

COUNTY OF HORRY)
)
STATE OF SOUTH CAROLINA) **ORDINANCE NO: 02 - 10**

AN ORDINANCE TO AMEND THE HORRY COUNTY CODE OF ORDINANCES TO REPEAL EXISTING ORDINANCES RELATING TO COUNTY PROCUREMENT AND TO ENACT THE HORRY COUNTY PROCUREMENT CODE AS APPENDIX E TO THE HORRY COUNTY CODE OF ORDINANCES.

WHEREAS, Section 4-9-30 of the South Carolina Code of Laws empowers the Horry County Council “to acquire real property by purchase or gift; to lease, sell or otherwise dispose of real and personal property; and to acquire tangible personal property and supplies” and “to make and execute contracts”; and

WHEREAS, Section 11-35-50 of the South Carolina Code of Laws requires every political subdivision of the State of South Carolina to “adopt ordinances or procedures embodying sound principles of appropriately competitive procurement”; and

WHEREAS, County Council having reviewed existing ordinances and procedures relating to County procurement and finding same to require modification and revision, Council now wishes to amend said ordinances and procedures to better serve the purposes inherent in public purchasing, namely, best value, fair competition, and simplification and modernization of the law governing procurement by the County.

NOW, THEREFORE, by the power and authority granted to the Horry County Council by the Constitution of the State of South Carolina and the powers granted to the County by the General Assembly of the State, it is ordained that:

1. Appendix E of the Horry County Code of Ordinances is hereby repealed, and is rewritten and replaced in its entirety. Appendix E shall hereafter read as follows:

APPENDIX E PROCUREMENT CODE

Section 101. Procurement code adopted; administration.

The provisions of this appendix are adopted pursuant to Section 11-35-50 of the Code of Laws of South Carolina (1976, as amended), and may be referred to as the County Procurement Code.

Section 102. Legislative Intent.

- (a) It is the intent of County Council that County government be the effective provider of services to the citizens of the County in the most efficient and economical way possible and that all purchases of goods and service be conducted with primary concern for the most prudent use of revenues provided by those citizens.
- (b) The underlying purposes and policies of this legislation are to:
 - (1) Provide a clear and comprehensive ordinance governing procurement by the County;

- (2) Promote increased public confidence in the procurement regulations, procedures and practices used by the County;
- (3) Maximize the purchasing value of public funds;
- (4) Foster real and effective broad-based competition for public procurement within the free enterprise system;
- (5) Ensure the fair and equitable treatment of all persons who are providing, or seeking to provide, supplies and/or services to the County;
- (6) Provide safeguards for maintaining a procurement system of quality and integrity; and
- (7) Permit the continued development of procurement regulations, procedures and practices that support user needs.

Section 103. The County's Director of Procurement is hereby authorized to promulgate regulations governing procurement, management, control, and disposal of any and all supplies, services, and/or construction to be procured by the County, in a form substantially similar to that attached hereto; to submit such regulations and amendments thereto which may be made from time to time to the County Administrator for approval; and to promulgate and enforce compliance with such regulations. Such regulations once approved by way of Resolution of Horry County Council shall be binding in all procurements made by the County; however, no regulation shall change any commitment, right, or obligation of the County or a contractor/supplier under a contract in existence on the effective date of such regulation, unless all the parties to an existing contract execute a written bilateral modification agreeing to have the contract subject to the regulation. Such regulations as promulgated shall be appropriately disseminated.

2. Severability. If a section, sub-section, or part of this Ordinance shall be deemed or found to conflict with a provision of South Carolina law, or other pre-emptive legal principle, then that section, sub-section, or part of this Ordinance shall be deemed ineffective, but the remaining parts of this Ordinance shall remain in full force and effect.

3. Conflict and preceding Ordinances. If a section, sub-section or provision of this ordinance shall conflict with the provisions of a section, sub-section or part of a preceding Ordinance of Horry County, then the preceding section, sub-section or part shall be repealed and no longer in effect.

4. Effective date: This Ordinance shall be effective upon implementation by the County Administrator, but no later than May 1, 2010.

AND IT IS SO ORDAINED, ENACTED, AND ORDERED.

Dated this _____ day of _____, 2010

HORRY COUNTY COUNCIL

Liz Gilland, Chairman

Harold G. Worley, District 1

Brent J. Schulz, District 2

Marion D. Foxworth, III, District 3

Gary Loftus, District 4

Howard D. Barnard, III, District 5

Robert P. Grabowski, District 6

James R. Frazier, District 7

Carl H. Schwartzkopf, District 8

W. Paul Prince, District 9

Jody Prince, District 10

Al Allen, District 11

Attest:

Patricia S. Hartley, Clerk to Council

Date of First Reading:

Date of Second Reading:

Date of Third Reading:



Procurement Regulation

Effective May 1, 2010

Horry County Procurement Regulation

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Horry County Procurement Regulation

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Chapter One – Introduction

1-1-1 Purpose of Regulation

This regulation is issued by the Horry County Department of Procurement and is designed to govern the procurement and procurement management of personal property, services, and improvements to real property by Horry County. It is also designed to govern the disposal of certain personal property as set forth herein. Further, its goal is to enable the County's acquisition of personal property, services, and improvements to real property to be accomplished in a uniformly fair and impartial manner that serves the best economic interests of Horry County. Finally, it is to inform all that participate in the Horry County process, in both the public and private sectors, of the requirements and processes that Horry County will follow in its acquisition of personal property, services, and improvements to real property. This regulation does not apply, except where specifically provided otherwise, to the acquisition, management, or disposal of any interests in real property. It also does not apply to the disposal of any other type of property except to the specific extent set forth herein.

1-1-2 Definition of Terms

As applicable to this regulation the following terms are defined as follows:

“Agreement” - An agreement is a non-binding arrangement in which the parties commit to the manner in which they will conduct business with each other in the event that both parties choose to do business with each other.

“Assignment of Claims” – It is a method by which the proceeds from a contract may, with the consent of Horry County, be assigned to a third party and Horry County will make contract payments to that third party.

“Best Price” – It is a source selection method in which the award of the contract or agreement shall be made to the Procurement Participant that satisfies all of the requirements of the procurement at either the lowest cost or lowest price, as specified in the procurement.

“Best Value” – It is a source selection method in which the award of the contract or agreement shall be made to the Procurement Participant that satisfies all of the requirements of the procurement and provides the most advantageous offer to Horry County based on an assessment of the evaluation factors specified in the procurement.

“Bid Protest” – This is a process by which bidders, offerors, or quoters formally challenge the award of an Horry County contract or agreement or the process that Horry County is using in a procurement.

“Bilateral Modification” - A bilateral modification is a type of contract modification that requires both parties to the contract, Horry County and the contractor, to agree to changes in the terms and conditions before the contract modification becomes effective.

“Change of Name Agreement” – This is an agreement between Horry County and a contractor under which Horry County agrees to recognize a contractor’s new name.

“Competitive Range” – This is a group of offerors in a Tier Four – Negotiated Procurement that, after evaluation of the offers, have not been eliminated from the competition as their offers are deemed to have a reasonable chance for the award of a contract.

“Construction Manager” – This is a type of construction contract relationship format under which Horry County contracts with an individual or entity to serve as its agent in managing the construction process on behalf of the County. The Construction Manager’s role is to protect the County’s interests throughout the construction project.

“Contract” - A contract is a legally binding relationship that requires the parties in the relationship to provide something of value to each other in the performance of the contract. It is legally binding on each of the parties from the moment of contract award.

“Contract Debts” - Contract Debts are amounts that a contractor owes Horry County. These amounts can be generated by any type of activity or obligation including, but not limited to: payments to the contractor by Horry County to which the contractor is not entitled; judgments or administrative determinations in which the contractor is found liable to Horry County for amounts; and taxes, fees, or charges of any nature or kind that are owed by the contractor to Horry County.

“Contract Disputes”- These are any controversies that arise during the performance of a contract between Horry County and the contractor. Contract Disputes include, but are not limited to, claims involving contract funds, contract performance, contract modifications, contract terminations, and any other aspect of a contract about which Horry County and the contractor disagree.

“Contract Renewal” - A contract renewal is the extension of a contract’s term beyond the original term, although the contract makes no provision for such an extension.

“Cooperative Purchasing” – This is an arrangement under which Horry County and other Public Procurement Units are able to purchase from one contract or a group of contracts that have been let to a contractor or a group of contractors by Horry County or one of the other Public Procurement Units.

“County” – Whenever the term “County” is used in this regulation, it refers to Horry County.

“Cure Notice” – This is a notice that is sent to a contractor that is not in compliance with its contractual obligations and in which the contractor is advised by Horry County to remedy its non-compliance within a certain period of time.

“Data” – As used in this regulation “Data” is recorded information, regardless of the form or media on or in which it appears or is contained, including technical data and computer software, which includes computer documentation (owners and user manuals, installation and operating instructions, and the like).

“Debarment” – This is a process pursuant to which a contractor is for good cause shown banned from doing business with Horry County for a determined period of time.

“Debriefing” – This is a process that occurs in a Tier Four-Negotiated Procurement when an offeror is eliminated from the competitive range and seeks to determine the reasons that the offer was rejected. Upon request by the offeror, Horry County will provide the reasons for the offer’s rejection to the offeror.

“Delivery Order”- This an order issued against a contract for the acquisition of personal property.

“Design Build” - Design Build is a type of construction contract relationship format in which one contractor supplies all of the work involved in the project, including the design. Horry County provides the performance specifications and the contractor designs and constructs the project consistent with those performance specifications.

“Discussions” - Discussions are verbal exchanges between the Horry County procurement team members and offerors addressing various issues involved in offers after the offers have been received by Horry County in a Tier Four - Negotiated Procurement.

“Emergency and Unusual Procurement” – An Emergency and Unusual Procurement is a procurement method included within Tier Five that is used when a need must be satisfied immediately or the need includes an unusual or unique requirement. It enables Horry County to respond to the situation by conducting procurements in any reasonable manner without strict adherence to the Procurement Guiding Principles.

“Evaluation Criteria” – These are the requirements included within a procurement and against which offerors, bidders, and quoters will be judged to determine if they are responsive to the procurement opportunity.

“Final Performance Report” – This is a report prepared by an Horry County Agency upon contract performance completion and submitted to the Director of Procurement. It is designed to inform the Director of Procurement of the performance status of the contract and the contractor’s satisfactory or unsatisfactory completion of all contract requirements.

“Fundamental Contract Elements” - These are those aspects or “elements” of a contract that enable Horry County to tailor the contractual relationship to fit its specific requirements for the acquisition of personal property, services, or improvements to real property.

“Horry County Agency” – This term refers to all Agencies and Departments within the Horry County government that are subject to the provisions of this regulation.

“Indefinite-Delivery, Indefinite-Quantity Contract” – This is type of contract in which there is no specified time for performance of the contract tasks and there is no definite quantity that is to be delivered.

“Intervention” – This is a term used in an Horry County Bid Protest in which a non-protestor, interested party is allowed to join in and participate in a protest to the degree and extent allowed by Horry County.

“Interested Party” - An “interested party” is a term used in an Horry County Bid Protest and refers to an actual or prospective quoter, bidder, offeror, or awardee of a contract or agreement whose direct economic interest would be affected by the award or non-award of a contract or agreement.

“Invitation for Bids” – This is a method by which Horry County announces the existence of a procurement opportunity to the public that is to be conducted pursuant to Tier Four – Sealed Bidding procedures and invites the public to submit bids in response to the opportunity.

“Maximum Practicable Competition” – This is one of the four Procurement Guiding Principles to which Horry County adheres in most procurements and the group of standards it uses to determine if it has adequately solicited competition in a procurement.

“Negotiated Procurement” – This is a Tier Four procurement method in which negotiations with offerors may be held and the contract award is made to the offeror that provides the most advantageous offer to Horry County based on the award criteria.

“Novation Agreement” - This is an agreement between Horry County, a contractor, and a party that has purchased the contractor under which Horry County agrees to recognize a successor in interest as the new party that holds an Horry County contract. A Novation Agreement is an appropriate agreement to use when a party holding an Horry County contract is purchased by another party. A Novation Agreement is utilized to recognize the purchasing party as the new contractor.

“Obsolete Property” – This is personal property or technology property that Horry County has previously acquired and has determined that the property is no longer of functional value.

“Option” - An option is a right that is included in the terms of a contract that enables Horry County, without the consent of the contractor, to extend a contract period for an additional amount of time.

“Possession Agency” – This term refers to the Horry County Agency that was not necessarily the Agency responsible for the acquisition but is the Agency that has possession of personal property, service, or an improvement to real property that was the subject of a procurement.

“Price Reasonableness” – This is one of the four Procurement Guiding Principles to which Horry County adheres in most procurements and the standards it uses to determine if the price it is paying in a procurement is acceptable.

“Procurement Guiding Principles” – This is the group term for the four fundamental tenets around which all of the procurement methods in the regulation are designed.

“Procurement Participants” – This is the universe of entities and persons in the private sector that are interested in and eligible for participation in Horry County procurement opportunities.

“Professional Services” – These are services that are provided by persons with technical and unique skills, developed through training and experience, which are designed to fulfill non-repetitive requirements. Licensing requirements for a profession neither establish it as nor eliminate it from being categorized as a Professional Service.

“Project Status Report” – This is a report required to be filed periodically with the Director of Procurement by Horry County Agencies informing the Director of Procurement of the compliance of a contractor with the performance requirements of a contract.

“Proprietary Information” – This term is used to designate any information, regardless of the form or media on or in which it appears or is contained, that is so vital to the owner that its disclosure would likely cause substantial harm to the competitive position of the owner. This includes trade secrets and financial information. Information that has been disclosed to any other entity by the owner of the Proprietary Data, without informing that entity that the information constitutes proprietary data and is not subject to disclosure, will not be considered Proprietary Data.

“Protected Procurement Information” – Protected Procurement Information includes certain information that is disclosed to Horry County during a procurement by a bidder, offeror, or quoter and is protected from disclosure by Horry County for the duration of the procurement, as set forth in Chapter Four of this regulation.

“Public Procurement Unit” – This is any state, local, or federal agency, unit, or division thereof that is not an Agency, unit, or division of the Horry County government that is subject to this regulation.

“Purchase Order” - Purchase orders are orders that are issued in all procurement process arrangements except for contracts. Purchase orders are issued against agreements to form contracts. Purchase orders are also issued using Small Purchase Procedures to form contracts, and they are used in certain Tier Five procurements, when extraordinary circumstances are present that justify the use of certain Tier Five procedures to form contracts.

“Purchase Request” – This is a written request made by an Horry County Purchasing Agency to the Department of Procurement informing the Department of Procurement that the Purchasing Agency has a need and seeking its approval and guidance in the procurement method and procedures to be used to satisfy the need.

“Purchasing Agency” – This is an Horry County Agency that has a need and works as a member of the Horry County procurement team to initiate and complete a procurement in satisfaction of that need.

“Quotation” – This is a response, either written or oral, made by Procurement Participants to a Quotation Request in which the Procurement Participants provide information to Horry County about products, services, and prices concerning a procurement need that Horry County intends to satisfy.

“Quotation Request” – This is a request, either written or oral, made by Horry County to Procurement Participants asking them to respond with price and other product or service information in the form of a Quotation.

“Request for Information” – This is a market research tool that Horry County may issue to Procurement Participants seeking information about pricing, the method and form of a potential procurement, and any other information that will aid Horry County in planning and conducting an acquisition.

“Request for Proposals” – This is a method by which Horry County announces to the public a procurement opportunity that is to be conducted pursuant to Tier Four – Negotiated Procurement procedures and invites the public to submit offers in response to the opportunity.

“Request for Qualifications” - It is a pre-solicitation source selection method that can be used in conjunction with any of the procurement methods in any Tier to pre-qualify the bidders, offerors, or quoters that will be eligible to compete for a contract in a procurement.

“Responsible” – This is a fundamental requirement that a Procurement Participant must meet and have the ability to demonstrate to become an Horry County contractor. Responsibility includes the Procurement Participant’s ability to satisfy the contract’s requirements and the financial strength to perform the contract. It also includes a satisfactory record of previous performance and a demonstrated degree of integrity.

“Responsive” – This is a requirement in a Tier Four - Sealed Bidding procurement method in which a bidder must in its bid show that it has met or can meet all of the bid requirements necessary for the award of a contract.

“Sealed Bidding” – This is a Tier Four procurement method in which bids from bidders are received and publicly opened. No negotiations with bidders are held and the contract award is made to the lowest priced, responsible bidder that meets the award criteria set forth in the IFB.

“Show Cause Notice” - This is a notice that is sent to a contractor that is not in compliance with its contractual obligations and in which the contractor is advised by Horry County to remedy its non-compliance within a certain period of time. It is sent when a contractor fails to respond to or comply with a “Cure Notice.”

“Single Prime Contractor” - Single Prime Contractor is a type of construction contract relationship format in which one contractor contracts with Horry County to accomplish an entire construction project or task pursuant to specifications or designs provided by the County.

“Sole Source” – This is a Tier Five procurement method in which Horry County acquires supplies or services by negotiating with and letting a contract to only one source.

“Solicitation” – This is a document that Horry County distributes to Procurement Participants in which Horry County solicits offers or bids in a Negotiated Procurement or Sealed Bidding procurement, respectively. Contained within the solicitation are the provisions that will govern the conduct of the procurement, including the source selection process and criteria, as well as the clauses that will govern any resultant contract.

“Source Selection” – This is the method or process that is followed in which Horry County, pursuant to offers, bids, or quotes, determines the awardee of a contract or agreement.

“Specifications” – This is a requirement of a needed product, service, or improvement to real property that a bidder, offeror, or quoter must satisfy in an Horry County procurement in order to be awarded a contract.

“Splitting Requirements” – This is a process in which an Horry County Purchasing Agency divides its requirements into separate smaller groups, generally for the purpose of enabling a series of procurements to be conducted by using procurement methods that would otherwise be prohibited if the requirements had not been divided. This practice is not allowed under this regulation.

“Successor in Interest” – This term is used in conjunction with the novation agreement process in which an entity, designated as the “Successor in Interest,” that purchases the business of an entity that holds an Horry County contract, is able to have that contractor’s contract transferred to it as part of its purchase of that business.

“Surplus Property” – This is personal property for which the Horry County Possession Agency no longer has any use.

“Suspension” – This is the status of an Horry County contractor that has been accused of conduct for which debarment proceedings are pending and during which the contractor is prohibited from doing business with Horry County.

“Tailoring” – This is the process in which clauses and provisions in a contract, agreement, or solicitation are altered, deleted, or added by an agreement between Horry County and a Procurement Participant(s).

“Task Order” - This an order issued against a contract for the acquisition of services.

“Technology” – Technology means any equipment or interconnected systems involved in digital acquisition, storage, analysis, manipulation, control, transmission, or display of data or information. It includes but is not limited to: hardware, software, GIS (spatial technology), commercial applications, application development, software licensing, E-Government, E-Services, internet, networking, telecommunications, fiber, security, multimedia, video conferencing, mobile technologies, wireless technologies, computers, sound equipment, telephone systems, fax machines, copiers, cell phones, pagers, and professional services and training related thereto.

“Unilateral Modification” - A unilateral modification is a type of contract modification which requires only the decision of one of the parties to the contract to effectuate its application.

“Unsolicited Proposal” – This is a written proposal that includes a new, unique, or innovative product, service, project, or process that is submitted to Horry County on the initiative of the offeror for the purpose of obtaining a contract with Horry County.

“Vendor-Generated Contract” – This is a document(s) that constitutes a proposed contract, generally a proposed form contract, submitted to Horry County by an offeror or quoter for the purpose of having Horry County accept its terms and conditions in the acquisition of that offeror’s or quoter’s personal property, services, or improvements to real property.

1-1-3 Identification of Commonly-Used Acronyms and Abbreviations

“IDIQ” – Indefinite-delivery, indefinite-quantity contract

“IFB” – Invitation for Bids (Sealed Bidding solicitation)

“QR” – Quotation Request

“RFI” – Request for Information

“RFP” – Request for Proposals (Negotiated Procurement solicitation)

Chapter Two - General Provisions

Subchapter 2-1 - Rules of Interpretation

2-1-1 Singular-Plural and Gender Interpretation Rules

- A. Words in the singular number include the plural and those in the plural include the singular.
- B. Words of a particular gender include any gender and the neuter.
 - 1. Titles – Titles to chapters, sections, subsections and any other title references are for convenience and reference only and have no other significance whatsoever.
 - 2. Appearance Order - Unless otherwise specifically provided herein, the order in which chapters, sections, subsections, topical coverage or other listings appear in this regulation does not constitute an order of preference or precedence.

2-1-2 Application of Regulation

Except where specifically provided otherwise, this regulation shall apply to every transaction for the acquisition of interests in personal property, services and improvements to real property by the Horry County government. It shall apply, as specifically provided herein, to the disposal of certain personal property.

2-1-3 Effective Date and Dissemination

This regulation shall become effective on the date it is approved by the County Administrator pursuant to the procedures set forth in Chapter Three of this regulation. Upon its effective date or as soon thereafter as is practicable, the Director of Procurement shall distribute copies of the regulation to all County officials and all Purchasing Agencies. The Director of Procurement shall also as soon as possible after its effective date post a copy of the regulation on its website.

2-1-4 Regulatory Determinations

When this regulation requires a written determination, it shall be the responsibility of the official that is provided with that responsibility to prepare that written determination. The determination shall set forth the information required and shall provide sufficient facts or other information to support the substance of the determination made. Each written determination shall

become a part of the contract or agreement file and shall be maintained and available for public inspection, unless it is otherwise exempt from public inspection under applicable law.

2-1-5 Severability

If any provision or application of this regulation is held invalid, such invalidity shall not affect any other provision or application of this regulation. To this end, the provisions of this regulation are severable.

Subchapter 2-2 – Application Deviations

2-2-1 Deviations

- A. Required by Statute, Regulation, or Ordinance – The application of the rules, policies, and directives contained in this regulation and the application of any other rules, policies, and directives emanating from this regulation may be overridden or modified when specifically required for compliance with a jurisdictionally applicable statute, regulation, or ordinance. Such a deviation shall be made to the application of the rules, policies, and directives contained in or emanating from this regulation only to the extent and for the time that is required for compliance with a jurisdictionally applicable statute, regulation, or ordinance.
- B. Horry County Option – Horry County may, in any instance in which it deems it in the County’s best interests, override or modify the application of the rules, policies, and directives contained in or emanating from this regulation upon a written determination made by the Chief Procurement Officials. Such a deviation shall be in effect only to the extent and time that is required to serve the County’s best interests.

Subchapter 2-3 - Procurement Doctrine

2-3-1 Procurement Guiding Principles

- A. General - When a procurement is conducted pursuant to the authority provided herein, that procurement should reflect adherence to the Procurement Guiding Principles, set forth below. In the event that it does not so adhere to the Procurement Guiding Principles, the procurement file shall be documented with a written determination setting forth the reason or reasons for the procurement’s failure to meet any of the applicable Procurement Guiding Principles.

B. Procurement Guiding Principles

1. Except when the Chief Procurement Officials determine otherwise, there are four guiding principles that should be satisfied in an Horry County procurement for personal property, services, and improvements to real property. These four principles are:
 - a. Guiding Principle One – Satisfaction of Horry County’s Need - The result of the procurement should satisfy the Horry County Purchasing Agency’s need.
 - b. Guiding Principle Two – Best Price or Best Value Source Selections - Depending on the circumstances involved in the acquisition, Horry County should conduct the procurement on a Best Price or Best Value award criteria basis.
 - c. Guiding Principle Three – Price Reasonableness - Unless the lowest price is the primary source selection criteria, a finding of Price Reasonableness must be made in order to award an Horry County contract or agreement.
 - d. Guiding Principle Four – Maximum Practicable Competition - Horry County shall provide Maximum Practicable Competition, when feasible, in all acquisition opportunities.
2. Unless a procurement method specifically provides an exception to or deviation from the four Procurement Guiding Principles, each Horry County procurement should adhere to and be conducted in a manner consistent with the Procurement Guiding Principles.

2-3-2 Priority of Acquisition Methods

- A. General - There are various procurement methods and sources that are available to satisfy Horry County’s requirements for goods and services. The methods listed in this subsection should be used to satisfy those needs as they arise. These methods are listed in Tiers in their order of priority for use to satisfy Horry County’s requirements for goods and services. For example, if a Tier Three procurement method can satisfy the Purchasing Agency’s need, then a Tier Four or Tier Five procurement method should not even be considered for use in that procurement, unless, in the discretion of the Chief Procurement Officials, a method in one of those Tiers should be utilized.
- B. Priority of Use - There is no order of priority for use of the methods included within each Tier. The only order of priority applies to choice of the Tiers.
 1. Tier One – Surplus Property
 2. Tier Two – Task/Delivery Orders against Required Sources of Supply (e.g., Requirements Contracts)

3. Tier Three
 - a. Small Purchase Procedures (depending upon the dollar amount of the total purchase transaction)
 - b. Cooperative Purchasing
 - c. Task/Delivery Orders against Indefinite- Delivery, Indefinite-Quantity contracts
 - d. Purchase orders against Agreements
 - e. Purchase Card
4. Tier Four
 - a. Negotiated Procurements
 - b. Sealed Bidding
5. Tier Five
 - a. Sole Source
 - b. Emergency and Unusual Procurement Methods
 - c. Unsolicited Proposals

2-3-3 Socioeconomic Programs and Other Contracting Preferences

The only preferences that Horry County has in its procurement system are for environmentally-preferable and energy-efficient products, services, and solutions. Unless required by law, Horry County does not have any other procurement preferences, including but not limited to, business size, socioeconomic, gender, and geographical preferences.

Chapter Three – Horry County Procurement Organization

Subchapter 3-1 - Horry County Officials' Roles

3-1-1 Chief Procurement Officials

- A. General – The County’s Chief Procurement Officials shall be The County Administrator and Director of Procurement.

- B. Procurement Authority – The County’s Chief Procurement Officials have the primary authority in the acquisition, the administration, and the management of the acquisition of personal property, services, and improvements to real property. They also have the authority to dispose of certain personal property, as set forth in this regulation. Their authority and responsibility include the management of contract performance after an acquisition has been accomplished. The specific procurement authority of the Chief Procurement Officials over the acquisition of personal property, services, and the improvement to real property shall include:
 - 1. Authority to commit to and cancel contracts, solicitations, and agreements on behalf of Horry County and in the process obligate and de-obligate Horry County funds;
 - 2. Authority in all acquisition matters;
 - 3. Authority in contract and agreement administration matters, including, but not limited to, the authority to approve/disapprove of assignment of claims, novation agreements, change-of-name agreements and changes to Horry County agreements, standard contracts, standard provisions and clauses;
 - 4. Authority to amend this regulation so long as Horry County Council approves such amendment by way of Resolution, which amendment, when exercised, shall not affect existing contracts, unless all the parties to an existing contract execute a written bilateral modification agreeing to have the contract subject to the amendment;
 - 5. Authority to delegate Procurement Authority;
 - 6. Authority to oversee and audit all procurement activities in which the County and/or its contractors are engaged;
 - 7. Authority to research, plan, and implement procurement education programs for all persons, whether employed by the County or not, that have a potential role or interest in the County’s procurement system;
 - 8. Authority in connection with the Contractor Contract and Administration Fee to determine:
 - a. In what procurements to apply the Fee
 - b. The amount of the Fee
 - c. The method used to collect the Fee.

- C. Notice of Exercise of Authority – The exercise of the authority, as set forth in this section, may be implemented individually or jointly. Whenever the Administrator or the Director of Procurement exercises authority individually in a manner that results or has the potential to result in the obligation or de-obligation of funds in excess of \$50,000.00, the individual Chief Procurement Official exercising the authority shall inform the other Chief Procurement Official in writing of the action taken, the party or parties involved in the exercise of that authority, and the amount of funds actually or potentially obligated or de-obligated.

3-1-2 Director of Procurement

- A. General – The Director of Procurement shall be a full-time employee, appointed by the Administrator and subject to the County’s employee personnel policies. The Director of Procurement, whose compensation shall be determined by the Administrator, shall have the primary responsibility of being the head of and managing the Department of Procurement.
- B. Procurement Authority – While the Director of Procurement serves as one of the County’s two Chief Procurement Officials with all of the authority that resides in that position, and also has all of the authority afforded non-elected Department Heads in Horry County’s government, the Director’s principal responsibility in managing the Department of Procurement is to serve as the County’s primary contracting officer with authority and oversight responsibility for all of the County’s procurement actions, including the termination of the County’s procurement obligations, in connection with the acquisition of personal property, services, and improvements to real property. The Director of Procurement also has the authority to initiate and determine Suspension and Debarment proceedings. This position’s specific authority does not include authority over the acquisition or deacquisition of interests in real property. The Director of Procurement’s authority does include the authority to sell, trade, or otherwise dispose of the County’s Obsolete Property, as defined and set forth in this regulation, in a manner that is in the best interests of the County.

3-1-3 Horry County Attorney

The Horry County Attorney has the following authority and responsibilities in procurement matters. The Horry County Attorney may delegate this authority and the responsibilities to personnel under the Horry County Attorney’s control and supervision. Accordingly, the Horry County Attorney:

- A. Shall assist and advise in procurement matters as called upon by the Director of Procurement or the Administrator;

- B. Shall assist and advise in any procurement matters the County Attorney deems appropriate for its involvement;
- C. Shall approve in writing, prior to use, of all of Horry County's solicitation provisions and contract clauses and any changes thereto and any changes to the Procurement Regulation;
- D. Shall be involved, when appropriate, in matters involving contractor non-performance and contract terminations;
- E. Shall be involved in all procurement matters involving any action governed by Chapter Fifteen of this regulation;
- F. Shall be responsible for the description of the County's needs and requirements and the source selection in the acquisition of all legal services.

3-1-4 Role of Other Horry County Officials in Procurement

Certain other Horry County officials have authority and responsibilities in the source selection process in certain limited types of acquisitions.

- A. Construction - The County's Highest Ranking Construction Officer is responsible for the description of the County's needs and requirements and the source selection in all acquisitions involving construction materials, construction services, and construction projects.
- B. Technology - The County's Highest Ranking Technology Officer is responsible for the description of the County's needs and requirements and the source selection in all acquisitions involving technology property, technology services, and technology projects. The County's Highest Ranking Technology Officer also has the authority to determine the use and/or disposition of technology property that is no longer useful to an Horry County Agency, as set forth in this regulation.
- C. Delegation – Both the County's Highest Ranking Technology Officer and the County's Highest Ranking Construction Officer have the authority to delegate their authority and responsibilities as set forth in this regulation to Horry County personnel with the written consent of the Chief Procurement Officials.

Subchapter 3-2 - Procurement Authority and Direction

3-2-1 Delegations of Procurement Authority

- A. Except for the limited authority and responsibilities of the Horry County Officials set forth in the preceding subsections of this chapter, only the

County's Chief Procurement Officials shall have the power to delegate the County's Procurement Authority.

- B. All delegations of Procurement Authority shall be in writing, shall describe the extent of the authority delegated, and shall be signed by one or both of the Chief Procurement Officials and the party to whom the delegation is granted.

3-2-2 Types of Delegation of Procurement Authority

- A. Blanket Delegation of Procurement Authority – A Blanket Delegation of Procurement Authority is a delegation pursuant to which a party is given procurement authority over specific groups or types of procurements. Normally, a Blanket Delegation will not have a date or the occurrence of an event upon it will terminate, but rather it will continue indefinitely until terminated in writing by either or both of the Chief Procurement Officials.
- B. Specific Delegation of Procurement Authority – A Specific Delegation of Procurement Authority is a delegation pursuant to which a party is given authority over a specified procurement or procurements. Normally, a Specific Delegation will have a date or the occurrence of an event that will terminate the authority granted.

3-2-3 Revocation of Delegations of Procurement Authority

- A. All Delegations of Procurement Authority granted or given prior to the effective date of this regulation, whether written or oral, and regardless of format, designation, or title, are deemed void as of the effective date of this regulation.
- B. Delegations of Procurement Authority may be revoked for any reason at any time by the County's Chief Procurement Officials. A revocation of a Delegation of Procurement Authority must be in writing and, unless otherwise provided therein, is effective when issued.

3-2-4 Procurement Directives

- A. Procurement Directives are written instructions, procedures, information, and guidelines that are designed to implement processes, clarify recurring issues, and otherwise augment this regulation and the applicable Horry County Ordinances concerning the operations of the Department of Procurement and the conduct of Horry County procurements.
- B. The Director of Procurement may, when the Director feels it is appropriate, issue Procurement Directives.

- C. Production, Dissemination, Revocation – Procurement Directives have the force and effect of the provisions of this regulation and shall be precisely followed in their application. Procurement Directives shall be issued in writing to all that the Director of Procurement deems appropriate, but all Procurement Directives must be provided to the County Administrator and the County Attorney. Procurement Directives may, at the discretion of the Director of Procurement, be revoked, amended, or supplemented.

Subchapter 3-3 - Horry County Procurement Team

3-3-1 Responsibilities of the Purchasing and Possession Agencies and The Department of Procurement - The “Procurement Team”

The acquisition and the management of the acquisition of personal property, services, and improvements to real property have three phases: Pre-Acquisition, Acquisition, and Post-Acquisition. While it is the duty of each Agency involved to support the entire effort, the primary responsibilities of the Purchasing and Possession Agencies and the Department of Procurement in each acquisition and management phase are as follows:

A. Pre-Acquisition Phase

1. Purchasing Agency – The responsibilities of the Purchasing Agency are to determine the need, define that which will satisfy the need, and decide on the appropriate acquisition method to satisfy the need, all of which shall be accomplished in compliance with the Horry County procurement structure. This includes notification of the funding sources and any particular specifications or technical documents related to the procurement.
2. Department of Procurement – It is the responsibility of the Department of Procurement to assist, as needed, the Purchasing Agency in the accomplishment of its Pre-Acquisition phase tasks and to prepare the documents that are required in the acquisition.

B. Acquisition Phase

1. Purchasing Agency – It is the responsibility of the Purchasing Agency to take the lead role in the source selection tasks.
2. Department of Procurement – The Department of Procurement shall take overall responsibility for the conduct of the procurement to insure that the Purchasing Agency acquires that which will satisfy its need in a manner that is compliant with the Horry County procurement structure. In this regard, the Department of Procurement is to take the lead role in all aspects of the acquisition except for the source selection determination.

C. Post-Acquisition Phase

1. Purchasing and Possession Agencies – The responsibilities of the Purchasing and Possession Agencies are to take delivery of all contract deliverables, determine if those deliverables meet the terms of the acquisition requirements, manage the possession of those deliverables on behalf of Horry County, and to inform the Procurement Department in a timely fashion of any possible deviations between the contractual requirements and the deliverables, and any deviations between performance responsibilities and actual performance, whenever such deviations are perceived. The responsibility of the Purchasing and Possession Agencies also include the tasks of determining when a contract deliverable is no longer required in the satisfaction of a need and, when appropriate, informing the Horry County Agency vested with the authority of disposing of the deliverable of this determination.
2. Department of Procurement – The responsibilities of the Department of Procurement in this Phase are to administer and manage the performance of the acquisition method used to acquire the acquisition deliverables so as to remedy any deviations between the requirements for acquisition deliverables and the actual deliverables and between the responsibilities for performance and actual performance. It is also the responsibility of the Department of Procurement to assist in the representation of Horry County’s interests in any dispute that arises in connection with an acquisition. Finally, it is the Department of Procurement’s responsibility to dispose of certain personal property, as set forth in this regulation in response to an appropriate disposal determination of a Purchasing or Possession Agency.

3-3-2 Representatives of the Members of the Procurement Team

In each procurement the Department of Procurement shall designate a representative or representatives to perform the tasks that are required of the Department of Procurement during the procurement. The Purchasing Agency shall also designate a representative or representatives to perform its tasks during the procurement. Additionally, should either the Purchasing Agency or the Department of Procurement determine that it is in Horry County’s best interests to add to the team representatives from another or other Agencies, they may do so upon joint agreement.

3-3-3 Suggested Duties of the Procurement Team

- A. The assignment of the duties listed below to the procurement team members are suggestions. The ultimate determination of the assignment of the procurement duties in each procurement is the responsibility of the team members involved in each procurement. In the event that the team members

cannot agree on the assignment of the required duties, the Chief Procurement Officials shall make that determination.

- B. Department of Procurement Duties – While not an exhaustive list, the Department of Procurement may be responsible for the following tasks:
1. Determining the appropriate provisions, clauses, and forms that are to be a part of the procurement and resultant contract or agreement;
 2. Preparing all of the documents required in the procurement;
 3. Ensuring that the procurement process meets the standard of maximum practicable competition;
 4. Overseeing the specifications to ensure that they meet the procurement standards for specifications;
 5. Overseeing the evaluation process to ensure that the evaluation process is fair for all Procurement Participants and that the criteria used for the evaluation is in the best interests of Horry County;
 6. Ensuring that the prices Horry County is paying for the products or services are fair and reasonable;
 7. Leading the discussions, when appropriate, with Procurement Participants
 8. Guiding the post-award debriefing discussions, when appropriate, with offerors or quoters;
 9. Ensuring that the entire procurement process is conducted in compliance with all Horry County procurement requirements as well as any other state or federal requirements;
 10. Awarding a contract or agreement to the party that meets all of the requirements of the procurement and Horry County’s contractor requirements.
- C. Purchasing Agency Duties - While not an exhaustive list, the Purchasing Agency may be responsible for the following tasks:
1. Formulating and expressing the Purchasing Agency’s need in the procurement documents;
 2. Preparing responses to Procurement Participants’ questions, if any, on technical aspects of the specifications or any other technical issues involved in the procurement;
 3. Leading the evaluation of the responses in the procurement including the determination of the relative rank of the offerors, bidders, or quoters in relation to the evaluation criteria;
 4. Participating, as requested by the Department of Procurement, in discussions and debriefings, as appropriate, with offerors or quoters;
 5. Assisting in the determination of the awardee of the contract or agreement consistent with the award criteria and the specifications set forth in the procurement documents.

- D. Exceptions to Procurement Team Members – The following exceptions are made for the composition of the procurement team in certain procurements.
1. Technology Procurements – In all procurements for technology property, technology services, and technology projects, the County’s Highest Ranking Technology Official shall have all of the duties and responsibilities involving substantive and technical issues required of the Purchasing Agency’s team members. The actual Purchasing Agency shall, however, be a member of the procurement team by having its representatives also included in any procurement for technology property, technology services, and technology projects.
 2. Legal Services - In all procurements for legal services the County Attorney shall have all of the duties and responsibilities involving substantive and technical issues required of the Purchasing Agency’s team members.
 3. Construction Procurements - In all procurements for construction materials, construction services, and construction projects, the County’s Highest Ranking Construction Official shall have all of the duties and responsibilities involving substantive and technical issues required of the Purchasing Agency’s team members. The Purchasing Agency shall, however, be a member of the procurement team by having its representatives also included in any procurement for construction materials, construction services, and construction projects.

3-3-4 Inter-Agency Procurements

An Inter-Agency Procurement is defined as the involvement in a procurement of more than one County Purchasing Agency, not including the Department of Procurement, as a result of the application of a statute, ordinance, regulation, or the budget. In the conduct of an Inter-Agency Procurement, each of the participating Purchasing Agencies shall appoint one or more representatives to represent its interests in the conduct of the procurement. Together, these representatives of the participating Purchasing Agencies are responsible for defining the need in the procurement and assisting in the selection of the awarded contractor in conformity with the applicable laws, ordinances, and the provisions of this regulation. It is the Procurement Department’s responsibility to ensure that the Purchasing Agencies meet their obligations as just set forth. In the event that, for whatever reason, the Purchasing Agencies are unable to perform their joint tasks in the procurement in a timely fashion, the Department of Procurement shall perform those tasks in conformity with the applicable laws, ordinances, and provisions of this regulation.

Chapter Four — Contractor Requirements and Standards of Conduct For Horry County and Procurement Participants

Subchapter 4-1 - Policy and Definitions

4-1-1 Policy

In conducting a procurement and in the performance of a contract there are certain standards of conduct to which quoters, offerors, bidders, contractors, Horry County employees, and their Immediate Families must adhere and certain requirements that must be met. In this chapter of the regulation those standards and requirements are set forth. While many of these standards are based on the provisions of the South Carolina Ethics, Government Accountability, and Campaign Reform Act of 1991, which also applies to the conduct of an Horry County procurement, the Horry County standards in this chapter reflect the application of standards tailored to Horry County's procurement processes and environment.

4-1-2 Definitions

The following terms are defined as follows:

- A. "Immediate Family" – A person's "Immediate Family" includes the person's spouse, children, parents, siblings, grandparents, parents in-law or siblings in-law, grandchildren, aunts, uncles, cousins, nephews, nieces, or step-relationships fitting within any of the aforementioned familial relationships.
- B. "Protected Procurement Information" – The information that is included within this designation consists of :
 - 1. Bid prices before bid opening
 - 2. Proposal prices or costs before contract award
 - 3. Source selection plans
 - 4. Technical evaluation plans
 - 5. Cost or price evaluations of proposals
 - 6. Competitive range discussions or determinations
 - 7. Rankings of bids, proposals, or competitors
 - 8. Reports and evaluations of any source selection group or person involved in a procurement
 - 9. Any information, that is designated as "Protected Procurement Information" by the Chief Procurement Officials in the procurement or the person or persons to whom a delegation of procurement authority has been given.

- C. “Proprietary Data” – “Proprietary Data” is any information, regardless of the form or media on or in which it appears or is contained, that is so vital to the owner that its disclosure would likely cause substantial harm to the competitive position of the owner. This includes trade secrets and financial information. Information that has been disclosed to any other entity by the owner of the proprietary data, without informing that entity that the information constitutes proprietary data and is not subject to disclosure, will not be considered “Proprietary Data.”

Subchapter 4-2 - Obligations of Procurement Participants

4-2-1 Responsibility

- A. In order to receive a contract, a quoter, bidder, or offeror must be able to demonstrate that it is responsible. In order to meet this burden, the quoter, bidder, or offeror must be able to show that it:
 - 1. Has, or has the ability to obtain the resources, financial and otherwise, to satisfy all of the contract’s requirements; and
 - 2. Is legally qualified to contract with Horry County; and
 - 3. Does not have a record of consistent unsatisfactory performance in previous contracts with Horry County or any other public or private entity; and
 - 4. Does not have an unsatisfactory record of integrity; and
 - 5. Has proposed, bid, or quoted a price pursuant to which the bidder, quoter, or offeror can successfully meet the requirements of the procurement.
- B. Horry County has the obligation to determine if quoters, bidders, or offerors are responsible. In the exercise of that obligation Horry County has the right to receive reasonable information from the quoter, bidder, or offeror relating to that determination. In the event that a quoter, bidder, or offeror refuses to cooperate with a request for such reasonable information, Horry County shall find the quoter, bidder, or offeror non-responsible.
- C. Whether based on the information that Horry County has, or the lack of cooperation with an Horry County request, if Horry County finds that a quoter, bidder, or offeror is non-responsible, it shall inform the quoter, bidder, or offeror of that finding in writing. The Chief Procurement Officials shall maintain a list of Procurement Participants that have been found to be non-responsible, and a Procurement Participant shall only be removed from the list upon a subsequent determination that Horry County erred in its determination of non-responsibility or the Procurement Participant has remedied its responsibility issues and is now in a position to be found responsible.

4-2-2 *Honesty*

In all written and verbal communications with Horry County in connection with a solicitation, contract, or agreement, a Procurement Participant must provide complete and accurate information. In the event that a Procurement Participant knowingly provides inaccurate, false, fictitious, or misleading information, that party will be subject to remedies set forth in Chapter Fifteen of this regulation.

4-2-3 *Anti-Competitive Practices*

Procurement Participants shall not engage in anti-competitive practices in connection with any procurement conducted by Horry County. Some examples of anti-competitive practices, while not exhaustive, are collusive bids or offers, follow-the-leader pricing, rotated low bids or offers, or any method of sharing the business opportunities provided in procurements conducted by Horry County. Any arrangement in which the natural forces of market competition are altered constitutes a violation of this section. Included in the prohibited practices are any prohibitions imposed on any subcontractor's ability to do business with Horry County by any Procurement Participant. Any party found in violation of this subsection is subject to the penalties and remedies set forth in Chapter Fifteen of this regulation.

4-2-4 *Organizational Conflicts of Interest*

- A. General - It is Horry County's policy that it will not award a contract to Procurement Participants or allow Procurement Participants to participate in an awarded contract when they have a real, apparent, or potential conflict of interest.
- B. Existence of a Conflict of Interest – An organizational conflict of interest exists when a Procurement Participant has:
 - 1. A conflicting or potentially conflicting role, or the appearance of a conflicting or potentially conflicting role, in the Horry County procurement process that might bias a judgment it must make in satisfying present or potential contractual obligations with Horry County; or
 - 2. Acquired, or has the appearance of having acquired, Protected Procurement Information or Proprietary Data that provides the Procurement Participant with an unfair competitive advantage in a future procurement.
- C. Duties of Chief Procurement Officials – Regardless of whether a delegation of procurement authority has been granted to an Horry County employee, it is the duty of the Horry County employee to bring all real, apparent, and potential organizational conflicts of interest to the attention of the Chief

Procurement Officials. It is the duty of the Chief Procurement Officials to address organizational conflicts of interest. When the Chief Procurement Officials become aware of the existence of a potential, apparent, or real organizational conflict of interest they, individually or jointly, shall proceed as follows:

1. They must find a method to avoid, neutralize, or mitigate a conflict of interest before a contract is awarded in the procurement in which the conflict exists.
2. The method used to avoid, neutralize, or mitigate conflicts will vary with the circumstances of the procurement or procurements affected by the conflict but most methods will involve restricting the conflicted Procurement Participants' eligibility for future contract awards.
3. Any restriction placed on an affected Procurement Participant shall be as limited as possible but sufficient to neutralize the possibility of a competitive advantage and/or judgment bias that is the result of the organizational conflict of interest.

D. When the Chief Procurement Officials determine that a Procurement Participant(s) responding to a procurement opportunity has/have or will have a potential, apparent, or real organizational conflict of interest if it is awarded a contract in the procurement opportunity, the Chief Procurement Officials shall determine the proposed method that will be used to avoid, neutralize, or mitigate the conflict and inform the affected party or parties in writing of the existence or potential existence of the potential, apparent, or real conflict of interest and the Chief Procurement Official's proposed method of addressing the real, apparent, or potential conflict. The Chief Procurement Officials shall provide the affected party or parties a reasonable time to respond to the notification and the proposed method supplied by the Chief Procurement Officials. All parties involved may meet or otherwise communicate in an effort to reach a mutually agreeable method of addressing the real, apparent, or potential conflict of interest. After having allowed a reasonable time to resolve any differences the parties have in the matter, the Chief Procurement Officials will render a final decision on the method that will be used to address the real, apparent, or potential conflict of interest. If any party does not agree with the Chief Procurement Officials' final decision, it or they may proceed under the Disputes or Protest procedures, if appropriate, included within Chapter Fifteen of this regulation.

E. Waiver – The Chief Procurement Officials may waive the application of the procedures included in this subsection enabling Horry County to contract with a Procurement Participant having a potential, apparent, or real organizational conflict of interest, if the Chief Procurement Officials deem such an action to be in the best interests of Horry County and such action will not violate any other rule of professional or ethical conduct.

Subchapter 4-3 - Obligations of All Parties

4-3-1 Gifts

No Horry County employee or any Procurement Participant shall offer, give, solicit or receive, directly or indirectly, anything of value from any other Procurement Participant or any Horry County employee with the intent to influence any decision or the performance of any task involved in a procurement.

Subchapter 4-4 - Obligations of Horry County Employees

4-4-1 Personal Conflicts of Interest

No Horry County employee may be involved in any procurement in which that employee or that employee's Immediate Family has an economic interest. The term "involved in any procurement" means makes decisions of any type or exert any influence in decisions of any type that could contribute to the expenditure of County funds, regardless of the amount, in connection with a procurement.

4-4-2 Employment and Representation

No former Horry County employee shall, for a period of at least 365 days after the termination of that employee's employment with Horry County, represent the interests of any Procurement Participants, whether as an employee or in a representative capacity (e.g., lobbyist, attorney), in seeking or participating in any procurement opportunities with Horry County.

4-4-3 Procurement Integrity

- A. General - No Horry County employee possessing Protected Procurement Information or Proprietary Data shall disclose that information to anyone other than those whose responsibilities in connection with the conduct of the procurement require that they have access to such confidential information during the procurement process.
- B. Protection of Proprietary Data – Regardless of any other rights Horry County may have concerning inventions, data, computer software, and any other information, any data that constitutes "Proprietary Data" may be protected by a Procurement Participant from disclosure by Horry County when the Procurement Participant clearly designates that the information constitutes "Proprietary Data." The designation should plainly appear on the form or media on or in which the Proprietary Data appears or is contained.

- C. Determination of Proprietary Data - The Director of Procurement, upon written request of a Procurement Participant or any other written and legally valid request, shall examine the information designated as “Proprietary Data” to determine the validity of any such designation. The Director of Procurement shall disclose to the party that has so designated the information as Proprietary Data that the information has been subject to a request for disclosure. If the parties do not agree as to the disclosure of the data, the Director of Procurement shall return the quote, bid, or offer to the quoter, bidder, or offeror and the quote, bid, or offer will not be considered for award unless the quoter, bidder, or offeror resubmits the quote, bid, or offer with either non-confidential data or data that satisfies the Director of Procurement that the information sought to be protected from disclosure qualifies as Proprietary Data.
- D. Disclosure of Protected Procurement Information and Proprietary Data - After an award has been made in a procurement, the Horry County Chief Procurement Officials, or the person or persons to whom a delegation of procurement authority has or have been given in the procurement, may authorize the disclosure of all or part of Protected Procurement Information, but shall not disclose Proprietary Data unless the Procurement Participant agrees to the disclosure or a court with jurisdiction over the subject matter and the parties orders the release of the Proprietary Data.

Subchapter 4-5 – Penalties

4-5-1 Violations

Any person or legal entity found in violation of any of the subsections of Chapter Four is subject to the penalties and remedies provided in the South Carolina Ethics, Government Accountability, and Campaign Reform Act of 1991, when applicable, and the remedies and penalties provided in Chapter Fifteen of this regulation.

Chapter Five – Preparing for an Acquisition

Subchapter 5-1 - General

5-1-1 Application

This chapter applies to the procedures that are to be used to begin the Horry County procurement process.

Subchapter 5-2 - Initiation of the Procurement Process

5-2-1 Market Research

- A. General – Consistent with the provisions of the South Carolina Ethics, Government Accountability, and Campaign Reform Act of 1991 and in compliance with the conduct requirements set forth in Chapter Four of this regulation, County employees are encouraged to do market research in their particular areas of responsibility.
- B. Purposes – The purposes for Horry County employees to engage in market research are varied, but some of the primary reasons are as follows:
 - 1. To understand and consider, in defining a Purchasing Agency’s needs and specifications in a procurement, the latest technology and developments available that are in the best interests of Horry County; and
 - 2. To identify sources that are able to satisfy Horry County’s procurement needs; and
 - 3. To determine customary industry practices so that Horry County procurements will be conducted in consideration of those practices; and
 - 4. To make better source selection decisions in procurements, such as price reasonableness evaluations and the establishment of source selection criteria.
- C. Methods of Market Research – While any method of market research can be utilized, certain customary methods of market research have proven to be successful. While not exhaustive, some of the customary methods that may be used by Horry County employees conducting market research are as follows:
 - 1. Communicating with knowledgeable people in both the public and private sectors;
 - 2. Conducting meetings with individuals or groups involved in targeted industries;

3. Issuing, receiving and assessing the results of procurement input documents;
4. Issuing Draft Solicitations or portions of draft solicitations, such as specifications and award evaluation criteria, which may be released to the public for comment and use in determining the final form of solicitations;
5. Issuing Requests for Information (“RFI”), which may be released to the public seeking specific information that will assist Horry County employees in determining the form, content, and conduct of a procurement, as well as information on economic concerns including, but not limited to, cost estimates for projects, and resolving price reasonableness issues;
6. Issuing Quotation Requests (“QR”), which may be released to the public seeking price or cost information that will assist Horry County employees in determining the economic issues involved in a Small Purchase Procedures procurement. QRs may also be used as a basis upon which to issue a purchase order in a procurement using Small Purchase Procedures. QRs should only be used during a Small Purchase Procedures process; an RFI is a better process for soliciting price and cost information outside of Small Purchase Procedures.

5-2-2 Describing the Acquisition Need and Specifications

- A. General - When an Horry County Purchasing Agency has a need that is to be satisfied by resort to the procurement system, it translates that need into a procurement specification. The procurement specification then becomes the standard that a Procurement Participant must satisfy in order to obtain a contract with Horry County.
- B. In developing a specification for a procurement, the Purchasing Agency, or the Horry County official responsible for the development of the specification, should engage in market research so that the specification reflects the most current developments within the private sector to satisfy the Purchasing Agency need.
- C. Requirements of Specifications – There are certain requirements that all specifications must meet. These are:
 1. Specifications must be expressed in such a manner as to enable the procurement to be conducted with Maximum Practicable Competition.
 2. When describing a Purchasing Agency’s need in specifications, that need should reflect that which will actually satisfy the instant need as well as that which will provide the best overall solution for the County’s needs in the future.
 3. A specification shall not contain requirements that can restrict Maximum Practicable Competition unless those restrictive requirements reflect the actual Purchasing Agency’s need.

- D. Types of Specifications – There are three general types of procurement specifications that are approved for use by Purchasing Agencies:
1. Performance-Based – This type of specification expresses the Purchasing Agency’s need in terms of functions to be performed, the actual physical characteristics of performance, or the results of performance.
 2. Brand Name or Equal – This type of specification defines the Purchasing Agency’s need in terms of a particular brand of an item that will satisfy that need. When using a Brand Name or Equal specification, a procurement must include the salient characteristics that the Brand Name item has that other items must satisfy in order to be considered for the award of a contract.
 3. Design and/or Method – This type of specification directs Procurement Participants to satisfy a method or manner of performance in order to satisfy the Purchasing Agency’s need. It is more detailed as to the performance requirements that must be met and is usually used in conjunction with construction-type projects.
- E. Order of Preference – The Purchasing Agency’s need will generally indicate the type of specification that should be used in each procurement. However, when there is a choice in the type of specification that may be used in a procurement, the following is the order of preference for the type of specifications that shall be used:
1. Performance-Based Specifications
 2. Brand Name or Equal Specifications
 3. Design and/or Method Specifications
- F. Use of Other Types of Specifications – While it is anticipated that the three types of specifications listed shall satisfy most, if not all, of the County’s specification requirements, it is possible that another type of specification, not so listed, shall be more appropriate in a particular procurement. With the prior written consent of the Chief Procurement Officials, a Purchasing Agency may, when necessary, use any other type of specification or any combination of types of specifications whether listed in this section of the regulation or not.
- G. Restrictive Specifications – As a general rule, specifications shall not restrict the fulfillment of the Procurement Guiding Principle of Maximum Practicable Competition. Also, whether expressed as a Brand Name or Equal specification or in some other fashion, specifications shall not reflect a preference for the product or service of a particular manufacturer, service provider, or Procurement Participant unless the product or service is essential in the satisfaction of the Purchasing Agency’s need. In the event that the use of a restrictive specification is necessary to satisfy a Purchasing Agency’s

need, the Purchasing Agency must so inform the Chief Procurement Officials in writing of this necessity and receive their written approval prior to conducting procurement with a restrictive specification. When a restrictive specification is justified and used, every effort must be made to solicit responses from enough suppliers of the item with the restrictive specification to enable the Procurement Guiding Principle of Maximum Practicable Competition to be met.

H. Procurement Preference – To the extent practicable, all specifications, regardless of type, shall express a preference for environmentally-preferable and/or energy-efficient products, services, and solutions.

I. Specification Authority

1. General - The authority over the type and the expression of specifications in a procurement is the dual responsibility of the Director of Procurement and the Purchasing Agency.
2. Duties of the Director of Procurement – The following are the duties that the Director of Procurement have in the development and use of specifications in an Horry County procurement, regardless of the role played in the development of a specification by any other Agency, Procurement Participant, or Horry County official:
 - a. Determine, with assistance from the Purchasing Agency, the type of specification that is appropriate for the procurement and inform the Purchasing Agency of that determination; and
 - b. Ensure that the specification provides for Maximum Practicable Competition to satisfy the County’s needs; and
 - c. Ensure that the specification expresses the valid need of the Purchasing Agency; and
 - d. To the extent possible, insure that the specification reflects Horry County’s overall interests now and in the future; and
 - e. When appropriate, ensure that the specification reflects a preference for environmentally-preferable and/or energy-efficient products, services, or solutions; and
 - f. Develop, when appropriate and in conjunction with advice from the appropriate Purchasing Agency or Horry County official, generic specifications for application in procurements involving products or services for which Horry County has a recurring need and that can be adequately described through the development and use of generic specifications.

3. Duties of the Purchasing Agency:
 - a. Assist the Director of Procurement in the determination of the appropriate type of specification for the procurement to include providing any specifications, guidelines, or other documents that describe special conditions that are required in a particular procurement; and
 - b. Develop the actual specification based on its assessment of its actual need; and
 - c. Ensure that the final specification that is used in the procurement accurately describes its need and that the likely results of the procurement will be the satisfaction of that need and the best interests of Horry County now and in the future; and
 - d. Assist, when requested by the Director of Procurement, with the development of generic specifications.

- J. Exception to the Dual Specification Authority – As seen in the preceding subsections of this regulation, the responsibility for the development and use of specifications is dually vested in the Purchasing Agency and the Director of Procurement. There are, however, three exceptions to that authority:
 1. The development and expression of all specifications for the procurement of legal services shall be vested in the County Attorney; and
 2. The development and expression of all specifications for procurement of construction materials, construction services, and construction projects shall be vested in the County’s Highest Ranking Construction Officer; and
 3. The development and expression of all specifications for the procurement of technology property, technology services, and technology projects shall be vested in the County’s Highest Ranking Technology Officer.

- K. Specifications prepared by Parties other than Horry County Employees – When the task of developing specifications are performed by a party other than an employee of Horry County, the Department of Procurement must insure that the party preparing the specifications does not have a personal or organizational conflict of interest. Additionally, it shall be incumbent upon the entire procurement team to advise the party preparing the specifications of the requirements for Horry County specifications and to insure that the specifications prepared by that party meet such requirements.

Subchapter 5-3 - Initiating the Procurement Process

5-3-1 The Purchase Request

A. General

1. In order to begin the procurement process a Purchasing Agency must first determine if its need can be satisfied by obtaining goods included within Tier One, Surplus Property. If goods included within Tier One satisfy the need, the Agency shall follow the established procedures to acquire the goods included within Tier One and no procurement action is necessary.
2. When an Horry County Purchasing Agency has a need for products that cannot be satisfied by resort to Tier One resources, the Purchasing Agency begins the process of satisfying its need by providing to the Procurement Department a Purchase Request.
3. The Purchase Request – The Purchasing Agency notifies the Procurement Department of the need and that the need must be satisfied through the procurement process.

B. The Procurement Department Responds to the Purchase Request - When the Procurement Department receives a Purchase Request from a Purchasing Agency, it may:

1. Reject the Purchase Request, providing reasons for rejection and returning it to Purchasing Agency for remedial, if feasible, action:
 - a. Need can be satisfied by resort to Tier One (Surplus Property)
 - b. Need not understood- specification issues
 - c. Budget discrepancy
 - d. Other reason(s) for rejection
2. Approve the Purchase Request and include direction as to which Tier to use to satisfy the Purchasing Agency's requirement and/or include conditions that must be satisfied in connection with the procurement.

C. Actions after Purchase Request Returned to Agency

1. Disapproved Purchase Requests - For Purchase Requests that have been disapproved, the Purchasing Agency and the Procurement Department shall work together until the requirements for approval of the Purchase Request are satisfied at which time the Director of Procurement shall approve the Purchase Request.
2. Approved Purchase Requests – Once a Purchase Request is approved, the Director of Procurement shall request that the Purchasing Agency assign mutually agreeable staff members of the Purchasing Agency to form the

procurement team that will conduct the procurement to satisfy the Purchasing Agency's need from the beginning of the procurement process and into the performance period after contract award.

5-3-2 Risk Management Considerations

- A. General – In preparing for an acquisition, careful consideration must be given to protecting or mitigating the effect on the County from the occurrence of possible undesired results of procurements. Prior to engaging in any procurement in which the expenditure is expected to exceed \$50,000.00 and there is a liability risk to the County which may be eliminated or mitigated by a form of risk protection, the County shall either include in the procurement adequate risk protection or the Director of Procurement shall issue a determination in writing that such protection is not required for the procurement. The Director of Procurement may, at the Director's option, require risk protection in any procurement not expected to exceed \$50,000.00 in which the Director determines that such risk protection is in the best interests of the County.

- B. Insurance – Insurance coverage shall meet or exceed the requirements of the solicitation or the resultant contract and be kept current throughout the contract period or as required by the contract documents. Current certificates of insurance shall be submitted by each contractor until the contract has been completed and Horry County has issued its Final Acceptance of Contract Completion. Failure to supply documentation of insurance coverage may result in contract termination for cause.

- C. Bonds
 - 1. Bid and Offer Security Bonds
 - a. General - In County construction contract procurements expected to exceed \$50,000.00, and any other procurements in which risk protection is appropriate as set forth above, the County shall require the submission of bid or offer security in an amount equal to at least 5% of the bid or offer, at the time the bid or offer is submitted. If a bidder or offeror fails to accompany its bid or offer with the required bid security, the bid or offer shall be rejected, unless it is determined by the Director of Procurement that such failure is deemed to be non-substantial under the circumstances of that procurement.
 - b. Acceptable Bid Security - Acceptable bid security shall be limited to:

- (i) A bond in a form satisfactory to the County underwritten by a company licensed to issue bid or offer bonds in South Carolina; or
- (ii) A certified check issued by a financial institution acceptable to Horry County.

2. Performance Bonds

- a. General - A performance bond is required for all County construction contracts in excess of \$50,000, and any other procurements in which risk protection is appropriate as set forth above, in the amount of 100% of the contract price. The performance bond shall be delivered by the proposed contractor to the County at the same time the contract is executed. If a bidder or offeror fails to deliver the required performance bond, the bidder's or offeror's bid or offer shall be rejected and its bid or offer security shall be forfeited. In the event of such a failure the County may, at its discretion:
 - (i) Award the contract to the next lowest bidder in a Sealed Bidding procurement; or
 - (ii) Engage in negotiations for a contract with the next eligible offeror in a Negotiated Procurement; or
 - (iii) Conduct a reprocurement to satisfy the requirement.
- b. Reduction of Bond Amount – The amount of a performance bond may be reduced, depending upon the circumstances in a procurement.
 - (i) Prior to Solicitation - The Director of Procurement may reduce the performance bond required prior to issuing a solicitation for a construction contract procurement to a lesser amount, if the Director of Procurement determines in writing that such lesser amount provides adequate protection for the County or that it is less costly or more advantageous to the County to self-insure a part of the performance of the contractor.
 - (ii) During Performance - The Director of Procurement may reduce the amount of the performance bond as work is completed, if the Director of Procurement determines in writing that such reduction is in the best interests of the County.

3. Payment Bonds

- a. General - A payment bond is required for all construction contracts in excess of \$50,000.00, and any other procurements in which risk protection is appropriate as set forth above, in the amount of 100% of the contract price. The payment bond shall be delivered by the contractor to the County at the same time the contract is executed. If a party selected for contract award fails to deliver the required payment bond, the party's bid or offer shall be rejected and its bid or offer security shall be forfeited. In the event of such a failure the County may, at its discretion:
 - (i) Award the contract to the next lowest bidder in a Sealed Bidding procurement; or
 - (ii) Engage in negotiations for a contract with the next eligible offeror in a Negotiated Procurement; or
 - (iii) Conduct a reprocurement to satisfy the requirement.
- b. Reduction of Bond Amount - Prior to issuing a solicitation, the Director of Procurement may reduce the payment bond for a procurement to a lesser amount, if the Director of Procurement determines in writing that such lesser amount is in the best interests of the County. Factors to be considered in order to make such a determination include, but are not limited to, the value and number of subcontracts to be included within the project and the value of the contract. During performance the Director of Procurement may reduce the required coverage of the payment bond as payments are made by the contractor.

4. Bond Obligations After Contract Award

- a. If performance and/or payment bonds are required for a procurement, they are required, unless the parties agree to the contrary, to remain in place with full force and effect during the entire time of the procurement and performance of the contract. Performance bonds specifically shall remain in effect until the County has unconditionally accepted the final performance by the contractor. Payment bonds specifically shall remain in effect until all lienors, subcontractors, suppliers and all entities providing materials, supplies, and/or services in connection with the contract or agreement have been properly paid, as evidenced by receipt of unconditional lien releases or such other evidence that Horry County may

require. Should the contractor at any time fail to satisfy these bonding requirements, the County may:

- (i) Withhold payment to the contractor for work performed under the contract; and/or
 - (ii) Suspend performance of the contract until the contractor fulfills the contractor's obligations concerning the status of the bonds. Any costs incurred by Horry County as a result of the suspension will be subject to the Disputes process set forth in Chapter Fifteen of this regulation; and/or
 - (iii) Terminate the contract for Default and Horry County will proceed under the Termination for Default provisions as set forth in Chapter Thirteen of this regulation.
- b. With respect to the filing of claims, the length of time that bonds are required to remain in effect after the conclusion of contract performance shall be determined by Horry County based on its satisfaction that all of the risks for which the bonds provided protection have been satisfied or eliminated.

5-3-3 Solicitation Provisions/Contract Clauses and Procurement Forms

- A. Provisions that are approved for use in solicitations and clauses that are approved for use in contracts and agreements are included within this regulation in a designated Procurement Regulation Appendix.
- B. Procurement forms that include the appropriate approved provisions and clauses are included within this regulation in a designated Procurement Regulations Appendix.
- C. The Director of Procurement will provide guidance through Procurement Directives on the utilization of the provisions, clauses, and procurement forms that are included within the Procurement Regulation Appendices.
- D. It is the responsibility of the Director of Procurement and the County Attorney to develop the appropriate provisions, clauses, and procurement forms for use in Horry County procurements.
- E. No provision, clause, or procurement form shall be approved for use in solicitations, contracts, or agreements, or in any other part of the procurement process, without the prior written consent of the County Attorney.

- F. Approved provisions, clauses, and procurement forms may be tailored only with the written approval of the Chief Procurement Officials and the County Attorney and only to the extent of that approval.

- G. Other deviations in the terms and conditions that are to govern solicitations, contracts, and agreements, or any other part of the procurement process, including the deletion of required provisions or clauses, the addition of non-approved provisions or clauses, or any other deviation from the approved provisions, clauses, or procurement forms, or the requirements contained for their utilization, as may appear in Procurement Directives, shall not be allowed without the prior written consent of the Chief Procurement Officials and the County Attorney.

Chapter Six – Types of Contracts and Agreements

Subchapter 6-1 - General

The result of a procurement is the formation of a contract between Horry County and a contractor(s). Under a contract, Horry County receives personal property, and/or services, and/or improvements to real property and the contractor(s) is compensated for providing the subject matter of the contract to Horry County. Not all contracts, however, are the result of Horry County conducting a procurement. Some contracts are formed when orders are issued against agreements. Horry County is authorized to enter into both contracts and agreements.

6-1-1 Differences between Contracts and Agreements

- A. Contract - A contract is a legally binding relationship that requires both parties in the relationship to provide something of value to each other in the performance of the contract. It is legally binding on each of the parties from the moment of contract award.
- B. Agreement - An agreement is a non-binding arrangement in which the parties agree to the manner in which they will conduct business with each other in the event that both parties choose to do business with each other. The manner in which an agreement becomes a contract is when Horry County issues and the contractor accepts an order against the agreement. The order that is issued becomes the contract and its performance is governed by the terms of the agreement.
- C. When to Use Agreements – When to Award Contracts – Contracts are used when it is certain that Horry County wants to acquire that which is the subject matter of the contract. Agreements are used when Horry County believes, but is not certain, that it will do repetitive business with a Procurement Participant, and it uses the agreement to establish the terms that will govern that repetitive business.

6-1-2 Difference between Purchase Orders and Delivery/Task Orders

- A. Purchase Orders – Purchase orders are orders that are issued in all procurement process arrangements except for contracts. Purchase orders are issued against agreements to form contracts. Purchase orders are also issued using Small Purchase Procedures to form contracts, and they are used in certain Tier Five procurements, when extraordinary circumstances are present that justify the use of certain Tier Five procedures to form contracts.

- B. Delivery/Task Orders – Delivery/Task Orders are orders that are issued only against contracts. They do not establish the contract, as do Purchase orders, but rather they direct performance under a contract that has already been established when awarded. Task Orders are orders for services. Delivery Orders are orders for personal property. An order for both services and personal property can be deemed either a Task Order or Delivery Order depending upon which part of the order predominates the transaction. For example, if the order is primarily for services but includes the purchase of certain materials to augment the services, then the order would be deemed a Task Order. If an order were for a product but included installation services for the product, then the order would be deemed a Delivery Order. The correct designation of the type of order against a contract or an agreement has no legal effect upon the obligations of the parties to the contract or agreement.

- C. Enforceability - A Purchase Order is not binding on the parties until it is accepted by the Procurement Participant to which it is issued in the manner in which acceptance has been established by the parties. Normally, the manner of acceptance will be by performance by the Procurement Participant, but acceptance can be based on some other method, such as the mutual execution and return to Horry County of the Purchase Order. A Delivery/Task Order is binding the moment it is delivered to the contractor as it is written against a contract that is already binding.

Subchapter 6-2 - Types of Contracts – Authorized and Disallowed

6-2-1 Authorized Contracts

There are four types of contracts that are specifically authorized for use by Horry County.

- A. Firm Fixed-Price Contract – A firm fixed-price contract provides a price for that which is being acquired and is not subject to adjustment because of variations in the contractor's costs involved in performance. It should be used whenever prices, which are fair and reasonable to the County and the contractor, can be established at the outset.

- B. Fixed-Price with Price Adjustment Contract - A fixed-price contract with price adjustment provides for variation in the contract price under special conditions defined in the contract, other than customary provisions authorizing price adjustments due to modifications to the work. The formula or other basis by which the adjustment in contract prices can be made shall be specified in the solicitation and the resulting contract. Adjustments allowed may be upward or downward only or both upward and downward. Generally, there are two types of price adjustments that are allowed:

1. Adjustments due to changes in economic conditions; and
2. Adjustments occurring as the result of incentives included in the contract.

These types of adjustments are addressed in a subsequent subsection of this chapter.

- C. **Cost Plus Fixed-Fee Contract** - This is a cost-reimbursement type contract which provides for payment to the contractor of an agreed fixed-fee in addition to reimbursement of allowable incurred costs. The fee is established at the time of contract award and does not vary whether or not the actual cost of contract performance is greater or less than the initial estimated cost established for such work. Thus, the fee is fixed but not the contract amount, because the final contract amount will depend on the allowable costs reimbursed. The fee is subject to adjustment only if the contract is modified to provide for an increase or decrease in the scope of work specified in the contract.
- D. **Time and Materials Contract (including Labor Hours Contract)** - Time and materials contracts provide an agreed basis for payment for materials supplied and labor performed. Such contracts shall contain a stated ceiling or an estimate that shall not be exceeded without the prior written approval of the Director of Procurement. A Labor Hours contract is a variation of the Time and Materials contract in that it provides only for the labor performed and not for the payment of materials supplied. It must also contain a stated ceiling or an estimate that shall not be exceeded without the prior written consent of the Director of Procurement.

6-2-2 Use of Other Contract Types

While the contracts listed above should meet the contract needs of Horry County in most, if not all, of its procurement requirements for contract types, other types of contracts may be used when so authorized by the Chief Procurement Officials in writing.

6-2-3 Prohibited Contract Types

The only contract type that Horry County is prohibited from using is a Cost Plus Percentage of Cost type contract.

Subchapter 6-3 – Fundamental Contract Elements

6-3-1 General

There are certain aspects of a contract that enable Horry County to tailor the contractual relationship to fit its specific requirements for the acquisition of personal property, services, or improvements to real property. These aspects are the Fundamental Elements of a contract of which there are six (6) such elements:

- A. Quantity
- B. Delivery
- C. Price Adjustments
- D. Contract Term
- E. Number of Contractors
- F. Type of Possession Interest

All of these Fundamental Elements include options from which Horry County may choose to tailor the contract to fit its need.

6-3-2 Fundamental Elements

- A. First Fundamental Element - Quantity

Utilized mainly in contracts for personal property and in some instances contracts for services, there are three ways to specify the quantity in a contract from which Horry County should choose one of the alternatives and include that alternative within the contract.

1. Requirements Contracts – Under a Requirements contract, Horry County agrees to purchase all of its requirements for the subject matter of the contract from the contractor during the term of the contract. The purchases are accomplished by Horry County issuing delivery/task orders against the contract when it has requirements for the subject matter of the contract. This type of contract should be used cautiously as it provides the contractor with a virtual monopoly. Significant price concessions should be required of any contractor that is awarded a Requirements contract. Additionally, the County may include in the contract a limitation on the order size that the County is contractually bound to order from the contractor. This allows the County to fulfill larger requirements using other, more competitive, procurement methods. To insure that a

Requirements contract is deemed to be a contract and not an agreement, a certain minimum volume that will be ordered, that is not nominal, should be guaranteed in the contract.

2. Indefinite Quantity Contracts – Like Requirements contracts, there is no definite quantity specified for delivery in this contract. The County places delivery/task orders against this contract as the County’s need for the subject matter of the contract arises. Again, to insure that this type of contract is deemed to be a contract and not an agreement, a certain minimum volume that will be ordered, that is not nominal, should be guaranteed in the contract.
3. Definite Quantity Contracts – In this type of contract, there is a specified amount of either personal property or services that is included in the contract. Since this type of contract commits the County to acquiring a specific amount of the subject matter of the contract, there is no issue regarding whether it is a contract or an agreement.

B. Second Fundamental Element – Delivery

There are two optional choices included within this second Fundamental Element of delivery. Again, in order to complete a contract, Horry County should choose one of the two options and include it within the contract.

1. Indefinite Delivery Contracts– In an Indefinite Delivery contract, there is no specified time for delivery or performance of the contract tasks. Delivery times are established in the delivery/task orders that are issued against the contract.
2. Definite Delivery Contracts – In a Definite Delivery contract, there is established in the contract firm performance or delivery times.

C. Third Fundamental Element – Price Adjustments

This Fundamental Element will not be considered when Horry County decides that the kind of contract it needs is a Firm Fixed-Price contract. If, however, Horry County determines that it needs a contract in which a price adjustment mechanism is needed, it should choose from the options included within this Fundamental Element. Typically, price adjustments, of which there are two types, are used in contracts to enable the contractor to share pricing risks with Horry County. These price adjustments enable the contractor to seek increases in prices in the contract based on the occurrence of a certain event(s). Although rare, it is possible for Horry County to include within a contract a downward adjustment in contract prices upon the occurrence of a certain event(s). The price adjustment optional choices are as follows:

1. Economic Price Adjustments – An economic price adjustment enables the parties to adjust the contract price based on economic conditions. These conditions could include an increase in the prices upon which the contract

prices are based, such as an increase in commercial list prices or labor rates of the contractor, or it could be based on substantial increases or decreases in significant contract pricing factors, such as the cost of gasoline. Or, it could also be based on general economic increases by using certain indices, such as the Consumer Price Index, to determine if, and to what extent, contract prices are subject to adjustment.

2. Incentive Price Adjustments – Incentive price adjustments enable the County to provide price incentives for contract performance. These incentives may be based on cost targets, delivery targets, or any other facets of the performance of the contract that are subject to objective measurement. The incentives may be upward or downward. For example a contractor may be entitled to an increase in the contract’s fees if the contractor’s costs are below a certain target. Conversely, the contractor may be subject to a fee decrease if the costs exceed a certain target. Regardless of the type of incentive price adjustment that is included in a contract, when such a price adjustment scheme of this type is included, it should be accompanied by a cost incentive (or constraint) that operates to control the costs as the contractor attempts to achieve the incentives.

D. Fourth Fundamental Element - Contract Term

There is no requirement that a contract contain a definite length of time for its completion. But, if the contract does contain a definite period of time or the contract is expected to continue over several Horry County fiscal years, the options included within this Fundamental Element should be considered and addressed in the contract.

1. Single Fiscal Year Contracts – Under this type of term contract, the performance required is to be completed within Horry County’s fiscal year. This creates no funding or contract continuance issues that need to be considered.
2. Multi-Year Contracts – The term of this type of contract extends beyond one Horry County fiscal year and requires multiple budget considerations. It is designed to be used in projects, such as large projects for improvements to real property, or when the initial costs of performance are so significant that it takes a longer period of time for the contractor to realize a reasonable return based on the higher initial cost investment. It is also an appropriate Element to include in a contract when the need for the personal property or the services that are the subject of the contract can be foreseen to extend beyond the fiscal year and the benefits of having the contract outweigh the possible advantages of conducting a follow-on procurement for the subject of the contract. The continuation of multi-year contracts is conditioned upon annual appropriations by Horry County.
3. Contracts with Options – Under this type of contract, an initial term for the contract is established, but the contract also provides for the renewal of the contract for an additional term or additional terms, if the parties mutually

agree to extend the period of the contract. The same fiscal year and funding considerations for including in a contract a multi-year term are relevant in the determination of whether to include options in a contract.

E. Fifth Fundamental Element – Number of Contractors

Under this Fundamental Element Horry County must decide whether it wants to award a contract to a single or multiple contractors. Here is a brief description of the two options:

1. Single Award – Under this type of contract, one contractor is chosen from all the Procurement Participants to perform the contract.
2. Multiple Award – Under this type of contract, more than one contractor is chosen from the Procurement Participants and those chosen are awarded contracts. The breadth and extent of the requirements included within the procurement, as well as an evaluation of the supply and performance capabilities of the Procurement Participants, should be considered in determining whether to make a single or multiple award. Another consideration is whether to insure that those Procurement Participants awarded in the procurement receive contracts or whether the awarded procurement vehicles are only agreements. To insure that this type of arrangement is deemed to be a contract and not an agreement, a certain minimum volume that will be ordered, that is not nominal, should be guaranteed in each contractor's contract.

F. Sixth Fundamental Element – Type of Possession Interest

While this final Fundamental Element applies only to the County's acquisition of personal property and technology, it is important for Horry County to consider that purchasing the property is not the only acquisition option it has in a procurement. There are four options under this final Element and purchase may not be the most appropriate manner in which to gain possession and use the property. The options under this Fundamental Element are:

1. Ownership – This is the most common and preferred interest that Horry County can acquire in the acquisition of personal property.
2. Renting – Under a rental, Horry County acquires the use of the property but no ownership rights. Horry County should only consider renting personal property when the need for the use of that personal property is limited both in application and duration. Renting should not be used to acquire personal property unless it is clearly in the best interests of Horry County. Prior to conducting a procurement for the rental of any personal property, the written consent of the Chief Procurement Officials is required.
3. Leasing – Leasing is similar to renting in that it enables Horry County to use the personal property, but it also enables Horry County to acquire a

partial or full ownership interest in the property as it pays for the rental use of the property. While leasing may be an appropriate method for Horry County to acquire capital equipment, it should not normally be used to acquire other personal property unless it is clearly in the best interests of Horry County. Prior to conducting a procurement for leasing any personal property, the written consent of the Chief Procurement Officials is required.

4. Licenses – The acquisition of this interest is confined to the acquisition of technology. Before a license for technology may be procured, the County’s Highest Ranking Technology Officer must make a written finding that utilizing a license and the type of license involved are in the County’s best interests.

Subchapter 6-4 - Determination of Contract Type

6-4-1 Final Determination

The procurement team shall make a determination of the type of contract to use, including the inclusion of the appropriate Fundamental Element options. In the event of a disagreement by the team members on any of these issues, the final decisions shall be made by the representatives on the team from the Department of Procurement.

Chapter Seven – Procurement Methods – Priority of Procurement Tiers, Application of Procurement Guiding Principles And General Procurement Considerations

In Chapters Eight through Twelve of this regulation the various procurement methods that Horry County may use to acquire personal property, services, solutions, and improvements to real property to meet its needs are established and the rules that govern their utilization are set forth. In this chapter, Chapter Seven, the Horry County procurement process is introduced with the establishment of the priority for the use and the application of the Procurement Guiding Principles to the procurement methods included within Chapters Eight through Twelve. This chapter also includes the authority for the Chief Procurement Officials to deviate from the procurement methods when the situation justifies such a deviation.

Subchapter 7-1 - General

7-1-1 Purpose of Chapter

The purpose of Chapter Seven is to establish:

- A. The priority for the use of the procurement method Tiers, as set forth in Chapter Two of this regulation; and
- B. The application of the Procurement Guiding Principles in the use of the procurement methods established in each of the procurement Tiers.

7-1-2 Procurement Method Tiers - Priority for Utilization

As set forth in Chapter Two, “General Provisions,” the procurement methods are divided into Tiers. When a Purchasing Agency has a need that must be satisfied by the use of a procurement method, it shall use a method in the lowest Tier possible. For example, if a need can be satisfied by issuing a task or delivery order against a required source of supply, as set forth in Tier Two, the Purchasing Agency shall not use a Tier Three procurement method, such as Small Purchase Procedures, to satisfy the need. Unless otherwise directed by the Chief Procurement Officials, there shall be no priority for use of a particular procurement method that is included within a Tier. For example, a Purchasing Agency that must resort to Tier Three to satisfy a procurement need may use any of the methods included within Tier Three it chooses.

Subchapter 7-2 - Application of Procurement Guiding Principles

7-2-1 Procurement Guiding Principle One – Satisfaction of Horry County’s Need and Prohibition Against Splitting Requirements

If Horry County conducts diligent market research, carefully drafts its specifications according to the guidance provided in Chapter Five of this regulation, and chooses an appropriate type of contract, including the fundamental contract element options, as set forth in Chapter Six of this regulation, Horry County should be in a good position to satisfy the Purchasing Agency’s need. In defining need, a Purchasing Agency shall not split its requirements for the purpose of enabling a procurement or multiple procurements to be conducted within or outside of a specific Horry County Procurement Regulation Tier.

7-2-2 Procurement Guiding Principle Two – Best Price or Best Value Source Selection

Unless the Chief Procurement Officials issue a written determination to the contrary, all Horry County procurements shall base source selection decisions on either Best Price or Best Value.

- A. Best Price – When source selection is based on Best Price, the award of the contract or agreement shall be made to the responsible Procurement Participant that satisfies all of the requirements of the procurement at either the lowest cost or lowest price, as specified in the procurement.
- B. Best Value – When source selection is based on Best Value, the award of the contract or agreement shall be made to the responsible Procurement Participant that satisfies all of the requirements of the procurement and provides the most advantageous offer to Horry County based on an assessment of the evaluation factors specified in the procurement. In all procurements that use Best Value as the source selection process, price or cost, as so specified in the procurement, may or may not be included as an evaluation factor in the source selection decision. In addition to price or cost, examples of other types of factors that might be used for evaluation are:
 - 1. Environmentally-Preferable and Energy-Efficient products, services, and solutions
 - 2. Operational costs
 - 3. Reliability of delivery and ability to meet performance deadlines
 - 4. Warranties, guarantees, and return policies
 - 5. Financial stability
 - 6. Performance capability
 - 7. Quality and effectiveness of the proposed solution and approach
 - 8. Long-term economic factors

9. Additional cost and performance benefits of the proposed solution
- C. Preference for Environmentally-Preferable and Energy-Efficient products, services, and solutions – Horry County has established in Chapter Two of this regulation a preference for acquiring products and services that satisfy this preference. Thus, this preference shall be included as part of the evaluation criteria in all procurements, regardless of the procurement method chosen, whenever possible.

7-2-3 Procurement Guiding Principle Three –Price Reasonableness

Subject to certain exceptions set forth in this section of the regulation, a determination of Price Reasonableness must be made in all procurements awarded in any source selection scheme, other than Best Price. The methods by which to determine price reasonableness are as follows:

- A. Prices or Costs Set by Law or Regulation – When the prices or costs included within a proposal are set by law or regulation of a governmental entity having the requisite jurisdiction and authority to set those prices or costs, then the prices or costs so set by law or regulation are deemed to meet the standard of Price Reasonableness.
- B. Prices or Costs derived by Adequate Price Competition – When a procurement is conducted that requires a finding of Price Reasonableness as a condition to the award of a contract, a finding of Price Reasonableness may be made if at least two offers are received from offerors competing independently and the award is made to the offeror that proposes the lowest price or the award is made to the offeror that does not propose the lowest price but the difference between the awardee’s price and the lowest price proposed for the procurement can be reasonably explained and justified based on other factors. “Other factors” should normally consist of the evaluation factors included within the procurement. If only one offer is received, a Price Reasonableness determination may still be made if:
 1. The Director of Procurement has no reason to believe that the price or cost proposed is not reasonable; and
 2. It was anticipated that more than one offer would be received.
- C. Procurement Participant’s History of Sales at the Proposed Prices or Costs – The potentially successful Procurement Participant may be asked to provide data on either the prior sales it has made of the product, service, or project *at* the prices or costs included in the proposal or prior sales it has made of the product, service, or project *based on* the prices or costs included in the proposal. In order to justify a finding of Price Reasonableness using the Procurement Participant’s History of Sales method, a substantial number of prior sales must have been made at the same or based on the same prices or

costs included within the proposal to the Procurement Participant's public and/or private sector customers.

- D. Horry County Experience with Prior Acquisitions – Horry County may use the prices or costs for which it has awarded past contracts or agreements as the basis for a determination of Price Reasonableness so long as:
1. The time between the prior awarded contracts or agreements is not so great as to render such price comparisons unreasonable; and
 2. The contract or agreements being used for comparison to the offer are sufficiently similar in contract or agreement type, scope of work, and obligations of the parties that a comparison is meaningful and any differences in the prices and costs between the offer and the comparison contracts or agreements can be reasonably justified based on the similarities in the contract or agreement type, scope of work, and the obligations of the parties.
- E. Market Research – In order to make a finding of Price Reasonableness, Horry County may use market research methods, as set forth in Chapter Five of this regulation, “Preparing For An Acquisition,” to determine the prices or costs that are currently being paid in the public or private sector markets for the same or similar goods or services that are the subject of the procurement. It then may base a finding of Price Reasonableness on this market research information.
- F. Waiver - Based on the best interests of Horry County, the Chief Procurement Officials may issue a written waiver of the requirement for a determination of Price Reasonableness in a particular procurement.
- G. Cost Information – If all of the previously listed methods of determining Price Reasonableness cannot be used, or, when used cannot justify a finding of Price Reasonableness, Horry County may require that the potentially successful Procurement Participant submit cost information. In the event that it is necessary to use this method for determining Price Reasonableness, Horry County shall follow the process and require the potentially successful Procurement Participant to submit the cost information as set forth in Part 15 of the Federal Acquisition Regulation.
- H. The particular technique or techniques for determining Price Reasonableness when utilizing a specific procurement method are set forth in the regulatory structure that applies to each of the procurement methods established in this regulation.
- I. Exception – The preceding Price Reasonableness methods do not apply in any acquisition in which the total value of the acquisition is \$5,000.00 or less,

unless the Horry County Official conducting the procurement reasonably believes that the price Horry County is to pay in the acquisition is unreasonable. Should such a belief arise during a transaction, the Horry County Official shall use any of the Price Reasonableness techniques to determine the Price Reasonableness status of the price that Horry County is to pay in the acquisition. Further, the Horry County Official involved in such an acquisition shall follow the documentation requirements set forth in the subsequent subsection of this regulation entitled, “Documentation.”

- J. Documentation – In all procurements in which a finding of Price Reasonableness is required, the procurement file shall include a written finding of Price Reasonableness and a written justification for that finding. The form, nature, content, and extent of the written justification shall be determined by the Director of Procurement.

7-2-4 Procurement Guiding Principle Four – Maximum Practicable Competition

Except for procurements in Tier Five and certain procurements under Small Purchase Procedures, purchasing agencies shall ensure that the Horry County Procurement Guiding Principle Four, Maximum Practicable Competition, is observed in each procurement method used. The particular requirements for Maximum Practicable Competition are addressed in the regulation section that is applicable to each of the procurement methods.

Subchapter 7-3 - Other Procurement Considerations

7-3-1 Restrictions on Subcontracting

Horry County may in any particular procurement restrict the allowable amount of subcontracting of the tasks involved in the performance of the contract by the contractor.

7-3-2 Request for Qualifications

A Request for Qualifications (“RFQ”) is a pre-solicitation source selection method that can be used in conjunction with any of the procurement methods in any Tier to pre-qualify the bidders/offerors that will be eligible to compete for a contract in the procurement.

- A. General – Before issuing the solicitation for quotes, offers, or bids, Horry County may issue a RFQ requiring Procurement Participants that are interested in competing for the contract to respond. The RFQ shall contain:
 - 1. A minimum description of the scope of the work involved in the procurement; and

2. The time and date that responses to the RFQ are due, and the location at which the RFQ responses are to be received; and
 3. A request for information on the Procurement Participant's qualifications, experience, and ability to meet the description of the scope of the work involved in the procurement.
- B. Dissemination of RFQ and Receipt of Responses – The method of making the public aware of the RFQ shall meet the requirements set forth in the provisions in this regulation addressing Procurement Guiding Principle Four, Maximum Practicable Competition that is applicable to the procurement method of which the use of the RFQ is a part. For example, if the RFQ is issued in connection with Sealed Bidding procurement, then the requirements for notice of a Sealed Bidding opportunity shall apply to the dissemination of the RFQ. After the receipt of responses to a RFQ:
1. Horry County may cancel the procurement; or
 2. If more than one response was received to the RFQ, Horry County may limit the competition in the procurement to those Procurement Participants that responded to the RFQ and that in the opinion of the Horry County procurement team have the requisite qualifications to satisfy the requirements involved in the procurement.
 3. If there is only one response to the RFQ that, in the opinion of the Horry County procurement team, has the requisite qualifications to satisfy the requirements involved in the procurement, Horry County may proceed with a sole source procurement under Tier Five.
 4. Horry County may choose to ignore the results of the RFQ and shall conduct the procurement without regard to the responses to the RFQ.

7-3-3 Clarifications

Whether based on a request received from a quoter, bidder, or offeror or based on its own determination, Horry County may, at its option, conduct communications with quoters, offerors, or bidders in any procurement to clarify to the quoters, bidders, or offerors the requirements that must be met in a procurement and/or to insure that those quoters, bidders, and offerors are:

- A. Responsible; and
- B. Capable of meeting the requirements of the procurement

Clarification communications may be conducted on a verbal or written basis but must occur prior to the award of a contract or agreement. The conduct of clarification communications is the responsibility of the Department of Procurement, which must insure that no competitive advantage is gained by any quoter, bidder, or offeror as a result of the clarification communications. A written record of the clarification communications must be made and

included in the contract file for any procurement that results in the award of a contract or agreement that is expected to exceed \$50,000.00.

7-3-4 Audits

Horry County reserves the right to audit the books and records of its quoters, contractors, bidders, offerors, and its own agencies pursuant to the procedures set forth in Chapter Thirteen of this regulation. This right includes audits prior to or after the award of a contract or agreement.

7-3-5 Deviations

The procurement methods set forth in Tiers Two through Five should enable Horry County to procure all of its requirements for goods and services. However, if a situation should occur in which all of the methods set forth in this regulation are deemed inadequate to satisfy a need for goods or services, Horry County may, upon a written determination by the Chief Procurement Officials, institute another procurement method not included in this regulation to satisfy the County's need.

Chapter Eight – Acquisition Methods – Tier One–Surplus Property

8-1-1 General

Of the Five Tiers of acquisition methods available to Horry County Tier One-Surplus Property is the only acquisition method that does not require a procurement action. Surplus Property involves the acquisition of personal property by an Horry County Agency from another Horry County Agency.

8-1-2 Tier One Acquisition Method

- A. General – Only personal property may be acquired using the Tier One-Surplus Property acquisition method. When a Purchasing Agency has a need that the acquisition of personal property will satisfy, it shall consider using the procedures in this Tier, “Tier One-Surplus Property,” as the method of acquisition before it considers the use of any of the procurement methods that are contained in Tiers Two through Five.

- B. Tier One Acquisition Process
 - 1. With the exception of technology property, when an Horry County Agency no longer has a use for personal property, it shall contact the Director of Procurement and inform the Director of Procurement that it has Surplus Property that is available for transfer or other disposition, thereby effectively transferring the property to the Director of Procurement.
 - 2. When the Surplus Property has been transferred to the Director of Procurement, the Director of Procurement shall maintain a list of Surplus Property that shall include a description of the property, the amount of the property, the location of the property, and the name of and contact information of the contact person. The Director of Procurement shall disseminate this list to all Horry County Agencies.
 - 3. Personal Property that is included on the Surplus Property List shall remain on the list and available to all of the Agencies until such time that the Director of Procurement disposes of the property.
 - 4. If an Agency determines that the Surplus Property that appears on the list will satisfy a need that it has, it shall arrange with the Director of Procurement for the property to be delivered to that Agency.

8-1-3 Technology Property Exception

When the property that an Agency determines is no longer useful is technology property, it shall contact the Highest Ranking Technology Official to determine if that property should be declared to be Surplus Property. It will be the Technology Official’s obligation to determine if that technology

property should be declared Surplus and/or Obsolete Property and what should be done with that technology property. For example, the Technology Official may determine that the property should be declared Surplus Property and have its disposal governed by procedures administered by the Director of Procurement. Or, the Technology Official may determine that the best disposition of that technology property is its use as trade-in property in the acquisition of other, new technology property. The ultimate use and/or disposition of technology property that is no longer useful to a Possession Agency are within the discretion of the Highest Ranking Technology Official.

8-1-4 Tier One Compliance

The Director of Procurement is authorized to review the purchases made by Agencies to determine if the needs that the Agencies met by using acquisition methods, other than the Tier One – Surplus Property acquisition method, were necessary. If the Director of Procurement determines that an Agency has had needs that could have been satisfied by resort to the Tier One-Surplus Property acquisition method but it used other methods to satisfy its needs, the Director of Procurement may take any appropriate remedial action, including the revocation of the Agency's Delegation(s) of Procurement Authority.

Chapter Nine – Acquisition Methods – Tier Two

9-1-1 Overview

In this chapter of the regulation the first of the simplified procurement methods that Horry County may use to satisfy its needs when a procurement method is to be used is addressed. As has been stated throughout this regulation, Horry County Purchasing Agencies shall not use a procurement method that is located within a higher Tier when a procurement method that is located within a lower Tier will satisfy the County's need.

9-1-2 Tier Two Procurement Methods – Required Sources of Supply

The Tier Two procurement methods consist only of task/delivery orders against required sources of supply. These required sources of supply are:

- A. Horry County awarded Requirements contracts
- B. Any other contract so designated as a required source of supply by the Director of Procurement, as long as that contract was awarded on a basis consistent with the Horry County Procurement Guiding Principles.

9-1-3 Contracts eligible for inclusion in Tier Two

In order to be included within Tier Two, a Requirements contract, or a contract designated by the Director of Procurement as a Tier Two required source of supply, must comply with the requirements in Chapter Seven of this regulation:

- A. Be awarded on a Best Price or Best Value source selection basis; and
- B. Be awarded with a finding of Price Reasonableness, if Best Value is used as the basis of source selection; and
- C. Be awarded by satisfying the applicable standard of Maximum Practicable Competition.

9-1-4 Tier Two Orders

- A. Task/Delivery orders may be issued against any Tier Two contract that satisfies the need of the Purchasing Agency. In the event that two or more contracts within Tier Two satisfy the need of the Purchasing Agency, the Purchasing Agency shall evaluate those eligible sources on either a Best Price

or Best Value basis, depending on the circumstances involved in the procurement.

- B. Because the contracts against which the orders will be issued were awarded based on the satisfaction of the standards applicable to the Procurement Guiding Principles of Price Reasonableness and Maximum Practicable Competition, Task/Delivery orders issued against any Tier Two contract do not need to satisfy any standards applicable to Price Reasonableness or Maximum Practicable Competition.

Chapter Ten – Acquisition Methods – Tier Three

10-1-1 Overview

In this chapter of the regulation the final methods of the simplified procurement procedures that Horry County may use to satisfy its needs when a procurement method is necessary are addressed. If any source included within Tier Two is unable to satisfy a Purchasing Agency's need, it must then consider the sources available in Tier Three. Once a Purchasing Agency determines that its needs can be satisfied by resort to a Tier Three method, the Purchasing Agency may use any method in Tier Three to satisfy its need. The sources available in Tier Three are:

- A. Small Purchase Procedures
- B. Non-Required Sources of Supply
- C. Purchase Card

Subchapter 10-2 – Small Purchase Procedures

10-2-1 General

In a transaction using Small Purchase Procedures the Horry County Purchasing Agency in conjunction with the Director of Procurement issues a purchase order to the Procurement Participant that satisfies the Purchasing Agency's need and represents either the Best Price or Best Value alternative. Once the Purchase Order is issued, the Procurement Participant to which it is issued has the option of accepting or rejecting the Purchase Order. If the Procurement Participant chooses to accept the Purchase Order, it does so in the manner set forth in the terms of the purchase order which is generally through performance. At that point a contract is formed. If the Procurement Participant rejects the Purchase Order, then Horry County continues with the procurement until it finds a Procurement Participant that will accept the Purchase Order or it uses another procurement method to satisfy the need.

10-2-2 Transaction Amount Limitations

Small Purchase Procedures can only be used in transactions that do not exceed certain dollar amounts. These dollar amounts are limitations on the size of the entire amount of the Purchase Order are as follows:

- A. \$25,000.00 for the procurement of all products and services other than professional services;
- B. \$50,000.00 for professional services.

10-2-3 Describing the Acquisition Need

The description of the Purchasing Agency's need in a transaction involving Small Purchase Procedures should be as simplified as possible while still providing the involved Procurement Participants with a complete and accurate depiction of what type of product, service, or solution will satisfy the need. This is generally the type of procurement method in which to use brand name or equal specifications for the acquisition of products and performance-based specifications for the acquisition of services, as set forth in Chapter Five of this regulation. It is, however, within the discretion of the Purchasing Agency to determine the appropriate method to describe the need.

10-2-4 Source Selection Basis

While either Best Value or Best Price may be used as the basis for source selection, Small Purchase Procedures are an appropriate procurement method in which to use Best Price as the source selection basis. If the method chosen to describe the Purchasing Agency's need is Brand name or equal, only Best Price may be used as the source selection basis.

10-2-5 Small Purchase Transactions Not Exceeding \$5,000.00

In Small Purchase Procedures transactions not exceeding \$5,000.00, Horry County does not need to determine Price Reasonableness or satisfy the standard of Maximum Practicable Competition unless Horry County has a reason to believe that the proposed price of the Procurement Participant to which Horry County intends to award a contract using Small Purchase Procedures is unreasonable. In the event that Horry County has a reason to believe that the proposed price is unreasonable, it shall proceed to engage in the procedures set forth in this section of the regulation governing Price Reasonableness determinations and the standard of Maximum Practicable Competition in Small Purchase Transactions Exceeding \$5,000.00.

10-2-6 Small Purchase Transactions Exceeding \$5,000.00

In Small Purchase transactions exceeding \$5,000.00, Horry County needs to determine Price Reasonableness and satisfy the standard of Maximum Practicable Competition. These two requirements may be satisfied by using the following procedure.

- A. General – These two requirements may be satisfied by the receipt and comparison of quotations from Procurement Participants. Horry County is to solicit and receive a reasonable number of quotations as dictated by the circumstances involved in the procurement. Horry County may use QRs to solicit quotations.
- B. Maximum Practicable Competition - The standard of Maximum Practicable Competition is generally satisfied through the County’s receipt of three (3) written quotations from independent Procurement Participants that have submitted the quotations for products, services, or projects that satisfy the County’s need in the procurement.
- C. Price Reasonableness - Price Reasonableness is satisfied when the price of the quotation chosen for award is deemed reasonable in comparison with the other quotations. Generally, the number of quotations required to satisfy the standard of Price Reasonableness is three (3) written quotations.
- D. Exigent Circumstances - The actual number and nature of the quotations required to satisfy the two requirements of Maximum Practicable Competition and Price Reasonableness may be less, if exigent circumstances are present. For example, if there is not adequate time in a procurement to solicit and receive three (3) written quotations, it may be that less than three (3) written quotations and/or oral quotations will satisfy the requirements.

10-2-7 Agreements

- A. General – Agreements are not contracts. Agreements do, however, govern the performance of a contract when a Purchase Order is issued referencing the agreement that is then accepted by the Procurement Participant. Agreements are appropriate procurement vehicles to establish with Procurement Participants with which the County has determined that it will do a significant amount business in the future, but it does not know when or how much business it will do. In establishing an agreement with a Procurement Participant that meets this profile, the County obligates no funds but establishes the fundamental terms and conditions now that will govern that future business, instead of waiting until acquisition needs arise to establish the terms and conditions. Agreements may only be formed when using Small Purchase Procedures and are subject to all of the limitations and all of the rules applicable to the use of Small Purchase Procedures. For example, the Small Purchase Procedure dollar limitations on orders are applicable to orders against agreements.
- B. An agreement shall contain the following:
 - 1. The terms and clauses that shall apply to any purchase orders issued against the agreement; and

2. A description, as specific as possible, of the personal property and/or services that are subject to acquisition under the agreement; and
 3. Prices for the personal property and/or services that are included within the agreement or a method for determining the prices; and
 4. The specific method for the acceptance of purchase orders; and
 5. A duration clause setting forth the applicable term of the agreement.
- C. An agreement shall not state or imply that funds have been obligated for purchase orders to be issued against the agreement or state or imply a promise that any purchase orders will be issued against the agreement.

Subchapter 10-3 - Non-Required Sources of Supply- General

10-3-1 General

Non-Required Sources of Supply consist of Task/Delivery orders issued against:

- A. Cooperative Purchasing Contracts; or
- B. IDIQ Contracts

10-3-2 Transaction Options

In order to qualify for a Tier Three, Non-Required Source of Supply transaction, one of the above-referred procurement contracts must already be available for the transaction. If one is available and the Purchasing Agency's need will be satisfied by issuing a order against that contract, the Purchasing Agency may or may not be obligated to use that option to satisfy its need, as follows:

- A. If resort to Tier One (Surplus Property) will satisfy the need, then the Purchasing Agency must use Tier One.
- B. If Tier One is eliminated and a procurement method under Tier Two is available that will satisfy the need, then the Purchasing Agency must use the procurement method available under Tier Two.
- C. If Tier Two is eliminated and there is at least one procurement method available under Tier Three that will satisfy the need, then the Purchasing Agency must use one of the procurement methods under Tier Three that will satisfy the need.

10-3-3 Tier Three, Non-Required Source of Supply Transactions Not Exceeding \$5,000.00

In Tier Three, Non-Required Source of Supply transactions not exceeding \$5,000.00, Horry County does not need to determine Price Reasonableness or satisfy the standard of Maximum Practicable Competition unless Horry County has a reason to believe that the proposed price of the Procurement Participant to which Horry County intends to issue an order is unreasonable. In the event that Horry County has a reason to believe that the proposed price is unreasonable, it shall proceed to engage in the procedures set forth in the next section of the regulation governing Price Reasonableness determinations and the standard of Maximum Practicable Competition in Tier Three, Non-Required Source of Supply transactions Exceeding \$5,000.00.

10-3-4 Tier Three, Non-Required Source of Supply Transactions Exceeding \$5,000

In Tier Three, Non-Required Source of Supply Transactions Exceeding \$5,000, Horry County needs to determine Price Reasonableness and satisfy the standard of Maximum Practicable Competition. These two requirements may be satisfied by using the following procedures:

- A. When Horry County seeks to satisfy a procurement need by issuing a delivery/task order against a Tier Three contract which, when awarded, satisfied the standards of Price Reasonableness and Maximum Practicable Competition, Horry County may issue an order against such a contract without having the order subject to Price Reasonableness or Maximum Practicable Competition standards.
- B. When Horry County seeks to satisfy a procurement need by issuing a delivery/task order against a Tier Three contract which, when awarded, did not satisfy the standards of Price Reasonableness and Maximum Practicable Competition, Horry County may not issue an order against such a contract without first satisfying Price Reasonableness and Maximum Practicable Competition standards as those standards apply to the order.
 - 1. In the satisfaction of the Price Reasonableness standard, Horry County may use any of the Price Reasonableness methods set forth in Chapter Seven of this regulation.
 - 2. In the satisfaction of Maximum Practicable Competition, Horry County may solicit and compare three (3) written quotations from sources available under Tier Three that can satisfy the Purchasing Agency's need. The actual number and nature of the quotations required to satisfy the requirement of Maximum Practicable Competition may be less, if exigent circumstances are present. Additionally, Horry County may use the method of publishing the opportunity in a sufficient time that is usually applicable to Tier Four procurements, as set forth in Chapter Eleven, to

satisfy the requirement of Maximum Practicable Competition in a procurement involving Tier Three Orders.

Subchapter 10-4 - Creation and Use of Horry County Cooperative Purchasing Contracts

10-4-1 Authorization

The County may sponsor, create, conduct, administer, or use Cooperative Purchasing contracts for the procurement of any supplies, services, or improvements to real property with one or more Public Procurement Units in accordance with an agreement entered into between the participants. Such Cooperative Purchasing contracts may include, but are not limited to, joint or multi-party contracts between Public Procurement Units and open-ended Public Procurement Unit contracts that are made available to other Public Procurement Units.

10-4-2 Creation and Use Conditions

Any IDIQ Cooperative Purchasing contracts created by Horry County and available for use by any Public Procurement Units shall provide that:

- A. Horry the County shall create the Cooperative Purchasing contracts in compliance with all Horry County procurement requirements;
- B. When a Public Procurement Unit utilizes an Horry County Cooperative Purchasing contract to acquire any supplies, services, or improvements to real property, it shall do so by placing orders against the appropriate Horry County contracts in accordance with the terms and conditions of such contracts;
- C. Payment for the supplies, services, or improvements to real property ordered by the Public Procurement Unit under Horry County Cooperative Purchasing contracts and any fees for service shall be the exclusive obligation of such ordering jurisdiction;
- D. Inspection and acceptance of supplies, services, and improvements to real property ordered by the Public Procurement Unit under Horry County Cooperative Purchasing contracts shall be the exclusive obligation of such ordering jurisdiction;
- E. Horry County may terminate the Cooperative Purchasing Contract, terminate the right to use the Cooperative Purchasing Contract, or terminate an order thereunder for failure of the Public Procurement Unit to comply with the terms of the contract or pay a contractor to which Horry County has awarded a Cooperative Purchasing contract;

- F. The exercise of any warranty rights attaching to supplies, services, or improvements to real property received by the Public Procurement Unit under any Horry County Cooperative Purchasing contracts shall be the exclusive obligation of such jurisdiction; and,
- G. The failure of a contractor to supply a Public Procurement Unit with the supplies, services, or improvements to real property it has ordered under an Horry County Cooperative contract or in any way to comply with an Horry County Cooperative Purchasing contract will not impose an obligation on Horry County to secure performance from the contractor or in any way assist in supplying a remedy for the Public Procurement Unit.

10-4-3 Horry County's Use of Other Public Procurement Units' Cooperative Purchasing Contracts

Horry County may use other Public Procurement Units' Cooperative Purchasing Contracts if:

- A. Horry County complies with all of the terms and conditions applicable to its use of the contracts, as contained in those contracts; and
- B. Horry County's use of the contracts does not contravene any of the County's applicable ordinances or procurement policies and regulations.

Subchapter 10-5 – Purchase Card

10-5-1 Purchase Card Use

The Horry County Purchase Card may be used to purchase goods and services by Horry County officials that hold such cards pursuant to the procedures and limitations established by the Director of Procurement.

Chapter Eleven – Acquisition Methods – Tier Four

Subchapter 11-1 - General

11-1-1 Overview

Tier Four procurement methods, which include Negotiated Procurements and Sealed Bidding, are full procurement methods that are used for several purposes:

- A. These methods are used in Tier Four procurements to establish definite quantity contracts for the direct acquisition of personal property, services, and improvements to real property; and
- B. These methods are used to establish indefinite quantity contracts that are included within Tiers Two and Three and against which delivery and task orders are issued for goods, services, and improvements to real property.

11-1-2 Method Preferences and Guidance as to Use

- A. Method Preference – When it is necessary to use a Tier Four procurement method, either of the two methods, Sealed Bidding or Negotiated Procurements, may be used with no preference for either method.
- B. When to Use Sealed Bidding – Sealed Bidding should be used when an Horry County need cannot be satisfied by resort to a Tier One acquisition or by a procurement method included within Tiers Two and Three and
 - 1. The need can be satisfied on the basis of minimal satisfaction of objective evaluation criteria and the award will be made to the lowest priced bidder that satisfies the objective evaluation criteria; and
 - 2. It is unnecessary to have discussions with Procurement Participants responding to the procurement opportunity.
- C. When to Use a Negotiated Procurement– A Negotiated Procurement should be used when an Horry County need cannot be satisfied by Tier One or by a procurement method included within Tiers Two and Three and
 - 1. The need can only be satisfied through the subjective evaluation and ranking of the offers based on the performance requirements; and
 - 2. It may be necessary to have discussions with Procurement Participants responding to the procurement opportunity.

Subchapter 11-2 Sealed Bidding

11-2-1 General

Sealed Bidding is a procurement method that involves Invitation For Bids (“IFBs”) to solicit responses from Procurement Participants that when received are publicly opened and the contract award is made to the lowest priced bidder that meets the award criteria set forth in the IFB.

11-2-2 Bid Documents

The documents involved in responding to a Sealed Bidding procurement opportunity include:

- A. Instructions to Procurement Participants on the completion and inclusion in a bid of the required bid documents, the place for the submission of bids, and the time by when bids must be submitted in order to be considered for contract award; and
- B. The specifications that bids must meet in order to be considered for contract award; and
- C. A statement as to the method of contract award which shall be confined to the lowest priced bidder that meets the specifications and any other criteria required to be an Horry County contractor (e.g., responsibility); and
- D. Solicitation provisions and contract terms and conditions; and
- E. A statement that discussions between Horry County and interested Procurement Participants concerning any matter involving a Procurement Participant’s individual bid will not be allowed; and
- F. The identification of the Horry County personnel that are designated as the contact points for general questions concerning the conduct, nature, or content of the procurement processes or its documents; and
- G. The identification of any documents that are incorporated by reference into the procurement and the method and manner in which a Procurement Participant may obtain copies of those documents incorporated by reference.

11-2-3 Application of Procurement Guiding Principles to Sealed Bidding

- A. Guiding Principle One – Satisfaction of Horry County’s Need - The need must reflect the key factors involved in contract performance and be expressed in a manner capable of evaluation on the basis of meeting objective criteria.

- B. Guiding Principle Two – Best Price or Best Value – Sealed Bidding may only be conducted on the basis of Best Price source selection.
- C. Guiding Principle Three – Price Reasonableness – Sealed Bidding does not require a determination of Price Reasonableness as it is based on the Best Price source selection method.
- D. Guiding Principle Four – Maximum Practicable Competition – In Sealed Bidding the standard of Maximum Practicable Competition is satisfied when the information on the opportunity to compete for a contract has been published in sufficient time to enable interested and diligent Procurement Participants to determine if it is appropriate for them to participate, and, if so, to formulate and submit a meaningful response to the opportunity.
 - 1. “Published” – This term is satisfied when a notification of an Horry County Sealed Bidding opportunity appears publicly in a location and manner designed to inform interested and diligent Procurement Participants of its existence and to provide the information required to enable the Procurement Participants to respond to the opportunity in a meaningful and effective manner. This notification may appear in the printed media, such as a newspaper of general circulation, or it may be conveyed electronically, such as being posted on a website routinely known for containing information on procurement opportunities, or it may be transmitted via email to the email addresses of Procurement Participants that have expressed a desire to receive notices of its type. The notice will include as a minimum:
 - a. A description of the type of product, service, or project that is the subject of the procurement
 - b. A description of what will be required for a response to the opportunity in order to be considered for a contract award and where and how to obtain any documents, instructions, or other information that are required for such a response
 - c. The date and time when responses are due
 - d. The name, telephone number, and email address of the Horry County Official that Procurement Participants may contact with questions concerning the opportunity
 - 2. “Sufficient Time” – This term is satisfied when the published notification has been provided in enough time prior to the required response date to enable a Procurement Participant to make a reasoned decision as to whether to compete for the opportunity and, if competing, to formulate a meaningful and effective response, regardless of the ultimate success of any such response. While the circumstances involved in each particular procurement will determine what constitutes a “sufficient time,” a time of not less than fourteen (14) calendar days following the first date of the

appearance of the published notification of the procurement opportunity shall be deemed minimally to meet the “published in sufficient time” standard. When the circumstances involved in a procurement opportunity are lengthy and complicated, it is likely that the time for a Procurement Participant to submit a meaningful and effective response will exceed the fourteen-calendar-day threshold. In those instances the “sufficient time” standard will only be satisfied with a longer response time consistent with the circumstances involved in the submission of a meaningful response to the procurement opportunity.

3. The number of responses received by Horry County in a procurement is not determinative of whether the Procurement Guiding Principle of Maximum Practicable Competition has been satisfied; it is Horry County’s adherence to the Maximum Practicable Competition process that satisfies this Procurement Guiding Principle.

11-2-4 Bidder Submissions

In order to be considered for a contract award, a bidder participating in a Sealed Bidding procurement opportunity must submit:

- A. A completed IFB including the bid prices for all items for which the bidder is submitting a bid, the signature of a person authorized by the bidder to contractually bind the bidder, and the date of the signature of that authorized person; and
- B. Any other documents that are designated in the IFB for inclusion in the bidder’s bid submission. Such documents may include, but are not limited to, information on the nature of the bidder’s procurement responsibility, descriptive literature, or even bid samples; and
- C. The bidder may choose to submit more than one bid. If the bidder chooses to submit more than one bid in response to the Sealed Bidding opportunity, the bids must be designated as “alternative bid” or “alternative bids” to enable Horry County to recognize the multiple bids as separate, stand-alone, bids.

11-2-5 Pre-Bid Conferences

Pre-bid conferences may be conducted to explain the procurement requirements. They shall be announced to all prospective bidders known to have received an Invitation for Bids. A conference, if held, should be timed to occur long enough after the Invitation for Bids has been issued to allow Procurement Participants to become familiar with it, but sufficiently before bid opening to allow consideration of the conference results in the preparation of bids. Nothing stated at the pre-bid conference shall change the Invitation for Bids unless a change is made by written amendment. A summary of the conference shall be made available to all the prospective bidders.

11-2-6 Amendments to Invitations for Bids

- A. Form - Amendments to Invitations for Bids shall be identified as such and shall require that the bidder acknowledge receipt of all amendments issued when the bidder submits its bid. An amendment shall reference the portions of the Invitation for Bids it amends and shall explain the nature of the amendment and the action required of a bidder to comply with the amendment.
- B. Notice – The existence of and the actual Amendments shall be made available to all Procurement Participants specifically in a manner designed to ensure that all diligent Procurement Participants and the general public will have notice of the existence of the Amendments in the same manner that notification of the Sealed Bidding procurement opportunity was originally made.
- C. Timeliness - Amendments shall be available within a reasonable time to allow Procurement Participants to consider them in preparing their bids. If the time and date set for receipt of bids will not permit the consideration of the amendments in the preparation of bids, then the time for the receipt of bids shall be increased in the Amendment.

11-2-7 Pre-Opening Modification or Withdrawal of Bids

Bids may be modified or withdrawn by written notice received in the office designated in the Invitation for Bids prior to the time and date set for bid opening. If a bid is withdrawn in accordance with this section, the bid security, if any, shall be returned to the bidder.

11-2-8 Late Bids, Late Withdrawals, and Late Modifications

Any bid received after the time and date set for receipt of bids is late. Any withdrawal or modification of a bid received after the time and date set for opening of bids at the place designated for bid opening is late.

- A. Treatment- No bid, modification, or withdrawal of a bid will be considered unless received before the time and date set for the opening of bids unless the reason for the untimeliness is directly attributable to the action or inaction of Horry County personnel directly involved in the procurement. When the untimeliness can be causally connected to the action or inaction of Horry County personnel directly involved in the procurement, the late bid, late modification, or late withdrawal may be considered or withdrawn, as appropriate.

- B. Notice- Bidders submitting late bids that will not be considered for award shall be so notified as soon as practicable.

11-2-9 Receipt, Opening, and Recording of Timely-Submitted Bids

- A. Receipt- Upon its receipt each bid and modification shall be time-stamped but not opened and shall be stored in a secure place until the time and date set for bid opening.
- B. Opening and Recording - Bids and modifications shall be opened publicly, in the presence of one or more witnesses, at the time, date, and place designated in the Invitation for Bids. The name of each bidder, the bid price, and such other information as is deemed appropriate by the Director of Procurement shall be read aloud or otherwise made available. Such information also shall be recorded in a bid abstract.
- C. Public Inspection of Bids - The opened bids shall be available for public inspection except to the extent that the bidder designates information to be Proprietary Data or the bid contains Protected Procurement Information. When such information is Proprietary Data or Protected Procurement Information, either it shall be redacted or separated from the bid in order to facilitate public inspection of the non-confidential portion of the bid. Price, identification of the items offered, and the proposed contract terms, if any, shall be publicly available at the time of bid opening regardless of any designation to the contrary. The regulatory coverage of the disclosure and protection from disclosure of Protected Procurement Information and Proprietary Data is contained in Chapter Four of this regulation in the subsection designated as “Procurement Integrity.”

11-2-10 Mistakes in Bids

Correction or withdrawal of a bid because of an inadvertent, non-judgmental mistake in the bid requires careful consideration to protect the integrity of the Sealed Bidding process and to assure fairness. Depending on when the mistake is identified and the type of mistake made, a bid may or may not be corrected as further set forth in this section.

- A. Mistakes Discovered Before Opening - A bidder may correct mistakes discovered before the time and date set for bid opening by withdrawing or correcting the bid.
- B. When Horry County Discovers a Mistake Before Bid Opening - When Horry County is informed, prior to the bid opening, that a mistake has been made in a bid, the County shall bring the issue of the mistake to the bidder’s attention and request that the bidder confirm the information included in the bid that is alleged to be erroneous. If the bidder confirms that a mistake has been made,

the bidder may correct or withdraw the bid before the bid opening. If the bidder determines that a mistake has not been made, then the bid stands as submitted.

- C. Mistakes Discovered After Opening but Before Award- This subsection sets forth procedures to be applied when mistakes in bids are discovered after the time and date set for bid opening but before award.
1. Minor Informalities. Minor informalities are matters of form rather than substance evident from the bid document, or insignificant mistakes that can be waived or corrected without prejudice to other bidders: that is, the effect on price, quantity, quality, delivery, or contractual conditions is negligible. The Director of Procurement may waive such informalities or allow the bidder to correct them depending on which is in the best interests of the County. Examples include the failure of a bidder to:
 - a. Return the number of signed bids required by the Invitation for Bids
 - b. Sign the bid, but only if the unsigned bid is accompanied by other material indicating the bidder's intent to be bound
 - c. Acknowledge the receipt of an amendment to the Invitation for Bids, but only if it is clear from the bid that the bidder received the amendment and intended to be bound by its terms
 2. Mistakes Where Intended Correct Bid is Evident. If the mistake and the intended correct bid are clearly evident on the face of the bid document, the bid shall be corrected to the intended correct bid and may not be withdrawn. Examples of mistakes that may be clearly evident on the face of the bid document are typographical errors, errors in extending unit prices, transposition errors, and arithmetical errors.
 3. Mistakes Where Intended Correct Bid is Not Evident. A bidder may be permitted to withdraw a low bid if:
 - a. A mistake is clearly evident on the face of the bid document but the intended correction is not similarly evident; or
 - b. The bidder submits proof that clearly and convincingly demonstrates that a mistake was made.
- D. Mistakes Discovered After Award - Mistakes shall not be corrected after award of the contract except where the Director of Procurement makes a written determination that it would be unconscionable not to allow the mistake to be corrected.

11-2-11 Bid Evaluation and Award

The contract is to be awarded to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the Invitation for Bids. The Invitation for Bids shall set forth the requirements and criteria which will be used to determine the lowest bidder. No bid shall be evaluated for any requirement or criteria that are not disclosed in the Invitation for Bids.

- A. Product Acceptability - The Invitation for Bids shall set forth any evaluation criterion to be used in determining acceptability of contract deliverables. It may require the submission of bid samples, descriptive literature, technical data, or other material. It may also provide for inspection, testing, or any other type of examination prior to contract award.
- B. Objective Evaluation - The acceptability evaluation is not conducted for the purpose of determining whether one bidder's item is superior to another but only to determine that a bidder's offering is acceptable as set forth in the Invitation for Bids. Any bidder's offering which does not meet the acceptability requirements shall be rejected as non-responsive.
- C. Determination of Lowest Bidder – Following the determination of product acceptability, bids will be evaluated to determine which bidder offers the lowest cost or price to Horry County in accordance with the evaluation criteria set forth in the Invitation for Bids. Only objectively measurable criteria which are set forth in the Invitation for Bids shall be applied in determining the lowest bidder. Examples of such criteria include, but are not limited to, transportation cost, and ownership or life cycle cost formulas. Evaluation factors need not be precise predictors of actual future costs, but to the extent possible such evaluation factors shall be reasonable estimates based upon information the County has available concerning future use.
- D. Award Restrictions - Nothing in this section shall be deemed to permit a contract award to a bidder submitting a higher quality item than that designated in the Invitation for Bids if such bidder is not also the lowest bidder.
- E. Discussions - Except for communications under Clarifications, as set forth in Chapter Seven of this regulation, discussions of any kind, including the negotiation of award criteria and price, are strictly prohibited in Sealed Bidding.

11-2-12 Low Tie Bids

Low tie bids are low responsive bids from responsible bidders that are identical in price and which meet all the requirements and criteria set forth for contract award in the Invitation for Bids. When such a situation occurs, award

may be made by drawing lots or in any other manner deemed fair and equitable by the Director of Procurement.

11-2-13 Publicizing Awards

Written notice of award shall be sent to the successful bidder. Notice of award shall be made available to the public.

Subchapter 11-3 – Negotiated Procurements

11-3-1 General

A Negotiated Procurement is a procurement method that involves Request for Proposals (“RFPs”) to solicit responses from Procurement Participants that, when received, are evaluated against the award criteria. Discussions, including negotiations, are then held with Procurement Participants that are included within the competitive range. When discussions have concluded, Best and Final Offers are requested of and received from those within the competitive range. Finally, the contract award is made to the offeror that provides the most advantageous offer to Horry County, based on the award criteria set forth in the RFP.

11-3-2 Offer Documents

The documents involved in responding to a Negotiated Procurement opportunity include:

- A. Instructions to Procurement Participants on the completion and inclusion in an offer of the required offer documents, and the place for the submission of offers, and the time, if any, by when offers must be submitted in order to be considered for contract award; and
- B. The specifications that offers must meet in order to be considered for contract award; and
- C. A description as to the method of the application of the evaluation factors for contract award, including their relative importance to each other. Price does not need to be an evaluation factor. When it is not an evaluation factor, a statement must appear in the RFP clearly informing Procurement Participants that price is not an evaluation factor; and
- D. Solicitation provisions and contract terms and conditions; and
- E. A statement that discussions between Horry County and interested Procurement Participants concerning any matter involving a Procurement

Participant's individual offer will be allowed, but that Horry County reserves the right to make a contract award without the conduct of discussions; and

- F. The identification of the Horry County personnel that are designated as the contact points for general questions concerning the conduct, nature, or content of the procurement processes or its documents; and
- G. The identification of any documents that are incorporated by reference into the procurement and the method and manner in which a Procurement Participant may obtain copies of those documents incorporated by reference.

11-3-3 Application of Procurement Guiding Principles to Negotiated Procurements

- A. Guiding Principle One – Satisfaction of Horry County's Need - The need should be expressed in a manner that enables the County to subjectively evaluate and rank the offers based on the contract performance requirements contained in the RFP.
- B. Guiding Principle Two – Best Price or Best Value Source Selection - While Negotiated Procurements can be conducted on the basis of Best Price source selection, the preferred method of source selection in a Negotiated Procurement is Best Value.
 - 1. When source selection is based on Best Value, the award of the contract shall be made to the Procurement Participant that satisfies all of the requirements of the procurement and provides the most advantageous offer to Horry County based on a comparison of the evaluation factors specified in the procurement. In all procurements that use Best Value as the source selection process, price or cost, as so specified in the procurement, may or may not be included as an evaluation factor in the source selection decision. In addition to price or cost examples of other types of factors that might be used for evaluation are:
 - a. Environmentally-Preferable and Energy-Efficient products, services, and solutions
 - b. Operational costs
 - c. Reliability of delivery and ability to meet performance deadlines
 - d. Warranties, guarantees, and return policies
 - e. Financial stability
 - f. Performance capability
 - g. Quality and effectiveness of the proposed solution and approach to satisfying Horry County's need in the procurement
 - h. Long-term economic factors

- i. Additional cost and performance benefits of the proposed solution
 2. Preference for Environmentally-Preferable and Energy-Efficient products, services, and solutions – Horry County has established in Chapter Two of this regulation a preference for acquiring products and services that satisfy this preference. Thus, this preference shall be included as part of the evaluation criteria in all procurements whenever possible.
- C. Guiding Principle Three – Price Reasonableness – If the source selection decision of a Negotiated Procurement acquisition is based on Best Price, which is unlikely but possible, then a determination of Price Reasonableness is not required. If, however, the source selection decision of a Negotiated Procurement is not based on Best Price, then a finding of Price Reasonableness must be made before a contract can be awarded. The methods by which to determine price reasonableness are as follows:
 1. Prices or Costs Set by Law or Regulation – When the prices or costs included within a proposal are set by law or regulation of a governmental entity having the requisite jurisdiction and authority to set those prices or costs, then the prices or costs so set by law or regulation are deemed to meet the standard of Price Reasonableness.
 2. Prices or Costs derived by Adequate Price Competition – When a procurement is conducted that requires a finding of Price Reasonableness as a condition to the award of a contract, a finding of Price Reasonableness may be made if at least two offers are received from offerors competing independently and the award is made to the offeror that proposes the lowest price or the award is made to the offeror that does not propose the lowest price but the difference between the awardee’s price and the lowest price proposed for the procurement can be reasonably explained and justified based on other factors. “Other factors” should normally consist of the evaluation factors included within the procurement. If only one offer is received, a Price Reasonableness determination may still be made if:
 - a. The Director of Procurement has no reason to believe that the price or cost proposed is not reasonable; and
 - b. It was anticipated that more than one offer would be received.
 3. Procurement Participant’s History of Sales at the Proposed Prices or Costs – The potentially successful Procurement Participant may be asked to provide data on either the prior sales it has made of the product, service, or project *at* the prices or costs included in the proposal or prior sales it has made of the product, service, or project *based on* the prices or costs included in the proposal. In order to justify a finding of Price

Reasonableness using the Procurement Participant's History of Sales method, a substantial number of prior sales must have been made at the same or based on the same prices or costs included within the proposal to the Procurement Participant's public and private sector customers.

4. Horry County Experience with Prior Acquisitions – Horry County may use the prices or costs for which it has awarded past contracts as the basis for a determination of Price Reasonableness so long as:
 - a. The time between the prior awarded contracts is not so great as to render such price comparisons unreasonable; and
 - b. The contracts being used for comparison to the offer are sufficiently similar in contract type, scope of work, and obligations of the parties that a comparison is meaningful and any differences in the prices and costs between the offer and the comparison contracts can be reasonably justified based on the similarities in the contract type, scope of work, and obligations of the parties.
 5. Market Research – In order to make a finding of Price Reasonableness, Horry County may use market research methods, as set forth in Chapter Five of this regulation, “Preparing For An Acquisition,” to determine the prices or costs that are currently being paid in the public or private sector markets for the same or similar performance obligations that are the subject of the procurement. It then may base a finding of Price Reasonableness on this market research information.
 6. Waiver - Based on the best interests of Horry County, the Chief Procurement Officials may issue a written waiver of the requirement for a determination of Price Reasonableness in a particular procurement.
 7. Cost Information – If all of the previously listed methods of determining Price Reasonableness cannot be used, or, when used cannot justify a finding of Price Reasonableness, Horry County may require that the potentially successful Procurement Participant submit cost information. In the event that it is necessary to use this method for determining Price Reasonableness, Horry County shall follow the process and require the potentially successful Procurement Participant to submit the cost information as set forth in Part 15 of the Federal Acquisition Regulation.
 8. Documentation – In all procurements in which a finding of Price Reasonableness is required, the procurement file shall include a written finding of Price Reasonableness and a written justification for that finding. The form, nature, content, and extent of the written justification shall be determined by the Director of Procurement.
- D. Guiding Principle Four – Maximum Practicable Competition – In Negotiated Procurements the standard of Maximum Practicable Competition is satisfied when the information on the opportunity to compete for a contract has been published in sufficient time to enable interested and diligent Procurement

Participants to determine if it is appropriate for them to participate, and, if so, to formulate and submit a meaningful response to the opportunity.

1. “Published” – This term is satisfied when a notification of an Horry County Negotiated Procurements opportunity appears publicly in a location and manner designed to inform interested and diligent Procurement Participants of its existence and to provide the information required to enable the Procurement Participants to respond to the opportunity in a meaningful and effective manner. This notification may appear in the printed media, such as a newspaper of general circulation, or it may be conveyed electronically, such as being posted on a website routinely known for containing information on procurement opportunities, or it may be transmitted via email to the email addresses of Procurement Participants that have expressed a desire to receive notices of its type. The notice will include as a minimum:
 - a. A description of the type of product, service, or project that is the subject of the procurement
 - b. A description of what will be required for a response to the opportunity in order to be considered for a contract award and where and how to obtain any documents, instructions, or other information that are required for such a response
 - c. The date and time when responses are due
 - d. The name, telephone number, and email address of the Horry County Official that Procurement Participants may contact with questions concerning the opportunity
2. “Sufficient Time” – This term is satisfied when the published notification has been provided in enough time prior to the required response date to enable a Procurement Participant to make a reasoned decision as to whether to compete for the opportunity and, if competing, to formulate a meaningful and effective response, regardless of the ultimate success of any such response. While the circumstances involved in each particular procurement will determine what constitutes a “sufficient time,” a time of not less than fourteen (14) calendar days following the first date of the appearance of the published notification of the procurement opportunity shall be deemed minimally to meet the “published in sufficient time” standard. When the circumstances involved in a procurement opportunity are lengthy and complicated, it is likely that the time for a Procurement Participant to submit a meaningful and effective response will exceed the fourteen-calendar-day threshold. In those instances the “sufficient time” standard will only be satisfied with a longer response time consistent with the circumstances involved in the submission of a meaningful response to the procurement opportunity.
3. The number of responses received by Horry County in a procurement is not determinative of whether the Procurement Guiding Principle of

Maximum Practicable Competition has been satisfied; it is Horry County's adherence to the Maximum Practicable Competition process that satisfies this Procurement Guiding Principle.

11-3-4 Offeror Submissions

In order to be considered for a contract award, an offeror participating in a Negotiated Procurement opportunity must submit:

- A. A completed RFP including the proposed prices for all items for which the offeror is submitting an offer, the signature of a person authorized by the offeror to contractually bind the offeror, and the date of the signature of that authorized person; and,
- B. Any other documents that are designated in the RFP for inclusion in the offeror's offer submission. Such documents may include, but are not limited to, information on the nature of the offeror's procurement responsibility, descriptive literature, or even offer samples; and,
- C. The offeror may choose to submit more than one offer. If the offeror chooses to submit more than one offer in response to the Negotiated Procurement opportunity, the offers must be designated as "alternative offer" or "alternative offers" to enable Horry County to recognize the multiple offers as separate, stand-alone, offers.

11-3-5 Offer Openings

Offers shall not be opened publicly but the names of the offerors shall be publicly disclosed. Offers and amendments shall be time-stamped upon receipt and held in a secure place until the established due date. After the date established for receipt of offers, a List of Offers shall be prepared which shall include the name of each offeror, the number of amendments received, if any, and a description sufficient to identify the supply item or service offered. The List of Offers shall be open to public inspection at any reasonable time after the initial public disclosure.

11-3-6 Pre-Proposal Conferences

Pre-Proposal conferences may be conducted to explain the procurement requirements. They shall be announced to all prospective Offerors known to have received a Request for Proposals and a notice of such conferences shall be posted on an appropriate Horry County website. A conference, if held, should be timed to occur long enough after the RFP has been issued to allow Procurement Participants to become familiar with it, but sufficiently before the closing date and time for the submission of offers to allow consideration of the conference results in the preparation of offers. Nothing stated at the

Pre-Proposal Conference shall change the Request for Proposals unless a change is made by written amendment. A summary of the conference shall be made available to the public.

11-3-7 Amendments to Requests for Proposals

- A. Form - Amendments to Requests for Proposals shall be identified as such and shall require that the offeror acknowledge receipt of all amendments issued when the offeror submits its offer. The amendment shall reference the portions of the Request for Proposals it amends and shall explain the nature of the amendment and the action required of an offeror to comply with the amendment.
- B. Notice – The existence of and the actual Amendments shall be made available to all Procurement Participants specifically in a manner designed to ensure that all diligent Procurement Participants and the general public will have notice of the existence of the Amendments in the same manner that notification of the Negotiated Procurement acquisition opportunity was originally made.
- C. Timeliness - Amendments shall be available within a reasonable time to allow Procurement Participants to consider them in preparing their offers. If the time and date set for receipt of offers will not permit such preparation, the time within which to submit the offer shall be increased in the Amendment.

11-3-8 Modification or Withdrawal of Offers

Offers may be modified by written notice received in the office designated in the Request for Proposals prior to the time and date set for the receipt of offers. Offers may be withdrawn by written notice received in the office designated in the Request for Proposals at any time prior to the time of contract award. If an offer is withdrawn in accordance with this section, the offer security, if any, shall be returned to the offeror.

11-3-9 Late Offers, Late Withdrawals, and Late Modifications

Any offer or offer modification received after the time and date set for receipt of offers is late. Any withdrawal of an offer after contract award in the procurement is late.

- A. Treatment- No late offer, or late offer modification, or late withdrawal will be considered, unless the reason for the untimeliness is directly attributable to the action or inaction of Horry County personnel directly involved in the procurement. In such an instance, where the untimeliness can be causally connected to the action or inaction of Horry County personnel directly involved in the procurement, a late offer or late offer modification may be

considered until the time of contract award. A late offer withdrawal may be considered after contract award so long as the untimeliness can be causally connected to the action or inaction of Horry County personnel directly involved in the procurement.

- B. Notice- Offerors submitting late offers, late offer modifications, or late offer withdrawals that will not be considered for contract award shall be so notified as soon as practicable.

11-3-10 Mistakes in Offers

- A. Mistakes Discovered Before Award - An offeror may correct any mistakes made in its offer until the time of contract award. Such a correction must be in writing and signed by a person authorized by the offeror to contractually bind the offeror. If the appearance of a mistake in an offer is discovered by Horry County prior to the award of a contract in the procurement, the Director of Procurement shall bring this to the attention of the offeror and request that the offeror either confirm the offer or correct the mistake in writing. The offeror shall in writing correct the mistake, confirm the offer as it is presently constituted, or withdraw the offer.
- B. Mistakes Discovered After Award - Mistakes shall not be corrected after award of the contract except when the Chief Procurement Officials find it would be unconscionable not to allow the mistake to be corrected.

11-3-11 Source Selection

- A. General - The source selection objective of the Horry County procurement team is to select the responsible offeror that proposes the best value at a reasonable price. In order to accomplish this, the Horry County procurement team should ensure that there is consistency in the evaluation of offerors' responses to the solicitation, that offers are evaluated solely on the factors set forth in the solicitation, and that each offer is evaluated fairly on its own merits.
- B. Evaluation Factors – When determining what factors to include as the evaluation factors in Negotiated Procurements, Horry County should choose those factors that will support a meaningful comparison and allow for the discrimination between offers based on the factors. Additionally, all evaluation factors and their relative importance must be clearly stated in the solicitation.
- C. Evaluation Task – Using the evaluation factors set forth in the solicitation, evaluations may be conducted using any type of rating method that is appropriate for the procurement, including, but not limited to, color or

adjectival ratings, numerical weights, or any other method that produces relative rankings.

- D. Competitive Range – After the offers have been evaluated, all of the offers that do not have a reasonable chance of contract award are to be eliminated. The elimination of these offers and the maintenance of offers that do have a reasonable chance for the award of a contract are deemed to be the establishment of the “competitive range.” Whenever an offer, during any stage in a Negotiated Procurement acquisition, is determined to have no reasonable chance for contract award, it is to be eliminated from the competitive range. Whenever an offer is eliminated from the competitive range, the offeror of that offer is to be informed in writing of that decision within a reasonable time after the decision to eliminate the offer from the competitive range is made.
- E. Additional Source Selection Technique One – Oral Presentations – While certainly not taking the place of the actual evaluation task based on the evaluation factors, there are several additional source selection techniques that may be used in Negotiated Procurements. One of these is the use of oral presentations that can either be a substitute for written offer information or augment the written offer information. If oral presentations are to be used, there are some general guidelines that should be observed.
1. Oral presentations can provide a forum for discussions to occur between the offeror and Horry County. Should discussions occur during oral presentations, the requirements and limitations on discussions that are applicable to “discussions,” as set forth in the next subsection of this regulation, shall be followed.
 2. In determining whether to have oral presentations and, if so, what information to seek from its offerors, Horry County should consider:
 - a. Horry County’s ability to evaluate the information
 - b. The actual contractual need for the type of information requested for the oral presentations
 - c. Whether oral presentations will have an impact on the efficiency of the acquisition
 - d. The costs to the offerors in preparing the oral presentations and any associated costs such as travel costs
 3. In the event that Horry County decides to include oral presentations in a Negotiated Procurement, Horry County should address oral presentations in the RFP and inform offerors of:
 - a. The types of information that should be provided during oral presentations and how that oral information will be evaluated

- b. The expected qualifications of the representatives of each offeror that will be providing the oral presentation
 - c. The requirements for and limitations on the actual oral presentations (e.g., time limits on presentations, additional media supplements)
 - d. The location, date, and time for oral presentations
 - 4. Some type of record of the oral presentations shall be made, since the reason for having oral presentations is for the purpose of evaluating an offeror.
 - 5. When the oral presentation includes proposed terms and conditions for the contract that will result from the award in the procurement, the solicitation shall inform offerors to include any such proposed terms and conditions in writing.
- F. Additional Source Selection Technique Two – Discussions – Discussions are verbal exchanges between Horry County procurement team members and offerors addressing various issues involved in offers after the offers have been received by Horry County in a procurement. These verbal exchanges take place at various times after the receipt of offers in a Negotiated Procurement and have varying purposes and significance, as described below:
- 1. Clarifications – As set forth in Chapter Seven of this regulation, clarification communications, are relatively limited verbal exchanges that are used to resolve ambiguities in offers, determine offeror responsibility, correct mistakes, or to determine offerors’ capabilities. Clarifications can occur at any time during the acquisition process but are not discussions.
 - 2. Discussions Before the Establishment of the Competitive Range – These discussions are limited to those offerors that Horry County has not yet determined if they are included or excluded from the competitive range. The purpose of the discussion at this point with these offerors is to enhance the understanding of their offers so that a determination of whether to include them in the competitive range can be made. Negotiations of offers at this point should not occur.
 - 3. Discussions After the Establishment of the Competitive Range – These discussions are conducted with those offerors that are included within the competitive range and are tailored to each offeror’s offer. These discussions, which are held with each offeror included within the competitive range, should attempt to maximize Horry County’s objective of awarding a contract that represents the best value to Horry County, based on the source selection criteria, to a responsible offeror whose offer includes prices that are determined to be reasonable.
 - 4. Conduct of Discussions After the Establishment of the Competitive Range - Horry County is given a wide latitude in the type of discussions in which it may engage offerors in the pursuit of this objective including negotiating price and performance criteria and engaging in technical trade-

offs and/or price trade-offs. There are some discussions that are prohibited:

- a. Discussions that favor one offeror over another offeror
- b. Discussions that reveal either Protected Procurement Information or the Proprietary Data included in one offer to another offeror or any other information that would compromise an offeror's unique innovations
- c. Discussions in which relative price information of various offerors is revealed. As stated previously, however, price negotiations, without the disclosure of the relative prices of other offerors, is permissible

G. Best and Final Offers – At the conclusion of discussions, Horry County shall establish a common date and time for the submission of written Best and Final Offers. Normally Best and Final Offers should be submitted only once, but may, however, when it is in the County's best interest to conduct additional discussions or change the County's requirements, require the submission of an additional round or rounds of Best and Final Offers. Once the final round of Best and Final Offers have been submitted by the offerors remaining in the competitive range, no additional discussions or changes in any of the offers shall be allowed prior to award. If offerors do not submit a notice of withdrawal or a Best and Final Offer, their immediate previous offer will become their Best and Final Offer.

H. Contract Award – The award of the contract shall be made to the offeror that submits the offer that provides Horry County with the best value based on the evaluation factors included within the RFP.

I. Low Tie Offers - Low tie offers are offers that, based on the evaluation factors included within the RFP, provide Horry County with equally the best value in the procurement. In such an instance, the tie will be broken and the award will be made to the offer that provides the best price. If the consideration of the best price does not separate the equal offers, then the contract award may be made by drawing lots or in any other manner deemed fair and equitable by the Director of Procurement.

J. Publicizing Awards - Written notice of award shall be sent to the successful offeror and to all unsuccessful offerors that were still included within the final competitive range from which the contract award was made. Notice of award shall be made available to the public.

11-3-12 Debriefing

All offerors that participated in the procurement shall be entitled to a debriefing.

- A. Once an offeror has been notified by Horry County that it has been eliminated from the competitive range, whether that be prior to the award of the contract or when the contract is awarded, the offeror has three business days (excluding weekends and Horry County-recognized holidays) from the date of notification to deliver to the Horry County official designated as the contact point in the procurement a request for a debriefing. When Horry County receives an untimely request for a debriefing, it may accommodate the request, or it may, within its total discretion, refuse to provide a debriefing based on the untimeliness of the request.
- B. Horry County may schedule the debriefing at any time after its receipt of the request, but it should make every effort to hold the debriefing session within fourteen (14) days after the award of the contract.
- C. The debriefing may be done in person, by telephone, via email, in writing or in any reasonable manner deemed appropriate by Horry County.
- D. The Debriefing may include:
 - 1. Horry County's evaluation of the offeror's offer
 - 2. A summary of why the offer was eliminated from the competitive range or did not receive a contract award, as appropriate
 - 3. Responses to questions concerning the application of the evaluation factors and/or other requirements of the procurement
 - 4. The identification of other offerors that participated in the procurement
- E. The debriefing may not include information about the offers of other offerors, including, but not limited to, the ranking of other offerors in relation to the evaluation factors included in the procurement or the relative merits of other offers in relationship to the offer of the Procurement Participant that is being debriefed.
- F. A written summary of each debriefing shall be made and included within the contract file.

Chapter Twelve – Acquisition Methods – Tier Five

12-1-1 Overview

This is the final chapter that addresses the methods of procurement that Horry County may use to acquire personal property, services, and improvements to real property. Tiers Two through Four include procurement methods that are designed to be used in normal circumstances, when neither exigent circumstances nor unforeseen developments play a role in the satisfaction of the County's need. In this chapter those exigent and/or unforeseen circumstances and the County's utilization of unusual procurement methods in response thereto are addressed. These unusual procurement methods are:

- A. Emergency and Unusual Procurements
- B. Sole Source Procurements
- C. Responses to Unsolicited Offers

Subchapter 12-2 – Types of Tier 5 Procurements

12-2-1 Emergency and Unusual Procurements

- A. General - An Emergency and Unusual Procurement is the acquisition by Horry County of personal property, services, and improvements to real property without using any of the procurement methods included within Tiers Two through Four. Horry County is justified in rejecting the use of the procurement methods included in Tiers Two through Four when it has a need that must be satisfied immediately or when the need includes an unusual or unique requirement that the use of the procurement methods included within Tiers Two through Four would not responsibly satisfy or further the interests of Horry County. When such situations arise, Horry County may conduct an Emergency and Unusual Procurement.
- B. The Procurement – When a need must be satisfied immediately or the need includes an unusual or unique requirement, the procurement to satisfy that need may be accomplished in any reasonable manner.
- C. Authorization – If possible, the Chief Procurement Officials shall either conduct or delegate, either verbally or in writing, procurement authority to conduct an Emergency and Unusual Procurement. If it is not possible or feasible to contact the Chief Procurement Officials when an Emergency and Unusual Procurement is needed, then any Horry County official that has the responsibility for responding to the circumstances that have created the need

for an Emergency and Unusual Procurement may conduct such an Emergency and Unusual Procurement or delegate, either verbally or in writing, their procurement authority to conduct an Emergency and Unusual Procurement. When an Horry County official conducts an Emergency and Unusual Procurement without a prior delegation of procurement authority from the Chief Procurement Officials, that official shall, at the earliest practicable time after the conduct of the Emergency and Unusual Procurement, provide the Chief Procurement Officials with a Report of a Tier Five Procurement, as set forth in this chapter.

- D. Application of the Four Guiding Principles of Procurement – While any official engaging in an Emergency and Unusual Procurement should exercise prudence in the expenditure of Horry County’s funds, there are no requirements in a Tier Five procurement for:
 - 1. Publicly expressing the need in the procurement; and
 - 2. Weighing and choosing from alternative methods of source selection (best price or best value); and
 - 3. Determining Price Reasonableness; and
 - 4. Imposing Maximum Practicable Competition requirements.
- E. Limitation – An Emergency and Unusual Procurement shall only be used to the extent necessary to respond to the circumstances that justify its utilization.

12-2-2 Sole Source Procurements

- A. General – A “Sole Source Procurement” is an acquisition in which Horry County acquires supplies or services by negotiating with and letting a contract to only one source.
- B. Justification for Use - Because a Sole Source Procurement is completely inconsistent with Procurement Guiding Principle Four, Maximum Practicable Competition, it is only permissible when an Horry County need can be satisfied by only one supplier. A Sole Source Procurement shall not be used when a single proprietary item or items are the only item or items that will satisfy the Horry County need, but that item or those items are available from multiple sources. There may be some situations, however, that require a Sole Source Procurement that are not justified on the basis that only one source exists. It may be that the need itself requires only one supplier. The following are examples of circumstances which could necessitate the use of a Sole Source Procurement:
 - 1. Where the compatibility of equipment, accessories, repair, or replacement parts is a significant consideration; or
 - 2. Where a sole supplier's item is needed for trial use or testing; or
 - 3. Where public utility services are to be procured.

- C. Authorization – When a Purchasing Agency encounters a potential situation that requires the utilization of a Sole Source Procurement, the Purchasing Agency shall contact the Chief Procurement Officials prior to taking any further procurement actions. The Chief Procurement Officials shall then make a determination that the use of a Sole Source Procurement is warranted or direct the Purchasing Agency to provide the Chief Procurement Officials with more information that would warrant the use of a Sole Source Procurement. This will more than likely require the use of market research techniques, as set forth in Chapter Five of this regulation. When the Chief Procurement Officials are satisfied that the use of a Sole Source Procurement is justified, the Chief Procurement Officials shall either conduct the Sole Source Procurement or delegate, in writing, procurement authority to the Purchasing Agency to conduct the Sole Source Procurement.
- D. Application of the Four Guiding Principles of Procurement – While any official engaging in a Sole Source Procurement should exercise prudence in the expenditure of Horry County’s funds, there are no requirements for:
1. The method of source selection (best price or best value); and
 2. Determining Price Reasonableness; and
 3. The imposition of Maximum Practicable Competition requirements.

The official should attempt to negotiate a contract with the single source that is in the best interests of Horry County. If the official is unable to reach an agreement with the single source that is in the best interests of Horry County, then a contract award should not be made.

12-2-3 Unsolicited Proposals

- A. General - An “Unsolicited Proposal” is a written proposal that includes a new, unique, or innovative product, service, project, or process that is submitted to Horry County on the initiative of the offeror for the purpose of obtaining a contract with Horry County. An Unsolicited Proposal is not submitted in response to an IFB, RFP, QR, or any other type of solicited response by Horry County.
- B. Processing of Unsolicited Proposals - When an Unsolicited Proposal is received by Horry County, it shall be immediately forwarded to the Director of Procurement who shall have final authority with respect to the evaluation, acceptance, and rejection of such unsolicited offers. Once the initial evaluation is made by the Director of Procurement, the Director of Procurement may, should the Director so choose, seek the advice and guidance of other Horry County personnel to assist in the Director of Procurement’s evaluation of the Unsolicited Proposal.

C. Conditions for Contract Award - To be considered for a contract award an Unsolicited Proposal:

1. Must be in writing; and
2. Must be sufficiently detailed to allow a judgment to be made concerning the potential utility of the offer to the County; and
3. Must present a unique or innovative product, service, project or process for County use; and
4. Must demonstrate that the unique character of the offering warrants consideration of the use of the Sole Source Procurement process; and
5. Must include a proposed price or cost to enable the County to consider in a contract award determination; and
6. May be subject to testing under terms and conditions specified by the County.

D. Post Evaluation Process

1. Rejection of Unsolicited Proposals – If, after the evaluation of an Unsolicited Proposal, the Director of Procurement determines that it is not in the best interests of the County to award a contract to the offeror of the Unsolicited Proposal, the Director of Procurement shall return the Unsolicited Proposal to the offeror along with a statement that Horry County is rejecting the Unsolicited Proposal. When an Unsolicited Proposal is rejected:
 - a. The statement to the offeror does not need to include the reasons for the rejection
 - b. The offeror has no right to a debriefing after the rejection of an Unsolicited Proposal
2. Acceptance of Unsolicited Proposals - If, after the evaluation of an Unsolicited Proposal, the Director of Procurement determines that it is in the best interests of the County to award a contract to the offeror of the Unsolicited Proposal, the Director of Procurement, or the County personnel that the Chief Procurement Officials have given authority through a delegation of procurement authority, shall proceed with the process of negotiating a Sole Source Contract with the offeror of the Unsolicited Proposal in a manner compliant with the subsection of this regulation that addresses Sole Source Procurements.
3. Confidentiality - Any written request for confidentiality of data contained in an Unsolicited Proposal that is made in writing shall be honored. If a contract award is made, confidentiality of data shall be agreed upon by the parties and governed by the provisions of the contract. If agreement cannot be reached on the issue of confidentiality, the County may reject the Unsolicited Proposal

Subchapter 12-3 - Report of Tier Five Procurements

12-3-1 Contents and Timing of Tier Five Procurements Report

Any Horry County official that engages in a Tier Five Procurement shall, at the earliest practicable time after the conduct of the Tier Five Procurement, provide the Chief Procurement Officials with a Report of a Tier Five Procurement. If the Chief Procurement Officials conduct the Tier Five Procurement, then they must provide a Report of a Tier Five Procurement. The Report of a Tier Five Procurement shall include:

- A. The date of the Tier Five Procurement; and
- B. The name and title of the official conducting the procurement; and
- C. The type of Tier Five Procurement used; and
- D. A statement of the circumstances that justified the use of the particular Tier Five Procurement method; and
- E. The details of the acquisition, including but not limited to, the name and address of the supplier, a complete description of that which was acquired, the amount spent and any other details that the Chief Procurement Officials may deem appropriate.

12-3-2 Maintenance of Tier Five Reports File

A fiscal-year file shall be maintained by the Chief Procurement Officials in which these Reports of Tier Five Procurements shall be kept and maintained for a period of three calendar years.

Chapter Thirteen – Contract Administration

Subchapter 13-1 – General

13-1-1 Introduction

Contract Administration involves the contractual activities that occur in connection with the contract after a contract award has been made. Contract Administration is designed to:

- A. Insure successful performance of the obligations of the contract by both Horry County and the contractor; and/or
- B. Remedy any deviations from successful performance by Horry County or the contractor.

13-1-2 Contract Administration Authority

Horry County's contract administration functions shall be the responsibility of the County's Director of Procurement, who, as a Chief Procurement Official, may delegate that responsibility under a Delegation of Procurement Authority, as the Director deems appropriate.

13-1-3 Contract Award

- A. Notice of Contract Award – When a contract is awarded, the contractor, as well as all of the parties that participated in the procurement, shall be notified of the contract award as follows:
 - 1. For contracts that are awarded for an amount of \$25,000.00 or less Horry County may provide the notification orally.
 - 2. For contracts in excess of an amount of \$25,000.00 Horry County shall provide the notification in writing. Such written notification may be accomplished by letter, email, posting the notification in a media form of general circulation (e.g., a newspaper or website maintained by Horry County for the public's access to information on Horry County procurement activities), or by such other means as deemed appropriate.
- B. Notice to Commence Performance – Generally, the time for the contractor to commence performance of the contract is determined by the terms and conditions of the contract. In the event that the contract does not provide a commencement time, Horry County shall inform the contractor of the time to commence performance of the contract in the following manner:

1. For contracts that are awarded for an amount of \$25,000.00 or less Horry County may provide the contractor with the information on the commencement time orally.
2. For contracts in excess of an amount of \$25,000.00 Horry County shall provide the information on the commencement time in writing.

C. Renewal of Contract/Exercise of Option

1. Renewal of Contract

- a. A renewal of a contract takes place when a contract's term is extended for a period beyond the original term, although the contract makes no provision for such an extension. Horry County may only renew a contract with the consent of the contractor; and
- b. A contract renewal is only authorized if the contract renewal satisfies the requirements of a Sole Source procurement, as set forth in Chapter Twelve of this regulation; and
- c. When a contract is renewed, regardless of the contract amount, Horry County and the contractor shall memorialize the agreement to extend the contract period by a written contract modification that is executed by both parties.

2. Exercise of Option

- a. An option is a right that is included in the terms of a contract that enables Horry County, without the consent of the contractor, to extend the contract period for an additional amount of time.
- b. Horry County should only exercise an option if it determines that:
 - (i) The County has an existing need that the continued performance of the contract can satisfy; and,
 - (ii) The exercise of the option is in the best interests of the County considering all of the prices and costs involved in the exercise of the option and the alternative methods of satisfying the County's need.
- c. When an option is exercised, regardless of the contract amount, Horry County shall memorialize the agreement to exercise the option by a written unilateral contract modification.

13-1-4 Contract Documents

Contract documents shall include all documents that pertain to the acquisition, award, and performance and administration of a contract.

- A. Standard Contracts – When Horry County develops standard contracts for the acquisition of particular types of personal property, services, and improvements to real property, such contracts shall be used whenever they satisfy the needs in a particular acquisition.
- B. Tailoring Contracts and Solicitations – If a standard Horry County contract or solicitation requires changes to its standard provisions, or if no such standard contract fits a particular acquisition, then the Horry County procurement team may draft provisions to include within a contract or solicitation, or draft changes to standard provisions. Any such changes shall be approved by the Chief Procurement Officials and by the County Attorney before they can be included within any Horry County contract or solicitation. When such changes are made, the tailored provisions shall be included within the contract in a modification or in a solicitation amendment, as appropriate.
- C. Acceptance of Vendor Contracts – As a general practice, Horry County solicits offers or bids from Procurement Participants to provide personal property, services, and improvements to real property through awarded contracts. When Horry County solicits offers or bids, it does so with the inclusion of the terms and conditions it will accept in order to award contracts. Horry County shall not accept vendor-generated contracts or forms unless the actual award of the contract satisfies the requirements of a Sole Source procurement, as set forth in Chapter Twelve of this regulation, or the vendor-generated contract or form has been approved by the County Attorney prior to contract award.

13-1-5 Payment Process

- A. Advance Payments – Payments in advance of performance are generally not allowed. There are certain exceptions when payments in advance of performance are allowed. These exceptions are as follows:
 - 1. Acquiring licenses for technology
 - 2. Acquiring subscriptions
 - 3. Payments for rentals or leases
 - 4. Payments for utilities
 - 5. Payments for insurance premiums for coverage protecting Horry County and its activities
 - 6. Advance payments that are required by law
 - 7. Other advance payments when approved by the Chief Procurement Officials

B. Payment Due Date – Payments in satisfaction of contractor invoices shall be transmitted to the contractor within thirty (30) days of:

1. Horry County’s receipt of a valid invoice; and
2. Horry County’s confirmation that the contractor’s performance has satisfied the contract’s requirements.

C. Contractor Invoices and Invoice Requirements

1. Submission of Invoices – Invoices shall be submitted to the address designated in the contract. If no address is designated in the contract, the contractor shall receive directions from the Horry County personnel involved in the procurement concerning the location to which it shall submit invoices.
2. Invoice Requirements – In order to insure timely payment, a contractor must submit to Horry County an invoice that conforms to the Horry County requirements for a valid invoice. These valid invoice requirements are:
 - a. Name and Address of the contractor
 - b. Invoice date and invoice number
 - c. Contract number
 - d. Description, quantity, unit of measure, unit price and extended price of products delivered or services performed
 - e. Shipping identification
 - f. Payment terms, as per the contract
 - g. Name and address of the official within the contractor’s organization to whom payments shall be addressed and sent
 - h. Name, address, phone number, fax number, and email address of the person within the contractor’s organization to contact for the resolution of any billing or payment issues
3. Invoice Errors – The contractor is responsible for the submission of invoices that conform to Horry County’s requirements. In the event that an invoice contains errors in the information supplied, Horry County shall contact the contractor, if necessary, to determine the correct information. If the erroneous information is minor, and will not affect the payment of the invoice, Horry County shall pay the invoice but advise the contractor of the error or errors.

Subchapter 13-2 - Performance of Contracts and Agreements

13-2-1 Monitoring Performance

Unless otherwise designated by the Director of Procurement, the Purchasing Agency is responsible for monitoring the receipt of, and any other compliance issues related to, contractor performance. Acceptable contractor performance includes:

- A. Providing contract deliverables in a timely manner; and
- B. Complying with all other contract terms and conditions (e.g., If the Davis Bacon Act were to apply to an Horry County construction project, the Purchasing Agency would be required to insure that the contractor complied with the Act's wage determination requirements and also to inform the appropriate County personnel of the contractor's prevailing wage coordinator).
- C. Maintaining Project Status Reports - Purchasing Agencies, or the Agency designated to monitor performance, shall, when directed by the Director of Procurement, prepare and submit to the Director of Procurement a Project Status Report. When the submission of such a report is required, the Director of Procurement will inform the Agency concerning the form and content of the report and the schedule for its submission.
- D. Completion of Final Performance Report - Upon contract performance completion, the final report on contractor performance, the Final Performance Report, shall be submitted by either the Purchasing Agency or the designated Agency to the Director of Procurement, who will inform the Agency concerning the form and content of the report. A copy of the report shall be included in the Agency's contract file.

13-2-2 Contractor's Failure to Perform

- A. General - When a contractor fails to meet contract requirements, the Purchasing Agency, or the Agency designated by the Director of Procurement to monitor performance, shall inform the Director of Procurement of the contractor's failure. The Director of Procurement shall then determine whether to:
 - 1. Waive non-performance; or
 - 2. Pursue remedies for non-performance
- B. Waiver of Non-Performance - The Director of Procurement, in consultation with the Purchasing or Designated Agency and based on the information

included within the Project Status Reports and the Final Performance Report, shall determine whether to waive a contractor's non-performance or pursue remedies for non-performance. If the determination is made to waive contractor non-performance, the Director shall do so in writing that includes the reasons in support of the decision. This determination shall be included within the contract file. The Director of Procurement has the authority to negotiate terms and conditions with the contractor in exchange for a waiver of non-performance.

- C. Remedies for Non-Performance - If the Director of Procurement, in consultation with the Purchasing or Designated Agency and based on the information included within the Project Status Reports or the Final Performance Report, determines not to waive a contractor's non-performance, then the Director of Procurement or the Purchasing or designated Agency, under the Director's instructions, shall attempt to affect a remedy for the non-performance as follows:
1. First Step – Communicate with the contractor to determine if the non-performance can be remedied without taking any further steps. If the Agency and the contractor can agree to a remedy for the non-performance that is approved by the Director of Procurement, then that agreement shall be reduced to writing, executed by duly authorized agents of both parties, and performed.
 2. Second Step – If communications and an agreement as a remedy for non-performance fail, the next step is for the Agency to issue a Cure Notice. The Cure Notice shall be in writing, include a description of the non-performance as well as the expected performance on the contractor's part that will cure the non-performance at issue, include a reasonable time for the contractor to complete that which will cure the non-performance, and shall be delivered to the contractor in a manner that provides proof of delivery. If this step remedies the non-performance issue, no further action is necessary. If the contractor fails to respond to the Cure Notice or the Cure Notice does not produce a remedy for the non-performance issue, then the Agency shall proceed to the Third Step. The Cure Notice and the proof of delivery shall be included in the contract file.
 3. Third Step – If the issuance of a Cure Notice fails to remedy the non-performance at issue, the next step is for the Agency to issue a Show Cause Notice. The Show Cause Notice shall include a statement that it is incumbent upon the contractor to communicate with Horry County concerning any reasons why Horry County should not terminate the contract for default and pursue its legal remedies against the contractor. The Show Cause Notice shall also include a relatively short, but reasonable, time for the contractor to respond to the Show Cause Notice and shall be delivered to the contractor in a manner that provides proof of delivery. If the contractor fails to respond to the Show Cause Notice or the Show Cause Notice does not lead to a remedy for the non-performance

issue, then the Director of Procurement shall refer the matter to the County Attorney who shall determine what further action to take on behalf of Horry County in connection with the contractor and the non-performance issue. The Show Cause Notice and the proof of delivery shall be included in the contract file.

4. Surety Notification - All bonding agents shall be sent copies of all Cure Notices, Show Cause Notices, and Termination for Default Notices directed to their client contractors.

13-2-3 Termination for Default

Horry County may terminate any contract, in whole or in part, when the contractor defaults in the performance of the contract. In order to terminate a contract for default, both of the Chief Procurement Officials must agree in writing.

- A. Specific Default Grounds – A termination for default is appropriate when a contractor fails:
 1. To complete the contractual performance obligations within the time specified in the contract; or
 2. To make satisfactory progress on the performance obligations of the contract to the extent that it endangers the completion of total contract performance in a timely manner; or
 3. To comply with any contract requirement.
- B. Termination Process – Horry County may terminate a contract for default if a contractor does not resolve the reason(s) for default within the time provided by Horry County for such resolution.
 1. Notice of Termination - Horry County must:
 - a. Provide the contractor with a written notice of the termination;
 - b. The notice must contain the reasons for the termination, the effective date of the termination, and a statement that the contract is being terminated for the default by the contractor of an Horry County contract;
 - c. The notice must be sent by the Director of Procurement or the Director’s designee and shall be delivered to the contractor in a manner that provides proof of delivery;
 - d. A copy of the notice shall be sent to the County Attorney.
 2. Generally, when a contract is terminated for default, Horry County may acquire the same or similar supplies and/or services and the terminated

contractor will be responsible for the excess costs of reprocurement including:

- a. The costs incurred by the County in connection with the procurement process for the substitute contract; and
 - b. The costs for the performance obligations included in substitute contract that are in excess of the costs for the performance obligations of the terminated contract.
3. The terminated contractor is not responsible for the excess costs of reprocurement when the contractor's failure to perform, or its subcontractor's failure to perform, is the result of:
- a. Acts of God
 - b. Acts of a public enemy
 - c. Fires, floods
 - d. Epidemics
 - e. Strikes
 - f. Freight embargoes
 - g. Unusually severe weather
4. Horry County may, in its discretion, require the terminated contractor to deliver the amount of performance that it completed prior to the default. When this occurs, Horry County shall pay the contract price that is contractually determined or appropriate for the amount of the performance delivered and accepted.
5. If, after the default termination, it is determined that the contractor was not in default, Horry County and the contractor shall settle the terminated contract in the manner set forth for settlements in contracts that are terminated for convenience.
6. Settlement Process – Within 120 days after the termination date, Horry County will submit in writing to the contractor its claims for amounts owed as a result of the termination for default, unless Horry County and the contractor agree to a longer or shorter period. If the contractor accepts this amount, the contractor will pay the stipulated sum and the matter is resolved. If the contractor does not accept the amount proposed by Horry County, the contractor may pursue the matter under the provisions governing Disputes, as set forth in Chapter Fifteen of this regulation.

13-2-4 Termination for Convenience

Horry County may terminate any contract, in whole or in part, when it is in the best interest of the County. In order to terminate a contract for the

convenience of Horry County, both of the Chief Procurement Officials must agree in writing.

A. Notice of Termination - In order to terminate a contract for the convenience of Horry County the County must:

1. Provide the contractor with a written notice of the termination;
2. The notice must contain the extent of the termination, the effective date of the termination, and a statement that the contract is being terminated for the convenience of Horry County;
3. The notice must be sent by the Director of Procurement or the Director's designee and shall be delivered to the contractor in a manner that provides proof of delivery;
4. A copy of the notice shall be sent to the County Attorney.

B. Contractor Requirements - When the termination notice is received by the contractor, the contractor must:

1. Cease performance of the contract on the effective date of the termination; and
2. Immediately cease letting any further subcontracts or acquiring or contracting to acquire any further supplies or services in furtherance of the portion of the contract that is being terminated; and
3. Immediately terminate all subcontracts to the extent that they relate to the portion of the contract that is being terminated; and
4. Under the direction of Horry County, settle all outstanding liabilities for subcontracts and supplies or services acquired or contracted to be acquired in connection with the portion of the contract that is being terminated; and
5. To the extent authorized by Horry County, perform the contract and furnish all contract deliverables up to the termination date.

C. Contractor Settlement Amount – A contractor that has a contract or a portion of a contract cancelled for convenience is entitled to be paid for certain costs and for a portion of the profit on the work performed, as follows:

1. Horry County will pay the contract price for the completed and accepted contract performance up to the date of termination.
2. Horry County will pay for initial and/or contract performance preparation costs incurred by the contractor to the extent that such costs are not included in the payment for the completed and accepted contract performance.
3. Horry County will pay for the costs the contractor incurs as a result of the terminated subcontracts for the terminated portion of the contract.
4. Horry County will pay a reasonable amount for profit on the costs incurred in connection with the terminated portion of the contract.

5. Horry County will pay reasonable amounts for costs incurred by the contractor in connection with the settlement process including, but not limited to, costs for clerical assistance, accounting assistance, legal assistance, and the like.
 6. Horry County will pay for the costs of storage, transportation, maintenance, and the disposal of inventory acquired in the performance of the terminated portion of the contract.
 7. The amount of the settlement cannot exceed the amount of the contract price, as reduced by previous contract payments, for performance of the contract.
 8. Horry County reserves the right to audit the books and records of the contractor and any other material that the contractor possesses that is related to the claim amounts.
- D. Settlement Process – After the termination date, the contractor will have 120 days, unless Horry County and the contractor agree to a longer or shorter period, to submit to Horry County a settlement claim in writing in which the contractor provides the details and support for the amount it seeks from Horry County in connection with the terminated contract.
1. If the contractor does not submit its written settlement claim within the time established for the submission of the written settlement claim, Horry County shall, based on the information regarding the terminated contract that is available, propose a settlement amount to the contractor. If the contractor accepts this amount, the contractor will be paid that amount and the matter is resolved. If the contractor does not accept the amount proposed by Horry County, the contractor may pursue the matter under the provisions governing Disputes, as set forth in Chapter Fifteen of this regulation.
 2. If the contractor submits its written settlement claim in a timely fashion and the contractor and Horry County agree on the settlement amount, the contractor will be paid that amount and the matter is resolved. If the contractor and Horry County cannot reach an agreement on the settlement amount, the contractor may pursue the matter under the provisions governing Disputes, as set forth in Chapter Fifteen of this regulation.

Subchapter 13-3 – Post-Award Issues

13-3-1 Contract Modifications

- A. General - A contract modification occurs after contract award when a change is made to the terms and conditions of the contract. Horry County and its contractors are authorized to enter into contract modifications.

B. Types of Modifications - There are two general types of contract modifications:

1. Unilateral – A unilateral contract modification is one in which one of the parties may, on its own, without the consent of the other party, make changes to the contract. An example of a unilateral contract modification is an option clause under which Horry County is given the right to extend the term of the contract beyond the original term of the contract. Horry County may exercise this option provision and extend the term of the contract without the consent of the contractor.
2. Bilateral – A bilateral contract modification requires both parties to the contract, Horry County and the contractor, to agree to changes in the terms and conditions before a bilateral contract modification becomes effective. An example of a bilateral contract modification would be to extend a date of performance in a contract. Such a change in this type of contract obligation will normally require the agreement of both parties.

C. Documentation and Performance – Contract modifications should be in writing if the contract is in the form of a written instrument. Modifications may:

1. If the modification is a unilateral modification, it shall not become effective until it is signed by an authorized representative of the party initiating the modification and delivered to the other party to the contract. The parties shall be given a reasonable period after the modification is signed and delivered to conform to the changes included within the unilateral contract modification.
2. If the modification is a bilateral modification, it must be executed by authorized representatives of both parties and must provide both parties with a reasonable period to conform to the changes included within the bilateral contract modification.

D. Modifications Allowed and Disallowed

1. Allowed - Contract modifications may change virtually any of the obligations within a contract. Examples of allowed changes are changes to the delivery dates, method of shipment or place of delivery, and even small variations in quantity or types of products or services.
2. Disallowed – Contract modifications shall not be used to change the scope of the contract.
 - a. A disallowed change in the scope of a contract occurs when a change to the contract results in a material difference between the contract as modified and the contract as it existed before the modification. Examples of disallowed changes in the scope of a contract are the significant

expansion of the contract deliverables or a significant change to the type of work to be performed.

- b. If such a change is contemplated, a contract modification shall not be used to fulfill the requirement. Instead, some other method, including a new procurement, shall be utilized to satisfy the Horry County need.

13-3-2 Set-Offs

- A. General – Horry County may deduct from payments that it is contractually required to make to a contractor the debts of the contractor (“Contractor Debts”) that the contractor owes to Horry County.
- B. Contractor Debts – Contract Debts are amounts that the contractor owes Horry County. These amounts can be generated by any type of activity or obligation including, but not limited to:
 1. Payments to the contractor by Horry County to which the contractor is not entitled; and
 2. Judgments or administrative determinations in which the contractor is found liable to Horry County for an amount; and
 3. Taxes, fees, or charges of any nature or kind that are owed by the contractor to Horry County.
- C. Horry County Collection Process – Horry County must follow the debt collection process as established by the Horry County Department of Finance.
- D. Interest – In addition to the principal amount of Contract Debts, Horry County may, in the exercise of its right to deduct from the payments due to the contractor, collect interest on the principal amount of the Contract Debt owed to Horry County by a contractor. The interest amount shall be equal to and determined in the same manner that judgment interest is determined under South Carolina Code of Laws (See S.C. Code Ann. Sec 34-31-20).

13-3-3 Audits

- A. General – Horry County has the authority to audit the books, records, of its contractors, bidders, offerors, or its own agencies and departments, and take any further lawful steps it may deem appropriate, including interviews with personnel employed by or associated with a contractor, bidder, offeror, or any of its own agencies and departments.
- B. Exercise of Audit Authority – The exercise of Horry County’s authority to audit shall be vested in the Chief Procurement Officials, who may order an audit at any time.

1. The Chief Procurement Officials may audit the books and records and have the authority to interview personnel employed by or associated with a contractor, bidder, offeror, or any of Horry County's own agencies or departments. The Chief Procurement Officials shall determine the scope of audits including the books and records to be examined and the personnel to be interviewed and may make such determinations during the course of an audit, based on the recommendations of the auditors. Audits may focus on the following matters:
 - a. Expenditures or charges connected with Horry County contracts
 - b. Compliance with the performance obligations of Horry County contracts
 - c. The truthfulness of any certifications or representations made in connection with the award or performance of Horry County contracts
 2. The Chief Procurement Officials may use internal Horry County personnel to conduct an audit or they may contract out for an audit using a contractor's personnel.
 3. In the event that one of the Chief Procurement Officials is personally or professionally involved in a matter that is subject to an audit, that Chief Procurement Official shall be prohibited from access to the conduct of the audit, the audit report, and from having any role in the determination of any actions that are to be taken by Horry County in response to the audit.
- C. Audit of Horry County Agencies and/or Departments – Auditors may audit Horry County Agencies and departments to determine if the Agencies and/or departments:
1. Have instituted adequate internal controls to ensure compliance with the Horry County procurement ordinance and regulation; and/or
 2. Are in compliance with the Horry County procurement ordinance and regulation in their acquisitions of personal property, services, and improvements to real property; and/or
 3. Are in compliance with the performance obligations for which they are responsible in all Horry County contracts.
- D. Audit of Horry County Contractors, Bidders, and Offerors - Auditors may audit Horry County contractors, bidders, and offerors to determine if:
1. The certifications and representation made by the contractors, bidders, and offerors were current accurate and complete at the time of offer/bid submission and/or contract award, as set forth in the solicitation, regardless of the contractor that is awarded the contract; and/or

2. The contractors meet the requirements of responsibility, as well as any other such qualifications such as bid responsiveness, that must be met to become an Horry County contractor; and/or
3. The contractors have instituted adequate internal controls to ensure compliance with the Horry County procurement ordinance and regulation; and/or
4. The contractors are in compliance with their present Horry County contracts' performance and other contract obligations.

E. Conduct of the Audit

1. The auditors will contact the entity to be audited in writing and provide the entity with notification of the audit, a list of books and records to be assembled and available, and a list of personnel, if any, that they intend to interview. The auditors shall provide the entity to be audited with a reasonable time to comply with the accomplishment of any tasks that are to take place prior to the audit, including, but not limited to, the assembly of the requested records and personnel.
2. In the event that the auditors and the entity to be audited cannot agree on a date to begin the audit, the auditors or the entity to be audited shall bring the disagreement to the attention of the Chief Procurement Officials. The Chief Procurement Officials shall then determine the date of the initiation of the audit.
3. The auditors shall examine only those books and records requested and interview only the personnel with whom they requested interviews unless during the audit the auditors discover information that reasonably leads them to request additional written information or interviews.
4. In the event that the auditors make such an additional request, they shall provide the entity being audited with a reasonable amount of additional time to prepare the materials requested or assemble the personnel for interviews. In the event of a disagreement over the additional amount of time allowed, the Chief Procurement Officials shall determine the additional time allowed.
5. When the audit is concluded, the auditors shall prepare an audit report. The report shall include:
 - a. Determinations directed at the purposes for which the audit was conducted
 - b. Facts supporting the determinations and references as to where such facts can be found in the documents audited or the reports of the interviews
 - c. Recommendations on remedial actions, if any, that the entity must take to correct any deficiencies included in the audit Determinations

6. A copy of the audit report shall be supplied to the Chief Procurement Officials and the entity audited. The entity audited shall then be contacted in writing by the Chief Procurement Officials and given a reasonable time to respond to the audit report in writing.
7. If the entity that was audited responds to the audit report in a timely fashion, the Chief Procurement Officials shall make a decision on the actions that are to be taken in connection with the audit. If the entity that was audited fails to respond in a timely fashion, the Chief Procurement Officials shall make such a decision without the entity's response.
8. The Chief Procurement Officials will determine the actions that Horry County will take in response to the results of the audit, which may include, but are not limited to, suspension, debarment, cancellation for default or convenience, or the pursuit of any other applicable civil or criminal sanction.

13-3-4 Assignment of Claims, Novation Agreements, and Change of Name Agreements

- A. General – Contractors are prohibited from assigning or otherwise transferring their interests in their contracts with Horry County to a third party except in three instances. These three instances, each of which requires the approval of Horry County, are:
 1. Assignment of contract claims
 2. Novation Agreements
 3. Change-of-Name Agreements
- B. Assignment of Contract Claims - The proceeds from a contract may, with the consent of Horry County, be assigned to a third party and Horry County will make contract payments to that third party so long as:
 1. The assignment is made to a financial institution; and
 2. The assignment is made to only one party; and
 3. A copy of the notice of assignment and the assignment instrument are sent to all sureties on all bonds applicable to the contract; and
 4. The Chief Procurement Officials are provided with a copy of the notice of the assignment and a copy of the assignment instrument and provide their written consent to the assignment; and
 5. Copies of the notice of the assignment, the assignment instrument, and the consent of the Chief Procurement Officials to the assignment are sent to the Horry County Finance Department, Accounts Payable Section.
- C. Novation Agreements – While the assignment of a contract, and most other methods of transferring an Horry County contract, is prohibited, Horry County will recognize a successor in interest to the party originally awarded a contract when certain conditions are satisfied.

1. Successor in Interest – A successor in interest (hereinafter “successor”) becomes a candidate to have the right, title, and interest to an Horry County contract when the successor acquires either all of the contractor’s assets or all of the contractor’s assets that are involved in the performance of the Horry County contract. Examples of how a party may become a successor to an Horry County contract are through a merger with a contractor or through the purchase of the contractor’s assets used in the performance of the contract. When an Horry County contract is held by a corporate subsidiary, the stock of which is owned by a corporate parent, a stock purchase of that corporate parent does not require a novation agreement, since the ownership of the contract that is held by the corporate subsidiary does not change.
2. Novation Agreements – When a successor situation occurs, a Novation Agreement should be executed in order for Horry County to continue with the contract. If it does not occur, Horry County may cancel the contract. The agreement itself is to be executed by all of the parties involved in the novation transaction, Horry County, the contractor, and the successor. The agreement shall contain the following:
 - a. It shall identify all of the Horry County contracts that are subject to the novation.
 - b. It shall contain or be accompanied by, as addenda, evidence of the successor’s ability to perform the contract or contracts to be novated.
 - c. It shall contain a statement that the successor assumes all of the obligations and the liabilities of the contract or contracts to be novated.
 - d. It shall contain a statement that the contractor will guarantee the performance of the contract or contracts by the successor (If all the parties agree, a performance bond in an amount determined by Horry County may be substituted for this guarantee).
 - e. It shall contain a statement that Horry County recognizes the successor as if it were the original party to the contract or contracts to be novated.
 - f. All payments made and previous actions taken by Horry County with respect to its performance obligations under the contract or contracts to be novated shall be considered to have discharged those past performance obligations.
 - g. It shall be accompanied by certified copies of each of the board of directors (contractor and successor) resolutions authorizing the actions on the part of each of those parties that required the submission of a novation agreement.

- h. It shall be executed by duly authorized representatives of both the contractor and the successor and then submitted to Horry County for its execution.
 - i. It shall be executed on behalf of Horry County by the Chief Procurement Officials and shall become effective on either Horry County's execution or such other date as is set forth in the novation agreement.
- D. Change-of-Name Agreement – When a contractor legally changes its name, but the rights and obligations under an Horry County contract or contracts are unaffected, Horry County and the contractor shall enter into a Change-of-Name Agreement. This agreement includes the following requirements:
- 1. It shall identify all of the Horry County contracts that are subject to the Change-of-Name Agreement.
 - 2. It shall contain or be accompanied by, as addenda, evidence that the name change has been properly accomplished under applicable law. In this regard a certified copy of the amended articles of incorporation bearing the official stamp of the jurisdiction that granted the name change will suffice.
 - 3. It shall be executed by a duly authorized representative of the contractor and then submitted to Horry County for its execution.
 - 4. It shall be executed on behalf of Horry County by the Chief Procurement Officials and shall become effective on either Horry County's execution or such other date as is set forth in the Change-of-Name Agreement.

13-3-5 Obsolete Property

- A. Disposal of All Surplus Property except Technology Property - Once personal property, other than Technology Property, has qualified as Obsolete Property pursuant to the provisions of Chapter Eight of this regulation, the property may be disposed of in any manner that the Director of Procurement deems is in the best interests of Horry County. Should the Director of Procurement choose to sell the Obsolete Property, any funds received as the result of such a sale shall be credited to the County's general fund, unless otherwise directed by the County Administrator.
- B. Disposal of Technology Property - Once Technology Property has qualified as Obsolete Property pursuant to the provisions of Chapter Eight of this regulation, the property may be disposed of in any manner that the County's Highest Ranking Technology Officer deems is in the best interests of Horry County. Should the County's Highest Ranking Technology Officer choose to sell the Obsolete Technology Property, any funds received as the result of such a sale shall be credited to the County's general fund, unless otherwise directed by the County Administrator.

13-3-6 Contract Closeouts

- A. General – A final payment to a contractor shall only be made by Horry County after the contract is declared to be ready for contract closeout.
- B. Conditions for Contract Closeouts – A contract may be declared ready for contract closeout after the satisfaction of several conditions:
 - 1. The Purchasing Agency has received from the contractor the following information:
 - a. All applicable warranty documents
 - b. All guarantee documents, including the description of all sureties on all bonds applicable to the contract and the performance thereof
 - c. All maintenance and repair manuals and any other manuals or instructions relating to the repair, maintenance, and upkeep of any contract deliverables
 - d. All drawings, surveys, schematics, or other renditions relevant to the planned or actual construction of any contract deliverables
 - 2. The Purchasing Agency shall have prepared and delivered to the Director of Procurement the Final Performance Report indicating that all of the required documents have been received from the contractor and that satisfactory performance of all contract requirements has been achieved.
- C. Final Contract Closeout – After receipt from the Purchasing Agency of a satisfactory Final Performance Report, the Director of Procurement shall declare the contract to be closed out on a date certain and take any necessary actions to ensure that the contractor receives final payment for the contract after the establishment of that closeout date.
- D. Record Retention – Once a contract has been closed out, Horry County and the contractor are required to keep all contract files available for a period of three (3) years after the contract closeout date. Horry County reserves the right to audit performance of the contract until the expiration of this period.

Chapter Fourteen – Construction Contracts

14-1-1 Introduction

The procedures, methods, and requirements included within this chapter apply to the County’s procurements for construction projects and tasks, regardless of the expenditure amount involved. This chapter addresses acquisitions for both Building Construction and Civil Infrastructure Engineering. This chapter does not apply to the acquisition and/or management of real property. Unless otherwise provided within this chapter, all of the procurement methods, requirements, and processes set forth in the other chapters of in this regulation apply to the acquisition of construction projects and tasks.

14-1-2 Definitions

- A. The term “Building Construction” includes all vertical improvements to real property and the construction projects in support thereof (e.g., paving, site work, utilities, storm drainage systems, building maintenance). This includes projects involving existing vertical improvements as well as new vertical improvements.
- B. The term “Civil Infrastructure Engineering” includes all construction projects and tasks involving vehicular thoroughfares, bridges, storm water systems, and all other horizontal improvements to real property.

14-1-3 Authority

- A. The authority in all procurement matters involving Building Construction and Civil Infrastructure Engineering is vested in the County’s Highest Ranking Construction Officer.
- B. The responsibilities of this position, as they pertain to Building Construction and Civil Infrastructure Engineering include:
 - 1. Approving all County construction projects or tasks to which this regulation applies prior to the obligation of any County funds and to the commencement of those projects or tasks; and
 - 2. Serving as the primary source selection official in all procurements; and
 - 3. Serving as the arbiter of substantive and technical issues involved in the acquisition process and performance of all contracts involving construction projects and tasks; and
 - 4. Serving as the representative of Horry County’s interests, regardless of the construction contract method used or the costs involved, to insure that the bests interests of the County are fulfilled in all construction projects and tasks.

14-1-4 Planning a Construction Project Procurement

- A. Regardless of the nature or size of a construction project or task, Horry County shall meet the following requirements prior to the commencement of any construction procurement:
 - 1. Insure that the project or task or portion of the project or task for which an immediate procurement is intended meets all requirements of any official County building plan or plans; and
 - 2. Obtain from the Procurement Department an approved Purchase Request for the procurement; and
 - 3. If a project is to include a number of separate procurements, each procurement can only proceed after the first two requirements, set forth above, are met.

- B. Use of Non-Employees – Prior to utilizing the services of any personnel that are not employed by the County, the County’s Highest Ranking Construction Officer shall determine in writing that Horry County does not have the capabilities to satisfy the requirements through the use of Horry County employees.

Subchapter 14-2 - Building Construction

14-2-1 Approved Contracting Relationship Formats

The following relationship formats may be used in any contract or agreement for construction projects or tasks. In the event that another relationship format is desired for use, it must be approved by the County’s Highest Ranking Construction Officer prior to its utilization.

- A. Single Prime Contractor – The Single Prime Contractor type of construction contract relationship format is one in which one contractor contracts with Horry County to accomplish an entire construction project or task pursuant to specifications or designs provided by the County. Often the specifications or designs are produced for the County by an architectural firm under contract to the County and much of the construction contractor’s work in the performance of the construction contract is supplied by specialty subcontractors.

- B. Design Build – The Design Build type of construction contract relationship format is one in which one contractor supplies all of the work involved in the project, including the design. Horry County provides the performance specifications and the contractor designs and constructs the project consistent with those performance specifications. In a Design Build type of contract

relationship format the contractor may even provide the site as part of the construction contract.

- C. Construction Manager - Under a Construction Manager type of construction contract relationship format, Horry County contracts with an individual or entity to serve as its agent in managing the construction process on behalf of the County. The Construction Manager's role is to protect the County's interests throughout the construction project. There are two types of Construction Manager relationships that can be created when this type of relationship format is chosen. One of the types is a pure agency relationship and the other type is a relationship in which the Construction Manager is "at risk."

14-2-2 Types of Construction Manager Relationships

- A. Pure Agency – Under a pure agency arrangement the Construction Manager acts only as the agent of the owner. In this arrangement the only contractual relationship the Construction Manager has is with Horry County. While the pure agency Construction Manager administers the construction project throughout the planning, design, and actual construction phases of the project, the Construction Manager is not responsible for the means and methods of the project and does not guarantee that the project will meet the expectations of the County in terms of cost, timeliness, and quality.
- B. At Risk – Under an at risk relationship, the Construction Manager provides advice and leadership on a project during the planning and design phases of the project and has control, under the direction of the County, during the construction phase. While the County will generally contract separately for the design portion of the project, the at risk Construction Manager will contract with the construction trade contractors. Because the at risk Construction Manager has control over the means and methods of construction portion of the project, the at risk Manager will be responsible for the completion of the project consistent with the expectations of the County in terms of cost, timeliness, and quality.
- C. Duties of Construction Managers
 - 1. Procurement Process – Whether the relationship that is formed with the Construction Manager is pure agency or at risk, the Construction Manager should play a role in the procurement process that is used to contract with the contractors that will have contractual relationships with Horry County during the project. During the procurement process, the Construction Manager should assist Horry County with:
 - a. The Request for Qualification process (if prequalification is used)

- b. Creation and completion of Sealed Bidding or Negotiated Procurement packages
- c. Review of bids or offers
- d. Shaping and honing the scope or scopes of work
- e. Assisting in evaluation and award decisions

2. Construction Process

a. Pure Agency:

- (i) Act on Horry County’s behalf in overseeing the design and construction phases of a construction project
- (ii) Transact any other such business on behalf of and as directed by Horry County during the construction project

b. At Risk:

- (i) Act on Horry County’s behalf during the design phase of a construction project
- (ii) Assume total responsibility for the construction phase of the project

Subchapter 14-3 - Contract Types and Procurement Procedures – Civil Infrastructure Engineering (This subchapter is reserved)

Subchapter 14-4 - Awarding Contracts/Agreements for Architect-Engineering Services

14-4-1 General

The following procedures shall be followed by Horry County in the award of any contracts or agreements for Architect-Engineering services in which the County’s contract expenditure for those services will or is expected to exceed \$50,000.00. Thus, these procedures apply:

- A. To the method to be used to award an order against Indefinite-Quantity, Indefinite- Delivery contracts or agreements when the order that is to be issued will exceed \$50,000.00; and
- B. To the Architect-Engineering portion of a procurement or series of procurements for an individual or group of projects in which the Architect-Engineering portion of that project or projects will exceed \$50,000.00.

14-4-2 Procurement Procedures

- A. Subject to the application thresholds set forth in the preceding subsection, the following procedures shall be followed in the procurement of all Architect-Engineering Services.

- B. Request for Qualifications - The procurement shall begin by following the procedures for the Request for Qualifications process, as set forth in Chapter Seven of this regulation.
 - 1. The application of the Request for Qualification process shall result in a determination of the competitive range, which shall include only those offerors that have demonstrated in this process that they possess the capability to perform successfully the Architect-Engineering tasks involved in the procurement.
 - 2. The offerors included within the competitive range shall be ranked from the most qualified to the least qualified.
 - 3. The offerors included within the competitive range shall be given a reasonable time to submit price proposals for the Architect-Engineering tasks included within the procurement. When the price proposals have been received, negotiations shall be conducted with offeror determined to be the most qualified. If a successful contract agreement with that offeror is reached, it shall be awarded the contract. If Horry County is unable to reach an acceptable contract agreement with the most qualified offeror, Horry County shall notify that party of the rejection of its offer, and then conduct contract negotiations with the next highest ranked offeror. This process shall continue on the basis of the relative ranking of the offerors until an acceptable contract agreement is reached and a contract is awarded.
 - 4. Under this process a contract may be awarded to the Architect-Engineering Procurement offeror that agrees to provide the services required in the procurement at a price that is deemed to meet any of the alternative standards of price reasonableness, as set forth in Chapter Seven of this regulation.
 - 5. While it is within Horry County's discretion to determine the factors to be utilized in evaluating responses received in the Request for Qualifications process for Architect-Engineering services, it is suggested that Horry County may want to use some or all of the following factors:
 - a. Professional qualifications for the satisfactory performance of the required services
 - b. Specialized experience and technical competence in the type of work required
 - c. Capacity to accomplish the required tasks in a timely manner
 - d. Knowledge of the location of the required work

e. Past performance information

C. Process Failure – In the event that after following this process Horry County is unable to award a contract to any of the qualified parties, Horry County may then award a contract to any qualified Architect-Engineering entity consistent with any of the procedures authorized for the conduct of a procurement and a contract award contained in this regulation.

Subchapter 14-5 - Risk Management Considerations

The requirements for bonds and insurance in construction projects and tasks are addressed in Chapter Five of this regulation.

Chapter Fifteen – Disputes, Debarment and Suspension Hearings, and Bid Protests

Subchapter 15-1 - Disputes

15-1-1 General

Contract Disputes, as governed by this subsection, are any disagreements that arise during the performance of a contract between Horry County and the contractor. Contract Disputes include, but are not limited to, claims involving contract funds, contract performance, contract modifications, contract terminations, and any other aspect of a contract about which Horry County and the contractor disagree.

15-1-2 Dispute Resolution Process

- A. Agreement of the Parties – When a dispute arises, the contractor and Horry County shall attempt to resolve the dispute amicably.
 - 1. If an agreement is reached by the parties resolving a Contract Dispute, a representative of each of the parties that has the authority to contractually bind its respective party must consent to the terms of the agreement.
 - 2. If a dispute arises in a contract which has an estimated value in excess of \$50,000.00, the agreement resolving the dispute must be in writing. The agreement shall include the name the parties involved in the dispute, the contract number, the date the dispute was resolved, and it shall contain a brief description of the nature of the dispute and the terms of its resolution. The agreement shall be signed by a representative of each of the parties that has the authority to contractually bind each of the parties. The written agreement resolving any Contract Dispute shall be included in the contract file.

- B. Decision of the Director of Procurement – If the parties are unable to resolve a Contract Dispute amicably, either party may request a decision from the Director of Procurement.
 - 1. The request to the Director of Procurement shall be in writing and shall provide the Director of Procurement with the name of the parties involved in the dispute, the contract number, the date the dispute arose, and it shall contain a description of the facts involved in the dispute including references to the contract clauses that are involved in the dispute, if any. The party making the request shall provide a copy of the request to all parties involved in the dispute.

2. Each of the parties involved in the dispute may submit comments on the request for a decision.
 3. The Director of Procurement, or the Director's designee, shall have forty-five (45) days from the date the Director of Procurement received the request for a decision to issue the Director of Procurement's written decision. During this period of time, the Director of Procurement, or the Director's designee, may engage in any reasonable investigative activities, including meeting with any or all of the parties involved in the dispute.
 4. The decision from the Director of Procurement, or the Director's designee, once issued, shall be delivered to all Horry County Purchasing Agencies involved in the contract and the dispute. The decisions shall also be delivered to the contractor in a manner that provides proof of delivery. If the contractor disagrees with the Director of Procurement's decision, the contractor may appeal the decision to the County Administrator. Only a contractor may appeal a decision under the Contract Disputes process.
- C. Final Decision by County Administrator - The appeal to the County Administrator shall be in writing and shall provide the County Administrator with a copy of the Director of Procurement's or designee's decision that the contractor is appealing as well as the grounds and rationale for the contractor's position in the appeal.
1. The County Administrator, or the designee of the County Administrator, shall have thirty (30) days from the date the County Administrator received the appeal to issue the County Administrator's final written decision. During this period of time, the County Administrator, or the designee of the County Administrator, may engage in any reasonable investigative activities, including meeting with any or all of the parties involved in the appeal.
 2. The final decision of the County Administrator, or the designee of the County Administrator, once issued, shall be delivered to all Horry County Purchasing Agencies involved in the contract and the dispute. It shall also be delivered to the contractor in a manner that provides proof of delivery. The final decision shall include:
 - a. A description of the controversy
 - b. A reference to pertinent contract provisions
 - c. A statement of the factual areas of agreement or disagreement
 - d. A statement of the County Administrator's decision, with supporting rationale
 - e. A paragraph in which the following statement or equivalent language appears:

“This is the final decision of the County Administrator. You may obtain judicial review of

this decision by bringing an action in the Circuit Court of Common Pleas for Horry County.”

3. Failure to Timely Issue Final Decision - If the County Administrator does not issue a written decision within thirty (30) days after the receipt of an appeal, then the contractor may proceed as if the decision of the Director of Procurement or the designee is the final decision of Horry County in the matter.
4. Payments of Amounts Found Due - The amount determined payable pursuant to a final decision by the County Administrator, less any portion already paid, normally should be paid without awaiting contractor action concerning appeal. Such payment shall be without prejudice to the rights of either party. Where such payments are required to be returned by a subsequent decision, interest on such payments shall be paid at the statutory rate, as set forth for judgment interest under the South Carolina Code of Laws (S.C. Code Ann. Sec 34-31-20), from the date of payment.

Subchapter 15-2 - Suspension and Debarment

15-2-1 General

Horry County shall award contracts and agreements to only those contractors that are responsible. Suspension and debarment are appropriate actions to take to implement this policy. The serious nature of suspension and debarment requires that the imposition of either or both are not to be used as punishment but rather to protect the interests of Horry County. Both individual persons as well as all forms of businesses may be subject to suspension and debarment.

15-2-2 Causes for Suspension and Debarment

The causes for suspension and debarment include the following:

- A. Conviction for the 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 which currently, seriously, and directly affects responsibility as a County contractor;
- C. Conviction under state or federal antitrust statutes arising out of the submission of bids or offers;

- D. Violation of contract provisions, as set forth below, of a character which is regarded by the Director of Procurement to be so serious as to justify a Debarment action:
 - 1. Deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or
 - 2. A recent record of consistent failure to perform in accordance with the terms of one or more contracts; provided that the consistent failure to perform caused by acts beyond the control of the contractor shall not be considered to be a basis for debarment.
- E. Any other cause the Director of Procurement 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 its regulations;
- F. For violation of the ethical standards set forth in applicable County, state, or federal law.

15-2-3 Suspension

- A. Initiation – The Director of Procurement, after consultation with the affected Horry County Agencies, the County Attorney, and, when practicable, the contractor, prospective contractor, or person who is to be suspended, shall make a written determination as to whether probable cause exists for debarment. If the decision of the Director of Procurement is that probable cause exists, the contractor, prospective contractor, or person shall be suspended. A notice of suspension, including a copy of such determination, shall be sent to the suspended contractor, prospective contractor, or person in a manner that provides proof of delivery.
- B. Notice of Suspension – The notice of suspension that is sent to the suspended contractor shall include statements that:
 - 1. The suspension is for the period it takes to complete an investigation into possible debarment not to exceed ninety (90) days; and
 - 2. Address the performance status for any executory contracts to which the suspended contractor or person is a party or involved, including the suspension or continuation of the performance of such contracts or the suspension or continuation of the suspended contractor's or person's involvement; and
 - 3. Bids or proposals will not be solicited from the suspended contractor or person, and, if such bids or proposals are received, they will not be considered during the period of suspension; and
 - 4. The suspended contractor or person may request a hearing.

- C. Effect of Suspension Decision - A contractor, prospective contractor, or person is suspended upon issuance of the notice of suspension. The suspension shall remain in effect during any appeals. The suspension may be ended by the Director of Procurement or by a court, but otherwise shall only be ended when the suspension has been in effect for ninety (90) days or a debarment decision takes effect, whichever first occurs.

15-2-4 Initiation of Debarment Action

- A. Written notice of the proposed debarment action shall be sent to the contractor, prospective contractor, or person by the Director of Procurement in a manner that provides proof of delivery. This notice shall:
 - 1. State that debarment is being considered; and
 - 2. Set forth the reasons for the action; and
 - 3. State that if the contractor, prospective contractor, or person so requests, a hearing will be held, provided such request is received by the Director of Procurement within ten days after the contractor, prospective contractor, or person receives notice of the proposed action; and
 - 4. State that the contractor, prospective contractor, or person may be represented by counsel.
- B. Such notice shall also be sent to the County Attorney and all affected Horry County Agencies. If more than one Agency is affected, the Director of Procurement may designate one or more representatives to represent the interests of all affected Agencies and to be consulted in all aspects of this action.
- C. Request for Hearing - A contractor, prospective contractor, or person that has been notified of a proposed debarment action may request in writing to the Director of Procurement that a hearing be held. Such request must be received by the Director of Procurement within ten (10) days of receipt of the notice of the proposed action. If no request is received within the ten-day period, a final determination on the debarment may be made by the Director of Procurement after consulting with the County Attorney and the affected Horry County Agencies or their representatives.
- D. Notice of Hearing - If a hearing is requested, the Director of Procurement may appoint a hearing officer to conduct the hearing and recommend a final decision. Otherwise, the Director of Procurement shall act as the hearing officer. The hearing officer shall send a written notice of the time and place of the hearing. Such notice shall be sent in a manner that provides for proof of delivery and shall state the nature and purpose of the proceedings. Copies shall be sent to the County Attorney and the affected Horry County Agencies.

- E. Authority of Hearing Officer - The hearing officer, in the conduct of the hearing, has the power, among others, to:
1. Hold a conference between all parties to the Debarment action in which resolution options are explored or the Debarment hearing process is scheduled; and/or
 2. Conduct an investigation of the merits of the Debarment allegations; and/or
 3. Order the parties to the Debarment action to engage in certain methods of discovery and set limits in terms of discovery scope and time; and
 4. Conduct the Debarment hearing.
- F. Hearing Officer's Decision - The hearing officer shall prepare a written decision recommending a course of action. Copies shall be sent to the contractor, prospective contractor, or the person involved as a party in the debarment hearing, the County Attorney, and all affected Horry County Agencies. The contractor, prospective contractor, or person shall have ten days to file comments upon the hearing officer's decision. After consultation with the representative or representatives of the affected Horry County Agencies and the County Attorney, the Director of Procurement shall issue a final decision. Both the hearing officer's decision and the Director of Procurement's final decision shall provide the reasons for the decisions and shall refer to the evidence upon which the decision is based. When debarment is recommended or ordered, the length of the debarment (not to exceed three years), and the extent, if any, of the affect on any affiliates of the party or parties debarred shall be set forth. Finally, the final debarment decision shall contain language as follows:
- “This is the final debarment decision of Horry County. You may obtain judicial review of this decision by bringing an action in the Circuit Court of Common Pleas for Horry County.”
- G. Effect of Debarment Decision - A debarment decision will take effect upon its issuance and receipt by the contractor, prospective contractor, or person debarred. After the debarment decision takes effect, the contractor, prospective contractor, or person shall remain debarred until a court or the Director of Procurement orders otherwise or until the debarment period specified in the decision expires.
- H. Maintenance of Debarred and Suspended List - The Director of Procurement shall maintain and update a list of debarred and suspended contractors, prospective contractors, and persons. All Agencies of the County shall be supplied with this list, and shall be provided with updates as necessary. Such list shall be available to the public upon request.

Subchapter 15-3 - Bid Protests

15-3-1 General

A Protest is a written objection by an interested party made to Horry County in connection with any of the following:

- A. A solicitation or other request by Horry County for a contract or agreement for the acquisition of personal property, services, or improvements to real property; or
- B. An award of a contract or agreement for the acquisition of personal property, services, or improvements to real property; or
- C. A termination or cancellation of the award of a contract or agreement for the acquisition of personal property, services, or improvements to real property, if the objection is based, in whole or in part, on the allegation that the award of the contract or agreement was improper.

15-3-2 Exclusive Remedy

The rights and remedies set forth in this subsection of this regulation, entitled “Procurement Protests,” are the rights and remedies that all Interested Parties have to address the alleged grievances set forth above, and these are the exclusive rights and remedies that Interested Parties have to address those alleged grievances with Horry County to the exclusion of all other rights and remedies.

15-3-3 Interested Party

An “interested party” in terms of an Horry County Protest is an actual or prospective quoter, bidder, offeror, or awardee of a contract or agreement, whose direct economic interest would be affected by the award or non-award of a contract or agreement.

15-3-4 Protest Procedure

- A. Filing a Protest:
 - 1. A Protest must be in writing, filed by an interested party, and addressed to the County Administrator.
 - 2. The Protest must be signed by an authorized representative of an interested party and be delivered in duplicate copies to the County Administrator within fourteen (14) calendar days after the date that the protester knew or should have known of the basis for the Protest. A

Protest filed beyond the fourteen (14) calendar day limit will not be considered.

B. Form of Protest – The written Protest shall include the following:

1. The name and address of the protester;
2. An appropriate identification of the procurement, and, if a contract has been awarded, the contract number;
3. A statement of the reasons for the Protest;
4. A request for documents, or other discovery requests, if desired;
5. A request for a remedy sought by the protester;
6. Exhibits, documents, or other evidence in support of the reasons for the Protest.

C. Notification to Other Parties - Upon receipt of a Protest the County Administrator or the designee of the County Administrator (hereinafter “designee”) shall promptly notify the following other parties of the filing of the Protest:

1. The County Attorney, who shall be provided with a copy of the Protest;
2. The Director of Procurement, who shall be provided with a copy of the Protest;
3. All other Interested Parties in the procurement that is the subject of the Protest, who shall be notified in the same manner as they were notified of the procurement that is the subject of the Protest.

D. Intervention – The County Administrator or the designee may, in the sole discretion of the County Administrator or the designee, allow other Interested Parties to intervene and participate in the Protest. In the event that the County Administrator or the designee allows for intervention, the County Administrator or the designee will determine the extent and limitations on any Intervenor’s participation in the Protest.

E. Post- Filing Protest Process - Once a Protest has been filed, the County Administrator or the designee may, in the sole discretion of the County Administrator or the designee:

1. Hold a conference between all parties to the Protest in which resolution options are explored or the Protest process is scheduled; and/or
2. Conduct an investigation of the merits of the Protest allegations; and/or
3. Order the parties to the Protest to engage in certain methods of discovery and set limits in terms of discovery scope and time; and/or
4. Schedule and conduct a Protest hearing; and
5. Render a decision on the merits of the Protest after engaging in some or none of the previously listed activities.

F. Stay of the Procurement

1. When a Protest has been timely filed before the award of a contract or agreement, the contract or agreement shall not be awarded, unless the Director of Procurement, after consulting with the Purchasing Agency and the County Administrator or the designee, determines that the award of the contract or agreement during the pendency of Protest is necessary to protect substantial interests of the County.
2. When a Protest has been timely filed after the award of a contract or agreement, the Director of Procurement shall direct the contractor not to engage in any further performance of the contract or agreement, unless the Director of Procurement, after consulting with the Purchasing Agency and the County Administrator or the designee, determines that performance under the contract or agreement during the pendency of Protest is necessary to protect substantial interests of the County.
3. Making Information on Protests Available - The County Administrator or the designee shall upon written request make available to any interested party information submitted that bears on the substance of the Protest, except where information is proprietary, confidential, or otherwise permitted or required to be withheld from disclosure by law or regulation. Persons or other entities that are involved in the Protest that want to keep information submitted by them confidential should request that the information not be disclosed by specifically identifying the confidential information within the documents submitted, and indicating on the front page of each document that it contains confidential information.

G. Protest Decision by the County Administrator - A decision on a Protest shall be made by the County Administrator or the designee as expeditiously as possible after receiving all relevant, requested information. In determining a Protest, the County Administrator or the designee may determine to:

1. Terminate the contract or agreement
2. Reopen the contract or agreement
3. Issue a new solicitation or other request for a contract or agreement
4. Award a contract or agreement
5. Provide any other relief consistent with the Horry County procurement ordinances and regulations

H. Bid Preparation Costs - In addition to any other relief, the County Administrator may award the protesting bidder or offeror the reasonable costs incurred in connection with the solicitation, including bid preparation costs, other than attorney's fees, when a Protest is sustained and the protesting quoter, bidder, or offeror should have been but was not awarded the contract or agreement.

I. Request for Reconsideration

1. Request - Reconsideration of a Protest decision may be requested by the protester or any interested party who was allowed to intervene in the Protest, or any Horry County Agency involved in the Protest. The request for reconsideration shall contain a detailed statement of the factual and legal grounds upon which reversal or modification is deemed warranted, specifying any errors of law made or information not previously considered.
2. Time for Filing - Requests for reconsideration of a Protest decision shall be filed not later than ten days after receipt of such decision. Such requests shall be delivered to the County Administrator.
3. Reconsideration Decision – A request for reconsideration shall be acted upon as expeditiously as possible. The County Administrator may uphold the previous decision or reopen the case as the County Administrator deems appropriate.

J. Effect of Judicial Proceedings - If an action concerning a Protest has commenced in court, the County Administrator shall not act on the Protest but refer the Protest to the County Attorney. The County Attorney shall inform the Court of the pendency of the Protest with the County Administrator as well as the provision in the Horry County procurement regulation that provides that Horry County Procurement Protests shall be the exclusive remedy to address Protest grievances. This section shall not apply where a court requests, expects, or otherwise expresses interest in the County's Protest decision.

Chapter Sixteen – Horry County Department of Airports

This chapter is reserved.

Chapter Seventeen – Miscellaneous Matters

17-1-1 Contractor Contract and Administration Fee

- A. General – Horry County may charge contractors a fee to offset the expenses that are incurred in the procurement process and administration of awarded contracts.
- B. The amount of the fee may be no more than an amount equal to one percent (1%) of the total payments made by Horry County to the contractor under the contract.
- C. The determination of what procurements will be subject to the fee and the amount of the fee that will be charged will be determined by the Chief Procurement Officials.
- D. The method of collection of the fee, whether as a contract setoff or other method, will be determined by the Chief Procurement Officials.
- E. If the Contractor Contract and Administration Fee is to be applicable to a particular procurement, all Procurement Participants are to be notified of its application, the amount of the fee, and the method of its collection, prior to the response date for bids, proposals, or quotes.
- F. All amounts of the Contractor Contract and Administration Fee that are collected by Horry County are to be credited to the budget of the Department of Procurement.

17-1-2 Intellectual Property

- A. Definitions for Terms Used in this Regulation Section
 - 1. Data – “Data” is recorded information, regardless of the form or media on or in which it appears or is contained, including technical data and computer software, which includes computer documentation (owners and user manuals, installation and operating instructions, and the like).
 - 2. Invention – “Invention” is any discovery made that is or may be patentable.
- B. Rights in Data Except Computer Software
 - 1. Rights in Data First Produced During Performance - Unless the parties otherwise agree in writing and subject to the constraints of the Protection of Proprietary Data subsection of this section of the regulation, Contractors shall not retain title and may not copyright any data, except

computer software, that is first produced in the performance of any Horry County contract or agreement. Horry County shall have the title to the data and may use the data as it deems appropriate.

2. Rights in Data Not First Produced During Performance - For data that is not first produced in the performance of any Horry County contract or agreement but is used in the performance of any contract or agreement, and for copyrighted data, the Contractor shall retain title to the data and Horry County shall have a nonexclusive, paid-up, irrevocable license to use, reproduce, use and display publicly by Horry County, or on its behalf, any data furnished by contractors in the performance of contractor obligations under any Horry County contract or agreement, regardless of the absence of any license or other rights-assignment document.
- C. Rights in Computer Software - Contractors shall retain title and may copyright any computer software that is used in the performance of contractor obligations under any Horry County contract or agreement, unless the parties otherwise agree in writing. Horry County shall have a nonexclusive, paid-up, irrevocable license to use, reproduce, use and display publicly by Horry County, or on its behalf, any computer software furnished by contractors in the performance of contractor obligations under any Horry County contract or agreement, regardless of the absence of any license or other rights-assignment document.
- D. Patent Rights – Contractors shall retain title to all inventions, whether patented or not, that are used in the performance of contractor obligations under any Horry County contract or agreement, unless the parties otherwise agree in writing. Horry County shall have a nonexclusive, paid-up, irrevocable license to practice or have practiced on its behalf any invention furnished by contractors in the performance of contractor obligations under any Horry County contract or agreement, regardless of the absence of any license or other rights-assignment document.
- E. Patent Indemnification - Horry County contractors will not use or provide to the County any process, program, document, data, design, device or material which infringes on any patent, copyright, trade secret, or any other proprietary right of any third party in the satisfaction of any obligations under any Horry County contract or agreement. Contractors will indemnify and defend the County, at the contractor's expense, against any suit or proceeding brought against Horry County for any infringement arising out of any contractors' performance under any contract or agreement with Horry County. Horry County will promptly notify any contractor in writing of any suit or proceeding in which it is named as a litigant and will assist all contractors in defending any action by providing any necessary information at the contractor's expense. If use of the work is enjoined, then contractor shall obtain a license for the County to continue using the work, or modify the work so that it no longer infringes, without degrading its function or performance.

***17-1-3 Ratification and Affirmation, or Termination, of Contracts or Agreements
Not in Compliance with Law***

- A. General – Under this section of the regulation awarded contracts or agreements that contain or have been awarded under violation of law are addressed.

- B. Horry County Options - When a contract or agreement has been awarded to a contractor and it is discovered that it contains or was awarded under violation of law, Horry County may either:
 - 1. Ratify and affirm the contract or agreement and begin or continue with performance under the contract or agreement; or
 - 2. Terminate the contract.

- C. Determination to ratify and affirm or terminate the Contract or Agreement – When confronting a contract or agreement that contains or was awarded under a violation of law, Horry County shall weigh certain factors to determine which of the options is in its best interests. These factors are:
 - 1. The violation will or will not result in harm to Horry County or prejudice to the interests of any other quoters, bidders, or offerors involved in the procurement that led to the award of the contract or agreement;
 - 2. The immediacy of the need for the goods, services, or improvements to real property involved in the performance of the contract or agreement performance;
 - 3. The duration of the performance that has occurred at the time the violation of law is discovered;
 - 4. The costs and time involved in conducting a reprocurement of the goods, services, or improvements to real property involved in the contract or agreement that contained or was awarded under a violation of law;
 - 5. The nature and extent of the contractor’s involvement in the violation of law.

- D. Determination Process of Ratification and Affirmation, or Termination of the Contract or Agreement
 - 1. Determination Process - When it is discovered that an awarded contract or agreement contains or has been awarded under a possible violation of law, this fact shall be immediately brought to the attention of the Chief Procurement Officials, who shall then determine with the assistance of the Purchasing Agency and the County Attorney, the validity of the illegality allegation(s), and whether to ratify and confirm the contract or agreement or terminate the contract or agreement. The determination shall be in

writing and shall be delivered to the contractor, the Purchasing Agency, and the County Attorney.

2. Termination Determination - If the determination is made that the contract is to be terminated, Horry County shall determine if the termination is one for default or one for convenience. This determination will be as a result of the amount of involvement that the contractor had in the violation of law. If a contractor would like to submit a claim for amounts due under the terminated contract, it may do so under the appropriate provisions included in Chapter Thirteen of this regulation governing Terminations for Convenience and Terminations for Default. Also, Horry County may pursue any other remedies it has against a contractor that is found to have been involved in the violation of law that is the basis for the termination of the contract or agreement. Such other remedies include, but are not limited to, Suspension and Debarment, as set forth in Chapter Fifteen of this regulation.
3. Contract or Agreement Performance Status - Between the time that the discovery of the possible violation of law is made and the time that the determination is issued, the contractor shall be directed by the Chief Procurement Officials whether to continue with or cease performance under the contract or agreement.