

PROCUREMENT CODE

ARTICLE 7—LEGAL RIGHTS AND REMEDIES

Part A - Exclusivity

§7-101 Exclusive Rights and Remedies; Waiver of All Other Rights and Remedies.

By participating in the County's procurement process, each vendor (a) accepts that the rights and remedies listed in this Article are their exclusive rights and remedies concerning disputes arising from the procurement process and (b) waives all other rights or remedies otherwise provided by law.

Part B – Matters Subject to Contest; Procedures; Appeals

§7-201 Limitations.

Unless this Code specifically states that a matter is contestable, then a vendor may not contest the matter administratively or judicially. In the event this Code specifically states that a matter is contestable, it is contestable and subject to remedy only within the limits set forth in this Article.

§7-202 Debarment; Suspension.

1. *Contestable Matter.* The matters of debarment or suspension are contestable matters.
2. *Grounds.* The grounds for debarment or suspension include any of the following:
 - a. Conviction of the vendor or an officer, director or employee of the vendor:
 - i. Of a crime in connection with obtaining or attempting to obtain a public or private contract, or in the performance of such contract;
 - ii. Under local, state or federal government statutes for 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; or
 - iii. Under state or federal antitrust statutes arising out of the submission of bids or proposals.
 - b. Violation of a contract provision of a character that is regarded by the Administrator to be so serious as to justify debarment action, including, but not limited to the following.
 - i. Failure without good cause to perform in accordance with specifications or within the time limitations provided in a contract; or
 - ii. A recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts; however, failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be a basis for debarment;
 - c. Failure to pay uncontested or unappealed, but delinquent, real or personal property taxes, including the underlying taxes and any penalties and interest.
 - d. Violation of the ethical standards set forth in the ethics laws of the State.

- e. Any other cause the Administrator finds to be so serious and compelling as to affect responsibility as a contractor, including debarment or suspension by another governmental entity.
3. *Original Authority.*
- a. *Decision.* Within thirty (30) days of the matter being brought to the attention of the Administrator, the Administrator, shall issue a written decision to debar or suspend. The decision shall state the reason for the action taken.
 - i. *Debarment.* After reasonable notice and an opportunity for the vendor to be heard, the Administrator, in consultation with the County Attorney, shall have authority to debar a vendor for cause from consideration for award of contracts. The debarment shall be for a period of up to three (3) years.
 - ii. *Suspension.* After a reasonable notice and an opportunity for the vendor to be heard, the Administrator, in consultation with the County Attorney, shall have authority to suspend a vendor from consideration for award of contracts if there is probable cause for debarment. The suspension shall be for a period of up to six (6) months.
 - b. *Notice of Decision.* Upon issuance, a copy of the decision shall be mailed or otherwise furnished to the debarred or suspended vendor and provided to the Director.
 - c. *Finality.* The Administrator's decision shall be final and conclusive, unless the vendor timely appeals to the Council.
4. *Appellate Authority and Procedure.*
- a. *Administrative Appeal.*
 - i. The vendor has limited rights to appeal the Administrator's decision, and those limited rights are set forth in this provision.
 - ii. A debarred or suspended vendor may appeal the Administrator's decision to Council.
 - iii. To effect an appeal, the vendor shall timely submit the appeal in writing to the Clerk to Council. For purposes of this provision, a timely appeal is one for which the Clerk to Council has received a written notice within ten (10) days of the date the Administrator issued the decision. Any appeal submitted to the Clerk to Council more than ten (10) days after the issuance date of the Administrator's decision shall be dismissed by the Clerk to Council as untimely. A timely appeal of the Administrator's decision shall not stay the debarment or suspension.
 - iv. The Clerk to Council shall transmit a timely notice of appeal to Council within three (3) days of receipt of same.
 - v. Council shall decide the vendor's appeal within 14 days of the Clerk to Council's transmittal of the notice of appeal. Council shall either affirm or reverse the Administrator's decision.
 - vi. Regardless of whether the Administrator's decision to debar or suspend is appealed, administratively or judicially, a timely appeal shall not stay the debarment or suspension. In the event that the vendor is successful on appeal to Council, the sole remedy available to the vendor is to have the County immediately return the business to good standing such that the

vendor may participate in County procurements that take place after the vendor is returned to good standing.

- b. *Judicial Appeal.* The sole basis upon which a debarred or suspended business may contest Council's decision is on the ground that the Council's decision is fraudulent. In that case, the vendor may file an action against the County in the South Carolina Court of Common Pleas, First Judicial Circuit, solely for the purpose of obtaining a declaratory judgment on the issue of whether the Council's decision is fraudulent. The vendor shall not have a cause of action for damages.

§7-203 Solicitations and Awards.

1. *Contestable.* Solicitation and award of a contract is a contestable matter.
2. *Right to Protest.* A vendor that does not receive a requested solicitation or the award of the contract may protest.
3. *Original Authority.* The Administrator shall have the authority to resolve a protest.
 - a. To effect a protest, the vendor shall timely submit the protest in writing to the Administrator. For purposes of this provision, a timely protest is one that the vendor submits to the Administrator within seven (7) days of the date the vendor knew or should have known of the facts giving rise to the protested point; however, in no event, will a protest be timely if it is submitted to the Administrator more than 15 calendar days after notification of the award of the relevant contract. Any protest submitted to the Administrator more than 15 calendar days after notification of the award of the relevant contract shall be dismissed by the Administrator as untimely.
 - b. The Administrator shall issue a decision in writing within five (5) days of receipt of a timely protest. The decision shall (a) state the decision, including any remedy, (b) state the reasons for the decision, and (c) inform the vendor of its right to administrative review.
 - c. *Notice of Decision.* Upon issuance of a decision, a copy of the decision shall be mailed or otherwise furnished to the protesting party and the Director.
 - d. The Administrator's issued decision shall be final and conclusive, unless the vendor timely appeals to the Council.
4. *Administrative Appeal.* To effect an administrative appeal, the vendor shall timely submit a written notice of appeal to the Council by delivering it to the Clerk to Council. For purposes of this provision, a timely appeal is one that has been received by the Clerk to Council within ten (10) days of the issuance date of the Administrator's decision. Any appeal submitted to the Clerk to Council more than ten (10) days after the issuance date of the Administrator's decision shall be dismissed by the Clerk to Council as untimely.
5. *Judicial Remedy or Appeal.* The vendor shall not have the right to bring a judicial action or appeal of any kind regarding the subject matter of this provision.

§7-204 Contract and Breach of Contract Controversies.

1. *Contestable.* A controversy between the County and a contractor which arises under or by virtue of a contract between them is a contestable matter including, but not limited to, controversies based upon breach of contract, mistake, misrepresentation, or other cause for contract modification or recession.

2. *Original Authority.* The Administrator shall have the authority to resolve any controversy between the County and a contractor.
3. *Submission.* Either party may submit a controversy to the Administrator for resolution. The submission shall be in writing.
4. *Decision.* The Administrator shall issue a decision in writing within 30 days of submission of the controversy. The issued decision shall (a) state the decision, including any remedy, (b) state the reasons for the decision, and (c) inform all parties to the contract of their right to administrative review.
5. *Failure to Render Timely Decision.* If the Administrator fails to issue a written decision within 30 days of submission of the controversy, any party to the contract may submit a written request to the Administrator for a final decision. If the Administrator fails to issue a written decision within 30 days of the Administrator's receipt of the party's request, then the requesting party may proceed as if an adverse decision had been issued on the last day of the extended period.
6. *Notice of Decision.* Upon issuance of a decision, a copy of the decision shall be mailed or otherwise furnished to all parties to the contract and the Director.
7. *Finality.* The Administrator's issued decision shall be final and conclusive, unless the vendor timely appeals the issued decision to the Council.
8. *Appeal.* To effect an appeal, the aggrieved person shall timely submit a written notice of appeal to the Council by delivering it to the Clerk to Council. For purposes of this provision, a timely appeal is one that has been received by the Clerk to Council within ten (10) days of the issuance date of the Administrator's decision. Any appeal submitted to the Clerk to Council more than ten (10) days after the issuance date of the Administrator's decision shall be dismissed by the Clerk as untimely.
9. *Judicial Remedy or Appeal.* As long as the contractor has exhausted the administrative remedies available, the contractor may pursue a judicial remedy for a claimed breach of contract; however, in that event, the contractor:
 - a. Waives any cause of action other than breach of contract claims;
 - b. Waives any damages other than actual damages, specifically including waiver of loss of profits; and
 - c. Shall file suit only in the Orangeburg County Court of Common Pleas.

Part C – Other Matters

§7-301 Solicitations or Awards in Violation of Law.

Where the County determines that a solicitation or award of a Contract is in violation of the law, all those persons participating in the procurement process agree that the County shall be deemed to have fully remedied the situation if the County takes action consistent with this provision.

1. *Remedies Prior to Award.* If, prior to award of a Contract, it is determined that a solicitation or proposed award is in violation of law, then the solicitation or proposed award may be:
 - a. Canceled;
 - b. Revised to comply with the law and rebid; or
 - c. Awarded in a manner that complies with the provisions of this Code.

2. *Remedies After Award.* If, after an award of a Contract, it is determined that the solicitation or award is in violation of the law and the protesting vendor should have been awarded the contract under the solicitation, but was not, then the protesting vendor may request and the County may award an amount to defray the reasonable costs of the vendor's bid preparation; however, regardless of actual or reasonable bid preparation costs the vendor has incurred, an award of this type may not exceed \$1,000.00. The decision regarding an award to defray bid preparation costs shall be made by the Administrator and shall be appealable to Council, but shall not be the subject of a judicial action or appeal. The time periods set forth in §7-203 apply to the request, decision and appeal.