

PROCUREMENT CODE

ARTICLE 6—CONSTRUCTION AND RELATED SERVICES

Part A – Project Delivery and Selection Methods

§6-101 Project Delivery Methods.

1. *Determination.* The Director shall make a determination regarding the appropriate method of construction administration for a particular project.
2. *Methods.* The method of construction contracting administration shall be the method most advantageous to the County that will result in the most timely, economical, and successful completion of the project. Any method previously listed in this Code as well as the following methods may be used:
 - (a) Invitation for Bid;
 - (b) Design-bid-build;
 - (c) Design-build;
 - (d) Design-build-operate-maintain; or
 - (e) Operations and maintenance.

§6-102 Source Selection Methods Assigned to Project Delivery Methods.

When the following delivery method is selected, the following source selection methods apply:

1. *Design-bid-build.*
 - a. *Design: Architectural and Engineering Services.* Part C of this Article shall be used to procure architectural and engineering services in design-bid-build procurements.
 - b. *Construction.* Competitive sealed bidding shall be used to procure construction in design-bid-build procurements.
2. *Design-build.* Contracts for design-build shall be procured by competitive sealed proposals.
3. *Operations and Maintenance.* Contracts for operations and maintenance shall be procured as set forth in Article 5.

§6-103 Procedures Applicable to Procurement of Certain Project Delivery Methods.

1. *Requirements and Options.* Each RFP for design-bid-build or design-build:
 - a. Shall include:
 - i. Evaluation factors;
 - ii. Design specifications;
 - iii. A solicitation for proposal development documents.
 - b. When the Director determines that the cost of preparing proposals is high in view of the size, estimated price, and complexity of the procurement, may:
 - i. Prequalify vendors by issuing an RFQ in advance of the RFP;
 - ii. Select a short list of responsible vendors prior to discussions and evaluations, provided that the number of proposals that will be short-listed

- is stated in the RFP and prompt public notice is given to all vendors as to which proposals have been short-listed; or
- iii. Pay stipends to unsuccessful vendors, provided that the amount of such stipends and the terms under which stipends will be paid are stated in the RFP.
2. *Evaluation Factors.* Each RFP for design-build shall state the relative importance of the following evaluation factors:
 - a. Demonstrated compliance with the design requirements;
 - b. Vendor qualifications;
 - c. Financial capacity;
 - d. Project schedule;
 - e. Price (or life-cycle price for design-build-operate-maintain and design-build-finance-operate-maintain procurements); and
 - f. Other factors, if any.

§6-104 Procedures Applicable to Invitations to Bid for Construction Services.

1. *Requirements.* Invitation for bids for each construction projects require the following:
 - a. A formal invitation for bids.
 - b. Publication of the invitation for bids.
2. The formal invitation for bids:
 - a. Shall be prepared by the Director with assistance from the project architect or engineer, if any, and from such using agency as is applicable to the project.
 - b. Shall include all applicable contractual terms and conditions.
 - c. Shall state the County's subcontracting requirements, if any, including:
 - i. Identification by specialty of all subcontractors who are expected to perform work for the prime contractor where any such subcontractor is expected to exceed three percent (3%) of the prime contractor's total base bid.
 - ii. Identification by specialty any subcontractors who are expected to perform work which the County considers vital to the project.
3. If the County states subcontracting requirements, a vendor shall only identify in its bid those subcontractors the County has listed. If a vendor determines to use its own employees to perform listed subcontract work, the vendor must be qualified to perform the listed subcontract work and must list itself in the appropriate place in its bid. Failure to complete the list provided in the invitation for bid shall render the bid unresponsive. No vendor whose bid is accepted shall substitute any person as a subcontractor in place of the subcontractor listed in the original bid, except upon approval of the Director for good cause shown. The request and approval for substitution must be in writing.

Part B – Retainage and Other Security

§6-201 Retainage.

1. *Amount.* A twenty percent (20%) retainage shall be retained by the County for every project (a) valued at one hundred thousand dollars (\$100,000) or less and (b) governed by Article 6.

A ten percent (10%) retainage shall be retained by the County for every project (a) valued in excess of one hundred thousand dollars (\$100,000) and (b) governed by Article 6.

2. *Reduction.* If the contractor submits in writing to the County (a) a certification that fifty percent (50%) of the project has been completed and (b) a request for a reduction in retainage, then the Administrator shall bring the contractor's submission before Council for Council's decision at Council's next regularly scheduled meeting. Council may, in its sole discretion, vote to reduce retainage on the completed portion of the project to an amount as low as zero. If Council votes to reduce retainage on the completed portion of the project, then the County shall use the estimated total cost of the incompleted portion of the project for computing retainage and shall continue retainage at the relevant percentage until the project is completed.

§6-202 Threshold for Security.

Notwithstanding any provision within this Article 6, no security or bond of any kind shall be required for a vendor response that totals less than \$50,000.00.

§6-203 Bid Security.

1. *Requirement.* Bid security shall be required for all methods of selection for construction contracts when the Director estimates the price to exceed five hundred thousand dollars (\$500,000). Bid security shall be a bond provided by a surety company authorized to do business in this State, or the equivalent in cash, or otherwise supplied in a form satisfactory to the Director.
2. *Option.* If the Director determines that bid security should be required for a construction contract under five hundred thousand dollars (\$500,000), then bid security shall be required.
3. *Amount.* Bid security shall be in an amount equal to at least five percent (5%) of the amount of the bid and will remain in place until the latter of the following two occurrences: execution of the construction contract or posting of performance/payment bonds.
4. *Rejection of Bid for Non-compliance with Bid Security Requirements.* When the invitation for bids requires bid security, a vendor's failure to comply shall result in the County rejecting the bid; however, if the vendor provides bid security that is non-compliant as to the full amount or as to the proper rating, the vendor shall be given one (1) working day from bid opening to cure such deficiencies. If the vendor cannot cure such deficiency within one (1) working day of bid opening, its bid shall be rejected.
5. *Withdrawal of Bids.* After the bids are opened, they shall be irrevocable for the period specified in the invitation for bids; however, the relevant authority under Section 4-101 may permit a vendor to withdraw its bid before award.

§6-204 Payment, Performance, Other Bonds.

1. *Payment Bonds.* When a construction contract is awarded in excess of forty-nine thousand nine hundred ninety-nine dollars (\$49,999.00), the contractor must deliver to the County a payment bond for the protection of all persons supplying labor and materials to the contractor or its subcontractors for the performance of the work provided for in the contract. The payment bond shall become binding on the parties upon execution of the contract. The payment bond shall be in an amount equal to one hundred percent (100%) of the contract price. The payment bond shall be satisfactory to the County, executed by a surety company

authorized to do business in the State or otherwise secured in a manner satisfactory to the County.

2. *Performance Bonds.* When a construction contract is awarded in excess of five hundred thousand dollars (\$500,000), the contractor must deliver to the County a performance bond that shall become binding on the parties upon the execution of the contract. The performance bond shall be satisfactory to the County, executed by a surety company authorized to do business in this State or otherwise secured in a manner satisfactory to the County.
3. *Authority to Require Additional Bonds.* Nothing in this section shall be construed to limit the authority of the County to require a performance bond or other security in addition to those bonds, or in circumstances other than specified in the previous subsections of this section.
4. *Suits on Payment Bonds.*
 - a. *Right to Institute.* Every person who has furnished labor or materials to the contractor or the contractor's subcontractors for the work provided in the contract, in respect of which a payment bond is furnished under this section, and who has not been paid in full therefor before the expiration of a period of ninety (90) days after the day on which the last of the labor was done or performed by such person or materials were furnished or supplied by such person for which such claim is made, shall have the right to sue on the payment bond for the amount, or the balance thereof, unpaid at the time of institution of such suit and to prosecute said action for the sums justly due such person; provided, however, that any person having a direct contractual relationship with a subcontractor of the contractor, but no contractual relationship express or implied with the contractor furnishing said payment bond, shall have a right of action upon giving written notice to the contractor within ninety (90) days from the date on which such person did or performed the last of the labor or furnished or supplied the last of material upon which such claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the labor was done or performed. Such notice shall be personally served or served by mailing the same by registered or certified mail, postage prepaid, in an envelope addressed to the contractor at any place the contractor maintains an office or conducts business.
 - b. *Where and When Brought.* Every suit instituted upon a payment bond shall be brought in the a court of competent jurisdiction located in the County, but no such suit shall be commenced after the expiration of one (1) year after the day on which the last of the labor was performed or materials were supplied by the person bringing suit. The obligee named in the bond need not be joined as a party in such suit.

**Part C -
Architectural-Engineering, Construction Management, and
Land Surveying Services.**

§6-301 Applicability and Policy.

1. Architectural-engineering, construction management, and land surveying services shall be procured as provided in this Part C, except as otherwise authorized herein.
2. Except as otherwise specifically provided in this Article, the County's policy is as follows:
 - a. To announce publicly all requirements for architect-engineer, construction management, and land surveying services; and
 - b. To negotiate contracts for such services on the following basis:
 - i. Demonstrated competence for the particular type of services required;
 - ii. Qualification for the particular type of services required; and
 - iii. At fair and reasonable prices.

§6-302 Procurement Procedures.

The following procedures apply to the architect-engineering, construction management, and land surveying services:

1. *Selection Committee.* The County shall establish an architectural-engineering, construction management, and land surveying services selection committee. The selection committee shall be composed of those individuals whom the Administrator determines to be qualified to make an informed recommendation as to the most competent and qualified firm for the proposed project. The Director shall sit as a permanent member of the selection committee for the purpose of coordinating and accounting for the committee's work. To assist the selection committee in its work for significant or highly technical projects and to facilitate prompt selections, the selection committee may invite input from appropriate County employees.
2. *Project Description.* The selection committee shall be responsible for:
 - a. Developing a description of the proposed project
 - b. Enumerating all required professional services for that project, and
 - c. Preparing a formal invitation to vendors for submission of information. The invitation shall include, but not be limited to, the project title, the general scope of work, a description of all professional services required for that project, the submission deadline, and how interested firms may apply for consideration. The selection committee shall file a copy of the project description and the invitation with the County engineer's office.
 - d. Determining the form of public notice for the invitation.
3. *Response to Invitation.* The date for submission of the information from vendors in response to an invitation shall be not less than fifteen (15) days after publication of the invitation. Interested architectural-engineering, construction management, and land surveying vendors shall be required to respond to the invitation, and land surveying vendors shall also be required to respond with the submission of a current and accurate Federal Standard Form 254, Architect-Engineer and Related Services Questionnaire, and Federal Standard Form 255, Architect-Engineer and Related Services Questionnaire for

Specific Project, or such similar information as the County may accept as a substitute as set forth in the invitation or the Regulations and Procedural Policies.

4. *Interviews.* The selection committee may hold interviews to obtain such further information as it may require to fully acquaint itself with the relative qualifications of the responding vendors. The number of vendors to be interviewed shall be dependent on the number of responding vendors.
 - a. If there are three or more responding vendors, the selection committee will hold interviews with at least three (3) responding vendors. The vendors shall be selected on the basis of who the selection committee deems to be most qualified based on the information available to the committee prior to announcement of the interviews. The basis of the selection committee's decision as to which vendors to interview shall be based upon its review and evaluation of all responding vendors, be in writing, and enumerate the reasons for selecting those to be interviewed.
 - b. If there are less than three (3) responding vendors, the selection committee shall hold interviews with all responding vendors.
 - c. Prior to the date selected for interviews to occur, the Director shall send to all responding vendors a list of vendors selected for interview.
5. *Selection and Ranking of the Three Most Qualified.* The selection committee shall evaluate each vendor interviewed on the following:
 - a. Past performance;
 - b. The ability of professional personnel;
 - c. Demonstrated ability to meet time and budget requirements;
 - d. Location;
 - e. Recent, current, and projected workloads of the firms;
 - f. Creativity and insight related to the project; and
 - g. Related experience on similar projects.

Based upon these evaluations, the selection committee shall select the three (3) vendors which, in its judgment, are the best qualified, ranking them in priority order. The selection committee's report ranking the three (3) vendors shall be in writing and shall include data substantiating its determinations.

6. *Notice of Selection and Ranking.* When the selection committee determines that the ranking report is final, it shall notify the Director and supply the Director with its written ranking report. The Director shall cause the written ranking report to be distributed within a reasonable time and contemporaneously by (a) forwarding it to the appropriate authority pursuant to Section 4-101, (b) forwarding it via USPS to each vendor interviewed, and (c) posting it to the official County website. The date of posting on the official County website shall be deemed the date the Director gave notice.
7. *Award.* If the County decides to go forward with the procurement, the intent to award the contract shall follow completion of the foregoing steps. Award shall be made to the vendor whose proposal the Council determines to be the most advantageous to the County taking into consideration the points of evaluation listed in §6-302.5 and the selection committee's ranking report. This vendor shall be referred to as the highest ranked vendor. Council shall also rank any vendor on the selection committee's list that Council believes would be a suitable substitute vendor if negotiations with the highest

ranked vendor fail to result in a contract. The contract file shall contain the basis on which the award is made and be sufficient to satisfy external audit.

8. *Negotiation of Contract.* The Director shall negotiate a contract for services for a compensation that is fair and reasonable to the County with the highest ranked vendor. Should the Director be unable to negotiate a satisfactory written proposed contract with this vendor, the Director shall formally terminate negotiations with that vendor, and commence negotiations with the second and, if necessary, then the third most qualified, until a satisfactory contract has been negotiated. If the Director is unable to reach a written proposed contract with one of the three, then the Director, in consultation with the selection committee, shall add the other responding vendors in order of their competence and qualifications. The process of notice and negotiation shall be continued in the same manner until a written proposed contract is reached.
9. *Authorization.* All written proposed contracts must be approved by the appropriate level of authority consistent with Section §4-101 or the County shall not be contractually bound.

§6-303 Exceptions for Small Architectural-Engineering and Land Surveying Services Contracts.

1. *Procurement Procedures.* Architectural-engineering or land surveying services estimated not to exceed twenty-five thousand dollars (\$25,000) may be recommended by the Director to the relevant authority without use of the selection committee, but with the advice and consent of the County engineer, by direct negotiation and selection, taking into account:
 - a. The nature of the project;
 - b. The proximity of the architectural-engineering or land surveying services to the project;
 - c. The capability of the architect, engineer, or land surveyor to produce the required service within a reasonable time;
 - d. Past performance; and
 - e. Ability to met project budget requirements.
2. No project may be broken into small projects for the purpose of circumventing the provisions of this Code.

§6-304 Architect, Engineer, or Construction Manager; Performance of Other Work.

No architect or engineer performing design work, or construction manager performing construction management services pursuant to a contract awarded under any provision of this Code may perform other work on that project as a contractor or subcontractor either directly or through a business in which he or his architectural, engineering, or construction management firm has greater than a five percent (5%) interest. For purposes of this section, safety compliance and other incidental construction support activities performed by the construction manager are not considered work performed as a contractor or subcontractor. Should the construction manager perform or be responsible for safety compliance and other incidental construction provisions of S.C. Code Ann. § 41-15-210 (Supp. 1997), as amended, then the construction management firm is subject to all applicable fines and penalties.

Part D - Indefinite Delivery Contracts

§ 6-401 Indefinite Delivery Contracts.

1. *General Applicability.* Subject to this section, indefinite delivery contracts may be awarded on an as-needed basis for (a) construction services and (b) for architectural, engineering and land surveying services.
2. *Construction Services.* When construction services contracts are awarded, each contract shall be limited to a total expenditure of seven hundred fifty thousand dollars (\$750,000) for a two-year period with individual project expenditures not to exceed one hundred fifty thousand dollars (\$150,000).
3. *Architectural, Engineering, and Land Surveying Services.* When architectural, engineering and land surveying services contracts are awarded, each contract shall be limited to a total expenditure of three hundred thousand dollars (\$300,000) for a two-year period with individual project expenditure not to exceed one hundred thousand dollars (\$100,000).
4. *Small Indefinite Delivery Contracts.* Small indefinite delivery contracts for architectural, engineering and land surveying services may be procured as provided in Section 6-303.