



Administrative Services Committee Meeting Commission Chamber- 12/13/2010- 1:00 PM

ADMINISTRATIVE SERVICES

1. An Ordinance to amend the Augusta, Georgia Code, Article One, Chapter Ten, relating to the procurement of goods and services and the Local Small Business Opportunities Program so as to provide updates and to establish policies, procedures and guidelines regarding the procurement process and the Local Small Business Opportunities Program; to repeal all Ordinances and parts of Ordinances in conflict herewith; to provide an effective date and for other purposes. (No recommendation from Administrative Services Committee November 29, 2010) (Referred from December 7 Commission meeting) ☐ [Attachments](#)

2. 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. (No recommendation Administrative Services Committee November 29, 2010) (Referred from December 7 Commission meeting) ☐ [Attachments](#)

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**Administrative Services Committee Meeting
12/13/2010 1:00 PM**

Ordinance to Amend the Augusta, GA. Code, Article One, Chapter Ten Relating to the Procurement of Goods and Services and the Local Small Business Opportunities Program, and for Other Purposes.

Department: Administrator

Caption: An Ordinance to amend the Augusta, Georgia Code, Article One, Chapter Ten, relating to the procurement of goods and services and the Local Small Business Opportunities Program so as to provide updates and to establish policies, procedures and guidelines regarding the procurement process and the Local Small Business Opportunities Program; to repeal all Ordinances and parts of Ordinances in conflict herewith; to provide an effective date and for other purposes. (No recommendation from Administrative Services Committee November 29, 2010) (Referred from December 7 Commission meeting)

Background: See attached.

Analysis: See attached.

Financial Impact: None.

Alternatives: Decline to amend the Code at this time.

Recommendation: Approve.

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

REVIEWED AND APPROVED BY:

Clerk of Commission

ORDINANCE NO. _____

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

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

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

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

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

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

THE AUGUSTA, GEORGIA COMMISSION ordains as follows:

SECTION 1. AUGUSTA, GA. CODE Article one, Chapter ten as set forth in the AUGUSTA, GA. CODE, re-adopted July 10, 2007, is hereby amended by striking this chapter in its entirety as set forth in "Exhibit A" hereto. A new Chapter ten is

hereby inserted to replace the repealed Code Chapter ten as set forth in “Exhibit B” hereto.

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

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, Georgia 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: Chapter 10 of the AUGUSTA, GEORGIA CODE in its entirety.

Exhibit B

Office Of The Clerk of Commission



Lena J. Bonner, CMC
Clerk of Commission

Nancy Morawski
Deputy Clerk

Room 801 - Municipal Building
530 Greene Street - Augusta, GA. 30911
(706) 821-1820 - FAX (706) 821-1838

CLERK'S CERTIFICATION

The undersigned Clerk of Augusta-Richmond County Commission (the "Commission"),
Hereby certifies that the foregoing is a true and correct copy of the Procurement Section,
known as Chapter 10, pages **T1-127-T1:160** of the Augusta Code adopted by the
Commission at a meeting called and held on **July 10, 2007**, at which meeting a quorum
of the Commission members were present 7 voted in favor of said adoption, 0 voted
against the resolution, and 1 abstained from voting and 2 absent from voting; that said
resolution was lawfully adopted, has been spread upon the corporate records of the
Commission, has not been modified or amended, and is in full force and effect.

IN WITNESS WHEREOF, I hereunto have set my hand and affixed the seal of
Augusta, Georgia, this **25th** day of February, 2009.

(SEAL)

A handwritten signature in blue ink, which appears to read "Lena J. Bonner", is written over a horizontal line.

Clerk, Augusta-Richmond County Commission

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Chapter 10

PROCUREMENT

Note—Under Review-Reference Court Order 3/14/07 enjoining race-based portion of DBE Program—*Thompson Wrecking Company v Augusta Civil Rights Action*.

ARTICLE 1 GENERAL PROVISIONS AND DEFINITIONS

Sec. 1-10-1. Purpose.

The purpose of this Augusta-Richmond County Procurement Procedures is to provide detailed administrative procedures for implementation of procurement policies for Augusta-Richmond County. This chapter shall contain all of the administrative rules, regulations, and procedures needed to purchase goods and services and provide other procurement services for Augusta-Richmond County government.
(Ord. No. 6939, § 16, 1-2-07)

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

The requirements of this chapter apply to contracts for the procurement of commodities, services, construction, professions, and consultant service products solicited or entered into by Augusta-Richmond County. 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-Richmond County supplies and personal assets. When the procurement involves the expenditure of State or Federal assistance or contract funds, the procurement shall be conducted in accordance with applicable State and Federal laws and regulations. Nothing in this chapter shall preclude Augusta-Richmond County from complying with the terms and conditions of any grant, gift, or bequest that are otherwise consistent with State law.

Sec. 1-10-3. Supplementary laws.

The Uniform Commercial Code of Georgia (O.C.G.A. 11-1 thru 11-11 as amended) plus other applicable Federal, State, and local laws shall apply, as appropriate, to the procurement process. Questions of specific legal applicability may be

directed through the Augusta-Richmond County Administrator to the Augusta-Richmond County Attorney.

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

All parties involved in the negotiation, performance, or administration of Augusta-Richmond County contracts shall act in good faith. Good faith means honesty in fact in the conduct or transaction concerned.

State law reference—O.C.G.A. § 11-2-201.

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

Procurement information shall be a public record to the extent required by the laws of the State of Georgia; except, a request for proposals (RFP) shall not become public record until the final contract is negotiated and awarded. Any financial or commercial data contained in the request for proposals are privileged and confidential and shall not be disclosed.

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

(a) Augusta-Richmond County encourages the use of local suppliers of goods, services and construction products whenever possible. Augusta-Richmond County also vigorously supports the advantages of an open competitive market place. Nothing in this Section shall be interpreted to mean that the Augusta-Richmond County 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-Richmond County commodity, service and construction products, local firms should be contacted, if possible, first. Then if 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 market area.

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(c) In the event of a tie bid (see section 1-10-43 (h)), when all other factors are equal, the Augusta-Richmond County 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 evidence supports collusive bidding in favor of a local source.

(d) The local vendor preference policy shall be applied when the lowest bidder is within 5% or \$10,000.00, 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, if matched the lowest local bidder will be awarded the contract.

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 Augusta for at least six months immediately prior to the issuance of the request for competitive bids or request for proposals by Augusta and
- (2) Holds any business license required by the Augusta-Richmond County Code and
- (3) Employees at least one full time employee, or two part time employees whose primary residence is in Augusta, or if the business has no employees, the business shall be at least 50% owned by one or more persons whose primary residence is in Augusta.

(e) The Procurement Director shall develop a program to routinely search out local firms that offer products or services which Augusta-Richmond County may purchase and encourage such firms to place themselves on the bidder's list.

(f) The Procurement Director shall work closely with Augusta-Richmond County's Disadvantaged Business Enterprise Program (see Article 7*) in an effort to place such qualified firms on the approved list and their products on the qualified products list.

Note—*Article 7, the City's Disadvantaged Business Program is under revision, reference Judge B. Avant Edenfield's Court Order, Enjoining Race-Based Portion of the DBE Program.

(g) Nothing in this section shall be interpreted to mean that the Augusta-Richmond County Administrator may abrogate the provisions of O.C.G.A. §§ 36-10-1 through 36-10-5, Public Works Contracts. This provision of the State Code requires that all County public works contracts of twenty thousand dollars (\$20,000.00) 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 the County Administrator may abrogate the provisions of the Augusta-Richmond County Code requiring public advertising before letting certain contracts.

(Ord. No. 6890, § 1, 6-15-06; Ord. No. 6939, § 16, 1-2-07)

Sec. 1-10-7. Value analysis.

(a) *Purpose.* A significant portion of the Augusta-Richmond County 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 lowest possible cost. It employs techniques which identify the functions the user wants from a product or service; it 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.* Simply stated, value analysis is a study of function and the value of any service, material, or product is 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 the lowest possible cost.

Value analysis is a helpful tool in evaluating bids, but the concept is even more effective if

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applied at the beginning of the process when the need or requirement is being defined. Consequently, the solicitation process can more effectively and accurately reflect and describe Augusta-Richmond County's requirements and acceptable levels of quality and functionality. As the input of other departments such as Finance is critical to performing a good value analysis, it is advisable for Procurement and the User to seek the cooperation of these disciplines prior to proceeding with major purchases.

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

When the procurement transaction involves the expenditure of State or Federal Assistance, the transaction shall be conducted in accordance with any applicable mandatory State or Federal laws and authorized regulations which are not reflected in this chapter.

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 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.

- (a) *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)

- (b) *Bid.* An offer by an intending purchaser to pay a designated price for property which is about to be sold at auction, and an offer to perform a contract for work and labor or supplying materials or goods at a specified price. (Black's Law Dictionary, 5th Edition)
- (c) *Bid Bond.* A type of bond required in public construction projects which is filed at the time of the bid and which protects Augusta-Richmond County in the event that the bidder refuses to enter into a contract after the award to him or withdraws his bid before the award. A type of indemnity bond. (Black's Law Dictionary, 5th Edition)
- (d) *Bidders List.* Augusta-Richmond County'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.
- (e) *Bill of Lading.* A document evidencing the receipt of goods for shipment issued by a person engaged in the business of transporting or forwarding goods, and includes an airbill. Airbill means a document serving for air transportation as a bill of lading does for marine or rail transportation, and includes an air consignment note or air waybill. (O.C.G.A. § 11-1-201)
- (f) *Blind Trust.* An independently managed trust in which the employee-beneficiary has no management rights and in which the employee-beneficiary is not given notice of alterations in, or other disposition of, the property subject to the trust.
- (g) *Business.* Any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, firm, or any other private legal entity.
- (h) *Buyer in ordinary course of business.* A person who, in good faith and without knowledge that the sale to him is in

violation of the ownership rights or security interest of a third party in the goods, buys in ordinary course from a person in the business of selling goods of that kind but does not include a pawnbroker. Buying may be for cash or by exchange of other property or on secured or unsecured credit and includes receiving goods or documents of title under a preexisting contract for sale but does not include a transfer in bulk or as security for or in total a partial satisfaction of money debt. (O.C.G.A. § 11-1-201)

- (i) *Change Order.* The formal document effecting a bilateral contract modification that alters the specification, delivery point, rate of delivery, period of performance, price, quantity, or other provision of any contract accomplished by mutual agreement of the parties to the contract.
- (j) *Commodities.* Those things that are useful or serviceable, particularly articles of merchandise moveable in trade. Goods, wares, supplies, and merchandise of any kind; movables; articles of trade or commerce are all included within this definition. (Black's Law Dictionary, 5th Edition)
- (k) *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.
- (l) *Contract.* The total legal obligation which results from the parties' agreement as affected by this title and any other applicable rules of law. (O.C.G.A. § 11-1-201)
- (m) *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.
- (n) *Contract Directive.* A written order signed and issued by the Augusta-Richmond County Administrator, directing the con-

tractor to make changes which the Changes clause of the contract authorized Augusta-Richmond County to order without the consent of the contractor.

- (o) *Contract Documents.* All items which define the scope of the project including plans and specifications, including but not limited to, advertisement for bids, instructions to bidders, bid proposal, proposed contracts, proposed bond form, general conditions, special conditions, and technical specifications.
- (p) *Contract Modification.* Any change order, contract price adjustment or contract revision or similar document which modifies an existing contract.
- (q) *Contractor and/or Sub-Contractor.* Any person having a contract with Augusta-Richmond County, a using agency of Augusta-Richmond County, or a contractor thereof.
- (r) *Cooperative Procurement.* Acquiring commodities, services, and construction by, or on behalf of, more than one public procurement unit.
- (s) *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.
- (t) *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.
- (u) *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.
- (v) *County.* Richmond County, Georgia.
- (w) *County Commission.* The Board of Commissioners of Richmond County which is the governing body of Richmond County.

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- (x) *County Commission Mayor.* The chief executive officer of Richmond County who is authorized to sign all contracts for the Board of Commissioners.
- (y) *County Administrator.* The chief appointed administrative office of Richmond County.
- (z) *Creditor.* Includes a general creditor, a secured creditor, a lien creditor and any representative of creditors, including an assignee for the benefit of creditors, a trustee in bankruptcy, a receiver in equity, and an executor or administrator of an insolvent debtor's or assignor's estate. (O.C.G.A. § 11-1-201)
- (aa) *Days.* Richmond County working days.
- (bb) *Debarment.* To bar, exclude, or preclude from having or doing something. Exclusion from government contracting and subcontracting. (Black's Law Dictionary, 5th Edition)
- (cc) *Delivery with respect to instruments, documents of title, chattel paper, or securities.* Voluntary transfer of possession.
- (dd) *Designee.* A duly authorized representative of a person holding a superior position.
- (ee) *Direct or Indirect Participation.* Involvement through decision, approval, disapproval, recommendation, preparation of any part of a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity.
- (ff) *Document of Title.* Includes bill of lading, dock warrant, dock receipt, warehouse receipt or order for the delivery of goods, and also any other document which in the regular course of business or financing is treated as adequately evidencing that the person in possession of it is entitled to receive, hold, and dispose of the document and the goods it covers. To be a document title, a document must purport to be issued by or addressed to a bailee and purport to cover goods in the bailee's possession which are either identified or are fungible portions of an identified mass. (O.C.G.A. § 11-1-201)
- (gg) *Emergency.* Any reasonably unforeseen circumstances, i.e. breakdown in major equipment, threatened termination or curtailment of an essential service, or development of a dangerous condition that creates an immediate threat to public health, welfare or safety.
- (hh) *Employee.* An individual drawing a salary or wages from Richmond County, whether elected or not; any non-compensated individual performing personal services for Richmond County or any department, agency, commission, council, board, or any other entity established by the executive, legislative or judicial branch of the County; and any non-compensated individual serving as an elected official of Richmond County.
- (ii) *Fault.* Wrongful act, omission or breach. (O.C.G.A. § 11-1-201)
- (jj) *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)
- (kk) *Firm.* Any individual, partnership, corporation, association, joint venture, or other legal entity permitted by law to practice or offer professional or consultant services.
- (ll) *Fungible with respect to goods or securities.* Goods or securities of which any unit is, by nature or usage of trade, the equivalent of any other like unit. Goods which are not fungible shall be deemed fungible for the purpose of this title to the extent that under a particular agreement or document unlike units are treated as equivalents. (O.C.G.A. § 11-1-201)
- (mm) *Good Faith.* Honesty in fact in the conduct or transaction concerned. (O.C.G.A. § 11-1-201)

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- (nn) *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.
 - (oo) *Genuine*. Free of forgery or counterfeiting. (O.C.G.A. § 11-1-210)
 - (pp) *Holder*. A person who is in possession of a document of title or an instrument or an investment security drawn, issued, or endorsed to him or to his order or to bearer or in blank. (O.C.G.A. § 11-1-201)
 - (qq) *Honor*. To pay or to accept and pay, or where a credit so engages, to purchase or discount a draft complying with the terms of credit. (O.C.G.A. § 11-1-201)
 - (rr) *Immediate Relative or Immediate Family*. Father, mother, son, daughter, brothers, sisters, grandparents or grandchildren, wife or husband, or the wife or husband of any of the preceding persons.
 - (ss) *Invitation for Bids*. A type of advertisement used by one who desires bids to be submitted for a particular project and includes all documents, whether attached or incorporated by reference, utilized for soliciting an intelligent bid.
 - (tt) *Let (contracts)*. Award to one of several persons, who have submitted proposals (bids) therefor, 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. Letting the contract is the choosing of one from among the number of bidders, and the formal making of the contract with him. The letting, or putting out, is a different thing from the invitation to make proposals; the letting is subsequent to the invitation. It is the act of awarding the contract to the proposer, after the proposals have been received and considered. (Black's Law Dictionary, 5th Edition)
 - (uu) *Lowest and Best Bidder*. The most responsive bidder or offerer as herein defined who has offered the requested goods, services, or construction for the lowest cost.
 - (vv) *Nominal Value*. Any gift or gratuity of less than twenty-five dollars.
 - (ww) *Notice*. Knowledge, or a notice or notification received by an organization is effective for a particular transaction from the time when it is brought to the attention of the individual conducting that transaction, and in any event from the time when it would have been brought to his attention if the organization had exercised diligence. (O.C.G.A. § 11-1-201)
 - (xx) A person has *notice* of fact when:
 - (1) He has actual knowledge of it; or
 - (2) He has received a notice or notification or it; or
 - (3) From all the facts and circumstances known to him at the time in question he has reason to know that it exists.
- A person *knows* or has knowledge of a fact when he has actual knowledge of it. Discover or learn or a word or phrase of similar import refers to knowledge rather than to reason to know. The time and circumstances under which a notice or notification may cease to be effective are not determined by this title. (O.C.G.A. § 11-1-201)
- (yy) A person *notifies* or *gives* a notice or notification to another by taking such steps as may be reasonably required to inform the other in ordinary course whether or not such other actually comes to know of it. A person receives a notice or notification when:
 - (1) It comes to his attention; or
 - (2) It is duly delivered at the place of business through which the contract was made or at any other place held out by him as the place for receipt of such communications. (O.C.G.A. § 11-1-201)

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- (zz) *Offer*. A proposal or bid submitted in response to a request for proposal or invitation for bids.
- A proposal to do a thing or pay an amount, usually accompanied by an expected acceptance, counter-offer, return promise, or act. A manifestation or willingness to enter into a bargain, so made as to justify another person in understanding that his assent to that bargain is invited and will conclude it. (Black's Law Dictionary, 5th Edition)
- (aaa) *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)
- (bbb) *Party as distinct from third party*. A person who has engaged in a transaction or made an agreement within this title. (O.C.G.A. § 11-1-201)
- (ccc) *Person*. Any business, individual, union, committee, club, other organization, or group of individuals.
- (ddd) *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.
- (eee) *Presumption or Presumed*. The trier of fact must find the existence of the fact presumed unless and until evidence is introduced which would support a finding of its nonexistence. (O.C.G.A. § 11-1-201)
- (fff) *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.
- (ggg) *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.
- (hhh) *Procurement*. The buying, procurement, renting, leasing, or otherwise acquiring of any goods, supplies, services, or construction products. It also includes all functions that pertain to the obtaining of any supply, service, professional service or construction product, including description of requirements, selection, and solicitation of sources, preparation, and award of contract.
- (iii) *Product*. Something produced by physical labor or intellectual effort or something produced naturally or as a result of natural process as by generation or growth. (Black's Law Dictionary, 5th Edition). As used in this chapter, the term product is a very broad term that could include all types of commodities, supplies, equipment, materials, goods, services and construction.
- (jjj) *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 County requirements, and which provides for the submission of equivalent products.
- (kkk) *Professional Services*. Those licensed and professional services as defined by the laws of the State of Georgia.
- (lll) *Proposal*. An offer; something proffered. An offer, by one person to another, of the terms and conditions with reference to some work or undertaking, or for the transfer of property, the acceptance whereof will make a contract between them. (Black's Law Dictionary, 5th Edition)
- Proposals for professional services received by the County will be evaluated for their comparative level of compliance with the specifications issued for the project. The evaluation of proposals may or may not include proposed price as one of the evaluation criteria.

- (mmm) *Public Procurement Unit.* Any unit or subunit of any federal, state, or local government, or any non-profit entity which expends public funds for the procurement of commodities, services, or construction products.
- (nnn) *Public Sale.* A sale:
- (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 the county 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.
- The provisions of this paragraph shall not be in derogation of any additional requirements relating to notice of any conduct of any such public sale as may be contained in other provisions of this title but shall be supplementary thereto. (O.C.G.A. § 11-1-201)
- (ooo) *Public Works Contract.* Any contract for a county government public works project valued at twenty thousand dollars (\$20,000.00) or more as more fully defined in O.C.G.A. § 36-10 and Article X of this chapter.
- (ppp) *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)
- (qqq) *Purchaser.* A person who takes by purchase. (O.C.G.A. § 11-1-201)
- (rrr) *Purchase Order.* A document authorizing a seller to deliver goods with payment to be made later. A written authorization calling on a vendor or supplier to furnish goods to the person ordering such. It constitutes an offer which is accepted when the vendor supplies the quantity and quality ordered. (Black's Law Dictionary, 5th Edition)
- (sss) *Procurement Director.* The supervisor of the Procurement Department and as further defined in the Richmond County Code and elsewhere in this chapter.
- (ttt) *Qualified Products List.* An approved list of commodities described by model or catalog numbers, which, prior to competitive solicitation, the County has determined will meet the applicable product specifications requirements.
- (uuu) *Quotations or informal bids selection method.* The method for submitting a bid to perform work or offer a commodity to the County on a proposed contract without the formality of a written proposal or sealed bid. See § 505 for additional detail defining the quotations or informal selection method.
- (vvv) *Representative.* Includes an agent, an officer of a corporation or association, and a trustee, executor or administrator of an estate, or any other person empowered to act for another. (O.C.G.A. § 1-11-201)
- (www) *Requisition.* The document whereby the using agencies request that a purchase be made on their 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 this chapter.

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- (xxx) *Request for Proposals (RFP)*. All documents, whether attached or incorporated by reference, utilized for soliciting proposals.
- (yyy) *Request for Qualifications (RFQ)*. A method used to predetermine the capacity of prospective bidders or proposers for a specific project.
- (zzz) *Request for Quotations (RFQ)*. An informal solicitation for prices.
- (aaaa) *Responsible Bidder or Proposer*. A person who has the capability in all respects to perform fully 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, County Administrator, using agency head, or County Commission may consider the bidder's quality of work, general reputation in the community, financial responsibility, and previous employment or use by the County.
- (bbbb) *Responsive Bidder or Proposer*. A person who 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.
- (cccc) *Sealed Bid*. A method for submitting a bid to perform work on a proposed contract. In general, each party interested submits a bid in a sealed envelope, and all such bids are opened at the same time and the most favorable responsible bid is accepted. (Black's Law Dictionary, 5th Edition) See § 502 for additional detail explaining the sealed bid selection method.
- (dddd) *Sealed Proposal*. A method for submitting a proposal for services or a combination of services and commodities on a proposed contract. In general, each party interested submits a proposal in two sealed envelopes. One envelope shall contain the price proposal and the second sealed envelope shall contain the technical (non-price data) proposal. The technical proposal shall be opened and reviewed and ranked by the Procurement Director before the price proposal is opened and reviewed. The sealed proposal method is not intended to be done as a public bid opening because of the technical complexities of the proposal which must be reviewed in detail before the proposals can be compared, rated, and ranked.
- (eeee) *Security Interest*. An interest in personal property or fixtures which secures payment or performance of an obligation. The retention or reservation of title by a seller of goods notwithstanding shipment or delivery to the buyer (O.C.G.A. § 11-2-401) is limited in effect to a reservation of a security interest. The term also includes any interest of a buyer of accounts, or chattel paper which is subject to Article IX of this title. The special property interest of a buyer of goods on identification of such goods to a contract for sale under O.C.G.A. § 11-2-401 is not a security interest, but buyer may also acquire a security interest by complying with Article IX of this title. Unless a lease or consignment is intended as security, reservation of title thereunder is not a security interest but a consignment is in any event subject to the provisions on consignment sale (O.C.G.A. § 11-2-326). Whether a lease is intended as security is to be determined by the facts of each case; however, (a) the inclusion of an option to purchase does not of itself make the lease one intended for security, and (b) an agreement that upon compliance with the terms of the lease, the lessee shall become or has the option to become the owner of the property for no additional consideration or for a nominal consideration does make the lease one intended for security. (O.C.G.A. § 11-1-201)
- (ffff) *Send in connection with any writing or notice*. To deposit in the mail or deliver for transmission by any other usual means of communication with postage or cost of transmission provided for and properly addressed and in the case of an instru-

ment to an address specified thereon or otherwise agreed, or if there be none, to any address reasonable under the circumstances. The receipt of any writing or notice within the time at which it would have arrived if properly sent has the effect of a proper sending. (O.C.G.A. § 11-1-201)

(gggg) *Services*. The furnishing of labor, time or effort by a contractor, not involving the delivery of a specific end product other than reports which are merely incidental to the required performance. This term shall not include employment agreements or collective bargaining agreements.

(hhhh) *Signed*. Includes any symbol executed or adopted by a party with present intention to authenticate a writing. (O.C.G.A. § 11-1-201)

(iiii) *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.

(jjjj) *Sole Source*. That there is only one source for the procurement of any goods, supplies, services or construction. Only one source means that there is only one manufacturer or product source and/or only one vendor source for the required commodities, services or construction products.

(kkkk) *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.

(llll) *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)

(mmmm) *Supplies*. Those accumulated stores reserved for distribution (Black's Law Dictionary, 5th Edition), and for the purposes

of this chapter shall include any goods, equipment, material or other personal property owned by Richmond County and available for use by the personnel of the organization.

(nnnn) *Surplus Supplies*. Any County supplies no longer needed having any use to Richmond County as determined of official action of the Board of Commissioners.

(oooo) *Suspension*. A temporary stop, a temporary delay, interruption, or cessation. A temporary cutting off or debarring one, as from the privileges of one's profession. Temporary withdrawal or cessation as distinguished from permanent severance accomplished by debarment. (Black's Law Dictionary, 5th Edition)

(pppp) *Term*. That portion of an agreement which relates to a particular matter. (O.C.G.A. § 11-1-201)

(qqqq) *Transact Business or transact any business*. To sell or lease any personal property, real property, or services on behalf of oneself or on behalf of any third party as an agent, broker, dealer, or representative and means to purchase surplus real or personal property on behalf of oneself or on behalf of any third party as an agent, broker, dealer, or representative. (O.C.G.A. § 45-10-20)

(rrrr) *Unauthorized signature or endorsement*. One made without actual, implied, or apparent authority and includes a forgery.

(ssss) *Using Agency*. Any department, commission, board, office, authority, or division of Richmond County requiring commodities, services or construction products or professional or other consultant services.

(tttt) *Using Agency Head*. The director or head of a using agency who is responsible for the administration or such using agency.

(uuuu) *Value*. Except as otherwise provided with respect to negotiable instruments and bank collections (O.C.G.A. §§ 11-3-303, 11-4-208, and 11-4-209) a person gives value for rights if he acquires them:

- (1) In return for a binding commitment to extend credit or for the extension

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of immediately available credit whether or not drawn upon and whether or not a charge-back is provided for in the event of difficulties in collection; or

- (2) As security for or in total or partial satisfaction of a preexisting claim; or
- (3) By accepting delivery pursuant to a preexisting contract for purchase; or
- (4) Generally, in return for any consideration sufficient to support a simple contract. (O.C.G.A. § 11-1-201)

(vvvv) *Value Analysis*. An organized and systematic study of every element of cost in a part, material, or service to make certain it fulfills its function at the lowest possible cost.

(www) *Warehouse Receipt*. A receipt issued by a person engaged in the business of storing goods for hire. (O.C.G.A. § 11-1-201)

(xxxx) *Warranty Period*. A one-year period following final acceptance of the project during which the contractor is responsible for repair of any work not caused by vandalism or natural disaster.

(Ord. No. 6939, § 16, 1-2-07)

ARTICLE 2 RESERVED*

**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-Richmond County, and shall be responsible for the procurement of commodities, services, construction, and professional service products in accordance with the Augusta-Richmond County Code and this chapter.

***Editor's note**—Ord. No. 6239, § 2, adopted Jan. 18, 2000, repealed §§ 1-10-10—1-10-22 in their entirety. See the Code Comparative Table.

(b) *Duties*. In accordance with the Augusta-Richmond County Code, the duties of the Procurement Director are further elaborated upon to include but not be limited to:

- (1) Procuring or supervising the procurement of all commodities, services, construction, and professional and consultant service products needed by Augusta-Richmond County;
- (2) Acting to procure for Augusta-Richmond County the highest quality in commodities, construction and service products at the least cost to Augusta-Richmond County;
- (3) Discouraging uniform 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-Richmond County 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-Richmond County whenever possible all tax exemptions;
- (10) Cooperating with using agencies so as to secure for Augusta-Richmond County the maximum efficiency in budgeting and accounting;

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- (11) Recommending to the Administrator that product vendors who are irresponsible and non-responsive or default on contracts be disqualified from receiving any business from Augusta-Richmond County for an appropriate period of time;
 - (12) Exercising general supervision over all other inventories of supplies belonging to Augusta-Richmond County;
 - (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 disadvantaged business owners;
 - (15) Selling, trading, or otherwise disposing or surplus supplies belonging to Augusta-Richmond County;
 - (16) Prequalifying suppliers;
 - (17) Prequalifying products, especially janitorial products, through the study of testing data;
 - (18) Maintaining the official Augusta-Richmond County bidder's list; and
 - (19) Any other duty assigned by the Administrator that is within the intent and scope of duties set forth in the Augusta-Richmond County Code.
- (Ord. No. 6939, § 16, 1-2-07)

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

(a) 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-Richmond County, except for certain purchases officially authorized to be made by an elected official or using agency head (refer to section 1-10-71(e)—Authority to Approve, Sign, and Execute Contracts by Type).

(b) Augusta-Richmond County shall not be legally bound by any purchase order or contract made contrary to the provisions of the Augusta-Richmond County 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-Richmond County 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-Richmond County Administrator or Procurement Director. Violators shall be subject to penalties provided in Article 8 of this chapter.

(Ord. No. 6939, § 16, 1-2-07)

ARTICLE 4 PRODUCT SPECIFICATIONS

Sec. 1-10-25. 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. The term product is a very broad term that could include commodities, supplies, goods, equipment, materials, construction and services.

Sec. 1-10-26. 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

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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 responsible bid, and the bidders shall be required to submit information concerning their ability to service and maintain the product or equipment.

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. 1-10-27. Maximum practicable competition.

All specifications shall be drafted so as to promote overall economy for the purpose intended and encourage competition in satisfying Augusta-Richmond County'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-Richmond County by architects, engineers, designers, draftsmen, and other consulting persons.

Sec. 1-10-28. Qualified products list.

(a) Augusta-Richmond County 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-Richmond County. Augusta-Richmond County 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 following reasons:

- (1) Declining to offer bids for a two-year period.
- (2) Suspension for the following shall not be for less than three (3) months or more than three (3) years:
 - a. Failing to satisfactorily meet terms, agreements, or contracts made with the procurement department or the using agency.
 - b. 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.
 - c. 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 responsibility of a contractor, including disbarment or suspension from a vendor list by another governmental entity.
 - d. Violating the standards as set forth in Article II hereof for conflicts of interest.

(Ord. No. 6939, § 16, 1-2-07)

Sec. 1-10-29. 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. 1-10-30. 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-Richmond County'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-Richmond County'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.

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.

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-Richmond County at a lower price shall be ordered in lieu of the requisitioned brand name items.
(Ord. No. 6939, § 16, 1-2-07)

Sec. 1-10-31. Responsibility for specifications.

The responsibility for acquiring specifications data rests primarily with the using agency head concerned. 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.

(Ord. No. 6939, § 16, 1-2-07)

Sec. 1-10-32. Inspection of purchases.

The procurement agent 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 agent 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-RICHMOND COUNTY
CONTRACTS**

Sec. 1-10-33. Responsibility of bidders and proposers.

(a) *Determination of responsibility.* The level of responsibility of the bidder or proposer (offeror) shall be ascertained for each contract awarded by Augusta-Richmond County 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-Richmond County.

If an offeror who otherwise would have been awarded a contract is found non-responsible, a

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written determination of non-responsibility, setting forth the basis of the finding, shall be prepared by the Procurement Director or using agency. 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-Richmond County's contract file and be made a public record.

(b) *Right of nondisclosure.* Information furnished by an offeror pursuant to this Section shall not be disclosed outside of the Procurement Department, or using agency, by Augusta-Richmond County staff without prior written consent by the offeror.
(Ord. No. 6939, § 16, 1-2-07)

Sec. 1-10-34. 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 (\$5,000.00) and is to be awarded by competitive sealed proposals (section 1-10-45; Competitive Sealed Proposals), by sole source procurement authority (section 1-10-49; Sole Source Procurement), or by competitive selection procedures for professional and consultant services (section 1-10-46).

(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-Richmond County 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-Richmond County 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-Richmond County contracts shall include a provision stating that when detailed pricing data has been requested by the County 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-Richmond County, including profit or fee, shall be appropriately adjusted. Such prices

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shall be accurate, complete, and current as of the date agreed upon between Augusta-Richmond County and the contractor.
(Ord. No. 6939, § 16, 1-2-07)

Sec. 1-10-35. 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/offeree 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. 1-10-36. 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-Richmond County's interest under circumstances specified herein. Any such bonding requirements shall be set forth in the solicitation. Bid or performance bonds shall not be used by the staff as a substitute for an affirmative determination of an offeror's level of responsibility (see section 1-10-33).

(Ord. No. 6939, § 16, 1-2-07)

Sec. 1-10-37. Bid bonds.

(a) *Requirements.* Bid security shall be required, primarily for construction contracts, when the value is estimated to exceed forty thousand dollars (\$40,000.00).

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-Richmond County), or such other security as approved by the Augusta-Richmond County Attorney.

Nothing herein prevents the requirements of such security on construction and other purchases less than forty thousand dollars (\$40,000.00) when the circumstances warrant such requirements as determined by the Procurement Director and using agency head.

(b) *Amount.* Bid security, when required, shall be in an amount equal to at least ten (10 percent of the amount of bid or an amount certain specified in the solicitation.

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.

Upon failure of an offeror to enter into a contract within ten (10) days after the contract is tendered by Augusta-Richmond County, the offeror's security is subject to forfeit.

(c) *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.

(d) *Withdrawal of bids.* If a bidder is permitted to withdraw a bid before award, no action shall be taken against the bidder or bid security.
(Ord. No. 6939, § 16, 1-2-07)

Sec. 1-10-38. Payment and performance bonds.

(a) *Requirement and amount.* When a contract for construction services is awarded in excess of forty thousand dollars (\$40,000.00) the following bonds shall be delivered to Augusta-Richmond County, 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-Richmond County, 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-Richmond County.

A performance bond insures that the contract will be completed in accordance with contract requirements.

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A payment bond is for the protection of all persons supplying labor and material to the contractor or subcontractors for the performance of the work specified in the contract.

Nothing in this chapter shall prohibit Augusta-Richmond County from requiring other contractors or suppliers of professional services to comply with one or both bonding requirements if so determined by the Augusta-Richmond County Administrator, and/or using agency head, to be necessary. The same reserved authority applied to requiring other type bonds determined to be necessary and also requiring bonds on purchases for goods and services of any dollar amount less than forty thousand dollars (\$40,000.00).

Sec. 1-10-39. Insurance requirements.

Standard ranges and types of coverage shall be determined under the direction of the Augusta-Richmond County Administrator and advice of the Augusta-Richmond County Attorney, Risk Management, Finance Director, Procurement Director and other appropriate staff. General requirements shall be reviewed at least once annually. Insurance will be required within established ranges and for specific purposes on an individual contract basis.

(Ord. No. 6939, § 16, 1-2-07)

Sec. 1-10-40. Pre-qualifications of contractors.

(a) *When required.* The Procurement Director, in consultation with the Administrator and using agency head may determine that it shall be in the best interest of Augusta-Richmond County to pre-qualify suppliers for contracts of a particular type. The imposed standards must be met by any contractor who wishes to bid on the named project. The contractor shall submit required data in order to obtain a fair and impartial determination of whether a contractor has met such pre-qualification standards. 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 on the contract in question, or who are parties to a joint venture formed by suppliers who are herewith pre-qualified, shall be allowed to submit bids or proposals on the contract in question.

(b) *Public notice.* Public notice of pre-qualification shall be given in the same manner as provided in section 1-10-43(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 1-10-43-Sealed Bids; Bid Acceptance and Bid Evaluation and section 1-10-45g)-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 is entitled to appeal rights as provided in Article 9. (Ord. No. 6939, § 16, 1-2-07)

ARTICLE 6 PROCUREMENT SOURCE SELECTION METHODS AND CONTRACT AWARDS

Sec. 1-10-41. Generally.

The following sections provide detailed information concerning the use of the six (6) source selection methods available for use for the procurement of commodities, services and construction products for Augusta-Richmond County. The six methods are: (1) sealed bids, (2) sealed proposals, (3) special services, (4) quotations or informal bids, (5) sole source, and (6) emergency procurement. Lastly, these sections provide certain specific requirements applicable to any or all six methods of source selection.

Sec. 1-10-42. Purchase order.

No officer or employee of Augusta-Richmond County shall request a vendor to deliver goods,

merchandise, materials or supplies to the county 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. 1-10-43. Sealed bids selection method.

(a) *Conditions for use.* All contracts of Augusta-Richmond County shall be awarded by competitive sealed bidding except as otherwise provided elsewhere in this article (see section 1-10-45-Sealed Proposals; 1-10-46-Professional Services; 1-10-47-Quotations; 1-10-49-Sole Source Procurement; and 1-10-50-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-Richmond County Commission for approval by the Augusta-Richmond County 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 (defined per Georgia State Law, Code Section 36, Chapter 10, as contracts necessary to build or repair any courthouse, jail, bridge, causeway, or other public works) with values that equal or exceed twenty thousand

dollars (\$20,000.00), 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 day within a ten (10) day period in the legal gazette and in local minority owned newspapers. 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-Richmond County 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

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conditions contained in the Invitation for Bids, the bids shall be conditionally accepted without alteration or correction pending evaluation.

Bids shall be evaluated based on the requirements set forth in the invitation for bids, 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 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. The main advantage of using life-cycle costing is that both initial costs and related costs for the life of the item are considered. When the criterion for awarding the contract is based on lowest responsive bidder, it may mean that the contract specifications are just minimally complied with. Selecting of the lowest bidder could result in a higher incidence of maintenance, and down-time could eat up any savings made if the procurement process considers only the initial cost.

(g) *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) After the bid opening, corrections to bids shall be permitted 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 prejudicial to the interest of Augusta-Richmond County or fair competition shall be permitted.
- (3) In lieu of bid correction, a low bidder alleging a material mistake of fact may be permitted to withdraw its bid if:
 - a. the mistake is clearly evident in the bid document but the intended correct bid is not similarly evident; or

- b. the bidder submits evidence which clearly and convincingly demonstrates that a mistake was made.

- (4) 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.
- (5) 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 the County 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-Richmond County, or if not within the above, within the State of Georgia. Where no bidder is located in Augusta-Richmond County or in the State of Georgia, 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.

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,

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- (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.

(j) *Award to other than low bidder.* When the award is not given to the lowest bidder, a full and complete statement of the reasons for placing the purchase order or other contract elsewhere shall be prepared and signed by the Procurement Director and/or Administrator and made part of the record file for audit proposes.
(Ord. No. 6939, § 16, 1-2-07)

Sec. 1-10-44. 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 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 will only be for the purpose of clarification to assure a full understanding of the solicitation requirement and responsiveness thereto.

- (f) Nonmonetary 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. 1-10-45. Sealed proposals.

(a) *Conditions for use.* The competitive sealed proposals method may be utilized when the Augusta-Richmond County 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-Richmond County. 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-Richmond County. In the case of procurement computer software, for example, it is in the best interest of Augusta-Richmond County to specify functional requirements and outputs, and allow the bidders to propose based on the closest available product(s) and software or software development services meeting our needs.

(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 1-10-43(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 is not required but recommended for purposes of expounding on the requirements and

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soliciting vendor/contractor input. Such conferences should 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 1-10-44(c)-Public Notice and Bidder's List.

(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. 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 respondents will be identified at the proposal opening; 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).

- (1) Selection committee. A selection committee, minimally consisting of representatives of the procurement office, the using agency, and the Administrator's office or their choice shall convene for the purpose of evaluating the proposals.
- (2) 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.

(h) *Final negotiations and letting the contract.* The Committee shall rank the technical proposals, open and consider the pricing proposals submitted by each offeror, and request final and best offers from the top ranked three firms if available. Award shall be made or recommended for award through the Augusta-Richmond County Administrator, to the responsible offeror whose proposal is determined to be the most advantageous to Augusta-Richmond County, 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 Article 10, section 1-10-71 of this chapter. (Ord. No. 6939, § 16, 1-2-07)

Sec. 1-10-46. Authority to contract for special services.

As used in this section, special services are those professional services, such as those provided by physicians, architects, ministers, engineers, accountants and attorneys, which are normally obtained on a fee basis. In the procuring of professional services those departments which normally utilize such services may contract on their behalf for such service in accordance with this article provided that the following requirements are met:

- (a) The department must solicit the best possible contract with the person providing the professional service.
- (b) Negotiation with the person providing professional services shall include the department head and the Augusta-Richmond County Administrator.
- (c) The department shall obtain the approval of the Commission.

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- (d) On those special services in Augusta-Richmond County, where another department head's expertise and recommendations can be of special use, the department procuring such service shall seek the advice of such department head.
- (e) The Commission shall have the authority to continue a contract for professional services from year to year when it is in the best interest of Augusta-Richmond County.
- (f) Depending on the type of the service that is involved, Augusta-Richmond County should look beyond price estimates or bids, to qualifications of the bidder. Cost of the work to be performed should not be given primary and dominant weighing in selecting the professional bidder. The technical factors and qualifications of the staff and firm should be also considered.

Sec. 1-10-47. Quotations or informal bids selection method (Standard and small purchases).

(a) *Conditions for use.* Any standard or small purchase contract or purchase order for supplies, services, and construction not exceeding five thousand dollars (\$5,000.00) 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 five thousand dollars (\$5,000.00). 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, at least one of which shall be from a DBE as provided in section 1-10-52 hereof. Maximum purchase under this system is to be one thousand five hundred dollars (\$1,500.00), including sales tax. Vendor quotes are to be noted on the requisition for retention. The procure-

ment 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, at least one of which shall be from a DBE as provided in section 1-10-52 hereof. The maximum purchase under this system is to be ten thousand dollars (\$10,000.00), including sales tax.
- (3) Selection is to be made from the list in the following manner:
 - a. Low bidder on last quote;
 - b. Next vendor on list;
 - c. Next DBE vendor on list (see Article 7);
 - d. Repeat procedure until all vendors have been asked to quote;
 - e. 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

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costs. No criteria may be used in the evaluation process 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 1-10-43(g)(Correction or Withdrawal of Bids).

(g) *Tie bids.* Shall be handled in the manner described in section 1-10-43(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 hundred dollars (\$100.00) / authority of using agency.* Procurement of an item or article which does not exceed one hundred dollars (\$100.00), 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 hundred dollars (\$100.00) 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 hundred dollars (\$100.00) 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 hundred dollars (\$100.00) 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 the County. 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)

Sec. 1-10-48. Banking services.

(a) *Vendor and payroll accounts.* Requests for Proposals shall be solicited as provided in section 1-10-44 of this chapter for each of these accounts. The Request shall specify that the award shall be for a period of twenty-four (24) months, as the Commission has determined that such period of contracting will best serve the interest of Augusta-Richmond County by encouraging effective competition and promoting economies in Augusta-Richmond County's administration of these services.

(b) *Accounts other than vendor and payroll accounts.*

- (1) Requests for Proposals shall be solicited as provided in section 1-10-44 of this chapter for each such account. The Request shall specify that the award shall be for a period of twenty-four (24) months, as

the Commission has determined that such period of contracting will best serve the interest of Augusta-Richmond County by encouraging effective competition and promoting economies in Augusta-Richmond County's administration of these services.

- (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-Richmond County. Further, as provided in Article 7, a banking institution having not more than \$500,000,000.00 in total assets in the State of Georgia shall be considered a DBE.

Sec. 1-10-49. 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-Richmond County 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.

(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 negotiation. 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.

(c) If the Augusta-Richmond County Administrator, upon considering the requisition and the substantiation therefor, determines that the item should be purchased by sole source procurement and the cost thereof does not exceed ten thousand dollars (\$10,000.00), the Administrator may approve such procurement. If the item exceeds ten thousand dollars (\$10,000.00) in cost, and the

Administrator determines that sole source procurement is appropriate, the requisition shall be referred to the Commission for action.

(Ord. No. 6939, § 16, 1-2-07)

Sec. 1-10-50. Emergency procurement selection method.

Notwithstanding any other provisions of this chapter, the Procurement Director, Augusta-Richmond County 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-Richmond County Commission at their next regular meeting in the case of public works contracts as defined by Georgia State Law or other Augusta-Richmond County purchases when the value of the purchase exceeds ten thousand dollars (\$10,000.00).

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.

Emergency purchases by the Augusta-Richmond County Commission shall be made as provided in 1975 Ga. Laws p. 4334, as amended.

(Ord. No. 6939, § 16, 1-2-07)

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Sec. 1-10-51. Specific requirements/options for source selection method.

(a) *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 order.

(b) *Cancellation of bids or request for proposals.* A bid(s) may be canceled at any time prior to opening the bid upon determining that mistakes occurred in the preparation of the bid to warrant such action, Augusta-Richmond County's requirements changed to the extent that the goods or services are no longer needed, or due to insufficient funds. The Procurement Director shall document for the files the specific reason(s) for cancellation and promptly notify the vendor(s) in writing of Augusta-Richmond County's decision.

(c) *Multi-step proposals/sealed bids.* When it is considered impractical to initially prepare a product purchase description to support an award based on price, an invitation for bids may be issued requesting the submission of unpriced offers to be followed by an invitation for bids limited to those bidders whose offers have been determined by the Procurement Director and using agency head to be technically acceptable under the criteria set forth in the first solicitation. (Ord. No. 6939, § 16, 1-2-07)

Sec. 1-10-52. Rejecting bids; 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-Richmond County. The reasons thereof shall be made part of the contract file. Each solicitation issued by Augusta-Richmond County 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-Richmond

County. Notice of cancellation shall be sent to all businesses solicited. The notice shall identify the solicitation, explain the reason for cancellation and, where appropriate, explain that an opportunity will be given to compete on any re-solicitation or any future procurement of similar items.

(b) *Authority to reject/cancel.* If the value of the bid is \$10,000 or greater, the Augusta-Richmond County Commission shall have the authority to reject/cancel any and all bids. If the bid/quote is less than \$10,000, the administrator shall have the authority to reject/cancel any and all bids, quotes and proposals.

(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-Richmond County Administrator and the Procurement Director are authorized, when time permits, or economic considerations preclude further resolicitation 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) *Readvertisement.* In the event that the negotiating process set forth in subparagraph (c), above, is unsuccessful, the Procurement Director may, in the alternative, readvertise for the purpose of receiving a new set of bids. Therefore, if the lowest and best bid exceeds the budgeted amount and the Augusta-Richmond County 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. (Ord. No. 6706, § 1, 7-1-04; Ord. No. 6939, § 16, 1-2-07)

Sec. 1-10-53. 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, are included in the solicitation and

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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-Richmond County 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-Richmond County 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-Richmond County. 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-Richmond County.

Sec. 1-10-54. Right to inspect facilities.

Official representatives of Augusta-Richmond County 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-Richmond County.

Sec. 1-10-55. Right to audit records.

Official representatives of Augusta-Richmond County 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-Richmond County when such inspection is required by law, or is authorized by the Administrator in writing as being in the public interest.

Sec. 1-10-56. Use of state contracts.

The Procurement Director may, independent of the requirements of bid process of this article, procure supplies, services or construction items through the contract established by the procurement division of the State of Georgia.
(Ord. No. 6939, § 16, 1-2-07)

Sec. 1-10-57. 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-Richmond County Administrator. The Procurement Director may accept a next lowest bidder. The options selected shall be the most advantageous to Augusta-Richmond County.
(Ord. No. 6939, § 16, 1-2-07)

ARTICLE 7 DISADVANTAGED BUSINESS ENTERPRISES (DBE) PROGRAM (RESERVED)

Note—Under Review-Reference Court Order 3/14/07 enjoining race-based portion of DBE Program—*Thompson Wrecking Company v Augusta Civil Rights Action*.

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**ARTICLE 8 SUSPENSION OR
DEBARMENT OF BIDDER OR PROPOSER**

**Sec. 1-10-63. Authority to suspend or debar
from qualified bidder/proposer
list.**

After reasonable notice to the person involved and reasonable opportunity for that person to be heard, the Augusta-Richmond County Commission is authorized to suspend or debar a person for cause from consideration for award of contracts. The suspension may be for a period of not more than three months. The debarment shall be for a period of not more than three years. The Augusta-Richmond County Administrator is authorized to suspend a person from consideration for award of contracts if there is any activity which might lead to debarment. The Administrator's suspension shall be for a period not to exceed thirty (30) days.

Sec. 1-10-64. Causes for suspension and debarment.

The causes for suspension or debarment may include, but are not limited to:

- (a) Conviction for the commission of a criminal offense as an incident to obtaining or attempting to obtain any public or private contract or subcontract, or in the performance of such contract or subcontract;
- (b) Conviction under state or federal statutes of embezzlement, theft, forgery, bribery, indicating a lack of business integrity or business honesty;
- (c) Conviction under state or federal anti-trust statutes arising out of the submission of any bids or proposals;
- (d) Violation of prior Richmond County contract provisions, as set forth below, of a character which is regarded by Augusta-Richmond County to be so serious as to justify suspension or debarment action, such as:
 - (1) Deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in any prior Richmond

County contract; or a recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more Richmond County contracts, provided that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be basis for debarment;

- (e) Any other cause determined to be so serious and compelling that would materially affect or has materially affected the responsibility of a contractor in the performance of his duties under any contract, including debarment by another governmental entity for any cause listed in this chapter; and
- (f) For violation of any ethical standards set forth in Article 2 (Ethics in Public Contracting) of this chapter.

Sec. 1-10-65. Decision to suspend or debar.

Any decision to suspend or debar a person may be made by the Augusta-Richmond County Administrator or to recommend suspension or debarment to the Commission shall be in writing and shall state the reasons for the action or recommended action and inform the suspended person of their rights to an administrative appeal to the Commission. Any decision by the Commission to suspend or debar any person from the procurement process shall be on the record and in writing and shall state the reasons for the action taken.

Sec. 1-10-66. Notice of decision.

A copy of the written decision required by section 1-10-65 (Decision to Suspend or Debar) shall be mailed by certified mail, return receipt requested, to the suspended or debarred person.

ARTICLE 9 APPEALS AND REMEDIES

Sec. 1-10-67. Procurement protests.

(a) *Right to protest.* Any actual or prospective bidder, offeror, or contractor who is aggrieved in connection with the solicitation or award of a

contract may protest to Augusta-Richmond County. Protestors shall seek resolution of their complaints initially with the Procurement Director. All protests must be submitted in writing to the Procurement Director.

(b) *Protests concerning invitations to bid.* A protest with respect to an invitation for bids or request for proposals shall be submitted in writing prior to the opening of bids or the closing date of proposals. If not done by that time, the complaint or protest is lost.

(c) *Stay of procurement during protests.* In the event of a timely protest under subsection (b) of this Section, the Procurement Director shall not proceed further with the solicitation or award of the contract until all administrative remedies have been exhausted or until the Augusta-Richmond County Administrator or Commission makes a determination on the record that the award of the contract without delay is necessary to protect the interests of Augusta-Richmond County. (Ord. No. 6939, § 16, 1-2-07)

Sec. 1-10-68. Contract claims.

(a) *Decision of the county administrator.* All claims by a contractor against Augusta-Richmond County relating to a contract shall be submitted in writing to the Augusta-Richmond County Administrator through the officially designated Augusta-Richmond County Project Manager for a decision. The contractor 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. 1-10-69. Authority of the Augusta-Richmond county administrator to settle bid protests and contract claims.

The Augusta-Richmond County Administrator is authorized to settle any protest regarding the solicitation or award of a County contract, or any claim arising out of the performance of an Augusta-Richmond County contract, prior to an appeal to the Augusta-Richmond County Commission.

Sec. 1-10-70. County's right to amend bid solicitations or awards that are in violation of law.

(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-Richmond County Administrator, and the Augusta-Richmond County Attorney, 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 County Attorney 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 County Attorney determines that a solicitation or award of a contract was in violation of applicable law, then the contract shall be revised to comply with applicable law. If Augusta-Richmond County is unable to revise the contract to comply therewith, the contract shall be terminated and declared null and void by the Augusta-Richmond County Commission. (Ord. No. 6939, § 16, 1-2-07)

ARTICLE 10 TYPES OF CONTRACTS

Sec. 1-10-71. 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

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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 twenty thousand dollars (\$20,000.00) 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 twenty thousand dollars (\$20,000.00) but more than one thousand five hundred dollars (\$1,500.00) must have:

- (1) General project concept approval by the Commission and/or Augusta-Richmond County Administrator;
- (2) General budget approval (e.g. could be unspecified within a larger account) 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);
- (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 \$1,500 but more than one hundred dollars (\$100.00) must have:

- (1) General project concept approval by the Commission or Augusta-Richmond County Administrator;

(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);

(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 hundred dollars (\$100.00) must have:

(1) Specific project concept approval by the Commission;

(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 Augusta-Richmond County Administrator;

(3) Using agency head approval of the source selection method and award of contract; and

(4) 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;

(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;

(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

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- (4) Contract/small purchase order to be signed by the Administrator, using agency head, or Mayor based on the value of the purchase.

(Ord. No. 6939, §§ 14, 16, 1-2-07)

ARTICLE 11 COOPERATIVE PROCUREMENT

Sec. 1-10-72. Definitions.

(a) *Cooperative procurement.* Procurement conducted by, or on behalf of, more than one public procurement unit.

(b) *Public procurement unit.* The United States Government, any department, agency or division thereof, any county, city, 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.

Sec. 1-10-73. Cooperative procurement agreement.

Cooperative procurement may be agreed to between Augusta-Richmond County 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. 1-10-74. Sale, acquisition, or use of supplies.

Augusta-Richmond County 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. 1-10-75. Cooperative use of supplies or services.

Augusta-Richmond County 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. 1-10-76. Joint use of facilities.

Augusta-Richmond County 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. 1-10-77. Use of state contracts.

Augusta-Richmond County 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-Richmond County Code and this chapter governing procurement procedures.

(Ord. No. 6939, § 16, 1-2-07)

Sec. 1-10-78. Purchase of surplus and excess property.

Augusta-Richmond County 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-Richmond County as detailed in Article 10, section 1-10-1001 of this chapter.

Sec. 1-10-79. 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. 1-10-80. 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-

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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. 1-10-81. Augusta-Richmond County contracts and contract clauses.

(a) *Use of model (standard) contracts and clauses.* The Procurement Director, after consultation with the Augusta-Richmond County Administrator, using agency head, and Augusta-Richmond County Attorney, may establish standard contract clauses for use in County 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-Richmond County contracts.* Whether designed as a model or standard contract provision or specifically tailored for a particular contract, all Augusta-Richmond County contracts should include provisions for:

- (1) The unilateral right of Augusta-Richmond County to order in writing a temporary stopping of work, or scope, of the contract;
- (2) The unilateral right of Augusta-Richmond County to order in writing a temporary stopping of the work, or delaying performance that does not alter the scope, of the contract;
- (3) Variations, occurring between estimated quantities of work in contract and actual quantities;
- (4) Defective pricing;
- (5) Liquidated damages;
- (6) Specified excuses for delay or non-performance;
- (7) Termination of the contract for default;
- (8) Termination of the contract in whole or in part for the convenience of Augusta-Richmond County;

- (9) Payment procedures;
- (10) Hold harmless provisions;
- (11) Prohibition against contingent fees;
- (12) Suspension of work on a construction project ordered by Augusta-Richmond County;
- (13) 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:
 - a. When the contract is negotiated,
 - b. When the contractor provides the site or design, or
 - c. When the parties have otherwise agreed with respect to the risk of differing site conditions, and
- (14) Insurance requirements.
- (15) Contractor's consent to venue in the Superior Court of Richmond County, Georgia; and
- (16) Provision that contract supersedes any and all provisions of the Georgia Prompt Pay Act.

(Ord. No. 6939, § 16, 1-2-07)

Sec. 1-10-82. Contract modification.

Every modification to a contract with Augusta-Richmond County, which has not been previously approved by the Augusta-Richmond County Commission, shall be subject to prior approval by the Commission. 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-Richmond County 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-Richmond

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County and funds are available and the appropriate budget transfer is made, the Administrator may authorize the appropriate action.

(Ord. No. 6939, § 16, 1-2-07)

Sec. 1-10-83. Bid security and performance bonds.

(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 forty thousand dollars (\$40,000.00). Bid security shall be a bid bond provided by a surety company authorized to do business in the State of Georgia, or the equivalent in a cashier's or certified check made payable to Augusta-Richmond County. Nothing herein shall prevent the requirement of such bonds on construction contracts under \$40,000 when the circumstances warrant.

(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. 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-Richmond County 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.

(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 withdrawn its bid before award as provided in section 1-10-42(g) (Sealed Bidding; Correction or Withdrawal of Bids) no action shall be taken against the bidder or the bid security. (Bidder entitled to return of bid security).

(Ord. No. 6939, § 16, 1-2-07)

Sec. 1-10-84. Contract performance and payment bonds.

(a) *When required—Amounts.* When a construction contract is awarded in excess of forty thousand dollars (\$40,000.00), the following bonds or

security shall be delivered to Augusta-Richmond County and shall become binding on the parties upon the execution of the contract:

- (1) A performance bond satisfactory to Augusta-Richmond County, executed by a surety company authorized to do business in the State of Georgia or otherwise secured in a manner satisfactory to Augusta-Richmond County, in an amount equal to 100% of the price specified in the contract; and
- (2) A payment bond satisfactory to Augusta-Richmond County, executed by a surety company authorized to do business in the State of Georgia or otherwise secured in a manner satisfactory to Augusta-Richmond County, 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. The bond shall be in an amount equal to one hundred (100) percent of the price specified in the contract.

(b) *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-Richmond County to do so, provided Georgia law does not mandate the amount of such bond.

(c) *Authority to require additional bonds.* Nothing in this Section shall be construed to limit the authority of Augusta-Richmond County to require other security in addition to those bonds if warranted by the circumstances and other than specified in Subsection (1) of this Section.

(Ord. No. 6939, § 16, 1-2-07)

Sec. 1-10-85. Bond forms and copies.

The form of payment and performance bonds and other required bonds shall be prescribed by the Augusta-Richmond County Attorney.

Any person may request and obtain from Augusta-Richmond County a certified copy of a bond upon payment of the cost of reproduction of the

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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. 1-10-86. 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-Richmond County 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-Richmond County desires.

(b) *When used.* Retainage may be applied to any construction contract, regardless of the dollar amount. Its use shall be so decided prior to release of the project for bid. Its use is recommended on projects of less than twenty thousand dollars (\$20,000.00) value when the bonds have been waived.

(c) *Release of retainage.* Funds held by Augusta-Richmond County as retainage under the contract shall be released upon completion and acceptance of work except as described herein.

(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. 1-10-87. Wage and requirements for federally funded projects.

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. 1-10-88. 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-Richmond County 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. 1-10-89. Contractual provisions for worksite inspections.

All contracts shall provide that Augusta-Richmond County 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-Richmond County.

Sec. 1-10-90. Contractual provisions for auditing records.

(a) *Audit of costs or pricing data.* All contracts shall provide that Augusta-Richmond County may at reasonable times and places, audit the books and records of any contractor who has submitted cost or pricing data pursuant to section 1-10-502 (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-Richmond County 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-

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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.

Sec. 1-10-91. Reporting of anti-competitive practices to state.

When for any reason collusion or other anti-competitive practices are suspected among any bidders or offerors, a notice of the relevant facts shall be transmitted to the State Attorney General by the Augusta-Richmond County Attorney.

ARTICLE 13 SUPPLIES AND FIXED ASSETS MANAGEMENT PROGRAMS

Sec. 1-10-92. Surplus supplies.

(a) Supplies. Goods, equipment, material and other personal property owned by Augusta-Richmond County.

(b) Surplus supplies. Any goods, equipment, materials and personal property no longer having any use to Augusta-Richmond County as determined by official action of the Commission.

(c) 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-Richmond County.
- (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-Richmond County agencies and may be transferred.

(Nothing herein refers to the sale, lease or disposal of real property.)

Sec. 1-10-93. Fixed asset management.

The Fixed Assets Management function in Augusta-Richmond County was implemented for the purpose of surveying and documenting all County owned personal assets, performing regular audits of County 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-Richmond County, the Procurement Director shall prepare a report to the Augusta-Richmond County Administrator advising that office of the item (s) available for disposition.

(Ord. No. 6939, § 16, 1-2-07)

Sec. 1-10-94. Supplies management.

(a) *Responsibility*. The Procurement Director has responsibility for the sale, lease, or disposal of surplus supplies. No employee or official of Augusta-Richmond County nor 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-Richmond County.

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- (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-Richmond County 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-Richmond County.

(d) *Payment.* U.S. currency, U.S. Postal Money Orders, local personal checks, certified checks, or cashier's checks are acceptable methods of payment.

(Ord. No. 6939, § 16, 1-2-07)

Sec. 1-10-95. 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.

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- Sec. 1-10-107. Contract performance and payment bonds.**
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- Sec. 1-10-109. Retainage.**
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Article 13 DBE Program for DOT, FTA and other Federally Assisted Contracts.

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- Sec. 1-10-121. Overconcentration of DBE firms in certain types of work.**
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- Sec. 1-10-123. DBE Program overall goals.**
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Sec. 1-10-125 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.
- (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 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 Department of Procurement, and the applicant must be approved and registered by the 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 Procurement Director and establish that it continues to meet the requirements contained in subparagraph (e) of this section in order to receive a bid preference on eligible local projects.

- (j) Continuing obligations of eligible bidders registered as local bidders. Eligible bidders registered as local bidders shall be under a continuing duty to immediately inform the department of procurement in writing of any changes in the eligible bidder's business if, as a result of such changes, the eligible bidder no longer satisfies the requirements of subparagraph (e) of this section.
- (k) Nothing in this section shall be interpreted to mean that the Augusta, Georgia Administrator or Commission may decline to follow the provisions of O.C.G.A. §§ 36-91-1 through 36-91-95, Public Works Contracts. O.C.G.A. § 36-91-22 requires that all Augusta, Georgia public works contracts of one-hundred thousand dollars (\$100,000) or more, as defined therein, be publicly advertised before letting out the contract to the lowest bidder. Further, nothing in this section shall be interpreted to mean Augusta, Georgia Administrator or Board of Commissioners may decline to follow the provisions of the AUGUSTA, GA. CODE requiring public advertising before letting certain contracts.
- (l) Georgia-made Preference: Augusta, Georgia shall provide a preference for Georgia-made products on the purchase of supplies, materials, equipment and agriculture products. The Georgia-made Preference policy shall only be applied to purchases of such items costing over one-hundred thousand dollars (\$100,000) and only when the vendor seeking this preference supplies sufficient proof that their product is Georgia-made. A vendors request for the Georgia-made Preference must be placed in the vendor's response to an applicable Augusta, Georgia bid. The Administrator shall determine whether the product is a Georgia-made product. The lowest bidder of a Georgia-made product will be allowed to match the bid of the lowest non-Georgia-made bidder. If matched the lowest bidder of a Georgia-made product will be awarded the contract.

Sec. 1-10-7. Value analysis.

- (a) Purpose. A significant portion of the Augusta, Georgia Annual Budget is committed each year to various purchase contracts such as raw materials, equipment, equipment parts or components, general supplies, and professional and non-professional services. Therefore, it is essential that maximum value be obtained for every public tax dollar spent. A proven technique for obtaining this goal is value analysis.

- (b) Definition of value analysis. Value analysis is the organized and systematic study of every element of cost in a part, material, or service to make certain it fulfills its function at the best value. It employs techniques which identify the functions the user wants from a product or service; establishes by comparison the appropriate cost for each function; then, it causes the required knowledge, creativity; and initiative to be used to provide each function for that cost.
- (c) Application of value analysis to the procurement process. Value analysis is a study of function and the value of any service, material, or product established by the minimum cost of other available alternatives, materials, products, or services that will perform the same function. To achieve high value, emphasis must be placed on obtaining high use value at low cost.

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

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

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

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

- (1) Agreement. The bargain of the parties in fact as found in their language or by implication from other circumstances including course of dealing or usage of trade or course of performance as provided in O.C.G.A. § 11-1-205 and § 11-2-208. Whether an agreement has legal consequences is determined by the provision of this title, if applicable;

otherwise, by the law of contracts (O.C.G.A. § 11-1-103). (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) Ultra Vires. In excess of legal power or authority.
- (85) 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.
- (86) Using Agency Head. The director or department head of a using agency that is responsible for the administration or such using agency.
- (87) 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.
- (88) 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, Georgia officer or employee to participate directly or indirectly in the procurement process except in the following circumstances:

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

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

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

Sec. 1-10-29. Contingent fees.

- (a) **Prohibition.** It shall be unethical for a person to be retained or to retain a person to solicit or secure an Augusta, Georgia contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, except for retention of bona fide employees of bona fide established commercial selling agencies for the purpose of securing business.
- (b) **Contract clause required.** Every Augusta, Georgia contract or purchase order shall contain the clause prohibiting contingent fees, as follows:
“The vendor or contractor or firm warrants that it has not employed or retained any company or person, other than a bona fide employee working for the vendor or contractor or firm, to solicit or secure this contract or purchase order; and that the vendor or contractor or firm has not paid or agreed to pay any person, company, association, corporation, individual or firm other than a bona fide employee working for the vendor or contractor or firms, any fee, commission, percentage, gift or any other consideration contingent upon or resulting from the award or making of this agreement, For the breach or violation of the above warranty, and upon a finding after notice and hearing, Augusta, Georgia shall have the right to terminate the

contract or purchase order without liability, and, at its discretion, to deduct from the contract or purchase order price, or otherwise recover the full amount of such fee, commission, percentage, gift or consideration.”

Sec. 1-10-30. Penalties.

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

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

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

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

ARTICLE 4

PRODUCT SPECIFICATIONS

Sec. 1-10-32. Purpose.

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

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

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

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

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

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

- (a) Augusta, Georgia shall advertise at least once per fiscal year for vendors to

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

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

(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 responsibility 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, Georgia General Counsel.

- (c) Nothing herein prevents the requirements of such security on construction and other purchases less than one-hundred thousand dollars (\$100,000) when the circumstances warrant such requirements as determined by the Procurement Director and using agency head.
- (d) Amount. Bid security, when required, shall be in an amount equal to at least ten percent (10%) of the amount of bid or an amount certain specified in the solicitation.
- (e) The bid security of the three (3) lowest bidders shall be held until contract award. Securities posted by others will be returned shortly after receipt of bids. Except for the three (3) lowest bidders, unsuccessful bidders shall be entitled to the return of the bid security. Upon failure of a successful bidder to enter into a contract within an established time frame after Augusta, Georgia tenders the proposed contract, the bidder shall forfeit the bid security. Upon approval of the contract by the Commission, the remaining bid securities shall be returned.
- (f) Upon failure of an offeror to enter into a contract within ten (10) days after the contract is tendered by Augusta, Georgia, the offeror's security is subject to forfeit.
- (g) Rejection of bids/noncompliance with bid 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, Georgia General Counsel, Risk Management, Finance Director, Procurement Director and other appropriate staff. General requirements shall be reviewed at least once annually. Insurance shall be required within established ranges and for specific purposes for each solicitation and contract, except where otherwise provided for in the AUGUSTA, GA. CODE.

(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 ten thousand dollars (\$10,000), including sales tax.
 - (3) Selection is to be made from the list in the following manner:
 - (i) Low bidder on last quote;
 - (ii) Next vendor on list;
 - (iii) Repeat procedure until all vendors have been asked to quote;
 - (iv) Begin new rotation of vendors by using the last low bidder on quote.
- (c) Public notice. Notice in the form of advertisements is not required. However, no less than three (3) vendors/contractors shall be directly solicited, if available, to submit quotations.
- (d) Receipt of quotations. Quotations shall be scheduled for receipt at a date, time and place certain. The amount of each quote and such other relevant information as the Procurement Director deems appropriate, together with the name of each offeror shall be recorded. The record of each quote shall be open to public inspection in accordance with section 1-10-5 (Public Access

to Procurement Information).

- (e) Evaluation. Quotations shall be evaluated based on the requirements set forth in the request for quotations, which may include bidder responsiveness, capability and past performance, and criteria to determine acceptability such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose. Those criteria that will affect the quoted price and be considered in evaluation forward shall be objective and clearly measurable, including but not limited to discounts, transportation costs, and total or life cycle costs. No criteria may be used in the evaluation processes that are not set forth in the request for quotations or other notice.
- (f) Correction or withdrawal of quotes. Correction or withdrawal of inadvertently erroneous quotes before or after the evaluation of the quotes may be permitted under the circumstances described in section 1-10-50(g) (Correction or Withdrawal of Bids).
- (g) Tie quotes. Shall be handled in the manner described in section 1-10-50 (h) (Tie Bids).
- (h) Award. Award shall be made to the most responsible and responsive bidder offering the lowest acceptable quotation. The names of the person submitting quotations and the date and amount of each quotation shall be recorded and maintained as a public record. Written quotations are advisable but not expressly required.
- (i) Agency purchases under one-thousand dollars (\$1,000)/authority of using agency. Procurement of an item or article which does not exceed one-thousand dollars (\$1,000.00), including any sales tax, shall be exempt from the bid process except that, where applicable, contract vendors shall be used unless substitution is approved in writing and in advance by the Procurement Director. Further, the procurement requirements shall not be artificially divided so as to constitute a small purchase. A reasonable effort shall be made to negotiate price agreements that will cover much of the small purchase volume. For purchases of one-thousand dollars (\$1,000) or less in value the using agency head may issue a Purchase Order to acquire commodity and service products. The using agency shall obtain adequate and reasonable competition for the supply, service, or construction being purchased. Further, the using agency head shall require the preparation and

maintenance of written records adequate to document the competition obtained, properly account for the funds expended, and facilitate an audit of the small purchase made. Small purchases under one-thousand dollars (\$1,000) may be made by the elected official or using agency head of all using agencies as follows:

- (1) Where the purchase does not exceed one-thousand dollars (\$1,000) and a Using Agency Purchase Order is prepared and presented to the vendor.
 - (2) A copy of the purchase order shall be forwarded to Finance and Procurement notifying the Director of Finance and Procurement of the purchase and requesting payment to be made from funds previously allocated to such using agency.
- (j) Limitations on small purchases made by using agencies. When small purchases are made by the using agency head pursuant to Subsection (i), the following requirements shall be met:
- (1) Such purchases are limited to goods and minor services where no contract exists or goods are not stocked by Augusta, Georgia. No equipment and furniture purchases are authorized under subsection (i);
 - (2) The Using Agency Purchase Orders and original invoices shall be prepared and signed by an authorized party at the using agency level and forwarded to Finance for further processing;
 - (3) Purchases shall not be divided artificially to constitute a small purchase; and
 - (4) Using agencies are responsible for checking the availability of funds prior to making any small purchase.
- (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 Augusta, Georgia determines at an open meeting of which minutes are recorded, that an emergency exists, and there is an immediate need for goods, materials or supplies to relieve said emergency, the Board of Commissioners shall be allowed to approve purchases without bids in the event the Board has determined an emergency exists, but all such declarations of emergency shall be in strict accordance with applicable State law defining 'emergency'." (1975 Ga. Laws p. 4334 as amended). (Ord. No. 6939, § 16, 1-2-07).

Sec. 1-10-58. Annual contracts.

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

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

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

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

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

proposal may be rejected in whole or in part for good cause when in the best interest of Augusta, Georgia. Notice of cancellation shall be sent to all businesses solicited. The notice shall identify the solicitation, explain the reason for cancellation and, where appropriate, explain that an opportunity will be given to compete on any re-solicitation or any future procurement of similar items.

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

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

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

the availability and appropriation of funds. All multi-year contracts shall contain a clause which terminates the contract at the beginning of a fiscal year when funds are not appropriated by the Commission for continuation of the contract for that fiscal year.

- (b) Determination prior to use. Prior to the utilization of a multi-term contract, it shall be determined in writing:
 - (1) that estimated requirements cover the period of the contract and are reasonably firm and continuing; and
 - (2) that such a contract will serve the best interest of Augusta, Georgia by encouraging effective competition or otherwise promoting economies in procurement.
- (c) Cancellation due to unavailability of funds in succeeding fiscal periods. All multi-term contracts shall include provisions providing that when funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the contract shall be canceled with appropriate notice.
- (d) Renewal of contract. At least ninety (90) days prior to the expiration of any term of a multi-term contract, the using agency shall submit to the Augusta, Georgia Administrator, a report of the performance of the contract and the agency's recommendation as to the renewal of the contract. The Administrator, after consultation with the using agency and review of the report, and upon appropriate approval, shall renew the contract if renewal is in the best interest of Augusta, Georgia. All other requirements of this Section must be met in order to consummate a renewal.
- (e) Expiration and extension. Contracts being considered for renewal or re-bid may be extended by the Administrator for a period of time not exceeding ninety (90) days. Any extensions are subject to the availability of funds and mutual agreement of the vendor/contractor and Augusta, Georgia.

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

Official representatives of Augusta, Georgia shall have the right to inspect facilities of a vendor at any reasonable time which is related to the performance of

any contract award, bid on or to be awarded by Augusta, Georgia.

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

- (a) Official representatives of Augusta, Georgia may, at reasonable times and upon reasonable written notice to vendor, inspect the official records of the person or firm pertaining to a contract, change order, or purchase order with Augusta, Georgia when such inspection is required by law, or is authorized by the Administrator in writing as being in the public interest.
- (b) Contract audit. Augusta, Georgia shall be entitled to audit the books and records of a contractor or subcontractor under any negotiated contract or subcontract, other than a firm fixed-price contract to the extent that such books, documents, papers and records relate to the performance of such contract or subcontract. Such books and records shall be maintained by the contractor for a period of three (3) years from the date of final payment under the prime contract and by the subcontractor for a period of three (3) years from the date of final payment under the subcontract, unless a shorter period is authorized in writing.
- (c) Collection of statistical data. Augusta, Georgia shall be entitled to collect statistical information relating to such factors to determine whether disparities exist as permitted by law. All contractors and subcontractors under any negotiated contract or subcontract shall collect such information for every Augusta, Georgia contract and shall make such information available upon request.

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

In the event a vendor is unwilling or unable to perform a contract or the vendor gives written notice of cancellation of an existing contract, the Procurement Director may immediately pursue a replacement of said contract either by formal or informal bid procedure as is appropriate, with the approval of the Augusta, Georgia Administrator. The Procurement Director may accept a next lowest bidder. The options selected shall be the most advantageous to Augusta, Georgia. (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 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, 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 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 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 sub-contractors.
 - (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 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 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 Procurement Director shall have the primary responsibility to assure that the LSBOP is effectively and equitably carried out in Augusta, Georgia. Other Augusta, Georgia officials, Department directors 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:
 - (1) Developing and administering local small business registration criteria and procedures.
 - (2) Establishing and maintaining a directory available to the public of registered local small businesses capable of supplying the type and

quality of equipment, supplies, general services, construction, and professional services required by Augusta, Georgia.

- (3) Regularly seeking out and registering new local small businesses to bid on Augusta, Georgia purchases and solicitations.
- (4) Notifying vendors of their registration status and advising non-registered parties of their right to appeal 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 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. The 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 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.
- (20) Notify all registered vendors of formal bid opportunities through direct solicitation or public advertisement, including information on the LSBOP.
- (21) Work with project managers or user agencies to divide larger projects into smaller projects or contracts when commercially appropriate, in order to create more opportunities for local small businesses to participate in contracts let by Augusta, Georgia.

- (22) Provide data and technical assistance to support the outreach efforts of the LSBOP as necessary and appropriate.
 - (23) Develop and utilize specifications that are open and competitive.
 - (24) The Procurement Director, the Using Agency and the Finance Director, may make special provision for progress payments as deemed reasonable to assist local small businesses to carry out the terms of a contract.
 - (25) When a local small business is awarded a contract with Augusta, Georgia, the Procurement Director may furnish written confirmation of the same, providing the terms of the contract which may be used by the local small business in negotiating lines of credit with lending institutions.
- (c) Evaluation of the Local Small Business Opportunity Program 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 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 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 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 Procurement Department;
- (2) Firms that have been denied registration or re-registration may protest the denial as follows:
 - (i) Within five (5) days of receipt of denial of registration or re-registration, the firm may protest such action in writing to the 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 (or his or her designee) at which time the firm may present

additional facts and evidence in support of its eligibility. Augusta, Georgia Administrator (or his or her designee) shall control all aspects of the hearing, including scheduling, conduct, witnesses, and evidence, and may request the attendance of witnesses and production of particular documents.

- (iii) Augusta, Georgia Administrator shall send written notice of the decision to the firm within thirty (30) days of the hearing.
 - (iv) A firm found to be ineligible cannot apply for registration or re-registration for a period of one year after the effective date of the final decision.
- (c) Limitations. Notwithstanding any other provision of this program except on a finding of good cause by Augusta, Georgia, a registered local small business is no longer eligible to participate in the LSBOP after being enrolled for ten (10) consecutive years regardless of whether the firm received contracts or prime contracts under the program. If a firm has been released from the program before graduation as a result of exceeding the LSBOP thresholds, it will still be eligible to receive contracts from Augusta, but such participation will not be counted toward the LSBOP goal of identifying and employing local small businesses to the greatest extent possible.

In determining whether a good cause exists for a firm to continue participation beyond ten (10) consecutive years, Augusta may review all relevant factors such as amount of business previously received by the firm, and capability of other small firms to provide goods and services, impact on a potential contract opportunity for other local businesses to compete. In no event shall a firm's participation in the program extend beyond fifteen (15) years.

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

- (d) Graduation. Augusta, Georgia shall graduate a local small business from eligibility as a local small business. The local small business will be graduated from local small business if any one of the following occurs:
- (1) The local small business' gross revenues in each of the previous consecutive three (3) years exceed an average of \$1.5 million;
 - (2) The net worth of any owner of a local small business exceeds an average of \$750,000 for each of the previous consecutive three (3) years, exclusive of principal residence and the value of the local small business ; or
 - (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 identify the existence of registered local small businesses which are qualified to submit bids as prime contractors.
- (4) The 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 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 Procurement Department so appropriate local small business subcontracting goals may be determined.
- (3) Assist the 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 Procurement Department within fourteen (14) days of progress payments and thirty (30) days of contract closeout.
- (7) Submit to the 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 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 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 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 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 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 Procurement Department shall provide annual training to all Augusta, Georgia Departments on the Local Small Business Opportunities Program.
 - (3) The 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.
 - (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 Procurement Department.
 - (5) The 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 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 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 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 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 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 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 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, FTA, 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 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 (5) years. The period of time during which the debarment will be imposed is to be determined by the Procurement Director based upon the severity of the causes for debarment. After consultation with the using agency and General Counsel, the Procurement Director is authorized to suspend a person from participation in any Augusta, Georgia procurement at any tier and consideration for award of contracts if there is probable cause for debarment. The suspension shall not be for a period exceeding the greater of: (1) three months; (2) the period during which administrative review of the suspension is pending; or (3) the period during which judicial review of an administrative decision that was adverse to the suspended firm is pending.

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

The causes for debarment or suspension include:

- (a) Conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract or in the performance of such contract or subcontract.
- (b) Conviction under state and federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property or any other offense indicating a lack of business integrity or business honesty which currently, seriously and directly affects responsibility as an Augusta, Georgia contractor.
- (c) Conviction under state or federal antitrust statutes arising out of the solicitation and submission of bids or proposals.
- (d) Violation of contract provisions, as set forth below, of a character which is regarded by the Procurement Director to be so serious as to justify debarment action:
 - (1) Deliberate failure to perform in accordance with the provisions or within the time limit provided in any Augusta, Georgia contract.
 - (2) A recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts, provided that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be a basis for debarment. In the event that the contractor asserts in a suspension or debarment proceeding that such recent failure to perform or unsatisfactory performance in accordance with the terms of one or more contracts was caused by acts beyond the control of the contractor, the contractor must introduce documentation from the applicable contract/project in which it provided notice of such acts beyond its control and/or invoked its rights to equitable adjustment or other similar remedies under the applicable contract as a result of force majeure or other similar events; provided, however, that Augusta, Georgia's determination on such issue will be independent from the contract/project at issue. It is insufficient in a debarment proceeding for the contractor to raise this issue for the first time concerning a prior contract under which it failed to perform or performed unsatisfactorily.
- (e) For violation of any ethical standards set forth in Article 3, Ethics in Public Contracting.

- (f) Submission to Augusta, Georgia of a claim for additional compensation that is without merit, including, but not limited to claims seeking to recoup:
 - (1) Costs incurred by the contractor but not included in its bid or proposal due to its own error;
 - (2) Costs that it has already been paid or will be paid under the contract;
 - (3) Costs asserted simply for the purpose of forcing Augusta, Georgia to consider a settlement at a reduced amount;
 - (4) Costs that the contractor has not certified pursuant to the contract documents; and
 - (5) Costs that the contractor would not be entitled to recover under the contract documents, including, but not limited to attorneys fees and interest on unpaid sums.
- (g) Material misrepresentation of the composition of the ownership or work force of a business entity registered with Augusta, Georgia as a local small business.
- (h) Any other cause the Procurement Director, in consultation with the using agency and General Counsel, determines to be so serious and compelling as to affect responsibility, including, but not limited to, debarment by another governmental entity.

Sec. 1-10-78 . Notice.

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

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

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

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

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

ARTICLE 9

APPEALS, PROTESTS AND REMEDIES

Sec. 1-10-81. Procurement protests.

Authority to Resolve Protested Solicitations and Awards.

- (a) **Right to Protest.** Any actual or prospective bidder, offeror, or contractor who is aggrieved in connection with the solicitation or award of a contract may protest to the Procurement Director.
- (b) **Authority to Resolve Protests.** The Procurement Director and the Administrator shall have the authority, prior to a final decision by the Commission, to settle and resolve the protest of an aggrieved bidder, offeror, or contractor, actual or prospective, concerning the solicitation or award of a contract.
- (c) **Decision of Procurement Director.** If the protest is not resolved by mutual agreement, the Procurement Director shall issue a decision in writing regarding the protest as specified in Section 1-10-83. The decision shall:
 - (1) state the reasons for the action taken; and
 - (2) inform the protester of its right to administrative review as provided in this Article.
- (d) **Notice of Decision.** A copy of the decision shall be mailed or otherwise furnished to the protestor and any other interested party.

- (e) Finality of Decision. A decision under Subsection (d) of this Section shall be final and conclusive, unless any person adversely affected by the decision files a timely appeal in accordance with Section 1-10-84.
- (f) Stay of Procurements During Protests or Appeals. In the event of a timely protest under section 1-10-82 of this Article the Procurement Director shall not proceed further with the solicitation or with the award of the contract unless the 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 in the Procurement Department not later than five (5) business days after receipt of such decision.

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

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

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

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

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

- (a) Protests appearing on the Administrative Services Committee shall be treated as any other Committee agenda item, except that the Protestor, or his or her representative, shall have the right to address the Committee and to present evidence in support of the protest for a minimum of ten (10) minutes. The Procurement Director and user department shall also have the opportunity to present evidence relating to the protest for a minimum of ten (10) minutes. The Chairman of the Administrative Services Committee may grant additional time equally to each party at his or her discretion.
- (b) After considering the evidence presented, the Administrative Services Committee shall vote to grant or deny the protest or to send the item to the full Augusta, Georgia Commission without recommendation. Regardless of the decision made by the Committee, the protest shall be forwarded to the full Commission agenda. However, the Commission may, at its discretion, dispose of the agenda item via the Consent Agenda and the Protestor does not have the right to force the item to be moved from the Consent Agenda to the Regular Agenda.

- (c) Effect of Failure to Appear at Hearing. Failure on the part of the Protestor to appear before either the Administrative Services Committee or the full Augusta, Georgia Commission is considered **an abandonment of their right to appeal and a failure on the part of the protestor to exhaust administrative remedies.** The Procurement Director's decision is considered final and the award shall proceed accordingly. However, the Chairman of the Administrative Services Committee or the Mayor may, at his or her discretion, grant the Protestor one continuance to the next regularly scheduled Committee or Commission Meeting. Such continuance may only be granted during the Committee or Commission meeting and shall be recorded on the minutes of such meeting.

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

The Augusta, Georgia Administrator has the authority to:

- (a) communicate with the protestor and other interested parties to try to settle any dispute, or narrow the issues for matters to be presented to the Committee or Commission;
- (b) consult with the Procurement Director, the User Department and the General Counsel regarding the need for a stay pursuant to Section 1-10-81(f);
- (c) participate in all aspects of the procurement process as necessary to support the best interests of Augusta, Georgia.

Sec. 1-10- 90. Hearing procedures.

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

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

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

Sec. 1-10-92. Contract claims.

Decision of Augusta, Georgia Administrator. All claims by a contractor or vendor against Augusta, Georgia relating to a contract shall be submitted in writing to the Augusta, Georgia Administrator 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 General Counsel determine that a solicitation or proposed award is in violation of federal, state or municipal law, then the solicitation or proposed award shall be canceled.
- (c) After award. If, after an award, the Procurement Director, after consultation with the Administrator and the General Counsel, determines that a

solicitation or award of a contract was in violation of applicable law, the following options shall be available to Augusta, Georgia:

- (1) The contract may be ratified and affirmed, provided it is determined that doing so is in the best interest of Augusta, Georgia and the person or company awarded the contract has not acted fraudulently or in bad faith; or
 - (2) If services or work have not commenced under the contract, it may be terminated and declared null and void; or
 - (3) If services or work have commenced under the contract, it may be terminated and the person awarded the contract shall be compensated for the actual expenses reasonably incurred for partially performing and in terminating its performance under the contract; 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 ten thousand (\$10,000) must have:
- (1) General project concept approval by the Commission and/or Augusta, Georgia Administrator; and
 - (2) General budget approval by the Commission and specific budget approval of the Administrator, or special funding authorization by the Commission or the Administrator (if the transfer of funds is necessary and general project concept not approved previously by the Commission); and
 - (3) Administrator approval of source selection method and award of contract; and
 - (4) Contract to be signed by the Mayor.
- (d) Small purchase contracts. Small purchases equal to, or less than, ten thousand dollars (\$10,000) but more than one-thousand dollars (\$1,000) must have:
- (1) General project concept approval by the Commission and/or the Administrator; and
 - (2) General budget approval by the Commission (e.g. could be specified within a larger account) and specific budget approval of using agency head as designee of the Administrator, or special funding authorization by the Administrator (when transfer of funds is

necessary and general project concept not previously approved by the Commission or Administrator); and

- (3) Using agency head approval of source selection method and Administrator award of contract; and
 - (4) Small purchase orders to be signed by the Procurement Director or designee.
- (e) Using agency purchase contracts. Using agency purchases (as defined elsewhere) of one-thousand dollars (\$1,000) or less must have:
- (1) General budget approval by the Commission (e.g. could be specified within a larger account) and/or or special funding authorization by the Administrator; and
 - (2) Using agency head approval of the source selection method and award of contract; and
 - (3) Purchase order 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 the Administrator; and
 - (2) General budget approval by the Commission (e.g. could be unspecified within a larger account) and specific budget approval of the using agency head as the Administrator's designee; and
 - (3) Using agency head approval of the source selection method and award of contract if during non-standard working hours, or by the Administrator during normal working hours; and
 - (4) Contract/small purchase order to be signed by the Administrator, using agency head, or Mayor based on the value of the purchase.

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

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

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

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

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

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

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

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

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

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

Sec. 1-10-113. Purpose.

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

Sec. 1-10-114. Definitions.

- (a) Generally. Those definitions set forth in Chapter 10 of the Code of Ordinances shall also apply to this Article, except as provided in this section.
- (b) Specifically.

1. Airport Concessionaire Disadvantaged Business Enterprises (ACDBEs) means a concession that is a for-profit small business concern that is at least fifty-one percent (51%) owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which fifty-one percent (51%) of the stock is owned by one or more such individual; and whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

2. Department of Transportation (DOT) means the U.S. Department of Transportation, including the Office of the Secretary, the Federal Highway Administration (FHWA), the Federal Transit Administration (FTA) and the Federal Aviation Administration (FAA).

3. Disadvantaged Business Enterprise (DBE) means a for-profit small business concern that is at least fifty-one percent (51%) owned by one or more individuals who are both socially and economically disadvantaged, or in the case of a corporation, in which fifty-one percent (51%) of the stock is owned by one or more such individuals; and whose management and daily

business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

4. DOT assisted contract means any contract between a recipient and a contractor (at any tier) funded in whole or in part with DOT financial assistance, including letter of credit or loan guarantees, except a contract solely for the purchase of land.

5. Good faith efforts means efforts to achieve a DBE goal or other requirement which, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the program requirement.

Sec. 1-10-115 Limitations.

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

Sec. 1-10-116. Policy statement.

Augusta, Georgia is committed to ensuring that all DBE requirements of federal and state funded contracts will be implemented by Augusta, Georgia. The 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, FTA and other contracts covered by this program, including highway, transit, and airport financial assistance programs in compliance with 49 CFR Part 21;
- (b) To create a level playing field on which DBEs can compete fairly for DOT, FTA and other contracts covered by this program;
- (c) To ensure that the this DBE program is narrowly tailored in accordance with applicable law;
- (d) To ensure that only firms that fully meet this part's eligibility standards are permitted to participate as DBEs;
- (e) To help remove barriers to the participation of DBEs in DOT, FTA and other contracts covered by this program;

- (f) To assist in the development of firms that can compete successfully in the marketplace outside the DBE program; and
- (g) To provide appropriate flexibility to recipients of Federal financial assistance in establishing and providing opportunities for DBEs.

Sec. 1-10-117. DBE liaison officer.

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

- (a) Gathering and reporting statistical data and other information as required by DOT, FTA and other contracts covered by this program.
- (b) Reviewing third party contracts and purchase requisitions for compliance with this program.

- (c) Working with all departments to set overall annual goals or as required by federal law.
- (d) Ensuring that bid notices and requests for proposals are available to DBEs in a timely manner.
- (e) Identifying contracts and procurements so that DBE goals are included in solicitations covered by this DBE Program.
- (f) Analyzing Augusta, Georgia's progress toward attainment and identifying ways to improve progress.
- (g) Participating in pre-bid meetings.
- (h) Advising the Commission on DBE matters and achievement.
- (i) Providing DBEs with information and assistance in preparing bids, obtaining bonding and insurance.
- (j) Planning and participating in DBE training seminars.
- (k) Certifying DBEs according to the criteria set by DOT and FTA and acting as liaison to the Uniform Certification Process in Georgia.
- (l) Providing outreach to DBEs and community organizations to advise them of opportunities.
- (m) Maintaining the DBE bidder's list for DOT, FTA and other contracts covered by this program as provided in § 1-10-121.
- (n) Ensuring that all aspects of this DBE Program are complied with by participants and using agencies.

Sec. 1-10-118. DBE financial institutions.

For projects containing federal or state 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. 1-10-119. Prompt payment mechanisms.

- (a) For projects containing federal or state 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, Georgia shall have the power and authority to enforce all of the provisions of this subsection and may implement suspension and debarment for non-compliance as provided in Article 8.

Sec. 1-10-120. 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. 1-10-121. DBE bidder's list for DOT and FTA 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 or FTA assisted contracts. The purpose of this requirement is to allow use of the bidder's 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 and FTA assisted contracts requiring prime bidders to report the name, address, DBE/non-DBE status and gross receipts of all firms who quote to them on subcontracts.
 - (2) Submitting surveys of a statistically sound sample of firms in the Augusta, Georgia regional area.
 - (3) Including a notice in solicitations and on the Augusta, Georgia website requesting that firms quoting on subcontracts submit their name, address, DBE/non-DBE status and gross receipts directly to the DBE Liaison Officer.

Sec. 1-10-122. 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 shall be submitted to the concerned DOT or FTA operating administration for a final determination of overconcentration.

- (b) Subject to approval required in subsection (c) below, when an overconcentration of DBE firms in a certain type of work is determined to exist, the DBE Liaison Officer may provide: technical assistance, business development programs, mentor-protégé programs, and other appropriate measures designed to assist DBEs in performing work outside of the specific field in which there is an overconcentration of DBE firms.
- (c) Before implementing any of the measures provided in subsection (b) above, the DBE Liaison Officer shall obtain the approval of the concerned DOT or FTA operating administration.

Sec. 1-10-123. Compliance with DBE Program requirements.

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

Sec. 1-10-124. DBE Program overall goals.

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

Sec. 1-10-125. 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. 1-10-125 through Sec. 1-10-999. Reserved.



**Administrative Services Committee Meeting
12/13/2010 1:00 PM**

Proposal to Amend Augusta, Georgia Charter, Section 1-40, Relating to Separating Function of EEO from Minority and Local Small Business, and for Other Purposes.

Department: Administrator

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. (No recommendation Administrative Services Committee November 29, 2010) (Referred from December 7 Commission meeting)

Background: See attached.

Analysis: See attached.

Financial Impact: None.

Alternatives: Decline to consider amendment to the Charter at this time.

Recommendation: Adopt proposal to amend the Charter.

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

REVIEWED AND APPROVED BY:

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 modify the Charter to reflect changes in the manner in which services and functions are provided;

NOW BE IT THEREFORE ORDAINED as follows:

CHARTER AND LAWS OF LOCAL APPLICATION. An ordinance 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, Charter, re-adopted July 10, 2007, is hereby presented. The ordinance 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 the Department of Transportation, Federal Transportation Administration and Other Federally Assisted Contracts" as set forth in "Exhibit B" hereto.

SECTION 2. This ordinance shall become effective upon its adoption in accordance with applicable laws. Once this ordinance is read into the minutes by the Commission, a notice containing a synopsis of the proposed Charter 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 placed 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 to be repealed upon the final approval of this Charter amendment.

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 the Department of Transportation, Federal Transportation Administration and Other Federally Assisted Contracts.

(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, disability, genetics 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, disability, genetics 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 Director (EEO Director). The EEO Director shall develop and, subject to the approval of the Commission, implement such policies, procedures, and guidelines as necessary or appropriate to ensure equal employment opportunities for Augusta, Georgia. The EEO Director shall report to the Mayor and Commission.

(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 the Procurement Director. The Procurement Director shall develop and, subject to the approval of the 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.

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

(f) In accordance with federal and state regulations the Commission shall develop and implement a Disadvantaged Business Enterprises (DBE) Program for U.S. Department of Transportation (DOT) assisted contracts, Federal Transportation Aviation (FTA) assisted contracts and other federally assisted contracts having DBE requirements. The DBE Program must comply with DOT and FTA mandated DBE requirements for certain DOT and FTA assisted contracts as required by 49 C.F.R. Part 26 and 49 C.F.R. Part 23.

(g) The DBE Program shall be operated by a DBE Liaison who shall report to the Mayor and Commission and have direct, independent access to the Mayor concerning DBE Program matters.