

PROCUREMENT CODE

ARTICLE 3—EVALUATION OF BIDS AND PROPOSALS

Part A – Minority Business Enterprise Program

§3-101 County MBE Program.

1. *Statistical Justification for County MBE Goals.* MBEs represent ___ percent of the businesses in the United States and ___ percent of the business revenue nationwide, according to the United States Bureau of Census. Also, according to the United States Bureau of Census, in the Orangeburg County area, ___ percent of establishments have less than ten employees and ___ percent of establishments have less than 50 employees.
2. *MBE Program.* Based upon §1-102.1 and §3-101.1, there is hereby established a County MBA Program. The statistical goals of the MBE Program are as follows:
 - a. A goal of ___ percent of annual procurement. This is consistent with the federal MBE goal of 25 percent and lower than the availability of MBEs in the marketplace; and
 - b. A ___ percent MBE subcontracting goal for each specific prime contract that has subcontracting and/or supplier possibilities; however, the Director shall have the authority to reduce or eliminate such MBE goal on a contract-by-contract basis based upon the type of contract, the type of subcontracting work that will be required, and the availability of MBE's therefore.

§3-102 Required Submissions; Counting Procedures.

1. Every vendor participating in a procurement shall be required to submit with its response the names, addresses, certification numbers, if applicable, of certified MBEs or firms that have applied for MBE certification at the time of the submission, and any other information the Director may require in the project's solicitation documents.
2. In evaluating the County's progress toward reaching its MBE goals, the following shall apply:
 - a. Once a firm is certified as an MBE, the total dollar value of the subcontractor or supplier contract awarded to the MBE by the contractor is counted toward the applicable MBE goal. If a firm is listed on the contract as having its MBE certification pending has its certification denied, or if an MBE fails to be recertified during the term of the contract, or if an MBE is decertified during the term of the contract, the dollar value of the contract awarded to that MBE cannot be counted toward the applicable MBE goal;
 - b. The County will count toward its MBE goals a portion of the total dollar value of a contract with a joint venture equal to the percentage of the ownership and contractual commitment to the MBE partner in the joint venture.
 - c. The County will count toward the MBE goals a portion of the total dollar value of a contract with a mentor protégé team equal to the percentage of the project self performed by the MBE member of the team.
 - d. The County will count toward its MBE goals only expenditures to MBEs that perform a commercially useful function in the work of the contract.

- e. The County will count toward its MBE goals the following expenditures to MBE firms that are not suppliers:
 - i. The fees or commissions charged for providing a bona fide service, such as professional, technical, consultant or managerial services and assistance in the procurement of essential personnel, facilities, equipment, materials or supplies required for performance of the contract, provided that the fee or commission is determined by the County to be reasonable and not excessive as compared with fees customarily allowed for similar services.
 - ii. The fees charged for delivery of materials and supplies required on a job site (but not the cost of the materials and supplies themselves) when the hauler, trucker, or delivery service is not also the manufacturer of, or a regular dealer in, the materials and supplies, provided that the fee is determined by the County to be reasonable and not excessive as compared with fees customarily allowed for similar services.
 - iii. The fees or commissions charged for providing any bonds or insurance specifically required for the performance of the contract, provided that the fee or commission is determined by the County to be reasonable and not excessive as compared with fees customarily allowed for similar services.

§3-103 MBE-Designated Procurements.

The Regulations and Operational Policies shall designate such procurements as deemed appropriate for negotiation with South Carolina-based MBEs. Where the County will not be required to sacrifice (a) the quality of goods or services or (b) fair, reasonable and competitive pricing, the following criteria shall be used to designate such procurements:

- 1. The total dollar value of procurement in the County.
- 2. The availability of County- and State-based MBEs.
- 3. The potential for breaking procurements into smaller units, where necessary, to encourage MBE participation in procurement.

§3-104 Duties of the Procurement Director.

- 1. *Assistance from the Director.* The Director shall provide assistance to MBEs and minority persons with the procurement process, including, but not limited to, the following:
 - a. The sponsorship of training programs regarding how to do business with the County. The Director shall coordinate with the appropriate State offices and minority programs to develop these training programs.
 - b. The issuance of supplementary instructions to promote full participation in the County's MBE program;
 - c. The establishment of Regulations and Operational Policies to allow MBEs alternatives and additional flexibility as to the Code's provisions regarding security and progress payments.
- 2. *Source Lists.* The Director shall establish, update and maintain special source lists of MBEs that are located in the County and these lists shall, at a minimum, include an alphabetical listing by MBE name, a listing by product, and a listing by service. The lists shall include details regarding the products and services each MBE provides.

3. *Solicitation Mailing Lists.* The Director shall also establish, update and maintain a list containing the MBEs on the State's bidders' list, and shall ensure that these firms are solicited on an equal basis within nonminority firms.
4. *Fee Waivers.* Upon request by an MBE and certified by the OSMBA, user or subscription fees for services provided by the Director may be waived for an MBE.
5. *Annual Report.* The Director shall report annually in writing to the Council concerning the number and dollar value of contracts awarded to MBEs and minority persons during the preceding fiscal year. After the first fiscal year, the Director's annual report shall include sufficient comparative information for Council to evaluate the progress of the MBE Program.

Part B - Preference Percentage Points

§3-201 Preferences Percentage Points for Vendors.

For the reasons stated in §1-102.1 and 2, the County finds that it is appropriate to recognize preferences.

1. *Application.* The purpose of the preference percentage point system is to value a vendor's bid or proposal for purposes of determining its value in contrast to other vendors' bids or proposals. The preference percentage point system does not change the vendor's actual bid or proposal amount, and the vendor's actual bid or proposal amount shall be used if the vendor is awarded the contract.
2. *Grounds for Preference.* Two (2) preference percentage points are available to a vendor for each of the following categories applicable to the vendor that the vendor has certified in accordance with §3-201.5:
 - a. The vendor is a resident of the State;
 - b. The vendor is a resident of Orangeburg County, South Carolina; and
 - c. The vendor is an MBE.
3. *Valuation.* During the evaluation of bids and proposals leading up to a contract award, a preference percentage point shall be valued at a dollar amount that is equal to 1% of the vendor's total bid. Subject to the preference caps, the dollar value of the cumulative total preference points is deducted from the vendor's total bid.
4. *Preference Caps.* The maximum preference a vendor may accumulate on any particular procurement is capped at the higher of the following: six (6) preference percentage points; or \$25,000.00.
5. *Certification.* The Director shall apply the preferences provided that, in the responsive bid or proposal, the vendor certifies in writing under an appropriately labeled section to the underlying facts necessary for the Director to find that the vendor qualifies for a preference. The Director shall create and provide vendors with a checklist-type certification form sufficient for this purpose. If a vendor has not made a sufficient certification for a preference in the responsive bid or proposal, then (a) the vendor will not be entitled to claim any preference on the bid or proposal (b) nor will the vendor be entitled to contest the application of any preference that arises from a sufficiently certified bid.
6. *Penalties.*
 - a. *Invalidity.* If the vendor was awarded the contract and a preference applied is

found to have been invalid at the time the preference was made, then:

- i. If the County has custody of retainage, then the County shall be entitled to keep the retainage up to the amount of the value of the invalid preferences.
 - ii. If the County does not have custody of retainage, but has not made final payment to the contractor, then the County shall be entitled to withhold from its final payment to the contractor an amount equal to the value of the invalid preferences.
 - iii. If the County does not have custody of retainage and has made final payment to the contractor, the County shall be entitled to debar the contractor until such time as the contractor pays the County an amount equal to the value of the invalid preferences. In this event, the three (3) year maximum period for debarment shall not apply.
- b. *False Pretenses*. In addition to the applicable penalty for invalidity in §3-201.6.a., the County shall debar a vendor for three (3) years if the County determines that a vendor's preference certification (a) is not valid and (b) was filed under false pretenses.

Part C – Breaking Ties

§3-301 Tie Bids.

After applying the preferences set forth in this Article, if two (2) or more vendors are tied in price while otherwise meeting all of the required conditions and the contract is to be awarded to the lowest bidder, award is determined in the following order of priority:

1. If there is a business based in the United States of America tied with a business based outside of the United States of America, the award must be made to the business based in the United States of America.
2. If there is a South Carolina business tied with an out-of-state business, the award must be made to the South Carolina business.
3. If there are two South Carolina businesses tied, the award must be made to (a) the business located in Orangeburg County, if any, or (b) if none, pursuant to §3-301.5.
4. If there is an MBE and a non-MBE, the award must be made to the business located in Orangeburg County or, if none, the award must be made in favor of the MBE;
5. In all other situations in which bids are tied, the award must be made to the tied vendor offering the quickest delivery time, or if the tied vendors have offered the same delivery time, the tie must be resolved by the flip of a coin witnessed by the Director. All responding vendors must be invited to attend any such coin flip

Part D – Cancellation, Rejection, Acceptance and Construction of Bids and Proposals

§3-401 Cancellation of Invitations for Bids or Requests for Proposals; Rejection of Bids or Proposals.

An invitation for bids, a request for proposals, or other solicitation may be cancelled, or any or all bids or proposals may be rejected in whole or in part when (1) it is in the best interest of the County or (2) as may be specified in the solicitation. The Director shall reduce the reason to writing and make that writing a part of the solicitation file.

§3-402. Acceptance and Evaluation.

Bids and proposals must be accepted unconditionally without alteration or correction, except as otherwise authorized in this Code. Bids and proposals must be evaluated based on the requirements in the solicitation, the criteria listed in the bid or proposal, and in accordance with the Code and Regulations and Operating Policies.

§3-403. Correction or Withdrawal of Bids; Cancellation of Awards.

Correction or withdrawal of inadvertently erroneous bids before bid opening, withdrawal of inadvertently erroneous bids after award, or cancellation and re-award of awards or contracts, after award but before performance, may be permitted in accordance with the Regulations and Operating Policies. After bid opening, changes in bid prices or other provisions of bids prejudicial to the interest of the County or fair competition must not be permitted. After opening, bids must not be corrected or withdrawn except in accordance with the provisions of this Code and the Regulations and Operating Policies.

§3-404 Minor Informalities and Irregularities.

A minor informality or irregularity is one which is merely a matter of form or is some immaterial variation from the exact requirements of the invitation for bids having no effect or merely a trivial or negligible effect on total bid price, quality, quantity, or delivery of the supplies or performance of the contract, and the correction or waiver of which would not be prejudicial to other vendors. The Director shall either give the vendor an opportunity to cure any deficiency resulting from a minor informality or irregularity in a bid or waive any such deficiency when it is to the advantage of the County. Such communication or determination shall be in writing. Examples of minor informalities or irregularities include, but are not limited to:

1. Failure of a vendor to return the number of copies of signed bids required by the solicitation;
2. Failure of a vendor to furnish the required information concerning its number of employees or failure to make a representation concerning its size;
3. Failure of a vendor to sign its bid, *but only if* the vendor has formally adopted or authorized the execution of documents by typewritten, printed, or rubber stamped signature and submits evidence of that authorization, and the bid carries that signature or the unsigned bid is accompanied by other material indicating the vendor's intention to be bound by the unsigned document, such as the submission of a bid guarantee with the bid or a letter signed by the vendor with the bid referring to and identifying the bid itself;
4. Failure of a vendor to acknowledge receipt of an amendment to a solicitation, *but only if*:
 - a. The bid received indicates in some way that the vendor received the amendment, such as where the amendment added another item to the solicitation and the vendor submitted a bid on the added item, if the vendor states under oath that it received the amendment before bidding and that the vendor will stand by its bid price; or
 - b. The amendment has no effect on price or quantity or has a mere trivial or negligible effect on quality or delivery and is not prejudicial to other vendors, such as an amendment correcting a typographical mistake in the name of the governmental body;
5. Failure of a vendor to furnish an affidavit concerning affiliates;

6. Failure of a vendor to execute the certifications with respect to equal opportunity and affirmative action programs;
7. Failure of a vendor to furnish cut sheets or product literature;
8. Failure of a vendor to furnish certificates of insurance;
9. Failure of a vendor to furnish financial statements;
10. Failure of a vendor to furnish references;
11. Failure of a vendor to furnish its bidder number; and
12. Notwithstanding Title 40 of the South Carolina Code of Laws, the failure of a vendor to indicate his contractor's license number or other evidence of licensure, except that a contract must not be awarded to the vendor unless and until the vendor is properly licensed under the laws of South Carolina.

§3-405 Responsibility of Vendors.

A written determination of non-responsibility of a vendor shall be made in accordance with Regulations and Operating Policies. The unreasonable failure of a vendor to promptly supply information in connection with an inquiry with respect to responsibility may be grounds for a determination of non-responsibility with respect to such vendor.

§3-406 Substantiation of Offered Prices.

The Director may request factual information reasonably available to the vendor to substantiate that the price or cost offered, or some portion of it, is reasonable, if the price is not:

1. Based on adequate price competition;
2. Based on established catalogue or market prices;
3. Set by law or regulation; and
4. The price or cost exceeds an amount established in the Regulations and Operating Policies.