georgia of a claim for additional compensation that is without merit, including, but not limited to claims seeking to recoup:
- (1) Costs incurred by the contractor but not included in its bid or proposal due to its own error;
 - (2) Costs that it has already been paid or will be paid under the contract;
 - (3) Costs asserted simply for the purpose of forcing Augusta, Georgia to consider a settlement at a reduced amount;
 - (4) Costs that the contractor has not certified pursuant to the contract documents; and

- (5) Costs that the contractor would not be entitled to recover under the contract documents, including, but not limited to attorneys fees and interest on unpaid sums.
- (g) Material misrepresentation of the composition of the ownership or work force of a business entity registered with Augusta, Georgia as a local small business.
- (h) Any other cause the Procurement Director, in consultation with the using agency and General Counsel, determines to be so serious and compelling as to affect responsibility, including, but not limited to, debarment by another governmental entity.

Sec. 1-10-78 . Notice.

The Procurement Director shall issue a written notice of the decision to debar or suspend. The notice shall state the reasons for the action taken and the effective date of the debarment or suspension and shall inform the debarred or suspended person involved of the right to administrative review as provided in this division.

Sec. 1-10-79. Finality of decision.

A decision under this section is final and conclusive, unless fraudulent or any person adversely affected by the decision appeals administratively to the Administrative Services Committee in accordance with the appeals and remedies of Article 9 of this Chapter.

Sec. 1-10-80. Board of Commissioner's initiated debarment.

The Board of Commissioners, by enactment of an appropriate resolution, may request that the Procurement Director initiate an investigation into whether a particular person should be debarred and/or suspended and, after consulting with the General Counsel, the Procurement Director is authorized to debar or suspend such person for cause from participation in any Augusta, Georgia procurements at any tier and consideration for award of contracts.

ARTICLE 9

APPEALS, PROTESTS AND REMEDIES

Sec. 1-10-81. Procurement protests.

Authority to Resolve Protested Solicitations and Awards.

- (a) **Right to Protest.** Any actual or prospective bidder, offeror, or contractor who is aggrieved in connection with the solicitation or award of a contract may protest to the Procurement Director.
- (b) **Authority to Resolve Protests.** The Procurement Director and the Administrator shall have the authority, prior to a final decision by the Commission, to settle and resolve the protest of an aggrieved bidder, offeror, or contractor, actual or prospective, concerning the solicitation or award of a contract.
- (c) **Decision of Procurement Director.** If the protest is not resolved by mutual agreement, the Procurement Director shall issue a decision in writing regarding the protest as specified in Section 1-10-83. The decision shall:
 - (1) state the reasons for the action taken; and
 - (2) inform the protester of its right to administrative review as provided in this Article.
- (d) **Notice of Decision.** A copy of the decision shall be mailed or otherwise furnished to the protestor and any other interested party.
- (e) **Finality of Decision.** A decision under Subsection (d) of this Section shall be final and conclusive, unless any person adversely affected by the decision files a timely appeal in accordance with Section 1-10-84.
- (f) **Stay of Procurements During Protests or Appeals.** In the event of a timely protest under section 1-10-82 of this Article, the Procurement Director shall not proceed further with the solicitation or with the award of the contract unless the Administrator, after consultation with the head of the using agency and General Counsel, makes a written determination that the award of the contract without delay is necessary to protect substantial interests of Augusta, Georgia. Such a determination shall be provided to the protestor.

1-10-82. Filing of protest.

- (a) Protests shall be made in writing to the Procurement Director and shall be filed in within five (5) business days after the protestor knows or should have known of the facts giving rise thereto. A protest is considered filed when received by the Procurement Department. **Protests filed after the five (5) day period shall not be considered and are deemed a failure on the part of the protestor to exhaust administrative remedies.**
- (b) Subject of Protest. Protestors may file a protest on any phase of solicitation or award including but not limited to specifications preparation, bid solicitation, award, or disclosure of information marked confidential in the bid or offer.
- (c) To expedite handling of protests, the written protest shall include as a minimum the following:
 - (1) the name and address of the protestor;
 - (2) appropriate identification of the procurement, and, if a contract has been awarded, its number;
 - (3) a statement of reasons for the protest; and
 - (4) supporting exhibits, evidence, or documents to substantiate any claims unless not available within the filing time in which case the expected availability date shall be indicated.
- (d) Requested Information; Time for Filing. Any additional information requested by any of the parties should be submitted within the time periods established Procurement Director in order to expedite consideration of the protest. Failure of any party to comply expeditiously with a request for information by the Procurement Director may result in resolution of the protest without consideration of any information which is untimely filed pursuant to such request.
- (e) Making Information on Protests Available. The Procurement Director shall upon written request make available to any interested party information submitted that bears on the substance of the protest except where information is proprietary, confidential, or otherwise prohibited from disclosure or required to be withheld by law or regulation. Persons who wish to keep such information submitted by them confidential should so request by specifically identifying such information within documents submitted, and indicating on the front page of each document that it contains such information.

Sec. 1-10-83. Decision by the Procurement Director

Time for Decisions. A written decision on a protest shall be made by the Procurement Director within ten (10) business days after receiving all relevant, requested information. If a protest is sustained, the Procurement Director may determine that the solicitation or award violates the law; or may make a determination that the solicitation should be cancelled in order to comply with the applicable law.

Sec. 1-10-84. Appeals.

Appeal of a decision of the Procurement Director may be requested by the protestor or any department involved in the protest. The appeal shall contain a detailed statement of the factual and legal grounds upon which reversal or modification is deemed warranted.

Sec. 1-10-85. Time for filing appeal.

Appeals of a decision of the Procurement Director shall be filed in the Procurement Department not later than five (5) business days after receipt of such decision.

Sec. 1-10-86. Request for hearing and effect of untimely appeal.

A contractor or prospective contractor that has been notified of a denial of its protest action may request in writing an appeal to the Augusta, Georgia Commission. All appeals must be received by the Procurement Department within five (5) business days. **Appeals filed after the five (5) day period shall not be considered and are deemed a failure on the part of the protestor to exhaust administrative remedies.** Where no appeal (or an untimely appeal) is filed, the Procurement Director's decision is considered final and the award shall proceed.

Sec. 1-10-87. Notice of hearing.

If a timely appeal is filed by the protestor, the Procurement Director shall place the protest on the agenda of the Administrative Services Committee. The Clerk of Commission's Office shall provide public notice of the Administrative Services Committee agenda as required by law. In addition, the protestor shall be sent written notice of the time and place of the hearing. Copies of such notice shall be sent to the Augusta, Georgia General Counsel and the Department Director of the appropriate user department.

Sec. 1-10-88. Administrative Services Committee hearing procedure and effect of failure to appear at hearing.

- (a) Protests appearing on the Administrative Services Committee shall be treated as any other Committee agenda item, except that the Protestor, or his or her representative, shall have the right to address the Committee and to present evidence in support of the protest for a minimum of ten (10) minutes. The Procurement Director and user department shall also have the opportunity to present evidence relating to the protest for a minimum of ten (10) minutes. The Chairman of the Administrative Services Committee may grant additional time equally to each party at his or her discretion.
- (b) After considering the evidence presented, the Administrative Services Committee shall vote to grant or deny the protest or to send the item to the full Augusta, Georgia Commission without recommendation. Regardless of the decision made by the Committee, the protest shall be forwarded to the full Commission agenda. However, the Commission may, at its discretion, dispose of the agenda item via the Consent Agenda and the Protestor does not have the right to force the item to be moved from the Consent Agenda to the Regular Agenda.
- (c) Effect of Failure to Appear at Hearing. Failure on the part of the Protestor to appear before either the Administrative Services Committee or the full Augusta, Georgia Commission is considered **an abandonment of their right to appeal and a failure on the part of the protestor to exhaust administrative remedies.** The Procurement Director's decision is considered final and the award shall proceed accordingly. However, the Chairman of the Administrative Services Committee or the Mayor may, at his or her discretion, grant the Protestor one continuance to the next regularly scheduled Committee or Commission Meeting. Such continuance may only be granted during the Committee or Commission meeting and shall be recorded on the minutes of such meeting.

Sec. 1-10-89. Authority of Administrator to participate in procurement matters.

The Augusta, Georgia Administrator has the authority to:

- (a) communicate with the protestor and other interested parties to try to settle any dispute, or narrow the issues for matters to be presented to the Committee or Commission;

- (b) consult with the Procurement Director, the User Department and the General Counsel regarding the need for a stay pursuant to Section 1-10-81(f);
- (c) participate in all aspects of the procurement process as necessary to support the best interests of Augusta, Georgia.

Sec. 1-10- 90. Hearing procedures.

- (a) Hearings shall be as informal as may be reasonable and appropriate under the circumstances and in accordance with the applicable rules of the Administrative Services Committee and Commission. The Procurement Director shall provide the Administrative Services Committee and Commission with copies of the protest and the response of the Procurement Department.
- (b) Witnesses providing testimony at before the Administrative Services Committee or Commission shall testify under oath or affirmation.

Sec. 1-10-91. Determination of Commission; final decision.

The Commission's decision regarding a Protest is the final step in the Appeals process for Augusta, Georgia. The parties shall have thirty (30) days to file a judicial appeal of any such decision. Such appeal shall be by writ of certiorari to the Superior Court of Richmond County.

Sec. 1-10-92. Contract claims.

Decision of Augusta, Georgia Administrator. All claims by a contractor or vendor against Augusta, Georgia relating to a contract shall be submitted in writing to the Augusta, Georgia Administrator. The contractor or vendor may request a conference on the claims. Claims include, without limitation, disputes arising under a contract, and those based upon breach of contract, mistake, misrepresentation, or other cause for contract modification or rescission.

Sec. 1-10-93. Augusta, Georgia's right to amend bid solicitations or awards that are in violation of law.

Applicability. This section applies where it is determined by administrative review that a solicitation or award of a contract is in violation of applicable law. For purposes of this section administrative review shall refer to a review by the

Procurement Director and/or Augusta, Georgia Administrator in consultation with the General Counsel.

- (a) Prior to bid opening or closing date for receipt of proposals. If prior to the bid opening or the closing date for receipt of proposals, the Procurement Director, after consultation with the Augusta, Georgia Administrator, and the Augusta, Georgia General Counsel, determines that a solicitation is in violation of federal, state, or local law or ordinance, then the solicitation shall be canceled or revised to comply with applicable laws.
- (b) Prior to award. If after bid opening or the closing date for receipt of proposals, the Procurement Director, after consultation with the Administrator or his designee, and the General Counsel determine that a solicitation or proposed award is in violation of federal, state or municipal law, then the solicitation or proposed award shall be canceled.
- (c) After award. If, after an award, the Procurement Director, after consultation with the Administrator and the General Counsel, determines that a solicitation or award of a contract was in violation of applicable law, the following options shall be available to Augusta, Georgia:
 - (1) The contract may be ratified and affirmed, provided it is determined that doing so is in the best interest of Augusta, Georgia and the person or company awarded the contract has not acted fraudulently or in bad faith; or
 - (2) If services or work have not commenced under the contract, it may be terminated and declared null and void; or
 - (3) If services or work have commenced under the contract, it may be terminated and the person awarded the contract shall be compensated for the actual expenses reasonably incurred for partially performing and in terminating its performance under the contract.

ARTICLE 10

TYPES OF CONTRACTS

Sec. 1-10-94. Authority to approve, sign and execute contracts by type.

- (a) Generally. The following section establishes five (5) types of purchases: (1) major purchases, (2) standard purchases, (3) small purchase, (4) using agency purchase, and (5) emergency purchases.

Each type of purchase has its parameters involving: (1) value of purchase, (2) level of approval required within the organization for the purchase, (3) level of budget authorization given for the purchase, (4) level of authority required for the source selection process, and (5) person within the organization charged with the responsibility to sign the purchase contract document.

- (b) Major purchase contracts. Capital equipment, construction and all services purchase contracts with a value of one-hundred thousand dollars (\$100,000) or more must have:

- (1) Specific project concept approval by the Commission;
- (2) Specific budget approval (listed in budget) or special funding authorization by the Commission;
- (3) Commission approval of the source selection method and award of contract; and
- (4) Contract to be signed by the Mayor.

- (c) Standard purchase contracts. Goods and services purchase contracts with a value less than one-hundred thousand dollars (\$100,000) but more than ten thousand (\$10,000) must have:

- (1) General project concept approval by the Commission and/or Augusta, Georgia Administrator; and
- (2) General budget approval by the Commission and specific budget approval of the Administrator, or special funding authorization by the Commission or the Administrator (if the transfer of funds is necessary and general project concept not approved previously by the Commission); and
- (3) Administrator approval of source selection method and award of

contract; and

- (4) Contract to be signed by the Mayor.
- (d) Small purchase contracts. Small purchases equal to, or less than, ten thousand dollars (\$10,000) but more than one-thousand dollars (\$1,000) must have:
- (1) General project concept approval by the Commission and/or the Administrator; and
 - (2) General budget approval by the Commission (e.g. could be specified within a larger account) and specific budget approval of using agency head as designee of the Administrator, or special funding authorization by the Administrator (when transfer of funds is necessary and general project concept not previously approved by the Commission or Administrator); and
 - (3) Using agency head approval of source selection method and Administrator award of contract; and
 - (4) Small purchase orders to be signed by the Procurement Director or designee.
- (e) Using agency purchase contracts. Using agency purchases (as defined elsewhere) of one-thousand dollars (\$1,000) or less must have:
- (1) General budget approval by the Commission (e.g. could be specified within a larger account) and/or or special funding authorization by the Administrator; and
 - (2) Using agency head approval of the source selection method and award of contract; and
 - (3) Purchase order approved by the Procurement Director.
- (f) Emergency purchase contracts. Emergency purchases (as defined elsewhere) regardless of the amount of the purchase must have:
- (1) Specific project concept approval by the Commission or the

Administrator; and

- (2) General budget approval by the Commission (e.g. could be unspecified within a larger account) and specific budget approval of the using agency head as the Administrator's designee; and
- (3) Using agency head approval of the source selection method and award of contract if during non-standard working hours, or by the Administrator during normal working hours; and
- (4) Contract/small purchase order to be signed by the Administrator, using agency head, or Mayor based on the value of the purchase.

Sec. 1-10-95. Public works contracts.

Augusta, Georgia is authorized to utilize any construction delivery method, provided that such method places the bidder or offeror at risk for construction; and requires labor or building materials in the execution of the contract shall be awarded on the basis of competitive sealed bidding or competitive sealed proposals.

- (a) Waiver of Technicalities. Augusta, Georgia shall have the authority to reject all bids or proposals or any bid or proposal that is non-responsive or not responsible and to waive technicalities and informalities.
- (b) Modifications or Addenda to Public Works Plans and Specifications. Augusta, Georgia shall not issue or cause to be issued any addenda modifying plans and specifications within a period of 72 hours prior to the advertised time for the opening bids or proposals, excluding Saturdays, Sundays, and legal holidays. However, if the necessity arises to issue an addendum modifying plans and specifications within the 72 hour period prior to the advertised time for the opening of bids or proposals, excluding Saturdays, Sundays, and legal holidays, then the opening of bids or proposals shall be extended at least 72 hours, excluding Saturdays, Sundays, and legal holidays, from the date of the original bid or proposal opening without need to readvertise as required by O.C.G.A. § 36-91-20(b)(1).
- (c) Change Orders. Augusta, Georgia bid and contract documents may contain provisions authorizing the issuance of change orders, without the necessity of additional requests for bids or proposals, within the scope of the project

when appropriate or necessary in the performance of the contract. Change orders may not be used to evade the purposes open, fair and competitive public bidding on public works contracts.

- (d) Notice to Proceed. The Procurement Director shall, after consultation with the using agency, issue a Notice to Proceed to the contractor, stating the name of the project, the date upon which the project is to begin, the contact name and telephone number for the using agency and the contract term.
- (e) Registration and Participation of Contractors pursuant to the Georgia Security and Immigration Compliance Act and the Immigration Reform and Control Act of 1986. All contractors and subcontractors entering into contracts with Augusta, Georgia for the physical performance of services shall be required to execute an Affidavit verifying its compliance with O.C.G.A. § 13-10-91, stating affirmatively that the individual, firm, or corporation which is contracting with Augusta, Georgia has registered with and is participating in a federal work authorization program [any of the electronic verification of work authorized programs operated by the United States Department of Homeland Security or any equivalent federal work authorization program operated by the United States Department of Homeland Security to verify information of newly hired employees, pursuant to the Immigration Reform and Control Act of 1986 (IRCA), P.L. 99-603], in accordance with the applicability provisions and deadlines established in O.C.G.A. §13-10-91 and shall continue to use the federal authorization program throughout the contract term.

ARTICLE 11

COOPERATIVE PROCUREMENT

Sec. 1-10-96. Cooperative procurement agreement.

Cooperative procurement may be agreed to between Augusta, Georgia and other public procurement units. Written agreements are encouraged so as to clearly document the requirements and any special conditions of purchase should a public solicitation be utilized.

Sec. 1-10-97. Sale, acquisition, or use of supplies.

Augusta, Georgia may sell surplus supplies at the direction of the Administrator. Augusta, Georgia may sell to, acquire from, or use any supplies belonging to another public procurement unit independent of the requirements of Article 6 (Procurement Source Selection Methods and Contract Awards).

Sec. 1-10-98. Cooperative use of supplies or services.

Augusta, Georgia may enter into an agreement with any public procurement unit for the cooperative use of supplies or services under the terms agreed upon between the parties.

Sec. 1-10-99. Joint use of facilities.

Augusta, Georgia may enter into agreements for the common or joint use or lease of warehousing facilities, capital equipment, and other facilities with any public procurement unit under the terms agreed upon between the parties.

Sec. 1-10-100. Use of state contracts.

Augusta, Georgia may procure supplies, services or construction items through contracts established by the Procurement Division of the State of Georgia where such contracts and contractors substantially meet the requirements of the AUGUSTA, GA. CODE.

Sec. 1-10-101. Purchase of surplus and excess property.

Augusta, Georgia may purchase surplus and excess personal and real property from the United States Government or any other public procurement unit upon verification of need, fund availability, and approval by the appropriate level of authority within Augusta, Georgia.

Sec. 1-10-102. Waiver.

Any use of cooperative procurement as described above is independent of the requirements for source selection and contract award as described in Article 6 of this chapter.

ARTICLE 12

CONTRACT ADMINISTRATION AND MANAGEMENT

Sec. 1-10-103. Purpose.

A contract administration system, designed to insure that a contractor is performing in accordance with the solicitation under which the contract was awarded, shall be maintained by the Procurement Director with assistance from the using agency. Effective administration therefore includes the development of concise and competitive specifications, well developed terms and conditions of contract, and prompt, efficient day-to-day administration. Contract administration generally shall be the responsibility of the using agency requesting the commodity, general or construction service, except that certain specialized contracts may be administered by selected trade professionals, e.g., architects, engineers, construction managers, etc.

Sec. 1-10-104. Augusta, Georgia contracts and contract clauses.

- (a) Use of model (standard) contracts and clauses. The Procurement Director, after consultation with the Augusta, Georgia Administrator, using agency head, and Augusta, Georgia General Counsel, may establish standard contract clauses for use in Augusta, Georgia contracts for various commodities, services and construction products. Such contracts shall include provisions necessary to clearly define the responsibilities and rights of the parties to the contract.
- (b) Provisions of Augusta, Georgia contracts. Whether designed as a model or standard contract provision or specifically tailored for a particular contract, all Augusta, Georgia contracts should include provisions for:
 - (1) The unilateral right of Augusta, Georgia to order in writing a temporary stopping of the work, or delaying performance that does not alter the scope, of the contract;
 - (2) Variations, occurring between estimated quantities of work in contract and actual quantities;
 - (3) Defective pricing;
 - (4) Liquidated damages;

- (5) Specified excuses for delay or non-performance;
- (6) Termination of the contract for default;
- (7) Termination of the contract in whole or in part for the convenience of Augusta, Georgia;
- (8) Payment procedures;
- (9) Hold harmless provisions;
- (10) Prohibition against contingent fees;
- (11) Suspension of work on a construction project ordered by Augusta, Georgia;
- (12) Site conditions differing from those indicated in the contract, or ordinarily encountered, except that a differing site conditions clause need not be included in a contract:
 - (i) When the contract is negotiated,
 - (ii) When the contractor provides the site or design, or
 - (iii) When the parties have otherwise agreed with respect to the risk of differing site conditions, and
- (13) Insurance requirements.
- (14) Contractor's consent to venue in the Superior Court of Richmond County, Georgia;
- (15) Provision that the terms of the contract supersedes any and all provisions of the Georgia Prompt Pay Act.
- (16) An acknowledgement by all parties contracting with Augusta, Georgia as follows:

Contractor acknowledges that this contract and any changes to it by amendment, modification, change order or other similar document may have required or may require the legislative authorization of the Board of Commissioners and approval of the Mayor. Under Georgia law, Contractor is deemed to possess knowledge concerning Augusta, Georgia's ability to assume contractual obligations and the consequences of Contractor's provision of goods or services to Augusta, Georgia under an unauthorized contract, amendment, modification, change order or other similar document, including the possibility that the Contractor may be precluded from recovering payment for such unauthorized goods or services. Accordingly, Contractor agrees that if it provides goods or services to Augusta, Georgia under a contract that has not received proper legislative authorization or if the Contractor provides goods or services to Augusta, Georgia in excess of the any contractually authorized goods or services, as required by Augusta, Georgia's Charter and Code, Augusta, Georgia may withhold payment for any unauthorized goods or services provided by Contractor. Contractor assumes all risk of non-payment for the provision of any unauthorized goods or services to Augusta, Georgia, and it waives all claims to payment or to other remedies for the provision of any unauthorized goods or services to Augusta, Georgia, however characterized, including, without limitation, all remedies at law or equity." This acknowledgement shall be a mandatory provision in all Augusta, Georgia contracts for goods and services, except revenue producing contracts.

- (17) Use of Augusta, Georgia Landfill. All contracts for contractors performing demolition and/or construction projects for Augusta, Georgia shall contain a provision requiring that all debris, trash and rubble from the project be transported to and disposed of at the Augusta, Georgia Solid Waste Landfill in accordance with local and state regulations. The contractor shall provide evidence of proper disposal through manifests, which shall include the types of material disposed of, the name and location of the disposal facility, date of disposal and all related fees.
- (18) All contractors and subcontractors entering into contracts with Augusta, Georgia for the physical performance of services shall be required to execute an Affidavit verifying its compliance with O.C.G.A. § 13-10-91, stating affirmatively that the individual, firm, or corporation which is contracting with Augusta, Georgia has registered

with and is participating in a federal work authorization program. All contractors and subcontractors must provide their E-Verify number and must be in compliance with the electronic verification of work authorized programs operated by the United States Department of Homeland Security or any equivalent federal work authorization program operated by the United States Department of Homeland Security to verify information of newly hired employees, pursuant to the Immigration Reform and Control Act of 1986 (IRCA), P.L. 99-603, in accordance with the applicability provisions and deadlines established in O.C.G.A. § 13-10-91 and shall continue to use the federal authorization program throughout the contract term. All contractors shall further agree that, should it employ or contract with any subcontractor(s) in connection with the physical performance of services pursuant to its contract with Augusta, Georgia the contractor will secure from such subcontractor(s) each subcontractor's E-Verify number as evidence of verification of compliance with O.C.G.A. § 13-10-91 on the subcontractor affidavit provided in Rule 300-10-01-.08 or a substantially similar form. All contractors shall further agree to maintain records of such compliance and provide a copy of each such verification to Augusta, Georgia at the time the subcontractor(s) is retained to perform such physical services.

- (19) All contracts shall provide that Augusta, Georgia may, at reasonable times, inspect the part of the plant, place of business, or work site of a contractor or subcontractor or subunit thereof which is pertinent to the performance of any contract awarded or to be awarded by Augusta, Georgia.

Sec. 1-10-105. Contract modification and price adjustments.

- (a) Modifications. Every modification to a contract with Augusta, Georgia (except those entered into pursuant to § 1-10-54) shall be subject to approval by the Commission prior to execution. A contract modification does not require Commission action if a contingency amount has been approved and the contract modification is within that amount and provided the Augusta, Georgia Administrator has been contractually or otherwise specifically designated by the Commission for such purpose.
- (b) In instances where the Procurement Director, the using agency head or Administrator, determine that the contract modification or change order

cannot be delayed without substantial delay and cost to Augusta, Georgia and funds are available and the appropriate budget transfer is made, the Administrator may authorize the appropriate action.

- (b) Price adjustments. Adjustments in price in contracts 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 practicable;
 - (2) By unit prices specified in the contract or subsequently agreed upon;
 - (3) By the costs 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; and
 - (4) In such other manner as the contracting parties may mutually agree upon.

Sec. 1-10-106. Retainage.

- (a) Maximum amount to be withheld. In any contract or subcontract for construction which provides for progress payments in installments based upon an estimated percentage of completion with a percentage of the contract's proceeds to be retained by Augusta, Georgia pending completion of the contract or subcontract, the retained amount of each progress payment or installment shall be no more than ten (10) percent). The retainage may be reduced to five (5) percent after fifty (50) percent of the work is complete if Augusta, Georgia desires.
- (b) When used. Retainage may be applied to any construction contract, regardless of the dollar amount and its use shall be set forth in the invitation for bids or proposals.
- (c) Release of retainage. Funds held by Augusta, Georgia as retainage under the contract shall be released upon completion and acceptance of work except as described in the contract.
- (d) No interest on retainage. No interest shall be due to any contractor on any sum held as retainage pursuant to any construction contract.

Sec. 1-10-107. Approval of accounting system.

Except with respect to firm fixed-price contracts, no contract type shall be used unless it has been determined in writing by Augusta, Georgia that:

- (a) The proposed contractor's accounting system will permit timely development of all necessary cost data in the form required by the specific contract type completed; and
- (b) The proposed contractor's accounting system is adequate to allocate costs in accordance with generally accepted cost accounting principles.

Sec. 1-10-108. Contractual provisions for auditing records.

- (a) Audit of costs or pricing data. All contracts shall provide that Augusta, Georgia may at reasonable times and places, audit the books and records of any contractor who has submitted cost or pricing data to the extent that such books, documents, papers, and records are pertinent to such cost or pricing data. Any person who received a contract, change order, or contract modification 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 (3) years from the date of final payment under the contract.
- (b) Contract audit. All contracts shall provide that Augusta, Georgia shall be entitled to audit the books and records of a contractor or subcontractor at any time 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 subcontract. Such books and records shall be maintained by the contractor for a period of three years from the date of final payment under the prime contract and by the subcontractor for a period of three years from the date of final payment under the subcontract.

ARTICLE 13
DISADVANTAGED BUSINESS ENTERPRISES PROGRAM
FOR DEPARTMENT OF TRANSPORTATION, FEDERAL
TRANSPORTATION ADMINISTRATION, FEDERAL
AVIATION ADMINISTRATION AND OTHER FEDERALLY
ASSISTED CONTRACTS

Sec. 1-10-109. Purpose.

The purpose of this Disadvantaged Business Enterprises program is to comply with U.S. Department of Transportation (DOT), Federal Transit Administration (FTA), Federal Aviation Administration (FAA) and other federal and state mandated DBE requirements for certain DOT, FTA, FAA, and other federal and state assisted contracts as required by 49 C.F.R. Part 26, et. seq. and/or 49 C.F.R. Part 23, et. seq.

Sec. 1-10-110. Definitions.

- (a) Generally. Those definitions set forth in Chapter 10 of the Code of Ordinances shall also apply to this Article, except as provided in this section.
- (b) Specifically.
 - (1) Airport Concessionaire Disadvantaged Business Enterprises (ACDBEs) means a concession that is a for-profit small business concern that is at least fifty-one percent (51%) owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which fifty-one percent (51%) of the stock is owned by one or more such individual; and whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.
 - (2) Department of Transportation (DOT) means the U.S. Department of Transportation, including the Office of the Secretary, the Federal Highway Administration (FHWA), the Federal Transit Administration (FTA) and the Federal Aviation Administration (FAA).
 - (3) Disadvantaged Business Enterprise (DBE) means a for-profit small business concern that is at least fifty-one percent (51%) owned by one or more individuals who are both socially and economically

disadvantaged, or in the case of a corporation, in which fifty-one percent (51%) of the stock is owned by one or more such individuals; and whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

- (4) DOT assisted contract means any contract between a recipient and a contractor (at any tier) funded in whole or in part with DOT financial assistance, including letter of credit or loan guarantees, except a contract solely for the purchase of land.
- (5) Good faith efforts means efforts to achieve a DBE goal or other requirement which, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the program requirement.

Sec. 1-10-111 Limitations.

This DBE program is only for DOT, FTA and FAA assisted contracts and other federal or state funded contracts having mandatory DBE requirements.

Sec. 1-10-112. Policy statement.

Augusta, Georgia is committed to ensuring that all DBE requirements of federal and state funded contracts will be implemented by Augusta, Georgia. The Equal Employment Director shall serve as the DBE Liaison Officer and is responsible for accomplishing the objectives of this program. The objectives of this DBE program are:

- (a) To ensure nondiscrimination in the award and administration of DOT, FTA, FAA and other contracts covered by this program, including highway, transit, and airport financial assistance programs;
- (b) To create a level playing field on which DBEs can compete fairly for DOT, FTA, FAA and other contracts covered by this program;
- (c) To ensure that the this DBE program is narrowly tailored in accordance with applicable law;
- (d) To ensure that only firms that fully meet this part's eligibility standards are permitted to participate as DBEs;

- (e) To help remove barriers to the participation of DBEs in DOT, FTA, FAA and other contracts covered by this program;
- (f) To assist in the development of firms that can compete successfully in the marketplace outside the DBE program; and
- (g) To provide appropriate flexibility to recipients of Federal financial assistance in establishing and providing opportunities for DBEs.

Sec. 1-10-113. DBE liaison officer.

The Chief Executive Officer concerning DBE Program matters for Augusta, Georgia shall be the Mayor of Augusta, Georgia. Augusta shall have a DBE Liaison Officer who shall have direct, independent access to the Mayor concerning DBE Program matters. The DBE Liaison Officer shall have the following duties and responsibilities:

- (a) Gathering and reporting statistical data and other information as required by DOT, FTA, FAA and other contracts covered by this program.
- (b) Reviewing third party contracts and purchase requisitions for compliance with this program.
- (c) Working with all departments to set overall annual goals or as required by federal law.
- (d) Ensuring that bid notices and requests for proposals are available to DBEs in a timely manner.
- (e) Identifying contracts and procurements so that DBE goals are included in solicitations covered by this DBE Program.
- (f) Analyzing Augusta, Georgia's progress toward attainment and identifying ways to improve progress.
- (g) Participating in pre-bid meetings.
- (h) Advising the Commission on DBE matters and achievement.

- (i) Providing DBEs with information and assistance in preparing bids, obtaining bonding and insurance.
- (j) Planning and participating in DBE training seminars.
- (k) Certifying DBEs according to the criteria set by DOT and FTA and acting as liaison to the Uniform Certification Process in Georgia.
- (l) Providing outreach to DBEs and community organizations to advise them of opportunities.
- (m) Maintaining the DBE bidder's list for DOT, FTA and other contracts covered by this program as provided in § 1-10-121.
- (n) Ensuring that all aspects of this DBE Program are complied with by participants and using agencies.

Sec. 1-10-114. DBE financial institutions.

For projects containing federal or state mandated DBE requirements, Augusta, Georgia must thoroughly investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in Augusta, Georgia and must make reasonable efforts to use these institutions and encourage prime contractors to use these institutions.

Sec. 1-10-115. Prompt payment mechanisms.

- (a) For projects containing federal or state mandated DBE requirements, Augusta, Georgia will include a contract clause requiring prime contractors to pay subcontractors for satisfactory performance for their contracts no later than thirty (30) days from receipt of each payment made by Augusta, Georgia to the prime contractor.
- (b) Augusta, Georgia will ensure prompt and full payment of retainage from the prime contractor to the subcontractor within thirty (30) days after the subcontractor's work is satisfactorily completed by using one or more of the following methods:
 - (1) Declining to hold retainage from prime contractors and prohibiting prime contractors from holding retainage from subcontractors.

- (2) Declining to hold retainage from prime contractors and requiring a contract clause obligating prime contractors to make prompt and full payment of any retainage kept by prime contractor to the subcontractor within thirty (30) days after the subcontractor's work is satisfactorily completed.
 - (3) Holding retainage from prime contractors and providing for prompt and regular incremental acceptances of portions of the prime contract, pay retainage to prime contractors based on these acceptances, and require a contract clause obligating the prime contractor to pay all retainage owed to the subcontractor for satisfactory completion of the accepted work within thirty (30) days after Augusta, Georgia's payment to the prime contractor.
 - (4) Requiring a contract clause that requires prime contractors to include in their subcontracts language providing that prime contractors and subcontractors will use appropriate alternative dispute resolution mechanisms to resolve payment disputes.
 - (5) Requiring a contract clause providing that the prime contractor will not be reimbursed for work performed by subcontractors unless and until the prime contractor ensures that the subcontractors are promptly paid for the work they have performed.
- (c) Augusta, Georgia shall have the power and authority to enforce all of the provisions of this subsection and may implement suspension and debarment for non-compliance as provided in Article 8.

Sec. 1-10-116. Wage requirements for federally funded projects.

Wage requirements. When a project has federal funds, the prevailing wages paid shall correspond as nearly as practicable to those prescribed in the Federal Davis Bacon Act when required. The wage scale shall be posted by the contractor in a prominent and easily accessible place at the site of work in accordance with Federal Government requirements.

Sec. 1-10-117. DBE bidder's list for federally assisted contracts.

- (a) The DBE Liaison will maintain a bidder's list, consisting of information about all DBE and non-DBE firms that bid or quote on federally assisted contracts. The purpose of this requirement is to allow use of the bidder's list

approach to calculating overall goals. The bidder's list will include the name, address, DBE/non-DBE status, age, and annual gross receipts of firms and the types of work each firm has been certified to perform as a DBE. The DBE Liaison shall revise the bidder's list at least annually and make updated information available to contractors and the public.

- (b) The DBE Liaison Officer may collect this information in the following ways:
 - (1) Including a contract clause in all DOT and FTA assisted contracts requiring prime bidders to report the name, address, DBE/non-DBE status and gross receipts of all firms who quote to them on subcontracts.
 - (2) Submitting surveys of a statistically sound sample of firms in the Augusta, Georgia regional area.
 - (3) Including a notice in solicitations and on the Augusta, Georgia website requesting that firms quoting on subcontracts submit their name, address, DBE/non-DBE status and gross receipts directly to the DBE Liaison Officer.

Sec. 1-10-118. Overconcentration of DBE firms in certain types of work.

- (a) The DBE Liaison Officer shall annually review the availability of DBE and non-DBE firms in the different types of work which Augusta, Georgia utilizes and make a preliminary determination as to whether DBE firms may be so overconcentrated in a certain type of work as to unduly burden the opportunity of non-DBE firms to participate in one or more types of work. Any preliminary determination by the DBE Liaison Officer shall be submitted to the concerned DOT or FTA operating administration for a final determination of overconcentration.
- (b) Subject to approval required in subsection (c) below, when an overconcentration of DBE firms in a certain type of work is determined to exist, the DBE Liaison Officer may provide: technical assistance, business development programs, mentor-protégé programs, and other appropriate measures designed to assist DBEs in performing work outside of the specific field in which there is an overconcentration of DBE firms.
- (c) Before implementing any of the measures provided in subsection (b) above,

the DBE Liaison Officer shall obtain the approval of the concerned DOT or FTA operating administration.

Sec. 1-10-119. Compliance with DBE Program requirements.

- (a) All prime contractors and subcontractors choosing to participate in a project subject to this DBE Program must comply with all parts of this program as well as all federal, state and local law applicable to such projects.
- (b) The DBE Liaison Officer shall, for every project subject to this DBE Program, keep and maintain a running tally of actual DBE attainments (e.g., payments actually made to DBE firms), including a means of comparing these attainments to commitments. In reports of DBE participation to the Department, the DBE Liaison Officer shall display both commitments and attainments.
- (c) Augusta, Georgia shall not exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any solicitation, bid or contract on the basis of race, color, sex, or national origin.
- (d) The DBE Liaison Officer is responsible for submitting DOT form 4630 to the FTA and FHWA on a quarterly basis and to the FAA as required by 49 C.F.R. Part 26 or 49 C.F.R. Part 23.

Sec. 1-10-120. DBE Program overall goals.

- (a) The DBE Liaison Officer shall establish an annual overall goal for this program in accordance with 49 C.F.R. Part 26 and shall annually submit such goal to FHWA, FTA or FAA as appropriate. Neither quotas nor set-asides for DBEs are permitted in this program. Augusta, Georgia may only use the means authorized by 49 C.F.R. Part 26.51 to meet overall goals.
- (b) For ACDBE projects the DBE Liaison Officer shall establish goals in compliance with 49 C.F.R. Part 23.21, et. seq.

Sec. 1-10-121. Severability.

Should any section, paragraph, subdivision, clause, phrase, or provision of this chapter be adjudged invalid or held unconstitutional by a court of competent

jurisdiction, such declaration shall not affect the validity of this chapter as a whole or any part or provisions thereof, other than the part so decided to be invalid or unconstitutional.

Sec. 1-10-122 through Sec. 1-10-999. Reserved.



**Administrative Services Committee Meeting
6/13/2011 1:00 PM**

Motion to Deny Bid Protest regarding RFQ # 10-173 from Johnson Laschober and Associates

Department: Procurement Department

Caption: Motion to deny bid protest of Johnson Laschober and Associates in reference to RFQ 10-173 Professional Design Services for Municipal Building.

Background: On April 17, 2011 the Procurement Department received a bid protest from Johnson Laschober and Associates (JLA) to which a response was sent on April 29, 2011. JLA responded on May 2, 2011 by requesting a review by the Administrator. Such review was conducted and results were sent to JLA on May 23, 2011. JLA responded on May 25, 2011 requesting an appeal to the Commission. See attached documents.

Analysis: See attached.

Financial Impact: N/A.

Alternatives: Re-bid this RFQ.

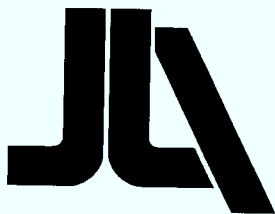
Recommendation: Deny bid protest.

Funds are Available in the Following Accounts: N/A.

REVIEWED AND APPROVED BY:

**Finance.
Law.
Administrator.
Clerk of Commission**

JOHNSON, LASCHOBER & ASSOCIATES, P.C.



April 17, 2011

Ms. Geri Sams, Director
Procurement Department
530 Greene Street, Room 605
Augusta, GA 30911

Re: RFP#10-173
Subject: Municipal Renovations And Modernization
JLA No: PZL 214-2010
Letter No: 003

Dear Ms. Sams:

Our Team respectfully protests the final recommendation of the selection committee as indicated in the attached letter to you dated March 2, 2011 and as presented to the Augusta Richmond County Engineering Services Committee on April 11, 2011. We do not agree that our proposal is qualified or stipulated. Attached are two (2) letters attesting that there is no stipulation in our fee proposal. Also, attached is the selection committee ranking showing that our team is the most qualified team and our fee proposal is \$424,471 less than the fee of the recommended firm.

We respectfully request that our team be recommended for this work.

Sincerely,

JOHNSON, LASCHOBER & ASSOCIATES, P.C.

A handwritten signature in black ink, appearing to read 'Charles Johnson', written over a horizontal line.

Charles (Joe) Johnson, P.E.
Partner

21 APR '11 AM 9:22



Engineering Services Committee Meeting
4/11/2011 1:00 PM
Municipal Building Renovations - Architectural Services

Department: Public Services Department - Facilities Management Division

Caption: Approve the selection committee's recommendation to issue a contract to Virgo Gambill Architects for Professional Architectural Services for the Augusta, Georgia Municipal Building Renovations and Modernization.

Background: Requests for Qualifications (RFQ) were prepared to solicit qualifications statements and proposals for Professional Architectural Services for the Augusta, Georgia Municipal Building Renovations and Modernization.

Analysis: Ten (10) compliant responses for Phase I qualifications submittals were received and evaluated by the selection committee. A short list of four (4) firms was selected to participate in the Phase II interviews. After completing and scoring the Phase II Interviews, the fees for Professional Architectural Services were opened and scored according to the scoring matrix include in the Phase II submittal requirement. The selection committee has completed the evaluation of the Phase I and Phase II submittals from the Architectural Firms and hereby recommends that a contract should be issued to Virgo Gambill Architects in the amount of \$984,471.00

Financial Impact: The total amount of \$984,471.00 for Professional Architectural Services fees is included in the overall project budget of \$18,000,000.00

Alternatives: 1. Approve the selection committee's recommendation to issue a contract to Virgo Gambill Architects for Professional Architectural Services for the Augusta, Georgia Municipal Building Renovations and Modernization. 2. Select a different method of procuring the design services and award

21 APR '11 AM 9:24

Item # 3

the total contract to a lump sum bidder, which will delay the completion date of the project and increase the total project costs.

Recommendation: Approve the selection committee's recommendation to issue a contract to Virgo Gambill Architects for Professional Architectural Services for the Augusta, Georgia Municipal Building Renovations and Modernization

**Funds are
Available in the
Following
Accounts:**

GL - 323-04-6211; JL - 296050050

REVIEWED AND APPROVED BY:

**Finance.
Procurement.
Law.
Administrator.
Clerk of Commission**

ATTACHMENT "C"

PROPOSAL for PROFESSIONAL ARCHITECTURAL SERVICES

for the

Augusta, Georgia

Municipal Building Renovations and Modernization

Gentlemen:

Having carefully examined the Standard Form of Contract for Professional Architectural Services included as Attachment "A", in the Phase II RFP, the undersigned proposes to provide all of the services described and required for a lump sum fee of:

Five Hundred Sixty Thousand and 00/100

(Written Amount)

The amount above was derived based on the following breakdown for the services described in the Standard Form of Contract for Professional Architectural Services:

Phase	Percent	Amount
Design Narrative Phase	5%	28,000
Schematic Design Phase	10%	56,000
Design Development Phase	10%	56,000
Construction Document Phase	35%	196,000
Permitting and Bidding Phase	5%	28,000
Construction Phase	30%	168,000
Final Completion Phase	5%	28,000
Total Architectural and Engineering Fees		560,000
Reimbursable Expenses (per Paragraph 8.2.4 of the Standard Form of Contract for Professional Architectural Services)	*	0
Total		560,000

* To be submitted to the Owner for written authorization prior to incurring expense. Actual cost incurred. Budget 10% of A/E Fee

Fee assumes that we strive to maintain and respect the existing interior character of the building and minimize alterations. This strategy is sustainable and stretches the contract dollars.

1

21 APR '11 AM 9:25

We agree and understand that the breakdown provided above will be used as the schedule of values for billing purposes if awarded the contract. The Construction Phase described above is defined as the date of Substantial Completion.

If notified of the acceptance of this proposal within sixty (60) days after the date of the presentations described in the Phase II RFP, the undersigned agrees to execute and deliver the specified Contract within ten (10) days after receipt of the contract for signature, from Augusta, Georgia. The undersigned agrees, if awarded the Contract within sixty (60) days from the date of the presentations described in the Phase II RFP, to faithfully and properly complete the design work within **one hundred and Eighty (180)** calendar days, consistent with the best interest of the Owner. Completion of the design work is defined as a set of documents that are ready for preparation and submittal 100% Construction Documents.

We acknowledge receipt of Addendum's 1

The undersigned declares that this firm is (strike through those not applicable):

A corporation organized and existing under the laws of the state of Georgia.

~~A partnership consisting of~~ _____

~~An individual trading as~~ _____

The undersigned declares that the person or persons signing this proposal is/are authorized to sign this proposal on behalf of the firm listed and to fully bind the firm listed to all the conditions and provisions thereof.

Respectfully submitted this the _____ (_____) day of _____, 2010.

(Name of Firm)

Johnson, Laschober & Associates, PC

(Street Address)

1296 Broad Street

(City, State, Zip Code)

Augusta, Georgia

(Phone Number)

706-724-5756

(Signature)

AUGUSTA GEORGIA CAPITAL IMPROVEMENTS
HEERY INTERNATIONAL, INC., PROGRAM MANAGER

March 2, 2011

Ms. Geri Sams
Director of Procurement
Augusta Richmond County
530 Greene Street, Room 605
Augusta, GA 30901

RE: Bid #10-173 – Professional Design Services for Municipal Building

Dear Ms. Sams:

We received ten (10) compliant responses for Phase I qualifications submittals, after these were evaluated by the selection committee, a short list of Four (4) firms was selected, based on the scoring for Phase I, to participate in the Phase II Interviews.

The selection committee completed the evaluation of the Phase I and Phase II submittals.

Johnson Laschober & Associates had the lowest fees, but they were found to have qualified their fee proposal and were therefore non-compliant. Based on this, Virgo Gambill Architects was the next firm in the rankings.

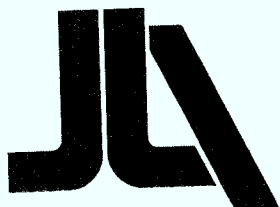
The selection committee recommends that ARC begin contract negotiations with Virgo Gambill Architects.

Thank you for your assistance in this selection process. If you have any questions or require any additional information, please don't hesitate to contact me.

Sincerely,

Forrest W. White, CCM, LEED®AP
Program Manager
Augusta, Georgia
Capital Improvements Program Management

C: Fred Russell, Phyllis Mills, Nancy Williams



March 8, 2011

Mr. Rick Acree, Assistant Director
Public Works and Engineering Department
501 Greene Street, Suite 301
Augusta, GA 30911

Re: RFP#10-173
Subject: Municipal Renovations and Modernization
JLA No: PZL 214-2010
Letter No: 001

Dear Rick:

I want to thank you and the committee for giving the Johnson, Laschober and Associates team the opportunity to interview for this project. Also, I want to thank the committee for asking questions and clarifications during the interview session and the opportunity to clarify our scope and fee in our subsequent meeting.

Our team is committed to providing exceptional services at a fair fee. Our fee includes all costs for the services and consultants such as:

Professional services as outlined in Exhibit A of the proposed contract.

Diversity - Our team utilizes local minority businesses for professional civil engineering and interior design.

Providing cost estimating services as outlined in Exhibit A.

Providing a local Historic Preservation Consultant to assist with the new entrance.

JLA is currently the Design Firm responsible for modifying the existing M/E Central Energy Plant in the basement of the Municipal Building. Our team has the most knowledge of the existing building systems.

We are a full service local Architecture, Engineering and Landscape Architecture Design Firm with a Georgia and nationally renowned Interior Design Consultant. We have verified that the proposed program can very easily fit the actual space. We understand that there will be some adjustment in the program and we anticipated such adjustments in space needs within our fee.

21 APR '11 AM 9:25

Municipal Renovations and Modernization
March 8, 2011
Page 2

The Johnson, Laschober & Associates Team is committed to your project. We look forward to an opportunity to provide our quality Professional Services. If you have any questions, issues or concerns, please do not hesitate to contact us.

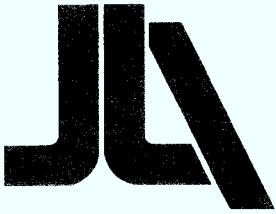
Best Regards,

JOHNSON, LASCHOB & ASSOCIATES, P.C.

Charles J. (Joe) Johnson,
Partner

A handwritten signature in black ink, appearing to be 'C. Johnson', with a stylized, sweeping flourish extending to the right.

cc: Ms. Geri Sams, Procurement Director
Mr. Forrest White, CCM, LEED[®] AP Heery International, Inc



March 23, 2011

Ms. Geri Sams, Director
Procurement Department
530 Greene Street, Room 605
Augusta, GA 30911

Re: RFP#10-173
Subject: Municipal Renovations and Modernization
JLA No: PZL 214-2010
Letter No: 002

Dear Geri:

This letter is to affirm to you and the committee that our fee proposal for the referenced project is genuine. Our fee proposal includes all services to comply with all the requirements of the RFP as originally stated. We take no exceptions to the RFP and our Fee is not contingent on any assumed changes to the RFP. Please do not interpret any verbal or written communications as altering our proposal or "qualifying" our proposal. Our fee proposal includes all costs for the services and consultants as required by the RFP with no exceptions

I want to thank you and the committee for considering the Johnson, Laschober and Associates team for the opportunity to provide our quality design and construction administration services for this project. The Johnson, Laschober & Associates Team is committed to your project. If you have any questions, issues or concerns, please do not hesitate to contact us.

Best Regards,

JOHNSON, LASCHOB & ASSOCIATES, P.C.

Charles J. (Joe) Johnson,
Partner

21 APR '11 AM 9:25

cc: Mr. Rick Acree, Assistant Director Public Works and Engineering Department
Mr. Forrest White, CCM, LEED® AP Heery International, Inc International, Inc

Overall Scoring Phase II Cumulative Scoring Summary

RFP 10-173 Professional Design Services Municipal Building

Category and Description	Pts.	Johnson Laschober & Associates 1296 Broad Street Augusta, Georgia 30901	Nicholas Dickinson & Associates 771 Broad Street, Suite 200 Augusta, Georgia 30901	Studio 3 Design Group 1617 Walton Way Augusta, Georgia 30904	Virgo Gambil Architects 2531 Centerwest Parkway, Suite 200 Augusta, Georgia 30904
Member #1	100.0	92.0	76.5	62.5	80.5
Member #2	100.0	84.0	65.2	57.8	79.0
Member #3	100.0	84.8	75.0	62.2	85.0
Total Cumulative Points	300	260.8	216.7	182.5	244.5
Total Average Points	100	86.9	72.2	60.8	81.5

21 APR '11 AM 9:24



Procurement Department

Mrs. Geri Sams, Director

April 29, 2011

FAXED/MAILED (706) 724-3955

Johnson, Laschober & Associates
Attn: Charles Johnson
P.O. Box 2103
Augusta, GA 30903

Ref: RFQ 10-173 Professional Design Services for Municipal Building

Dear Mr. Johnson:

This correspondence comes to you pursuant to AUGUSTA, GA CODE §1-10-67, and in response to your April 17, 2011 letter regarding the above referenced RFQ item. In your letter, you respectfully protest the final recommendation of the selection committee. You stated that you do not agree that your proposal was qualified or stipulated. Please allow me the opportunity to address your concerns.

In Phase I of the evaluation process, the committee reviewed a total of nine (9) qualification packages that were received in reference to this item and ranked each company according to the evaluation criteria that was listed in the RFQ on pages 13 through 15. Each item listed in the evaluation criteria was weighed. From this initial evaluation process, the four top scoring companies were shortlisted. Each of the shortlisted firms was contacted to appear before the selection committee for an interview.

The second part of the evaluation process, Phase II, included a forty-five (45) minute presentation to the evaluation committee by the shortlisted firms. Prior to the interview, each company received a proposal package which included the evaluation criteria. During the interview, the committee members ranked each company according to their proposal by utilizing the evaluation criteria listed in the RFP package on pages 3 and 4. During your presentation, you made the statement that "[your] proposal was submitted with the idea of preserving the historical features of the building and would include limited renovations"; this information was also included in a note that your firm added to the proposal form which was submitted as part of your proposal. Your company was the top ranked firm, receiving a ranking of 86.9, however the selection committee did have questions and concerns that your proposal did not reflect the information sought in the Request for Proposals. Therefore, your proposal was not considered to be a true comparison with the other firms.

On February 23, 2011, we once again requested that you meet with the committee in order to clarify concerns in reference to your fee amount and comments made during your proposal. During the interview, you stated that "it was the intent of the firm to make minimal changes to the building in order to preserve the historical features of the building"; you also stated that "there were certain remodel request that were included in the RFQ that could not be done without additional costs." Due to these statements of fact, your proposal was considered a qualified proposal, and therefore deemed as non-compliant. Based on the

Room 605 - 530 Green Street, Augusta Georgia 30911
(706) 821-2422 - Fax (706) 821-2811

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Item # 3

classification of your proposal as qualified, it was decided that it would not in the best interest of the City to select your firm. With your proposal being deemed as non-compliant, the next highest ranking firm was selected. After a review of your submittal and the meeting with you to discuss your proposal, I have found that I concur with the decision deeming your proposal as a qualified proposal. Therefore your proposed cannot be considered for award of this RFQ. Accordingly, your protest is denied.

If you would like to pursue your request further, AUGUSTA, GA. CODE §1-10-69 authorizes the Augusta, Georgia Administrator "to settle any protest regarding the solicitation or award of a County contract..." If you would like the Administrator to review your request, please let me know within five (5) days and I will forward your request to the Administrator's Office.

I would like to thank you again for taking the time to participate in the RFQ process with the City of Augusta. We look forward to your Company's continued participation in future business opportunities. Please do not hesitate to contact our office if there are any additional questions or concerns on this item.

Sincerely,

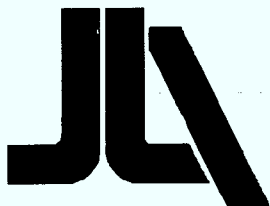


Geri A. Sams, Director
Procurement Department

GAS/nw

cc: Fred Russell, Administrator
Andrew G. Mackenzie, General Counsel
Forrest White, Heery International
Rick Acree, Public Services Department

JOHNSON, LASCHOBER & ASSOCIATES, P.C.



May 2, 2011

SENT VIA MAIL AND FAX 706.821.2811

Mrs. Geri Sams, Director
Procurement Department
530 Greene Street, Room 605
Augusta, GA 30911

Re: RFQ 10-173 Professional Design Services for Municipal Building
JLA No: 9999.2010-214
Letter No: 004

Dear Mrs. Sams:

Pursuant to Augusta, GA Code §1-10-69, we would like the Augusta, Georgia Administrator to review our protest of the recommendation for Professional Services per RFQ 10-173 Professional Design Services for the Municipal Building.

Thank you for your prompt attention to our request.

Sincerely,

JOHNSON, LASCHOBER & ASSOCIATES, P.C.

A handwritten signature in black ink, appearing to read 'Charles (Joe) Johnson', is written over the printed name.

Charles (Joe) Johnson, P.E.
Partner

CJJ/dmt



Office of the Administrator

Frederick L. Russell, Administrator

Tameka Allen, Deputy Administrator
William P. Shanahan, Deputy Administrator

Room 801 - Municipal Building
530 Greene Street - AUGUSTA, GA. 30901
(706) 821-2400 - FAX (706) 821-2819
www.augustaga.gov

MAILED / FAXED (706) 724-3955

May 23, 2011

Mr. Charles Johnson
Johnson, Laschober & Associates
P.O. Box 2103
Augusta, GA 30903

RE: RFQ 10-173 Professional Design Services for Municipal Building

Dear Mr. Johnson:

This letter is in response to your April 17, 2011 protest regarding the above referenced RFQ item. In your letter, you stated the basis for the protest is your disagreement with the decision that your proposal was qualified or stipulated; therefore, you are protesting the final recommendation of the selection committee. Augusta, GA. Code § 1-10-69 authorizes the Administrator to "settle any protest regarding the solicitation or award of a County contract ... prior to an appeal to the Augusta-Richmond County Commission."

It is my understanding that your protest centers around your contention that there was no stipulation in your fee proposal and that you were the most qualified team. In Phase I of the evaluation process, your company was among the four top scoring companies and was shortlisted. As a shortlisted firm you were contacted and asked to appear before the selection committee for an interview.

The Procurement Department has noted that during your presentation, you made the statement that "[your] proposal was submitted with the idea of preserving the historical features of the building and would include limited renovations". Additionally, this information was included in a note that your firm added to the proposal form which was submitted as part of your proposal. While your company was the top ranked firm, the selection committee had questions and concerns that your proposal did not reflect the information sought in the Request for Proposals.

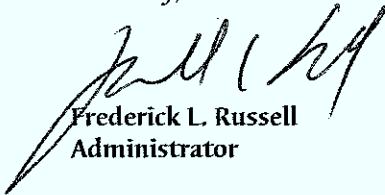
In order to further address concerns regarding your fee amount and comments made during your proposal, there was a request for you to meet with the selection committee on February 23, 2011. At that meeting, you stated that "it was the intent of the firm to make minimal changes to the building in order to preserve the historical features of the building," and that "there were certain remodel requests that were included in the RFQ that could not be done without additional costs." The selection committee determined your proposal did not encompass all the renovations that had been identified, including, but not limited to, certain structural changes to various floors of the Municipal Building. Based on these statements, the selection committee deemed your proposal to be a qualified proposal, and therefore non-compliant.

Mr. Charles Johnson
May 23, 2011
Page 2

After review of each of your concerns, I concur with the Procurement Department and I find that your proposal was qualified or stipulated. Accordingly, your protest is denied.

If you would like to appeal your protest to the Augusta Commission, please submit your request directly to the Procurement Department Director within five (5) days. If you have any questions relating to this matter please let me know.

Sincerely,

A handwritten signature in black ink, appearing to read 'Frederick L. Russell', is written over the printed name and title.

Frederick L. Russell
Administrator

cc: Ms. Geri A. Sams, Procurement Department Director
Mr. Andrew G. Mackenzie, General Counsel
Mr. Forrest White, Heery International