

OCONEE COUNTY COUNCIL

ORDINANCE NO. 2001-15

AN ORDINANCE TO ESTABLISH CENTRALIZED PROCUREMENT REGULATIONS

AND REPLACING ORDINANCE NO. 85-12

Section 1. Purpose.

The purpose of this ordinance is to secure for the County taxpayers the advantages and economies which will result from centralized control over the expenditures of County funds for supplies, materials, equipment and contractual services, by the application of modern, business-like methods for such expenditures, and from better utilization of the articles procured at public expense. This ordinance is to implement S.C. Code § 4-9-160.1, by which County Council is to provide for a centralized procurement system.

Section 2. Definitions.

As used in this ordinance:

Agency and using agency means any of the departments, offices, or other organization units of the County government, and any special district whose affairs and funds are under the supervision and control of the County Council and for which the County is ex-officio the governing body.

Bidders list means a current file of sources of supply of articles for each category of commodities repetitively purchased for County use.

Contractual services means any and all telephone, gas, water, electric light and power services; towel, uniforms and cleaning service; the rental of equipment and machinery; and all other types of agreements under which the contractor provides services which are required by the County government but not furnished by its own employees; provided, however, that "contractual services" shall not include legal advertising, and purchases of space for legal advertising shall not be subject to the provisions of this ordinance.

Irresponsible bidder means a bidder or prospective bidder who fails to furnish, upon written request, proof of his financial resources, production or service facilities, service reputation; who has, as a vendor or contractor with the County, repeatedly made slow or unsatisfactory deliveries; or who has violated, or attempted to violate the provisions of this ordinance.

Personal services mean the service of architects, engineers, consultants, or other individuals or organizations possessing a high degree of technical skill.

Responsible bid means an offer submitted by a responsible bidder in ink or typewritten form, to

furnish supplies, materials, equipment or contractual services in conformity with the specifications, delivery terms and conditions, and other requirements included in the invitation for bids.

Responsible bidder means a bidder who submits a responsible bid; who has furnished, when requested, information and data to prove that his financial resources, production or service facilities, service reputation and experience are adequate to make satisfactory delivery of the supplies, materials, equipment or contractual service on which he bids; and who has not violated, or attempted to violate, any provisions of this ordinance.

Supplies, materials and equipment mean any and all articles or things which shall be furnished to or used by any agency, including any and all printing, binding, or publication of stationery, forms, laws, journals and reports.

Section 3. Powers and duties of County Procurement Director.

The County Procurement Director shall, subject to the provisions of this ordinance and applicable provisions of state law:

- A. Purchase all supplies, materials, equipment and contractual services required by the agencies in accordance with the procurement regulations, which regulations have been approved by County Council pursuant to Section 4 of this Ordinance.
- B. Purchase all supplies, materials, equipment and contractual services required by the agencies in amounts or estimated amounts of fifteen thousand dollars (\$15,000.00) or less; and submit to the County Supervisor for award, and thereafter execute contracts for all purchases of supplies, materials, equipment and contractual services in amounts or estimated amounts greater than fifteen thousand dollars (\$15,000.00) and less than twenty five thousand dollars (\$25,000.00); and submit to County Council for award and thereafter execute contracts for all purchases of supplies, materials, equipment and contractual services in amounts or estimated amounts in excess of twenty five thousand dollars (\$25,000.00). In order to procure supplies, materials, equipment and services in such a manner as to promote competition while considering the administrative cost of such procurements, the following methods of source selections are described.
 - (1) **Informal Purchases.** Items can be procured on an informal basis addressing competition as follows:
 - (a) Routine Small Purchase Order (RSPOs) books shall be prenumbered and issued by the County Procurement Director to properly authorized officials, for use in securing delivery of miscellaneous hardware, repair parts and miscellaneous operational items when the need arises. The use of such orders shall be limited to purchases in amounts not to exceed five hundred dollars (\$500.00). It is the using agency's responsibility to assure there are sufficient funds available in the corresponding line item to cover all RSPO

expenditures. All order books and all order blanks shall be properly accounted for by the official to whom they have been issued.

- (b) The County Vehicle Maintenance Facility is authorized to purchase items up to five hundred (\$500.00) dollars using Parts Purchase Orders (PPO), which shall be pre-numbered and issued by the Vehicle Maintenance Superintendent or his/her designee. PPO's shall be used only for securing parts for vehicles, tires, tubes, oil, grease, antifreeze, etc. from the inventory accounts and then charged out to the vehicle via a Work Order.
 - (c) Purchases over \$500.00 but not exceeding \$1,500.00 require no competition, if price is fair and reasonable, which shall be determined by the Procurement Office.
 - (d) Purchases of \$1,501.00 to \$5,000.00 require solicitation of three verbal or written bids;
 - (e) Purchases of \$5,001.00 to \$15,000.00 require solicitation of three written bids.
- (2) **Competitive Sealed Bidding.** Procurements above \$15,000.00 shall be based upon formal bid requirements for which bid specifications can be developed to assure adequate competition. An award shall be made to the lowest responsive and responsible bidder.
 - (3) **Competitive Sealed Proposals.** Procurements can be made by competitive sealed proposals that are highly technical, complex in nature and do not lend themselves to formal competitive sealed bidding. Competitive sealed proposals shall be used in accordance with Section 18. An award shall be made to the offeror whose proposal is considered to be most advantageous to the County.
 - (4) **Sole Source Procurements.** A procurement can be made from a sole source without competition based upon a written determination that there is only one source for the required supply, service or equipment; or in the case of repairs or replacement parts that the sole source is the authorized dealer for such repairs or replacements.
- C. Negotiate contracts for personal services and submit them for approval and award as provided in subparagraphs (1) through (4) of this section;
 - D. Use standard specifications wherever they are applicable to purchase orders and contracts; and insure compliance with such specifications through adequate inspection of deliveries;
 - E. Transfer between agencies supplies, materials and equipment which are no longer needed by a holding agency but which can be used by the receiving agency;

- F. Exchange, trade in or sell those supplies, materials and equipment which are surplus, obsolete or unused and which are found by the County Supervisor not to be required for public use;
- G. Develop, with the approval of the County Attorney as to legal sufficiency, standard forms and conditions of invitations to bid and purchase orders and contracts; develop, and prescribe the use by agencies of other forms required in carrying out the provisions of this ordinance; and amend or eliminate any such forms;
- H. Upon request of County Council, and subject to its approval of each transaction, perform all delegable functions in connection with acquisition and disposal of real property;
- I. Purchase, or perform other supply functions prescribed in this ordinance, when requested to do so by special districts, or other governmental units of the County whose affairs and funds are exempt from the supervision and control of County Council;
- J. Ensure procurement information is public record to the extent required by Chapter 3 of Title 30 (the Freedom of Information Act), South Carolina Code of Laws, 1976, with the exception that commercial or financial information obtained in response to a request for proposals which is privileged and confidential need not be disclosed;
- K. Where a procurement involves the expenditure of federal assistance or contract funds, the Procurement Director shall comply with such federal law and authorized regulations which are mandatorily applicable and which are not presently reflected in the ordinance;
- L. Ensure the provisions of Chapter 13 of Title 8 (State Ethics Act), South Carolina Code of Laws, 1976, are complied with in all actions involving the procurement of supplies, services or construction for the County;
- M. Report any collusion or other anti-competitive practices suspected among any bidders or offerors to the State Attorney General;
- N. Promulgate regulations concerning vendor or contractor complaints or grievances. The regulations shall provide for a complete and unbiased hearing of vendor complaints and grievances within a reasonable time period. Complaints and grievances that are not resolved satisfactorily by the Procurement Director may be reviewed by the County Supervisor or by a person or persons designated by the County Supervisor; and
- O. Promulgate regulations concerning debarment or suspension of vendors. The decision to debar or suspend shall not be made without allowing the vendor reasonable opportunity to present information concerning the debarment or suspension to the Procurement Director and/or the County Supervisor.

- P. It shall be the responsibility of the County Procurement Director:
- (1) To reduce, to the maximum extent possible, the number of purchase transactions by combining into bulk orders and contracts the requirements of agencies for common-use items or items repetitively purchased; and
 - (2) To develop and use those types of contracts and purchase orders which will reduce to the minimum the accompanying paper work and which, in other respect, will be most advantageous to the County; and
 - (3) To the greatest extent possible, to make full utilization of the procurement services provided by the Division of General Services of the state.

Q. In carrying out the provision of paragraph P of this section, the County Procurement Director is authorized to prescribe in the procedural regulations adopted pursuant to Section 4 of this ordinance the use of various types of contracts and orders, including, but not limited to, the following:

- (1) Definite-quantity contracts, whereby the contractor agrees to furnish a specified quantity of supplies, materials or equipment at a specified time.
- (2) Indefinite-quantity contracts, whereby the County agrees to obtain from the contractor all its requirements for specified supplies, materials or equipment in an estimated but indeterminate amount during a prescribed period of time at a definite unit price or at a specified discount from list or posted prices.
- (3) Price agreements, whereby the contractor agrees to supply the County requirements for items, such as replacement parts for different makes of mechanical or automotive equipment during a prescribed period of time and within a designated geographical area of the County at a definite unit price or at a specified discount from list or posted prices.

Section 4. Procedural regulations.

- (a) The County Procurement Director is hereby authorized to prepare procedural regulations to amplify the provisions of this ordinance; to submit such regulations and amendments thereto to the County Council for approval, to promulgate and enforce compliance with such regulations, including, but not limited to:
- (1) The procedure for making purchases pursuant to the regulations as approved by County Council;
 - (2) The procedure for handling bids, including their custody and safeguarding; opening and tabulation; rejection and readvertising; and the procedure for determining the

lowest responsible bidder;

- (3) The procedure for securing from bidders and prospective bidders the data necessary to determine whether or not they are responsible;
 - (4) The procedure for inspection of deliveries of supplies, materials, equipment and contractual services;
 - (5) The procedure for reporting receipt of deliveries of supplies, materials, equipment and contractual services;
 - (6) The procedure for submitting requisitions for the supplies, materials, equipment and contractual services required by the using agencies;
 - (7) The procedure for making emergency purchases;
 - (8) The procedure for making open market purchases and sale of surplus property;
 - (9) Such matters as may be necessary to give effect to provisions of this ordinance and any amendments thereto.
- (b) A copy of such regulations shall be available in the County Procurement Director's office and shall be open to public inspection during regular business hours.
- (c) If at any time, there is a conflict between this Ordinance and the Procurement Regulations, the provisions of this Ordinance will control.

Section 5. Exemptions from centralized procurement.

With the approval of the County Supervisor, the County Procurement Director may, and where legally required to do so, shall authorize, in writing, any agency or department to purchase or contract for certain specified classes of supplies, materials, equipment, or contractual services, independently of the County Procurement Director's office; but such purchases or contracts shall be made in conformity with the applicable provisions of this ordinance. The County Procurement Director may also rescind such authorization to purchase independently, by written notice to the agency or agencies concerned unless otherwise prohibited by law.

Section 6. Emergency purchases.

- (a) Emergency procurements shall be permitted only when there exists an immediate threat to public health, welfare, critical economy and efficiency, or safety under emergency conditions; a breakdown in machinery or an essential service occurs; or when unforeseen circumstances arise, including delays by contractors, delays in transportation and unanticipated volume of work; and provided that such emergency procurements shall be made with as much competition as is practicable under the circumstances. A written determination of the basis for the emergency and for the selection of the particular contractor shall be included in the contract file.

- (b) If an emergency occurs during regular business hours, the head or designee of the using agency shall immediately notify the Procurement Director, or his/her designee, who shall either make the purchase or authorize the using agency to do so. If the Procurement Director, or his/her designee, is unavailable, the head of the using agency shall notify the County Supervisor before making the purchase. If an emergency occurs at times other than regular business hours, the using agency may purchase directly the commodity or commodities required. If the estimated cost of the emergency purchase exceeds fifteen hundred dollars (\$1,500.00), the head of such agency shall, whenever possible, secure competitive telephone bids and order delivery to be made by the lowest responsible bidder. On every emergency purchase made, the agency head shall, not later than the next business day thereafter, submit to the Procurement Director a requisition, a tabulation of bids received, if any, a delivery receipt and a written explanation of the circumstances of the emergency. The record of such emergency transactions shall be open to public inspection during regular business hours.

Section 7. Requisitions and estimates of future requirements.

- (a) All agencies shall submit to the County Procurement Director requisitions for the supplies, materials, equipment and contractual services as required for their operations and for the purposes and within the limits of funds appropriated therefor. The County Procurement Director, after reviewing any such prices, may require from the head of the requesting agency a justification of the quantity or quality requisitioned.

- (b) All agencies shall also file with the County Procurement Director estimates of their requirements for supplies, materials, equipment and contractual services in such form, at such time, and for such future periods, as the County Procurement Director shall prescribe.

Section 8. Contract purchases.

- (a) All purchases of, and contracts for supplies, materials, equipment and contractual services, shall be based, wherever possible, on competitive bids. If the amount of the expenditure for a contractual service or for a commodity, or for a class of commodities normally obtainable from the same sources of supply, is estimated to exceed fifteen thousand dollars

(\$15,000.00), contract bids shall be solicited by public notice and written purchase orders/contracts shall be awarded. The method and extent of public notice shall be prescribed by the County Council. All public notices shall include a general description of the commodities or services to be purchased; shall state where contract bids and specifications may be secured; and shall specify the time and place for opening of bids.

- (b) The County Procurement Director shall, in addition, solicit bids from prospective bidders for the class of commodities being purchased as listed on the bidders' list by sending them copies of the newspaper notice or such other notice as will acquaint them with the proposed purchase. All pending purchases shall also, in all cases, be advertised by posting a copy of the bid notice form on a public bulletin board in or adjacent to the office of the County Procurement Director.
- (c) All bids shall be submitted sealed to the County Procurement Director on the official contract bid form, furnished by the County, which will have indicated thereon the class of commodities to be purchased and the established time for opening of bids. When required, each bid shall be accompanied by surety in the form of certified or cashier's check or bid bond in such amount as shall be prescribed in the contract bid form. A tabulation of all bids received, whether accepted or rejected, shall be open for public inspection during regular business hours for a period of not less than thirty (30) calendar days after the bid opening. At this point in the process, the County Procurement Director may:
 - (1) Reject any and all bids for any or all commodities or contractual services included in the bid form and may readvertise for bids when the public interest will be served thereby, but will report such action and the reasons therefor to the County Supervisor.
 - (2) If all bids received are for the same total amount or unit price, the County Procurement Director may recommend award of the contract to one of the tie bidders based on the following:
 - a) Availability or completion period;
 - b) Service availability or facility;
 - c) Previous vendor record;
 - d) If all factors listed above are equal, preference may be given to the vendor whose principle place of business is located in Oconee County or is closest to Oconee County;
 - e) If all factors listed above are equal, the Procurement Director may ask only the tie bidders to re-submit another bid, or may determine to break the tie by drawing lots or flipping a coin.

- (3) Otherwise, the contract shall be awarded by the County Supervisor up to twenty-five thousand (\$25,000.00) dollars and by County Council on all contracts in excess of twenty-five thousand (\$25,000.00) dollars, to the lowest responsible bidder, unless a specific finding of fact is made that it is in the best interests of Oconee County to take a higher bid.
 - (4) In determining the lowest responsible bidder, the County Procurement Director and the County Supervisor shall take into consideration the quality offered and its conformity with the specifications, the delivery and discount terms and conditions of the bid, the service reputation of the bidder, and other information and data required to prove the bidder's responsibility.
- (d) It shall be the duty of the County Procurement Director to discourage uniform bidding by every possible means and to endeavor to obtain as full and open competition as possible on all purchases. Accordingly, the County Procurement Director shall require each bidder to accompany his bid with a statement made under oath that he has not been a party with other bidders to an agreement to bid a fixed or uniform price. Violation of such statement shall render void the bid of such bidders. Any disclosure to, or acquisition by, a competitive bidder, in advance of the opening of the bids, of the terms and conditions of the bid submitted by another competitor shall render the proceedings void and shall require readvertising for bids.
- (e) Unless otherwise agreed upon by the County, if the successful bidder does not enter into a contract within ten (10) days after mailing of notice of award of contract, he shall forfeit in cash an amount equivalent to the amount of any surety which accompanied his bid, unless the County is responsible for the delay. The contractor shall also be held liable for any cost in excess of his/her bid price which the County incurs in procurement of the commodities or services elsewhere, including Attorney's fees incurred by the County in enforcing this provision of the Ordinance.
- (f) When required, the successful bidder shall furnish surety in the form of a certified or cashier's check or bond for the faithful performance of the contract in the amount specified in the contract bid form.
- (g) Bidders who regularly do business with the County may, if approved by the County Procurement Director, be permitted to file with the County Procurement Office an annual bid bond and an annual performance bond in an amount established by the County Procurement Director. Such annual bonds may be acceptable as surety in lieu of the furnishing of surety with each individual transaction.
- (h) All contract bid forms and all contracts shall be approved by the County Attorney as to form and legality. Following such approval, all contracts shall be signed on behalf of the County by the County Procurement Director. Contracts shall be maintained in the Procurement

Office.

Section 9. Open market purchases.

- (a) If the amount of the expenditure for a contractual service or for a class of commodities normally obtainable from the same sources of supply, is estimated to be less than fifteen thousand dollars (\$15,000.00), it shall be an open market transaction and shall not be subject to the sealed bid requirements of Section 8 of this ordinance.
- (b) The Procurement Director may solicit bids by direct mail requests to prospective bidders for the class of commodities being purchased as listed on the bidder's list, or bids may be solicited by telephone, facsimile, or via the County's web site. No competition is required for purchases not exceeding \$1,500.00 if price is fair and reasonable. Purchases \$1,501.00 to \$5,000.00 require solicitation of three verbal or written bids. Purchases \$5,001.00 to \$15,000.00 require solicitation of three written bids.
- (c) The County Procurement Director shall make a tabulation or other record of all written and telephone bids and such records shall be open to public inspection during regular business hours for at least thirty (30) days after the date of the bid opening or telephone transaction.
- (d) All open market purchases shall be awarded to the lowest responsive/responsible bidder.

Section 10. Purchase of patented or proprietary articles.

- (a) When the County requires supplies, materials or equipment which are produced by only one manufacturer, the County Procurement Director shall specify such manufacturer's make or brand in the invitations to bid and shall obtain competitive bids from authorized dealers or distributors of such manufacturer. If such manufacturer is the sole bidder and sole source of supply, or the manufacturer has territorial authorized dealers, the County Procurement Director is authorized to negotiate an open market order or contract with the manufacturer or authorized dealer at prices and on terms most advantageous to the County.
- (b) When the County requires supplies, materials or equipment which are patented or proprietary and which are obtainable in two (2) or more equally satisfactory and competitive makes, brands, or types, the County Procurement Director shall list such acceptable and competitive makes, brands, or types in the invitations to bid. Such lists shall also include the phrase "or equal" to permit bidders to bid on alternate or additional makes, brands or types. It shall be incumbent on each such bidder to prove to the satisfaction of the County that the alternate or additional make, brand or type which he offers is equal in quality or performance to those listed in the invitation to bid.
- (c) When the County requires supplies, materials or equipment which are patented or proprietary and are not obtainable in other competitive makes or brands, it is appropriate to use a

proprietary specification when the desired product must be compatible with or is an integral component of existing equipment or products, or when prequalification of products is necessary to support a specific need of a program; or is covered by a patent or copyright; or must yield absolute continuity of results; or is one with which a user has had extensive training and experience, and the use of any other similar piece of equipment would require considerable reorientation and training. Upon solicitation, every effort must be made to obtain full competition among the distributors, which carry the manufacturer's product. The determination for the use of a proprietary specification shall be made by the using agency, in writing, and submitted with the requisition, and it must be included in the procurement file. Final approval of each proprietary specification shall be made by the Procurement Director.

Section 11. Availability of funds.

Except in emergencies as defined in Section 6(a) of this ordinance, no notice of award of contract shall be issued, no contract shall be signed, and no open market purchase order shall be issued, until the Director of Finance, or his/her designee, shall have certified that the unexpended balance in the appropriation or appropriations concerned, is sufficient to defray the amount of such contract or purchase order.

Section 12. Unlawful purchases.

- (a) If any agency purchases or contracts for any supplies, materials, equipment or contractual services contrary to the provisions of this ordinance, such purchase order or contract may be void and of no effect. The head of the agency making such purchase transaction may be personally liable for the amount of such purchase order or contract, and, if already paid for out of County funds, the amount thereof may be recovered in the name of the County in an appropriate action therefor.
- (b) It shall be unlawful for any agency or department to split its requirements for supplies, materials, equipment and contractual services into estimated amounts of less than five hundred (\$500.00) dollars or fifteen thousand (\$15,000) dollars in order to evade the provisions of Section 9 of this ordinance.

Section 13. Personal purchases.

Purchases of supplies or equipment for the personal use of an official, employee of the County, or volunteer shall be made by the County Procurement Director, or by an agency to which he/she has voluntarily given an exemption in accordance with Section 5 of this ordinance, only when the item or items are required parts of a worker's equipment and are necessary to the successful performance of the duties of such County official, employee, or volunteer.

Section 14. Gratuities.

- A. A person, vendor, or contractor may not, directly or indirectly, give, offer, or promise anything

of value to a County official, County member, or County employee with the intent to:

- (1) influence the discharge of a County official's, County member's, or County employee's official responsibilities;
 - (2) influence a County official, County member, or County employee to commit, aid in committing, collude in, or allow fraud on a governmental entity; or
 - (3) induce a County official, County member, or County employee to perform or fail to perform an act in violation of the County official's County member's or County employee's official responsibilities.
- B. A County official, County member, or County employee may not, directly or indirectly, knowingly ask, demand, exact, solicit, seek, accept, assign, receive, or agree to receive anything of value for himself or for another person, vendor, or contractor in return for being:
- (1) influenced in the discharge of his official responsibilities;
 - (2) influenced to commit, aid in committing, collude in, allow fraud, or make an opportunity for the commission of fraud on a governmental entity; or
 - (3) induced to perform or fail to perform an act in violation of his official responsibilities.
- C. A violation of any provision of this section by any County official, County member, or County employee shall be cause for removal or other disciplinary action.
- D. A violation of any provision of this section by any vendor or contractor, or prospective vendor or contractor, shall be cause for declaring such individual or firm to be an irresponsible bidder and for debaring him from bidding, as provided by Section 15 of this ordinance.
- E. This section does not apply to political contributions unless the contributions are conditioned upon the performance or specific actions of the person accepting the contributions nor does it prohibit a parent, grandparent, or other close relative from making a gift to a child, grandchild, or other close relative for love and affection except as otherwise provided.

Section 15. Debarment of irresponsible bidders.

The County Procurement Director may determine and declare a bidder to be irresponsible for the reasons cited in the definition of "irresponsible bidder" in Section 2 and Section 14 of this ordinance; may remove his name from the bidders' list; and may debar him from bidding for a reasonable period, or not less than one year. Such debarred bidder shall be furnished with a statement of the reasons therefor.

Section 16. Inspection.

- (a) The receiving departments/agencies shall inspect deliveries of supplies, materials and equipment or the furnishing of contractual services to insure their conformance with the specifications set forth in the purchase order or contract.
- (b) Any department/agency that has the necessary facilities and staff for adequate inspection may be authorized and directed by the County Procurement Director, to inspect deliveries made to other agencies.
- (c) The County Procurement Director shall have authority to require chemical and physical tests of samples submitted with bids and samples of deliveries to the extent necessary to determine their quality and conformance with the specifications. For such tests, the County Procurement Director shall have authority to make use of laboratory facilities of any department/agency or to engage the services of any outside laboratory.

Section 17. Surplus, obsolete and waste commodities.

- (a) All agencies shall submit to the County Procurement Director at such times and in such form as he/she shall prescribe reports showing stocks of all supplies, materials, and equipment which are no longer used or which have become obsolete, worn out or scrapped. The County Procurement Director shall have authority to transfer any such commodities which are usable to another or other agencies in lieu of filling requisitions for the purchase of new and additional stock of the same or similar articles.
- (b) The County Procurement Director shall have authority to sell all such supplies, materials and equipment which cannot be used by any agency or which have been found by the County supervisor not to be required for public use; or to exchange or trade-in such articles in part or full payment for new supplies, materials or equipment of a similar nature. Any such sale, exchange or trade-in shall be made in accordance with Section 8 or 9 of this ordinance, or by public auction, whichever is applicable.
- (c) The Oconee County Sheriff's Department shall be responsible for the sale of all confiscated equipment, automobiles, bikes, etc., pursuant to applicable state law. However, upon request of the sheriff's department, the Procurement Director may sell such confiscated property during any auction sale being sponsored by the County.

Section 18. Competitive sealed proposals.

Notwithstanding any other provisions of this ordinance, competitive sealed proposals may be used in the procurement of goods, services, and construction in the manner provided for herein:

- (a) **Conditions for use.** When the Procurement Director determines that the use of competitive sealed bidding in procurement of particular goods, services, or construction is

either not practicable or not advantageous to the County, he/she may utilize the competitive sealed proposals procedure established herein to contract for and procure the particular goods, services, or construction required by the County.

- (b) **Request for proposals.** Proposals shall be solicited from at least three (3) qualified sources, when such sources are reasonably available, through a request for proposals. A "request for proposals" is a written or published solicitation for proposals to provide goods, services, or construction, as described therein. Evaluation factors upon which the proposals will be evaluated for award of the contract shall be stated in the request for proposals. Price shall be one of the evaluation factors but it shall not be the sole basis for award of the contract.
- (c) **Public notice.** Public notice of the request for proposals shall be given at a reasonable time prior to the date set forth therein for the receipt of proposals. Such notice may include utilization of bidders' lists or publication in a newspaper of general circulation in the County.
- (d) **Receipt of proposals.** Proposals shall be opened publicly in the presence of one (1) or more witnesses at the time and place designated in the request for proposals. Only the names of the offerors shall be disclosed at the proposal opening. Contents of the proposals shall not be disclosed during the negotiation process. Proposals shall be open for public inspection after contract award, except that proprietary or confidential information in any proposal that is clearly marked "confidential" by the offeror shall not be disclosed without written consent of the offeror.
- (e) **Evaluation factors.** The request for proposals shall state the relative importance of price and of each other evaluation factor but shall not require numerical weighing of each factor. The evaluation factors shall be examined with respect to each proposal in determining which proposal is most advantageous to the County. There are no restrictions on the kind or number of evaluation factors that may be used, as long as they are stated in the request for proposals and relate to the purpose of the procurement.
- (f) **Negotiation with responsible offerors and revisions to proposals.** Negotiations may be conducted with any offerors submitting a proposal that appears eligible for contract award (based upon the evaluation factors) for the purpose of clarification to assure full understanding of and responsiveness to the requirements of the request for proposals. Offerors shall be accorded fair and equal treatment with respect to opportunity for discussion and revision of proposals. Revisions in proposals may be permitted after their submission and prior to contract award for the purpose of obtaining best and final offers. In conducting negotiations, there must be no disclosure of any information derived from proposals submitted by competing offerors.
- (g) **Award.** Award shall be made to the responsive offeror whose proposal is determined to be the most advantageous to the County, taking into consideration price and the other evaluation factors set forth in the request for proposals. No other factors or criteria may be used in evaluation and there must be adherence to any weighings, if specified, for

each factor in the request for proposals. If the County Council or its designee should determine that none of the proposals are advantageous to the County, the County shall have the absolute right to reject any and all proposals. The contract file shall contain the basis on which the award is made and be sufficient to satisfy external audit.

- (h) **Negotiations after unsuccessful competitive proposals.** When the price of all proposals received pursuant to a request for proposals appears to be unreasonable, or the price of the lowest proposal exceeds available funds as determined by the County Council or its designee, and time or other circumstances do not permit the delay required to resolicit for competitive sealed proposals, a contract may nevertheless be negotiated provided that:
- (1) Each offeror who submitted a proposal under the original solicitation is notified and given reasonable opportunity to negotiate;
 - (2) The negotiated price must be within the limits of available funds as determined by the County Council or its designee.

Section 19. Provisions Applicable to Road Construction Projects Only.

- (a) Prior Approval of Substitutions:

- (1) The materials, products and equipment described in the Bid Package establish a standard of required function, dimension, appearance and quality to be met by any proposed substitution.
- (2) Bidders may submit a request for approval of a substitution to the County Procurement Office no later than ten (10) business days prior to the date of the Bid Opening. Such requests shall include the name of the material or product for which it is to be substituted and a complete description of the proposed substitution including drawings, specification, performance and test data, and any other information necessary for an evaluation of the proposed substitution. The County Procurement Director's decision of approval or disapproval of a proposed substitution shall be final.
- (3) If the County Procurement Director does not approve a proposed substitution, the Bidder will be required to base its bid on the materials, products, and equipment described in the Bid Package and Addendum and may not base its bid on the proposed substitution.
- (4) If the County Procurement Director approves a proposed substitution prior to the date of the Bid Opening, the County will issue an Addendum setting forth the approved substitutions.
- (5) The County will issue such Addendum no later than five (5) business days prior to

the Bid Opening. Bidders shall not rely upon approvals made in any other manner. All approved substitutions listed in the Addendum shall become a part of the Bid Package and all prospective bidders will be allowed to base their bids on materials, products and equipment listed as approved substitutions.

(b) Bidder Shall Not Qualify Bid

The bidder will not qualify its bid and will not be allowed to list any exceptions or deviations from the requirements set forth in the Bid Package or Addendum (such modifications or deviations will render a bid non-responsive).

(c) Award of Construction Contracts

It is the intent of the County to award a Contract to the lowest responsive and responsible Bidder, provided the Bid has been submitted in accordance with the requirements of the Bid Package and any Addendum and does not exceed the funds available.

Section 20. Severability.

If any section, phrase, sentence or portion of this Ordinance is for any reason held invalid or unconstitutional by a court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

Section 21. Effective date.

This Ordinance shall take effect on December 4, 2001.

ADOPTED ON THIRD & FINAL READING THIS 4TH DAY OF DECEMBER 2001 BY A VOTE OF 4 YES TO 0 NO.

Attest:

Opal O. Green, Clerk

Ann H. Hughes
Supervisor-Chair
Oconee County Council