



Administrative Services Committee Meeting Commission Chamber- 9/27/2010- 12:55 PM

ADMINISTRATIVE SERVICES

1. Approval for the filing of three (3) environmentally related grants/services: ☐ [Attachments](#)
Brownfield Community-Wide Assessment Grant for Hazardous Substances and Petroleum, EPA Clean Up Grant and the Targeted Brownfield Assessment Program through the Environmental Protection Agency.
2. Motion to Receive Draft of Procurement Code For Review and Comment. ☐ [Attachments](#)
3. Motion to approve an Ordinance to amend the Augusta, Georgia Code Article Twelve, Sections 3-5-92 through 3-5-95.1 relating to parking violations and enforcement; to add new Sections 3-5-95.2 through 3-5-95.24; to allow the Downtown Development Authority to enforce parking violations and use collected funds for revitalization in Augusta; to repeal all Ordinances and parts of Ordinances in conflict herewith; to provide an effective date and for other purposes. (Approved by Administrative Services Committee September 13, 2010) (Referred from September 21 Commission meeting) ☐ [Attachments](#)
4. An Ordinance to present proposal to amend the Augusta, Georgia Charter and Laws of Local Application, Section 1-40 relating to Equal Opportunity; to separate the function of Equal Employment Opportunity from Minority and Small Business Opportunities; to provide policies and guidelines; to create a Local Small Business Advisory Board; to repeal all Charter, Code Sections and Ordinances and parts of Charter, Code Sections and Ordinances in conflict herewith; to provide an effective date and for other purposes. ☐ [Attachments](#)

www.augustaga.gov



**Administrative Services Committee Meeting
9/27/2010 12:55 PM**

**Brownfield Community-Wide Assessment Grant for Hazardous Substances and Petroleum Consent, Clean Up Grant
and the Targeted Brownfield Assessment Program**

Department:	Housing & Community Development
Caption:	Approval for the filing of three (3) environmentally related grants/services: Brownfield Community-Wide Assessment Grant for Hazardous Substances and Petroleum, EPA Clean Up Grant and the Targeted Brownfield Assessment Program through the Environmental Protection Agency.
Background:	A Brownfield is defined as: real property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant. · The Brownfield Community-Wide Assessment Grant for Hazardous Substances and Petroleum (\$400,000) will allow Housing and Community Development Department (HCDD) to inventory, characterize, assess, and conduct planning and community involvement related to Brownfield. The funds will be used to address sites contaminated by petroleum and hazardous substances, pollutants, or contaminants including hazardous substances co-mingled with petroleum. · The EPA Cleanup Grant (\$200,000) will provide funding to carry out cleanup activities at Brownfield sites. These activities would require a Phase I and Phase II Environmental Assessment. · The Targeted Brownfield Assessment (TBA) program (\$200,000) is not a grant program, but a service provided through an EPA contract in which EPA directs a contractor to conduct environmental assessment activities to address the requestor's needs if there is a concern in a Brownfield site. This program will cover the cost of the Phase I and Phase II Environmental Assessment for sites that potentially require clean up. The project period for each grant is three years.
Analysis:	These grants will be used to address sites contaminated by petroleum and hazardous substances, pollutants, or contaminants (including hazardous substances co-mingled with petroleum). One public meeting will be held to provide citizens an opportunity to participate in the development of the application prior to submission of the Brownfield Community-Wide Assessment Grant for Hazardous Substances and Petroleum.
Financial Impact:	There will be no financial impact to the municipality. The Community Wide Assessment Grant for Petroleum and Hazardous Substances will be in the amount of \$400,000.
Alternatives:	none
Recommendation:	Approve the submission of the Brownfield Community Wide Assessment

Cover Memo

Item # 1

Grant for Petroleum and Hazardous Substances in the amount of \$400,000 and approve the future submission of the EPA Clean Up Grant and the Targeted Brownfield Assessment Program applications in the amount of \$200,000.00.

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

The EPA Clean Up Grant and Targeted Brownfield Assessment Program applications will be submitted at a later date.

REVIEWED AND APPROVED BY:

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



**Administrative Services Committee Meeting
9/27/2010 12:55 PM
Motion to Receive Draft of Procurement Code For Review and Comment**

Department: Law

Caption: Motion to Receive Draft of Procurement Code For Review and Comment.

Background:

Analysis:

Financial Impact:

Alternatives:

Recommendation:

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

REVIEWED AND APPROVED BY:

Finance.

Law.

Administrator.

Clerk of Commission

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.**
- Sec. 1-10-64. Rebidding or cancellation of existing contract.**
- Sec. 1-10-65. Multiple awards.**

Article 7 Local Small Business Opportunity Program

- Sec. 1-10-66. Short title.**
- Sec. 1-10-67. Objective.**
- Sec. 1-10-68. Policy.**
- Sec. 1-10-69. Definitions.**
- Sec. 1-10-70. Application; effective date.**
- Sec. 1-10-71. Program administration**
- Sec. 1-10-72. Registration and certification procedures.**

Sec. 1-10-73. Local small business opportunities program participation
Sec. 1-10-74. Exceptions – federally funded projects

Sec. 1-10-75. Citizen’s Small Business Advisory Board

Article 8 Suspension or Debarment of Bidder or Proposer

Sec. 1-10-76. Authority to suspend or debar from qualified bidder/proposer list.

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

Sec. 1-10-78. Notice

Sec. 1-10-79. Finality of decision

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

Article 9 Appeals and Remedies

Sec. 1-10-81. Procurement protests.

Sec. 1-10-82. Filing of protest

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

Sec. 1-10-84. Appeals

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

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

Sec. 1-10-87. Notice of hearing

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

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

Sec. 1-10-90. Hearing procedures

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

Sec. 1-10-92. Contract claims

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

Article 10 Types of Contracts

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

Sec. 1-10-95. Public works contracts

Article 11 Cooperative Procurement

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

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

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

- Sec. 1-10-99. Joint use of facilities.**
- Sec. 1-10-100. Use of state contracts.**
- Sec. 1-10-101. Purchase of surplus and excess property.**
- Sec. 1-10-102. Waiver.**

Article 12 Contract Administration and Management

- Sec. 1-10-103. Purpose.**
- Sec. 1-10-104. Augusta, Georgia contracts and contract clauses.**
- Sec. 1-10-105. Contract modification.**
- Sec. 1-10-106. Bid security and performance bonds.**
- Sec. 1-10-107. Contract performance and payment bonds.**
- Sec. 1-10-108. Bond forms and copies.**
- Sec. 1-10-109. Retainage.**
- Sec. 1-10-110. Approval of accounting system.**
- Sec. 1-10-111. Contractual provisions for worksite inspections.**
- Sec. 1-10-112. Contractual provisions for auditing records.**

Article 13 Supplies and Fixed Assets Management Programs

- Sec. 1-10-113. Surplus supplies.**
- Sec. 1-10-114. Fixed asset management.**
- Sec. 1-10-115. Supplies management.**

Article 14 DBE Program for DOT Assisted Contracts.

- Sec. 1-10-116. Purpose.**
- Sec. 1-10-117. Limitations.**
- Sec. 1-10-118. Policy Statement**
- Sec. 1-10-119. DBE liaison officer.**
- Sec. 1-10-120. DBE financial institutions.**
- Sec. 1-10-121. Prompt payment mechanisms.**
- Sec. 1-10-122. Wage requirements for federally funded projects.**
- Sec. 1-10-123. DBE bidder's list for DOT-assisted contracts.**
- Sec. 1-10-124. Overconcentration of DBE firms in certain types of work.**
- Sec. 1-10-125. Compliance with DBE Program requirements.**
- Sec. 1-10-126. DBE Program overall goals.**

- Sec. 1-10-127. Severability.**

- Sec. 1-10-128 through Sec. 1-10-999. Reserved.**

Chapter 10

PROCUREMENT

ARTICLE 1

GENERAL PROVISIONS AND DEFINITIONS

Sec. 1-10-1. Purpose.

The purpose of the Procurement Chapter of the AUGUSTA, GA. CODE is to provide detailed procedures for implementation of procurement requirements for Augusta, Georgia. 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; and
- (d) Foster competition in the public procurement process.
- (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) 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 every expenditure of public funds irrespective of the source of the funds. It shall also apply to the disposal of Augusta, Georgia 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 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. Other records may be maintained by the Local Small Business Office.
- (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 believes that there may not be at least three (3) qualified informal bidders, quotes shall 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 is encouraged to select the bid from within the local market area. 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 bidder is within 10% or \$10,000, whichever is less of the lowest non-local bidders. The lowest local bidder will be allowed to match the bid of the lowest non-local bidder and, if matched, the lowest local 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 Local Small Business (LSB) Coordinator [or 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 Local Small Business Office [or Department of Procurement], and the applicant must be approved and registered by the Local Small Business Office [or Department of Procurement]. 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 LSB Coordinator [or 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 Local Small Business Office [or 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 abrogate 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 County 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 abrogate 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). (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) *Fault*. Wrongful act, omission or breach.
- (30) *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).
- (31) *Firm*. Any individual, partnership, corporation, association, joint venture, or other legal entity permitted by law to practice or offer professional or consultant services.
- (32) *Good Faith*. Honesty in fact in the conduct or transaction concerned. (O.C.G.A. § 11-1-201).
- (33) *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.
- (34) *Genuine*. Free of forgery or counterfeiting. (O.C.G.A. § 11-1-210).
- (35) *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.

- (36) *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.
- (37) *Invitation for Bids.* An advertisement for the submission of bids for a particular project, item or goods whether attached or incorporated by reference.
- (38) *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.
- (39) *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.
- (40) *May.* Denotes the permissive.
- (41) *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).
- (42) *Notice to proceed.* Written document issued by the Procurement Director or her designee directing the contractor to proceed with the performance of the contract.
- (43) *Offer.* A proposal or bid submitted in response to a request for proposal (RFP) or invitation for bid (ITB).
- (44) *Offeror.* Any person submitting a response to a solicitation issued, including an informal request for quotes, a request for proposal or invitation for bids.

- (45) *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).
- (46) *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.
- (47) *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.
- (48) *Person.* Any business, individual, union, committee, club, other organization, or group of individuals.
- (49) *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.
- (50) *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.
- (51) *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.
- (52) *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.

- (53) *Procurement Department.* The department responsible for the expenditure of public funds for the procurement of commodities, services, or construction products.
- (54) *Procurement Director.* The department head of the Procurement Department responsible for the procurement of goods and services for Augusta, Georgia.
- (55) *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.
- (56) *Product.* Something produced by physical labor or intellectual effort, commodities, supplies, equipment, materials, goods, services and construction.
- (57) *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.
- (58) *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.
- (59) *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.

- (60) *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.
- (61) *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.
- (62) *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.
- (63) *Public Sale.* A sale held to dispose of surplus Augusta, Georgia property.
- (64) *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.
- (65) *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).
- (66) *Purchase Order.* Written authorization requesting the selected vendor to deliver goods with payment to be made later.
- (67) *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.
- (68) *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.

- (69) *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.
- (70) *Request for Proposals (RFP)*. All documents, whether attached or incorporated by reference, utilized for soliciting proposals.
- (71) *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.
- (72) *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.
- (73) *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.
- (74) *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.

- (75) *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.
- (76) *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.
- (77) *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.
- (78) *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.
- (79) *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.
- (80) *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.
- (81) *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).
- (82) *Supplies.* Any goods, equipment, material or other personal property owned by Augusta, Georgia and available for use by the personnel of the organization.
- (83) *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.

- (84) *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.
- (85) *Using Agency Head*. The director or department head of a using agency that is responsible for the administration or such using agency.
- (86) *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.
- (87) *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, if needed;
 - (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;
- (22) Resolving protests excepts 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.
- (24) **Implementing and operating the LSBOP.**

(Ord. No. 6939, § 16, 1-2-07).

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.

(Ord. No. 6939, § 16, 1-2-07).

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: The Procurement Director and the using agency shall review each solicitation for accuracy prior to advertising. The Procurement Director and the using agency shall 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 following circumstances:

- (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 Augusta, Georgia 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-Richmond County 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-Richmond 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.

(Ord. No. 6939, § 16, 1-2-07).

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.

(Ord. No. 6939, § 16, 1-2-07).

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

The using agency shall be responsible for acquiring specifications data for its procurements. Procurement personnel will assist with this task by providing copies of previously used specifications, brochures, or other reference materials. However, the Procurement office staff's primary responsibility is to develop the data provided by the using agency head into the proper format for the solicitation of bids, proposals, or quotations. 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.

(Ord. No. 6939, § 16, 1-2-07).

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.

(Ord. No. 6939, § 16, 1-2-07).

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.

(Ord. No. 6939, § 16, 1-2-07).

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; or
 - (4) 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.

(Ord. No. 6939, § 16, 1-2-07).

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.

(Ord. No. 6939, § 16, 1-2-07).

Sec. 1-10-44. Bid bonds.

- (a) *Requirements.* Bid security shall be required, primarily for construction contracts, when the value is estimated 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-Richmond 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 bond requirement.* When the Invitation for Bids requires bid security, any bid submitted without such security shall be rejected and returned to the bidder with a written explanation of the action taken.
- (h) *Withdrawal of bids.* If a bidder is permitted to withdraw a bid before award it is considered cause to forfeit bid security unless substantial evidence is presented clearly evidencing the mistake and hardship that would occur to the bidder.

(Ord. No. 6939, § 16, 1-2-07).

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-Richmond 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.

(Ord. No. 6939, § 16, 1-2-07).

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. (Ord. No. 6939, § 16, 1-2-07).

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 office designated in the invitation for bids 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.
- (Ord. No. 6939, § 16, 1-2-07).

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.
- (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.
- (Ord. No. 6939, § 16, 1-2-07).

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 five thousand dollars (\$5,000), 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.
- (Ord. No. 6939, § 16, 1-2-07).
- (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 ten 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 and place in the contract file.
- (Ord. No. 6939, § 16, 1-2-07).

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 Richmond County 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). (Ord. No. 6939, § 16, 1-2-07).

Sec. 1-10-58. Annual contracts.

Upon approval of an annual contract by the Augusta Richmond 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. (Ord. No. 6939, § 16, 1-2-07).

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 Augusta, Georgia government. 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 Chapter 10 of the Code of Ordinances 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 LSB Coordinator [or Procurement Director] of matters pertaining to this section, 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, § 1-40. Members are appointed by the Mayor, Commission and the Richmond County Legislative Delegation to the Georgia General Assembly. A list of the appointees is maintained in the Clerk of Commission's Office and is incorporated herein by reference.
 - (2) *Commercially Useful Function.* For the purpose of determining whether a registered Local Small Business is performing a commercially useful function, the Local Small Business Office [or Procurement Department] 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 Local Small Business Office [or Procurement Department] 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 Local Small Business Office [or Procurement Department] 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 Local Small Business Office [or Procurement Department].

- (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 the 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 Local Small Business Office [or Procurement Department], providing goods or services, which has its principal office and place of doing business in Augusta, Georgia; with gross annual receipts being less than one million dollars (\$1,000,000); 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.

This ordinance shall apply to all bids, proposals, contracts, expenditures and purchases commenced by Augusta, Georgia except sole source or emergency procurement. 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 (LSBOP).* The LSB Coordinator [or Procurement Director] shall have the primary responsibility to assure that the LSBOP is effectively and equitably carried out in Augusta, Georgia. The LSB Coordinator [or Procurement Director] shall work in partnership with the Procurement Program set forth in Chapter 10 of the AUGUSTA, GA. CODE. Other Augusta, Georgia officials and management personnel shall give their full cooperation towards the implementation of the LSBOP program.
- (B) *PROGRAM.* The Local Small Business Opportunities Program administration consists of performing vendor registration, education and outreach, and review of bid and proposal documents. Specifically, the program shall consist of:
- (4) 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 which shall be filed with Augusta, Georgia Administrator within seven (7) 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 LSB Coordinator [or Procurement 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. LSB Coordinator [or Procurement 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 Local Small Business Office [or Procurement Department] 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.
- (c) *Procurement Department Responsibilities.*
- (1) Notify all registered vendors of formal bid opportunities through direct solicitation or public advertisement, including information on the LSBOP.
 - (2) 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.
 - (3) Provide data and technical assistance to support the outreach efforts of the LSBOP as necessary and appropriate.
 - (4) Develop and utilize specifications that are open and competitive.
 - (5) The Procurement Director in consultation with the LSB Coordinator, 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.

- (6) 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.
- (D) *Evaluation of the Local Small Business Opportunity Program by the Augusta, Georgia Commission.* The Local Small Business Opportunities Assistance Program shall be evaluated on an annual basis. Each annual report shall be compiled by the LSB Coordinator [or the Procurement 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 Augusta, Georgia's Local Small Business Opportunities Program requires prior registration or evidence of current certification of a Local Small Business in order to count the participation of that Local Small Business 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 Local Small Business Office [or Procurement Department] 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;
- (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 the applicant individual must have maintained such fifty-one (51) percent ownership for at least one (1) year; 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 Local Small Business Office [or the Procurement Department] 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 Local Small Business Office [or Procurement Department];
- (5) 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 LSB Coordinator [or Procurement 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 at which time the firm may present additional facts and evidence in support of its eligibility. Augusta, Georgia Administrator 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

- (2.) The local small business has participated in the LSBOP for ten (10) years and ARC 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 LSB Coordinator with a copy of the invitation to bid or bid specifications, including the scope of work. The Local Small Business Office [or Procurement Department] will identify the existence of

registered local small businesses which are qualified to submit bids as prime contractors.

- (4) The Local Small Business Office [or Procurement Department] 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:
 - (i) adherence to the policies of Augusta, Georgia relating to equal opportunity in contracting; (ii) agreement to undertake certain measures as provided in this policy to ensure maximum practicable participation of local small businesses; and (iii) 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 Local Small Business Office [or Procurement Department] 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 Local Small Business Opportunity Program 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) *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 Local Small Business Department [or Procurement Department] so

appropriate local small business subcontracting goals may be determined.

- (3) Assist the Local Small Business Department [or Procurement Department] 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 Local Small Business Office [or Procurement Department] within fourteen (14) days of progress payments and thirty (30) days of contract closeout.
- (7) Submit to the Local Small Business Office [or Procurement Department], 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 LSB Coordinator [or Procurement 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. This will be achieved by adopting the Federal Guidelines for setting Goals 49 CFR Part 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 in 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 and the LSB Coordinator [or 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 LSB Coordinator [and/or Procurement 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 Local Small Business Office [or Procurement Department], 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 Local Small Business Office [or Procurement Department] shall make available to every Augusta, Georgia department a directory of registered local small businesses and encourage their use of by departments.
 - (2) The Local Small Business Office [or Procurement Department] shall provide annual training to all Augusta, Georgia Departments on the Local Small Business Opportunities Program.
 - (3) The LSB Coordinator [or Procurement 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. The LSB Coordinator will make recommendations to the Procurement Director when a specification appears to impede local small businesses from competitively participating in a bid.
 - (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 Local Small Business Office [or Procurement Department].
 - (5) The Local Small Business Office [or Procurement Department] will attempt to identify qualified local small businesses and will include such local small business in bid/quote solicitation lists.
- (f) *Procurement Department Buyer's Responsibilities.*
- (1) For all 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 buyer.

(g) *Maintenance of Records.*

- (1) The Local Small Business Office [or Procurement Department], with the assistance of the Department of Information Technology, shall compile data on local small business participation. Information on prime contract awards and subcontractor utilization will be maintained by the Local Small Business Office [or Procurement Department] 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 by category of purchase (i.e. construction, professional services, general services, and materials/equipment/supplies).
- (3) The following statistics shall be reported not less than annually to the Augusta, Georgia Commission by the LSB Coordinator [or Procurement Director].
 - (i) Regarding purchases of professional services, general services and material/equipment/supplies made through the competitive bid and quotation process:
 - Total value of purchases
 - Total value of purchases from local small businesses
 - (ii) Regarding small purchases by operating department using Agency Purchase Orders:
 - Total value of small purchases by Augusta, Georgia Department

Total value of small purchases from local small businesses by
Department

(iii) Regarding construction purchases:

Total value of construction contract awards

Total value of construction contracts awarded to local small
businesses as prime contractors.

Total value of subcontracts awarded to local small 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 Procurement 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 LSB Coordinator [or Procurement 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, and include the right of the LSB Coordinator [or Procurement 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 LSB Coordinator [or Procurement 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 Local Small Business Office [or Procurement Department]:

- (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 GDOT, DOD and FAA 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 LSB Coordinator [or Procurement 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 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:
 - (i) Deliberate failure to perform in accordance with the provisions or within the time limit provided in any Augusta, Georgia contract.
 - (ii) 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:
 - (i) Costs incurred by the contractor but not included in its bid or proposal due to its own error;
 - (ii) Costs that it has already been paid or will be paid under the contract;
 - (iii) Costs asserted simply for the purpose of forcing Augusta, Georgia to consider a settlement at a reduced amount;
 - (vi) Costs that the contractor has not certified pursuant to the contract documents; and
 - (v) 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 this division.

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 Procurement Director, 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 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-Richmond-County Commission. All appeals must be received by the Procurement Director 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 Procurement Department may, but is not required, to send to the protestor written notice of the time and place of the hearing. Copies of such notice shall be sent to the Augusta-Richmond General Counsel and the Department head 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 through the officially designated Augusta, Georgia Project Manager. 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 Augusta-Richmond 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 Augusta-Richmond 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; or (Ord. No. 6939, § 16, 1-2-07).

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 five thousand (\$5,000) 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 of less than five thousand dollars (\$5,000) but more than one-thousand dollars (\$1,000) must have:
- (1) General project concept approval by the Commission and/or 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 less than one-thousand dollars (\$1,000) 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 to be signed 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 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 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 nonresponsive 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.

(Ord. No. 6939, § 16, 1-2-07).

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

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) and Article 13 (Supplies and Fixed Assets Management Programs).

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.

(Ord. No. 6939, § 16, 1-2-07).

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.

(Ord. No. 6939, § 16, 1-2-07).

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.

(Ord. No. 6939, § 16, 1-2-07).

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

- (a) *Modifications.* Every modification to a contract with Augusta, Georgia 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.

In instances where the Procurement Director, architect/engineer, or project manager, with the approval of the using agency head, and 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.

(Ord. No. 6939, § 16, 1-2-07).

Sec. 1-10-106. 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) *Amount of bid security.* Bid security shall be in an amount equal to at least ten (10) percent of the amount of the bid.
- (c) *Rejection of sealed bids for noncompliance with bid security and authority.*

If required, and the bid security is not included with the bid, the Procurement Director shall recommend to the Commission that the bid be rejected.

- (d) *Withdrawal of bids.* If a bidder is permitted to withdraw its bid before award as provided in section 1-10-50(g) Sealed Bidding; Correction or Withdrawal of Bids no action shall be taken against the bidder or the bid security and the bidder may be entitled to the return of its bid security).

(Ord. No. 6939, § 16, 1-2-07).

Sec. 1-10-107. Contract performance and payment bonds.

- (a) Performance bonds or security shall be delivered to Augusta, Georgia and shall become binding on the parties upon the execution of the contract to provide a performance bond satisfactory to Augusta, Georgia.
- (b) Payment bond satisfactory to Augusta, Georgia for the protection of all persons supplying labor and material to the contractor or its subcontractors for the performance of the work provided for in the contract.

(Ord. No. 6939, § 16, 1-2-07).

Sec. 1-10-108. Bond forms and copies.

The form of payment and performance bonds and other required bonds shall be prescribed by the Augusta, Georgia General Counsel. Any person may request and obtain from Augusta, Georgia a certified copy of a bond upon payment of the cost of reproduction of the bond and postage, if any. A certified copy of a bond shall be prima facie evidence of the contents, execution, and delivery of the original.

Sec. 1-10-109. 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. 1-10-110. 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. 1-10-111. Contractual provisions for worksite inspections.

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. 1-10-112. 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

SUPPLIES AND FIXED ASSETS MANAGEMENT PROGRAMS

Sec. 1-10-113. Surplus supplies.

- (a) Generally, salvageable surplus supplies are divided into categories as described below:
 - (1) *Scrap.* Any ferrous supplies that can be used for remelting to produce iron, steel, or its alloys.
 - (2) *Waste.* All non-metallic refuse which has market value, e.g. paper.
 - (3) *Worn or damaged.* Either scrap or waste supplies that may be sold or used as trade-in.
 - (4) *Obsolete and surplus.* Any supplies that are of no use by Augusta, Georgia.
 - (5) *Excess.* Any supply that does not have a useful purpose for a particular department or agency. The supply may have value, within other departments or Augusta, Georgia agencies and may be transferred. Nothing herein refers to the sale, lease or disposal of real

property.

Sec. 1-10-114. Fixed asset management.

The Fixed Assets Management function in Augusta, Georgia was implemented for the purpose of surveying and documenting all Augusta, Georgia owned personal assets, performing regular audits of Augusta, Georgia assets, centralizing the administration and control of excess supplies and determining whether excess supplies are suitable for other uses prior to disposition and prior to procuring new items of similar quality and functionality. Also, the Procurement Director shall regularly check with agencies regarding the use and availability of excess or potentially surplus items.

With respect to surplus supplies, all using agencies shall submit to the Procurement Director, at such times and in such forms as prescribed, reports showing stocks of all supplies which are no longer used or which have become obsolete, worn out or scrapped. The Fixed Assets Manager shall determine whether the item(s) can be relocated for further use by other departments or agencies prior to disposition. If the item(s) has no further use to Augusta, Georgia, the Procurement Director shall prepare a report to the Augusta, Georgia Administrator advising that office of the item(s) available for disposition.

(Ord. No. 6939, § 16, 1-2-07).

Sec. 1-10-115. Supplies management.

- (a) *Responsibility.* The Procurement Director has responsibility for the sale, lease, or disposal of surplus supplies. No employee or official of Augusta, Georgia or their agent shall be entitled to purchase such supplies.
 - (1) The Procurement Director is responsible for the sale, or disposal of supplies via means described below; except that it shall first be determined that the item(s) has no further use by Augusta, Georgia.
 - (2) The Procurement Director shall handle the procurement of auction facilities and professional auction services, and the advertisement process, or coordinate the sealed bidding process.
 - (3) The Augusta, Georgia Commission shall authorize the sale, lease, or disposal of surplus supply items when necessary and appropriate.

- (b) *Surplus supplies*--How disposed.
 - (1) Auction or sealed bids.
 - (2) Transfer to other using agency or public entity.
 - (3) Trade-in on new supplies or equipment.
- (c) *Award*. Award shall be made in accordance with the invitation for bids or public outcry to the highest bidder if the price is reasonable and acceptable to Augusta, Georgia.
- (d) *Payment*. U.S. currency, U.S. Postal Money Orders, local personal checks, certified checks, or cashier's checks are acceptable methods of payment.
 - (1) Held at a place reasonably available to persons who might desire to attend and submit bids; and
 - (2) At which those attending shall be given the opportunity to bid on a competitive basis; and
 - (3) At which the sale, if made, shall be made to the highest and best bidder; and
 - (4) Except as otherwise provided in this title for advertising or dispensing with the advertising of public sales, of which notice is given by advertisement once a week for two weeks in the newspaper in which the sheriff's advertisements are published, in Augusta, Georgia where the sale is to be held, and which notice shall state the day and hour, between 10:00 a.m. and 4:00 p.m., and the place of sale, and shall briefly identify the goods to be sold.

Article 14 DBE Program for DOT Assisted Contracts.

Sec. 1-10-116. Purpose.

The purpose of this DBE program is to comply with U.S. Department of Transportation (DOT) mandated DBE requirements for certain DOT assisted contracts as required by 49 C.F.R. Part 26.

Sec. 1-10-117. Limitations.

This DBE program is only for DOT assisted contracts and other federally funded contracts having federally mandated DBE requirements.

Sec. 1-10-118. Policy statement.

Augusta is committed to ensuring that all DBE requirements of federally funded contracts will be implemented by Augusta, Georgia. The DBE Liaison Officer 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-assisted contracts in the Department's highway, transit, and airport financial assistance programs;
- (b) To create a level playing field on which DBEs can compete fairly for DOT-assisted contracts;
- (c) To ensure that the Department's 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-assisted contracts;
- (f) To assist 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. 1-10-119. DBE liaison officer.

The Chief Executive Officer concerning DBE Program matters for Augusta, Georgia shall be the Augusta, Georgia Mayor. 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) Gathers and reports statistical data and other information as required by DOT.
- (b) Reviews third party contracts and purchase requisitions for compliance with this program.
- (c) Works with all departments to set overall annual goals.
- (d) Ensures that bid notices and requests for proposals are available to DBEs in a timely manner.
- (e) Identifies contracts and procurements so that DBE goals are included in solicitations covered by this DBE Program.
- (f) Analyzes Augusta, Georgia's progress toward attainment and identifies ways to improve progress.
- (g) Participates in pre-bid meetings.
- (h) Advises the Commission on DBE matters and achievement.
- (i) Provides DBEs with information and assistance in preparing bids, obtaining bonding and insurance.
- (j) Plans and participates in DBE training seminars.
- (k) Certifies DBEs according to the criteria set by DOT and acts as liaison to the Uniform Certification Process in Georgia.
- (l) Provides outreach to DBEs and community organizations to advise them of opportunities.
- (m) Maintains the DBE bidder's list for DOT-assisted contracts as provided in Sec. 1-10-123.
- (n) Ensures that all aspects of this DBE Program are complied with.

Sec. 1-10-120. DBE financial institutions.

For projects containing federally mandated DBE requirements, Augusta 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. 1-10-121. Prompt payment mechanisms.

- (a) For projects containing federally mandated DBE requirements, Augusta 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 to the prime contractor.
- (b) Augusta 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'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 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. 1-10-122. 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. 1-10-123. DBE bidder's list for DOT-assisted contracts.

- (a) The DBE Liaison Officer will maintain a bidders list, consisting of information about all DBE and non-DBE firms that bid or quote on DOT-assisted contracts. The purpose of this requirement is to allow use of the bidders list approach to calculating overall goals. The bidder 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 Officer 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-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. 1-10-124. 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 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 must be submitted to the concerned DOT 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 operating administration.

Sec. 1-10-125. 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 must 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 on an annual basis.

Sec. 1-10-126. DBE Program overall goals.

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.

Sec. 1-10-127. 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. 1-10-128 through Sec. 1-10-999. Reserved.



**Administrative Services Committee Meeting
9/27/2010 12:55 PM
Ordinance Relating to Parking Violations and Enforcement**

Department: Clerk of Commission

Caption: Motion to approve an Ordinance to amend the Augusta, Georgia Code Article Twelve, Sections 3-5-92 through 3-5-95.1 relating to parking violations and enforcement; to add new Sections 3-5-95.2 through 3-5-95.24; to allow the Downtown Development Authority to enforce parking violations and use collected funds for revitalization in Augusta; to repeal all Ordinances and parts of Ordinances in conflict herewith; to provide an effective date and for other purposes. (Approved by Administrative Services Committee September 13, 2010) (Referred from September 21 Commission meeting)

Background:

Analysis:

Financial Impact:

Alternatives:

Recommendation:

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

REVIEWED AND APPROVED BY:

Clerk of Commission

ORDINANCE NO. _____

AN ORDINANCE TO AMEND THE AUGUSTA, GEORGIA CODE, ARTICLE TWELVE, SECTIONS 3-5-92 THROUGH 3-5-95.1 RELATING TO PARKING VIOLATIONS AND ENFORCEMENT; TO ADD NEW SECTIONS 3-5-95.2 THROUGH 3-5-95.24; TO ALLOW THE DOWNTOWN DEVELOPMENT AUTHORITY TO ENFORCE PARKING VIOLATIONS AND USE COLLECTED FUNDS FOR REVITALIZATION IN AUGUSTA; 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-Richmond County Commission to effectively utilize the parking resources available in Augusta and to maintain consistent enforcement with respect to parking; and

WHEREAS, Augusta, Georgia desires to partner with the Downtown Development Authority (DDA) to assist in the collection of revenue for parking violations and for using collected funds for aesthetic and economic revitalization in Augusta, Georgia; and

WHEREAS, based on the foregoing, the Augusta-Richmond County Commission, recommends amending AUGUSTA, GA CODE §§ 3-5-92 through 3-5-95.1 and adding new sections to be designated §§ 3-5-95.2 through 3-5-95.24, relating to parking violations and enforcement.

THE AUGUSTA-RICHMOND COUNTY COMMISSION
ordains as follows:

SECTION 1. AUGUSTA, GA. CODE Sections 3-5-92 through 3-5-95.1 as set forth in the AUGUSTA, GA. CODE, re-adopted July 10, 2007, is hereby amended by striking this section in its entirety as set forth in "Exhibit A" hereto. New Code Sections 3-5-92 through 3-5-95.24 are hereby inserted to replace the repealed Code Sections as set forth in "Exhibit B" hereto.

SECTION 2. This ordinance shall become effective upon its adoption in accordance with applicable laws.

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

Adopted this ____ day of _____, 2010.

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-Richmond County Commission on _____, 2010 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

STRIKE:

~~ARTICLE 12. STOPPING, STANDING OR PARKING PROHIBITED IN SPECIFIED PLACES~~

~~Sec. 3-5-92. Parking not to obstruct traffic.~~

~~No person shall park any vehicle upon a street or road other than an alley, in such a manner or under such conditions as to leave available less than ten (10) feet of the width of the roadway for free movement of vehicular traffic.~~

~~Sec. 3-5-93. Improper parking.~~

~~Except when necessary to avoid conflict with other traffic, or in compliance with law or the directions of a law enforcement officer or official traffic control device, no person shall:~~

~~(a) Stop, stand or park a vehicle:~~

- ~~(1) On the roadway side of any vehicle stopped or parked at the edge of a curb of a street;~~
- ~~(2) On a sidewalk;~~
- ~~(3) Within an intersection;~~
- ~~(4) On a crosswalk;~~
- ~~(5) Between a safety zone and the adjacent curb or within thirty (30) feet of points on the curb immediately opposite the ends of a safety zone, unless a different length is indicated by signs or markings;~~
- ~~(6) Alongside or opposite any street excavation or obstruction when stopping, standing or parking would obstruct traffic;~~

- ~~(7) Upon any bridge or other elevated structure upon a highway or within a highway tunnel;~~
- ~~(8) On any railroad tracks;~~
- ~~(9) On any controlled access highway;~~
- ~~(10) In the area between roadways of a divided highway, including crossovers;~~
~~or~~
- ~~(11) At any place where official signs prohibit stopping;~~
- ~~(b) Stand or park a vehicle, whether occupied or not, except momentarily to pick up or discharge a passenger or passengers:~~
 - ~~(1) In front of a public or private driveway;~~
 - ~~(2) Within fifteen (15) feet of a fire hydrant;~~
 - ~~(3) Within twenty (20) feet of a crosswalk at an intersection;~~
 - ~~(4) Within thirty (30) feet upon the approach to any flashing signal, stop sign, yield sign or traffic control signal located at the side of a roadway;~~
 - ~~(5) Within twenty (20) feet of the driveway entrance to any fire station, or on the side of a street opposite the entrance to any fire station within seventy five (75) feet of such entrance (when properly signposted); or~~
 - ~~(6) At any place where official signs prohibit standing.~~
- ~~(c) Park a vehicle, whether occupied or not, except temporarily for the purpose of and while actually engaged in loading or unloading property or passengers:~~
 - ~~(1) Within fifty (50) feet of the nearest rail of a railroad crossing; or~~
 - ~~(2) At any place where official signs prohibit parking.~~
- ~~(d) No parking areas.~~

~~(1) No vehicle shall park in any area that has been designated or approved as a no-parking area by the Sheriffs Department, the traffic engineer, or the fire department.~~

~~(2) The prohibited no-parking areas shall include but not be limited to the following: Parking in fire lane; improper parking, parking where signs prohibit; yellow curb; loading zone; handicapped zone (O.C.G.A. § 40-6-225); parking on sidewalk; and parking at fire plug.~~

~~(3) It shall be unlawful and in violation of this subsection to park any vehicle within the area so designated as a no-parking area.~~

~~(4) It shall be the duty of the Sheriffs Department to enforce the provisions of this subsection (d); and each deputy sheriff finding a vehicle which is in violation of the terms of this subsection (d) shall attach to such vehicle a summons to the owner, or operator thereof, that such vehicle has been parked in violation of this subsection (d). The citation shall designate the state license number of such vehicle and the county; the time during which such vehicle is parked in violation of this subsection (d); and any other facts, the knowledge of which is necessary to a thorough understanding of the circumstances attending such violation.~~

~~(e) Any person violating the provisions of this section shall be subject to a monetary fine as follows:~~

~~Improper parking: \$20.00~~

~~Handicap zone (O.C.G.A. Section 40-6-225 and 226):~~

~~Not less than \$100.00 and not more than \$500.00~~

~~(f) The vehicle of any person which accumulates parking violations in excess of the sum of forty five dollars (\$45.00) shall be impounded by the Sheriffs Department by an Augusta-Richmond County list wrecker in the event the vehicle can be located and seized within Augusta-Richmond County. The vehicle shall be held until accumulated fines and wrecker fees have been paid in full.~~

~~Sec. 3-5-94. Improper parking by not parking within one foot of curb.~~

~~Every vehicle stopped or parked upon a two-way roadway shall be stopped or parked with the right-hand wheels parallel to and within twelve (12) inches of the~~

~~right-hand curb or as close as practicable to the right edge of the right-hand shoulder.~~

~~Sec. 3-5-95. Obstructing an intersection.~~

~~No driver shall enter an intersection unless there is sufficient space on the other side of the intersection to accommodate the vehicle he is operating without obstructing the passage of other vehicles or pedestrians, notwithstanding any traffic control signal indication to proceed.~~

~~Sec. 3-5-95.1. Restrictions on parking adjacent to the United States Courthouse.~~

~~(a) It shall be unlawful for the owner, driver, or operator of any vehicle to park or to permit such vehicle to be parked or to stand unattended at any time, except by permit, adjacent to any portion of the United States District Courthouse, Southern District of Georgia, located at 500 East Ford Street, Augusta, Georgia, as marked by the Sheriff of Richmond County including specifically those streets or portions thereof, as follows:~~

~~The West Side of Eighth Street between Telfair Street and Walker Street; Walker Street between Ninth Street and Eighth Street; West Ford Street; East Ford Street, and The South Side of Telfair Street from Eighth Street to Ninth Street.~~

~~(b) The United States District Court, Southern District of Georgia, is authorized to issue permits to park in spaces as allowed in this Section.~~

~~(c) The Richmond County Sheriffs Office shall cause to be posted a public notice of parking restrictions imposed by this Section.~~

~~(d) This Section shall not apply to fire department vehicles, police vehicles, emergency or rescue vehicles or other vehicles performing a public emergency function.~~

~~(e) Any vehicle, not displaying the proper permit, which is parked within the restricted area, shall be towed, at the owner's expense.~~

~~(Ord. No. 6430, § 1, 11-7-01)~~

Exhibit B

REPLACE WITH:

ARTICLE 12

STOPPING, STANDING OR PARKING PROHIBITED IN SPECIFIED PLACES

Sec. 3-5-92. Illegal parking.

(a) It shall be unlawful for the owner, driver or operator of a vehicle to stop, stand, or park a vehicle:

(1) On a street or on any public property owned or leased by Augusta, Georgia in violation of an official traffic control device when such traffic control device gives notice of restrictions or prohibitions on parking.

(2) In a space designated with a sign for handicapped persons when the vehicle does not display the distinguishing registration plate, windshield placard, or disabled veteran registration plate or placard issued pursuant to O.C.G.A. § 40-6-226.

(3) So as to obstruct a curb ramp or curb cut for handicapped persons.

(4) In front of or within 15 feet of a fire hydrant.

(5) Within 20 feet of the driveway entrance to any fire station when such entrance is within 75 feet of the fire station.

(6) In an area designated as a fire lane.

(7) In a marked off parking space in a manner that its overall dimensions are not entirely within the parking space as marked off.

(8) On a sidewalk.

(9) On a street in front of a public or private driveway.

(10) Within an intersection.

(11) On a crosswalk.

- (12) On a street within 20 feet of a crosswalk at an intersection.
- (13) On a street within 30 feet upon the approach to any flashing signal, stop sign, or traffic control signal located at the side of a roadway.
- (14) On a street between a safety zone and the adjacent curb or within 30 feet of the points on the curb immediately opposite the ends of a safety zone unless the traffic authority indicates length by signs or markings.
- (15) On a street within 50 feet of the nearest rail of a railroad crossing.
- (16) On a street alongside or opposite any street excavation or obstruction when such stopping, standing, or parking would obstruct traffic.
- (17) On the roadway side of any vehicle stopped or parked at the edge or curb of a street.
- (18) Upon any bridge or other elevated structure upon a street or within a street tunnel.
- (19) On a street median, unless the vehicle is disabled, and then only temporarily for a period not to exceed 24 hours.
- (20) On a street other than parallel with the edge of the roadway, headed in the direction of traffic, and with the curbside wheels of the vehicle within 12 inches of the edge of the roadway, unless authorized to do otherwise by appropriate signs.
- (21) On a street so as to leave available less than ten feet of the width of the roadway, if such roadway has designated thereon traffic lanes.
- (22) On a street within the marked traffic lane area so as to leave available less than ten feet of the width of the right one-half of the roadway for the free movement of vehicular traffic.
- (23) Within a public alley in such a manner under such conditions as to leave available less than ten feet of the width of the roadway for the free movement of vehicular traffic.

Sec. 3-5-93. Parking prohibited.

It shall be unlawful for the owner or operator of any motor vehicle or other vehicle to park the vehicle or allow the vehicle to remain parked on any public street, highway or alley, or in an Augusta, Georgia owned or operated parking deck, lot or garage, in violation of any posted signs regulating or prohibiting parking in such location.

Sec. 3-5-94. Restrictions on parking adjacent to the United States Courthouse.

It shall be unlawful for the owner, driver, or operator of any vehicle to park or to permit such vehicle to be parked or to stand unattended at any time, except by permit, adjacent to any portion of the United States District Courthouse, Southern District of Georgia, located at 600 James Brown Blvd., Augusta, Georgia, as marked by the Sheriff of Richmond County including those streets or portions thereof, as follows:

The West Side of Eighth Street between Telfair and Walker Street;

Walker Street between Ninth Street and Eighth Street;

James Brown Blvd. between Telfair and Walker Street;

East Ford Street; and

The South Side of Telfair Street from Eighth to Ninth Street.

The United States District Court, Southern District of Georgia, is authorized to issue permits to park in spaces as allowed in this Section.

The Richmond County Sheriff's Office shall cause to be posted a public notice of parking restrictions imposed by this Section.

This section shall not apply to fire department vehicles, police vehicles, emergency or rescue vehicles performing a public emergency function.

Any vehicle, not displaying the proper permit, which is parked within the restricted area, shall be booted or towed, at the owner's expense.

Sec. 3-5-95. Parking or standing on a two-way roadway.

A driver who stops or parks on a two-way roadway shall do so in the direction of authorized traffic movement with the right-hand wheels of the vehicle parallel to and not more than 12 inches from the right-hand curb or edge of the roadway, unless otherwise indicated by one or more signs, curb markings, or other traffic controlled devices applicable to the roadway.

Sec. 3-5-95.1. Parking or standing on one-way roadway.

In the event traffic is restricted to one direction upon a roadway, a driver who stops or parks on the roadway shall park the vehicle in the direction of authorized traffic movement with the right-hand wheels parallel to and not more than 12 inches from the right-hand curb or edge of the roadway. Where authorized by one or more signs, curb markings, or other traffic-control devices applicable to the roadway, a vehicle may be parked on the left-hand side of the roadway, but only with the left-hand wheels parallel to and not more than 12 inches from the left-hand curb or edge of the roadway.

Sec. 3-5-95.2. Standing or parking for certain purposes.

(a) It shall be unlawful to stop, stand, or park a vehicle on a street or other property owned or operated by Augusta, Georgia for the principal purpose of:

- (1) Advertising;
- (2) Displaying the vehicle for sale;
- (3) Washing, greasing or repairing such vehicle except repairs necessary by emergency; or
- (4) Storage of such vehicle.

Sec. 3-5-95.3. Parking for more than 48 hours in one place.

For the purpose of this section, a vehicle shall be deemed to have been left on the street or other Augusta, Georgia owned property for the principal purpose of storage when that vehicle has been standing in one place for a continuous period of more than 48 hours. It shall be illegal for the operator of any vehicle to park the same continuously in one place for more than 48 hours on any public street highway or right- of- way or other Augusta, Georgia owned property.

Sec. 3-5-95.4. Standing for loading only.

(a) It shall be unlawful to stop, stand, or park a vehicle for any purpose or period of time other than for the expeditious loading or unloading of passengers in any place marked as a passenger loading zone during the hours specified for a period not to exceed three minutes.

(b) It shall be unlawful to stop, stand, or park a vehicle for any purpose or length of time other than for the expeditious unloading and delivery or pickup and loading of materials at any place marked as a loading zone during the hours when the provisions applicable to loading zones are in effect. In no case shall a stop for loading and unloading of materials exceed the posted time limit, which time shall be no more than 30 minutes.

Sec. 3-5-95.5. Certain vehicles to be parked only for loading and unloading.

(a) It shall be unlawful to park any of the following vehicles on a street at any time except when engaged in loading and unloading or otherwise lawfully and actively engaged in conducting the business for which they are intended and only for the duration of such activities:

(1) Interurban and intraurban motorbuses operating as passenger carriers and property hauling vehicles licensed by the state as common carriers.

(2) Private vehicles whose overall dimensions, including any trailer attached thereto are more than 80 inches in width or 30 feet in length.

(b) Because of the public necessity to transport students to elementary and secondary schools, all school buses are exempted from subsection (a) of this section.

Sec. 3-5-95.6. Double parking for delivery vehicles in downtown area.

The operator of a delivery vehicle shall be permitted to double park for the sole purpose of making deliveries in the downtown area before 10:00 a.m. and after 2:00 p.m.

All delivery drivers are required to place safety cones behind their delivery vehicle and in the immediate area of the point of access to the truck from the street to alert motorists to the loading and unloading activity that is underway in the travel lane.

All other provisions in regards for loading and unloading will remain in effect before 10:00 a.m. and after 2:00 p.m.

Sec. 3-5-95.7. Vehicles blocking streets.

(a) It shall be unlawful to operate a vehicle in such manner as to prevent the use of any street or portion thereof for the purpose of travel for a period of time longer than five minutes. It shall be unlawful to stop a vehicle within an intersection or on a crosswalk for the purpose of receiving or discharging passengers.

(b) It shall be unlawful to head in or back a vehicle at any angle to the curb while engaged in loading or unloading or storage so that any part of the vehicle shall extend past the parking lane if parking is permitted.

(c) When parking adjacent to an intersection, no vehicle shall be allowed to extend past the curb or lateral edge of the roadway. Storage, loading and unloading shall be done with the vehicle parked parallel to the curb only.

(d) At locations where parking is prohibited during certain hours, it shall be unlawful to load or unload from that side of the street during the time of the parking prohibition.

Sec. 3-5-95.8. Leaving unattended vehicle.

It shall be unlawful for an operator or person in charge of a vehicle to leave such vehicle unattended on any street, alley, other public property, new or used car lot, or on any private parking lot which the general public is invited and at which there is no attendant, without first stopping the engine, locking the ignition, and removing the ignition key from the vehicle. However, this section shall not be applicable to vehicles:

- (1) Used for public transportation;
- (2) Used for delivery and emergency purposes; or
- (3) Owned and operated for governmental purposes by Augusta, Georgia, county or state.

Sec. 3-5-95.9. Parking for persons with disabilities.

All spaces on the public streets of Augusta, Georgia which are designated for use by persons with disabilities shall be marked with appropriate signs, and it shall be unlawful for any person to park in a space designated for persons with disabilities in a vehicle which is not displaying a valid parking permit for persons with disabilities, as required by O.C.G.A. § 40-6-226.

It shall be unlawful for any vehicle displaying a valid parking permit for a person with disabilities or having a specially disabled veteran or disabled person license plate to be parking in a space designated for persons with disabilities for more than one hour over the posted time limit.

Sec. 3-5-95.10. Funeral parking.

Any funeral director conducting a funeral in Augusta, Georgia shall have the right to place in the right-of-way adjacent to the home, church or funeral home in which the funeral is to be conducted, and prior to and on the day of such funeral, signs worded as follows: "Reserved for funeral from O'clock until O'clock; provided that such sign is completed by inserting therein a time two hours in advance of the time set for the funeral to which it is related. Unless otherwise permitted by the funeral director or enforcement officer, it shall be unlawful for any person to park any vehicle in the portion of the right-of-way indicated as being reserved for such funeral between the times specified in such sign.

Sec. 3-5-95.11. Residential parking.

a) *Study.* Upon citizen request or on its own initiative, Augusta, Georgia may study the feasibility and desirability of establishing or eliminating one or more residential parking permit zones. A study shall consider, among other things:

- (1) The effect on the safety of residents of the area under consideration from intensive use by nonresidents for parking of vehicles.
- (2) The need of the residents of the area to obtain adequate on-street parking adjacent to or close by their places of residence.
- (3) The difficulty or inability of residents of the area to secure adequate on-street parking adjacent to or close by their places of residence because of widespread use of available parking spaces in that area by nonresident transient motorists.
- (4) The impact of major public facilities and programs on the health, safety, and welfare of the residents of the area and any unreasonable burdens placed on those residents in securing adequate on-street parking and gaining access to their places of residence by virtue of such facilities and programs.

- (5) The likelihood of alleviating, by use of a parking permit system, any problem of unavailability of residential parking spaces.
- (6) The desire of the residents in the area for the institution of a parking permit system and the willingness of those residents to bear the administrative costs incidental to the issuance of permits authorized by this section.
- (7) The fact that the residents of a contemplated parking permit area have contributed to the cost of construction and/or improvement of streets and roads in such area either by the direct assessment of costs or indirectly to the extent such costs are reflected in purchase or rental prices paid by those residents.
- (8) The need for some parking spaces to be available in the area under consideration for use by visitors and the general public.
- (9) Such other factors as the Administrator shall deem relevant.
- (b) *Public hearing.* A public hearing may be held in accordance with the following:

 - (1) Following the completion of a study conducted pursuant to subsection (a) of this section, the Administrator, or his or her designee, may conduct a public hearing at which time interested persons may appear and be heard.
 - (2) Within 45 days following the close of the public hearing, the Administrator shall decide whether to propose the designation of the area under consideration as a residential parking permit zone or to remove the designation of an established residential parking permit zone.
- (c) *Petition and designation.* Procedures for submitting a petition and designation of the zone are as follows:

 - (1) If the Administrator proposes to establish a residential parking permit zone, residents within the area proposed for the designation may petition for the establishment of the zone. Petitions shall be on forms prepared and promulgated by the Administrator. Petitions shall be submitted to the Administrator who shall determine their sufficiency. Any insufficient petition shall be remanded to the individual submitting it, with instructions for correction of deficiencies.

(2) No residential parking permit zone shall be established unless at least 70 percent of the households within the proposed zone have properly signed a petition.

(3) Upon establishment of a residential parking permit zone, the Administrator shall cause to be posted parking signs in the zone, which signs shall prescribe times, locations and conditions under which parking may be by permit only.

(4) The Administrator shall have authority to promulgate regulations necessary to the administration of this program, including, but not limited to, the issuance, display, renewal, revocation, and replacement of decals, and the establishment of reasonable fees for the users of the program.

Sec. 3-5-95.12. Construction permit fees in the downtown area; penalty for violation.

For purposes of this subsection, the "downtown area" shall consist of the area, North to South from the Savannah River to Walton Way and East to West, from Fifth Street to Fifteenth Street.

There shall be a construction permit parking fee for the use of parking spaces in the downtown area by contractors in the performance of their work as follows:

\$8.00 per parking space per day. The construction permit parking fee may be waived by the Augusta, Georgia Administrator for construction projects being preformed for Augusta, Georgia.

It shall be unlawful for the operator of any motor vehicle to park in any spaces which have been designated for construction parking.

Sec. 3-5-95.13. Meaning of curb markings.

The following meanings shall be given to curb markings designating requirements and prohibitions governing parking, standing and stopping:

White shall indicate the lines wherein which vehicles shall park in accordance with the provisions of this chapter.

Yellow paint shall indicate places where vehicles shall not park.

Red paint shall indicate loading zones and other restrictive regulations indicated by posted signs.

Sec. 3-5-95.14. Authority to issue notices of violation and assess civil penalties.

Notices of violation may be issued and civil penalties authorized by this Article may be assessed by any Richmond County Sheriff's officer; or by any officer, employee, or agent designated by the Downtown Development Authority ("DDA") for the administration and enforcement of these provisions; or by any other officer, employee, agent, or other person who is authorized by the Augusta, Georgia administrator to enforce the provisions of this Article.

Sec. 3-5-95.15. Appeals of civil penalty assessments.

Unless another procedure is established for a particular violation by ordinance or state law, appeals of civil penalty assessments shall be governed by this section.

Any person assessed a civil penalty may appeal by filing a written notice of appeal with the DDA, or its designated agency, within 30 days from the date of assessment. Failure to file a notice of appeal within this time period shall constitute a waiver of the right to contest the civil penalty.

Appeals shall be heard by a hearing officer through a quasijudicial process. The hearing officer will be selected by the DDA. The DDA or its designated agency may establish rules and procedures that govern the appeal and quasijudicial hearing process. Such rules may include a requirement that, for specified violations, a bond equal to the amount of the civil penalty be posted at the time a notice of appeal is filed.

A hearing officer's decision on a civil penalty appeal is subject to further review in the Superior Court of Richmond County by proceedings in the nature of certiorari. Either party may appeal the hearing officer's decision. Any petition for writ of certiorari shall be filed with the clerk of the superior court within 30 days after the date that the hearing officer's written decision is issued. The hearing officer shall maintain an official record of each proceeding and if a writ of certiorari is filed in Superior Court of Richmond County, the hearing officer shall submit a copy of the record to the court in accordance with Georgia law.

Sec. 3-5-95.16. Legal Parking zone violations.

The owner of a motor vehicle shall be subject to the following fines for the violation enumerated within:

<u>Overtime parking</u>	<u>\$25</u>
<u>Parking left side of curb</u>	<u>\$25</u>
<u>Parking improperly</u>	<u>\$25</u>
<u>Blocking driveway/alley</u>	<u>\$50</u>
<u>Blocking handicap curb cut</u>	<u>\$200</u>
<u>Parking in handicapped space</u>	<u>\$500</u>
<u>Parking in fire lane</u>	<u>\$100</u>
<u>Parking on sidewalk</u>	<u>\$25</u>
<u>Parking in loading zone</u>	<u>\$50</u>
<u>Parking at yellow curb</u>	<u>\$50</u>
<u>Double parking</u>	<u>\$50</u>
<u>No parking zone</u>	<u>\$50</u>
<u>Parking too far from curb</u>	<u>\$25</u>
<u>Fire hydrant</u>	<u>\$100</u>
<u>Construction parking</u>	<u>\$50</u>

Sec. 3-5-95.17. Cumulative nature of article.

The provisions of this article shall be cumulative and fines will double if assessed penalties are not paid within 14 days.

Sec.3-5-95.18. Multiple violations in one space in a single day.

Each violation of the provision of this code and other ordinances of Augusta, Georgia relating to the parking of vehicles committed by the same person in the same parking space during the same day shall constitute a separate punishable offense against this Code or other ordinances of Augusta, Georgia and may be treated as such.

Sec. 3-5-95.19. Towing of illegally parked vehicles.

Any illegally parked vehicle may be towed. Any vehicle that has been towed for a parking violation is to be held until the towing fee and all penalties related to all outstanding parking tickets and penalties owed to Augusta, Georgia are paid in full or a bond posted in the amount of the towing fee and all outstanding parking tickets and penalties. Payment of the towing fee and all outstanding parking tickets and penalties shall not constitute a waiver of the person's right to contest the towing or the outstanding parking tickets or penalties.

Sec. 3-5-95.20. Wheel locks.

A parked vehicle for which there are three or more tickets outstanding, unpaid, and overdue parking tickets for a period of ninety days or more may be immobilized through the use of wheel locks Any vehicle that has been immobilized is to remain immobilized until an immobilization fee and penalties related to all outstanding parking tickets and penalties owed to Augusta, Georgia are paid in full or a bond is posted in the amount of the immobilization fee and all outstanding parking tickets

and penalties. Payment of the immobilization fee and all outstanding parking tickets and penalties shall not constitute a waiver of a person's right to contest the immobilization or the outstanding parking tickets and penalties.

If a wheel lock is attached to a vehicle, a notice shall be affixed to the windshield or other part of the vehicle so as to be readily visible. The notice shall warn that the vehicle has been immobilized and that any attempt to move the vehicle may result in damage thereto. The notice shall also state the total amount of civil penalties due for parking tickets which are overdue, unpaid, and attributable to such vehicle and that an immobilization fee is also being charged. The address and telephone number to be contacted to pay the charges and have the wheel lock removed shall also be listed. Augusta, Georgia shall not be responsible for any damage to an immobilized vehicle resulting from unauthorized attempts to free or move that vehicle.

The immobilization fee is \$100.00.

There will be a \$400.00 charge for damaged or stolen boots in addition to the immobilization fee and total amount of civil penalties for unpaid parking tickets.

Sec. 3-5-95.21. Payment of parking fines required for vehicle registration renewal.

Failing to satisfy any outstanding fines and penalties assessed under this Article is grounds for the Richmond County Tax Commissioner ("Tax Commissioner") to deny an offender's vehicle registration renewal application. To renew a vehicle registration, an applicant shall satisfy all listed standing, stopping, and parking violations, and other infractions issued for the vehicle and incurred while the vehicle was registered in the applicant's name. For purposes of this section, "listed" standing, stopping, and parking violations and other infractions include only those violations for which a hold notice has been sent to the Tax Commissioner by the DDA, the Sheriff's Office, Augusta, Georgia, or any court. Such notice must be at least 30 days or more before the date the vehicle registration expires. Notice of such violations received by the Tax Commissioner

later than 30 days before that date shall be considered by the Tax Commissioner in connection with any applications for registration renewal in any subsequent registration year. The renewal application may be processed by the Tax Commissioner or his or her agents only if the applicant:

Presents proof that they were not the a registered owner of the vehicle at the time the parking violations were incurred; or

Presents proof of payment for each listed standing, stopping, or parking violations, or other infractions as well as proof of payment for any additional penalties, fines, or fees assessed pursuant to this Article.

Upon verifying that payment has been made on outstanding parking violations, the Tax Commissioner will, within 48 hours, release any hold on the renewal of the vehicle registration resulting from parking violations.

If there is a change in the registered owner of the vehicle, the Tax Commissioner shall forward the information regarding the change to the DDA or other officer or agency which submitted the notice of violation. The Tax Commissioner will, within 48 hours, release any hold on the renewal of the vehicle registration resulting from parking violations or other infractions incurred while the certificate of registration was in a previous registered owner's name.

The Tax Commissioner and/or DDA shall send all registered owners of vehicles who have been reported to have outstanding listed parking violations or other infractions issued at the time of renewal, a statement setting out the dates and jurisdictions in which the violations occurred as well as the amount of unpaid fines and penalties relating to them.

Sec. 3-5-95.22. Holidays.

Parking citations and the towing of vehicles will not occur on the following holidays:

New Year's Day

Martin Luther King, Jr. Day

Good Friday

Memorial Day

Independence Day

Labor Day

Thanksgiving Day

Christmas Day

However, other parking violations such as fire hydrant and no parking areas will remain in effect.

Sec. 3-5-95.23. Augusta, Georgia employees.

Any clearly marked vehicle belonging to Augusta, Georgia, the driver of which is engaged in the performance of his duties as an employee of Augusta, Georgia, is hereby exempt from the provisions of this chapter.

Sec. 3-5-95.24. Allocation of funds collected by DDA.

Funds collected pursuant to this Article by the DDA, or its authorized agent, shall first be used to pay the cost and expenses associated with the enforcement of this Article. Any additional funds collected by the DDA shall be retained by the DDA and used for aesthetic and economic revitalization in Augusta, Georgia.



Administrative Services Committee Meeting

9/27/2010 12:55 PM

Proposal to amend the Augusta, Georgia Charter, Section 1-40 relating to Equal Opportunity

Department: Law

Caption: An Ordinance to present proposal to amend the Augusta, Georgia Charter and Laws of Local Application, Section 1-40 relating to Equal Opportunity; to separate the function of Equal Employment Opportunity from Minority and Small Business Opportunities; to provide policies and guidelines; to create a Local Small Business Advisory Board; to repeal all Charter, Code Sections and Ordinances and parts of Charter, Code Sections and Ordinances in conflict herewith; to provide an effective date and for other purposes.

Background: At the time of consolidation of the City of Augusta and Richmond County, the functions of Equal Employment Opportunity (EEO), Disadvantage Business Enterprise (DBE) and Local Small Business were consolidated in a single position. In 2007 the Disadvantaged Business Enterprise Program for Augusta funded projects was found unconstitutional by the U.S. District Court for the Southern District of Georgia and soon thereafter, the Augusta, Georgia Commission adopted a Local Small Business Opportunity Program (LSBOP). Federal regulations require Augusta, Georgia to have a DBE program for certain federally funded projects and to ensure that DBE requirements in such contracts are fully complied with. 49 C.F.R. Part 26.

Analysis: Separating the functions of EEO, DBE and LSBOP will help to ensure Augusta is in compliance with federal and state laws and regulations for these functions as well as update the Charter to reflect how Augusta performs these services and functions.

Financial Impact: None.

Alternatives: Decline to amend the Charter at this time.

Recommendation: Approve the proposed changes.

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

REVIEWED AND APPROVED BY:

Cover Memo

Finance.
Law.
Administrator.
Clerk of Commission

ORDINANCE NO. _____

AN ORDINANCE TO PRESENT PROPOSAL TO AMEND THE AUGUSTA, GEORGIA CHARTER AND LAWS OF LOCAL APPLICATION, SECTION 1-40 RELATING TO EQUAL OPPORTUNITY; TO SEPARATE THE FUNCTION OF EQUAL EMPLOYMENT OPPORTUNITY FROM MINORITY AND SMALL BUSINESS OPPORTUNITIES; TO PROVIDE POLICIES AND GUIDELINES; TO CREATE A LOCAL SMALL BUSINESS ADVISORY BOARD; TO REPEAL ALL CHARTER, CODE SECTIONS AND ORDINANCES AND PARTS OF CHARTER, CODE SECTIONS AND ORDINANCES IN CONFLICT HEREWITH; TO PROVIDE AN EFFECTIVE DATE AND FOR OTHER PURPOSES.

WHEREAS, Augusta, Georgia seeks to separate the functions of equal employment opportunity, disadvantaged business enterprise and local small business and seeks to provide policies and guidelines for these functions; and

WHEREAS, Augusta, Georgia seeks to create a local small business advisory board and to update the Charter to reflect changes in the manner in which services and functions are provided;

THE AUGUSTA, GEORGIA COMMISSION, ordains as follows:

CHARTER AND LAWS OF LOCAL APPLICATION. A proposal to amend Augusta, Georgia Charter and Laws of Local Application, Chapter 1, Article 5, Sections 1-40, called “Equal opportunity”, as set forth in the Augusta, Georgia, re-adopted July 10, 2007, is hereby presented. The proposal is to amend the Charter by striking Section 1-40 in its entirety as set forth in “Exhibit A” hereto and inserting in lieu thereof a new Section 1-40 called “Equal employment opportunity, local small business program and disadvantaged business enterprise program for DOT assisted projects” as set forth in “Exhibit B” hereto.

SECTION 2. This ordinance shall become effective upon its adoption in accordance with applicable laws. Once this proposal is adopted by the Commission, a notice containing a synopsis of the proposed amendment shall be published in the Augusta Chronicle once a week for three weeks. Following the final week of publication, the Charter amendment shall be place on the Commission agenda for final approval. The Charter amendment will be effective following the second reading of the final approval.

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

Adopted this _____ day of _____, 2010.

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 _____, 2010 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: _____

EXHIBIT A

STRIKE:

Sec. 1-40. Equal opportunity.

~~—(a) The government of Augusta-Richmond County shall encourage the meaningful involvement in its operations of all citizens of Augusta-Richmond County, particularly those who are members of minority or other traditionally disadvantaged groups, as appointees, employees, and independent contractors. The Commission shall afford equal opportunities for employment and promotion to all persons regardless of race, sex, religion, gender, creed, color, or national origin.~~

~~—(b) It is the policy of the Augusta-Richmond County government to ensure the equitable participation of all minorities, including African-Americans, women, and small businesses in providing goods and services to the city county government. The goal of this section is to increase the use of such minorities and small businesses to a level comparable with their availability. This participation goal shall be used as a guideline to the Commission and shall not be construed as a ceiling or quota.~~

~~—(c) In furtherance of the policies stated in subsections (a) and (b) of this section, the Commission shall employ a person to serve as equal employment opportunity director and as director of minority and small business opportunities. The director shall develop and, subject to the approval of the Commission, implement such policies, procedures, and guidelines as the director deems necessary or appropriate to ensure equal employment opportunities for all citizens. The director, subject to the approval of the Commission, shall propose and implement such policies, procedures, and guidelines as are necessary and appropriate to ensure equal opportunities for all businesses and citizens in contracting with the Commission and all departments, agencies, authorities, and other entities of local government and to encourage the development of minority and small businesses within Richmond County. In addition, said director shall have such other powers and duties as may from time to time be afforded by action of the Commission.~~

~~—(d) The Commission shall establish' a citizens advisory council for minority employment and small business opportunities to advise the Commission and~~

~~director of matters pertaining to this section, and to meet with minorities and small businesses to review the problems of minority and small business opportunities. (1995 Ga. Laws, p. 3648; 1996 Ga. Laws, p. 3607; 1997 Ga. Laws, p. 4024; 1997 Ga. Laws, p. 4690)~~

EXHIBIT B

REPLACE WITH:

Sec. 1-40. Equal employment opportunity, local small business program and disadvantaged business enterprise program for DOT assisted projects.

(a) The government of Augusta, Georgia shall implement and follow employment practices that treat all persons fairly regardless of race, sex, religion, gender, creed, color, national origin, or protected age classification. It is the policy of the Augusta, Georgia government to provide equal employment opportunities to all minorities and women.

(b) Subject to the limitations of federal and state law, the government of Augusta, Georgia shall implement and follow procurement practices that treat all persons fairly regardless of race, sex, religion, gender, creed, color, national origin or protected age classification. It is the policy of the Augusta, Georgia government to provide equal opportunities for participation to all minorities, women, and small businesses in providing goods and services to the government.

(c) In furtherance of the policy stated in subsection (a), the Commission shall employ a person to serve as Equal Employment Opportunity Coordinator (EEO Coordinator). The EEO Coordinator shall develop and, subject to the approval of the Administrator and Commission, implement such policies, procedures, and guidelines as the EEO Coordinator deems necessary or appropriate to ensure equal employment opportunities for Augusta, Georgia. The EEO Coordinator shall report to the Commission [or Mayor].

(d) In furtherance of the policy stated in subsection (b), the Commission shall develop and implement a Local Small Business Opportunities Program (LSBOP). The LSBOP shall be operated by Local Small Business Coordinator (LSB Coordinator) [or the Procurement Director]. The LSB Coordinator [or the Procurement Director] shall develop and, subject to the approval of the Administrator and Commission, implement such policies, procedures, and guidelines as necessary or appropriate to provide opportunities for local small businesses in providing goods and services to the government. The LSB Coordinator [or the Procurement Director] shall report to the Commission [or Mayor or Administrator].

(e) The Commission shall establish a Citizens' Small Business Advisory Board (CSBAB) to advise the Commission and LSB Coordinator [**or the Procurement Director**] of matters pertaining to the LSBOP.

(f) In accordance with federal and state regulations the Commission shall develop and implement a DBE Program for DOT Assisted Contracts. The DBE Program must comply with U.S. Department of Transportation (DOT) mandated DBE requirements for certain DOT assisted contracts as required by 49 C.F.R. Part 26 and shall be operated by a DBE Liaison who shall report to the Mayor and have direct, independent access to the Mayor concerning DBE Program matters.