

Effective Date: November 20, 2015

Revisions: January 1, 2021 – Commission Chairman to sign all contracts over \$25,000 and change orders to the contracts.

August 13, 2021 – Georgia Department of Transportation requirements for Local Administration Projects language added.

October 6, 2023 – Expounds upon the current provision of the “Special Procurements” to allow for greater flexibility under certain procurement conditions.

February 16, 2024 – Amend as it relates to the “Local Preference” provision

Chatham County Purchasing Ordinance



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PART 13 - DEFINITIONS

PART 1 – GENERAL PROVISIONS

Section I – Scope

This Ordinance shall apply to every expenditure of public funds irrespective of their source. It shall also apply to the disposal of Chatham County surplus. When the procurement involves the expenditure of federal assistance or contract funds, the procurement shall be conducted in accordance with any applicable federal law and regulations. Nothing in this Code shall prevent any governmental body or political subdivision from complying with the terms and conditions of any grant, gift, which is otherwise consistent with law.

Section II – Exclusions from Competitive Requirements

The following supplies and services are exempted from this Ordinance:

- (A) Works of art for public places, or other creative/artistic endeavors that require a particular and demonstrated skill or talent to include, but not limited to, artists, musicians, and writers.
- (B) Printed copyright material including published books, maps, periodicals and technical pamphlets (not including software for computer systems), except where a greater savings can be realized by a quantity purchase.
- (C) Dues, memberships and board member fees.
- (D) Subscriptions
- (E) Services provided directly to individual citizens and employees including reimbursements and other miscellaneous payments, including but not limited to services provided in response to general liability insurance claims, solid waste services, and recreation and park attendants and instructor services.
- (F) Utilities, where there is no reasonable basis for competitive procurement, for example electric power, water, and sewerage.
- (G) Legal services, litigation, and related legal expenses
- (H) Training, facilitators for meetings, travel, lodging or meal expense covered by other County policies and regulations.

- (I) Items for resale, such as those sold at County facilities and require a particular manufacturer or provider to enhance their marketability.
- (J) Advertisements and legal advertisements including but not limited to bid/proposal solicitations, Planning Commission, Zoning Board of Appeals, and other boards that are required by law to publicly advertise their meetings or actions in the legal organ.
- (K) Antiques and other unique assets of historical value, including restoration of these items.
- (L) Materials or services required for confidential and secure investigations, apprehensions and detentions of individuals suspected of or convicted of criminal offenses by law enforcement personnel.
- (M) Professional Services Contracts under \$25,000. Although not required, where the scope of work is clear, a request for quotation may be used to solicit these services.

Section III – Application of Federal and State Law

It is intended that this Ordinance shall conform to all applicable provisions of the laws of the United States and of the State of Georgia, and the provisions hereof shall be so construed wherever possible. In the event that any portion of this Ordinance shall be declared invalid for its failure to conform to state or federal law, such invalidity shall not affect the remaining portions hereof. Notwithstanding any other provision of this Ordinance, Chatham County may enter into any contract, follow any procedure, or take any action that is otherwise at variance with this Ordinance if necessary or convenient to receiving funds from the government of the United States or the State of Georgia.

Section IV - Public Access to Information

Procurement information shall be a public record to the extent provided by law. All responses to Invitations to Bid (ITB) and Quotations shall be made available to the public as soon as practical after the bids have been opened. A bid tabulation shall be posted on Chatham County's website. Responses to Request for Proposals (RFP) shall only be made available after the award has been made. However, after the deadline for receipt of proposals, a register of the respondents shall be posted on Chatham County's website.

Section V– Appropriate Expenditures

Elected officials or Department Directors are responsible for ensuring that all purchases made within his or her authority are appropriate expenditures for the use of public funds.

PART 2 – PROCUREMENT ORGANIZATION

Section I - Procurement Office

The Procurement Office shall serve all of Chatham County government by obtaining required commodities and services in accordance with State of Georgia Law and this Ordinance.

Section II - Authority of the Purchasing Director

- (A) *Chief Procurement Officer of Chatham County.* The Purchasing Director shall serve as the Chief Procurement Officer of Chatham County.
- (B) *Power to Adopt Operational Procedures.* Consistent with the provisions of this Code, the Purchasing Director may adopt operational procedures governing the internal functions of the Purchasing and Contracting Department.
- (C) *Duties.* Except as otherwise specifically provided in this Code, the Purchasing Director shall:
 - (a) Procure or supervise the procurement of all supplies, services, and construction needed by Chatham County;
 - (b) Sell, trade, or otherwise dispose of surplus equipment, vehicles and supplies belonging to Chatham County;
 - (c) Ensure compliance with this Code by reviewing and monitoring procurements conducted by any designee, department, agency or official delegated authority.

Section III - Delegation of Authority by County Manager

County Manager may delegate procurement authority to designees or to any department, agency, or official.

Section IV – Awards and Signing Authority

- (A) *Contracts over \$25,000.* Except as otherwise provided in this article, all contracts exceeding \$25,000 for procurement of supplies, services, equipment and construction shall be awarded only after authorization of the award has been given by the Board of Commissioners.

All contracts over \$25,000 shall be signed by the Commission Chairman. Change Orders to these contracts shall also be signed by Commission Chairman. (Amended 01/01/2021)

- (B) *Contracts, Agreements, or Purchase Orders up to \$25,000.* Except as otherwise provided in this article, all contracts and purchase orders of \$25,000 or less shall be awarded only after authorization has been given by the Purchasing Director. The Purchasing Director shall sign and maintain copies of agreements and contracts up to \$25,000. The Board of Commissioners shall be provided a list of purchase orders between \$2500 and \$25,000 as information items at each Board meeting.
- (C) *Purchase Orders over \$25,000.* All purchase orders over \$25,000 shall be signed by County Manager or his designee after Board approval.
- (D) *Departmental Purchasing Authority.* Department Heads may authorize purchases up to \$2,500. Competition shall be obtained where practical. The Purchasing Card (P-Card) may be used to facilitate such purchases in accordance with this ordinance.

Purchases shall not be divided so as to keep the purchase below \$2,500. Repetitive purchases during a fiscal year with the same vendor for the same commodity or service which exceed \$25,000 shall be considered for annual contracts.

PART 3 – PROCUREMENT METHODS

Section I - Authorized Procurement Methods

Unless otherwise authorized by law, all Chatham County contracts shall be awarded by one of the following methods:

- (A) Competitive Sealed Bidding;
- (B) Competitive Sealed Proposals;
- (C) Small Purchases;
- (D) Sole Source Procurement;
- (E) Emergency Procurements;
- (F) Special Procurements;
- (G) Architectural and Engineering Services
- (H) Competitive Negotiation Qualification-Based Selection for Projects Using Federal Aid Highway Program Funding

A. Competitive Sealed Bidding

- (1) *Conditions for Use.* Contracts expected to exceed \$25,000 shall be awarded by competitive sealed bidding except as otherwise provided in Part 3 Section I (Authorized Procurement Methods).
- (2) *Invitation to Bid.* An Invitation to Bid shall be issued and shall include a purchase description, and relevant requirements applicable to the procurement.
- (3) *Public Notice.* Adequate public notice of a minimum of 10 days of the Invitation to Bid shall be given prior to the date set forth therein for the opening of bids. Public Works Construction shall be handled in accordance with state law. Use of Chatham County website for posting of solicitations shall constitute adequate notice unless federal, state or grant funding require otherwise. Addenda shall be issued with a minimum of 72 hours' notice prior to deadline for bids.

- (4) *Bid Opening.* Bids shall be opened publicly in the presence of one or more witnesses at the time and place designated in the Invitation to Bid. The amount of each bid, and such other relevant information, together with the name of each bidder shall be recorded; the record and each bid shall be open to public inspection. Bids received after the deadline shall not be read or considered.

- (5) *Bid Acceptance and Bid Evaluation.* Bids shall be unconditionally accepted without alteration or correction, except as authorized in this Code. Bids shall be evaluated based on the requirements set forth in the Invitation to Bid, which may include criteria to determine acceptability such as inspection, testing, quality, workmanship, delivery, past performance and suitability for a particular purpose. Those criteria that will affect the bid price and be considered in evaluation for award shall be objectively measurable, such as discounts, transportation costs, and total or life cycle costs. The Invitation to Bids shall set forth the evaluation criteria to be used. No criteria may be used in bid evaluation that are not set forth in the Invitation to Bid except as set forth in Part 3, Section 3 - Responsibility of Bidders.

In the event that only one (1) bid is received, the Purchasing Director may postpone the bid opening for one (1) week for the purpose of obtaining additional bids. The bid received shall remain unopened. If after this extension, there is still only one (1) bid, the bid shall be opened and reviewed.

- (6) *Correction or Withdrawal of Bids; Cancellation of Awards.* Correction or withdrawal of inadvertently erroneous bids before or after bid opening, or cancellation of awards or contracts based on such bid mistakes, may be permitted. Mistakes discovered before bid opening may be modified or withdrawn by written or electronic notice received in the office of the Purchasing Director prior to the time set for bid opening. After bid opening, no changes in bid prices or other provisions of bids prejudicial to the interest of Chatham County or fair competition shall be permitted. Except as otherwise provided, all decisions to permit the correction or withdrawal of bids, or to cancel awards or contracts based on bid mistakes, shall be supported by a written determination made by the Purchasing Director. In general, unit prices shall govern in the event of mathematical errors.

- (7) *Award.*
 - (a) The contract shall be awarded by written notice to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set

forth in the Invitation to Bid. In the event all bids exceed available funds, the Purchasing Director is authorized in situations where time or economic considerations preclude solicitation of work of a reduced scope to negotiate an adjustment of the bid price in coordination with the Project Manager, including changes in the bid requirements, with the low responsive and responsible bidder, in order to bring the bid within the amount of available funds.

- (b) The following provisions shall apply in the procurement of supplies and services: In the event that the lowest bid among those provided by responsive and responsible local vendors is within two (2) percent of the lowest responsive and responsible bidder who is not a local vendor, the lowest responsive and responsible local vendor shall be afforded the opportunity to match the bid submitted by the nonlocal bidder. If the lowest responsive and responsible local vendor agrees to match the lowest bid, then the contract shall be awarded to the local vendor. This provision shall not apply to construction projects.
- (8) *Multi-Step Sealed Bidding.* When it is considered impractical to initially prepare a purchase description to support an award based on price, an Invitation to Bid may be issued requesting the submission of unpriced offers to be followed by an Invitation to Bid limited to those bidders whose offers have been qualified under the criteria set forth in the first solicitation.

B. Competitive Sealed Proposals

- (1) *Conditions for Use.*
 - (a) A contract expected to exceed \$25,000 may be entered into by competitive sealed proposals when the Purchasing Director, determines that the use of competitive sealed bidding is either not practicable or not advantageous to Chatham County.
 - (b) Competitive sealed proposals may be used when it is either not practicable or not advantageous to Chatham County to procure specified types of supplies, services, or construction by competitive sealed bidding.
- (2) *Request for Proposals.* Proposals shall be solicited through a Request for Proposals.

- (3) *Public Notice.* Adequate public notice of a minimum of 10 days of the Request for Proposals shall be given prior to the date set forth therein for the opening of bids. Public Works Construction shall be handled in accordance with state law. Use of the Chatham County website for posting of solicitations shall constitute adequate notice unless federal, state or grant funding require otherwise.
- (4) *Receipt of Proposals.* Proposals shall be opened so as to avoid disclosure of contents to competing offerors during the process of negotiation. A Register of Proposals shall be prepared which lists the name of the respondent. The successful proposal shall be open for public inspection only after contract award. Late proposals may be accepted when there are extenuating circumstances and when no advantage could be gained by the proposer by the late submission. The Purchasing Director shall make the determination.
- (5) *Evaluation Factors.* The Request for Proposals shall state the relative importance of price and other evaluation criteria.
- (6) *Discussion with Responsible Offerors and Revisions to Proposals.* As provided in the Request for Proposals, discussions may be conducted with responsible offerors who submit proposals determined to be reasonably susceptible of being selected for award for the purpose of clarification to assure full understanding of, and responsiveness to, the solicitation requirements. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals, and such revisions may be permitted after submissions and prior to award for the purpose of obtaining best and final offers. In conducting discussions, there shall be no disclosure of any information derived from proposals submitted by competing offerors.
- (7) *Award.* Award shall be made to the responsible offeror whose proposal conforms to the solicitation and is determined in writing to be the most advantageous to Chatham 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 the basis on which the award is made.

- (8) *Debriefings.* Procurement staff and Project Managers are authorized to provide debriefings that furnish the basis for the source selection decision and contract award.

C. Small Purchases

- (1) *General.* Any contract not exceeding \$25,000 shall be made in accordance with the small purchase procedures authorized in this section. Contract requirements shall not be artificially divided so as to constitute a small purchase under this section.
- (2) *Small purchases not exceeding \$25,000.* A minimum of three (3) businesses shall be solicited to submit Quotations. Award shall be made by the Purchasing Director to the business offering the lowest acceptable quotation. The names of the businesses submitting Quotations, and the date and amount of each quotation, shall be recorded and maintained as a public record. Departments are authorized to obtain these Quotations as long as personnel have been certified by the Purchasing and Contracting Department as having the required training. Quotations shall be submitted to Purchasing prior to the department placing the order.
- (3) *Small purchases under \$2,500.* The Department head shall provide for obtaining adequate and reasonable competition for the supply, service or construction being purchased. Further, such procedures 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. A purchasing card may be used to facilitate these transactions subject to the requirements of this ordinance.
- (4) *Local Preference.* The following provisions shall apply in the award of small purchases of supplies and services: In the event that the lowest bid among those provided by responsive and responsible local vendors is within two (2) percent of the lowest responsive and responsible bidder who is not a local vendor, the lowest responsive and responsible local vendor shall be afforded the opportunity to match the bid submitted by the nonlocal bidder. If the lowest responsive and responsible local vendor agrees to match the lowest bid, then the contract shall be awarded to the local vendor. This provision shall not apply to construction projects.

D. Sole Source Procurement

A contract may be awarded for a supply, service, or construction item without competition when the Purchasing Director determines in writing that there is only one known source for the required supply, service, or construction item. The Purchasing Director shall conduct negotiations, as appropriate, as to price, delivery and terms.

A sole source procurement may be authorized where it is impractical to solicit other sources due to proximity to a project, prior work on a related project, or the need for a specialized skill or expertise.

E. Emergency Procurement

The Purchasing Director, or a Department Head may make or authorize others to make emergency procurements when there exists a threat to public health, welfare, or safety under emergency conditions; provided that such emergency procurements shall be made with such competition as is practicable under the circumstances. A written determination of the basis for the emergency and for the selection of the particular contractor shall be included in the contract file.

Approval of emergency procurement actions for goods, materials, and services exceeding the \$25,000 Board approval threshold must at a minimum, be verbally approved by the County Manager, or if not available, an Assistant County Manager. Verbal approval shall be followed up with a written memo which outlines the nature of the emergency, quotes obtained and contractor selected. This memo shall be signed by the Assistant County Manager and County Manager and attached to the Commission agenda item. Board confirmation of the emergency procurement shall be obtained at the next scheduled Commission meeting.

F. Special Procurements

The Purchasing Director may initiate a procurement above the small purchase amount where the Director determines that an unusual or unique situation exists that makes the application of all requirements of competitive sealed bidding or competitive sealed proposals contrary to the public interest. Any special procurement under this Section shall be made with such competition as is practicable under the circumstances. A written determination of the basis for the procurement and for the selection of the particular contractor shall be included by

the Purchasing Director in the contract file and Board approval shall be obtained prior to the purchase or confirmed by the Board if time constraints exist.

G. Architectural and Engineering Services

- (1) *Policy.* It is the policy of Chatham County to publicly announce all requirements for Architectural and Engineering Services and to negotiate contracts for Architectural and Engineering Services on the basis of demonstrated competence and qualification for the type of services required, and at fair and reasonable prices.
- (2) *Architectural and Engineering Selection Committee.* In the procurement of Architectural and Engineering Services, the Selection Committee shall encourage firms engaged in the lawful practice of their profession to submit a statement of qualifications and performance data. The Purchasing Director or his designee, and Chatham County Engineer or Project Manager shall at a minimum comprise the Architect-Engineer Selection Committee for each Architectural and Engineering Services contract over \$100,000. The Selection Committee for Architectural and Engineering Services contracts under this amount shall be established by the Purchasing Director and Project Manager. The Selection Committee shall evaluate statements of qualifications and performance data regarding the proposed contract.
- (3) *Negotiation.* Chatham County Engineer or Project Manager shall negotiate a contract with the highest qualified firm for Architectural and Engineering Services at compensation which Chatham County Engineer determines in writing to be fair and reasonable to Chatham County. In making this decision, the County Engineer shall take into account the estimated value, the scope, the complexity, and the professional nature of the services to be rendered. Should the County Engineer be unable to negotiate a satisfactory contract with the firm considered to be the most qualified, at a price determined to be fair and reasonable to Chatham County, negotiations with that firm shall be formally terminated. County Engineer shall then undertake negotiations with the second most qualified firm. Failing accord with the second most qualified firm, the County Engineer shall formally terminate negotiations. The County Engineer shall then undertake negotiations with the third most qualified firm. Should the County Engineer be unable to negotiate a contract at a fair and reasonable price with any of the selected firms, the County Engineer shall

select additional firms in order of their competence and qualifications, and shall continue negotiations in accordance with this Section until an agreement is reached.

H. Competitive Negotiation Qualifications-Based Selection for Projects Using Federal Aid Highway Program (FAHP) Funding

- (1) *Procurement Methods.* The procurement of engineering and design related services funded by FAHP funds shall be conducted in accordance with one of two methods: Competitive negotiation and non-competitive procurement where specific conditions exist allowing solicitation and negotiation to take place with a single consultant.
- (2) *Competitive Negotiations.* Except as provided in (2) and (3) below, Chatham County shall use the competitive negotiation method for the procurement of engineering and design related services when FAHP funds are involved in the contract (as specified in 23 U.S.C. 112(b)(2)(A)). The solicitation, evaluation, ranking, selection, and negotiation shall comply with the qualifications-based selection procurement procedures for architectural and engineering services codified under 40 U.S.C. 1101–1104, commonly referred to as the Brooks Act.

In accordance with the requirements of the Brooks Act, the following procedures shall apply to the competitive negotiation procurement method:

(i) Solicitation.

The solicitation process shall be by public announcement in the Georgia Procurement Registry, public advertisement, or any other public forum or method that assures qualified in- State and out-of-State consultants are given a fair opportunity to be considered for award of the contract. Procurement procedures may involve a single step process with issuance of a Request for Proposal (RFP) to all interested consultants or a multiphase process with issuance of a request for statements or letters of interest or qualifications (RFQ) whereby responding consultants are ranked based on qualifications and Request for Proposals are then provided to three (3) or more of the most highly qualified consultants. Minimum qualifications of consultants to perform services under general work categories or areas of expertise may also be assessed through a prequalification process whereby statements of qualifications are submitted on an annual basis. Regardless of any process utilized for prequalification of consultants or for an initial assessment of a consultant's qualifications under a RFQ, a RFP specific

to the project, task, or service is required for evaluation of a consultant's specific technical approach and qualifications.

(ii) Request for Proposal (RFP).

The RFP shall provide all information and requirements necessary for interested consultants to provide a response¹ to the RFP and compete for the solicited services. The RFP shall:

- (a) Provide a clear, accurate, and detailed description of the scope of work, technical requirements, and qualifications of consultants necessary for the services to be rendered. The scope of work should detail the purpose and description of the project, services to be performed, deliverables to be provided, estimated schedule for performance of the work, and applicable standards, specifications, and policies;
- (b) Identify the requirements for any discussions that may be conducted with three (3) or more of the most highly qualified consultants following submission and evaluation of proposals;
- (c) Identify evaluation factors including their relative weight of importance in accordance with subparagraph III (a) of this document;
- (d) Specify the contract type and method(s) of payment to be utilized in accordance with 23 CFR Part 172.9;
- (e) Identify any special provisions or contract requirements associated with the solicited services;
- (f) Require that submission of any requested cost proposals or elements of cost be in a concealed format and separate from technical / qualifications proposals as these shall not be considered in the evaluation, ranking, and selection phase; and
- (g) Provide a schedule of key dates for the procurement process and establish a submittal deadline for responses to the RFP, which provides sufficient time for interested consultants to receive notice, prepare, and submit a proposal, which except in unusual circumstances shall be not less than 14 days from the date of issuance of the RFP.

(iii) Evaluation Factors.

- (a) Criteria used for evaluation, ranking, and selection of consultants to perform engineering and design related services must assess the demonstrated competence and qualifications for the type of professional services solicited. These qualifications-based factors may include, but are not limited to, technical approach (e.g., project understanding, innovative concepts or alternatives, quality control procedures), work experience, specialized expertise, professional licensure, staff capabilities, workload capacity, and past performance.
- (b) Price shall not be used as a factor in the evaluation, ranking, and selection phase. All price or cost related items, which include, but are not limited to, cost proposals, direct salaries/wage rates, indirect cost rates, and other direct costs are prohibited from being used as evaluation criteria.
- (c) In-State or local preference shall not be used as a factor in the evaluation, ranking, and selection phase. State licensing laws are not preempted by this provision and professional licensure within a jurisdiction may be established as a requirement, which attests to the minimum qualifications and competence of a consultant to perform the solicited services.
- (d) The following non-qualifications-based evaluation criteria are permitted under the specified conditions and provided the combined total of these criteria do not exceed a nominal value of ten percent of the total evaluation criteria to maintain the integrity of a qualifications-based selection:
- (e) A local presence may be used as a nominal evaluation factor where appropriate. This criterion shall not be based on political or jurisdictional boundaries and may be applied on a project-by-project basis for contracts where a need has been established for a consultant to provide a local presence, a local presence will add value to the quality and efficiency of the project, and application of this criteria leaves an appropriate number of qualified consultants, given the nature and size of the project. If a consultant outside of the locality area indicates as part of a proposal that it will satisfy the criteria in some manner, such as establishing a local project office, that commitment shall be considered to have satisfied the local presence criteria.
- (f) The participation of qualified and certified Disadvantaged Business Enterprise (DBE) sub-consultants may be used as a nominal evaluation criterion where appropriate in accordance with 49 CFR Part 26.

- (g) The combined total of the above criteria shall not exceed a nominal value of ten percent of the total evaluation criteria to maintain the integrity of a qualifications

(iv) Evaluation, Ranking, and Selection.

- (a) Consultant proposals shall be evaluated by Chatham County based on the criteria established and published within the public solicitation.
- (b) While the contract will be with the prime consultant, proposal evaluations shall consider the qualifications of the prime consultant and any sub-consultants identified within the proposal with respect to the scope of work and established criteria.
- (c) Following submission and evaluation of proposals, Chatham County shall conduct interviews or other types of discussions with three (3) of the most highly qualified consultants to clarify the technical approach, qualifications, and capabilities provided in response to the RFP unless it is determined in writing that the proposals contain sufficient information for evaluation of technical approach and qualifications without discussion. Discussion requirements shall be specified within the RFP and should be based on the size and complexity of the project as defined in Chatham County written policies and procedures (as specified in § 172.5(c)). Discussions may be written, by telephone, video conference, or by oral presentation/interview. Discussions following proposal submission may be waived when proposals contain sufficient information for evaluation of technical approach and qualifications to perform the specific project, task, or service with respect to established criteria.
- (d) From the proposal evaluation and any subsequent discussions, which have been conducted, Chatham County shall rank, in order of preference, at least three (3) consultants determined most highly qualified to perform the solicited services based on the established and published criteria.
- (e) Notification must be provided to responding consultants of the final ranking of the three (3) most highly qualified consultants and selected consultant must be posted to the Georgia Procurement Registry.
- (f) Chatham County shall retain acceptable documentation of the solicitation, proposal, evaluation, and selection of the consultant accordance with the provisions of 49 CFR Part 18.42.

(v) Negotiation.

- (a) Independent estimate. Prior to receipt or review of the most highly qualified consultant's cost proposal, Chatham County shall prepare a detailed independent estimate with an appropriate breakdown of the work or labor hours, types or classifications of labor required, other direct costs, and consultant's fixed fee for the defined scope of work. The independent estimate shall serve as the basis for negotiation and ensuring the consultant services are obtained at a fair and reasonable cost.
- (b) Elements of contract costs (e.g., indirect cost rates, direct salary or wage rates, fixed fee, and other direct costs) shall be established separately in accordance with 23 CFR Part 172.11.
- (c) If concealed cost proposals were submitted in conjunction with technical/qualifications proposals, only the cost proposal of the consultant with which negotiations are initiated may be considered. Concealed cost proposals of consultants with which negotiations are not initiated should be returned to the respective consultant due to the confidential nature of this data (as specified in 23 U.S.C. 112(b)(2)(E)).
- (d) Chatham County shall retain documentation of negotiation activities and resources used in the analysis of costs to establish elements of the contract in accordance with the provisions of 49 CFR 18.42. This documentation shall include the consultant cost certification and documentation supporting the acceptance of the indirect cost rate to be applied to the contract (as specified in 23 CFR Part 172.11(c)).

(vi) Noncompetitive.

The noncompetitive method involves procurement of engineering and design related services when it is not feasible to award the contract using competitive negotiation. The following requirements shall apply to the noncompetitive procurement method:

- (a) Chatham County may use their own noncompetitive procedures, which reflect applicable State and local laws and regulations and conform to applicable Federal requirements.

- (b) Chatham County shall establish a process to determine when noncompetitive procedures will be used and shall submit justification to, and receive approval from, the FHWA before using this form of contracting.
- (c) Circumstances under which a contract may be awarded by noncompetitive procedures are limited to the following:
 - (i) The service is available only from a single source;
 - (ii) There is an emergency which will not permit the time necessary to conduct competitive negotiations; or
 - (iii) After solicitation of a number of sources, competition is determined to be inadequate.
 - (iv) Contract costs may be negotiated in accordance with Chatham County noncompetitive procedures; however, the allowability of costs shall be determined in accordance with the Federal cost principles.

(3) *Additional Procurement Requirements.*

(a) Common Grant Rule.

- (i) Chatham County must comply with procurement requirements established in State and local laws, regulations, policies, and procedures which are not addressed by or in conflict with applicable Federal laws and regulations (as specified in 49 CFR Part 18.36).
- (ii) When State and local procurement laws, regulations, policies, or procedures are in conflict with applicable Federal laws and regulations, Chatham County must comply with Federal requirements to be eligible for Federal-aid reimbursement of the associated costs of the services incurred following FHWA authorization (as specified in 49 CFR Part 18.4).

(b) Disadvantaged Business Enterprise (DBE) program.

- (i) Chatham County shall give consideration to DBE consultants in the procurement of engineering and design related service contracts subject to 23 U.S.C. 112(b)(2) in accordance with 49 CFR Part 26. When DBE program participation goals cannot be met through race-neutral measures, additional DBE participation on engineering and design related services

contracts may be achieved in accordance with Chatham County's LSMWBE Procedures Manual through either:

- (ii) Use of an evaluation criterion in the qualifications-based selection of consultants (as specified in 23 CFR Part 172.7(a)(1)(iii)(D)); or
- (iii) Establishment of a contract participation goal.
- (iv) The County shall use one or the other not both.
- (v) The use of quotas or exclusive set-asides for DBE consultants is prohibited (as specified in 49 CFR Part 26.43).

(c) Suspension and Debarment.

Chatham County must verify suspension and debarment actions and eligibility status of consultants and sub-consultants prior to entering into an agreement or contract in accordance with 49 CFR Part 18.35 and 2 CFR Part 180.

Section II – Cancellation of Invitations to Bids or Requests for Proposals

An Invitation to Bid, a Request for Proposals, or other solicitation may be cancelled, or any or all bids or proposals may be rejected in whole or in part when it is in the best interests of Chatham County. The reasons for rejecting all bids or cancelling a solicitation shall be made part of the contract file.

Section III – Responsibility and Prequalification of Bidders

- (1) **Determination of Nonresponsibility.** A written determination of nonresponsibility of a bidder shall be made as part of the public record. The unreasonable failure of a bidder to promptly supply information in connection with an inquiry with respect to responsibility may be grounds for a determination of nonresponsibility with respect to such bidder.
- (2) **Prequalification of Suppliers.** Prospective suppliers may be prequalified for particular types of supplies, services, and construction. The method of submitting prequalification information and the information required in order to be prequalified shall be determined by the Purchasing Director. The criteria for prequalification must be directly related to the procurement.

Section IV – Types of Contracts

A. Authorized Types of Contracts

Subject to the limitations of this Section, any type of contract which will promote the best interests of Chatham County may be used. The use of a cost-plus-a-percentage-of-cost contract is not allowed except with extenuating circumstances and approval of the Purchasing Director. A cost-reimbursement contract may be used only when a determination is made in writing that such contract is likely to be less costly to Chatham County than any other type or that it is impracticable to obtain the supplies, services, or construction required except under such a contract.

B. On Call Contracts

- (1) On call contracts may be established for engineering, surveying, architectural services and other professional services contracts which are needed repetitively and which do not require a standalone contract.
- (2) The contracts shall be awarded based on the competitive proposal process which considers experience, qualifications, past performance as well as specific areas of expertise.
- (3) The contract shall be awarded for one (1) year with the option to renew annually for four (4) additional years.

C. Annual Contracts

- (1) *Specified Period.* Unless otherwise provided by law, a contract for supplies or services may be entered into for any period of time deemed to be in the best interests of Chatham County provided the term of the contract and conditions of renewal or extension, if any, are included in the solicitation and funds are available for the first fiscal period at the time of contracting. Payment and performance obligations for succeeding fiscal periods shall be subject to the availability and appropriation of funds. Contracts shall be renewable on an annual basis subject to a vendor performance evaluation and contract analysis.

- (2) *Use.* An annual contract is authorized where:
 - (a) Estimated requirements cover the period of the contract and are reasonably firm and continuing; and
 - (b) Such a contract will serve the best interests of Chatham County by encouraging effective competition or otherwise promoting economies in Chatham County procurement.
- (3) *Award.* The total award amount of the annual contract plus renewal periods will be used to determine the requirement for Board approval and signing authority.
- (4) *Insurance.* Contract which require a contractor or vendor to perform work on County property must provide general liability and worker's compensation insurance as set forth in the bid documents.
- (5) *Cancellation Due to Unavailability of Funds in Succeeding Fiscal Periods.* When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the contract shall be cancelled.

Section V – Authorization for County Inspection of Facility or Records

A. Right to Inspect. Chatham County may, at reasonable times, inspect the part of the facility or place of business of a contractor or any subcontractor which is related to the performance of any contract awarded or to be awarded by Chatham County.

B. Right to Audit

- (1) *Audit of Cost or Pricing Data.* Chatham County may, at reasonable times and places, audit the books and records of any person who has submitted data in substantiation of offered prices to the extent that such books and records relate to that data. Any person who receives a contract, change order, or contract modification for which such data is required, shall maintain such books and records that relate to such cost or pricing data for three (3) years from the date of final payment

under the contract, unless a shorter period is otherwise authorized in writing.

- (2) *Contract Audit.* Chatham County shall be entitled to audit the books and records of a contractor or any subcontractor under any negotiated contract or subcontract other than a firm fixed-price contract to the extent that such books and records relate to the performance of such contract or subcontract. Such books and records shall be maintained by the contractor for a period of three (3) years from the date of final payment under the prime contract and by the subcontractor for a period of three (3) years from the date of final payment under the subcontract, unless a shorter period is otherwise authorized in writing.

Section VI. - Retention of Procurement Records

All procurement records shall be retained and disposed of in accordance with records retention guidelines and schedules approved by the State of Georgia. All retained documents shall be made available upon request in accordance with open records requirements.

PART 4 – SPECIFICATIONS

Section I - Duties of the Purchasing Director

The Purchasing Director shall monitor the use of specifications for supplies, services, and construction required by Chatham County. The Purchasing Director shall obtain expert advice and assistance from personnel of Using Agencies in the development of specifications.

Section II - Brand Name or Equal Specification

- (A) **Use.** Brand name or equal specifications may be used when the Purchasing Director determines that:
 - (1) No other design or performance specification or qualified products list is available;

- (2) Time does not permit the preparation of another form of purchase description, not including a brand name specification;
 - (3) The nature of the product or the nature of Chatham County's requirements makes use of a brand name or equal specification suitable for the procurement; or
 - (4) Use of a brand name or equal specification is in Chatham County's best interests.
- (B) **Designation of several brand names.** Brand name or equal specifications shall seek to designate as many different brands as are practicable, as "or equal" references and considered for award.
- (C) **Required characteristics.** Unless the Purchasing Director determines in writing that the essential characteristics of the brand names included in the specifications are commonly known in the industry or trade, brand name or equal specifications shall include a description of the particular design, functional or performance characteristics which are required.
- (D) **Competition.** The Purchasing Director shall seek to identify sources from which the designated brand name item or items can be obtained and shall solicit such sources to achieve whatever degree of price competition is practicable. If only one (1) source can supply the requirement, the procurement shall be made under Part 3 Section 1 (D) (Sole Source Procurement).

Section III - Maximum Practicable Competition

All specifications shall seek to promote overall economy for the purposes intended and encourage competition in satisfying Chatham County's needs, and shall not be unduly restrictive.

Section IV - Specifications Prepared by other than Chatham County Personnel

- (A) The requirements of this Article regarding the purposes and nonrestrictiveness of specifications shall apply to all specifications prepared other than by Chatham County personnel, including, but not limited to, those prepared by architects, engineers, and designers.

- (B) Chatham County may solicit input from potential vendors in the preparation of specifications. The Purchasing Director shall be responsible for insuring that the specifications do not provide an unfair advantage to any bidder. In general, a vendor who prepared specifications for a fee, shall not be allowed to also bid on the solicitation. A written determination shall be made part of the bid file in the event this provision is waived.

PART 5 – PROCUREMENT OF PROFESSIONAL DESIGN SERVICES AND CONSTRUCTION

Section I – Authorized Project Delivery Methods

- (A) **Authorized.** All project delivery methods authorized under State law may be considered for Chatham County projects. Design-Bid-Build shall be the preferred method of project delivery.
- (B) **Conflict of Interest.** Participation in a report or study that is subsequently used in the preparation of design requirements for a project shall not disqualify a firm from participating as a member of a proposing team in a design-build, design-build-operate-maintain, or design-build-finance-operate-maintain procurement unless such participation would provide the firm with a competitive advantage.
- (C) **Choice of Project Delivery Methods**
The Purchasing Director and County Project Manager shall determine the project delivery method to be used for a particular project.

Procurement Methods Assigned to Project Delivery Methods

- (1) Design-bid-build.
 - (a) *Design: Architectural and Engineering Services.* The selection process set forth in Part 3 Section I (G) (Architectural and Engineering Services) shall be used to procure architectural and engineering services in design-bid-build procurements.

- (b) *Construction.* Competitive sealed bidding, as set forth in Part 3 Section I (A) (Competitive Sealed Bidding), shall be used to procure construction in design-bid-build procurements. Local preference shall not be used in construction procurements.
 - (c) *Prequalification.* A two (2) step pre-qualification process may be used in accordance with Georgia law. Criteria used for prequalification must be directly related to the project.
- (2) *Other project delivery methods.* All other project delivery methods shall be procured by competitive sealed proposals, as set forth in this ordinance.

Section II - Additional Procedures Applicable to Procurement of Certain Project Delivery Methods

- A. *Applicability.* In addition to the requirements of Part 3 Section I (B) (Competitive Sealed Proposals), the procedures in this Section shall apply to all project delivery methods other than design-bid-build.
- B. *Content of Request for Proposals.* Each Request for Proposals for design-build, design-build-operate-maintain, or design-build-finance-operate-maintain:
 - (a) Shall include design requirements;
 - (b) Shall solicit proposal development documents; and
 - (c) May, when the Purchasing Director determines that the cost of preparing proposals is high in view of the size, estimated price, and complexity of the procurement:
 - (i) Prequalify bidders by issuing a Request for Qualifications in advance of the Request for Proposals; and
 - (ii) Select a short list of responsible bidders based on evaluation criteria and provide notice to all bidders as to which proposals

have been shortlisted. The shortlist shall be developed prior to discussions with bidders.

- C. *Evaluation Factors.* Each Request for Proposals for design-build, design-build-operate-maintain, or design-build-finance-operate-maintain shall state the relative importance of (1) demonstrated compliance with the design requirements, (2) bidder qualifications, (3) financial capacity, (4) project schedule, (5) price (or life-cycle price for design-build-operate-maintain and design-build-finance-operate-maintain procurements), and (6) other factors, if any.

Section III – Bonds, Insurance, Guarantees

A. Bid Security

- (1) *Requirement for Bid Security.* Bid security shall be required for all competitive sealed bidding for construction contracts when the price is estimated to exceed \$100,000. Bid security shall be a bond provided by a surety company authorized to do business in the State of Georgia, or certified check or money order, or otherwise supplied in a form satisfactory to Chatham County. Nothing herein prevents the requirement of such bonds on such contracts under \$100,000 when the circumstances warrant.
- (2) *Amount of Security.* Bid security shall be in an amount equal to at least 5% of the amount of the bid.
- (3) *Rejection of Bids for Noncompliance with Bid Security Requirements.* When the Invitation to Bid requires security, noncompliance requires that the bid be rejected.
- (4) *Withdrawal of Bids.* After bids are opened, they shall be irrevocable for the period specified in the Invitation to Bid (except as otherwise provided for in this ordinance.) If a bidder is permitted to withdraw its bid (or proposal) before award, or is excluded from the competition before award, no action shall be had against the bidder or the bid security.

B. Contract Performance and Payment Bonds

- (1) *When Required – Amounts.* When a construction contract is awarded in excess of \$100,000, the following bonds or security shall be delivered to Chatham County and shall become binding on the parties upon the execution of the contract:
 - (a) A performance bond satisfactory to Chatham County, executed by a surety company authorized to do business in this State or otherwise secured in a manner satisfactory to Chatham County, in an amount equal to 100% of the portion of the contract price that does not include the cost of operation, maintenance, and finance; and
 - (b) A payment bond satisfactory to Chatham County, executed by a surety company authorized to do business in this State or otherwise secured in a manner satisfactory to Chatham County, for the protection of all persons supplying labor and material to the contractor or its subcontractors for the performance of the construction work provided for in the contract. The bond shall be in an amount equal to 100% of the portion of the contract price that does not include the cost of operation, maintenance, and finance.
- (2) *Construction Contracts under \$100,000.* The Purchasing Director may waive bid, payment and performance bonds under the \$100,000 public works construction limit. However the following shall apply where bonds are waived:
 - (a) Project Managers shall review references provided by Contractor to insure capability and fiscal responsibility.
 - (b) Project Managers shall require the Contractor to submit a waiver of lien and Affidavit of Payment of Claims with every pay request prior to authorizing payment to the Contractor.
- (3) *Reduction of Bond Amounts.* The Purchasing Director may reduce the amount of performance and payment bonds to a lesser % of the

amounts established in Subsection (1) of this Section for non-construction bids when it is deemed to be in Chatham County's best interest.

- (4) *Authority to Require Additional Bonds.* Nothing in this Section shall be construed to limit the authority of Chatham County to require a performance bond or other security in addition to such bonds, or in circumstances other than specified in Subsection (1) of this Section.

C. Bond Forms and Copies

- (1) *Bond Forms.* Chatham County Attorney shall determine the acceptability of bonds submitted pursuant to a contract requirement.
- (2) *Certified Copies of Bonds.* Any person may request and obtain from Chatham County 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.

D. Errors and Omissions Insurance

The Purchasing Director shall require bidders to provide appropriate professional liability including errors and omissions insurance to cover architectural and engineering services.

E. Other Forms of Security

The Purchasing Director is authorized to require one or more of the following forms of security to assure the timely and uninterrupted provision of operations and maintenance services as part of a design-build-operate-maintain or design-build-finance-operate-maintain contract:

- (a) Operations period surety bonds as appropriate that secure the performance of the contractor's operations and maintenance obligations;
- (b) Letters of credit in an amount appropriate to cover the cost to Chatham County of preventing infrastructure service interruptions for a period up to twelve months; and

- (c) Appropriate written guarantees from the contractor (or depending upon the circumstances, from parent corporations) to secure the recovery of re-procurement costs to Chatham County in the event of a default in performance by the contractor.

PART 6 – MODIFICATION AND TERMINATION OF CONTRACTS

Section I - Contract Requirements

- (A) *Contract Clauses.* The Purchasing Director shall include clauses providing for adjustments in prices, time of performance, or other contract provisions as appropriate covering the following subjects:
 - (a) The unilateral right of Chatham County to order in writing:
 - (i) Changes in the work within the scope of the contract; and
 - (ii) Temporary stopping of the work or delaying performance; and
 - (b) Variations occurring between estimated quantities of work in a contract and actual quantities.
- (B) *Price Adjustments.*
 - (a) Adjustments in price shall be allowed in one or more of the following ways:
 - (i) By agreement on a fixed-price adjustment based on documentation of a manufacturer's price increase which could not have been foreseen;
 - (ii) By unit prices specified in the contract or subsequently agreed upon;
 - (iii) In such other manner as the contracting parties may mutually agree; or
 - (iv) in the absence of agreement by the parties, by a unilateral determination by Chatham County of the costs attributable to the

events or situations under such clauses with adjustment of profit or fee, all as computed by Chatham County.

- (b) A contractor shall be required to submit cost or pricing data upon request.
- (C) *Additional Contract Clauses.* The Purchasing Director may include clauses providing for appropriate remedies and covering the following subjects:
 - (a) Liquidated damages as appropriate;
 - (b) Specified excuses for delay or nonperformance;
 - (c) Termination of the contract for default;
 - (d) Termination of the contract in whole or in part for the convenience of Chatham County; and
 - (e) Termination of contract due to lack of funding.

Section II - Contract Change Orders

- (A) *Construction Contracts.* Every contract modification, change order, or contract price adjustment under a construction contract with Chatham County shall be subject to approval by the Board of Commissioners. The Project Manager shall not execute or make such contract modification, change order, or adjustment in contract price unless sufficient funds are available.
- (B) *Non-Construction Contracts.* Change orders for non-construction contracts or purchase order which do not exceed \$25,000 may be administratively approved by the Purchasing Director. This would also apply to name changes and other non-monetary changes.

Section III - Renewals and Extensions of Contracts

(A) General Provisions

- (1) *Renewals.* Annual contracts contain renewal clauses describing the conditions under which it may be renewed. Prior to renewal, the user

department(s) must certify in writing to the Purchasing Division that the contractor(s) has performed satisfactorily and met all of the requirements set forth in the original award.

- (2) *Contract Extensions.* In rare instances, annual contracts may require an extension for such a period as may be necessary to afford Chatham County a continuous supply of items or services in the event of the termination or near termination of the award/contract. The Purchasing Director is authorized to extend a contract up to 180 days to facilitate bidding of a new contract.
- (3) *Contract Analysis.* Prior to renewing or rebidding an annual contract, Purchasing staff shall prepare a contract analysis which confirms the expenditures under the contract are in accordance with the contract.

(B) Contract Renewal for Additional Years

There may be occasions when it is impractical or not advisable to rebid a contract when the contract has reached its final expiration. In these instances, the Purchasing Director may seek Board approval to extend the contract for additional renewal periods.

PART 7 – ELECTRONIC COMMERCE

Section I - Electronic Transmissions of Information

- (A) Electronic commerce shall include but not be limited to on-line vendor registration, acceptance of bids and proposals by electronic mail or facsimile, internet auctions, notifications of solicitations and download capability and acceptance of electronic (digital) signatures.
- (B) Authorization of electronic commerce applies to records generated, stored, processed, communicated, or used for any purpose by Chatham County for purchasing, acquisition, services, or disposition of personal property.
- (C) The Purchasing Director is authorized to promulgate procedures to coordinate, create, implement, and facilitate the use of common approaches and technical infrastructure, as appropriate, to enhance the utilization of electronic commerce, electronic records, electronic signatures, and electronic security procedures for these purposes.

Section II - Electronic Signatures and Records

- (A) An electronic record satisfies any rule requiring a document to be in writing. An electronic signature satisfies any rule of law requiring a signature. Any electronic record is signed as a matter of law if it contains a secure electronic signature.
- (B) An electronic signature is deemed to be secure if it is created by application of a security procedure that is commercially reasonable and provided the electronic signature can be verified. Further, it is considered secure if it can be linked to the electronic record to which it relates in a manner such that, if the record is changed, the electronic signature is invalidated.
- (C) An electronic record is deemed to be secure if it is created by application of a security procedure that is commercially reasonable and agreed to by Chatham County. The electronic record will be deemed secure when it can be verified not to have been altered since a specified point in time.

PART 8 – DISPOSITION OF SURPLUS PROPERTY

Section I - Sale of Real Property

A. Public Sale Required

Disposition of real property owned by Chatham County shall be conducted by public sale in accordance with Section §36-9-3, Official Code of Georgia annotated, or as otherwise provided by state law.

B. Exceptions to Public Sale

The following transactions shall not be governed by subsection (A):

- (1) A redemption of real property acquired by County under tax deed
- (2) A grant of easement or license
- (3) A grant or conveyance of right-of-way or for other transportation purchases
- (4) A conveyance to any other unit of government

- (5) A conveyance of recreational set-aside property to a homeowner's association in the manner permitted by state law
- (6) Individual items with an original value of less than \$5000 which are determined to be only suitable to be sold as scrap or discarded in a sanitary landfill. The Fixed Asset Manager in cooperation with the Purchasing Director shall be responsible for making the determination.

C. Procedures

Except as otherwise specifically provided by state law, Chatham County shall not dispose of any real property with an original value over \$5,000 unless the Board of Commissioners has declared such real property to be unserviceable. Disposition may be made at public sale, upon such terms as the Board of Commissioners shall deem to be in the County's best interest.

Section II - Disposition of Personal Property

- A. *Declaration of Unserviceability.* Equipment, vehicles and fixtures must be declared surplus by the Board of Commissioners when the individual item value is estimated to be greater than \$5000. Items of lesser value may be declared surplus by the using agency's department head by completing a transfer slip. The Fixed Assets Manager shall make a determination as to the disposition method.
- B. *Disposition.* Unserviceable personal property may be sold by on-line sale, public sale, and or sealed bidding, or any other means deemed most advantageous to Chatham County under the particular circumstances as determined by the Board of Commissioners. A sale to a private person shall be for the highest net purchase price reasonably obtainable by Chatham County. A sale to another unit of government shall be for a fair and reasonable purchase price.

PART 9 – VENDOR DISPUTES

Section I – Resolution of Controversies

(A) Authority to Resolve Protested Solicitations and Awards

- (1) *Right to Protest.* Any actual or prospective bidder or contractor who is aggrieved in connection with the solicitation or award of a contract may

protest to the Purchasing Director. The protest must be received prior to action by the Board of Commissioners to award the contract. No protests shall be considered once an award has been made.

- (2) *Authority to Resolve Protests.* The Purchasing Director shall have the authority, to settle and resolve a protest of an aggrieved bidder or contractor, actual or prospective, concerning the solicitation or award of a contract.
- (3) *Decision.* If the protest is not resolved by mutual agreement, the Purchasing Director, shall promptly issue a decision in writing. The decision shall,
 - (a) State the reasons for the action taken; and
 - (b) Inform the protestant of its right to appeal the decision to the County Manager as provided in this ordinance.
- (4) *Notice of Decision.* A copy of the decision shall be mailed or otherwise furnished immediately to the protestant and any other party intervening.
- (5) *Finality of Decision.* A decision under Subsection (3) of this Section shall be final and conclusive, unless the vendor adversely affected by the decision appeals administratively to County Manager.
- (6) *Stay of Procurements During Protests.* In the event of a timely protest, Chatham County shall not proceed further with the solicitation or with the award of the contract until the Purchasing Director, after consultation with the head of the Using Department makes a determination that the award of the contract without delay is necessary to protect substantial interests of Chatham County.

Section II - Authority to Debar or Suspend

A. Debarment Procedure.

- (1) County Manager is authorized to suspend a person from consideration for award of contracts if there is probable cause to believe that the person has engaged in any activity which might lead to debarment.

- (2) A person suspended pending a debarment hearing before the Board of Commissioners shall file notice requesting a hearing within 30 days following receipt of the suspension notice. If an appeal is not filed within the prescribed time, the suspension shall become a debarment.
- (3) If a hearing is requested, the suspension shall continue until the debarment decision has been made by the Board of Commissioners. County Manager shall notify the person to be suspended in writing and set forth the basis for the action. A copy of the notification shall be sent to the Board of Commissioners. The written notification shall be delivered to the person to be suspended either in person or by electronic or postal mail. The decision shall state the basis for the action taken.

B. Period of Debarment. On recommendation from the County Manager, the Board of Commissioners, after a hearing, may debar a firm for cause from consideration for award of contracts. The debarment shall be for a period of not more than three (3) years.

C. Causes for Debarment

The causes for debarment 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 or 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;
- (c) Conviction under state or federal antitrust statutes arising out of the submission of bids or proposals;
- (d) Violation of contract provisions, as set forth below, of a character which is regarded by County Manager to be so serious as to justify debarment action:
 - (i) Deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or

- (ii) A recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts; provided that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be a basis for debarment;
 - (iii) Failure to pay subcontractors or suppliers who have provided labor or materials on the contract.
- (e) Any other cause County Manager determines to be so serious and compelling as to affect responsibility as a County contractor, including debarment by another governmental entity for any cause listed in this article; and
 - (f) For violation of the ethical standards set forth in Part 12 (Ethics in Public Contracting).

Section III - Authority to Resolve Contract and Breach of Contract Controversies

- (A) *Applicability.* This Section applies to controversies between Chatham County and a contractor which arise under, or by virtue of, a contract between them. This includes without limitation controversies based upon breach of contract, mistake, misrepresentation, or other cause for contract modification.
- (B) *Authority.* The Purchasing Director, County Engineer or Project Manager, is authorized, prior to commencement of an action in a court concerning the controversy, to settle and resolve a controversy.
- (C) *Decision.* If such a controversy is not resolved by mutual agreement, the Purchasing Director, County Engineer, or Project Manager shall promptly issue a decision in writing. The decision shall:
 - (a) State the reasons for the action taken; and
 - (b) Inform the contractor of its right to judicial or appeal the decision to the County Manager as provided in this Article.
- (D) *Notice of Decision.* A copy of the decision shall be mailed or otherwise furnished immediately to the contractor.

- (E) *Finality of Decision.* The decision of this Section shall be final and conclusive unless the contractor appeals administratively to the County Manager.

PART 10 – COOPERATIVE PURCHASING

Section I – Use of Cooperative Contracts

- (A) Chatham County may either participate in, sponsor, conduct, or administer a Cooperative Purchasing agreement for the procurement of any supplies, services, or construction when deemed to be in Chatham County’s best interest. Such Cooperative Purchasing may include, but is not limited to, joint or multi-party contracts between agencies and contracts that are made available to other agencies.
- (B) All purchasing conducted through Cooperative Purchasing agreements shall be through contracts awarded through full and open competition, including use of source selection methods substantially equivalent to those specified in this Code.

Section II - Sale, Acquisition, or Use of Supplies

- (A) *Intergovernmental Coordination.* Chatham County may sell to, acquire from, or use any supplies belonging to another government agency independent of the requirements of this Code.
- (B) *Cooperative Use of Supplies or Services.* Chatham County may enter into an agreement, without competitive bidding with any other government agency for the cooperative use of supplies or services under the terms agreed upon between the parties.

PART 11 – LOCAL, SMALL, AND MINORITY AND WOMAN-OWNED BUSINESS ENTERPRISE PROGRAM

Section I - Purchasing Methods to Encourage Purchasing from Local MWBEs and other Local Small Businesses

Chatham County shall implement nondiscriminatory neutral programs or methods to encourage local MWBEs and other local small businesses (LS/M/WBEs) to compete for

purchasing opportunities from Chatham County and to maximize the opportunities afforded to LS/M/WBEs by Chatham County.

Section II - Local, Small and Minority and Women Owned Business Enterprise

Coordinator

- (A) *Policy.* The LS/M/WBE Coordinator shall be responsible for the development and implementation of Chatham County's LS/M/WBE Policy.
- (B) *Goals.* The LS/M/WBE Coordinator shall establish goals for LS/M/WBE participation in accordance with direction from the Board of Commissioners.
- (C) *Evaluation of the Program.* The LS/M/WBE Coordinator shall establish reporting requirements which demonstrate the program's success in increasing LS/M/WBE participation. Purchasing and Contracting will assist in the establishment of reasonable reporting criteria based on available data.

Section III – Procedures for Specific Types of Procurement

The following procedures shall be used unless their use would violate the requirements of grant, federal or state funding.

- A. Architectural and Engineering Services.** Evaluation criteria for request for proposals for A/E services shall include a point value of 15% for LS/M/WBE participation. The LS/M/WBE Coordinator will score this portion of the RFP response.
- B. Request for Proposals for General Procurement.** LS/M/WBE participation may be waived or modified in the evaluation criteria for non-professional services. The LS/M/WBE Coordinator in coordination with the Purchasing Director shall determine the appropriateness of points awarded for LS/M/WBE participation on non-professional services RFP's.

- C. **General Procurement.** The LS/M/WBE Coordinator shall establish overall goals for local, small, minority and woman-owned businesses.
- D. **Small Purchases.** To the extent that departments are allowed to obtain their own quotes, the user department shall contact local, minority and woman-owned businesses to obtain these quotes. The LS/M/WBE and Purchasing and Contracting Offices shall assist departments by providing lists of potential LS/M/WBE vendors.

PART 12 – ETHICS IN PUBLIC CONTRACTING

Section I – Standards of Conduct

- (A) *Statement of Policy.* Public employment is a public trust. It is the policy of Chatham County to promote and balance the objective of protecting government integrity. Public employees and elected officials must discharge their duties impartially so as to assure fair competitive access to governmental procurement by responsible contractors. Chatham County employees and elected officials shall conduct themselves in such a manner as to foster public confidence in the integrity of the Chatham County procurement process.

To achieve this purpose, it is essential that those doing business with Chatham County also observe these ethical standards.

- (B) *Employees.* Where the term “employee” is used, for the purposes of this document, employees include elected officials.

Section II - General Standards of Ethical Conduct

- (A) *General Ethical Standards for Employees.* Any attempt to realize personal gain through public employment by conduct inconsistent with the proper discharge of the employee's duties is a breach of a public trust.
- (B) *General Ethical Standards for Non-Employees.* Any effort to influence any public employee to breach the standards of ethical conduct is also a breach of ethical standards.

Section III - Criminal Sanctions

To the extent that violations of the ethical standards of conduct constitute violations of the State of Georgia Criminal Code, they shall be punishable as provided in that Code. Such sanctions shall be in addition to the civil remedies set forth in this Article.

Section IV - Employee or Elected Official Conflict of Interest

- (A) *Conflict of Interest.* It shall be a breach of ethical standards for any employee to participate directly or indirectly in a procurement when the employee knows that:
 - (a) The employee or any member of the employee's immediate family has a financial interest pertaining to the procurement;
 - (b) A business or organization in which the employee, or any member of the employee's immediate family, has a financial interest pertaining to the procurement; or
 - (c) Any other person, business, or organization with whom the employee or any member of the employee's immediate family is negotiating or has an arrangement concerning prospective employment is involved in the procurement.

- (B) *Disclosure of Actual or Potential Conflict of Interest, Disqualification, and Waiver.* Upon discovery of an actual or potential conflict of interest, an employee shall promptly file a written statement which discloses the nature of the conflict and shall withdraw from further participation in the transaction involved. The Purchasing Director shall review the conflict of interest and recommend a course of action to the County Manager.

Section V - Employee or Elected Official Disclosure Requirements

- (A) *Disclosure of Benefit Received from Contract.* Any employee who has, or obtains any benefit from, any Chatham County contract with a business in which the employee has a financial interest shall report such benefit.

- (B) *Failure to Disclose Benefit Received.* Any employee who knows or should have known of such benefit, and fails to report such benefit is in breach of the ethical standards of this Section.

Section VI - Gratuities and Kickbacks

- (A) *Gratuities.* It shall be a breach of ethical standards 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 decision, approval, disapproval, recommendation, preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter, pertaining to any program requirement or a contract or subcontract, or to any solicitation or proposal therefor.
- (B) *Kickbacks.* It shall be a breach of ethical standards for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract or order.
- (C) *Contract Clause.* The prohibition against gratuities and kickbacks shall be conspicuously set forth in every Chatham County contract and solicitation.

Section VII - Prohibition against Contingent Fees

- (A) *Contingent Fees.* It shall be a breach of ethical standards for a person to be retained, or to retain a person, to solicit or secure a Chatham County contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except for retention of *bona fide* employees or *bona fide* established commercial selling agencies for the purpose of securing business.
- (B) *Representation of Contractor.* Every person, before being awarded a Chatham County contract, shall represent, in writing, that such person has not retained anyone in violation of Subsection (1) of this Section. Failure to do so constitutes a breach of ethical standards.

- (C) *Contract Clause.* Chatham County contracts shall contain an affidavit that must be signed stating that the individual has not lobbied any staff or elected official for the purpose of obtaining a contract.

Section VIII - Restrictions on Employment of Present and Former Employees

- (A) *Contemporaneous Employment Prohibited.* It shall be a breach of ethical standards for any employee who is participating directly or indirectly in the procurement process to become or be, while such an employee, the employee of any person contracting with the governmental body by whom the employee is employed.
- (B) *Restrictions on Former Employees in Matters Connected with Their Former Duties.*
 - (a) *Permanent Disqualification of Former Employee Personally Involved in a Particular Matter.* It shall be a breach of ethical standards for any former employee knowingly to act as a principal, or as an agent for anyone other than Chatham County, in connection with any:
 - (i) Judicial or other proceeding, application, request for a ruling, or other determination;
 - (ii) Contract;
 - (iii) Claim; or
 - (iv) Charge or controversy, in which the employee participated personally and substantially through decision, approval, disapproval, recommendation, rendering of advice, investigation, or otherwise while an employee, where Chatham County is a party or has a direct and substantial interest.
 - (b) *One Year Representation Restriction Regarding Matters for Which a Former Employee Was Officially Responsible.* It shall be a breach of ethical standards for any former employee, within one year after cessation of the former employee's official responsibility, knowingly

to act as a principal, or as an agent for anyone other than Chatham County, in connection with any:

- (i) Judicial or other proceeding, application, request for a ruling, or other determination;
- (ii) Contract;
- (iii) Claim; or
- (iv) Charge or controversy, in matters which were within the former employee's official responsibility, where Chatham County is a party or has a direct or substantial interest.

(C) *Disqualification of Business. When an Employee Has a Financial Interest.* It shall be a breach of ethical standards for a business in which an employee has a financial interest knowingly to act as a principal, or as an agent for anyone other than Chatham County, in connection with any:

- (a) Judicial or other proceeding, application, request for a ruling, or other determination;
- (b) Contract;
- (c) Claim; or
- (d) Charge or controversy, in which the employee either participates personally and substantially through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, or which is the subject of the employee's official responsibility, where Chatham County is a party or has a direct and substantial interest.

(D) *Selling to Chatham County after Termination of Employment is Prohibited.* It shall be a breach of ethical standards for any former employee to engage in selling or attempting to sell supplies, services, or construction to Chatham County for one year following the date employment ceased unless permission is obtained from the County Manager.

Section IX - Use of Confidential Information

It shall be a breach of ethical standards for any employee or former employee knowingly to use confidential information for actual or anticipated personal gain, or for the actual or anticipated personal gain of any other person.

Section X – Remedies

(A) *Civil and Administrative Remedies Against Employees Who Breach Ethical Standards.*

- (1) *Remedies.* The following remedies for breach of the ethical standards of this article may be imposed:
 - (a) Oral or written warnings or reprimands;
 - (b) Suspension with or without pay for specified periods of time, and;
 - (c) Termination of employment.
- (2) *Right to Recovery from Employee Value Received in Breach of Ethical Standards.* The value of anything received by an employee in breach of the ethical standards shall be recoverable by Chatham County.
- (3) *Due Process.* All procedures under this Section shall be in accordance with due process requirements and existing law. In addition, notice and an opportunity for a hearing shall be provided prior to imposition of any suspension or termination of employment.

PART 13 – DEFINITIONS

- (a) *Annual Contract.* A contract that is established to facilitate the purchase of small dollar goods and services that are used repetitively throughout the year. The contract establishes unit prices based on a competitive process. The contract contains provisions for renewals annually for a specified period of time.
- (b) *Brand name or equal specification.* A specification limited to one or more items by manufacturers' names or catalogue numbers to describe the standard of quality, performance and other salient characteristics needed to meet County requirements, and which provides for the submission of equivalent products.
- (c) *Brand name specification.* A specification limited to one or more items by manufacturers' names or catalogue numbers.
- (d) *Business.* Any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or any other private legal entity.
- (e) *Change order.* A written order signed and issued by County Manager, directing the contractor to make changes as provided under the "changes" clause of the contract.
- (f) *Chatham County.* The Board of Commissioners of Chatham County; Chatham County.
- (g) *Chief Procurement Officer.* Chatham County's Purchasing Director.
- (h) *Contract modification (bilateral change).* Any written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of any contract accomplished by mutual action of the parties to the contract.
- (i) *Confidential information.* Any information which is available to an employee only because of the employee's status as an employee of Chatham County and is not a matter of public knowledge or available to the public on request.
- (j) *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.

- (k) *Contract*. All types of agreements, regardless of what they may be called, for the procurement of supplies, services, or construction.
- (l) *Contract Analysis*. This is a review of an annual contract prior to renewing or rebidding. The review insures that contract pricing is correct and that all terms of the contract are being met.
- (m) *Contractor*. Any person having a contract with Chatham County or a using agency thereof.
- (n) *Cost data*. 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.
- (o) *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.
- (p) *Emergency*. An emergency means any reasonable 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.
- (q) *Employee*: An individual drawing a salary or wages from Chatham County whether elected or not; any noncompensated individual performing personal services for Chatham County or any department, agency, commission, council, board or any other entity established by the executive or legislative branch of Chatham County and any noncompensated individual serving as an elected official of Chatham County.
- (r) *Financial interest*.
 - (1) Ownership of any interest or involvement in any relationship from which, or as a result of which, a person within has received, or is presently or in the future entitled to receive, a fee commission or salary;
 - (2) Ownership of any property or business; or

- (3) Holding a position in a business such as officer, director, trustee, partner, employee, or the like, or holding any position of management.
- (s) *General Procurement.* A procurement for non-professional services or material, equipment and supplies.
- (t) *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.
- (u) *Immediate family.* A spouse, children, parents, brothers and sisters.
- (v) *Infrastructure.* The fundamental facilities and systems serving a country, city, or area, including roads, bridges, tunnels, water supply, sewers, electrical grids, telecommunications, and interrelated systems providing commodities and services essential to enable, sustain, or enhance societal living conditions.
- (w) *Invitation to Bid.* All documents, whether attached or incorporated by reference, utilized for soliciting sealed bids.
- (x) *Local vendor.* A business or supplier shall be considered a “local vendor” if it meets the following requirements:
 - (1) The bidder or vendor operate and maintain a regular place of business within Chatham County; or
 - (2) The bidder or vendor must have a current Business Tax Certificate issued by a county or municipality within Chatham County which was issued at least six (6) months prior to bid opening date; or
 - (3) The vendor or bidder has a staffed, physical business located and operating in Chatham County, and has been doing business at the location for at least six (6) months; or
 - (4) The bidder or vendor is a principal with at least 50% ownership interest in the business and said principal personally reside within Chatham County as evidenced by their Homestead exemption;.
 - (5) The bidder or vendor who is located in Chatham County, must have paid all real and personal property taxes owed to the County prior to any award of a

contract or purchase.

(y) *Minority*. Persons who are African American, Asian American or Hispanic American in origin.

(1) African American – A person having origins in any of the black racial groups of Africa.

- (2) Asian American – A person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent or the Pacific islands.
- (3) Hispanic-American – A person of Spanish culture with origins in Mexico, South America, Central America or The Caribbean regardless of race.
- (z) *Minority Business Enterprise (MBE)*. A business that is at least 51% owned, managed and directed on a day to day basis by one or more minorities and is certified as such by Chatham County.
- (aa) *Minority/Women Business Enterprise (MWBE)*. A Minority Business Enterprise (MBE) or a Women-Owned Business Enterprise (WBE)
- (bb) *Offeror*. Any person or entity who has submitted a bid, quotation or proposal to Chatham County or otherwise offered to form a contract with Chatham County.
- (cc) *On Call Contract*: Typically, an annual contract for professional services which is awarded based on competitive proposals. The award is based on qualifications only and fees are negotiated for individual jobs
- (dd) *Person*. Any business, individual, union, committee, club, other organization, or group of individuals.
- (ee) *Pricing data*. Factual information concerning prices for items substantially similar to those being procured. Prices in this definition refer to offered or proposed selling prices, historical selling prices and current selling prices. The definition refers to data relevant to both prime and subcontract prices.
- (ff) *Procurement*. The buying, purchasing, renting, leasing, or otherwise acquiring of 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.
- (gg) *Professional Service*. A service that requires specialized knowledge and training (often through long and intensive academic preparation) or in-depth experience in a particular field or discipline. Professional services are professional, technical, or consultant services predominantly intellectual in nature. They may

include analysis, evaluation, predicting, planning, or recommendation and usually result in the production of a report or completion of a task.

- (hh) *Public Works 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 with a construction estimate over \$100,000. Public Works Construction does not include the routine operation, routine repair, or maintenance of existing structures, buildings, or real property.
- (ii) *Purchase Order.* A written sales contract between Chatham County and a supplier authorizing the delivery of goods or services.
- (jj) *Qualified products list.* An approved list of supplies, services or construction items described by model or catalogue numbers, which, prior to competitive solicitation, County Manager or his designee has determined will meet the applicable specification requirements.
- (kk) *Request for proposals.* All documents, whether attached or incorporated by reference, utilized for soliciting proposals.
- (ll) *Responsible bidder or offeror.* A person who has the capability in all respects to perform fully the contract requirements, and the experience, reliability, capacity, facilities, equipment, and credit which will assure good-faith performance.
- (mm) *Responsive bidder.* A person who has submitted a bid which conforms in all material respects to the requirements set forth in the Invitation to Bid.
- (nn) *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.
- (oo) *Small Business Enterprise (SBE).* A small business enterprise is one that is independently owned and operated, is organized for profit, and is not dominant in its field. Depending on the industry, size standard eligibility is based on the

average number of employees for the preceding twelve months or on sales volume averaged over a three-year period. Chatham County adheres to the small business size standards established by the U.S. Small Business Administration.

- (pp) *Specification.* Any description of the physical or functional characteristics or of the nature of a supply, service or construction item. It may include a description of any requirement for inspecting, testing or preparing a supply, service or construction item for delivery.
- (qq) *Supplies.* Equipment, materials, commodities and printing.
- (rr) *Using agency.* Any department, commission, board or public agency requiring supplies, services, or construction.
- (ss) *Vendor performance evaluation.* An evaluation of a vendor's performance for an annual contract or project. For an annual contract, the vendor performance is evaluated annually prior to renewal of the contract. For construction projects or other projects, performance is reviewed at the end of the contract.
- (tt) *Women Business Enterprise (WBE).* A business that is at least 51% owned, managed and directed on a day to day basis by one or more women and does not fall into any of the minority categories.