



Fulton County Board of Commissioners  
**Agenda Item Summary**

# 19-0854

**BOC Meeting Date**  
 11/20/2019

**Requesting Agency**  
 Department of Purchasing & Contract Compliance

**Commission Districts Affected**  
 All Districts

**Requested Action** *(Identify appropriate Action or Motion, purpose, cost, timeframe, etc.)*  
 Ordinance amending Part I , Subpart B, Chapter 102, Article V, of the Code of Fulton County to include a Non-Discrimination in Purchasing and Contracting Program for discussion at the October 16, 2019 BOC Meeting and Adoption at the November 6, 2019 BOC Meeting; and for other purposes.

**Requirement for Board Action** *(Cite specific Board policy, statute or code requirement)*  
 In accordance with Article XI, Section II, Paragraph I of the Georgia Constitution, the governing authority of Fulton County is authorized to adopt clearly reasonable ordinances relating to its property, affairs and local government.

**Is this Item related to a Strategic Priority Area?** *(If yes, note strategic priority area below)*  
 Yes All People trust government is efficient, effective and fiscally sound

**Is this a purchasing item?**  
 Yes

**Summary & Background** *(First sentence includes Agency recommendation. Provide an executive summary of the action that gives an overview of the relevant details for the item.)*

Based on the findings of the Disparity Study and the County’s commitment to non-discrimination and equal opportunity in contracting, the County is amending the above-referenced code sections to improve the County’s “Non-Discrimination in Purchasing and Contracting” policy that will contain narrowly-tailored equal opportunity measures in County contracting.

| Agency Director Approval   |                                | County Manager's Approval |
|--|--------------------------------|---------------------------|
| <b>Typed Name and Title</b><br>Felicia Strong-Whitaker, Director | <b>Phone</b><br>(404) 612-5800 |                           |
| <b>Signature</b>   | <b>Date</b>                    |                           |

Revised 03/12/09 (Previous versions are obsolete)

|  |  |
|--|--|
|  |  |
| <b>Contract &amp; Compliance Information</b> | <i>(Provide Contractor and Subcontractor details.)</i> |

| Solicitation Information | NON-MFBE | MBE | FBE | TOTAL |
|--------------------------|----------|-----|-----|-------|
| No. Bid Notices Sent:    |          |     |     |       |
| No. Bids Received:       |          |     |     |       |

|                             |  |
|-----------------------------|--|
| <b>Total Contract Value</b> |  |
| <b>Total M/FBE Values</b>   |  |
| <b>Total Prime Value</b>    |  |

**Fiscal Impact / Funding Source** *(Include projected cost, approved budget amount and account number, source of funds, and any future funding requirements.)*

**Exhibits Attached** *(Provide copies of originals, number exhibits consecutively, and label all exhibits in the upper right corner.)*  
 Exhibit A: Fulton County Purchasing Code

**Source of Additional Information** *(Type Name, Title, Agency and Phone)*  
 Felicia Strong-Whitaker, Director, Purchasing & Contract Compliance, (404) 612-5800

| Agency Director Approval   |                                | County Manager's Approval |
|--|--------------------------------|---------------------------|
| <b>Typed Name and Title</b><br>Felicia Strong-Whitaker, Director | <b>Phone</b><br>(404) 612-5800 |                           |
| <b>Signature</b>   | <b>Date</b>                    |                           |

Revised 03/12/09 (Previous versions are obsolete)

|   |                                      |                                  |                        |
|---|--------------------------------------|----------------------------------|------------------------|
| <b>Procurement</b>  |                                      |                                  |                        |
| <b>Contract Attached:</b><br>No                                 |                                      | <b>Previous Contracts:</b><br>No |                        |
| <b>Solicitation Number:</b>                                     |                                      | <b>Submitting Agency:</b>        |                        |
| <b>Description:</b>   |                                      |                                  |                        |
| <b>FINANCIAL SUMMARY</b>  |                                      |                                  |                        |
| <b>Total Contract Value:</b>                                    |                                      | <b>MBE/FBE Participation:</b>    |                        |
| Original Approved Amount:                                       |                                      | Amount: .                        | %. .                   |
| Previous Adjustments:   |                                      | Amount: .                        | %. .                   |
| This Request:   |                                      | Amount: \$0                      |                        |
| TOTAL:  |                                      | Amount: .                        | %. .                   |
| <b>Grant Information Summary:</b>                               |                                      |                                  |                        |
| Amount Requested: .   | <input type="checkbox"/>             | Cash                             |                        |
| Match Required: .   | <input type="checkbox"/>             | In-Kind                          |                        |
| Start Date: .   | <input type="checkbox"/>             | Approval to Award                |                        |
| End Date: .   | <input type="checkbox"/>             | Apply & Accept                   |                        |
| Match Account \$: .   |                                      |                                  |                        |
| <b>Funding Line 1:</b>  | <b>Funding Line 2:</b>               | <b>Funding Line 3:</b>           | <b>Funding Line 4:</b> |
| <b>KEY CONTRACT TERMS</b>                                       |                                      |                                  |                        |
| <b>Start Date:</b><br>Effective upon BOC approval               |                                      | <b>End Date:</b>                 |                        |
| <b>Cost Adjustment:</b>   |                                      | <b>Renewal/Extension Terms:</b>  |                        |
| <b>ROUTING &amp; APPROVALS</b><br>(Do not edit below this line) |                                      |                                  |                        |
| X   | Originating Department:              | Strong-Whitaker, Felicia         | Date: 10/7/2019        |
| X   | County Attorney:                     | Ringer, Cheryl                   | Date: 10/9/2019        |
|   | Purchasing/Contract Compliance:      |                                  | Date:                  |
|   | Finance/Budget Analyst/Grants Admin: |                                  | Date:                  |
|   | Grants Management:                   |                                  | Date:                  |
| X   | County Manager:                      | Anderson, Dick                   | Date: 10/9/2019        |

1     **ORDINANCE AMENDING PART I, SUBPART B, CHAPTER 102, ARTICLE V,**  
2     **OF THE FULTON COUNTY CODE TO INCLUDE A NON-DISCRIMINATION IN**  
3     **PURCHASING AND CONTRACTING PROGRAM; AND FOR OTHER**  
4     **PURPOSES.**

5             **WHEREAS**, County stakeholders perform routine assessments of the County’s  
6 purchasing practices and procedures in order to maintain best practices; and

7             **WHEREAS**, in August 2017, the County commissioned Griffin & Strong, P.C. to  
8 conduct a disparity study (“Study”) on behalf of the County; and

9             **WHEREAS**, the purpose of the Study was to analyze the County’s purchasing  
10 activities over a five year period, from January 1, 2012 – December 31, 2016, to  
11 determine the County’s Minority and Female Business Enterprises usage relative to  
12 their availability in the vendor community; and

13            **WHEREAS**, the Study concluded that the County contains underutilization in  
14 certain work categories for females and certain minority groups; and

15            **WHEREAS**, based on the findings of the Study and the County’s commitment to  
16 non-discrimination and equal opportunity in contracting, the County is amending the  
17 above referenced Code sections to improve the County’s “Non-Discrimination in  
18 Purchasing and Contracting” policy that will contain narrowly-tailored equal opportunity  
19 measures in County contracting; and

20            **WHEREAS**, these measures will ensure the County does not become a passive  
21 participant in racial, ethnic, and gender discrimination; and

22            **WHEREAS**, various parts of the Fulton County Code will also be amended to  
23 update nomenclature and terminology to be consistent with current best practices.

24            **NOW, THEREFORE, BE IT ORDAINED**, by the Fulton County Board of  
25 Commissioners that Part I, Subpart B, Chapter 102, Article V, of Fulton County Code  
26 Sections 102-351 through 102-469 is hereby amended by expanding the equal  
27 opportunity in contracting program known as the “Non-Discrimination in Purchasing and  
28 Contracting Policy”, as outlined in “Exhibit A,” which is attached hereto;

1 **BE IT FURTHER ORDAINED**, that Fulton County Code will also be amended to  
2 update nomenclature and terminology consistent with current standards and best  
3 practices.

4 **BE IT FINALLY ORDAINED**, that this ordinance shall become effective upon  
5 adoption, and that the amended Fulton County Purchasing Code shall apply to all  
6 procurements initiated after adoption of this Ordinance and that all ordinances and  
7 resolutions and parts thereof conflict with this Ordinance are hereby repealed.

8 **SO PASSED AND ADOPTED**, by the Board of Commissioners of Fulton County,  
9 Georgia this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

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**FULTON COUNTY BOARD OF COMMISSIONERS:**

By: \_\_\_\_\_  
Robert L. Pitts, Chairman

**ATTEST:**

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Tonya R. Grier  
Chief Deputy Clerk to Commission

\_\_\_\_\_  
Patrise Perkins-Hooker  
County Attorney

# Legislation

ARTICLE V. - PURCHASES AND CONTRACTS

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- Sec. 102-351. - Definitions.
- Sec. 102-352. - Severability.
- Sec. 102-353. - Interpretation purposes and policies.
- Sec. 102-354. - Application of article.
- Sec. 102-355. - Supplementary general principles of law applicable.
- Sec. 102-356. - Good faith actions.
- Sec. 102-357. - Procurement records.
- Sec. 102-358. - Compliance with federal requirements.
- Sec. 102-359. - Construction of water treatment plant.
- Sec. 102-360. - Limitation on task orders authorized under fast track and standby annual contracts.
- Sec. 102-361. - Multiple awards; limitations on multiple awards.

DIVISION 2. - PROCUREMENT ORGANIZATION

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- Sec. 102-362. - Creation of Fulton County department of purchasing and contract compliance.
- Sec. 102-363. - Appointment and qualifications of purchasing agent.
- Sec. 102-364. - Authority of the purchasing agent.
- Sec. 102-365. - Delegation of authority by the purchasing agent.
- Sec. 102-366. - Centralization of purchasing authority.
- Sec. 102-367. - Using agency requirements.
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- Sec. 102-372. - Methods of source selection.
- Sec. 102-373. - Competitive sealed bidding.
- Sec. 102-374. - Competitive sealed proposals.
- Sec. 102-375. - Competitive selection procedures for professional and consultant services.
- Sec. 102-376. - Qualification based selection procedures for architectural and engineering services for federally funded projects.
- Sec. 102-377. - Local preference in contracting.
- Sec. 102-378. - Service disabled veterans business enterprise preference.
- Sec. 102-379. - Review of financial responsibility for request for proposals.
- Sec. 102-380. - Evaluation committee.
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- [Sec. 102-418. - Contract clauses and their administration.](#)
- [Sec. 102-419. - Responsibilities and rights of parties to contract.](#)
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- [Sec. 102-431. - Definitions.](#)
- [Sec. 102-432. - Scope and applicability.](#)
- [Sec. 102-432.1. - Annual aspiration goals for MFBE participation.](#)
- [Sec. 102-433. - Exclusions.](#)
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- [Sec. 102-4XX. - Mandatory subcontracting projects.](#)
- [Sec. 102-4XX. - Requirements for mentor protégé program.](#)
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ARTICLE V. - PURCHASES AND CONTRACTS<sup>[7]</sup>

Footnotes:

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**Editor's note**— Res. No. 13-0052, adopted Jan. 23, 2013, repealed the former art. V, §§ 102-351—102-361, 102-386—102-391, 102-401—102-403, 102-421—102-423, 102-456—102-458, 102-466—102-472, and enacted a new art. V as set out herein. The former art. V pertained to similar subject matter and derived from the Code of 1983, §§ 23-6-1—23-6-4, 23-6-6, 23-6-7, 23-6-21—23-6-23; a resolution of Nov. 16, 1988; Ordinance No. 90-RCM-365, adopted April 18, 1990; Ord. No. 91-RC-096, adopted Feb. 20, 1991; Ord. No. 92-RC-455, Oct. 21, 1992; Ord. No. 94-RC-365, adopted July 20, 1994; Ord. No. 95-1161, Sept. 20, 1995; Ord. No. 95-1104, adopted Nov. 4, 1995; Ord. No. 96-0450, April 25, 1996; Res. No. 98-1001, adopted July 15, 1998; Ord. No. 99-0960, §§ 1—7, adopted July 7, 1999; Res. No. 99-1484, adopted Dec. 1, 1999; Res. No. 99-1532, adopted Dec. 1, 1999; Res. No. 00-0979, adopted July 19, 2000; Res. No. 00-0981, adopted July 19, 2000; Res. No. 02-0729, adopted June 19, 2002; Ord. No. 03-1290, adopted Nov. 5, 2003; Res. No. 06-0148, adopted Feb. 15, 2006; Res. No. 09-0209, adopted Feb. 4, 2009; Res. No. 09-0294, March 4, 2009; Res. No. 10-0694, Aug. 18, 2010; Res. No. 10-0942, Sept. 15, 2010; and Res. No. 11-1094, adopted Dec. 7, 2011. Res. No. 13-0433, adopted June 5, 2013, clarified the repeal of §§ 102-401—102-103, 102-421—102-423, 102-456—102-458.

**Cross reference**— Requirement for art in public places in contracts for construction, acquisition or renovation of county buildings, § 126-68; human relations, ch. 142.

Local Constitutional Amendments and Local Acts reference— Purchasing, § 2-306 et seq.

**State Law reference**— Public works contracts, O.C.G.A. § 36-10-1 et seq.

DIVISION 1. - GENERAL PROVISIONS

Sec. 102-351. - Definitions.

*Addenda/Addendum* is a written amendment to an invitation to bid or request to proposal that changes the project specifications and is issued prior to bid opening which becomes a part of the specifications for the project.

*Advertisement* means public notice inviting bids or proposals on a specified project. The advertisement must include such details/specifications so as to enable the public to know the extent and scope of the work to be done. Plans and specifications must be available on the first day of the advertisement, and they must be open to inspection by the public. All notices must advise potential bidders/offerors of any mandatory prequalification requirements, any pre-bid/proposal conferences, and/or any federal requirements. All projects shall be published in the county's legal organ and on the Fulton County website under "Bid Opportunities."

*Aggrieved bidder* means any actual bidder, offeror or contractor that has submitted a bid/proposal for a particular procurement who is aggrieved in connection with the solicitation or award of a contract may protest to the purchasing agent.

*Alternate bid* means the amount stated in the bid or proposal to be added to or deducted from the base bid or base proposal if the corresponding change in project scope or alternate materials or methods of construction is accepted.

*Amendment* means a change, addition, alteration, correction or revision to a bid or proposal or contract document.

*Annual contract* means any contract entered into for a period of one year or multiple one-year periods (including options to renew for additional one-year periods), with a contractor or a vendor, to provide the county upon request with a specified product or service at a predetermined price or rate.

*Annual Aspirational Goal* means a non-binding annual aspirational percentage goal for overall MFBE Prime and Subcontractor participation in County contracts for Construction, Professional Services, Architectural and Engineering Services, and Other Services contracts. This goal will be established every five (5) years by a duly-authorized disparity study and based upon the Prime and Subcontractor availability statistics provided therein and is evaluated every year to ascertain program effectiveness.

*Award* means approval by the board of commissioners, to begin the contracting process with the most responsive and responsible bidder.

*Base bid* or *base proposal* means the amount of money stated in the bid or proposal as the sum for which the bidder or proposer offers to perform the work.

*Best value* means a procurement method that emphasizes value over price. The best value may not be the lowest cost, generally achieved through the request for proposal (RFP) method.

*Bid* means the formal process allowing prospective vendors to compete for goods and services sought by the county.

*Bid acceptance* means the acceptance of bids delivered to the purchasing agent at the time, place, and under the conditions contained in the invitation for bids and as further stipulated in the specifications document.

*Bid bond* means a form of bid security executed by the bidder as principal and by a surety to guarantee that the bidder will enter into a contract within a specified time and maintain the bid prices submitted with his/her original bids and furnish any required payment and/or performance bonds.

*Bid guaranty* means a certified check, bid bond, cashier's check, for a sum of money deposited with the county by a bidder to guarantee that the bidder will enter into a contract within a specified time and maintain the bid prices submitted with his/her bid and furnish any required payment and/or performance bonds.

*Bid opening* means the public opening of bids received and accepted and the reading aloud of the name of each bidder and the amount of bid in the presence of one or more witnesses at the time and place designated in the invitation to bid. For RFP openings, only the names of the proponents are read aloud.

*Brand name or equal specification* means a specification limited to one or more items by manufacturer's names or catalogue numbers to describe the standard of quality, performance and other salient characteristics needed to meet county requirements and which provides for the submission of equivalent products from any manufacturer.

*Business* means any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, firm or any other private entity.

*Change order* means an alteration, addition, or deduction from the original scope of work as defined by the contract documents to address changes or unforeseen conditions necessary for project completion.

*Clock calibration* means coordination of the bid clock with the time as indicated by the National Bureau of Standards.

*Collusion* means a secret agreement, whether expressed or implied, to commit a fraudulent, deceitful, unlawful, or wrongful act.

*Collusive bidding* means a violation of antitrust statutes that consists of a response to a solicitation by two or more persons who have secretly agreed to circumvent laws and rules regarding independent and competitive bidding.

*Competitive process* is the process by which a local government solicits a public works construction contract through either the bid method or the proposal method.

*Competitive sealed bidding* means a method of soliciting public works construction contracts whereby the award is based upon the lowest responsive, responsible bid in conformance with the provisions of this article.

*Competitive sealed proposal* means a method of soliciting public works contracts whereby the award is based upon criteria identified in a request for proposals in conformance with the provisions of subsection (c) of Code section 36-91-21.

*Construction* means the process of building, altering, repairing, remodeling, improving or demolishing any public structure or building, or other public improvements of any kind to any public real property. It does not include the routine maintenance of existing structures, buildings or real property.

*Construction delivery method* is a method of building a project.

*Construction management at risk* is a construction delivery method in which the local government hires a construction manager at risk.

*Construction manager agency* serves as an advisor and agent of the local government, as well as coordinates the design and construction teams on project.

*Construction manager at risk* serves as an advisor and agent of the local government, coordinates the design and construction team, as well as is responsible for the construction of a project.

*Contract* means all types of agreements, including purchase orders, regardless of what they may be called, for the procurement or disposal of supplies, services, construction, professional or consultant services, and for the transfers of interest in real property.

*Contract documents* means the various parts of the contract including, but not limited to the contract agreement, the bid form, the payment and performance

bond, any required insurance certificates, general and specific conditions and the specifications of the project.

*Contract file* means the grouping of all written determinations and other records pertaining to the solicitation, award or performance of a contract or purchase order in a designated file maintained by the county purchasing agent.

*Contract modification* means any written alteration in the terms of the contract including, but not limited to, the scope, manner of performance, specifications, delivery point, time and rate of delivery, period of performance, price, quantity, or other provision of any contract accomplished by mutual action of the parties to the contract.

*Contract sum* means the amount bid as adjusted by all contract modifications.

*Contractor* means any person or entity having a contract with the county.

*Cost data* factual information concerning the cost of labor, material, overhead and other cost elements that are expected to be incurred or which have been actually incurred by the contractor in performing the contract.

*County* shall mean Fulton County, Georgia, a political subdivision of the State of Georgia, and shall include all agencies, establishments or officials of the government.

*Countywide contract* means a contract for a specified service(s) executed for use by any agency within the county.

*Data* means recorded information, regardless of form or characteristics.

*Days* shall mean calendar days.

*Debarment* means the exclusion of a person or company from participating in a procurement activity for an extended period of time, as specified by law, because of previous illegal or irresponsible action.

*Designee* means an authorized representative of a person holding superior position of responsibility.

*Discussions* means an exchange of information or other manner of negotiation during which the offeror and the county may alter or otherwise change the conditions, terms and price of the proposed contract. Discussions may be conducted in connection with competitive sealed proposals, sole source and emergency procurement. Discussions are not permissible in competitive sealed bidding, except to the extent permissible in the first phase of multistep sealed



bidding, when all competitive bids exceed available funds but the responsive bid does not exceed such funds by more than five percent or as otherwise permitted by applicable law.

*Emergency* means any situation resulting in imminent danger to the public health, welfare or safety or the loss of an essential government service.

*Encumbrance* means an obligation, chargeable to a budget appropriation, by a user department to pay for a specific procurement.

*Evaluation criteria* means factors relating to management capability, technical capability, method of meeting performance requirements, price, and other material considerations specified in the request for proposal that will be considered in determining to whom a contract will be awarded.

*Fast track* is a construction delivery method where construction of a project begins as soon as the first phase of design documents is complete.

*Fidelity bond* means a form of insurance that secures an employer up to the amount stated in the bond for losses caused by dishonest acts of its employees.

*Final completion* means the completion of all work as required in accordance with the terms and conditions of the contract documents.

*Firm* means any individual, partnership, corporation, association, joint venture or other legal entity permitted by law to practice or offer professional or consultant services.

*Governing authority* means the official or group of officials responsible for governance of a governmental entity. The Fulton County board of commissioners is the governing authority for the county.

*Governing entity* means Fulton County Government ("county").

*Invitation to bid (ITB)* means all documents, whether attached or incorporated by reference, utilized for soliciting sealed bids.

*Invoice* means the document provided by vendors to the county as a demand for payment of goods or services provided under the provisions of a contract awarded by the county.

*Inspection* means an authorized representative of the county, or of the county's architect/engineer, assigned to make all necessary inspections, test, and reports of the work performed or being performed.

## # 19-0854

*Materials* means any substance(s) specified for use in the performance of the contract work.

*May* denotes permissive.

*Multiterm contracts* means a contract executed for a specific period with the option to renew for additional periods of time.

*Offer* means a proposal by an offeror submitted when procurement is made by a source selection method other than competitive sealed bidding.

*Offeror* is a person, firm or entity that submits a proposal under the proposal method.

*Owner* means Fulton County Government, Georgia ("county").

*Notice to proceed* means a written notice to the contractor to begin the actual contract work, stating, if applicable, the date on which the contract time begins.

*Payment bond* means a bond provided by a surety company authorized to do business in the State of Georgia, payable to the county which guarantees to the county that all costs incurred by the contractor relating to the performance of the contracted services for the use and protection of all subcontractors and all persons supplying labor, materials, machinery, and equipment in the prosecution of the work provided for in the public works construction contract.

*Performance bond* means a bond provided by a surety company authorized to do business in the State of Georgia, for the faithful performance of the contract and to indemnify the governmental entity for any damages occasioned by a failure to perform the same within the prescribed time. Such bond shall be payable to, in favor of, and for the protection of the county for which the work is to be done and guarantees to the county that the services contracted for will be performed in accordance with the terms and conditions specified in the contract document.

*Prebid or preproposal conference* means a meeting scheduled prior to the opening of bids/proposals at which attendance by potential bidders/offerors may be optional or mandatory, to clarify the solicitation and respond to prospective bidder/offeror inquiries.

*Prequalification* means required standards imposed in the best interest of the county as a condition of bidding, which must be met by an interested bidder in order to qualify to respond to an invitation for bids or a request for proposal.

*Prequalification process* means a requirement that any prospective bidder or offeror meet certain minimum qualifications related to the project or the quality of work before being eligible to submit a bid or proposal.

*Procurement* means buying, purchasing, renting, leasing or otherwise acquiring any supplies, services or construction. Also includes all functions that pertain to the obtaining of any supply, service or construction, including a description of requirements, selection and solicitation of sources, preparation and award of contracts, and all phases of contract administration.

*Professional and consultant services* means those services within the scope of the practices of architecture, professional engineering, planning, landscape architecture, land surveying, the medical arts, management analysis, accounting or auditing, law, psychology or any other similar kind or type of professional practice. In the context of the Local Government Public Works Construction Law, it means those services where the other party is not responsible for construction.

*Program manager or project manager* is a person, firm or county employee that oversees or manages a construction project.

*Proposal* means solicited submission of information from a prospective contractor which states how that offeror intends to perform certain work, its technical and business qualifications, its proposed delivery, warranty, other terms and conditions as those might differ from or supplement the county's solicitation requirements, and any other information requested by the county's solicitation.

*Proposal guaranty* is a certified check or other security payable to the local government to ensure that the successful bidder will execute the contract on which he bid similar to a bid bond.

*Proposer* means one who submits a proposal.

*Public works construction* means the building, altering, repairing, improving, or demolishing of any public structure or building or other public improvements of any kind to any public real property.

*Purchase description* means the words used in a solicitation to describe the supplies, services or construction to be purchased, including specifications attached to or made a part of the solicitation.

*Purchase order* means a short form of contract which is issued by the purchasing agent at the written request of the using agency for the procurement of supplies, goods or services.

*Purchasing agent* means the Director of the Fulton County department of purchasing and contract compliance, the principal purchasing official for the county.

*Qualification-based selection* means a way of selecting professional services or offerors under the proposal method in which the professional or offeror is selected prior to consideration of price.

*Quotation* means a bid more than \$2,499.99 and less than \$49,999.99.

*Request for proposal* means all documents, whether attached or incorporated by reference, utilized for soliciting proposals.

*Requisition* means a document utilized by a using agency to request that a purchase order or contract be entered into for a specific need.

*Responsible bidder or responsible offeror* means a person or entity that has the capability in all respects to perform fully and reliably the contract requirements.

*Responsive bidder or responsive offeror* means a person or entity that has submitted a bid or proposal that conforms in all material respects to the requirements set forth in the invitation for bids or request for proposals.

*Retainage* is the portion of the total contract amount that a local government retains from the contractor until the project is totally complete.

*Road* includes highways, roads, streets, avenues, toll roads, detours, structures, sidewalks, facilities, shoulders, bridges, causeways, viaducts, ferries, overpasses, underpasses, railroad grade crossings, tunnels, signs, signals, markings, wayside parks, parking facilities, drainage ditches, canals, culverts, rest areas, truck weighing stations and scenic easements.

*Road construction* is the planning, location, surveying, designing, supervising, inspecting, building, paving, striping, restriping, modifying, grading, widening, relocating, rebuilding or other major improvement of a substantial portion to an existing road.

*Scope of project* means the work required by the original contract documents and any subsequent change orders required or appropriate to accomplish the intent of the project as described in the bid documents.

*Scope of work* means the work required by the original contract documents and any subsequent change orders required or appropriate to accomplish the intent of the project as described in the bid documents.

*Service* means the furnishings of labor, time or effort by a contractor, not involving the delivery of a specific end product other than reports which are merely incidental to the required performance. This term does not include employment agreements or collective bargaining agreements.

*Service contract* means a contract awarded for a type of service other than construction, professional or consultant service, such as janitorial, plumbing, security guard services, etc.

*Shall* denotes imperative.

*Sole source* means those procurements made pursuant to a written determination by the governing authority that there is only one source for the required supply, service, or construction item.

*Solicitation* means an invitation for bid, a request for proposal, a request for quotation, or any other document issued by the county for the purpose of soliciting bids or proposals to perform a county contract.

*Specifications* means any description of the physical or functional characteristics or of the nature of a supply, service or construction item. It may include a description of any requirement for inspecting, testing or preparing a supply, service or construction item for delivery.

*Subcontractor* means any person undertaking part of the work of a contract under the control of the principal contractor.

*Substantial completion* means the date when construction is sufficiently complete, in accordance with the contract documents, so the county can occupy or utilize the work or designated portion thereof for the use for which it is intended.

*Supplies* means all property, including, but not limited to, equipment, materials, etc.

*Surety* means the corporation, partnership, or individual licensed and authorized to do business in the State of Georgia, other than the contractor, executing payment, performance or bid bonds to be furnished to the county by the contractor.

*Using agency* means any county entity that utilizes any supplies, services, construction, professional or consultant services procured under this article.

*Work* means the furnishing of all labor, materials, tools, equipment and incidentals necessary by the contractor for completion and performance of all duties and obligations imposed by the contract documents.

(Res. No. 13-0052, 1-23-13)

Sec. 102-352. - Severability.

If any section or part of a section of this article or any application thereof to any person or circumstances is held invalid, such invalidity shall not affect other sections of a section or application of this article which can be given effect without the invalid section or part of a section or application, and to this end the section and parts of sections of this article are declared to be severable.

(Res. No. 13-0052, 1-23-13)

Sec. 102-353. - Interpretation purposes and policies.

(a) *Interpretation.* This article shall be construed and applied to promote its underlying purposes and policies.

(b) *Purposes and policies.* The underlying purposes and policies of this article are to:

- (1) Simplify, clarify, consolidate and modernize the law governing procurement for this county;
- (2) Permit the continued development of procurement policies and practices;
- (3) Provide centralized procurement for this county;
- (4) Provide for increased public confidence in the procedures followed in public procurement;
- (5) Ensure the fair and equitable treatment of all persons who deal with the procurement system of this county;
- (6) Provide increased economy in county procurement activities and to maximize to the fullest extent practicable the purchasing value of public funds of the county;

- (7) Foster effective broad-based competition for public procurement within the free enterprise system;
- (8) Provide safeguards for the maintenance of a procurement system of quality and integrity; and
- (9) Obtain in a cost-effective and responsive manner the materials, services and construction required by county agencies in order for those agencies to better serve this county's businesses and residents.

(Res. No. 13-0052, 1-23-13)

Sec. 102-354. - Application of article.

This article applies only to contracts solicited or entered into after the effective date of the resolution from which this article is derived, unless the parties agree to its application to a contract solicited or entered into prior to the effective date.

(Res. No. 13-0052, 1-23-13)

Sec. 102-355. - Supplementary general principles of law applicable.

Unless displaced by the particular sections of this article, the principles of law and equity, including the uniform commercial code of the state, the law merchant, the law of real property and the law relative to capacity to contract, agency, fraud, misrepresentation, duress, coercion, mistake or bankruptcy, shall supplement this article.

(Res. No. 13-0052, 1-23-13)

Sec. 102-356. - Good faith actions.

This article requires all parties involved in the negotiation, performance or administration of county contracts to act in good faith. The term "good faith" means honesty in fact in the conduct or transaction concerned and the observance of reasonable commercial standards of fair dealing.

(Res. No. 13-0052, 1-23-13)

Sec. 102-357. - Procurement records.

- (a) *Contract file.* All determinations and other written records pertaining to the solicitation, award or performance of a contract or purchase order shall be maintained by the county in a contract file by the purchasing agent.
- (b) *Retention.* All procurement records shall be retained and disposed of by the county in accordance with state retention guidelines and schedules for local governments and approved by the board of commissioners. If a contract is being funded in whole or in part by assistance from a federal agency, all procurement records pertaining to that contract shall be maintained for three or four years, as applicable, from the closeout date of the assistance agreement or the final disposition of any controversy arising out of the assistance agreement.
- (c) *Public access.* Procurement information shall be a public record to the extent required by the laws of the state.

**State Law reference**— Records management programs for local governments, O.C.G.A. § 50-18-99.

(Res. No. 13-0052, 1-23-13)

Sec. 102-358. - Compliance with federal requirements.

When the procurement or real estate transaction involves the expenditure of federal assistance or contract funds, the procurement or real estate transaction shall be conducted in accordance with any applicable mandatory federal law and authorized regulations which are not reflected in this article. Notwithstanding, where federal assistance or contract funds are used in a procurement or real estate transaction, requirements that are more restrictive than federal requirements shall be followed.

(Res. No. 13-0052, 1-23-13)

Sec. 102-359. - Construction of water treatment plant.

The construction and operation of a water treatment plant and appurtenances in North Fulton County, as a joint venture of the county and Fulton County, being necessary to serve the joint needs of the county and Fulton County in ensuring an adequate supply of potable water for their citizens, the Atlanta-Fulton County Water Resources Commission is authorized to contract for goods and services and



to make purchases of real and personal property, in connection with the water treatment plant and appurtenances, subject to the following limitations:

- (1) The funds for the purchase of goods and services are available to the commission in line item appropriations of its approved budget.
- (2) Such contracts or purchases of goods and services do not exceed \$50,000.00, except that contracts exceeding that amount are authorized:
  - a. For goods or services for which the entity providing the goods or services is listed by name in its approved budget; or
  - b. When the chair of the commission certifies that emergency circumstances exist and that failure to contract for goods or services to correct such circumstances would result in the loss of operations of the facilities and that insufficient time is available to secure specific approval of the contract by the City of Atlanta and Fulton County.
- (3) Such contracts are made pursuant to purchasing and minority participation procedures as determined by the commission.
- (4) Regardless of the amount and when jointly authorized by resolution of the county council and of Fulton County, all contracts that are reasonable and necessary for the construction of the water treatment facilities and appurtenances, including professional and consultant contracts, may be executed, provided that the funds for the contracts are available to the commission in line item appropriations of its approved budget.
- (5) All pertinent requirements of the joint venture agreement for the making of contracts and purchases have been met.

(Res. No. 13-0052, 1-23-13)

**Cross reference**— Management of the joint venture, § 102-675.

Sec. 102-360. - Limitation on task orders authorized under fast track and standby annual contracts.

For fast track and standby annual contracts, any using agency may expend up to \$1,500,000.00 under an annual contract individually or in the aggregate with any one contractor. Task orders exceeding \$500,000.00 must be presented to the board of commissioners for approval prior to the issuance of the notice to proceed. Task orders exceeding \$100,000.00 must be presented on the consent

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agenda to the board of commissioners on a quarterly basis as part of the large contracts report.

(Res. No. 13-0052, 1-23-13)

**Note**— Board Policy 05-0369, 4-20-05.

Sec. 102-361. - Multiple awards; limitations on multiple awards.

- (a) *Multiple awards.* Unless otherwise provided in this section, or unless otherwise provided by law, two or more offerors may be awarded separate county contracts, at the discretion of the county, on the basis of one solicitation for the same or similar work, supplies or services if the county reserves the right to do so in the solicitation. Multiple contracts may be awarded, at the discretion of the county, for the procurement of annual contracts for supplies, annual contracts for construction, annual contracts for services, and annual contracts for professional and consultant services. Notwithstanding anything contained in this section, however, if multiple awards are not anticipated in a solicitation prior to the deadline established for receipt of bids, proposals or quotations, multiple awards shall not be made under that solicitation.
- (b) *Prohibition against multiple awards for the procurement of construction, services or professional and consultant services that are not annual contracts.* Except as provided in subsection (a) of this section, or unless otherwise provided by law, multiple county contracts shall not be awarded under one solicitation for the procurement of construction, services or professional and consultant services which are not annual contracts.
- (c) *Inapplicability.* This section shall not apply to the purchase, sale or disposition of real estate, nor shall this section apply to grant agreements, intergovernmental agreements or emergency procurements.

(Res. No. 13-0052, 1-23-13)

### DIVISION 2. - PROCUREMENT ORGANIZATION

Sec. 102-362. - Creation of Fulton County department of purchasing and contract compliance.

There is hereby created in each county in this state having a population of 550,000 or more according to the United States Census of 1970, or any future United States census, a county purchasing department, which shall be set up, established and maintained under the jurisdiction of the board of commissioners or other county authority.

(Res. No. 13-0052, 1-23-13)

Sec. 102-363. - Appointment and qualifications of purchasing agent.

The county manager shall appoint the purchasing agent. The purchasing agent shall have relevant, recent experience in public procurement and in the large scale procurement of supplies, services, or construction, and shall be a person with demonstrated executive and organizational ability.

- (1) *Tenure and removal.* The county purchasing department shall be under the direction and supervision of a county purchasing agent who shall be appointed by the board of commissioners or other county authority. Said purchasing agent shall be subject to removal from office by the appointing authority at any time during his tenure of office for just cause.
- (2) *Compensation.* The compensation of said county purchasing agent shall be an annual salary, payable monthly, fixed by the county authority and paid out of the county treasury.
- (3) *Vacancy; appointment of successor.* In the event of a vacancy in the office of county purchasing agent, by death, resignation or otherwise, the said county authority is authorized to appoint a successor to serve as county purchasing agent until the expiration of his term of office.

(Res. No. 13-0052, 1-23-13)

**Note**— Formerly Code, Pt. I, §§ 2-306, 2-307, 2-310, and 2-311.

Sec. 102-364. - Authority of the purchasing agent.

- (a) *Principal purchasing official.* The purchasing agent shall serve as the principal purchasing official of the county.

- (b) *Power to adopt operational procedures.* The purchasing agent may adopt operational procedures governing the internal functions of the purchasing department.
- (c) *Duties.* Except as otherwise specifically provided in this Code, the purchasing agent shall in accordance with regulations:
  - (1) Ensure compliance with this Code and implement regulations by reviewing and monitoring procurements conducted by any designee, department, agency or official delegated authority;
  - (2) Procure or supervise the procurement of all supplies, services, and construction needed by the county;
  - (3) Establish and maintain programs for the inspection, testing and acceptance of supplies, services and construction;
  - (4) Prepare and keep on file in his/her office specifications for all supplies, materials and equipment to be purchased by him/her, furnish copies of specifications to prospective bidders upon request and to the agencies for which the purchases are made, and require certification from the agencies that deliveries are correct as to quality, quantity and conformance to specifications;
  - (5) Keep at all times a record of all purchases made by him/her and of all emergency purchases made by the agencies for which he/she is authorized to purchase, as well as the amount paid for each item purchased; and
  - (6) Sign purchase orders after receipt of a fully executed contract or signed accepted quote and requisition.
- (d) *Regulations.* The regulations set out herein shall govern the purchase of all supplies, materials, or equipment, and contracts for all work or labor to be done, required by any department, office, officer, board, commission, or other agency of the county, payment for which is to be made from the county treasury, except the departments under the jurisdiction of the county board of education, the county board of public welfare, and public works contracts procured pursuant to O.C.G.A. §§ 36-10-1 et seq.
  - (1) The purchasing agent is authorized to adopt regulations, consistent with the Code, governing the procurement, management, control of any and all supplies, services and construction procured by the county; and

(2) Said regulations must be approved by the county manager and county attorney.

(Res. No. 13-0052, 1-23-13; Ord. No. 19-0220, Exh. A, 4-10-19)

**Note**— Formerly Code, Pt. I, § 2-312 and Pt. II, § 102-386.

Sec. 102-365. - Delegation of authority by the purchasing agent.

The purchasing agent may delegate authority to designees.

The board of commissioners of the county or other county authority is also authorized to employ such assistants as may be necessary to maintain and carry out the functions of the county purchasing department and fix their salary.

(Res. No. 13-0052, 1-23-13)

**Note**— Formerly Code, Pt. I, § 2-308.

Sec. 102-366. - Centralization of purchasing authority.

(a) *Purchasing agent.* All supplies, materials and equipment shall be purchased or procured by the county purchasing agent, except those for the use of the departments under the jurisdiction of the county board of education and county board of public welfare, provided that in the event of an emergency requiring an immediate purchase involving an expenditure of less than \$100.00, and does in fact present an emergency requiring immediate purchase, the county manager may, in writing, authorize the immediate purchase of the same by the county purchasing agent, without receiving written bids therefor, but before purchasing, the purchasing agent shall canvass such number of dealers and suppliers as the exigency of the situation will permit and shall make the purchase at the lowest obtainable price.

(b) *Purchasing staff.* Under the authority of the purchasing agent, the purchasing staff shall execute responsibilities at all bid openings which shall include coordination of clock calibration with the National Bureau of Standards, shall stamp all bids received and shall have any subsequent responsibilities as specified prior to and after all bid openings.

(Res. No. 13-0052, 1-23-13)

**Note**— Formerly Code, Pt. I, § 2-313.

Sec. 102-367. - Using agency requirements.

- (a) *Relationship with using agencies and other county agencies and departments.* The purchasing agent shall maintain a close and cooperative relationship with the using agencies. The purchasing agent shall afford each using agency reasonable opportunity to participate in and make recommendations with respect to procurement matters affecting the using agency. Notwithstanding any other provision in this chapter, when in consultation with the using agency with respect to a procurement matter, the purchasing agent, in cooperation with the head of the using agency, shall consult and seek technical assistance, specialized knowledge and expertise from appropriate subject matter professionals or persons within the affected using agency and, if the knowledge and expertise required are not available within the using agency, then the purchasing agent shall consult and seek technical assistance, specialized knowledge and expertise from professionals or persons in other appropriate agencies and departments of the county.
- (b) *Requisitions.* No expenditure for work, labor, supplies, materials or equipment under contract shall be made unless the necessity thereof be certified to by the agency for the use of which they are intended. All purchases made by the county purchasing agent shall be made only upon receipt of requisitions signed by such officers and employees of the several agencies of the county as may be designated for that purpose by the board of commissioners or other county authority.
- (1) All using agencies, with the authorization of the head of the department under which the using agency operates, shall file with the purchasing agent detailed requisitions or estimates of the department requirements of supplies, services, construction, professional or consultant services in such manner and at such times and for future periods as the purchasing agent shall prescribe in writing and as follows:
- a. *Unforeseen requirements.* A using agency may file with the purchasing agent at any time a requisition or estimate for any supplies, services, construction, professional or consultant services or real property, the need for which was not foreseen or anticipated when the estimates were filed under this subsection; and

- b. *Revisory power of purchasing agent.* The purchasing agent shall examine each requisition or estimate and shall have the authority to revise it as to quantity, quality or estimated cost, provided that the needs of the using agency are met and revisions as to quality and quantity shall be made in accordance with standards and specifications established pursuant to this article.
- (c) *Estimates.* All using agencies shall prepare an independent cost estimate for each project. The purchasing agent shall utilize the independent cost estimates for the evaluation of cost proposals and to assist the department of purchasing and contract compliance and evaluation committee in determining if proposals/bids are reasonably priced.
- (d) *Procurement forecast.* All using agencies shall file with the purchasing agent, within 30 days after the adoption of the annual budget and quarterly thereafter, a procurement forecast of their needs for the procurement of services, supplies, construction, professional or consultant services for the ensuing fiscal year or calendar quarter. The purchasing agent shall utilize such forecasts for the scheduling of work activities and of procurements to be made by the department of purchasing and contract compliance.
- (e) *List of authorized signatures.* Every head of a using agency shall provide the purchasing agent annually with a list of signatures of persons in the using agency who are authorized to sign requisitions on behalf of the using agency.

(Res. No. 13-0052, 1-23-13)

**Note**— Formerly Code, Pt. II, § 102-388.

Sec. 102-368. - Purchasing agent—bond.

Said county purchasing agent shall for himself and his assistants give a blanket bond in the sum of \$25,000.00, payable to the board of commissioners or other county authority, conditioned upon the faithful performance by said official and his assistants of all duties devolved upon them under this article and for the faithful accounting to such county authority for all goods, supplies and money that may come into their hands in their official capacities and to indemnify and save such county authority harmless for and on account of all of their acts in said positions, said bond to be given by said official before entering upon the discharge of his duties and maintained by said official during his entire term, and

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to be approved by said county authority and filed in the office of said county authority. The premium on said bond shall be paid out of the county treasury.

(Res. No. 13-0052, 1-23-13)

**Note**— Formerly Code, Pt. I, § 2-309.

Sec. 102-369. - Authority of county manager.

- (a) The county manager shall have the authority to sign all contracts and agreements for county procured goods, services, or grants up to \$100,000.00 on behalf of the county subject to budgetary limitations after approval by the BOC and execution by the county attorney.
- (b) The county manager shall also have the authority to approve change orders and sign modifications and amendments to any contract, without BOC approval, as long as the modification or amendment does not exceed ten percent of the contract value.
- (c) The county manager shall have the authority to sign (1) contracts up to \$1,000,000.00 that renew the term of the contract, as long as the original contract contains a renewal option and (2) amendments that extend the term of a contract by up to 90 days for re-procurement purposes.
- (d) The county manager shall maintain a list of contracts entered into pursuant to this section and provide the list of executed contracts to the BOC at the first BOC meeting of each month.

(Res. No. 13-0052, 1-23-13; Ord. No. 19-0220, Exh. A, 4-10-19)

**Note**— Formerly Code, Pt. II, § 102-387.

Sec. 102-370. - Periodic reporting to board of commissioners.

- (a) The purchasing agent shall submit to the board of commissioners reports required on a monthly or quarterly basis the following information:
  - ~~(1) All change orders or contract modifications authorized by the county manager pursuant to Board Policy 800-6, the dollar amount, and the reason;~~
  - (1) All cooperative purchasing;



- (2) Contract compliance reports;
- ~~(4) First source jobs; and~~
- (3) Other reports that are requested by the board of commissioners.

(Res. No. 13-0052, 1-23-13)

### DIVISION 3. - SOURCE SELECTION AND CONTRACT FORMATION

Sec. 102-371. - No contact provision.

- (a) *Statement of policy.* It shall be the policy of Fulton County that the evaluation and award process for county contracts shall be free from both actual and perceived impropriety, and that contacts between potential vendors and county officials and staff regarding pending awards of county contracts shall be prohibited, except as authorized herein, and that awards of county contracts to vendors other than vendors recommended by county staff should be temporarily held by the board of commissioners, and that such awards shall be supported by either a written report or an oral explanation of the award on the official minutes..
- (b) *Applicability.* This policy shall apply to all Fulton County employees, officers, elected officials, and agencies. This policy shall apply to all county contracts to be awarded following the solicitation of bids, requests for proposals, or the solicitation of competitive sealed proposals, issued on or after March 1, 2006.
- (c) *Procedure.*
  - (1) The purchasing agent, in conjunction with the user department, shall ensure that every solicitation of bids, request for proposals, and solicitation for competitive sealed proposals, issued on or after March 1, 2006, shall contain instructions stating substantially the following:
    - a. No person, firm, or business entity, however situated or composed, obtaining a copy of or responding to this solicitation, shall initiate or continue any verbal or written communication regarding this solicitation with any county officer, elected official, employee, or designated county representative, between the date of the issuance of this solicitation and the date of the county manager's recommendation to the board of commissioners for award of the

subject contract, except as may otherwise be specifically authorized and permitted by the terms and conditions of this solicitation.

- b. All verbal and written communications initiated by such person, firm, or entity regarding this solicitation, if same are authorized and permitted by the terms and conditions of this solicitation, shall be directed to the purchasing agent.
  - c. Any violation of this prohibition of the initiation or continuation of verbal or written communications with county officers, elected officials, employees, or designated county representatives, shall result in a written finding by the purchasing agent that the submitted bid or proposal of the person, firm, or entity in violation is not responsive, and same shall not be considered for award.
- (2) Between the date of the issuance of any solicitation of bids or proposals for county contracts and the date of the county manager's recommendation to the board of commissioners for award of the subject contract, no county officer, elected official, employee, or designated county representative, except in the course of carrying out obligations as a member of or designated adviser to a vendor selection committee acting in accordance with the terms and conditions of the solicitation, shall initiate or continue any verbal or written communications regarding the solicitation with any person, firm or business entity, however situated or composed, or any such representative of same, who the officer, elected official, employee, or representative knows or should have known has obtained a copy of the solicitation and either has submitted or may submit a bid or proposal; provided, further, except for members of or designated advisers to a vendor selection committee, no county officer, elected official, employee (including staff members of elected officials), or designated county representative shall contact any member of 1) such a vendor selection committee; 2) the relevant user department; or 3) the county manager's office regarding a pending solicitation between the date of the issuance of the solicitation and the date of the county manager's recommendation to the board of commissioners for award of the subject contract, and all inquiries during this period regarding the solicitation shall be directed to the purchasing agent.
- (3) In order to help ensure compliance with the terms of this policy, within two business days following the issuance of each solicitation of bids or

proposals, the purchasing agent shall notify each member of the board of commissioners, the county manager, the head of each involved user department, and each then known county representative involved in the solicitation or expected to be involved in the solicitation review process, in writing, of the date of the issuance of the solicitation, the subject matter of the solicitation, and the due date for bids or proposals in response to the solicitation.

- (4) Nothing contained in this policy shall be construed to prohibit any communication regarding any matter other than pending solicitations of bids or proposals and pending contract awards otherwise specifically covered herein.
- (5) Except in cases where there is an emergency need as determined by four affirmative votes of the board of commissioners, whenever the board of commissioners fails to award a contract to the lowest responsible bidder, following a recommendation by the purchasing agent, and whenever, except in such cases of an emergency, the board of commissioners fails to award a contract to the vendor recommended by the vendor selection committee, following the solicitation of competitive sealed proposals, and there is an approved motion to award the contract to a person, firm, or entity other than the person, firm, or entity recommended by county staff, the decision to award the contract shall not be final until the award is also approved at the next following meeting of the board, at which time the board's decision to award the contract to a person, firm, or entity other than as recommended by county staff, shall result in a written report, to be prepared by each commissioner voting for the award, in conjunction with the county attorney, which report shall describe the basis of the award with reference to the terms and conditions of the solicitation or, in the alternative to such a written report, each commissioner voting for the award may immediately following the vote state publicly on the official minutes the basis for such commissioner's vote.

(Res. No. 13-0052, 1-23-13)

Sec. 102-371.5. - Employment of law firms with suits pending against county.

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The policy prohibiting Fulton County from employing law firms who have suits pending against the county is modified so that this prohibition is no longer applicable where the lawsuit filed against the county involves a zoning matter with no claims for damages of any kind, including attorneys' fees.

(Res. No. 13-0052, 1-23-13)

Sec. 102-372. - Methods of source selection.

- (a) Competitive sealed bidding;
- (b) Competitive sealed proposals;
- (c) Competitive selection procedures for professional and consultant services;
- (d) Qualification-based procedures;
- (e) Prequalification of offerors (request for qualifications);
- (f) Request for quotation;
- (g) Small purchases;
- (h) Award without competition (sole source);
- (i) Emergency procurement;
- (j) Renewal of annual licensing, maintenance and support agreements for intellectual property; and
- (k) Disposition of county-owned real property.

(Res. No. 13-0052, 1-23-13)

Sec. 102-373. - Competitive sealed bidding.

(a) *Conditions for use.*

- (1) If the several parts of the work or labor to be done or the supplies, materials and equipment to be furnished shall together or in part involve the expenditure of more than \$50,000.00, such work or labor or supplies, materials, or equipment shall be procured only by contract on public letting founded on sealed bids under such regulations as shall be made by the board of commissioners or other county authority.
- (2) Time permits the solicitation, submission and evaluation of sealed bids.

- (3) The award will be made on the basis of price and other price-related factors.
  - (4) It is not necessary to conduct discussions with the responding offerors about their bids.
  - (5) There is a reasonable expectation of receiving more than one sealed bid.
  - (6) The terms of such contracts, subject to such regulations and in conformity with law, shall be settled by the county attorney as an act of preliminary specification to a proposal for bids. The purchasing agent and the board of commissioners may reject all bids if it shall deem it in the interest of the county so to do; if not, it shall, without other consent or approval, award the contract to the lowest responsible bidder.
  - (7) Such bids shall not be accepted after the time limit stated in the proposal for bids and shall not be opened except in the presence of the purchasing agent, or the designee thereof, and the head of the agency requesting the items. Tie bids shall be decided by the agency letting the contract.
  - (8) Whenever a contract is awarded to other than the lowest bidder, the agency awarding the same shall file in its office and with said county authority a statement in detail of the reasons therefor.
- (b) *Public notice.*
- (1) *General notice.* An advertisement inviting bids shall be posted on an internet website of Fulton County, or a website designated by Fulton County for such purpose and clearly indicated for that purpose. In addition, the department of purchasing and contract compliance shall place an advertisement inviting bids in the county's legal organ and in any other medium. The public notice shall contain a general description of the supplies, services, construction or professional and consultant services to be procured and shall state the location of where appropriate solicitation documents may be obtained and the time and place of opening the documents.
  - (2) *Additional notice in unusual or special circumstances.*
    - a. *Notice in trade or industry publications.* When required supplies, services or construction are, in the determination of the purchasing agent in consultation with the using agency, either unusual in nature or highly specialized, the purchasing agent shall cause an

advertisement to be placed in at least one trade journal or such other specialized industry publication of circulation in the county, whichever is appropriate and most likely to bring responses from qualified and available offerors. The advertisement shall be published once and at least 14 days preceding the date set for receipt of bids. The provisions of this subsection concerning unusual or special circumstances shall be used in addition to, and not in lieu of, the provisions of this section.

- b. *Assistance of using agency.* The purchasing agent may rely upon the subject matter expertise and the assistance of personnel of the using agency who shall, prior to competitive solicitation, make a prompt written determination of the appropriate trade journal or specialized industry publication where the advertisement is to be placed. The written determination by the using agency shall be made sufficiently in advance such that notice and advertisement can be timely placed by the purchasing agent in the next available issue of a journal or industry publication, which will be published at least 30 days preceding the date set for receipt of bids. The using agency shall provide the necessary funds from its budget for the costs and expenses associated with advertisement in trade journals or such other industry publications.
- c. *Contents of notice.* Notice of bid security, if required, shall be included in the public notice or the trade journal, or such other industry publication. The public notice shall contain a general description of the supplies, services or construction to be procured and shall state the date and location where solicitation documents may be obtained, and the time and place of opening of the bids.
- (c) *Receipt of competitive sealed bids.* All bids must be delivered to and received by the purchasing agent or designated department of purchasing staff at the bid opening and stamped no later than 11:00 a.m. Eastern Time.
- (d) *Clock calibration.* Prior to all bid openings, the purchasing agent or designated department of purchasing staff shall coordinate the clock calibration used in the bid process with the National Bureau of Standards.
- (e) *Bid opening.* Bids shall be opened publicly in the presence of one or more witnesses at the time and place designated in the invitation for bids. The name of each offeror, the amount of each bid and such other relevant information as the purchasing agent deems appropriate shall be recorded.

- (f) *Bid acceptance.* Bids shall be received by the purchasing agent or designated department of purchasing staff without alteration or correction, except as authorized in this article, provided that the bids are delivered to the purchasing agent at the time, place and under the conditions contained in the invitation for bids.
- (g) *Bid evaluation.* Bids shall be evaluated based on the requirements set forth in the invitation for bids and this Code. Those criteria, including but not limited to discounts, transportation costs and total or life-cycle costs, that will affect the bid and price and be considered in the evaluation for the award shall be objectively measurable. The invitation for bids shall set forth the evaluation criteria to be used.
- (h) *Correction or withdrawal of bids.*
  - (1) Before bid opening, correction or withdrawal of bids may be allowed by the purchasing agent before the scheduled time and date of bid opening. The offeror may withdraw the bid, without revealing the amount of the bid, by submitting a new sealed bid or providing written notice of withdrawal before bid opening. Notice of withdrawal shall be received by the purchasing agent prior to bid opening.
  - (2) After bid opening, corrections in bids shall be permitted only to the extent that the offeror can show by clear and convincing evidence that a mistake of a nonjudgmental character was made, the nature of the mistake, and the bid price actually intended. After bid opening, no changes in bid prices or other provisions of bids prejudicial to the interests of the county or fair competition shall be permitted.
  - (3) The purchasing agent may also exercise all rights a bidder may have to correct its bid provided in this section and may communicate with any bidder concerning the correction or withdrawal of its bid.
  - (4) Withdrawal. In lieu of bid correction, a low bidder alleging a material mistake of fact may be permitted to withdraw its bid if:
    - a. The mistake is clearly evident on the face of the bid document, but the intended correct bid is not similarly evident; or
    - b. The bidder submits evidence that clearly and convincingly demonstrates that a mistake was made.

All decisions to permit the correction or withdrawal of bids shall be supported by a written determination made by the purchasing agent.

- (i) *Tie bids.* Whenever goods or services of any kind or description are to be obtained through an invitation for bids, for the purpose of making an award to the lowest responsible bidder where two or more bidders have submitted the lowest bid with each of said bids being otherwise equal with respect to cost, but only one such bidder has a business location within Fulton County, then the recommendation for award shall be in favor of the bidder having a business location within Fulton County.
- (j) *Award.* In awarding any contract or determining the lowest responsible bidder for the purpose of awarding a contract, the agency awarding the contract may consider the vendor or bidder's quality of work, general reputation in the community, financial responsibility, previous experience in sales to the public, compliance with a small business enterprise program as adopted by the governing authority of the county or making a good faith effort to comply with the goals of such a program, and compliance with nondiscrimination and equal employment opportunity provisions as adopted by the governing authority of the county.

(Res. No. 13-0052, 1-23-13; Res. No. 16-0864, 10-5-16; Ord. No. 19-0220, Exh. A, 4-10-19)

**Note**— Formerly Code, Pt. I, §§ 2-314 and 2-316.

Sec. 102-374. - Competitive sealed proposals.

- (a) *Conditions for use.* This method of solicitation shall be used when the use of competitive sealed bidding is not practicable under the circumstances or is not in the best interests of the and the following conditions apply:
  - (1) Price is not the determining evaluating factor;
  - (2) Discussions with offerors is required;
  - (3) Offerors are required to provide methods and approaches to perform the Specification of Statement of Work;
  - (4) Agency desires to conduct interviews with offerors; and
  - (5) "Best value" award is anticipated.



- (b) *Request for proposals.* Proposals shall be solicited through a request for proposal.
- (c) *Public notice.* Adequate public notice of the request for proposal shall be given in the same manner as provided for competitive sealed bidding.
- (d) *Receipt of proposals.* Proposals shall be opened in the same manner as competitive sealed bids, provided that there is no disclosure of any information derived from proposals submitted by competing offerors. A register of proposals received shall be prepared and made available for public inspection in the purchasing department.
- (e) *Selection.* As provided in the request for proposal and under policies and procedures to be developed by the county, discussions may be conducted by the purchasing agent, in conjunction with the user department, with reasonable offerors who submit proposals determined by the purchasing agent, and written recommendation of the user department, to be reasonably qualified for being selected for award; such discussions shall be for the purpose of clarification to assure full understanding of and responsiveness to the solicitation requirements. Vendors who make offers, hereinafter referred to as offerors, shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals; and such revisions may be permitted after submission and prior to award for the purpose of obtaining best and final offers. In conducting discussions, there shall be no disclosure of any information derived from proposals submitted by competing offerors. The selection criteria may include, but not be limited to the following:
  - (1) Relevant project experience demonstrating competence and capability to perform the services involved in the solicitation;
  - (2) Past performance of previous contracts with respect to time of completion and quality of services;
  - (3) Qualifications and experience of key personnel;
  - (4) Availability of key personnel;
  - (5) Technical/project approach, the quality and effectiveness of the proposed approach to accomplish the tasks identified in the scope of work;
  - (6) The fee or compensation demanded for the services;
  - (7) The ability to comply with the schedule for the performance of the services, as required by the county;

- (8) Local preference; and
- (9) Service disabled veterans preference.
- (f) *Evaluation.* Section 102-380 shall govern the evaluation process and to the extent not in conflict with applicable state law, shall govern the size and composition of all vendor selection committees established for the evaluation of competitive sealed proposals obtained for goods and services of all kinds, including, without being limited to, design, construction, and operation services and contracts.
- (g) *Discussion with responsible offerors and revisions to proposals.* Discussions may be conducted with responsible and responsive offerors who submit proposals determined to be reasonably susceptible of being selected for award for any purpose in the best interests of the county, including the purpose of clarification to ensure full understanding of and responsiveness to the solicitation requirements. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals, and such revisions may be permitted after submissions and prior to award for the purpose of obtaining the best and final offers. In conducting discussions, there shall be no disclosure of information derived from proposals submitted by competing offerors.
- (h) *Award.* The award shall be made by the board of commissioners to the responsible offeror whose proposal is determined, upon written recommendation by the county manager, the purchasing agent and the user department, to be in the best interest of the county, taking into consideration price and the evaluation factors set forth in the request for proposal. No other factors or criteria shall be used in the evaluation. The contract file shall contain the name and complete identification of the successful offeror and the basis, in writing, upon which the award is made.
- (1) When proposals are received from offerors pursuant to this section or when bids are received from bidders pursuant to section 102-373 of this article are unreasonable or unacceptable as to terms and conditions, or when the lowest responsible bid and offer exceeds available funds and it is determined in writing by the county manager and the purchasing agent, upon recommendations by the user department, that time or circumstances will not permit the delay required to resolicit competitive sealed bids and competitive sealed proposals, a contract may be negotiated and awarded by the board of commissioners pursuant to this

section, provided that each responsible bidder or offeror who submitted a response to the original solicitation is notified of the determination and is given a reasonable opportunity to negotiate. The negotiated price shall be lower than the lowest responsible rejected bid and offer of any responsible bidder and offeror under the original solicitation, provided that the board of commissioners may reject all bids or proposals if it shall deem it in the best interest of the county to do so.

- (2) Within five days of the award of the contract, the purchasing agent shall publish the name of the successful bidder or offeror on public display in a conspicuous place in the purchasing department so that it may be easily seen by the public. The public notice shall also show the price or amount for which the contract was let; the work, labor or service to be done; or the supplies, materials, or equipment to be furnished under the contract. All the information required to be placed on public display in a conspicuous place in the purchasing department shall also be recorded in a permanent book to be kept by the county in the purchasing department. Such permanent record shall also contain information recording the names of persons whose bids or offers were rejected. Such records shall always be subject to public inspection upon written notice to the purchasing agent and subject to a reasonable response period by the county.
- (3) After contracts have been awarded, the purchasing agent shall certify to various user departments and agencies of the county government the sources of the work, labor, or service to be done or the supplies, materials, or equipment to be furnished by the contract.

(Res. No. 13-0052, 1-23-13)

**Note**— Formerly Code, Pt. I, § 2-320.

Sec. 102-375. - Competitive selection procedures for professional and consultant services.

(a) *Conditions for use.* This method of solicitation shall be used when the use of competitive sealed bidding is not practicable under the circumstances or is not in the best interests of the county and the following conditions apply:

- (1) Price is not the determining evaluating factor;

- (2) Discussions with offerors is required;
  - (3) Offerors are required to provide methods and approaches to perform the Specification of Statement of Work;
  - (4) Agency desires to conduct interviews with offerors; and
  - (5) "Best value" award is anticipated.
- (b) *Request for proposals.* Proposals shall be solicited through a request for proposal.
- (c) *Public notice.* Adequate public notice of the request for proposal shall be given in the same manner as provided for competitive sealed bidding.
- (d) *Receipt of proposals.* Proposals shall be opened in the same manner as competitive sealed bids, provided that there is no disclosure of any information derived from proposals submitted by competing offerors. A register of proposals received shall be prepared and made available for public inspection in the purchasing department.
- (e) *Selection.* As provided in the request for proposal and under policies and procedures to be developed by the county, discussions may be conducted by the purchasing agent, in conjunction with the user department, with reasonable offerors who submit proposals determined by the purchasing agent, and written recommendation of the user department, to be reasonably qualified for being selected for award; such discussions shall be for the purpose of clarification to assure full understanding of and responsiveness to the solicitation requirements. Vendors who make offers, hereinafter referred to as offerors, shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals; and such revisions may be permitted after submission and prior to award for the purpose of obtaining best and final offers. In conducting discussions, there shall be no disclosure of any information derived from proposals submitted by competing offerors. The selection criteria may include, but not be limited to the following:
- (1) Relevant project experience demonstrating competence and capability to perform the services involved in the solicitation;
  - (2) Past performance of previous contracts with respect to time of completion and quality of services;
  - (3) Qualifications and experience of key personnel;
  - (4) Availability of key personnel;

- (5) Technical/project approach, the quality and effectiveness of the proposed approach to accomplish the tasks identified in the scope of work;
  - (6) The fee or compensation demanded for the services;
  - (7) The ability to comply with the schedule for the performance of the services, as required by the county;
  - (8) Local preference;
  - (9) Service disabled veterans preference.
- (f) *Evaluation.* Section 102-380 shall govern the evaluation process and to the extent not in conflict with applicable state law, shall govern the size and composition of the evaluation committees established for the evaluation of competitive sealed proposals obtained for goods and services of all kinds, including, without being limited to, design, construction, and operation services and contracts.
- (g) *Negotiations and award.* The purchasing agent shall negotiate a contract with the most responsible and responsive short-listed offeror that the purchasing agent determines in writing to be fair and reasonable to the county. In making this decision, the purchasing agent shall take into account the estimated value, the scope, the complexity and the professional nature of the services to be rendered. Should the purchasing agent be unable to negotiate a satisfactory contract with the offeror considered to be the most responsible and responsive at a price for the purchasing agent determines to be fair and reasonable to the county, negotiations with that offeror shall be terminated. The purchasing agent shall then undertake negotiations with the second most responsible and responsive short-listed offeror. If negotiations with the second most responsible and responsive short-listed offeror are unsuccessful, negotiations shall be terminated and the purchasing agent shall then undertake negotiations with the third most responsible and responsive short-listed offeror. Should the purchasing agent be unable to negotiate a contract with any of the short-listed offerors, the purchasing agent and the using agency may select from the additional offerors that were not short-listed in order of their responsibility and responsiveness and the purchasing agent may continue negotiations in accordance with this section until an agreement is reached.

(Res. No. 13-0052, 1-23-13)

**Note**— Formerly Code, Pt. II, § 102-354.

Sec. 102-376. - Qualification based selection procedures for architectural and engineering services for federally funded projects.

- (a) *Conditions for use.* Fulton County shall use the competitive negotiation method for the procurement of engineering and design related services when Federal-Aid Highway Project (FAHP) funds are involved in the contract (as specified in 23 U.S.C. 112(b)(2)(A)). The solicitation, evaluation, ranking, selection, and negotiation shall comply with the qualifications-based selection procurement procedures for architectural and engineering services codified under 40 U.S.C. 1101-1104, commonly referred to as the Brooks Act. Engineering and design related services are defined in 23 U.S.C. § 112(b)(2)(A) and 23 CFR § 172.3 to include program management, construction management, feasibility studies, preliminary engineering, design engineering, surveying, mapping, or other related services. These other services may include professional engineering related services, or incidental services that may be performed by a professional engineer, or individuals working under their direction, who may logically or justifiably perform these services. In accordance with the requirements of the Brooks Act, the following procedures shall apply to the competitive negotiation procurement method:
- (b) *Pre-qualification of consultants.* Georgia Department of Transportation (GDOT) requires consultants to be prequalified pursuant to GDOT Standard Specifications, Construction of Transportation Systems Section 102.01, Pre-Qualification of bidders. The county will verify that consultants responding to solicitations are pre-qualified.
- (c) *Qualification statements.* Qualification statements shall be solicited through a request for proposals.
- (d) *Request for proposals.* The request for proposals (RFP) shall provide all information and requirements necessary for interested consultants [proposers] to provide a response to the RFP and compete for the solicited services. The RFP shall:
  - (1) Provide a clear, accurate, and detailed description of the scope of work, technical requirements, and qualifications of consultants necessary for the services to be rendered. The scope of work should detail the purpose and description of the project, services to be performed, deliverables to be

provided, estimated schedule for performance of the work, and applicable standards, specifications, and policies;

- (2) Identify the requirements for any discussions that may be conducted with three or more of the most highly qualified consultants following submission and evaluation of proposals;
  - (3) Identify evaluation factors including their relative weight of importance in accordance with subparagraph (h)(1) of this code section;
  - (4) Specify the contract type and method(s) of payment to be utilized;
  - (5) Identify any special provisions or contract requirements associated with the solicited services;
  - (6) Require that submission of any requested cost proposals or elements of cost be in a concealed format and separate from technical/qualifications proposals as these shall not be considered in the evaluation, ranking, and selection phase;
  - (7) Provide a schedule of key dates for the procurement process and establish a submittal deadline for responses to the RFP which provides sufficient time for interested consultants to receive notice, prepare, and submit a proposal, which except in unusual circumstances shall be not less than 30 days from the date of issuance of the RFP;
  - (8) Prevent, identify, and mitigate conflicts of interest for employees of the county and the consultant in accordance with 23 CFR 1.33; and
  - (9) Require consultants to verifying suspension and debarment actions and eligibility of consultants.
- (e) *Public notice.* Adequate public notice of the request for proposal shall be given in the same manner as provided for in competitive sealed bidding. The solicitation process shall be by public announcement, public advertisement, or any other public forum or method that assures qualified in-state and out-of-state consultants are given a fair opportunity to be considered for award of the contract.
- (f) *Solicitation.* The procurement procedures may involve a single step process with issuance of a RFP to all interested consultants or a multiphase process with issuance of a request for qualifications (RFQ) whereby responding consultants are ranked based on qualifications and request for proposals are then provided to three or more of the most highly qualified consultant.

Regardless of any process utilized for prequalification of consultants or for an initial assessment of a consultant's qualifications under an RFQ, an RFP specific to the project, task, or service is required for evaluation of a consultant's specific technical approach and qualifications.

- (g) *Receipt of proposals.* Proposals shall be opened in the same manner as competitive sealed bids, provided that there is no disclosure of any information derived from proposals submitted by competing offerors. A register of proposals received shall be prepared and made available for public inspection in the purchasing department.
- (h) *Evaluation.* Section 102-380 shall govern the evaluation process and to the extent not in conflict with applicable federal law, shall govern the size and composition of all evaluation committees established for the evaluation of qualification based proposals obtained for federally assisted architectural and engineering services and related services. The evaluation committee must evaluate the proposals in accordance with the evaluation criteria established and cited within the advertised solicitation document.
  - (1) Criteria used for evaluation, ranking, and selection of consultants to perform engineering and design related services must assess the demonstrated competence and qualifications for the type of professional services solicited. These qualifications-based factors may include, but are not limited to:
    - i. Relevant project/work experience demonstrating competence and capability to perform the services described in the solicitation;
    - ii. Past performance of previous contracts with respect to time of completion and quality of services;
    - iii. Qualifications and experience of key personnel; staff capabilities; specialized expertise; professional licensure;
    - iv. Workload capacity, technical/project approach, the quality and effectiveness of the proposed approach to accomplish the tasks identified in the scope of work (e.g., project understanding, innovative concepts or alternatives, quality control procedures);
    - v. The ability to comply with the schedule for the performance of the services, as required by the county;
    - vi. Project management techniques.



- (2) Price shall not be used as a factor in the evaluation, ranking, and selection phase. All price or cost related items which include, but are not limited to, cost proposals, direct salaries/wage rates, indirect cost rates, and other direct costs are prohibited from being used as evaluation criteria.
  - (3) In-state or local preference shall not be used as a factor in the evaluation, ranking, and selection phase. State licensing laws are not preempted by this provision and professional licensure within a jurisdiction may be established as a requirement which attests to the minimum qualifications and competence of a consultant to perform the solicited services.
  - (4) While the contract will be with the prime consultant, proposal evaluations shall consider the qualifications of the prime consultant and any sub-consultants identified within the proposal with respect to the scope of work and established criteria.
  - (5) From the proposal evaluation and any subsequent discussions which have been conducted, the county shall rank, in order of preference, at least three consultants determined most highly qualified to perform the solicited services based on the established and published criteria.
  - (6) Notification must be provided to responding consultants of the final ranking of the three most highly qualified consultants.
  - (7) The county shall retain acceptable documentation of the solicitation, proposal, evaluation, and selection of the consultant.
- (i) *Selection.* Following submission and evaluation of proposals as provided in the request for proposal and under policies and procedures developed by the county, oral interviews or discussions may be conducted by the purchasing agent, in conjunction with the user department, with at least three of the most highly qualified consultants. Such oral interviews or discussions shall be for the purpose of clarification to assure full understanding of the technical approach, qualifications, and capabilities provided in the response to the RFP and responsiveness to the solicitation requirements. Discussions may be written, by telephone, video conference, or by oral presentation/interview. Discussions following proposal submission are not required provided proposals contain sufficient information for evaluation of technical approach and qualifications to perform the specific project, task, or service with respect to established criteria.

In conducting discussions, there shall be no disclosure of any information derived from proposals submitted by competing offerors.

- (j) *Negotiations and award.* Offerors must be ranked and selected without regard to cost. Cost will be negotiated with the most highly qualified consultant. The purchasing agent shall negotiate a contract for architectural and engineering services with the most highly qualified offeror at compensation that the purchasing agent determines in writing to be fair and reasonable to the county. In making this decision, the purchasing agent shall take into account the scope, complexity, professional nature and estimated value of the services to be rendered.
  - (1) *Independent cost estimate.* Prior to receipt or review of the most highly qualified consultant's cost proposal, the county shall prepare a detailed independent cost estimate establishing elements of contract costs, accepting indirect cost rate(s) for application to contracts, and assuring consultant compliance with federal cost principles. The independent cost estimate shall serve as the basis for negotiation and ensuring the consultant services are obtained at a fair and reasonable cost.
  - (2) *Order of negotiation.* The purchasing agent shall attempt to negotiate a contract, as provided in subsection (a) with the most highly qualified offeror. If the purchasing agent is unable to negotiate a satisfactory contract with the offeror considered to be the most highly qualified offeror at a price the purchasing agent determines to be fair and reasonable to the county, the purchasing agent shall formally terminate negotiations with that offeror and then undertake negotiations with the next most qualified of the selected firms, continuing the process until an agreement is reached. If the purchasing agent is unable to negotiate a satisfactory contract with any of the selected firms, the purchasing agent shall select additional firms in order of their competence and qualification and continue negotiations in accordance with this section until an agreement is reached. It is expected that negotiations will be completed in a reasonable time period and provide notice that the county has complete discretion to determine when to terminate negotiations and move to the next most highly qualified offeror.

(Res. No. 13-0052, 1-23-13; 15-0208, Exh. A, 3-4-15)

Sec. 102-377. - Local preference in contracting.

Except as may otherwise be required by applicable state or federal law, in the contracting for goods and services of all kinds and description, when such goods or services are to be obtained, through a request for competitive sealed proposals local preference shall be given to businesses having a business location within the geographic boundaries of the county.

- (1) The term business location means that the business has a staffed, fixed, physical place of business located within the county and has had the same for at least one year prior to the date of the business' submission of its proposal, as applicable and has held a valid business license from the county or a city located within the county for the business at a fixed, physical, place of business, for at least one year prior to the date of the business' submission of its proposal or bid as applicable.
- (2) Whenever goods or services of any kind or description are to be obtained through the solicitation of competitive sealed proposals, local preference shall be included as an evaluation criterion to be considered by the vendor evaluation committee. In this regard, five percent of the total points available to each proposer shall be awarded on the basis of whether the proposer provides supporting documentation as required and certifies under oath that it is eligible to receive the local preference points.

Proposers having a business location within Fulton County shall be entitled to and shall receive the local preference points provided for in this section.

- (3) Whenever a proposal or bid is submitted by a partnership or joint venture, the local preference provided for in this section shall be awarded if the proposer, or any member of the proposer or, defined as a business that is a signatory to the partnership or joint venture agreement, has a business location within the county. No local preference shall be given on the basis of the business location of any other affiliated business, subcontractor, or consultant.
- (4) In the event the affidavit or other declaration under oath is determined to be false, such business shall be deemed "nonresponsive" and shall not be considered for award of the applicable contract.

(Res. No. 13-0052, 1-23-13; Ord. No. 19-0220, Exh. A, 4-10-19)

**Note**— Formerly Code, Pt. II, § 102-358.

Sec. 102-378. - Service disabled veterans business enterprise preference.

(a) *Purpose.* To expand and increase contracting opportunities for businesses that are owned and controlled by eligible veterans of the United States Armed Forces with service-connected disabilities and who have been honorably discharged.

- (1) In the contracting for goods and services of all kinds and description are to be obtained through the solicitation of competitive sealed proposals (RFP), a veterans preference shall be included as an evaluation criterion to be considered by the vendor selection committee and such preference shall be given to a service disabled veteran business enterprise ("SDVBE") which is certified as such SDVBE by the office of contract compliance.
- (2) The term "service-disabled veteran business enterprise" (SDVBE) means any business which is an independent and continuing operation for profit, performing a commercially useful function, and is 51 percent owned and controlled by one or more individuals who are disabled as a result of military service and who has been honorably discharged, designated as such by the United States Department of Veterans Affairs.
- (3) Whenever goods or services are procured on behalf of Fulton County by the solicitation of competitive sealed proposals, and when considering two or more proposals, at least one of which is from a certified service-disabled veteran business enterprise, in awarding the contract for goods and services under this section, the evaluation committee shall give preference points to a certified service-disabled veteran business enterprise of two percent of the total points available on the technical portion of such proposal.
- (4) Notwithstanding anything contained herein, this section shall not be construed as establishing a preference in contracting with any businesses, including SDVBEs, that are not otherwise responsive and responsible offerors as provided in this Code, the Fulton County purchasing regulations, and the request for proposals or applicable solicitation of goods and services.
- (5) Each SDVBE seeking a veterans preference under this section shall certify under oath that it is eligible to receive the veterans preference points as

set forth above as part of the submission of its proposal to Fulton County and, in the event that the affidavit or other declaration under oath is determined to be false, such business shall be deemed nonresponsive and shall not be considered for award of the applicable contract.

- (b) The purchasing agent, in conjunction with the county manager, shall compile and maintain data concerning the underutilization and availability of SDVBES in Fulton County and shall recommend to the board of commissioners such other and further amendments to this Code, policies, and procedures which may be necessary to implement the certification procedure for SDVBES contemplated herein.

(Res. No. 13-0052, 1-23-13)

**Note**— Formerly Code, Pt. II, § 102-361.

Sec. 102-379. - Review of financial responsibility for request for proposals.

- (a) *Purpose.* To establish procedures to determine the responsibility of a prospective proposer.
- (b) *Policy.* It is the policy of the county to determine a firm's financial responsibility in order to determine the firm's capability to successfully perform the work.
- (c) *Procedure.* The department of purchasing and contract compliance RFP solicitation documents shall include that the following documentation shall be required in request for proposals for submittal in order for the department of finance to complete its financial review:
  - (1) Provide financial statements for the last three years, including income statements, balance sheets, and any changes in financial position.
  - (2) Proposer's most recent Dun and Bradstreet, value line reports or other credit ratings/report.
  - (3) Identify any evidence of access to a line of credit or letter of credit.
- (d) *Evaluation.* The department of purchasing and contract compliance and the department of finance shall conduct a financial evaluation as part of the financial responsibility determination for the proposer who submitted the best responsive proposal using the following criteria:

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- (1) Have adequate financial resources to perform the contract, or the ability to obtain them;
- (2) Be able to comply with the required or proposed delivery or performance schedule, taking into consideration all existing commercial and governmental business commitments;
- (3) Have a satisfactory performance record. A prospective contractor shall not be determined responsible or non-responsible solely on the basis of a lack of relevant performance history;
- (4) Have a satisfactory record of integrity and business ethics;
- (5) Have the necessary organization, experience, accounting and operational controls, and technical skills, or the ability to obtain them (including, as appropriate, such elements as production control procedures, property control systems, quality assurance measures, and safety programs applicable to materials to be produced or services to be performed by the prospective contractor or subcontractor);
- (6) Have the necessary production, construction, and technical equipment and facilities, or the ability to obtain them; and
- (7) Be otherwise qualified and eligible to receive an award under applicable laws and regulations.

(Res. No. 13-0052, 1-23-13)

Sec. 102-380. - Evaluation committee.

- (a) *Authority.* This section, to the extent not in conflict with applicable state law, shall govern the size and composition of all evaluation committees established for the evaluation of competitive sealed proposals obtained for goods and services of all kinds, including, without being limited to, design, construction, and operation services and contracts and federal assisted qualification based proposals for architectural and engineering services.
- (b) *Evaluation committee guidelines.* The evaluation committee (EC) has the authority to review and evaluate proposers' technical responses in response to a specific request for proposals (RFP).
- (c) *General guidelines.*

- (1) *Identifying evaluation committee members.* Members of the EC should have professional interest and expertise to evaluate proposals and make recommendations that could lead to the selection of one or more suppliers. The EC shall be comprised of three staff assigned by purchasing, from the user department(s); if necessary, two additional technical staff from multiple departments or use of outside experts; one nonvoting member from the finance department who shall assist purchasing with the determination of financial responsibility and analyzing of cost proposals; the purchasing staff member of the solicitation shall serve on the EC as an ex-officio member and will facilitate all evaluation and negotiation meetings. He/she may not score proposers' responses.
- (2) *EC member participation form.* Prior to beginning the evaluation process, the purchasing staff member will send a confidentiality agreement to the individual EC members and each member shall return an executed copy.
- (3) *Initial review of suppliers' responses.* After the official closing of the solicitation, the purchasing staff member will review received responses for compliance with the submittal criteria and content requirements and make a recommendation to the purchasing agent as to the responsiveness of the response.
- (4) *Submitting responses to the EC.* The EC members who have executed the confidentiality agreement will be provided with all proposers' responses that passed the administrative review as well as the appropriate evaluation forms to capture scoring. The EC must comply with the scoring guidelines identified below.
- (5) *Independent and individual review.* Each EC member will individually and independently review each proposer's response. The EC member must assign a written assessment to each question. In addition, the EC member must include a written comment justifying any assessment other than "adequate." During the initial review, the EC member should note any clarification questions the EC member suggests asking the proposer. After completing the initial evaluation, the EC member will submit the evaluation documentation and any identified clarification questions to the purchasing staff member.
- (6) *Scoring rating system.* Each question's score will be multiplied by its assigned weight to obtain the applicable score for that proposer's response to the question. The following rating system applies:

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| Assessment  | Scoring Guidelines   | Evaluator Score      |
|---|--|----------------------|
| No Response<br>(Only applies to mandatory scored) | <ul style="list-style-type: none"><li>• The narrative response provided constitutes a material deviation from the requirement.<ul style="list-style-type: none"><li>• No narrative response provided.</li></ul></li><li>• When the response does not meet a mandatory.</li></ul>   | Fail or Disqualified |
| Poor  | <ul style="list-style-type: none"><li>• Fails to address the component or the supplier does not describe any experience related to the component.<ul style="list-style-type: none"><li>• Proposal is inadequate in most basic requirements, specifications, or provisions for the specific criteria.</li></ul></li></ul>   | 0.00                 |
| Marginal  | <ul style="list-style-type: none"><li>• Proposal minimally addresses the requirements, but one or more major considerations of the component are not addressed, or so limited that it results in a low degree of confidence in the bidder's response or proposed solution.</li><li>• Proposal meets many of the basic requirements specifications, or provision of the specific items, but is lacking in some essential aspects for the specific criteria.</li></ul> | 0.25                 |
| Adequate  | <ul style="list-style-type: none"><li>• Proposal adequately meets the minimum requirements, specification, or provision of the specific item, and is generally capable of meeting the state's needs for specific criteria.</li></ul>   | 0.50                 |
| Good  | <ul style="list-style-type: none"><li>• Proposal more than adequately meets the minimum requirements, specification or provision of the specific criteria, and exceeds those</li></ul>   | 0.75                 |



|           |   |     |
|-----------|---|-----|
|           | requirements in some aspects for the specific criteria.   |     |
| Excellent | <ul style="list-style-type: none"> <li>• Fully meets all requirements and exceeds several requirements.</li> <li>• Proposal exceeds minimum requirements, specification and provision in most aspects for the specific criteria.</li> </ul> | 100 |

- (7) *Convening EC committee meetings.* After the purchasing staff member has consolidated each individual EC member's scores into the master evaluation spreadsheet, he/she will schedule a meeting for all EC members to meet and discuss initial scores. The EC members will discuss the individual scores and, as a result of the discussion, each member may adjust the member's individual scoring up or down as appropriate. There is no requirement that all EC members reach agreement on the score for a particular question/requirement. In the event the EC members do not reach agreement on a score for a particular question/requirement, the purchasing staff member will average the individual scores to determine the proposer's score for that particular question/requirement.
- (8) *Analyzing cost proposals.* For RFPs, the purchasing staff and Finance staff members will analyze the cost proposals independently, but may perform the analysis concurrently with the EC's evaluation of the proposers' technical responses. These staff will not disclose the cost proposals or the cost analysis to the EC until after the technical proposals have been scored. The EC may elect to conduct oral interviews/presentations or request additional material prior to receiving the cost proposals and cost analysis.
- (9) *Overall scores preceding negotiations.* Each proposer meeting all mandatory requirements will receive a total combined score by adding the proposer's technical score to the proposer's cost score.

- (10) *Convening a negotiation team.* If the EC elects to initiate negotiations, then a negotiation team (NT) will convene. The Purchasing staff member must follow the guidelines found in the RFP.
- (11) *Capturing negotiation results and award recommendation.* If the county elects to negotiate with identified proposers, the proposer will each be asked to submit a proposal revision following each round of negotiations, which proposal revision will then augment the original RFP submission. Each proposal revision will be evaluated and rescored by the EC utilizing the same evaluation criteria.
- (12) *Maintaining agency records.* All evaluation/negotiation documents/forms completed by each evaluator and by the EC and NT will be collected by the purchasing staff member and become part of the official records and subject to the Georgia Open Records Act.

(Res. No. 13-0052, 1-23-13)

**Note**— Formerly Code, Pt. II, § 102-360.

Sec. 102-381. - Prequalification of offerors (request for qualifications).

- (a) *Conditions for use.* Under this article, the purchasing agent, in consultation with the using agency may determine that it is in the best interests of the county to prequalify offerors for particular types of supplies, services, construction and professional and consultant services. Prequalification standards may be imposed by the purchasing agent that must be met by any offeror in order to qualify to respond to an invitation for bids or a request for proposals. Offerors shall be required to submit information to the purchasing agent to allow a determination of whether an offeror has met such prequalification standards. When prequalification is required, only those offerors who submit the required prequalification information and who are actually prequalified to submit a bid or proposal for a particular solicitation shall be allowed to submit bids or proposals.
- (b) *Public notice.* Public notice of prequalification shall be given in the same manner as provided in Sections 102-373 and 102-374.
- (c) *Receipt of proposals.* Proposals shall be opened in the same manner as competitive sealed bids, provided that there is no disclosure of any information derived from proposals submitted by competing offerors. A

register of proposals received shall be prepared and made available for public inspection in the purchasing department.

- (d) *Procedures for prequalifying offerors.* The purchasing agent and using agency for which the solicitation is being performed shall review all information submitted by offerors, and, if necessary, additional information may be required. If the purchasing agent, in consultation with the using agency and any other affected county agency, determines that the offeror meets all of the prequalification standards established under this article, the purchasing agent shall prequalify the offeror as qualified to submit a bid or proposal for the particular solicitation for which the prequalification was performed. The offeror shall be notified in writing of prequalification.
- (e) *Failure to prequalify.* If an offeror is found not to meet the prequalification standards established under this article, a written determination setting forth the basis for such finding shall be prepared by the purchasing agent and delivered to the offeror.

(Res. No. 13-0052, 1-23-13)

Sec. 102-382. - Request for quotation.

- (a) *General procedures.* If the several parts of the work or labor to be done or the supplies, material, and equipment to be furnished shall together or in part involve an expenditure of more than \$2,499.99 but less than \$50,000.00, the same may be procured on order awarded to the lowest responsible bidder upon written bids submitted without public advertisement, under such regulation as shall be made by the county authority.
- (b) *Public notice.*
  - (1) *General notice.* An advertisement inviting quotations shall be posted on an internet website of Fulton County, or a website designated by Fulton County for such purpose and clearly indicated for that purpose. The public notice shall contain a general description of the supplies and/or services and the date and time the quotation must be submitted.
- (c) *Receipt of quotations.* All quotations must be received electronically by the purchasing agent or designated department of purchasing staff no later than 2:00 p.m. Eastern Time.

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- (d) *Quotation acceptance.* Quotations shall be received by the purchasing agent or designated department of purchasing staff without alteration or correction, except as authorized in this article, provided that the quotations are submitted in accordance with the conditions contained in the request for quotation.
- (e) *Quotation evaluation.* Quotations shall be evaluated based on the requirements set forth in the request for quotation and the county's Code of Ordinances. Those criteria, including but not limited to discounts, transportation costs that will affect the bid and price and shall be considered in the evaluation of the award.

(Res. No. 13-0052, 1-23-13)

**Note**— Formerly Code, Pt. I, § 2-315.

Sec. 102-383. - Small purchases.

- (a) *General procedures.* Purchases of \$2,499.99 or less may be made without competition. All work or labor solicitations, or solicitations for supplies, materials, or equipment to be let shall be made available for public review in the county purchasing office.
- (b) *Authority of using agency .* Heads of all county departments may, in their discretion, make small purchases without the assistance of the purchasing director under the following circumstances:
  - (1) Where the purchase does not exceed \$2,499.99 and is purchased pursuant to purchasing card policies and allocated to the department under a duly enacted appropriation; and
  - (2) Where the purchase does not exceed \$2,499.99 and is paid for by a requisition either by purchase order or payment voucher from funds previously allocated to such department.
- (c) *Limitations on small purchases made by county departments.* When small purchases are made by heads of county departments pursuant to subsection (b) of this section, the following requirements shall be met:
  - (1) Purchases shall not be artificially divided so as to constitute a small purchase under subsection (b) of this section.

(d) *Issuance and use of county purchasing cards and credit cards.* The county's purchasing card and credit card can be used for purchases where the purchase does not exceed \$2,499.99 and is designed to enable authorized, county employees, appointed officials and elected officials to make purchases of supplies, materials, equipment and services for county business use.

(1) *Intent and scope.* This section is intended to comply with the policy requirements of O.C.G.A. § 36-80-24 regarding the use of county-issued government purchasing cards and credit cards.

(2) *Definitions.*

- a. "Authorized elected official" means an elected official designated by the board of commissioners to receive a county issued government purchasing card or credit card.
- b. "Card administrator" means the purchasing card and credit card administrator designated by the board of commissioners or as provided in the county's Purchasing Card and Credit Card Manual.
- c. "County" means county and/or the board of commissioners.
- d. "County purchasing card," "county p-card" or "county credit card" means a financial transaction card issued by any business organization, financial institution, or any duly authorized agent of such organization or institution, used by a county official to purchase goods, services and other things of value on behalf of the county.
- e. "Financial transaction card" means an instrument or device as the term is defined in O.C.G.A. § 16-9-30(5).
- f. "User agreement" means the required agreement between the board of commissioners and the authorized elected officials which restricts the use of a county purchasing card or credit card. The purchasing cardholder agreement provided in the Purchasing Card and Credit Card Manual shall be used by constitutional officers, non-elected county employees and appointed officials.

(3) *Designated elected officials.* The Fulton County Board of Commissioners ("county"), in its discretion, may, from time-to-time authorize specific county elected officials to use a county purchasing card or credit card by adoption of a resolution in a public meeting. No authorized elected official may use a county purchasing card or credit card until and unless he or she

has executed the county's purchasing card and credit card user agreement. The county will not make payments to any business organization, financial institution, or any duly authorized agent of such organization or institution, for amounts charged by an elected official to any purchasing cards or credit cards that are not issued pursuant to this section or the county's Purchasing Card and Credit Card Manual or for any purchases that are not authorized by this section.

- (4) *Card administrator.* Duties of the card administrator may be delegated to persons identified in the county's Purchasing Card and Credit Card Manual. The responsibilities of the card administrator may include:
- a. Manage county issued purchasing cards and credit cards.
  - b. Serve as the main point of contact for all county purchasing card and credit card issues.
  - c. Serve as liaison to the elected officials authorized to use a purchasing card or credit card and their staff, as well as to the issuer of the purchasing card or credit card.
  - d. Provide training on card policies and procedures to the elected officials authorized to use a purchasing card or credit card and their staff, along with county employees authorized to use a purchasing card or credit card.
  - e. Develop internal procedures to ensure timely payment of cards.
  - f. Assist authorized elected officials and authorized county employees to dispute transactions when necessary.
  - g. Establish internal procedures to ensure compliance with this section. County procurement laws, rules, regulations and policies, county purchasing card and credit card user agreements, applicable agreements with the business organization, financial institution, or any duly authorized agent of such organization or institution, issuing card, and state law, specifically, O.C.G.A. §§ 16-9-37 and 36-80-24.
  - h. Document internal controls, audits and other measures to prevent and detect misuse or abuse of the cards.
  - i. Audit and reconcile transactions monthly.
  - j. Maintain records for at least seven years or as otherwise provided by the county's record retention policy.

- k. Comply with all other requirements set forth in the county's Purchasing Card and Credit Card Manual not in conflict with these provisions.
- (5) *County Purchasing Card and Credit Card Manual.* Procedures for the use of county purchasing cards and credit cards by elected officials and county employees shall be set forth in the county's Purchasing Card and Credit Card Manual, which shall be created, administered and maintained by the Fulton County Purchasing Department and are incorporated herein by references as if set forth in this section. The county's Purchasing Card and Credit Card Manual shall at all times include procedures for the use of purchasing cards and/ or credit cards by county elected officials, Constitutional officers, appointed officials and county employees. The Purchasing Card and Credit Card Manual may be revised from time-to-time by the county purchasing agent, without board of commissioners' approval, to ensure compliance with state laws (i.e., O.C.G.A. § 36-80-24) and Fulton County laws, rules and regulations.
- (6) *Use of cards.*
- a. *Authorized purchases.* County purchasing cards and credit cards may be used to purchase goods and services directly related to the public duties of the authorized elected official, constitutional officer, appointed official and county employee as set forth in the county's Purchasing Card and Credit Card Manual. All purchases are subject to the terms of this section, the user agreement, county procurement rules, laws, regulations, policies and ordinances, and the adopted budget. Only authorized elected officials, constitutional officer, appointed official or authorized county employees (as provided for in the Purchasing Card and Credit Card Manual) may use a county purchasing card or credit card for purchases or payments. The cards, and use of the cards, are not transferrable to others, except as may be authorized by the Purchasing Card and Credit Card Manual. The authorized elected official, constitutional officer, appointed official and authorized county employee shall use care to ensure that others do not have access to the card account number, expiration date and security code. Unless otherwise approved by the governing authority the transaction limits shall be \$2,499.99 for each transaction.

- b. *Unauthorized purchases.* County purchasing cards and credit cards shall not be used for goods and services not directly related to the official responsibilities of the authorized elected official, constitutional officer, appointed official or county employee. Additionally, cards shall not be used to avoid compliance with the county's purchasing regulations and procedures, to purchase goods and services that are not approved in the county's budget or budget for a user department, to purchase goods and services exceeding the per transaction or per month limit, if any, or to make purchases not in compliance with the county purchasing card and credit card user agreement and the county's Purchasing Card and Credit Card Manual. Said procedures shall be further detailed in the County Purchasing Card and Credit Card Manual.
  - c. *Receipts and documentation.* Receipts, invoices and other supporting documentation of all purchases made with a county purchasing card or credit card shall be obtained and maintained by the authorized county elected official, constitutional officer, appointed official or user department for five years or as otherwise provided by the county's record retention policy. If an original or duplicate cannot be produced, a sworn affidavit of the authorized elected official may be substituted. The documentation must include the supplier or merchant information (i.e., name and location), quantity, description, unit price, total price, price paid without sales tax and an explanation of the purchase sufficient to show that the expense was in the performance of official county duties. Said procedures shall be further detailed in the County Purchasing Card and Credit Card Manual.
  - d. *Public records.* All receipts and other documentation of purchases are public records and subject to the requirements of O.C.G.A. § 50-18-70 et seq.
- (7) *Review of purchases and audit.* Proper documentation of purchases, internal controls and other measures prevent and allow detection of misuse or abuse of county issued purchase cards and credit cards. Authorized elected officials and staff, along with authorized constitutional officers, appointed officials and county employees that process payments under this program shall cooperate and comply with the procedures established by the county's Purchasing Card and Credit Card Manual.



- a. *Review of purchases.* All purchases shall be reviewed according to the procedures set forth in the county's Purchasing Card and Credit Card Manual.
- b. *Audits.* The card administrator, under procedures set forth in the county's Purchasing Card and Credit Card Manual shall perform an annual review of the card program to ensure adequacy of internal policies and procedures, cardholder spending limits, monthly reconciliation procedures and documentation for transactions. Elected officials and staff. Constitutional officers, appointed officials and employees shall cooperate with such review.

(8) *Violations.*

- a. An elected official, appointed official or constitutional officer shall reimburse the county for any purchases made with a county issued purchasing card or credit card in violation of this section or the user agreement. In the discretion of the county governing authority, failure to comply with the procedures outlined in this section may result in: (i) a warning; (ii) suspension of the elected official's authority to use a county purchasing card or credit card; or (iii) revocation of the elected official's, appointer officer's or constitutional officer's authority to use a county purchasing card or credit card.
- b. County employees are subject to disciplinary action under the county's personnel regulations as provided in the county's Purchasing Card and Credit Card Manual.
- c. Nothing in this section shall preclude the county governing authority from referring misuse of a purchasing card or credit card for prosecution to the appropriate authorities.

(Res. No. 13-0052, 1-23-13; 15-1171, Exh. 1, 12-16-15)

**Note**— Formerly Code, Pt. I, § 2-315.

Sec. 102-384. - Award without competition.

- (a) *Statement of policy.* Notwithstanding any other provision of this article, a contract may be awarded by the BOC without competition when the county manager and the purchasing agent determine, in writing, upon

recommendation of the user agency and after the purchasing agent conducts a good faith review of available sources, that there is only one source for the required work, labor, or service to be done or the supplies, materials, or equipment to be furnished.

(b) *Conditions for use.* The following categories are permitted as basis for conditions allowing award of contracts without competition:

- (1) When required in order to comply with, or avoid voiding of or penalties under, licenses and warranties held by the county;
- (2) Expert services, acquiring the services of an expert or neutral person for any anticipated litigation or dispute;
- (3) The existence of limited rights in data, patent rights, copyrights, or secret processes; or similar circumstances, make the supplies and services available from only one source;
- (4) When necessary to maintain compatibility with existing equipment or systems, only specified makes and models of technical equipment, software, and parts will satisfy the county's needs for additional units or replacement items, and only one source is available;
- (5) Authorized or required by statute, a statute expressly authorizes or requires that the acquisition be made through another agency or from a specified source;
- (6) Supplies may be deemed to be available only from the original source in the case of a follow-on contract for the continued development or production of a major system or high-specialized equipment, including major components;
- (7) A governmental agency is the only provider of the service and/or services;
- (8) When a review of the market demonstrates that the work, services, or materials sought by the county are so unique that only one vendor can satisfy the county's requirements;
- (9) When acquiring utility services; or
- (10) When acquiring legal services.

(c) *Advertisement.* All intended sole source acquisitions shall be advertised on the county's bid board/internet for a minimum of five business days. The advertisement must include the following:

- (1) A brief description of the supplies and/or services;
  - (2) The identity of the sole source supplier;
  - (3) A copy of the completed sole source justification form; and
  - (4) Instructions to the vendors how to submit any offers to perform the sole source determination.
- (d) *Negotiations.* The purchasing agent, in conjunction with the user agency, shall conduct negotiations based upon written documentation and estimates provided in writing by the user agency as to quality, price, delivery and terms of performance. A contract shall be written based upon the negotiated terms and conditions.
- (e) *Recordkeeping.* A record of all sole source procurement shall be maintained as a public record for a minimum of three years and shall list each contractor's name; the amount and type of each contract; a listing of the work, labor, or service to be done or the supplies, materials or equipment to be furnished under each contract; and the identification number of each contract file. A separate record of sole source procurement shall be maintained as a public record for each fiscal year.
- (f) *Exceptions.* The following categories are exempt from the notice requirements described herein in subpart (c) through subpart (e):
- (1) A governmental agency is the only provider of the service and/or services;
  - (2) When acquiring utility services; or
  - (3) When acquiring legal services.
  - (4) Authorized or required by statute, a statute expressly authorizes or requires that the acquisition be made through another agency or from a specified source;
  - (5) The existence of limited rights in data, patent rights, copyrights, or secret processes; or similar circumstances, make the supplies and services available from only one source.

(Res. No. 13-0052, 1-23-13; Ord. No. 19-0220, Exh. A, 4-10-19)

**Note**— Formerly Code, Pt. I, § 2-319.

Sec. 102-385. - Emergency procurement.

Notwithstanding any other provision of this article, the purchasing agent, upon written recommendation by the user department and approval by the county manager, may make emergency procurement of work, labor or service to be done or the supplies, materials or equipment to be furnished when there exists a threat to public health, welfare or safety; provided, however, that such emergency procurement shall be made with such competition as is practicable under the circumstances. A written determination of the basis of the emergency and rationale for the selection of the particular contractor shall be included in the contract file. As soon as possible in such circumstances, a record of each such emergency procurement shall be made and shall set forth the contractor's name, the amount of payment and type of contract, a list of work, labor, or service to be done or the supplies, materials or equipment to be furnished under the contract, and the identification number of the contract file; and such information shall be forwarded to the board of commissioners for ratification and be made a part of the minutes of the next scheduled meeting of the board of commissioners.

(Res. No. 13-0052, 1-23-13)

**Note**— Formerly Code, Pt. I, § 2-321.

Sec. 102-386. - Renewal of annual licensing, maintenance and support agreements for intellectual property.

(a) *Conditions of use.* When the county has competitively procured the original acquisition of intellectual property and said property requires annual licensing, maintenance and support.

(1) *Statement of policy.* It is the policy of Fulton County Government to respect all copyrights, patents, trademarks and trade secrets and to adhere to the terms and conditions of any license to which Fulton County is a party. Moreover, it is the policy of the county government to ensure that all resources are managed in a transparent and cost-effective manner and in accordance with applicable laws.

(2) *Costs.* Therefore, the costs associated with annual licensing, maintenance and support for intellectual property shall be approved by the board of commissioners (BOC) as part of the annual budget process. Further, annual licensing, maintenance and support agreements that have been previously awarded by the BOC through a competitive procurement

process will not require additional BOC approval so long as the terms and conditions of the agreements have not materially changed and the cost of the associated support and maintenance services have been approved as part of the annual budget process.

- (3) *Applicability*. This policy applies to all county agencies, departments and offices acquiring intellectual property.
- (4) *Definitions*. For the purpose of this policy, the terms used herein shall be defined as follows:
  - a. *Annual maintenance and support agreement* provides for the technical assistance and materials related to the use, repair and/or maintenance of equipment and facilities associated with intellectual property, typically includes access to the manufacturer's technical support, the correction of defects or errors/bugs (e.g. software patches, etc.), and future releases of and updates to purchased intellectual property.
  - b. *Intellectual property* means intangible creations of human intelligence expressed or translated into tangible forms such as patented inventions, copyrightable works, trademarks or trade secrets, which are assigned certain property rights protected under federal and state law.
  - c. *License agreement* means language that is commonly part of the contract and states that the terms of usage as permitted by the copyright owner for the specific product for which it pertains. The price of the intellectual property covers the legal acquisition of the software license and binds the purchaser to use the intellectual property only according to the terms and conditions stated in the license agreement.
  - d. *Licensee* means the user of the intellectual property rights, or the entity to which a license is granted.
  - e. *Licensor* means the owner of the intellectual property rights, of the one with legal rights to grant a license for use.
  - f. *Useful life* means the details of a product's useful life, which includes anticipated duration/term of use and total cost of ownership over the term.

g. *Service level agreement (SLA)* means language that is commonly part of the contract and states the level of service/support to be provided by the licensor. The SLA documents a common understanding between the licensor and licensee about services, priorities, responsibilities, guarantees, and warranties.

(b) *Requirements for original acquisition and ongoing use of intellectual property.*

(1) *Definition of business need.* The department seeking to acquire intellectual property should clearly define the business need for the product and the expected return on investment. Pursuant to county policy 600-61, any software and/or hardware installations must be approved by the department of information technology in order to minimize costs and potential risk to the existing technology environment. The department should also work with the county's Budget Division to identify funding and with the department of purchasing and contract compliance to procure the intellectual property using the appropriate competitive process according to this Code.

(2) *Approval of original contract award.* board of commissioners approval shall be required at the time of the original contract award when acquiring intellectual property, in accordance with this Code. The department acquiring the intellectual property (licensee) must disclose in the body of the agenda report the terms of the license agreement for the intellectual property in question; the anticipated useful life of the intellectual property; and the anticipated annual cost for maintaining the intellectual property over its useful life cycle. Additionally, the contract and all related agreements must be attached to the agenda report at the time of approval.

(3) *Annual Budget Approval Process.* Once the board of commissioners has approved a contract award for the acquisition of intellectual property, satisfaction of the related maintenance and support and/or license agreements shall be approved through the annual budget process.

(Res. No. 13-0052, 1-23-13)

**Note**— Board Policy 800-14.

Sec. 102-387. - Disposition of county-owned real property.

- (a) *Conditions for use.* Guidelines for the identification and disposition of county-owned real property that is deemed no longer needed for county purposes.
- (b) *Statement of policy.* It is the policy of the board of commissioners that county-owned real property shall be identified for sale, transfer, or other disposition in accordance with Georgia law. Also, unless otherwise provided by law, the sale or disposition of all interests in county-owned real property shall be to the highest responsible bidder by competitive sealed bidding, pursuant to O.C.G.A. § 36-9-3, as amended. The abandonment, substitution, disposal or leasing of county-owned real property no longer needed for public road purposes shall be in accordance with the provisions of O.C.G.A. § 32-7-1 et seq.
- (c) *Applicability.* This policy will apply, upon adoption, to all Fulton County departments and agencies, contractors, and to the staffs of elected officials.
- (d) *Process for sale of county-owned real property by competitive sealed bids.*
  - (1) *General procedures.* The land administrator shall, with the assistance of the purchasing agent, prepare all documentation for a sale by competitive sealed bid. A sale by sealed bid package shall be prepared in a manner as prescribed by the purchasing agent.
  - (2) *Invitation to bid.* An invitation for sealed bids shall be issued and shall include a legal description of the real property and all terms and conditions applicable to the sale. The invitation to bid shall include the following mandatory terms:
    - a. The property is being sold "as is" "where is" and "with all faults" to be transferred by a quit claim deed only;
    - b. All closing costs shall be borne by the bidder at closing; and
    - c. The county reserves the right to reject any and all bids.
  - (3) The county shall schedule no less than one date for the public to inspect the property. Such inspection shall be conducted by the land division after legal advertisements have been run, but shall occur at least five days before the bid opening date and time.
  - (4) *Engagement of real estate brokerage.* At the discretion of the land administrator, provision may be made for the engagement of one or more licensed real estate broker(s) to market and assist in the sale of the property. The land administrator may, in order to stimulate interest and

encourage the protection of the interests of both buyer and seller, require any and all potential buyers to be represented by a licensed real estate broker or agent.

- (5) The procedures specified herein, shall not bar contact with the land administrator, and employees, contractors or agents of the land division with respect to disposition of county owned surplus real estate.
- (6) *Public notice.* An advertisement inviting bids shall be published at least once a week for two consecutive weeks in the official legal organ of the county or in at least one newspaper of general circulation in the county, not less than 15 nor more than 60 days prior to the last day for receipt of bids. Such advertisement shall give a legal description of the property, its dimensions, its location and any conditions of the sale or restrictions for use. The advertisement shall also contain an invitation for bids and shall state the conditions of the proposed sale, the address at which bid blanks and other written materials connected with the proposed sale may be obtained, and the date, time, and place for the opening of bids. Notice shall also include the posting of a sign on the property in a size appropriate to give a ready, willing and able buyer adequate notice and which shall contain general information of the sale. The purchasing department shall cause the notice of invitation to bid, including the official appraisal, to be published on their website for downloading by interested bidders. If the property to be disposed of is property previously used for public roads purposes pursuant to O.C.G.A. § 32-7-1 et seq., then the additional notice requirements of O.C.G.A. § 32-7-4 shall be complied with.
- (7) *Bid opening, acceptance and evaluation.* Bids shall be opened publicly by the purchasing agent. The name of each bidder, the amount of each bid and other such relevant information as the purchasing agent and/or land administrator deems appropriate shall be recorded. The record and each bid shall be open to public inspection for a period not less than 60 days from the date such bids are opened. Copies and/or a list of all responsible bids shall be provided to the land administrator by the purchasing agent for review and recommendation of an award. The land administrator shall determine the responsiveness of each bid, which shall be evaluated in relation to the fair market value set by the appraisal. The land



administrator is empowered to deem responsive any bid that is at least 85 percent of the appraised value.

- (8) *Withdrawal of bids.* Except as provided in this subdivision, bids shall become irrevocable once received and opened by the county.
- (9) *Award.* The award shall be made by the land administrator to the highest responsible bidder in accordance with the provisions of the sale by sealed bid as approved by the board of commissioners under this policy. The highest responsible bidder will be informed of his/her acceptable bid by written notification of award provided that the price offered by such bidder is acceptable to the land administrator based upon the fair market value of the property. The notification of the award shall include a purchase contract to be executed by the selected bidder and returned in accordance with the provisions set forth in the invitation to bid. All bids may be rejected if they are deemed in the judgment of the land administrator with the concurrence of the county manager, to be nonresponsive to the invitation to bid.
- (10) *Closing.* The land administrator, using an approved contract attorney, shall be responsible for the preparation of the quit claim deed and closing statement, which shall be subject to review by the county attorney. The land administrator is responsible for all coordination and scheduling relating to the closing. Good funds shall be collected from the successful bidder in the form of cash, cashiers check or bank issued check. Upon closing of the transaction, the land administrator shall distribute all closing documents and cause the deed to be recorded and notify the finance department in writing and tender any net proceeds for deposit. Upon the close of the sale the land administrator shall make the adjustments to the real property inventory and assets listing of the county and circulate a notice of disposition to all appropriate departments. Upon recording of the deed by the county, the original deed shall be forwarded to the purchaser.
- (11) *Net proceeds.* Net proceeds from the closing shall be immediately delivered to the finance department for deposit into the appropriate fund account.
- (12) *County's rights upon failure of successful bidder to close transaction.* In accordance with the terms set forth in the invitation for sale bids under this subdivision, the county shall, as may be necessary, pursue its rights

upon the failure of the successful bidder to close a transaction concerning the sale, conveyance or exchange of real property owned by the county. When the deed conveying the real property offered for sale by the county has been executed by the chairman of the board of commissioners and is ready for delivery, the successful bidder shall be notified by registered or certified mail of where delivery of the deed shall be accepted. If for any reason the successful bidder fails to render full payment of the consideration upon which the bid was based within 15 days after the mailing of the notice, such failure shall be construed as a refusal to pay the consideration due the county under the terms of the bid and as a refusal to accept the county's deed. If the successful bidder fails or refuses, for any reason, to close the transaction within the 15-day period, the county shall, at its option, have the right, at its option, to pursue any and all remedies available to it at law or in equity, including but not limited to the right to specific performance. If the county is successful in enforcing its right to specific performance, the county may demand that the successful bidder pay the county's reasonable attorney's fees incident thereto.

(13) *Successful bidder's rights upon failure of the county to close the transaction.* Subject to the county's rights to reject any and all bids, the county shall tender a duly executed quitclaim deed conveying the land or interest in real property offered by it for sale within 120 days after the awarding the bid to the successful bidder. Failure by the county to render such deed within the 120-day period shall entitle the successful bidder to refuse to close the transaction by giving written notice of such action to the land administrator. Upon receipt of such written notice of refusal, the county shall cancel the transaction. Neither the county nor the successful bidder shall be liable to any party in any respect as a result of such refusal to close the transaction under this circumstance.

(e) *Process for sale of county-owned real property by auction.*

(1) *Selection of auctioneer.* A duly qualified auctioneer shall be selected by the land administrator pursuant to a duly issued request for proposal. The scope of services and terms and conditions of the auctioneer's contract, including the amount and formula by which fees for services are determined, shall be as set forth in the RFP solicitation. The auctioneer shall be paid a commission from the gross sales proceeds and/or may be

paid a "reserve" to cover up-front marketing expense. The source of funds for marketing expenses shall be identified and approved by the BOC as part of the resolution to surplus and sell the property. The auctioneer shall be responsible for preparing an auction registration package containing all prerequisites to submitting a bid at auction.

- (2) *Inspection of the property.* The county shall schedule no less than one date for the public to inspect the property. Such inspection shall be conducted by the land division after legal advertisements have been run, but shall occur at least five days before the bid opening date and time.
- (3) *Minimum bid.* The fair market value, which shall be deemed to be no less than 85 percent of the value determined by appraisal conducted on behalf of Fulton County, shall constitute the minimum bid.
- (4) *Public notice.* An advertisement announcing an auction shall be published at least once a week for two consecutive weeks in the official legal organ of the county or in at least one newspaper of general circulation in the county, not less than 15 days nor more than 60 days prior to the date of the auction. Such advertisement shall direct the public to the auctioneer for an announcement of the auction which shall include a legal description of the property, its dimensions, its location and any conditions of the sale or restrictions for use, the address at which written materials connected with the proposed sale may be obtained, and the date, time and place of the auction. Notice shall also include the posting of a sign on the property in a size appropriate to give a ready, willing and able buyer adequate notice and which shall contain general information of the sale. The purchasing department shall cause the notice of invitation to bid, including the official appraisal, to be published on their website for downloading by interested bidders. If the property to be disposed of is property previously used for public roads purposes pursuant to O.C.G.A. § 32-7-1 et seq., then the additional notice requirements of O.C.G.A. § 32-7-4 shall be complied with. Additional notice of the auction, may be provided by posting such notice on the website of the department of purchasing and contract compliance, but such notices shall in no event be required.
- (5) *Award.* Provided that the winning bidder submitted a qualifying minimum bid, the land administrator shall notify the winner by written notification of award which shall include a purchase contract to be executed by the

winning bidder and returned to the land administrator. The county shall tender a duly executed quitclaim deed conveying the land or interest in real property offered by it for sale within 120 days after tendering the notification of award.

- (6) *Closing.* The closing of the sale of the property by auction shall be in compliance with the closing provisions set forth in this section.
- (7) *Net proceeds.* Net proceeds from the closing shall be immediately delivered to the finance department for deposit into the appropriate fund account.
- (8) *County's rights upon failure of successful bidder to close transaction.* When the deed conveying the real property offered for sale by the county has been executed by the chairman of the BOC and is ready for delivery, the successful bidder shall be notified by registered or certified mail of where delivery of the deed shall be made. If for any reason, the successful bidder fails to render full payment of the consideration upon which the bid was based within 30 days after the mailing of the notice, such failure shall be construed as a refusal to pay the consideration due the county under the terms of the bid and as a refusal to accept the county's deed. If the successful bidder fails or refuses, for any reason, to close the transaction within the 30-day period, the county shall, at its option, have the right, at its option, to pursue any and all remedies available to it at law or in equity, including but not limited to the right to specific performance. If the county is successful in enforcing its right to specific performance, the county may demand that the successful bidder pay the county's reasonable attorney's fees incident thereto.

(Res. No. 13-0052, 1-23-13)

Sec. 102-388. - Cancellation of invitation for bids or requests for proposals.

An invitation for bids, a request for proposals or any other solicitation under this Code may be canceled or any or all bids or proposals may be rejected in whole or in part, as may be specified in the solicitation, when it is in the best interest of the county.

The reasons therefore shall be made part of the contract file. Each solicitation issued by the county shall state that the solicitation may be canceled and that any bid or proposal may be rejected in whole or in part for good cause when in the

best interest of the county. Notice of cancellation shall be sent to all businesses solicited.

(Res. No. 13-0052, 1-23-13)

Sec. 102-389. - Responsibility of offerors.

- (a) *Determination of responsibility.* Responsibility of the offeror under this article shall be ascertained for each county solicitation based upon full disclosure to the purchasing agent at the time of the submission of a bid or proposal in accordance with the terms of the solicitation and this Code, unless the terms of such solicitation allow subsequent submittals by an offeror.
- (b) *Determination of nonresponsibility.* If an offeror who otherwise would have been awarded a contract is found nonresponsible, a written determination of non-responsibility setting forth the basis of the finding shall be prepared by the purchasing agent. The unreasonable failure of an offeror to supply information in connection with an inquiry with respect to responsibility may be grounds for a determination of nonresponsibility. A copy of the determination shall be sent to the nonresponsible offeror and shall inform the offeror of the right to protest under section 102-445.

(Res. No. 13-0052, 1-23-13)

Sec. 102-390. - Insurance.

- (a) *Generally.* Under this article, the chief financial officer, shall, at least annually, determine the minimum insurance requirements of the county and evaluate current insurance policies to determine whether minimum insurance requirements continue to be met.
- (b) *Public liability insurance for contracts.* The chief financial officer is authorized to establish standard ranges for limits of liability in public liability insurance coverage, as appropriate, for all contracts let by the county where work thereunder will expose the general public to the risks of bodily injury and property damage. If the chief financial officer in consultation with the risk manager determines that it is appropriate to the type of work under the contract and maximizes competition in the bidding or proposal process, lower limits of liability may be required.

(Res. No. 13-0052, 1-23-13)

Sec. 102-391. - Equal opportunity clause.

- (a) *Required.* Unless otherwise authorized by law, all contracts and purchase orders entered into by the county shall incorporate an equal employment opportunity (EEO) clause, as set forth in this section. Compliance with this section shall be considered met when the EEO clause is set forth in an exhibit attached to the contract and appropriate language incorporating the exhibit into the contract is set forth therein.
- (b) *Notice.* The EEO clause shall be included as a specification and shall appear on all invitations for bids, requests for proposals and all other solicitations, contracts and purchase orders prepared and issued by the department of purchasing and contract compliance.
- (c) *Failure to comply with the EEO clause.* The county shall reject any bid or proposal and shall not enter into any contract or purchase order with any person who fails to comply with the equal employment opportunity requirements of this section.

(Res. No. 13-0052, 1-23-13)

Sec. 102-392. - Cost or pricing data.

- (a) *Submissions relating to award of contracts.*
  - (1) *Required.* A prospective contractor shall submit cost or pricing data when the contract is expected to exceed \$2,499.99; for all procurements and contract modifications.
  - (2) *Exceptions.* The submission of cost or pricing data relating to the award of a contract is not required when:
    - a. The contract price is based on adequate price competition as determined by the purchasing agent;
    - b. The contract price is set by law or regulation; or
    - c. It is determined in writing by the purchasing agent that the requirements of subsection (a)(1) of this section may be waived.
- (b) *Submissions relating to change orders or contract modifications.*

- (1) *Required.* A contractor shall submit cost or pricing data prior to the pricing of any change order or contract modification, including adjustments to contracts awarded by competitive sealed bidding, whether or not cost or pricing data was required in connection with the initial solicitation.
- (2) *Exceptions.* The submission of cost or pricing data relating to the pricing of a change order or contract modification is not required when:
  - a. Unrelated and separately priced adjustments for which cost or pricing data would not be required are consolidated for administrative convenience; or
  - b. It is determined in writing by the purchasing agent that the requirements of subsection (b)(1) of this section may be waived and the determination states the reasons for such waiver.
- (c) *Verification required.* A contractor required to submit cost or pricing data in accordance with this section shall verify that, to the best of the contractor's knowledge and belief, the cost or pricing data submitted was accurate, complete and current as of the date it was submitted.
- (d) *Price adjustment provision required.* Any contract award, change order or contract modification under which the submission and verification of cost or pricing data are required shall contain a provision stating that the price to the county, including a profit or fee, shall be adjusted to exclude any costs found by the county to have been increased because the contractor furnished cost or pricing data was inaccurate, incomplete or not current as of the date it was submitted.

(Res. No. 13-0052, 1-23-13)

Sec. 102-393. - Cost or price analysis.

Under this article, if a contract is being funded in whole or in part by assistance from a federal agency, a cost analysis or a price analysis, as appropriate, shall be conducted prior to award of the contract. A written record of such cost analysis or price analysis shall be made a part of the contract file.

(Res. No. 13-0052, 1-23-13)

Sec. 102-394. - Multiyear-term contracts.

The purchasing department is authorized to procure on behalf of all county agencies multiyear lease, purchase, or lease-purchase contracts for the acquisition of goods, materials, real and personal property, services, and supplies.

- (1) *Conditions for use.* Unless otherwise provided by law, a contract for supplies or services may be renewed if deemed to be in the best interests of the county, provided the renewal terms are included in the solicitation. The purchasing agent may recommend renewal of a contract, subject to county manager approval, beyond the first term of the contract. Such contract shall be renewed if the original contract as approved by the board of commissioners allowed for the renewal.
- (2) *Determination prior to use.* Prior to the utilization of a multiyear-term contract, the purchasing agent shall determine in writing that:
  - a. Estimated supply and service requirements are covered by the period of the contract and are reasonably firm and continuing; and
  - b. Such contract will serve the best interests of the county by encouraging effective competition or otherwise promoting economy in county procurement.
- (3) *Obligation of funds.* The contract shall state the total obligation of the county for the calendar year of execution and shall further state the total obligation which will be incurred in each calendar year renewal term, if renewed.
- (4) *Non-appropriation clause.* All multiyear-term contracts shall contain a clause stating that when funds are not appropriated to support continuation of performance in a subsequent contract period, the contract shall be terminated absolutely and without further obligation on the part of the county.
- (5) *Renewal of contract.* The user agency shall:
  - a. At a minimum of 180 days prior to the expiration of any term of a multi-term contract, the user agency shall notify the purchasing department as to whether or not a renewal option will be exercised; and
  - b. Whether the renewal request requires a change in terms and conditions, vendors, or dollar amount from the original award. The user agency shall provide the necessary supporting documentation



and justification for such change in terms and conditions, vendors, or dollar amount from the original contract.

- c. Submit to the purchasing agent, in writing, a contractor performance report of the performance of the contract and the agency's recommendations as to the renewal of the contract.
- (6) *Presentation of requests.* The purchasing department shall present all renewal requests in excess of \$1,000,000.00 to the board of commissioners at least 90 days prior to the contract renewal date, 60 days if the contract term is six months or less.
  - (7) *Presentation of requests.* The purchasing department shall present all renewal requests up to \$1,000,000.00 to the county manager at least 45 days prior to the contract renewal date, 30 days if the contract term is six months or less.
  - (8) *Pricing analysis.* The user agency and the purchasing department shall conduct an analysis of the proposed pricing for the renewal to ensure that prices are still fair and reasonable based on market analysis.
  - (9) *Authorization.* The purchasing agent, after consultation with the head of the user agency and after review of the report, may renew the contract if renewal is in the best interests of the county and all other requirements of this section have been met. Any renewal of a contract must be expressly authorized by the contract initially approved by the BOC.
  - (10) *Expiration of multiyear-term contracts.* The contract shall terminate absolutely and without further obligation on the part of the county at the close of the calendar year in which it was executed and at the close of each succeeding year for which it may be renewed.
  - (11) *Exceptions.* The following categories or types of contracts are exceptions to the requirements contained herein:
    - a. Intergovernmental agreements (IGAs);
    - b. Revenue-generating contracts;
    - c. Construction contracts fully funded from capital improvement funds;
    - d. Capital funded projects;
    - e. Sole source contracts;

- f. Professional services contracts fully funded from capital improvement funds; and
- g. Requests for quotations.

(Res. No. 13-0052, 1-23-13; Ord. No. 19-0220, Exh. A, 4-10-19)

**State Law reference**— Multiyear lease, purchase, or lease-purchase contracts, O.C.G.A. § 36-60-13.

Sec. 102-395. - County's right to inspect plant, place of business or worksite.

Under this article, the county may, at reasonable times, inspect the part of the plant, place of business or worksite of a contractor or subcontractor that is pertinent to the performance of any contract awarded or to be awarded by the county.

(Res. No. 13-0052, 1-23-13)

Sec. 102-396. - County's right to audit records.

- (a) *Audit of cost or pricing data.* The county may, at reasonable times and places, audit the books and records of any person who has submitted cost or pricing data to the extent that such books, documents, papers and records are pertinent to such cost or pricing data. Any person who receives a contract, change order or contract modification for which cost or pricing data is required shall maintain such books, documents, papers and records that are pertinent to such cost or pricing data for three years from the date of final payment under the contract, unless a shorter period is authorized in writing.
- (b) *Contract audit.* The county shall be entitled to audit the books and records of a contractor or subcontractor under any negotiated contract or subcontract, other than a firm fixed-price contract to the extent that such books, documents, papers and records relate to the performance of such contract or subcontract. Such books and records shall be maintained by the contractor for a period of three years from the date of final payment under the prime contract and by the subcontractor for a period of three years from the date of final payment under the subcontract, unless a shorter period is authorized in writing.

(Res. No. 13-0052, 1-23-13)

Sec. 102-397. - Noncollusion.

On all competitive sealed proposals and competitive sealed bids solicited by the county through its purchasing agent, the following certificate of independent price determination shall be signed and attached to the bid or proposal. Under this article, collusion and other anticompetitive practices among offerors are prohibited by county, state and federal laws, and the county, therefore, establishes the following:

On all competitive sealed proposals and competitive sealed bids pursuant to this article received or solicited by the county through its purchasing agent, the following certificate of independent price determination shall be signed and attached to the bid or proposal:

- (1) *Certification of independent price determination.* All offerors shall identify a person having authority to sign for the offeror who shall certify, in writing, as follows:

"I certify that this bid or proposal is made without prior understanding, agreement or connection with any corporation, firm or person submitting a bid for the same work, labor or service to be done or the supplies, materials or equipment to be furnished and is in all respects fair and without collusion or fraud. I understand collusive bidding is a violation of county, state and federal law and can result in fines, prison sentences and civil damages awards. I agree to abide by all conditions of this bid or proposal and certify that I am authorized to sign this bid or proposal for the bidder.

Affiant further states that pursuant to O.C.G.A. Section 36-91-21 (d) and (e), s(he) or it has not, by himself/herself/itself or with others, directly or indirectly, prevented or attempted to prevent competition in such bidding or proposals by any means whatsoever. Affiant further states that (s)he has not prevented or endeavored to prevent anyone from making a bid or offer on the project by any means whatever, nor has Affiant caused or induced another to withdraw a bid or offer for the work.

Affiant further states that the said offer is bona fide, and that no one has gone to any supplier and attempted to get such person or company to

furnish the materials to the bidder only, or if furnished to any other bidder, that the material shall be at a higher price."

- (2) *Reporting of anticompetitive practices.* When for any reason collusion or other anticompetitive practices are suspected among any offerors, a notice from the using agency or other county department with knowledge of the relevant facts shall be transmitted to the county attorney for investigation.

(Res. No. 13-0052, 1-23-13)

**State Law reference**— Competitive award requirements, O.C.G.A. § 36-91-21(d), (e).

**Note**— Formerly Code, Pt. I, § 2-320.

Sec. 102-398. - Prompt pay act; clause for ensuring payment.

- (a) *Required.* Under this article, before final payment to a contractor is made by the county, the contractor shall certify to the county in writing, in a form satisfactory to the county, that all subcontractors, materialmen, suppliers and similar firms or persons involved in the county contract have been paid in full at the time of final payment to the contractor by the county or will be paid in full utilizing the monies constituting final payment to the contractor.
- (b) *Contract clause.* Every county contract, purchase order or solicitation shall set forth the requirement in subsection (a) of this section and the requirements of O.C.G.A. § 13-11-1.

(Res. No. 13-0052, 1-23-13)

Sec. 102-399. - Verification of funds availability.

- (a) *Application.* This section shall apply to all departments, bureaus, agencies and offices of the county. Notwithstanding any other provision of this chapter, no county official, employee or appointee shall incur any liability on behalf of the county under contracts of any kind, including but not limited to purchase orders, unless sufficient funds have been encumbered or otherwise made available for such liability.

(b) *Verification of funds availability and encumbrances for contracts.* The purchasing agent and the chief financial officer shall encumber funds for department, bureau, agency or office contracts, at the appropriate fund, account and center level, with an established dollar amount which is within the approved line item budget for such department, bureau, agency or offices, unless funds are otherwise made available. Each department, bureau, agency and office head shall be responsible for maintaining appropriate internal expenditure and order controls to ensure that the authorized contract amounts and appropriations are not exceeded. No encumbrances shall be made if funds are not available for such purposes, unless the chief financial officer deems the expenditure critical and identifies supplemental appropriations.

(Res. No. 13-0052, 1-23-13)

#### DIVISION 4. - SPECIFICATIONS

##### Sec. 102-400. - Definitions.

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section:

*Brand name or equal specification* means a specification limited to one or more items by manufacturers' names or catalogue numbers to describe the standard of quality, performance and other salient characteristics needed to meet county requirements and which provides for the submission of equivalent products.

*Brand name specification* means a specification limited to one or more items by manufacturers' names or catalogue numbers.

*Specification* means any description of the physical or functional characteristics or of the nature of a supply, service or construction item. It may include a description of any requirement for inspecting, testing or preparing a supply, service or construction item for delivery.

(Res. No. 13-0052, 1-23-13)

##### Sec. 102-401. - Duties of purchasing agent.

## # 19-0854

For purposes of this division, the purchasing agent shall cause to be prepared by using agencies specifications for supplies, services and construction. The purchasing agent shall issue, revise, maintain and monitor specifications for supplies, services and construction required by the county.

(Res. No. 13-0052, 1-23-13)

Sec. 102-402. - Relationship with using agencies.

Under this article, the purchasing agent shall obtain expert advice and assistance from personnel of using departments in the development of specifications and in the development of an approved list of supplies, services or construction items described by model or catalogue numbers, which, prior to competitive solicitation, the county has determined will meet the applicable specification requirements.

(Res. No. 13-0052, 1-23-13)

Sec. 102-403. - Maximum practicable competition.

All specifications under this article shall be drafted so as to promote overall economy for the purposes intended and to encourage maximum free and open competition in satisfying the county's needs and shall not be unduly restrictive. The policy enunciated in this division applies to all specifications.

(Res. No. 13-0052, 1-23-13)

Sec. 102-404. - Brand name specification.

- (a) *Condition of use.* Under this article, brand name specification may be used only when the purchasing agent makes a written determination that only the identified brand name item will satisfy the county's needs.
- (b) *Competition.* The purchasing agent shall seek to identify sources from which the designated brand name item can be obtained and shall solicit such sources to achieve whatever degree of price competition is practicable. If only one source can supply the requirement, the procurement shall be made under section 102-384.

(Res. No. 13-0052, 1-23-13)

Sec. 102-405. - Brand name or equal specification.

- (a) *Condition of use.* Under this article, brand name or equal specification may be used when the purchasing agent determines in writing that:
- (1) No other design or performance specification or qualified products list is available;
  - (2) Time does not permit the preparation of another form of purchase description, not including a brand name specification;
  - (3) The nature of the product or the nature of the county's requirements makes use of a brand name or equal specification suitable for the procurement; or
  - (4) Use of a brand name or equal specification is in the county's best interest; provided that the purchasing agent determines that the essential characteristics of the brand name included in the specifications are commonly known in the industry or trade. Brand name or equal specifications shall include a description of the particular design, function or performance characteristics that are required.
- (b) *Designation of several brand names.* Brand name or equal specifications shall seek to designate three or as many different brands as are practicable, as or equal references, to list the salient characteristics whenever brand names are used and shall further state that substantially equivalent products to those designated will be considered for award.
- (c) *Nonrestrictive use of brand name or equal specifications.* When a brand name or equal specification is used in a solicitation, the solicitation shall contain explanatory language that the use of a brand name is for the purpose of describing the standard of quality, performance and characteristics desired and is not intended to limit or restrict competition.

(Res. No. 13-0052, 1-23-13)

DIVISION 5. - PROCUREMENT OF INFRASTRUCTURE FACILITIES AND SERVICES

Sec. 102-406. - Applicability.

Public works construction projects costing more than \$100,000.00 must be procured pursuant to the Georgia Local Government Public Works Construction Law, O.C.G.A. §§ 36-91-1 through 36-91-95.

(Res. No. 13-0052, 1-23-13)

Sec. 102-407. - Definitions.

(a) *Architect-Engineer and land surveying services* means:

- (1) Professional services of an architectural or engineering nature, as defined by state law, if applicable, which are required to be performed or approved by a person licensed, registered, or certified to provide such services;
- (2) Those professional services within in the scope of the practice of architecture, professional engineering, land surveying, landscape architecture and interior design pertaining to construction, as defined by the laws of the state;
- (3) Professional services of an architectural or engineering nature performed by contract that are associated with research, planning, development, design, construction, alteration, or repair of real property; and
- (4) Such other professional services of an architectural or engineering nature, or incidental services, which members of the architectural and engineering professions (and individuals in their employ) may logically or justifiably perform, including: studies, investigations, surveying, mapping, tests, evaluations, consultations, comprehensive planning, program management, conceptual designs, plans and specifications, value engineering, construction phase services, soils engineering, drawing reviews, preparation of operating and maintenance manuals, and other related services.

(b) *Public works construction* means the building, altering, repairing, improving or demolishing of any public structure or building or other public improvements of any kind to any public real property other than those projects covered by Chapter 4 of Title 32. Such term does not include the routine operation, routine repair, or maintenance of existing structures, buildings, or real property (O.C.G.A. § 36-91-2(10)).



- (c) *Design-bid-build* means a project delivery method in which the county sequentially awards separate contracts, the first for architectural and engineering services to develop the project scope and design. The second contract when the design phase has been completed, the county solicits bids from prospective general contractors for the construction of the project according to the design.
- (d) *Design-build* means a project delivery method in which the county enters into a single contract with one entity responsible for both design and construction services.
- (e) *Design-build-operate* mean a project delivery method in which the county enters into a single contract with one entity responsible for the design, construction and operation of a facility.
- (f) *Program/project management* means a project delivery method in which the county enters into a contract(s) for professional management services above and beyond normal architectural services and serves as an extension of the county's staff and acts on the county's behalf during all phases of the program/project.
- (g) *Construction management* means a project delivery method in which the county enters into a contract(s) for construction management services regarding constructability, cost, planning and coordination of a construction project.
- (h) *Construction management at-risk* means a project delivery method in which the county, and enters into a contract(s) for construction management services in which the construction manager assumes financial risks and liabilities placing the manger "at-risk." The construction manager can serve as the general contractor and provide input regarding the design, constructability, coordination and planning during the design phase.
- (i) *Fast track construction* means a project delivery method in which the county utilizes a process that normally refers to the overlapping of the design and construction phases of a project. It allows construction to begin as soon as the plans for the first phase of the project are completed. While the selected contractor is constructing the project's initial phase, subsequent phases are being designed, and the remaining contract documents are being prepared.

(Res. No. 13-0052, 1-23-13)

## # 19-0854

Sec. 102-408. - Contracting for infrastructure facilities and services; project delivery methods authorized.

- (a) Governmental entities are authorized to utilize any construction delivery method, provided that all public works construction contracts subject to the requirements of O.C.G.A. § 36-91 that:
  - (1) Place the bidder or offeror at risk for construction; and
  - (2) Require labor or building materials in the execution of the contract shall be awarded on the basis of competitive sealed bidding or competitive sealed proposals.
- (b) The following project delivery methods are authorized for procurements relating to construction, services:
  - (1) Design-bid-build or traditional bid;
  - (2) Construction management at risk;
  - (3) Design-build;
  - (4) Design-build-operate; and
  - (5) Fast track construction.
- (c) The following project delivery methods are authorized for procurements relating to architect-engineer and land surveying services:
  - (1) Design;
  - (2) Architectural and engineering;
  - (3) Program/project management;
  - (4) Construction management;
  - (5) Construction management at risk;
  - (6) Operations and maintenance;
  - (7) Design-build; and
  - (8) Design-build-operate.

(Res. No. 13-0052, 1-23-13)

Sec. 102-409. - Responsibility for selection of methods of construction related services.

Under this article, the using agency, at the time the construction project is being developed, shall provide the purchasing agent and the county's department charged with monitoring capital projects with information for the scheduling of the project and, if necessary, for the method of selection of architect-engineer and land surveying services, construction services and construction management of the project. In determining which method to use for the selection of architect-engineering and land surveying services, construction services and construction management, the purchasing agent shall consider the county's requirements, its resources and the potential contractor's capabilities. The methods chosen shall be those which are most advantageous to the county and which will result in the most timely, economical and successful completion of the construction project.

(Res. No. 13-0052, 1-23-13)

Sec. 102-410. - Public notice.

Such notice shall be posted conspicuously in the governing authority's office and shall be advertised in the legal organ of the county or by electronic means on an Internet website of the governmental entity or an Internet website identified by the governmental entity. Contract opportunities shall be advertised a minimum of two times, with the first advertisement occurring at least four weeks prior to the opening of the sealed bids or proposals. The second advertisement shall follow no earlier than two weeks from the first advertisement. Plans and specifications shall be available on the first day of the advertisement and shall be open to inspection by the public. The advertisement shall include such details and specifications as will enable the public to know the extent and character of the work to be done. All required notices of advertisement shall also advise of any mandatory prequalification requirements or pre-bid conferences as well as any federal requirements pursuant to subsection (d) of O.C.G.A. § 36-91-22.

(Res. No. 13-0052, 1-23-13)

Sec. 102-411. - Issuance of addenda.

No governmental entity shall issue or cause to be issued any addenda modifying plans and specifications within a period of 72 hours prior to the advertised time for the opening bids or proposals, excluding Saturdays, Sundays, and legal holidays. However, if the necessity arises to issue an addendum modifying plans and specifications within the 72-hour period prior to the

advertised time for the opening of bids or proposals, excluding Saturdays, Sundays, and legal holidays, then the opening of bids or proposals shall be extended at least 72 hours, excluding Saturdays, Sundays, and legal holidays, from the date of the original bid or proposal opening without need to re-advertise.

(Res. No. 13-0052, 1-23-13)

Sec. 102-412. - Bonds, insurance, guarantees.

(a) Bid security for construction contracts.

- (1) *Required.* Under this article, bid security shall be required for all competitive sealed bidding for construction contracts when the price is estimated by the purchasing agent to exceed \$100,000.00. Bid security shall be a bond provided by a surety company authorized to do business in the state by the Georgia Insurance Commissioner or shall be the equivalent in cash or a certified check or shall be otherwise supplied in a form satisfactory to the county. Nothing in this subsection prevents the requirement of such bonds on construction contracts under \$100,000.00 when the circumstances warrant.
- (2) *Amount.* Bid security shall be in an amount equal to at least five percent of the amount of the bid. Unsuccessful offerors shall be entitled to the return of the bid security. Upon failure of a successful offeror to enter into a contract within ten days after the county tenders the proposed contract, the offeror shall forfeit the bid security.
- (3) *Rejection of bids for noncompliance.* When the invitation for bids requires security, the bid shall be rejected if the purchasing agent determines that it fails to comply in a substantial manner with the security requirements.
- (4) *Withdrawal of bids.* After the bids are opened, they shall be irrevocable for the period specified in the invitation for bids. If an offeror is permitted to withdraw a bid before award, no action shall be had against the offeror or bid security.

(b) *Contract performance and payment bonds for construction contracts.*

- (1) *Required amounts.* When a construction contract is awarded in excess of \$100,000.00, the following bonds or security shall be delivered to the county and shall become binding on the parties upon the execution of the contract.

- a. A performance bond satisfactory to the county, executed by a surety company authorized to do business in the state by the Georgia Insurance Commissioner or otherwise secured in a manner satisfactory to the county, in an amount equal to 100 percent of the price specified in the contract; and
  - b. A payment bond satisfactory to the county, executed by a surety company authorized to do business in the state by the Georgia Insurance Commissioner or otherwise secured in a manner satisfactory to the county, for the protection of all persons supplying labor and material to the contractor or subcontractors for the performance of the work provided for in the contract, in an amount equal to 100 percent of the price specified in the contract.
- (2) *Reduction or waiver of bond.* The purchasing agent in consultation with the chief financial officer is authorized to reduce or waive performance and payment bonds for contracts for \$100,000.00 or less, when a written determination is made that it is in the best interests of the county to do so. Nothing in this subsection prevents the requirement of such bonds on construction contracts for \$100,000.00 or less when the purchasing agent determines that the circumstances warrant.
- (3) *Authority to require additional bonds.* Nothing in this section shall be construed to limit the authority of the purchasing agent to require other security in addition to those bonds or in circumstances other than those specified herein.
- (4) *Right to institute suit on payment bond; jurisdiction and time limits for suits upon payment bonds.* The right to institute suit and jurisdiction and time limits for suits upon payment bonds provided under this section will be governed by the provisions of O.C.G.A. Title 13, Chapter 10, Article 1, P. 4.
- (5) *Retention.*
- a. *Maximum amount withheld.* In any contract for construction which provides for progress payments in installments based upon an estimated percentage of completion with a percentage of the contracts proceeds to be retained by the county pending completion of the contract, the retained amount of each progress payment or installment shall be no more than ten percent.

b. *Release of retained funds.* Funds held by the county as retainage under the contract shall be released to the contractor as specified in the contract.

(c) *Bond forms and copies.*

(1) *Forms.* The form of payment and performance bonds under this division shall be required by the purchasing agent, in consultation with the county attorney. The purchasing agent shall designate the bond forms to be used for a particular contract.

(2) *Copies.* Any person may request and obtain from the county a copy of the bond form upon payment of the cost of reproduction and postage.

(d) *Errors and omissions insurance.* Regulations shall be promulgated that specify when the purchasing agent shall require offerors to provide appropriate errors and omissions insurance to cover architectural and engineering services under the project delivery methods.

(e) *Other forms of security.*

(1) *Bid bond.* In lieu of a bid bond, the county may accept a cashier's check, certified check or cash deposit in an amount equal to at least five percent of the total contract amount.

(2) *Payment bond.* In lieu of a payment bond, the county may accept, in its discretion, a cashier's check, certified check, or cash in an amount not less than the total amount payable by the terms of the contract.

(Res. No. 13-0052, 1-23-13)

**State Law reference**— Projects requiring bid bonds; revocation of bids; surety, O.C.G.A. § 36-91-50; requirement of performance bonds, O.C.G.A. § 36-91-70; requirement for payment bonds, O.C.G.A. § 36-91-90.

Sec. 102-413. - Wage requirements for construction contracts.

(a) *Generally.* Under this article, unless otherwise required proposals, bids, and contracts involving Fulton County shall hereafter contain the following provision or words of similar import: Each contractor shall agree that in the performance of the contract he will comply with lawful agreements, if any, which the contractor had made with any association, union, or other entity,

with respect to wages, salaries, and working conditions, so as not to cause inconvenience, picketing, or work stoppage.

- (b) *Federally funded projects.* If federally assisted, when a construction project exceeds the sum of \$2,000.00, the prevailing wages paid shall correspond as nearly as practicable to the prevailing wages required in the federal Davis Bacon Act. Such scale of wages to be paid shall be posted by the contractor in a prominent and easily accessible place at the site of work.
- (c) *Statement in invitation for bids.* As applicable, the purchasing agent shall include a statement of the general requirements of this section in each invitation for bids.

(Res. No. 13-0052, 1-23-13)

Sec. 102-414. - Approval of public works construction contracts.

- (a) All public works construction contracts subject to the requirements of the Georgia Local Government Public Works Construction Law entered into by a governmental entity with private persons or entities shall be in writing, on file, and available for public inspection at a place designated by such governmental entity. Municipalities and consolidated governments shall execute and enter into contracts in the manner provided in applicable local legislation or ordinance.
- (b) All contracts for counties must be in writing and approved by the board of commissioners.

(Res. No. 13-0052, 1-23-13)

**State Law reference**— Contracts to be in writing and entered on minutes, O.C.G.A. § 36-10-1; public works construction contracts made in writing, O.C.G.A. § 36-91-20(a); inspection of public records, O.C.G.A. 50-18-70 et seq.

Sec. 102-415. - Operation and maintenance of water treatment systems by private entities.

- (a) *General.* The county is authorized pursuant to state law, in the discretion of its governing authority, to enter into valid and binding leases and contracts with private persons, firms, associations, or corporations for any period of time not to exceed 20 years to provide for the operation and maintenance of all or

portion of its wastewater treatment system, storm-water system, water system, or sewer system, or any combination of such systems, which leases and contracts may include provisions for the design, construction, repair, reconditioning, replacement, maintenance, and operation of the system, or any combination of such services and functions.

- (b) *Definition.* Applicant means any individual, firm, association, or corporation submitting a proposal on such leases or contracts.
- (c) *Delivery method.* Prior to entering into a lease or contract pursuant to this Code section, the governing authority shall solicit competitive sealed proposals.
- (d) *Evaluation.* The governing authority shall first establish criteria for evaluation of any applicants submitting proposals on such leases or contracts for the purpose of assisting the governing authority in making a review of such applicants' previous performance on projects of comparable magnitude, the environmental compliance record of such applicants, and any relevant civil or criminal penalties incurred by such applicant during the five years immediately preceding the execution of the lease or contract. All information required by the county pursuant to this Code section shall be provided by the applicant under oath.
- (e) *Award.* The award of a lease or contract pursuant to this Code section shall be made to the responsible and responsive applicant, whose proposal is determined in writing to be the most advantageous to the county, taking into consideration the evaluation factors set forth in the request for proposals.

(Res. No. 13-0052, 1-23-13)

**State Law reference**— Operation and maintenance of water treatment systems by private entities, O.C.G.A. § 36-60-15.1.

Sec. 102-416. - Contract administration.

- (a) *Applicability.* This article applies to all nonconstruction (e.g. professional services) and construction contracts.
- (b) *General.* Under this article, the purchasing agent shall establish the standards for a contract administration system designed to ensure that a contractor is performing in accordance with the solicitation under which the contract is



awarded and the terms and conditions of the contract. Such system shall require the inclusion of receiving reports from all appropriate agencies in the contract file.

- (c) *User agency responsibilities.* The goal of contract administration is to ensure that the contract is performed by the contractor and that the responsibilities of both parties are performed in accordance with the contract. It is the responsibility of the user agency to designate agency staff as the contract administrator to oversee, monitor, and provide technical guidance to contractors performing under a contract. The designee shall be responsible for managing the contract after award. All direction to the contractor must be within the scope of the contract.
- (d) *Functions of the contract administrator.* After the award of any contract, the user agency shall designate agency staff to assume the role of contract administrator and will ensure that both the county and the contractor/vendor are in compliance with all terms and conditions of the contract. Other responsibilities and duties include:
  - (1) To review all work that has been or is being performed by the contractor; to confirm that the work being performed is in accordance with the specifications and the provisions of the contract; to monitor the progress of the contract and perform inspections/site visits; and to address any performance deficiencies.
  - (2) In accordance with the contract the contract administrator is responsible for acceptance of the work product or services being provided; if changes need to be made to the contract in the form of modifications, terminations or claims disposition, the contract administrator manages this process; to document all actions taken regarding the contract and then maintain the original documentation concerning such actions in the official contract file; responsible for reviewing and approving invoices submitted by the contractor and for monitoring their payment for timeliness and accuracy.
  - (3) Recommends renewal(s) of the contract until the contract expires or is terminated; completes quarterly contract performance reports; and, at the end of the process, it is the responsibility of the contract administrator to close out the contract file.

- (4) Subsequent to the execution of the contract the using agency shall initiate and coordinate the preconstruction/work conference with the department of purchasing and contract compliance, and thereafter issue a notice to proceed to the contractor with copies to the department of purchasing and contract compliance and the department of finance/accounts payable manager.
- (e) *Purchasing responsibility to remedy a breach.* In cases where the user agency is unable to rectify a breach of contract with a contractor/vendor, the matter shall be turned over to the purchasing director, along with all documentation for resolution. Resolution may include, but not limited to, cancellation of the contract; suspension or debarment or other legal action if deemed appropriate by the county attorney.
- (f) *Evaluation of contractor/vendor performance.* The user agency shall monitor and review the performance of contractors/vendors that provide goods and services to the county. Regular performance appraisals shall be documented once every calendar quarter, or once every 60 days where the total contract period is six months or less. This shall not take the place of, but shall be in addition to the mandatory contract performance report currently required by the department of purchasing and contract compliance at the end of each contract. The contract administrator is responsible for ensuring that the performance of contractors/vendors is recorded on the contractor performance report and submitted into the department of purchasing and contract compliance centralized database.
- (g) *Contract closeout.* The purpose of the closeout process is to verify that both parties to the contract have fulfilled their contractual obligations and that there are no responsibilities remaining. A contract is completed when all goods and services have been received and accepted; all reports have been delivered and accepted; all administrative actions have been accomplished; all county furnished equipment and material has been returned; and final payment has been made to the contractor. The contract administrator has the following responsibilities and duties:
- (1) Determine that the contractor has satisfactorily performed all required contractual obligations;
  - (2) Determine that all deliverables including reports have been delivered and accepted by the user agency;

- (3) Determine if all county property (if applicable) has been returned;
- (4) Ensure that all issues, if any, have been resolved;
- (5) Determine whether all payments to the contractor have been made;
- (6) Determine whether all administrative actions have been completed;
- (7) Ensure that the official contract file contains all necessary documentation;
- (8) Complete the mandatory closeout contractor performance report; and
- (9) Provide the closeout report with documentation to the department of purchasing and contract compliance before final payment is made and if applicable, retainage is released.

(Res. No. 13-0052, 1-23-13)

#### DIVISION 6. - MODIFICATION AND TERMINATION OF CONTRACTS FOR SUPPLIES AND SERVICES

Sec. 102-417. - Definitions.

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section:

*Amendment* means a change, addition, alteration, correction or revision to a bid or proposal or contract document.

*Change order* means an alteration, addition, or deduction from the original scope of work as defined by the contract documents to address changes or unforeseen conditions necessary for project completion.

*Contract modification* means any written alteration in the terms of the contract including, but not limited to, the scope, manner of performance, specifications, delivery point, time and rate of delivery, period of performance, price, quantity, or other provision of any contract accomplished by mutual action of the parties to the contract.

(Res. No. 13-0052, 1-23-13)

Sec. 102-418. - Contract clauses and their administration.

(a) *Contract clauses.*

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- (1) The purchasing agent may promulgate regulations permitting or requiring the inclusion of clauses providing for adjustments in prices, time of performance, or other contract provisions.
- (2) All contract clauses shall be consistent with the provisions of this article and the regulations issued pursuant to this Code.

(b) *Price adjustments.*

- (1) Adjustments in price pursuant to clauses promulgated under subsection (a) of this section shall be computed in one or more of the following ways:
  - a. By agreement on a fixed-price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;
  - b. By unit prices specified in the contract or subsequently agreed upon;
  - c. By the costs attributable to the events or situations under such clauses with adjustment or profit or fee, all as specified in the contract or subsequently agreed upon; or
  - d. In such other manner as the contracting parties may mutually agreed upon.

(c) *Modification of clauses.* The purchasing agent may vary the clauses for inclusion in any particular contract; provided that any variations are supported by a written determination that states the circumstances justifying such variation and provided that notice of any such material variation be stated in the invitation to bid or request for proposals.

(Res. No. 13-0052, 1-23-13)

Sec. 102-419. - Responsibilities and rights of parties to contract.

Each county contract for goods or services shall include provisions necessary to define the responsibilities and rights of the parties to the contract. The purchasing agent, shall issue appropriate contract clauses addressing at least the following subjects, to the extent appropriate for the particular contract:

- (1) The unilateral right of the county to order changes in writing to the requirements for goods or services within the general scope of the contract;

- (2) The unilateral right of the county to order in writing a temporary suspension or delay to the provision of goods or services that does not alter the scope of the contract;
- (3) Responsibilities for performance and payment associated with variations occurring between estimated quantities of goods or services in a contract and actual quantities;
- (4) Defective pricing;
- (5) Liquidated damages and service level credits;
- (6) Specified excuses for delay or nonperformance;
- (7) Termination of the contract for default;
- (8) Termination of the contract, in whole or in part, for the convenience of the county;
- (9) Site conditions differing from those indicated in the contract or ordinarily encountered in similar situations; and
- (10) An acknowledgement by all parties contracting with the county as follows:

"Contractor acknowledges that this contract and any changes to it by amendment, modification, change order and/or supplemental agreement shall not become binding unless approved by the board of commissioners and entered on the minutes. Under Georgia law, Contractor is deemed to possess knowledge concerning the county's ability to assume contractual obligations and the consequences of Contractor's provision of goods or services to the county under an unauthorized contract, amendment, modification, change order or other similar document, including the possibility that the Contractor may be precluded from recovering payment for such unauthorized goods or services. Accordingly, Contractor agrees that if it provides goods or services to the county under a contract that has not received proper legislative authorization or if the Contractor provides goods or services to the county in excess of the any contractually authorized goods or services, as required by this Code, the county may withhold payment for any unauthorized goods or services provided by Contractor. Contractor assumes all risk of nonpayment for the provision of any unauthorized goods or services to the county, and it waives all claims to payment or to other remedies for the provision of any unauthorized

goods or services to the county, however characterized, including, without limitation, all remedies at law or equity."

This acknowledgement shall be a mandatory provision in all county contracts for goods and services, except revenue producing contracts.

(Res. No. 13-0052, 1-23-13)

Sec. 102-420. - Contract modifications and change orders.

(a) *Statement of policy.* Fulton County is committed to a policy of open, nondiscriminatory and competitive purchasing. When circumstances arise after award of a contract, requiring modification of that contract, such modification will be accomplished in accordance with the following procedure, to achieve the following goals:

- (1) Ensure that Fulton County does not pay more than is necessary to complete the contract;
- (2) Preclude a contractor from tendering the lowest bid and then increasing the cost of the contract through the change order process;
- (3) Ensure that the terms and conditions upon which the contract was awarded are met throughout the term of the contract, including any and all change orders;
- (4) Ensure that the change order procedure is not used to bypass the competitive bidding process; and
- (5) Ensure that change orders are not used for work that is independent of and outside the scope of the original contract.

(b) *Background.* A change order is a written order from Fulton County to a contractor, directing a change within the scope of the contract and necessary for completion of the contract, in the specifications, services, time of performance or terms and conditions of the contract. A change is within the scope of a contract if it concerns the work required by the original contract documents and any subsequent change orders approved to accomplish the intent of the project as described in the solicitation documents.

A contractor is any person or entity, whether designated as a contractor, vendor, consultant or by any other title, having a contractual relationship with Fulton County. In Fulton County, except as otherwise provided in this article,

change orders shall be affected only through a written, bilateral agreement (modification) between the county, acting through its board of commissioners, and the contractor. The modification modifies the contract and will specify all changes to the contract and the costs thereof.

- (c) *Justification for change orders.* Change orders are authorized only for the following reasons:
- (1) Situations creating an immediate need to protect the public health, safety or welfare;
  - (2) Corrections of deficiencies in design or construction documents provided by architects or engineers other than the contractor;
  - (3) Changes in applicable laws or regulations, or changes that result from public participation when such participation is mandated by laws or regulations;
  - (4) Concealed conditions, differing site conditions or abnormal inclement weather;
  - (5) Owner requested changes within the scope of the original contract. Such changes may include: Deductive change orders and accommodations of value engineering and administrative matters such as closeout change orders for unit price contracts, deductions for approved material substitutions and administrative no-cost change orders.
- (d) *Change order authority.* Change orders above ten percent of the contract price may be approved only by the BOC. Such approval shall be demonstrated by a formal vote on the contract modification. Change orders less than ten percent of the contract price may be approved by the county manager.
- (e) *Change order procedure.* The ordinary sequence of a change order is as follows:
- (1) Need for contract modification is identified;
  - (2) Contractor is requested to propose price for change and if necessary, schedule changes;
  - (3) Contractor and county negotiate price and scope of change;
  - (4) Agreement between county and contractor for change is clearly defined in a written modification;
  - (5) Contractor signs modification and returns it to the [county]; and

(6) Modification is submitted to the county manager or BOC for approval depending on the amount of the change order.

Circumstances may alter this general description of change order procedure. The administrative actions necessary to accomplish a change order are described in subsection (f) of this section.

(f) *Administrative actions.* Department heads have primary responsibility for completion of the administrative steps necessary to complete a change order. Such responsibility may be exercised through designees and in consultation with other interested departments.

(g) *County manager's authority.* In the following described situations, the county manager is authorized to approve change orders and authorize the commencement of work pursuant to such change orders.

(1) *Change orders less than ten percent of original contract amount.*

- a. The county manager is authorized to approve change orders having a total cost that is less than ten percent of the original contract cost. A change order may be approved under this article if its cost, when combined with that of all previous change orders to the same contract, is an amount less than ten percent of the original contract cost. The county manager may decline to exercise this authority and return change orders for processing through the regular change order procedure, or may direct that the work be procured through the competitive process.
- b. Change orders submitted under this authority shall be processed according to the regular administrative procedures.

(2) *Extraordinary circumstances.*

- a. The county manager is authorized to approve change orders regardless of the amount when due to extraordinary circumstances, work must be implemented before the board of commissioners can act. The county manager may decline to exercise the authority granted hereunder and may require that the change order be submitted under the regular procedure, or he/she may direct that the work be procured through the competitive process.
- b. The authority granted in this section may be exercised when immediate action must be taken to protect the county's interests, and



only under the following circumstances (in addition to meeting the requirements of subsection (c):

- (i) Threat to public health, welfare or safety;
  - (ii) Threat of litigation when it appears likely that litigation will be commenced and that the county's legal position may be comprised by delay in implementing the change order. Change orders citing this circumstance must be approved by the Office of the county Attorney; or
  - (iii) Loss of substantial resources due to delay, including delay in critical path schedule.
- c. Department heads proceeding under this authority must comply with as much of the procedure set out in subsection (g)(1) as the situation will permit.
- d. At minimum, the following procedures must be observed.
- (i) The contractor shall execute a written contract modification that clearly describes the work to be done and its cost. If costs cannot be fully detailed due to the exigencies of the situation, the modification must set out a maximum cost and state that the cost will be definitized in a final change order.
  - (ii) The department head shall obtain the approval of the purchasing agent, prior to submitting the change order to the county manager.
  - (iii) The work may proceed upon approval by the county manager. The department head shall prepare all other documentation normally required for a change order.
  - (iv) Not later than 60 days following approval of the change order, the county manager shall place the change order on the consent agenda.
  - (v) In cases of change orders without definitized costs under subsection (i) above, the department head shall commence processing a final change order as soon as circumstances permit.

(Res. No. 13-0052, 1-23-13; Ord. No. 19-0220, Exh. A, 4-10-19)

**Note**— Formerly Code, Pt. II, § 102-353. Board Policy 800-6, procedures for handling change orders.

Sec. 102-421. - Termination of contract; rescission of award.

Termination of any contract or rescission of award must be approved by the board of commissioners; and in all cases based upon the purchasing agent's recommendation. The purchasing agent must examine the circumstances and reasons behind the breach of contract, or other reasons for rescission or termination, and determine if there is a solution possible in the situation. If a breach of contract occurs, or rescission of award or termination of contract is necessary, dependent upon the circumstances, the purchasing agent may suspend or debar the subject contractor/vendor for failure to perform under the terms of the county's procurement code.

(Res. No. 13-0052, 1-23-13)

#### DIVISION 7. - OFFICE OF CONTRACT COMPLIANCE

Sec. 102-422. - Application.

- (a) Except where federal or state law or regulations mandate to the contrary, the provisions of this division shall be applicable to all contracts.
- (b) All departments and divisions of county government shall encourage SBE, ~~and~~ MFBE, DBE and SDVBE participation in all Fulton County government contracting.
- (c) The director of the department of purchasing and contract compliance shall review SBE and MFBE participation on an annual basis by analyzing the results of the application of this program during the year, plus other relevant data, and shall prepare an annual plan that reports the results of such review, and recommendations therefrom, to the county manager and the board of commissioners.
- (d) The director of the department of purchasing and contract compliance shall prepare an annual report.

(Res. No. 13-0052, 1-23-13; Res. No. 16-0864, 10-5-16)

Sec. 102-423. - Functions, duties and organization.

(a) The office of contract compliance shall have the following duties and responsibilities:

~~(1) Responsibility for ensuring adherence of all county staff units and county contractors to the minority business participation policies established by the board of commissioners and maintain the county's compliance with applicable federal regulations pertaining to contractor or employment practices, minority business participation and Title VI of the Civil Rights Act;~~

(12) Administration and enforcement of compliance with this established requirements;

(23) The establishment of written procedures, informal guidelines and forms necessary to implement this program;

(3) Monitoring compliance with the requirements of this subdivision;

(4) The development and maintenance of an SBE and MFBE certification directory which will be made available as a public record;

~~(5) Accept SBE certifications from the United States Department of Transportation and Small Business Administration, and Georgia Department of Transportation, MARTA, or other cities and counties within the Atlanta MSA, or other appropriate agencies;~~

Ensuring compliance with requirements for mentor-protégé or joint venture arrangements under section 102-4XX and section 102-4XX as applicable

(6) Notification by certified mail that an applicant who has been denied certification as an AABE, HBE, ABE, NABE, FBE or SDVBE has the right to appeal such determination, said appeal to be determined by a contract compliance hearing officer within seven calendar days of receipt of notice of such determination;

(7) Investigate and determine whether a contractor or vendor has failed to implement its contractual agreements and commitments regarding this division after the award of the bid or execution of the contract or purchase order; in the event it is determined the contractor or vendor has not complied with this division, the contractor or vendor shall be notified of the determination of noncompliance and any penalty to be imposed;

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- (8) Maintenance of: (1) documents, forms, records or data regarding the dollar amounts subcontracted to or expended for services performed by subcontractors and suppliers on all projects, including race and gender ownership of each subcontractor, and (2) documents, forms, records or data regarding certified SBEs, AABEs, HBEs, ABEs, NABEs, FBEs or SDVBEs;
  - (9) Make recommendations to the County Manager and Board of Commissioners of further efforts needed to encourage SBE and MFBE participation;
  - (10) Attendance at prebid, preproposal, preconstruction and prework conferences; and
  - (11) Development and implementation of outreach and assistance programs to promote equal contracting opportunities for all businesses desiring to do business with the county.
- (b) The office of contract compliance shall be headed by the contract compliance administrator, under the supervision and direction of the director of the department of purchasing and contract compliance and shall perform such duties as he/she shall prescribe.
  - (c) Contract compliance officers will be represented on each Purchasing team to provide continuity, required knowledge of opportunities and improved communication on contract timing.
  - (d) The Department of Purchasing and Contract Compliance shall prepare on an annual basis, an outreach plan for SBEs, MFBEs, DBEs and SDVBEs outlining the annual activities of each program.

(Res. No. 13-0052, 1-23-13; Res. No. 16-0864, 10-5-16)

Sec. 102-424. - User department responsibilities.

- (a) All departments and divisions of county government, in consultation with the Department of Purchasing and Contract Compliance, are encouraged to obtain SBE and MFBE participation on all county contracts. The director of the Department of Purchasing and Contract Compliance shall make periodic and annual reports of activity and progress under this article to the county manager and board of commissioners.

- (b) Provide the scope of work for projected projects and identify subcontracting opportunities/work disciplines available for the project; and request vendor list of certified SBEs and MFBEs.
- (c) Contract compliance officers will be aligned with the same Purchasing teams in order to provide continuity, knowledge of procurement opportunities and project timelines.

(Res. No. 13-0052, 1-23-13; Res. No. 16-0864, 10-5-16)

Sec. 102-425. - Certification.

- (a) Minority/female business enterprise (MFBE).
  - (1) In order to be certified as a minority or female business enterprise (MFBE) a business must be at least 51 percent owned and controlled by one or more minorities.
  - (2) The MFBE has a place of business registered in official documents filed with the Secretary of State, State of Georgia; and holds a valid business or occupational tax license.
  - (3) All firms participating in this program as a MFBE ~~are~~ must be encouraged to be certified with the office of contract compliance.
  - (4) Applications for certification will be available for completion and submittal online and will include, but will not be limited to, primary business location, evidence of ownership, control, operation, and experience. The application shall be in the form of an affidavit and shall be signed by the applicant, such signature to be notarized by an officer duly authorized to notarize signatures.
  - (5) ~~The office of contract compliance will have the ability to accept third party certifications as approved by the board of commissioners. —~~ The department of purchasing and contract compliance will have the ability to accept MBE and FBE certifications from the Georgia Minority Supplier Development Council (GMSDC); the Women Business Enterprise National Council (WBENC) and; the City of Atlanta, Office of Contract Compliance.
  - (6) All certified MFBE firms will be required to update their listing online continually including changes of addresses, telephone numbers, change of ownership, control and operation.

- (7) The director of the department of purchasing and contract compliance or his/her designee shall grant certification of an approved MFBE for a period of two years. All companies must request recertification of their business. If an MFBE is denied certification on the basis of information submitted, the company cannot reapply for certification for period of one year from the date of the notice of denial, provided that such company shall have the right to appeal such denial and to be certified if such appeal is decided in its favor as provided herein.
  - (8) Certification records will be maintained by the office of contract compliance.
  - (9) Appeals of denials of certification shall be made pursuant to section 102-439 of this Code.
- (b) *Service disabled veteran business enterprise (SDVBE).*
- (1) In order to be certified as a service disabled veteran business enterprise (SDVBE) a business must be at least 51 percent owned and controlled by one or more service disabled veterans.
  - (2) The SDVBE has a place of business registered in official documents filed with the Secretary of State, State of Georgia; and holds a valid business or occupational tax license.
  - (3) All firms participating in this program as a SDVBE are encouraged to be certified with the office of contract compliance.
  - (4) Applications for certification will be available for completion and submittal online and will include, but will not be limited to, primary business location, evidence of ownership, control, operation, and experience. The application shall be in the form of an affidavit and shall be signed by the applicant, such signature to be notarized by an officer duly authorized to notarize signatures.
  - (5) The office of contract compliance will have the ability to accept third party certifications as approved by the board of commissioners.
  - (6) All certified SDVBE firms will be required to update their listing continually, including changes of addresses, telephone numbers, change of ownership, control and operation.
  - (7) The contract compliance administrator shall grant certification of an approved SDVBE for a period of two years. All companies must request

recertification of their business. If an SDVBE is denied certification on the basis of information submitted, the company cannot reapply for certification for period of one year from the date of the notice of denial, provided that such company shall have the right to appeal such denial and to be certified if such appeal is decided in its favor as provided herein.

- (8) Certification records will be maintained by the office of contract compliance.
- (9) Appeals of denials of certification shall be made pursuant to section 102-439 of this Code.

(c) *Small business enterprise program (SBE).*

- (1) The Department of Purchasing and Contract Compliance will have the ability to accept SBE Certifications from United States DOT and Small Business Administration, GDOT, MARTA, cities, and counties within the Atlanta MSA, or other appropriate agencies.
- (2) All certified SBE firms will be required to notify the county of any material changes and update their listing online continually, including changes of contact information, addresses, telephone numbers, and changes of ownership, control and operation.
- (3) Certification records will be maintained by the Department of Purchasing and Contract Compliance.

(Res. No. 13-0052, 1-23-13; Res. No. 16-0864, 10-5-16)

**Note**— Formerly Code, Pt. II, § 102-423(4).

Sec. 102-426. - Good faith efforts of contractor.

In complying with the SBE and MFBE program of the county, the bidder, offeror, contractor, or other person or entity seeking to do business with the county is encouraged to exercise the following good faith efforts to involve SBEs and MFBEs:

- (1) Attendance at prebid/proposal conferences/meetings, to inform attendees of the role and responsibilities of the office of contract compliance;

- (2) Advertisement in the general circulation media, trade association publications, and minority-focus media, to provide notice of contracting opportunities;
- (3) Providing written notice to known SBEs and MFBEs that their interest in contracting opportunities is solicited.

The contractor, offeror, or bidder is required to include with its bid, identification of the SBEs and MFBEs by name, scope of work, and dollar value of work including the appropriate documentation of this information. Potential contractors, offerors, or bidders shall be required to provide documentation of their SBE and MFBE participation at the time their bid is submitted. All bidders will be encouraged to demonstrate that it made reasonable and good-faith efforts to utilize SBEs and MFBEs.

(Res. No. 13-0052, 1-23-13; Res. No. 16-0864, 10-5-16)

Sec. 102-427. - Outreach program.

The small business enterprise program and the minority and female business enterprise program are established to provide for specific aggressive outreach efforts by the department of purchasing and contract compliance to solicit and encourage SBEs and MFBEs to bid on county contracts. The efforts of the Department of Purchasing and Contract Compliance in conjunction with the appropriate user departments shall include the following:

- (1) The notification of bid opportunity alerts to SBEs/MFBEs/SDVBEs of upcoming contracts by the county through utilization of the SBE's and MFBE's certification listing;
- (2) Advertisement of upcoming county contracts in the appropriate media, including minority newspapers or publications; the county's website, public television, if appropriate; and other media;
- (3) Seminars to familiarize SBEs/MFBEs/SDVBEs with county procurement and bidding procedures and with upcoming business opportunities;
- (4) Establishment of a website which contractors and vendors can access information on bids or certification;
- (5) Active and sustained encouragement of SBEs/MFBEs/SDVBEs to apply for certification and to bid on county contracts.



- (6) Establishment of a website which prime contractors can identify subcontracting opportunities for Fulton County projects.
- (7) The office of contract compliance may act as a resource for technical assistance. The office may collect, organize and disseminate information regarding additional technical assistance providers other than Fulton County that are in the Atlanta market area.

(Res. No. 13-0052, 1-23-13; Res. No. 16-0864, 10-5-16)

**Note**— Formerly Code, Pt. II, § 102-403.

Sec. 102-428. - Technical Bonding assistance.

The Department of Purchasing and Contract Compliance shall develop and may make available technical assistance programs to assist SBEs, MFBEs and SDVBEs in gaining the ability to compete successfully and to participate in the county's procurement process:

- (1) Free one-on-one technical assistance regarding insurance and bonding; and Provide a surety bond prequalification program that will enable SBE, MBE and FBE businesses not currently bonded; with limited bonding capacity; or, who have been denied bonding with one-on-one prequalification sessions; and
- (2) Access to all the tools and training necessary to secure a first time bond and to increase current bonding capacity. Provide legal consulting services related to corporate governance and subcontractor contractual agreement review.

(Res. No. 13-0052, 1-23-13; Res. No. 16-0864, 10-5-16)

Sec. 102-429. - Monitoring and reporting.

The office of contract compliance staff shall make periodic random and scheduled visits to the contractor jobsite to review project progress, contractor-subcontractor relations, performance and payment schedules as well as to confirm compliance for the following:

- (1) Georgia Security and Immigration;
- (2) Title VI;

- (3) Davis Bacon Wage Rates;
- (4) Disadvantaged Business Enterprise (DBE);
- (5) Minority/Female Business Enterprise (MFBE);
- (6) Service Disabled Veteran Business Enterprise (SDVBE); and
- (7) Small Business Enterprise Program.

(Res. No. 13-0052, 1-23-13; Res. No. 16-0864, 10-5-16)

DIVISION 8. - NONDISCRIMINATION IN PURCHASING AND CONTRACTING<sup>[8]</sup>

Footnotes:

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**Cross reference**— Human relations, ch. 42.

Sec. 102-430. - ~~Statement of policy.~~

~~It is the policy of Fulton County that discrimination against businesses by reason of the race, color, gender or national origin of the ownership of any such business is prohibited. Furthermore, it is the policy of the board of commissioners that Fulton County and all vendors and contractors doing business with it shall provide to all businesses the opportunity to participate in contracting and procurement paid, in whole or in part, with monetary appropriations of the board without regard to the race, color, gender or national origin of the ownership of any such business. Similarly, it is the policy of Fulton County that the contracting and procurement practices of Fulton County should not implicate Fulton County as a passive participant in discriminatory practices engaged in by private contractors or vendors who seek to obtain contracts with Fulton County.~~

~~Adoption of the findings and conclusions of the 2018 Disparity Study Report by Griffin & Strong, P.C.~~

~~The county adopts the findings and conclusions of the 2018 disparity study prepared by Griffin & Strong, P.C. (referred to in this Division 8 as the “2018 Disparity Report”).~~

(Res. No. 13-0052, 1-23-13)

Sec. 102-431. - Definitions.

The following words, terms and phrases, when used in this division shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Annual Aspirational Goal means a non-binding annual aspirational percentage goal for overall MFBE Prime and Subcontractor participation in County contracts for Construction, Professional Services, Architectural and Engineering Services, and Other Services contracts. This goal will be established every five (5) years by a duly-authorized disparity study and based upon the Prime and Subcontractor availability statistics provided therein and is evaluated every year to ascertain program effectiveness.

*Availability* means the percent of firms seeking to do business with Fulton County that are ready, willing and able to do business with Fulton County.

*Bidder* means any contractor, vendor or other person, partnership, corporation or other business entity that submits or desires to submit a bid to Fulton County.

*Board* means the board of Commissioners of Fulton County.

*Certified MBE/FBE* means an MBE (AABE, HBE, ABE, NABE) or FBE which meets the definitions of this section, and has been "certified" (i.e., approved) as an MBE, or FBE by the department of contract compliance.

*Commercially useful function* means the performance of real and actual services in the discharge of a contractual endeavor; or with respect to a contract relating to the sale of goods or other items, contractual liability for the failed delivery thereof. The business must perform some distinct element of work which the business has the skill, expertise or other necessary capabilities and/or attributes as well as the responsibility for actually performing, managing and supervising the work or manufacture and/or delivery of goods.

*Compliance* means the condition existing when a bidder has met the requirements of this Code section.

*Contract* means any binding legal obligation of Fulton County created to acquire some good and/or service from one or more bidders, which is paid or

which is to be paid for, in whole or in part, with monetary appropriations of the board. In this context, the terms "contracting," "purchasing" and "procurement" are synonymous and refer to the process or processes under which Fulton County undertakes such acquisitions.

*Disparity* means that the availability of various businesses is greater than the utilization of any such businesses.

*Disparity index* means the ratio of utilization to availability (U/A) for a particular racial or gender group.

*Disparity ratio* means the ratio of availability to utilization (A/U) for a particular racial or gender group.

*EBO plan* means equal business opportunity plan which is designed to enhance the utilization of a particular racial, gender or ethnic group by a Fulton County bidder, contractor, or vendor or by Fulton County.

*Female business enterprise (FBE)* shall mean a business which is an independent and continuing enterprise for profit, performing a commercially useful function and is owned and controlled by one or more females, and certified as such by the department of contract compliance.

*Good faith/Utilization efforts* means those active and aggressive measures undertaken by a bidder to acquire MFBE utilization.

*Independent* means that with respect to the ownership, control and activity of a MFBE, the business shall operate separate and apart from the ownership, control or undue influence of another business not owned and controlled by one or more minorities or females.

*Joint venture* means an association of two or more independent persons, partnerships, corporations, limited liability corporations (or any combination of them) formed, consistent with the laws of the State of Georgia, to perform one or more specific contracts limited in scope and duration; and for which purpose, the entities combined their property, capital, effort, skills, knowledge and other assets.

*MFBE* means, alternatively, (1) severally, a minority business enterprise or a female business enterprise, or (2) collectively, minority business enterprises and female business enterprises, depending on the context in which it is used.

*Minority Business Enterprise (MBE)* means a business which is an independent and continuing operation for profit, performing a commercially useful function,

and is 51 percent owned and controlled by one or more minority persons, and is certified as such by the department of purchasing and contract compliance. MFBEs shall include but not be limited to the following:

- (1) *African American Business Enterprise (AABE)* means a business which is owned and controlled by one or more African American minority persons.
- (2) *Asian American Business Enterprise (ABE)* means a business which is owned and controlled by one or more Asian American minority persons.
- (3) *Hispanic Business Enterprise (HBE)* means a business which is owned and controlled by one or more Hispanic minority persons.
- (4) *Native American Business Enterprise (NABE)* means a business which is owned and controlled by one or more Native American minority persons.

*Minority person* means a United States citizen or permanent resident alien (as defined by the Immigration and Naturalization Service) of the United States, including but not limited to, one who is a member of any of the following groups and meeting the definition(s) for same:

- (1) *African American* means persons having ancestry with origins in any of the Black racial groups of Africa.
- (2) *Asian American* means persons having ancestry with origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands.
- (3) *Hispanic American* means persons of Spanish or Portuguese culture and ancestry with origins in Mexico, South or Central America, or the Caribbean Islands, regardless of race.
- (4) *Native American* means persons having ancestry with origins in any of the original peoples of North America, including American Indians, Eskimos and Aleuts.

*MSA* means the Atlanta Metropolitan Statistical Area as defined by the United States Bureau.

*Noncompliance* means the condition existing when a bidder has failed to meet the requirements of this program.

*Office of contract compliance (OCC)* means the office of contract compliance within the department of purchasing and contract compliance in Fulton County.

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*Owned*, for purposes of determining whether a business is a minority business enterprise or female business enterprise, means that the minority or female owner(s) possess an ownership interest of at least 51 percent of the business.

*Person* means an individual, sole proprietorship, corporation, partnership, limited partnership, limited liability corporation, or other business association.

*Promise of nondiscrimination* means, collectively, one or more voluntary contractual affirmative promises and other promises of forbearance made by a bidder relating to the bidder's conduct occurring prior to submission of a bid as well as after award of a contract.

*Sole source* means the awarding of a contract or contracts to a single bidder without benefit of competition because the bidder is the only appropriate and/or qualified contractor or vendor available from whom the commodity, equipment, good or service can be procured.

*Underutilization* means that the percentage of Fulton County dollars spent with a particular racial, gender or ethnic group which is less than what would be expected for a given racial, gender or ethnic group's business availability.

*Utilization* means the percentage of Fulton County dollars spent with a particular racial, gender or ethnic group which is equal to or greater than what would be expected for a given racial, gender or ethnic group's business availability.

*Waiver* means a determination of excused nonresponsiveness or noncompliance with the requirements of this Code section, including that of nondiscrimination, such that a bidder, contractor or vendor who has failed to achieve said requirements but has otherwise satisfactorily demonstrated efforts to do so shall be deemed to be responsive and compliant and the bidder, contractor or vendor shall be excused from the applicable penalties or sanctions.

(Res. No. 13-0052, 1-23-13)

Sec. 102-432. - Scope and applicability.

Except as provided herein below, the provisions of this Code section shall apply to Fulton County contracting and procurement, including construction and the acquisition of all commodities, equipment, goods, and services (including professional and nonprofessional services), however titled, and irrespective of the modality or manner procured, and irrespective as to whether purchased or

leased. The following categories are initially established by the board to identify the nature and type of Fulton County contracting and procurement encompassed under this Code section. From time to time, and upon recommendation of the county manager, the board may amend (by addition or deletion) these categories:

- (1) *Category ~~A-1~~—Construction (including prime contractors and subcontractors):* including, for example, and without limitation, any and all contracting relating to buildings, facilities and other erected structures on real estate of Fulton County such as new construction, rehabilitation, renovations, remodeling and repairs;
- (2) *Category ~~B-2~~—~~Wholesale Architectural and Engineering Service:~~* including, for example, and without limitation, ~~the purchase of all goods, equipment, food stuffs, office and other supplies, art, furniture and other tangible personal property not associated with and subsumed under the provision of a service identified in categories A or C;~~ the procurement of architectural and engineering services;
- (3) *Category ~~C-3~~—Service Industry:* including, for example, and without limitation, the procurement of advertising, printing, nonconstruction repairs, janitorial services, computer and information systems, security, shipping and mailing, microfiche and microfilm, courier, storage, travel, consulting, and any other nonprofessional services and professional services that may require a bidder to possess a license or other certificate of competency such as auditing, architectural, legal services and engineering services.
- (4) Category 4 – Professional Services; including, for example, and without limitation, any consulting services, medical services, planning services, accounting and auditing services, legal services, program management services and construction management services.

(Res. No. 13-0052, 1-23-13)

Sec 102-432.1 – Annual Aspirational Goals for MFBE Participation

A non-binding annual aspirational percentage goal for overall MFBE prime and subcontract participation in county procurement contracts shall be established for construction, professional services, architectural and engineering services and other services contracts. This Annual Aspirational Goal is to be based upon the MBE and FBE availability and utilization data collected and analyzed every five (5)

years as part of a duly-authorized disparity study. The Annual Aspirational Goal is not be applied to individual contracts, but rather, is intended to serve as a benchmark against which to measure the overall effectiveness of the Nondiscrimination in Purchasing and Contracting program on an annual basis, and to gauge the need for future adjustments to the program, including the various remedies applied under the program.

Sec. 102-433. - Exclusions.

The provisions of this article shall not apply to the following:

- (1) The acquisition of any interest or interests in real property including leaseholds;
- (2) Unique contracting where the unique nature of the item or service to be acquired renders the application of other bidder selection criteria inappropriate such that a sole source procurement may be required under Fulton County purchasing policies and regulations;
- (3) Emergency purchases as provided for in this Code;
- (4) Any other categories or subcategories of goods or services the board may from time to time establish as excluded contracts upon recommendation of the director of the department of purchasing and contract compliance and approval by the county manager.

(Res. No. 13-0052, 1-23-13)

**Note**— Formerly Code, Pt. II, § 102-466.

Sec. 102-434. - Monitoring, evaluation and reporting.

- (a) *Monitor*. The office of contract compliance shall continuously monitor the procurement, by contract or other means, of goods and services for Fulton County. Such monitoring shall include, but is not necessarily limited to, a statistical analysis of each wholesale, construction trade, and professional and nonprofessional service which is the subject of the Fulton County purchasing process; and to determine whether in any such classification there is any underutilization. While this monitoring function may be performed on an ongoing, as needed, basis, the director of the department of purchasing and



contract compliance shall report to the board quarterly with regards to its findings as to any such statistical analysis.

- (b) *Identified underutilization.* In the event that the monitoring function of the director of the department of purchasing and contract compliance identifies underutilization, the director is authorized to instruct the contract compliance administrator to conduct further investigation into the reasons for any such underutilization.
- (c) *Recommendations for remedial action.* In the event that any investigation of underutilization performed pursuant to subsection (b) shows that the underutilization involves either active or passive discrimination by Fulton County in its own contracting and procurement practices, or involves the passive participation by Fulton County in the discriminatory conduct by private persons or entities, or occurs for any other reason, the director of the department of purchasing and contract compliance shall report such finding to the county manager, who shall report the same to the board of commissioners with a recommendation for remedial action to eliminate any such discrimination. In the event that any investigation of underutilization performed pursuant to subsection (b) shows that the underutilization involves no discrimination or discriminatory conduct, the director of the department of purchasing and contract compliance may report same to the board with a recommendation for remedial action to remedy any such underutilization.
- (d) *Reporting.*
  - (1) *Scheduled reports.* The director of the department of purchasing and contract compliance shall conduct quarterly and annual reviews of the monitoring that is required herein and submit reports to the county manager with a copy to the board of commissioners.
  - (2) *Additional reports.* In addition to the reports required under subsection (d)(1) above, the director of the department of purchasing and contract compliance at any time is authorized to make recommendations to the county manager regarding the implementation of this section.

(Res. No. 13-0052, 1-23-13)

**Note**— Formerly Code, Pt. II, § 102-467.

Sec. 102-435. - Methods for promoting nondiscrimination in purchasing and contracting.

- (a) *Policy of nondiscrimination by Fulton County.* It is the policy of Fulton County to promote and encourage full and open competition in Fulton County contracting and procurement.
- (b) *Website.* There shall be maintained a website that contractors and vendors can use to obtain information on bids or certification.
- (c) *MBE/FBE (MFBE) certification.* MFBEs shall be encouraged to apply for certification by the department of purchasing and contract compliance.
- (d) *Purchasing administrative process.* The director of the department of purchasing and contract compliance shall investigate complaints, or on its own, initiate investigations, with regard to whether the Fulton County purchasing process, or any part thereof, inhibits the ability of any business to contract with Fulton County by reason of the race, color, gender or national origin of the ownership of any such business.
- (e) *MFBE directory.* A single unified list of all certified Fulton County MFBE vendors and contractors shall be maintained. The list shall be coded to reflect designations relating to the type of vendor or contractor, MFBE or non-MFBE, or other relevant information as determined by the director of purchasing and contract compliance and the contract compliance administrator. The directory shall be maintained on a current basis.
- (f) *Enhancement of contracting opportunities.* The county manager and the director of the department of purchasing and contract compliance, and representatives from other departments involved with contracting and procurement practices shall review contracting and procurement practices such as sole source, multiyear, blanket and emergency purchases and shall also review size of contracts in order to determine whether such practices and contract size unnecessarily inhibit the ability of businesses to participate in the contracting and procurement activities of Fulton County by reason of the race, color, gender or national origin of the ownership of any such business. Where such practices and contract size are identified as inhibitive, they shall be eliminated and/or diminished where practicable.
- (g) *Special publications.* The director of the department of purchasing and contract compliance in conjunction with other appropriate private and

government agencies, shall issue or cause to be issued one or more pamphlets, brochures or other publications designed to instruct, direct, assist and/or acquaint MFBEs with the procurement procedures of Fulton County.

- (h) *Training programs.* The director of the department of purchasing and contract compliance shall develop and conduct seminars and workshops on how to do business with Fulton County.
- (i) *Letter of contract award.* When an MFBE receives a contract with Fulton County, the director of the department of purchasing and contract compliance may, upon request, furnish a letter stating the dollar value of the contract, its duration and other information about the contract which may be used by the MFBE to establish lines of credit with lending institutions.
- (j) *Prompt payment and certification.* Every contract with Fulton County for performance of work or purchase of any item shall contain a provision requiring the prime contractor to certify in writing that all subcontractors and suppliers have been promptly paid for work and materials and previous progress payments received (less any retainage by the prime contractor prior to receipt of any further progress payments). In the event a contractor is unable to pay subcontractors or suppliers until it has received a progress payment from Fulton County, the prime contractor shall pay all subcontractors or suppliers funds due from said progress payments within 48 hours of receipt of payment from Fulton County. Throughout the duration of a construction project or other contract, and upon completion thereof, Fulton County may request documentation to certify payments to subcontractors or suppliers. Fulton County reserves the right to issue joint checks payable to both the contractor and the subcontractor/supplier to ensure proper payments. This provision shall in no way create any contractual relationship between the subcontractor and Fulton County or create any liability on Fulton County for a prime contractor's failure to make timely payment to a subcontractor or supplier.
- (k) *Outreach program.* The minority and female business enterprise program is hereby established to provide for specific aggressive outreach efforts by the department of purchasing and contract compliance to solicit and encourage MFBEs to bid on county contracts. The efforts of the department of purchasing and contract compliance in conjunction with the appropriate user departments shall include the following:

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- (1) The notification of bid opportunity alerts to MFBEs of upcoming contracts by the county through utilization of the MFBE's certification listing;
- (2) Advertisement of upcoming county contracts in the appropriate media, including minority newspapers or publications; the county's website, public television, if appropriate; and other media;
- (3) Seminars to familiarize MFBEs with county procurement and bidding procedures and with upcoming business opportunities;
- (4) Establishment of a website which contractors and vendors can access information on bids or certification;
- (5) Active and sustained encouragement of MFBEs to apply for certification and to bid on county contracts.
- (6) Establishment of a website which prime contractors can identify subcontracting opportunities for Fulton County projects.
- (7) The office of contract compliance may act as a resource for technical assistance. The office may collect, organize and disseminate information regarding additional technical assistance providers other than Fulton County that are in the Atlanta market area.

(Res. No. 13-0052, 1-23-13)

Sec. 102-436. - Contractor discrimination.

- (a) *Statement of policy.* It is the policy of Fulton County that discrimination against businesses by reason of the race, color, gender or national origin of the ownership of any such business is prohibited. Furthermore, it is the policy of the board that Fulton County and all vendors and contractors doing business with it shall provide to all businesses the opportunity to participate in contracting and procurement paid, in whole or in part, with monetary appropriations of the board without regard to the race, color, gender or national origin of the ownership of any such business. Similarly, it is the policy of Fulton County that the contracting and procurement practices of Fulton County should not implicate Fulton County as a passive participant in discriminatory practices engaged in by private contractors or vendors who seek to obtain contracts with Fulton County.
- (b) *Promise of nondiscrimination.* In consideration of, and as condition precedent to, the right and privilege to bid on or obtain construction projects and other

procurement contracts of Fulton County, each bidder, contractor, or vendor shall be required to submit to the director of the department of purchasing and contract compliance a duly executed and attested promise of nondiscrimination, enforceable at law, which by agreement, affidavit or other written instrument, unless subsequently amended by the board's attorney, shall provide substantially as follows:

"Know all persons by these presents, that I/We,(Name(s)), (Title(s)), (Name of bidder/contractor/vendor) (hereinafter "Company"), in consideration of the privilege to bid on or obtain contracts funded, in whole or in part, by Fulton County, hereby consent, covenant and agree as follows:

(1) No person shall be excluded from participation in, denied the benefit of, or otherwise discriminated against on the basis of race, color, national origin or gender in connection with any bid submitted to Fulton County for the performance of any contract resulting therefrom;

(2) That it is and shall be the policy of this company to provide equal opportunity to all businesses seeking to contract or otherwise interested in contracting with this company without regard to the race, color, gender or national origin of the ownership of this business;

(3) That the promises of nondiscrimination as made and set forth herein shall be continuing in nature and shall remain in full force and effect without interruption;

(4) That the promises of nondiscrimination as made and set forth herein shall be made a part of, and incorporated by reference into, any contract or portion thereof which this company may hereafter obtain; and

(5) That the failure of this company to satisfactorily discharge any of the promises of nondiscrimination as made and set forth herein shall constitute a material breach of contract entitling the board to declare the contract in default and to exercise any and all applicable rights and remedies, including but not limited to cancellation of the contract, termination of the contract, suspension and debarment from future contracting opportunities, and withholding and/or forfeiture of compensation due and owing on a contract.

(6) That the bidder shall provide such information as may be required by the director of purchasing and contract compliance pursuant to this division."

(c) *Required information.* Where the director of the department of purchasing and contract compliance has reason to believe that a bidder, contractor or vendor is engaged in unlawful discriminatory conduct, the director of the department of purchasing and contract compliance may request an investigation that is authorized by subsection (b) of this Code section of such person, contractor, its subcontractors and/or suppliers be conducted by the county manager or his/her designee. Such information may include, but is not necessarily limited to the following:

- (1) Documents that ~~show~~ demonstrate what, if any, ~~good faith~~ utilization efforts the bidder, contractor, or vendor has taken to insure the participation of all businesses without regard to the race, color, gender or national origin of the ownership of any such business for participation in the contract or proposed contract with Fulton County.
- (2) Documents which show that the bidder, contractor, or vendor has attempted to ~~segment~~ identify subcontracting opportunities based on the totality of work required under the proposed project or contract into two or more smaller economically feasible units or portions so as to permit participation of all businesses without regard to the race, color, gender or national origin of the ownership of any such business; provided, however, under no circumstances shall a bidder, contractor, or vendor be required to ~~segment work~~ identify subcontracting opportunities solely for the purpose of utilizing any particular racial or gender group participant as subcontractors where such ~~segmentation~~ subcontracting opportunities are is not in accordance with common and accepted industry practices relating to the utilization of other firms or persons as subcontractors.
- (3) Documents that show whether the bidder, contractor, or vendor attended any pre-solicitation meeting and/or pre-bid conference (if such meeting or conference is held) so as to permit interested businesses a meaningful opportunity to market their goods and services to the bidder, contractor, or vendor without regard to the race, color, gender or national origin of the ownership of any such business.
- (4) Documents that show whether the bidder, contractor, or vendor solicited ~~specific individual racial~~ minority, gender or ethnic businesses whose availability as potential sources of goods or services can be reasonably ascertained. This measure includes the sending of letters or making other personal contacts with specific certified MFBE's including those with

whom the bidder, contractor or vendor has contracted in the past as well as other MFBE's with whom the bidder, contractor, or vendor may be unfamiliar, but whose identities can be ascertained from a directory of certified MFBE's maintained by the ~~Director of the department of purchasing and office of~~ contract compliance.

- (5) Letters or documented personal contacts with any minority or female business enterprise programs, or programs for disadvantaged businesses, as well as private minority trade associations in the Atlanta MSA which programs and associations are known to publicize contracting and procurement opportunities for the benefit of their respective participants and/or members.
- (6) Documents that show whether the bidder, contractor, or vendor advertised in publications of general circulation and/or trade publications and other media owned by, or otherwise focused or marketed to racial minorities, women and any disadvantaged individuals and/or businesses owned and operated by them. The publication or media shall be one that reasonably covers the metropolitan statistical area. The advertisement shall identify and describe the specific subcontracting or other opportunity in reasonable detail.
- (7) Documents that show whether the bidder, contractor, or vendor provided all interested business concerns with adequate information about the plans, specifications and requirements of the project or contract in question.
- (8) Documents that show whether the bidder, contractor, or vendor conducted negotiations with any interested business in good faith without regard to the race, color, gender or national origin of the ownership of any such business and not rejecting them as unqualified or for other reasons without having thoroughly investigated any such business' capabilities or other basis of rejection.
- (9) Documents that show whether the bidder, contractor, or vendor provided reasonable assistance to an otherwise qualified business without regard to the race, color, gender or national origin of the ownership of any such business in need of equipment, supplies, bonding, letters of credit and/or insurance. The bidder, contractor or vendor may waive such bonding, credit and/or insurance as may be ordinarily required by it or provide

reasonable assistance to any such business so as to obtain such equipment, supplies, bonding, credit and/or insurance.

- (10) Documents that show whether the bidder, contractor, or vendor provided reasonable technical assistance to any business without regard to the race, color, gender or national origin of the ownership of any such business to ameliorate any deficiencies of technical knowledge or advance skill, where such assistance is undertaken by the bidder, contractor, or vendor for the purpose of facilitating such business' successful participation on a project or contract.
- (11) Documents that show whether the bidder, contractor, or vendor provided equal opportunity to all businesses without regard to the race, color, gender or national origin of the ownership of any such business when replacing nonperforming subcontractors or suppliers. The director of the department of purchasing and contract compliance shall approve all replacements prior to engagement of the substituting firm.
- (12) Documents that show whether the bidder, contractor, or vendor provides a nondiscriminatory worksite. Bidders, contractors and vendors shall ensure and maintain a work environment free of harassment, intimidation and coercion at all construction sites, offices and other facilities at which the bidder's, contractor's or vendor's employees are assigned to work. The contractor shall specifically show that all labor supervisors, superintendents, and other onsite supervisory personnel are aware of and carry out the bidder's, contractor's or vendor's obligation to maintain a nondiscriminatory work environment.
- (13) Documents that show all subcontractors and suppliers that were contacted by the bidder, contractor, or vendor detailing, among other things, their race, gender or ethnicity, discipline, requirements, the manner in which such contact was made, if the supplier or subcontractor submitted a bid or quote, the nature of same and, if rejected, the reasons therefor.
- (14) Documents which show whether the bidder, contractor, or vendor cooperated with the director of the department of contract compliance. Bidders, contractors and vendors shall be required to furnish reports and information sufficient to allow the director of the department of purchasing and contract compliance to determine whether the requirements of this Code section are being met.



(15) Bidders, contractors and vendors shall provide such other information as the director of the department of purchasing and contract compliance may from time to time reasonably require, whether orally or in writing.

- (d) *Notice to bidder, contractor or vendor.* When the investigation authorized by the ~~county manager~~ director of purchasing and contract compliance leads to a determination of probable cause to believe that a bidder, contractor or vendor is engaging in discriminatory conduct, the director of purchasing and contract compliance shall give notice of such determination to the bidder, contractor or vendor which notice shall include a rejection of any bid or a determination of breach and a copy of such notice shall be provided to the county manager and the county attorney.
- (e) *Hearing.* Any bidder, contractor, or vendor who is adversely affected by a determination under this section shall have the right to appeal such adverse determination pursuant to section 102-439 of this Code. Any request for appeal under this section must be made as provided in section 102-439 of this Code and a hearing shall be conducted pursuant to this division.
- (f) *Sanctions.* Where, after hearing held pursuant to section 102-439 of this Code, the contract compliance hearing officer determines that a bidder, contractor, or vendor has engaged or is engaging in discriminatory practices, the director of the department of purchasing and contract compliance and the county attorney shall determine the appropriate sanctions. In addition to any other sanctions that are authorized by this section, the director of the department of purchasing and contract compliance may impose the sanctions that are set forth in this division; provided, however, that at any time after a determination of discrimination is made pursuant to this Code section, the director of the department of purchasing and contract compliance and the county attorney may negotiate a settlement with the affected bidder, contractor or vendor regarding sanction. Such negotiated sanction may include, but is not necessarily limited to, the sanctions that are enumerated in section 102-438 of this Code or a voluntary EBO Plan that is approved by the director of the department of purchasing and contract compliance.

(Res. No. 13-0052, 1-23-13)

**Note**— Formerly Code, Pt. II, § 102-469.

~~Sec. 102-437. — Contract compliance hearing officers.~~

- ~~(a) *Appointment and tenure.* The county attorney shall biannually recommend a panel of two hearing officers to be approved by the board. Neither Fulton County employees and elected officials, nor any person who in any way does business with Fulton County (including, but not limited to, as contractor, vendor, or subcontractor), nor any person owning any interest in an entity doing business with Fulton County shall be eligible for recommendation. The hearing officers shall serve for a two-year term; and in no event shall they be eligible to serve more than four consecutive years.~~
- ~~(b) *Qualifications.* The hearing officers panel shall consist of five persons.~~
- ~~(c) *Authority and scope of review.* With the exception of controversies that are the subject matter of litigation or pending administrative review members of the hearing officers panel shall have the authority to review and determine any issue or matter in controversy arising from the adoption, implementation and enforcement of this article.~~
- ~~(d) *Compensation and access to facilities.* The hearing officers shall receive fair compensation at an hourly rate to be determined by the county manager for all time expended in the performance of duties created by this section. All hearings shall be open to the public and shall be held in a suitable place within a Fulton County building. Administrative and support services, as may be required by the hearing officers in the performance of such duties, shall be furnished by Fulton County and the cost of same shall be borne by Fulton County.~~

(Res. No. 13-0052, 1-23-13)

**Note**— Formerly Code, Pt. II, § 102-470.

Sec. 102-438. - Sanctions and penalties.

The Director of the department of purchasing and contract compliance shall have the authority and power to enforce the provisions of this Code section. Failure by a bidder, contractor, or vendor to comply with the requirements of this Code section shall subject the noncomplying party to administrative sanctions. In addition, a violation of this Code section shall constitute a material breach of contract, enforceable at law or in equity as with all other contract provisions. The following sanctions and penalties are established for the enforcement of this Code section:

- (1) *Declaration of non-responsiveness.* The county may declare a bid nonresponsive.
- (2) *Recommendation of cancellation or termination of contract.* The county may declare a contract null and void, cancelled or terminated where, after such contract has been awarded, it is determined that the bidder's, contractor's or vendor's bid or other relevant document contains false or misleading information.
- (3) *Rejection of future bids.* ~~The Fulton~~ County may reject any or all future bids of a bidder until such time as the bidder shall have demonstrated that it is in compliance or shall come into compliance with the provisions of the Code section.
- (4) *Limited partial withholding of payments.* ~~The Fulton~~ County may withhold an amount not to exceed more than ten percent of all progress payments otherwise due and payable under contract until the bidder, contractor, or vendor is in compliance with the provisions of this Code section.
- (5) *Total withholding of payments.* ~~The Fulton~~ County may withhold the entirety of all progress payments otherwise due and payable under contract until the bidder; contractor or vendor is in compliance with the provisions of this Code section.
- (6) *Limited suspension and debarment.* ~~For falsifications and misrepresentations, Fulton County may remove a bidder, contractor or vendor from its list of pre-qualified or otherwise eligible entities entitled to do business with Fulton County for a period not to exceed one year. The county may suspend a bidder, contractor or vendor from doing business with the county during the period when investigation into possible debarment is underway. The suspension period will not exceed 120 calendar days. Consideration of the imposition of a suspension under this code section shall be made pursuant to code section 102-451.~~
- (7) *Permanent Debarment.* ~~For repeated violations, Fulton County may remove a bidder, contractor, or vendor from its list of pre-qualified or otherwise eligible entities entitled to do business with Fulton County. The county may debar a company from doing business with the county for a specified period, but in no event longer than three years.~~

(Res. No. 13-0052, 1-23-13)

**Note**— Formerly Code, Pt. II, § 102-471.

Sec. 102-439. - Appeals.

- (a) *Availability.* Any bidder, contractor or vendor or other party aggrieved by the provisions of this Code section may appeal said grievance or grievances to the director of the department of purchasing and contract compliance, as provided herein. By these provisions, it is the intent of the board to ensure all parties basic guarantees of due process consisting of the right to be heard by an impartial trier of fact; and the same are hereby so guaranteed.
- (b) *Appealable matters.* Upon a denial of certification, a determination of nonresponsiveness, noncompliance or discrimination by the director of the department of purchasing and contract compliance shall notify the affected party in writing and by registered mail with return receipt, (hereinafter, "notice of determination") setting forth with particularity the reasons for the determination. This notice may also be provided via electronic message.
- (c) *Time for filing notice of appeal.* Any party who is aggrieved ~~has a grievance under this Code section~~ regarding a certification denial determination of non-responsiveness, noncompliance or discrimination may appeal an adverse decision by filing a written notice of appeal to a contract compliance hearing officer with the director of the department of purchasing and contract compliance within seven ~~calendar~~ business days of receipt of the notice of determination, ~~but no later than 15 days after the determination or within seven days of notice.~~
- (d) *Notice of hearing.* Upon receipt of the notice of appeal from the aggrieved party, the director of the department of purchasing and contract compliance shall forward the notice to a contract compliance hearing officer (hereinafter "hearing officer") within ten business days of receipt. Hearing officers will be appointed as set forth in section 102-452 of this code. Within ten business days of the date of receipt of the notice of appeal from the director of the department of purchasing and contract compliance, the hearing officer shall set the matter for hearing, which hearing shall be held not more than 30 business days from the date the hearing officer received the notice of appeal. The hearing officer shall cause a written notice of hearing to be served upon all parties by certified registered mail with return receipt, which shall state the date, time and place of hearing. Said notice shall also inform the parties of

due process rights and relevant procedural matters. This notice may also be provided via electronic message.

- (e) *Hearing.* At the hearing, all parties shall be provided a full and fair opportunity to be heard. Each party may be represented by counsel. Each party may present documentary evidence and the testimony of witnesses and shall have the right to object to the introduction of documents and to cross examine opposing witnesses. Although formal rules of evidence shall not apply, the hearing officer shall cause a record to be made of the proceeding through the use of a court reporter or by way of electronic tape recording with subsequent transcription.
- (f) *Decision.* Within ~~seven~~ twenty business days of the conclusion of the hearing, and based upon a preponderance of the evidence presented, the hearing officer shall render a written decision (i.e., an "order") which shall contain findings of fact, conclusions of law, and a disposition, regarding the determination of nonresponsiveness, discrimination or denial of MFBE certification ~~of by the department office of contract compliance or the director of purchasing and contract compliance.~~ purchasing agent.

(Res. No. 13-0052, 1-23-13)

Sec. 102-4XX. – Mandatory Subcontracting Projects

The purchasing agent and the office of contract compliance, may designate certain procurement projects or contracts as requiring a certain number or percentage of subcontracting opportunities (wherein all subcontractors perform a commercially useful function). The “mandatory subcontracting” designation for a particular project is discretionary on the part of the purchasing agent and should be applied only where there is a reasonable expectation, based on the various components of the project and subcontractor availability, that there will be a sufficient number of subcontracting firms ready, willing, and able to do the assigned work.

When appropriate, this provision is intended to reduce the number of projects on which prime contractors self-perform, precluding participation in County projects by a greater number of firms and limiting opportunities for smaller firms to grow capacity and gain experience.

Sec. 102-4XX. – Requirements for Mentor/Protégé Program

(a) Based upon the scope of work and market availability, the purchasing agent and the office of contract compliance shall determine on a project by project basis if a project is eligible to require a mentor/protégé relationship with a goal of enhancing the potential of participating MFBE, SBE and SDVBE firms by building business capability and experience to expand contracting opportunities within an agreed framework of conditions. This initiative is intended to assist in integration of on-the-job training for emerging MFBE, SBE and SDVBE firms and permit a prime contractor to offer assistance on a limited term agreement, generally one project.

On such contracts in which utilization efforts are required, no bid shall be accepted unless submitted by a mentor/protégé team, unless the office of contract compliance has determined utilization efforts to enter into a mentor/protégé relationship have been demonstrated.

No contractor or Bidder shall be penalized or preferred based upon participation or non-participation in this initiative.

(b) As to each mentor-protégé relationship under this section, a written mentor-protégé agreement must be completed by both parties to the mentor-protégé relationship and executed before a notary public, which clearly delineates the rights and responsibilities of the mentor and protégé, complies with any requirements of the office of contract compliance as set forth in bid documents or otherwise, and provides that the mentor-protégé relationship shall continue for, at a minimum, the duration of the project.

Sec. 102-4XX. - Requirements for joint ventures.

(a) Based upon the scope of work and market availability, the office of contract compliance shall determine on a project-by-project basis if a project is eligible to require a joint venture relationship. Utilization efforts to enter into a joint venture shall be required for such project. Only projects valued over \$5,000,000.00 are eligible for consideration under this section. On such projects in which utilization efforts to enter into a joint venture relationship is required, no bid shall be accepted unless submitted by a joint venture, unless the office of contract compliance has determined that utilization efforts to

enter into a joint venture have been demonstrated. The office of contract compliance shall determine whether utilization efforts to enter into a joint venture have been adequately demonstrated based on a review of relevant facts, documents and circumstances.

- (b) On such eligible projects, the county strongly encourages inclusion. If the joint venture relationship is inclusive of an MBE or FBE firm, the MFBE members of the joint venture must be certified as such by the office of contract compliance, and the joint venture team shall include in its bid submittal the MFBE certification number of each MFBE joint venture member.
- (c) As to each joint venture under this section, a written joint venture agreement must be completed by all parties to the joint venture and executed before a notary public, which clearly delineates the rights and responsibilities of each member or partner, complies with any requirements of the office of contract compliance as set forth in bid documents or otherwise, and provides that the joint venture shall continue for, at a minimum, the duration of the project.
- (d) The office of contract compliance shall review and approve all contractual agreements regarding the terms and provisions of each joint venture relationship prior to the award of a contract on an eligible projects. The joint venture agreements should at a minimum include the following information:

  - (1) The initial capital investment of each venture partner;
  - (2) The proportional allocation of profits and losses to each venture partner;
  - (3) The sharing of the right to control the ownership and management of the joint venture;
  - (4) Actual participation of the venture partners on the project;
  - (5) The method of and responsibility for accounting;
  - (6) The method by which disputes are resolved; and
  - (7) Any additional or further information required by the office of contract compliance as set forth in bid documents or otherwise.
- (e) The joint venture, and each member of the joint venture, shall provide the office of contract compliance access to review all records pertaining to joint venture agreements before and after the award of a contract in order to reasonably assess compliance with this subdivision.

Sec. 102-4XX. - Mediation of disputes between joint venture and mentor-protégé team members and prime and subcontractors.

- (a) If, after the award of a contract to a joint venture or mentor-protégé team, any member of the joint venture or mentor-protégé team believes that the terms and conditions of the agreement as approved by the office of contract compliance have not been complied with, then such member may seek review and mediation of such agreement before the director of the office of contract compliance. The request for review must be made in writing.
- (b) If, after the award of a contract, a dispute arises between the prime contractor and a subcontractor regarding performance of work or provision of services or supplies on the eligible project, then such prime contractor or subcontractor may seek review and mediation of the issue before the director of the office of contract compliance. The request for review must be made in writing. If the dispute involves an alleged violation of the county's prompt payment requirement, as set forth in section 102-XXX below, the contractor, subcontractor and the county shall proceed as is set forth in section 102-XXX.
- (c) Within 20 calendar days of receipt of a request for review, if the dispute has not already been resolved informally among the parties, the director shall set a mediation date, and the director shall provide written notice of the mediation date to each of the interested parties.
- (d) The director shall have authority to make recommendations in an attempt to resolve the dispute.
- (e) In the event that the mediation with the director of contract compliance does not resolve all disputes, the director of the office of contract compliance shall have the option of referring mediation proceedings to a qualified outside mediator, contingent upon the consent of the interested parties.

Sec. 102-4XX. Sunset provision.

If a disparity study is not completed within five years of the 2018 Disparity Study, then this nondiscrimination policy set forth hereinabove shall sunset on December 31, 2023.

**Note**— Formerly Code, Pt. II, § 102-472.



DIVISION 9. - DISADVANTAGED BUSINESS ENTERPRISE

Sec. 102-440. - Statement of policy.

It shall be the policy of Fulton County to grant disadvantaged business enterprises (DBEs) the opportunity to receive and participate in the performance of contracts funded in whole or in part with federal funds. To that end, Fulton County shall strive to:

- (1) Ensure nondiscrimination in the award and administration of United States Department of Transportation (DOT) or other federally assisted contracts within the department's highway, transit, airport or other federally funded programs;
- (2) Create a level playing field where DBEs can compete fairly for DOT assisted contracts or other federally funded programs;
- (3) Ensure that any and all programs as DBEs are narrowly tailored and consistent with federal and state law;
- (4) Remove barriers to the participation of DBEs in DOT assisted contracts or other federally funded programs; and
- (5) Encourage and assist the development of firms that compete successfully in the marketplace outside the DBE program to the extent permitted by law.

(Res. No. 13-0052, 1-23-13)

Sec. 102-441. - Definitions.

- (a) *Contract* means a mutually binding legal relationship or any modification thereof obligating the seller to furnish supplies or services and the buyer to pay for them.
- (b) *DBE* means disadvantaged business enterprise, a small business concern that is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51 percent of the stock is owned by one or more such individuals.
- (c) *DOT* means the United States Department of Transportation.
- (d) *FAA* means Federal Aviation Administration.

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- (e) *FHWA* means Federal Highway Administration.
- (f) *GDOT* means Georgia Department of Transportation.
- (g) *Unified Certification Program* means a directory identifying all firms eligible to participate as DBEs as certified by the Georgia Department of Transportation.
- (h) *User department* means any Fulton County department or agency participating in or administering a federally funded project.

(Res. No. 13-0052, 1-23-13)

Sec. 102-442. - Duties and responsibilities of the office of contract compliance.

It shall be the responsibility of the department of purchasing and contract compliance and the user department to:

- (1) Prepare on an annual basis, an outreach plan outlining the annual activities of the DBE program.
- (2) Facilitate the implementation of this policy and to adhere to any relevant federal regulations regarding federally assisted projects;
- (3) Disseminate this policy as well as any relevant DBE program materials to all Fulton County Departments, agencies, and employees that are responsible for administering any portion of the DBE program;
- (4) Administer any DBE program consistent with this policy, Fulton County's purchasing code, and Fulton County's policy of nondiscrimination in contracting and purchasing;
- (5) Distribute this policy to all agencies/organizations consulted during the development of any DBE goal methodology for any federally funded project; and
- (6) Monitor and enforce any DBE programs as required by law.
- (7) Ensure that firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBEs.

(Res. No. 13-0052, 1-23-13)

Sec. 102-442.5. - DBE certification.

Certification is granted to DBEs meeting all certification eligibility standards by the Georgia Department of Transportation. Fulton County has entered into the State of Georgia's Unified Certification Program (known as the GUCP agreement) which authorizes GDOT as the lead agency responsible for processing applications, certification, decertification and recertification, appeals and maintaining the DBE directory.

(Res. No. 13-0052, 1-23-13)

Sec. 102-422.7. - Goals.

GDOT, FHWA and FAA are responsible for setting goals if applicable, on federally funded projects on a per project basis.

(Res. No. 13-0052, 1-23-13)

DIVISION 10. - SMALL BUSINESS ENTERPRISE PROGRAM<sup>[9]</sup>

Footnotes:

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**Editor's note**— Res. No. 16-0864, App. A(A—T), adopted Oct. 5, 2016, repealed the former Div. 10 §§ 102-443—102-447, and enacted a new Div. 10, § 102-443—102-447.15, as set out herein. The former Div. 10 pertained to first source jobs and derived from Res. No. 13-0052, adopted Jan. 23, 2013.

Sec. 102-443. - Short title.

This program shall be known as the "Fulton County Small Business Enterprise Program."

(Res. No. 16-0864, App. A(A), 10-5-16)

Sec. 102-444. - Definitions.

The following words, terms and phrases, when used in this program, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Atlanta MSA* shall mean the geographical area consisting of the following 20 counties: Barrow, Bartow, Carroll, Cherokee, Clayton, Cobb, Coweta, DeKalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Henry, Newton, Paulding, Pickens, Rockdale, Spalding and Walton.

*Bid* shall mean a quotation, proposal, sealed bid or offer to perform or provide labor, materials, supplies or services to the county for a price on an eligible project, or for an eligible project that generates revenue for the county.

*Bidder* shall mean any individual, sole proprietorship, partnership, joint venture, or corporation that submits a bid or proposal to the county.

*Certification* shall mean official recognition and approval by the Department of Purchasing and Contract Compliance (DPCC) that a business meets the qualification criteria of a small business enterprise as determined by accepting SBE certifications from the United States Department of Transportation and Small Business Administration, Georgia Department of Transportation, MARTA, City of Atlanta and other cities and counties within the Atlanta MSA, and other agencies Fulton County deems appropriate.

*Commercially useful function (CUF)* : for the purpose of determining whether a business enterprise is performing a commercially useful function, DPCC shall consider all of the facts in the record, viewed as a whole, including without limitation the following:

- (1) An SBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing and supervising the work involved.
- (2) To perform a commercially useful function, the SBE must be responsible, with respect to material and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself.
- (3) To determine whether an SBE is performing a commercially useful function, DPCC will evaluate the amount of work subcontracted by the SBE, industry practices regarding subcontracting, whether the amount the SBE is to be paid under the contract is commensurate with the work it is actually performing, the SBE credit claimed for its performance of the work and other relevant factors.

- (4) An SBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of SBE participation. In determining whether an SBE is such an extra participant, DPCC will examine similar transactions, particularly those in which SBEs do not participate.

*Contract* shall mean and include any agreement between the county and a person or business enterprise to provide or procure labor, materials, equipment, supplies and services to, for or on behalf of the county. A "contract" shall include an agreement between the county and a person or business enterprise to perform professional architectural and engineering services, construction related services or fund the performance of such services, non-professional services and/or goods. Except as otherwise specifically defined in this section, a "contract" does not include:

- (1) Awards made by the county to a non-profit entity which the county offers assistance, guidance, or supervision on a project or program and the recipient of the grant award uses the grant monies to provide services to the community;
- (2) Sales transactions where the county sells its personal or real property;
- (3) A loan transaction where the county is acting as a debtor or a creditor;
- (4) Lease and franchise agreements;
- (5) Agreements to use county real property; or,
- (6) Gifts of materials, equipment, supplies or services to the county.

*Contractor* shall mean a prime contractor or vendor on a county contract.

*County* shall mean Fulton County.

*Day or days* shall refer to calendar days.

*Department of Purchasing and Contract Compliance* (DPCC) shall mean the Department of Purchasing and Contract Compliance for Fulton County.

*Eligible project* shall mean:

- (1) Any county contract with an SBE participation goal attached as identified by the DPCC Administrator excluding sole source procurement, emergency procurement and contracts governed by 49 CFR Parts 23 and 26.

- (2) For purposes of this program, contract or project "value" shall mean either the expenditure of funds by the county, or the generation of revenue for the county by a contractor as a direct result of a county contract.

*Joint venture* shall mean an association of two or more persons, partnerships, corporations, or any combination of them, established to carry on a single business activity that is limited in scope and duration. The agreement establishing the joint venture, partnership or other multi-entity relationship shall be in writing. Further, participation in a joint venture shall be based on the sharing of real economic interest in the venture and shall include proportionate control over management, interest in capital acquired by the joint venture and interest in earnings.

*Small business enterprise (SBE)* shall mean a firm with a location in the Atlanta MSA which is an independent and continuing enterprise for profit, performing a commercially useful function, for which the gross revenues or number of employees, inclusive of any affiliates as defined by 13 CFR § 121.103, does not exceed the size standard for its industry as defined by 13 CFR § 121.201 (as further explained in 13 CFR §§ 121.104 through 121.107), and which has: either (1) filed a letter or other documentation from the United States Small Business Administration that establishes that the firm is certified as an 8(a) firm, small business enterprise, or HUBZone firm; (2) a letter or other documentation from the City of Atlanta, MARTA, or Georgia Department of Transportation (GDOT) that establishes that the firm is certified as a DBE; or (3) submit proof of small business certification from a certifying agency within Georgia that applies the small business size standards consistent with or less than the applicable revenue and employment size standards for small businesses established by the United States Small Business Administration, and meets other county criteria related to SBE certification.

*SBE status* shall mean whether a firm meets the qualification criteria of an SBE, as set forth in this program.

*Supplier* shall mean a warehouse or manufacturer of materials, supplies or equipment which contracts directly with a bidder to provide such materials, supplies or equipment on an eligible project which involves a trade or service. For purposes of measuring the total contract dollars awarded or paid to suppliers on eligible projects, only amounts paid to suppliers of goods customarily and

ordinarily used based upon standard industry or trade practices shall be counted towards SBE goals.

(Res. No. 16-0864, App. A(B), 10-5-16)

Sec. 102-445. - Statement of policy.

It is the purpose of this small business enterprise program to promote the economic welfare of the people of Fulton County, to promote full and equal business opportunity for all persons doing business with Fulton County and to promote commerce by assisting SBEs to actively participate in the county's procurement process.

(Res. No. 16-0864, App. A(C), 10-5-16)

Sec. 102-446. - Duties of the department of purchasing and contract compliance.

Under this program, DPCC may have the following authority and duties for the implementation of the small business enterprise program:

- (1) Administration and enforcement of this program.
- (2) Administration and enforcement of the disadvantaged business enterprise program.
- (3) Establishment of written procedures, informal guidelines and forms as may be necessary to effectuate this program.
- (4) Monitoring compliance with the requirements of this program.
- (5) Acceptance of certification of businesses as SBEs in accordance with the standards set forth in this program.
- (6) Investigation of alleged violations of this program, and the issuance of written statements following any determination of such investigation, stating the reasons therefore and any penalty to be imposed.
- (7) Collaborating with the various county departments to ensure maximum outreach to SBEs.
- (8) Determination of whether any of the penalties set forth in section 102-447.8 should be applied to a business.
- (9) Attendance at pre-bid, pre-proposal, pre-construction and pre-work conferences.

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- (10) Provision to business entities of all forms, applications, documents and papers necessary to comply with this program.
- (11) Provision of information to potential bidders, upon request by the potential bidder, which may include names and contact information of certified SBEs, to reinforce and support outreach efforts by potential bidders.
- (12) Notification by certified mail that a bidder who has bid on and who otherwise would have been awarded a contract has the right to appeal a determination of noncompliance with this program, said appeal to be determined by the DPCC within seven calendar days of receipt of the notice of noncompliance.
- (13) Notification to the Purchasing Director of any determination of noncompliance with this program and of any appeal from any such determination.
- (14) Monitoring, for data gathering and informational purposes, utilization of SBEs on eligible projects.
- (15) Maintenance of documents, forms, records or data regarding this program as provided in this program including documents, forms, records or data regarding the dollar amounts subcontracted to or expended for services performed by subcontractors and suppliers on eligible projects, including the SBE status of each subcontractor and supplier.
- (16) Development and implementation of outreach and assistance programs to promote equal contracting opportunities for all businesses that wish to do business with the county, regardless of SBE status.

(Res. No. 16-0864, App. A(D), 10-5-16)

Sec. 102-447. - Small business assistance and procedures to ensure that SBEs have an equitable opportunity to compete for contracts and subcontracts.

- (1) *Procedures to ensure opportunities.* To the extent feasible and that there are available resources, Fulton County may utilize the following measures to ensure maximum practicable opportunities for SBE participation on county contracts:



- (a) Assist SBEs in obtaining insurance and surety bonds where necessary in the performance of contracts, including but not limited to:
  - i. Packaging contracts so that dollar amounts do not require bonding;
  - ii. Encouraging prime contractors to waive bonding or assist SBE subcontractors in obtaining bonding;
  - iii. Encouraging staged bonding where feasible, when bonding is carried over from one project stage to the next; and
  - iv. Relaxing bonding requirements for projects, to the extent permitted by Fulton County Code or state law.
- (b) Encourage the formation of joint ventures between SBEs. DPCC may also assist prime contractors in identifying interested SBEs for subcontracts;
- (c) Provide information on Fulton County's organization and contractual needs and offer instructions on bid specifications, procurement policy, procedures and general bidding requirements;
- (d) Provide specifications and requests for proposals to the SBE community in a timely manner to allow SBEs adequate time to develop responsive bids. In instances where the cost of obtaining specifications or requests for proposal is prohibitive, copies of the material would be made available at no charge to SBE development agencies;
- (e) Establish prorated payment and delivery schedules where feasible, to minimize cash flow problems faced by small firms. The county may provide guidance to SBE contractors regarding maintenance of positive flow in order that current obligations can be met;
- (f) Hold pre-bid conferences to explain SBE requirements as well as forms that must be submitted with a bid;
- (g) Permit bidders to review and evaluate successful bid documents of similar procurements via the Georgia Open Records Act;
- (h) Provide projected procurement information and contracting schedules through the office of contract compliance and other outreach efforts;
- (i) Conduct internal information workshops to inform and acquaint the county staff with the goals and objectives of Fulton County's Small Business Enterprise program and to sensitize them to the challenges faced by SBEs;

- (j) Maintain records showing specific efforts to identify and award contracts to SBEs and establish a monitoring system to ensure that all contractors, subcontractors, consultants and vendors comply with contract specifications related to SBE utilization; and
  - (k) Inform SBEs of bid notices and specifications related to their capability by placing bid notices in major local newspapers and other periodicals or on the Fulton County Website. Bid notices may also be sent to local trade associations, technical assistance agencies, economic development groups and SBEs with capabilities that may be relevant to the bid notice as identified by Fulton County's SBE data bank. Bid specifications may be made available to SBE contractor associations and technical assistance agencies. Lists of potential firms bidding as primes may also be made available to SBEs.
  - (l) Provide in contracts a provision requiring the contractor to certify it has complied with the prompt payment requirements pursuant to County Code at section 102-435(j).
- (2) *Direct assistance to SBEs.* In addition to the procedures set forth above, the DPCC may also undertake special measures to assist SBEs in overcoming barriers to participation on county contracts. This assistance may be offered directly by the county, as well as by county referral to other assistance agencies with established, comprehensive and continuous SBE development programs. Businesses requiring management and technical assistance may be identified through a questionnaire, through personal experience with these businesses and through requests for assistance. The DPCC may, to the extent feasible, offer the following direct assistance to SBEs:
- (a) Act as a resource for technical assistance. DPCC may collect, organize and disseminate information regarding available technical assistance providers in the Atlanta MSA.
  - (b) Act as a resource for financial assistance. DPCC may collect, organize and disseminate information regarding available capital or financing sources in the Atlanta MSA.
  - (c) The DPCC may provide SBEs with information regarding bonding including, providing a list of qualified service providers that supply bonding services; and may coordinate the development of programs with existing service providers in the Atlanta MSA.

- (d) Provide counseling and training sessions for SBEs. County staff may be available to interested business representatives to explain (in detail) instructions for preparation of bid specifications, the county's procurement policies, procedures and general bid requirements. DPCC would then coordinate and follow-up all requests for assistance to ensure that all necessary information was provided.
- (e) Provide coordination and referral to existing business development organizations.
- (f) Sponsor workshops and training sessions on identified SBE problem areas, including pricing and estimating, joint venture formation, accounting principles, marketing and related areas.

(Res. No. 16-0864, App. A(E), 10-5-16)

Sec. 102-447.1. - County-maintained records and reports.

The effectiveness of this program will be measured by a review of data indicating SBE participation as prime contractors, subcontractors and suppliers. In order to ensure the effective tracking of these efforts, the following shall be done:

- (1) On eligible projects, each contractor shall continuously maintain, compile, and provide to DPCC, monthly information relating to its use of SBEs on the county project. This information may include without limitation the following information for each of the SBE subcontractors and suppliers utilized by the contractor on the county project: a description of the categories of contracts awarded to SBEs; the dollar value of contracts awarded to SBEs; and contact information for the SBEs. Additionally, the contractor shall provide information regarding its progress toward attaining the SBE goal on the eligible county project.
- (2) Within 30 days after the end of a contract in which there was an SBE goal, each contractor shall provide DPCC with a report that summarizes the outcome of the project information, including without limitation: the identity of and contact information for each SBE to whom the contractor has awarded a subcontract or supplier agreement; the type of work performed or supplies provided by each subcontractor/supplier; the dollar value of each of the subcontracts/supplier agreements; and the total

percentage of the value of the county contract subcontracted to SBE subcontractors and/or suppliers.

- (3) DPCC shall track information regarding every county contract on which the prime contractor is an SBE or on which an SBE is part of a joint venture team serving as the prime contractor. The information shall include the name and contact information of the SBE, the type of contract and the dollar value of the contract.
- (4) DPCC shall prepare a consolidated report based on a compilation and analysis of the reports submitted by each contractor regarding the county's use of SBEs as prime contractors. The consolidated report will identify and assess the awards to SBEs of county contracts, prime contractors' use of SBE subcontractors and suppliers, prime contractors' progress in achieving SBE subcontract goals and other SBE development and contracting efforts. Specifically, DPCC will maintain records and prepare reports showing:
  - (a) Awards to SBE subcontractors and suppliers, including names of contractors and subcontractors, nature of the work/services performed, and the percentage of SBE participation per contract. Fulton County will obtain regular reports from prime contractors on their progress in meeting contractual SBE commitments;
  - (b) Specific efforts by contractors to identify and award contracts to SBEs;
  - (c) Electronic lists of direct mailings by contractors to SBEs;
  - (d) County contracts awarded to SBEs or prime contractors in which an SBE was a joint venture partner. This information shall include without limitation the name and contact information of the SBEs, the type of contract and the dollar value of the contract.
  - (e) Pre-bid conference information as it relates to the small business enterprise program;
  - (f) Requests for assistance from SBEs interested in bidding/proposing on Fulton County contracts and subcontracts;
  - (g) Attendance of SBEs at county-sponsored workshops, seminars and training programs; and
  - (h) Efforts to assist SBEs in acquiring bonding and insurance.

- (5) DPCC will submit annual SBE participation reports to the Board of Commissioners. These reports shall include a summary of the information described above, plus an analysis of the total dollar value of county contracts/subcontracts awarded to SBEs during the preceding year, categorized by prime contracting dollars, subcontracting dollars and supplier dollars. The percentage of the total dollar value of these contracts that was awarded to SBEs during the preceding year shall also be provided.

(Res. No. 16-0864, App. A(F), 10-5-16)

Sec. 102-447.2. - Small business enterprise program goals and counting procedures.

- (1) The Purchasing Director will set a specific percentage SBE goal on a contract-by contract basis for prime contracts, for contracts with subcontracting opportunities, and for supplier contracts, and shall have the authority to establish such SBE 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 SBEs to perform the work for that specific contract. Every bidder on an eligible project that has an SBE goal shall be required to submit, with its bid submission, the names, address, certification numbers, if applicable, of certified SBEs and any other information required by DPCC as set forth in the project's solicitation documents.
- (2) SBE participation is counted as follows:
  - (a) Once a firm is certified as an SBE, the total dollar value of the prime contract, subcontract or supplier contract awarded to the SBE by the county or the contractor is counted toward the applicable SBE goal. However, if an SBE fails to be recertified during the term of the contract, or if an SBE is decertified during the term of the contract, the dollar value of the contract awarded to that SBE cannot be counted toward the applicable SBE goal.
  - (b) The county will count toward its SBE goal 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 SBE partner in the joint venture.

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- (c) The county will count toward its SBE goal only expenditures to SBEs that perform a commercially useful function in the work of the contract.
- (d) The county will count toward its SBE goals the following expenditures to SBE 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. 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 Fulton County to be reasonable and not excessive as compared with fees customarily allowed for similar services.

(Res. No. 16-0864, App. A(G), 10-5-16)

Sec. 102-447.3. - Certification as a small business enterprise.

- (1) Prime contractors are required to provide DPCC documentation of its certification as an SBE, if applicable, and any subcontractor SBE certification at the time of bid, per the eligible project's solicitation documents, in order to count participation of a business towards an SBE goal. Certified SBEs must submit to DPCC or, if applicable, to the prime contractor, either (1) a letter or other documentation that establishes that the firm qualifies as an 8(a) or small business enterprise firm or HUBZone firm with the United States Small Business Administration; or (2) a letter or other documentation from the City of Atlanta, MARTA, GDOT or the United States Department of Transportation that establishes that the firm qualifies as a DBE; or (3) submit proof of small

business certification from a certifying agency within Georgia that applies small business size standards consistent with or less than the applicable revenue and employment size standards for small businesses established by the United States Small Business Administration, and meets other county criteria related to SBE status.

- (2) Certified SBEs must provide the prime with any information requested to verify location of the business within the Atlanta MSA.
- (3) When a firm which has previously been designated as an SBE exceeds the size standard for its industry as defined pursuant to 13 CFR § 121.201 (as further explained in 13 CFR §§ 121.104 through 121.107), it must notify the DPCC and, if applicable, the prime contractor of the change in status.

(Res. No. 16-0864, App. A(H), 10-5-16)

#### Sec. 102-447.4. - Decertification of small business enterprise.

If an SBE is decertified, the SBE has an affirmative obligation to notify the DPCC and the prime contractor of such decertification. If the prime contractor no longer meets the county's SBE goals after the decertification of the former SBE, the prime contractor shall be required, within 30 days after notification by the SBE, to demonstrate good faith efforts to substitute the decertified SBE with another certified SBE. Failure to demonstrate good faith efforts to substitute a decertified SBE with a certified SBE will result in the contractor being declared non-responsive, if done prior to the award of the contract, or the contractor being held in default of the contract, if done after the award of the contract.

(Res. No. 16-0864, App. A(I), 10-5-16)

#### Sec. 102-447.5. - Appeals.

A responsible bidder that is determined to be non-responsive to the requirements of the SBE program, and that otherwise would have been awarded a contract, as determined in consultation with DPCC, shall receive a written determination by the DPCC, via certified mail, setting forth the reasons for the determination of non-responsiveness.

Any appeal regarding the SBE program shall be subject to the appeal process provided in the County Code at section 102-453.

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(Res. No. 16-0864, App. A(J), 10-5-16)

Sec. 102-447.6. - Small business enterprise directory.

The county will create an SBE Directory that lists SBEs categorized by types of firms to facilitate identifying businesses with capabilities relevant to a particular specification. Each business listing will contain the business name, contact person, address, phone number, legal structure of the business, and details concerning the company's business specialties. North American Industrial Classification System (NAICS) Codes will be identified for each company. The DPCC will continuously update and maintain the directory on the computer and on hard copy. In compiling this directory, the DPCC will identify as many SBEs as possible that perform the types of work or provide the types of supplies needed by the county. The county will maintain and have available an updated SBE Directory and source list(s) for each bid/proposal solicitation to facilitate identifying SBEs working in areas relevant to county contracting requirements and the particular solicitations.

(Res. No. 16-0864, App. A(K), 10-5-16)

Sec. 102-447.7. - Methods by which the county may require contractors and subcontractors to comply with applicable SBE requirements.

The county's staff is available to assist contractors and subcontractors in implementing this program. As a standard procedure, such assistance may include:

- (1) Clearly setting forth any Fulton County SBE goals in specific applicable Fulton County solicitations;
- (2) Attending pre-proposal/bid conferences to explain the county's SBE program;
- (3) Identifying certified SBEs in Fulton County's database and providing a list of available, certified SBEs upon request;
- (4) Providing plan holder lists and pre-bid sign-in sheets made available to interested SBEs upon request;
- (5) Remaining available to assist bidders in developing their SBE programs;



- (6) Monitoring SBE participation levels on eligible projects throughout the duration of a contract. Contractors violating contract provisions regarding SBE participation are subject to the sanctions set forth in section 102-447.8 below; and
- (7) Monitoring prompt payment by prime contractors to SBE subcontractors, pursuant to County Code at section 102-435(j), "Methods for promoting nondiscrimination in purchasing and contracting."

(Res. No. 16-0864, App. A(L), 10-5-16)

Sec. 102-447.8. - Means to ensure bidders and contractors make good faith efforts to meet SBE contract goals.

The county shall request documentation of good faith efforts from bidders at the time of bid.

- (1) For all contracts for which SBE contract goals have been established, the bidder shall be required to submit SBE participation information to Fulton County. The award of the contract will be conditioned upon satisfaction of the requirements established by the county. The bidder shall submit, with its bid submission, the following information:
  - (a) The name, address, certification number and certifying agency of the SBE firm(s) that will participate in the contract;
  - (b) The description of the work each named SBE will perform and associated NIGP code(s); and
  - (c) The dollar amount of participation by each named SBE firm.
- (2) If the SBE participation submitted by the bidder does not meet the SBE contract goals, the bidder must submit with its bid submission evidence demonstrating that "good faith efforts" were made to meet the goals. The county will review documents submitted at the time of bid and make its determination of good faith efforts based on those submitted documents. Additional submissions will not be permitted. To determine sufficient "good faith efforts" to meet the SBE contract goal, a bidder/proposer shall document the steps it has taken to obtain SBE participation, which may include, but are not limited to, the following types of actions that are not meant to be mandatory or exhaustive:

- (a) Attendance at a pre-bid meeting, if any, scheduled by the county to inform SBEs of subcontracting opportunities under a given solicitation;
- (b) Advertisement in general circulation media, trade association publications, the county website and other media for at least 15 days before bids or proposals are due;
- (c) Written notification to SBEs that their interest in the contract is solicited;
- (d) Efforts made to select portions of the work proposed to be performed by SBEs in order to increase the likelihood of achieving the stated goal;
- (e) Good faith efforts to negotiate with SBEs for specific subcontracts, including at a minimum:
  - i. The names, addresses and telephone numbers of SBEs that were contacted;
  - ii. A description of the information provided to SBEs regarding the plans and specifications for portions of the work to be performed;
  - iii. A statement of why additional agreements with SBE were not reached;
  - iv. Concerning each SBE, the SBE contacted but rejected as unqualified and the reasons for the bidder's conclusion; and
  - v. Efforts made to assist the SBEs contacted that needed assistance in obtaining bonding or insurance required by the competitor or the county.
- (f) To determine whether a bidder that has failed to meet SBE goals may be awarded the contract, the county will determine whether the efforts the bidder made to obtain SBE participation were "good faith efforts." Efforts that are merely pro forma are not "good faith efforts" to meet the goals. In order to award a contract to a bidder that has failed to meet SBE contract goals, DPCC will determine whether the bidder made good faith efforts to meet the county's SBE goals.
- (g) A bidder making a good faith effort would consider a number of factors in negotiating with subcontractors, including SBE subcontractors, and would take a firm's price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using SBEs is not in

itself sufficient reason for a bidder's failure to meet the contract SBE goal, as long as such costs are reasonable. Also, the ability or desire of a prime contractor to perform the work of a contract with its own organization does not relieve the bidder of the responsibility to make good faith efforts.

- (h) Prime contractors are not, however, required to accept higher quotes from SBEs if the price difference is excessive or unreasonable. In determining whether a bidder has made good faith efforts, DPCC will take into account the performance of other bidders in meeting the contract. For example, when the apparent successful bidder fails to meet the contract goal, but others meet it, DPCC may reasonably raise the question of whether, with additional reasonable efforts, the apparent successful bidder could have met the goal. If the apparent successful bidder fails to meet the goal but meets or exceeds the average SBE participation obtained by other bidders, the county may view this, in conjunction with other factors, as evidence of the apparent successful bidder having made good faith efforts.
- (i) Bidders that fail to meet SBE goals and fail to demonstrate "good faith efforts" shall be deemed non-responsive to the county's SBE requirements and shall not be eligible to be awarded the contract.
- (j) To ensure that all obligations under contracts awarded to SBEs are met, the county shall review the contractor's SBE involvement efforts during the performance of the contract. The contractor shall bring to the attention of the county any situation in which regularly scheduled progress payments are not made to SBE subcontractors.

The county may also request documentation of good faith efforts from contractors after award of a contract with SBE goals. Specifically, in the event that a subcontractor becomes decertified as an SBE after contract award, the subcontractor will be required to notify the prime contractor of decertification and the prime contractor shall either replace the decertified SBE subcontractor by an equivalent SBE certified firm or provide documentation of good faith efforts.

(Res. No. 16-0864, App. A(M), 10-5-16)

Sec. 102-447.9. - Penalties for noncompliance.

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A contractor who fails to comply with any portion of this program, and whose failure to comply continues for a period of 30 calendar days after the contractor receives written notice of such noncompliance from the Purchasing Director, shall be subject to any or all of the following penalties:

- (1) Withholding of ten percent of all future payments for the eligible project until DPCC determines that the contractor is in compliance with this program.
- (2) Withholding of all future payments under the eligible project until it is determined that the contractor is in compliance with this program.
- (3) Cancellation of the eligible project.
- (4) Refusal of all future contracts or subcontracts with the county for a minimum of one year and a maximum of five years from the date upon which this penalty is imposed.

(Res. No. 16-0864, App. A(N), 10-5-16)

Sec. 102-447.10. - Outreach to SBEs.

Fulton County considers information dissemination and communication with SBEs as an integral part of the county's SBE program. As a part of its outreach program, DPCC may solicit input from representatives of SBEs, trade associations and community organizations. This input will serve several important functions, including:

- (1) Providing information to identify additional SBE firms;
- (2) Assisting in refining SBE program goals and procedures;
- (3) Disseminating procurement opportunities to SBEs; and
- (4) Providing an independent assessment of the effectiveness of the county's SBE program.

(Res. No. 16-0864, App. A(O), 10-5-16)

Sec. 102-447.11. - Procedures to require that participating SBEs are identified by name, by bidders for contracts.

The county may indicate, in specific solicitations for contracts that are determined to provide opportunities for SBE participation, goals for the use of

SBE firms. Solicitations may require all bidders to submit a written assurance of meeting the goals in their bids or proposals. Bids may also include a proposed schedule of SBE participation that lists the names of SBE subcontractors, a description of the work each is to perform and the dollar value of each proposed SBE subcontract. If the SBE participation does not meet the SBE contract goals, the bidders must submit sufficient information and evidence demonstrating that the bidder made good faith efforts to meet the goals on designated contracts.

Bidders may be required to submit this information at a time to be determined by DPCC. Agreements between a bidder and an SBE in which the SBE promises not to provide subcontracting quotations to other bidders shall be prohibited.

(Res. No. 16-0864, App. A(P), 10-5-16)

Sec. 102-447.12. - Prime contracting guidelines.

- (1) As early in the acquisition planning process as practicable, but no later than 30 days before the issuance of a solicitation, a user or procuring agency must coordinate with DPCC when a procurement is valued over \$100,000.00 in order to determine potential measures to be taken to maximize prime participation of SBEs in the procurement.
- (2) If DPCC believes that a proposed procurement will render SBE prime contract participation unlikely, then DPCC may recommend to the procuring agency alternative procurement methods which would increase SBE prime contract participation. Such alternatives may include:
  - (a) Breaking up the procurement into smaller discrete procurements; and
  - (b) Breaking out one or more discrete components.
- (3) Where methods under subsection (2)(b) are not feasible, DPCC will work with the procuring agency to recommend a strategy that preserves SBE prime contract participation to the maximum extent practicable. DPCC will also work to recommend that SBE participation is maximized through teaming arrangements and subcontracting opportunities.
- (4) Nothing in this section shall be interpreted to mandate increased participation of SBEs where such increased participation would significantly affect the ability of a user agency to complete a given project.

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(Res. No. 16-0864, App. A(Q), 10-5-16)

Sec. 102-447.13. - Severability.

If any provision of this program or any application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this division which can be given effect without the invalid provisions or applications, and are to this end declared to be severable.

(Res. No. 16-0864, App. A(R), 10-5-16)

Sec. 102-447.14. - Periodic review.

There shall be a periodic review and analysis of the program to determine if adjustments need to be made prior to its sunset within five years.

(Res. No. 16-0864, App. A(S), 10-5-16)

Sec. 102-447.15. - Sunset.

This program shall sunset on December 31, 2022.

(Res. No. 16-0864, App. A(T), 10-5-16)

### Sec. 102-447.16. – Small Business Reserve Program

(a) The purchasing agent, in consultation with the OCC, may designate certain procurement projects or contracts as available for Bid and award only to certified Small Business Enterprises (“SBEs”), as identified and discussed in the Small Business Enterprise Program herein (Division 10). The Small Business Reserve designation for a particular project is discretionary on the part of the purchasing agent and should be applied only where there is a reasonable expectation that there will be at least three (3) responsible and responsive bids for certified SBEs and that the award will be made at a fair market price/value.

(b) The intention of the Small Business Reserve Program is to increase opportunities for SBEs to perform as prime contractors on County projects/contracts, growing capacity and gaining valuable experience. Accordingly, to obtain a Small Business Reserve Program project, the bidding

SBE must self-perform a significant percentage of the contracted work (a minimum of 50%), limiting its ability to subcontract the work.

DIVISION 11. - LEGAL AND CONTRACTUAL REMEDIES

Sec. 102-448. - Right to protest; due process.

(a) *Applicability.* The provision of this Code section applies to the following Code sections:

- (1) Section 102-373, Competitive sealed bidding;
- (2) Section 102-374, Competitive sealed proposals;
- (3) Section 102-375, Competitive selection procedures for professional and consultant services;
- (4) Section 102-376, Qualification based selection procedures for architectural and engineering services for federally funded projects;
- (5) Section 102-381, Prequalification of offerors (request for qualifications);
- (6) Section 102-382, Request for quotation;
- (7) Section 102-389, Responsibility of offerors;
- (8) Section 102-449, Debarment; and
- (9) Section 102-450, Suspension of contractors.

(b) *Right to protest.* Any actual offeror that has submitted a bid/proposal for a particular procurement and is aggrieved in connection with the solicitation or award of the contract shall protest in writing to the purchasing agent after the date that the specific bid or proposal is submitted. No protest will be accepted or considered prior to the date the specific bid or proposal is submitted; it will be considered untimely. All protests shall set forth in full detail the factual and legal basis for the protest and specific relief sought by the protestor. Protests arising from factual or legal basis that the protestor knew or should have known prior to the submission of the bid/proposal must be submitted within three business days of the submission of the bid/proposal. Protests arising from factual or legal basis that the protestor knew or should have known subsequent to the date the bid/proposal was submitted must be submitted within ten business days after the protestor knew or should have known of such basis, but in no event shall any protest be submitted more than ten

business days after the award of the contract. Untimely protests will not be considered by the purchasing agent and will be simply denied as untimely. Decisions on timeliness by the purchasing agent are not appealable. This Code section shall be described in all procurement solicitations.

- (c) *Authority to resolve protest.* The purchasing agent shall have the authority to settle and resolve any and all protest of an aggrieved bidder or offeror concerning the solicitation or award of a contract prior to the filing of an appeal to the procurement hearing officer, where the right to appeal to a hearing officer is allowable under this Code section.
- (d) *Stand procurements during protest.* When a protest has been properly and timely filed and such filing is before a contract award has been approved and spread on the minutes of the commissioners at an open meeting, or before a purchase order has been signed and issued by the purchasing agent, the purchasing agent shall not award the contract until the protest has been settled; except, the purchasing agent, with the approval of the county manager after consulting with the user department, may make a written determination of the award of a contract without delay if necessary to protect substantial interests of the county.
- (e) *Making information on protest available.* The purchasing agent shall upon written request, make available to any interested party information submitted that bears on the substance of a protest except where the information is proprietary, confidential, or otherwise submitted or required to be withheld by law or regulation. Entities who desire, for business purposes, to keep its bid or protest documentation confidential shall so request by specifically identifying such information within documents submitted and indicating on the front page of each document that it contains such nonpublic information.
- (f) *Decision on protest.* If a protest is timely filed, the purchasing agent shall inform the protestor of the decision in writing within fifteen business days or, if the purchasing agent requires more than fifteen business days to render a decision, the purchasing agent will advise the protestor within the initial ten days of the additional amount of time required to render a decision on the protest.
- (g) *Finality of decision.* A decision under subsection (f) of this section is final and conclusive, unless fraudulent or the protestor, having the right to file under this division, files an administrative appeal with the procurement appeals hearing officer in accordance with this division.



(Res. No. 13-0052, 1-23-13)

**Note**— Formerly Code, Pt. I, § 2-324.

Sec. 102-449. - Debarment.

(a) *Definitions.* The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section:

*Contractor* means any individual, partnership, corporation or other business entity that seeks to obtain any construction, procurement, concession, services, lease, subcontract or other contract with the county.

*Debarment* means action taken by the county to bar a company from doing business with the county for a period at the county's sole discretion.

*Suspension* means action taken by the county to bar a contractor from doing business with the county during a period when investigation into possible debarment is underway. The suspension period will not exceed 120 days.

(b) *Authority to suspend or debar.* After reasonable notice to the entity involved and reasonable opportunity for that entity to be heard, the purchasing agent, after consultation with the user department, the county manager and the county attorney, shall have the authority to suspend an entity for cause from consideration for award of county contracts. As used in this section, the term entity means any business entity, individual, firm, contractor, subcontractor, or business corporation, partnership, limited liability corporation, or joint venture, however designated or structured; provided, further, that any such entity shall also be subject to suspension or debarment under this section if any of its constituents, members, subcontractors at any tier, or subcontractors at any tier of such entity's constituents or members, is found to have committed any act constituting a cause for suspension or debarment and the entity, or any constituent or member, knew or should have known of the commission of the act. The suspension or debarment shall be for a period not to exceed three years, unless cause is based on a felony conviction for an offense related or associated with fraudulent contracting or misappropriation of funds wherein the suspension shall not exceed seven years.

(c) *Causes for suspension or debarment.* The causes for suspension or debarment include:

- (1) Conviction for commission of a criminal offense as an incident to obtain or attempting to obtain a public or private contractor subcontract, or in performance of such contract or subcontract;
- (2) Conviction of 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;
- (3) Conviction of state or federal antitrust statutes arising out of the solicitation and submission of bids or proposals;
- (4) Violation of contract provisions, as set forth below, of a character which is regarded by the purchasing agent to be so serious as to justify suspension action:
  - a. Failure to perform in accordance with the specifications within a time limit provided in a county contract;
  - b. A recent record of failure to perform or unsatisfactory performance in accordance with the terms of one or more contracts; provided, that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be a basis for suspension;
  - c. Material misrepresentation of the composition of the ownership or workforce or business entity certified to the county as a minority business enterprise; or
  - d. Falsification of any documents.
- (5) Commission or solicitation of any act that would constitute a violation of the ethical standards set forth in this Code.
- (6) Knowing misrepresentation to the county, of the use which a majority owned contractor intends to make a minority business enterprise (a business entity at least 51 percent of which is owned and controlled by minority persons, as defined in this Code and certified as such by the county), as a subcontractor or a joint venture partner, in performing work under contract with the county;
- (7) A determination that the involved individual, firm, or other business entity has previously received an abatement of taxes, but failed to comply with

the prerequisite terms, conditions and obligations of an enterprise zone created pursuant to any applicable law.

- (d) *Initiation of suspension or debarment action.* Written notice of a proposed suspension or debarment action shall be sent by certified U.S. mail, return receipt requested to the bidder, offeror, contractor or subcontractor. This notice shall state the suspension or debarment as being considered and set forth the reasons for the action. The purchasing agent shall invite such notified persons and their counsel, if known, to submit records and any and all documents in defense of such suspension or debarment action to be received by the purchasing agent within 14 days of notice of the proposed suspension or debarment action. Notice of proposed suspension or debarment shall also be sent to the county attorney and the user department. Failure to submit a timely written response to the purchasing agent shall result in a waiver of review.
- (e) *Finding cause of suspension or debarment.* The purchasing agent shall prepare a written determination of suspension or debarment based on a finding of any of the foregoing causes for suspension, as enumerated in this section. The bidder, offeror, contractor or subcontractor shall have ten days to file comments upon a determination with the county manager. After consultation with the county attorney, the county manager shall issue a final decision. Both the purchasing agent's decision and the county manager's decision shall recite the evidence relied upon. When suspension or debarment is ordered, the length of the suspension or debarment, the reasons for such action and to what extent affiliates are affected shall be set forth.
- (f) *Maintenance of list of suspended or debarred entity.* The purchasing agent shall maintain and update a list of suspended and debarred entities. All departments within the county shall be routinely supplied with this list and such list is a public document available to the public upon request.
- (g) *Authority of purchasing director.* Under this division, the purchasing director has the power to:
  - (1) Hold informal conferences to settle issues, simplify and set forth the issues in a proceeding, or to consider other matters that may aid in the expedition disposition of the proceeding either by consent of the parties.
  - (2) Impose time limits and require parties to produce for examination any documentation that will assist in the purchasing agent's decision.

(h) *Effect of suspension or debarment decision.* A suspension or debarment decision shall take effect upon issuance and mailing of written notice of such action to the contractor or prospective contractor. After the suspension or debarment decision takes effect, the contractor shall remain suspended or debarred until the period specified in the decision expires, but in no event longer than three years.

(Res. No. 13-0052, 1-23-13)

**Note**— Formerly Code, Pt. I, § 2-322.

Sec. 102-450. - Suspension of contractors.

All contractors who have a recent record of unsatisfactory performance, or who fail to perform in accordance with the specifications or within the time limit provided in a contract shall be subject to suspension from doing business with Fulton County, provided that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be a basis for suspension, in accordance with purchasing policies and procedures for a period to be determined by the purchasing agent.

(Res. No. 13-0052, 1-23-13)

**Note**— Formerly Code, Pt. II, § 102-355.

Sec. 102-451. - Solicitations or awards in violation of law.

- (a) *Applicability.* This section applies where it is determined by the purchasing agent, that a solicitation or award of a contract is in violation of law.
- (b) *Remedies prior to award.* If the protest is timely and properly filed prior to an award, and the purchasing agent, after consultation with the county attorney determines that a solicitation or proposed award of a contract is in violation of law, then the solicitation of proposed award shall be canceled or revised to comply with the law.
- (c) *Remedies after award.* If the protest is timely and properly filed after an award, and the purchasing agent, after consultation with the county attorney, determines that the solicitation or award of a contract is in violation of applicable law, then:

- (1) If the entity awarded the contract has not acted fraudulently or in bad faith:
  - a. The contract may be ratified and affirmed, provided it is determined that so doing is in the best interest of the county; or
  - b. The contract may be terminated and the entity awarded the contract shall be compensated for the actual expenses of the contract, prior to the termination.
- (2) If the entity awarded the contract has acted fraudulently or in bad faith:
  - a. The contract may be declared null and void or voidable; or
  - b. The contract may be ratified and affirmed if such action is in the best interest of the county, without prejudice to the county's right to such damages as may be appropriate.

(Res. No. 13-0052, 1-23-13)

**Note**— Formerly Code, Pt. I, § 2-323.

Sec. 102-452. - ~~Procurement appeals~~ Hearing officers.

- (a) *Appointment and tenure.* The county attorney shall ~~appoint~~ recommend five procurement appeals hearing officers who shall be confirmed by the board of commissioners. Two hearing officers shall be appointed for contract compliance appeals and three hearing officers shall be appointed for procurement appeals. The hearing officers shall possess the educational background and public or private employment experience to examine facts and apply legal principles, including, but not limited to experience with evidentiary and civil procedure issues, to controversies regarding the following subjects: procurement of goods and services, construction, professional and consultant services and information technology. No county employee or official shall be appointed as a hearing officer who is a contractor or subcontractor or who owns any interest in any contracting or subcontracting firm or who does business with the county as a contractor. The officer shall serve a two-year term and shall not be eligible to serve more than two consecutive terms.
- (b) *Qualifications.* The officers shall possess the educational background and public or private employment experience to examine facts and apply legal

principles, including but not limited to experience with evidentiary and civil procedure issues, to controversies regarding the following subjects: procurement and disposal of goods and services, construction, professional and consultant services and information technology. No county employee or official shall be appointed who is a contractor or subcontractor or who owns any interest in any contracting or subcontracting firm or who does business with the county as a contractor.

~~(c) *Authority and scope of review.* With the exception of controversies that are the subject matter of litigation or pending administrative review members of the hearing officers panel shall have the authority to review and determine any issue or matter in controversy arising from the adoption, implementation and enforcement of this article.~~

~~(cd)~~ *Compensation and access to facilities.* The hearing officers shall receive fair compensation at an hourly rate to be determined by the county attorney for all time expended in the performance of duties created by this section. All hearing shall be open to the public and shall be held in a suitable place within a Fulton County building. Administrative and support services, as may be required by the hearing officer in the performance of such duties, shall be furnished by the county and the cost of same shall be borne by the county.

~~(de)~~ *Authority of procurement appeals hearing officers.* The procurement appeals hearing officers shall have the authority to review and determine any appeal by an aggrieved party from a determination by the purchasing agent that is authorized in section 102-448(b). The contract compliance appeals hearing officers shall have the authority to review and determine any appeal by an aggrieved party that is authorized in section 102-439(b).

(Res. No. 13-0052, 1-23-13)

Sec. 102-453. – Procurement Appeals.

(a) *Time for filing notice of appeal.* For an appeal before a procurement appeals hearing officer under the previous section, the aggrieved person shall file a notice of appeal with the purchasing agent with a copy to the head of the applicable using agency and county attorney within seven business days of receipt of the notice of an adverse action by the purchasing agent concerning the person's protest.

- (b) *Notice of hearing date; hearing.* Upon receipt of the notice of appeal from the aggrieved party by the purchasing agent, the purchasing agent shall forward the notice to a procurement appeals hearing officer within three business days of receipt of the notice. The duties of the procurement appeals hearing officer shall be as follows:
- (1) The procurement appeals hearing officer shall set a hearing date not more than thirty business days from the date of receipt of the notice from the purchasing agent. The hearing officer shall cause notice of the hearing date, time and location to be served upon all parties, by registered certified mail with return receipt. This notice may also be provided via electronic message.
  - (2) At the hearing, all parties shall be provided a fair and impartial hearing and shall be allowed to offer argument as to whether the purchasing agent's decision should be affirmed or overturned. Said hearing will not be de novo, but shall be of an appellate nature.
- (c) *Decision.* The procurement appeals hearing officer shall, within seven twenty business days of the hearing, make a written decision on the appeal, which decision shall affirm or deny the decision by the purchasing agent. The officer shall decide whether:
- (1) The solicitation or award being appealed was in accordance with applicable law and the terms and conditions of the solicitation; or
  - (2) The debarment or suspension being appealed was in accordance with applicable law and in the best interest of the city county and was fair.
- (d) *Notice of decision.* ~~The procurement appeals hearing officer shall issue written notice of the decision on the appeal to all parties within seven days of the hearing.~~ The notice of the decision shall be sent to all parties by registered certified mail with return receipt and shall set forth the reasons for the decision.
- (e) *Standard of review for factual issues.* The determination of the procurement appeals hearing officer shall be final and conclusive, unless arbitrary, capricious, fraudulent or clearly erroneous.
- (f) *Discontinuance of appeal.* After a notice of appeal to the purchasing agent has been filed, a protestor may not discontinue such appeal without prejudice, except as authorized by a procurement appeals hearing officer.

- (g) *Authority to resolve protest.* One of three independent hearing officers appointed by the board of commissioners shall have the authority to settle and resolve any and all protest on aggrieved bidder or offeror concerning solicitation or award of a contract prior to commencement of an action in court concerning the controversy.
- (h) *Remedies.* If the protest is sustained, the county shall remedy the protest by awarding the protesting bidder, offeror, contractor or subcontractor the reasonable cost incurred in connection with the bid including bid preparation cost and cost other than attorney's fees.
- (i) *Finality of decision.* A decision under subsection (e) of this section is final and conclusive as to the county appeal process. Any further action shall be through the court.
- (j) *Fees.* The party losing the appeal to the purchasing hearing officer will be responsible for the procurement appeals hearing officer's fees and costs.

(Res. No. 13-0052, 1-23-13)

## DIVISION 12. - INTERGOVERNMENTAL RELATIONS

### Sec. 102-454. - Definitions.

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section:

*Cooperative purchasing* means procurement conducted by or on behalf of more than one public procurement unit.

*Public procurement unit* means the United States government or any department, agency or division thereof; any county, city, town and any subdivision of the state or public agency of any such subdivision; public authority, educational, health or other institution; any entity which expends public funds for procurement of supplies, services or construction.

(Res. No. 13-0052, 1-23-13)

### Sec. 102-455. - Cooperative purchasing authorized.

The purchasing agent may participate in, sponsor, conduct or administer a cooperative purchasing agreement for the procurement of supplies, services or



construction with one or more public procurement units in accordance with an agreement entered into between the participants. Such cooperative purchasing agreements may include but are not limited to joint or multiparty contracts between public purchasing units.

(Res. No. 13-0052, 1-23-13)

Sec. 102-456. - Sale, acquisition or use of supplies.

The purchasing agent may sell to, acquire from or use any supplies belonging to another public procurement unit independent of the requirements of division 3 of this article.

(Res. No. 13-0052, 1-23-13)

Sec. 102-457. - Cooperative use of supplies or services.

The purchasing agent may enter into an agreement, independent of the requirements of division 3 of this article, with any public procurement unit for the cooperative use of supplies or services under the terms agreed upon between the parties.

(Res. No. 13-0052, 1-23-13)

Sec. 102-458. - Joint use of facilities.

The purchasing agent may enter into agreements for the common use or lease of warehousing facilities, capital equipment and other facilities with another public procurement unit under the terms agreed upon between the parties.

(Res. No. 13-0052, 1-23-13)

Sec. 102-459. - Use of state contracts.

The purchasing agent may procure supplies, services or construction items through contracts established by purchasing division of the state where such contracts and contractors substantially meet the requirements of this article.

(Res. No. 13-0052, 1-23-13)

Sec. 102-460. - Purchase of surplus and excess federal property authorized.

The purchasing agent may purchase surplus and excess personal and real property from the United States government of any department, agency or division thereof, independent of the requirements of division 3 of this article.

(Res. No. 13-0052, 1-23-13)

Sec. 102-461. - Board authorization required.

The purchasing agent shall not procure, acquire, sell, dispose of, lease, or use any supplies, services, construction items or professional and consultant services, facilities, equipment, or real property on behalf of the county pursuant to any state contract or cooperative purchasing transaction or contract established by a public procurement unit for an amount over \$49,999.99 without BOC approval.

(Res. No. 13-0052, 1-23-13)

#### DIVISION 13. - ETHICS IN PUBLIC CONTRACTING

Sec. 102-462. - Definitions.

*Business* means any corporation, partnership, proprietorship, organization, self-employed individual and any other entity operated for economic gain, whether professional, industrial, or commercial, and other entities, which for purposes of federal income taxation are operated as nonprofit organizations.

*Confidential information* means information which has been obtained in the course of performing official duties as an officer or employee.

*Contract* means any written or otherwise established agreement, lease, claim, account, or demand against any person, to which the county is an actual or otherwise interested party.

*Gifts and favors* means anything of value given by or received from a prohibited source.

*Immediate family* means an officer or employee and the spouse of or an individual in a certified committed relationship or legally recognized domestic partnership with an officer or employee, as well as the parents, children, brothers, and sisters of an officer or employee.

*Intent* means the state of mind in which a person seeks to accomplish a given result through a deliberate course of action. Intent is the design, resolve, or determination with which a person acts, and which can seldom be proved by direct evidence, but must usually be proved by circumstances from which intent may be inferred.

*Intent to influence* means to deliberately and willfully act in a manner chosen and designed to exert power over others, or to modify or affect the actions of others, even if in a gentle, subtle, or gradual fashion.

*Interest* means any financial interest or personal interest or any other direct or indirect pecuniary or material benefit held by or accruing to an officer or employee as a result of a contract or transaction which is or may be the subject of an official act or action by or with the county. Unless otherwise provided, the term "interest" does not include any remote interest. For purposes of this code of ethics, the term "financial interest" means any interest which shall, directly or indirectly, yield a monetary or other material benefit to the officer or employee, or to any person employing or retaining the services of the officer or employee, or to the immediate family of the officer or employee; and, the term "personal interest" means any interest arising from relationships between the officer or employee and members of his or her immediate family or from associations with any business, whether or not a financial interest is involved. For the purposes of this code of ethics, and without being limited thereto, an officer or employee shall be deemed to have an interest in matters and transactions involving:

- (1) Any person in his or her immediate family;
- (2) Any person with whom a contractual relationship (either written or implied) exists, whereby he or she may receive any payment or other benefit, including any agreement for employment; and
- (3) Any business in which he or she is a director, officer, employee, prospective employee, or substantial shareholder.

*Matter or transaction* means the subject of any official act or action by an officer or employee or any governing body of the county or any county agency.

*Officer or employee* means any elected officer of the county, any person appointed to a county Board, commission, or agency by the board of commissioners, any person employed by the county, including contractual employees, and any person retained by the county or any agency of the county in a consulting capacity, who is exclusively obligated to the county for a period of 90

or more days. This definition does not include members of advisory boards having no decision-making authority; provided, however, that county employees serving on the Advisory Committee of the Atlanta/Fulton County Water Resources Commission continue to be included within this definition while serving on that advisory committee. This definition includes retired former employees and other former employees of the county during any period in which they are later employed or retained by the county or any county agency.

*Official act or action* means any executive, legislative, administrative, appointive, ministerial, or discretionary act taken by the board of commissioners or the county manager, as well as any such act taken by any other officer or employee in the performance of his or her official duties.

*Paid* means the receipt of, or right to receive, a salary or a commission, percentage, brokerage, or contingent fee for services.

*Participate* means to take part in any official act, actions, or proceedings personally, and to take part in such acts, actions, or proceedings as an officer or employee for the purpose of performing a duty, granting or denying approvals, rendering decisions, or failing to so act or perform such a duty.

*Participation in contracting means* , with respect to current officers and employees as well as former officers and employees during the time periods set forth herein), to take part in any official act, actions, or proceedings personally, which acts, actions, or proceedings involve county contracts, and to take part in such acts, actions, or proceedings as an officer or employee for the purpose of performing a duty, or otherwise to grant or deny approvals, make recommendations, prepare any part of purchasing specifications or solicitations for bids or proposals, to influence the content of such documents, to render advice regarding such documents or contracts or the interpretation or meaning of county regulations and policies relevant to such documents or contracts, to investigate, audit, review, or make any ruling or determination regarding any proceedings or applications relating to such documents or contracts or related subcontracts, or to attempt to or actually influence the official acts, actions, proceedings, or decisions of others.

*Person* means any individual, business, representative, fiduciary, trust, or association.

*Prohibited source* means any person, business, or entity that the involved officer or employee knows or should know:

- (1) Is seeking official action from the county;
- (2) Is seeking to do or is doing business with the county;
- (3) Represents a person who is seeking official action from the county or who is seeking to do or is doing business with the county;
- (4) Has interests that may be affected by the performance or nonperformance of official duties by the officer or employee; or
- (5) Is a registered lobbyist in accordance with state law.

*Reprimand* means an action taken by the board of ethics, which constitutes and transmits a public disapproval of the conduct of an officer or employee.

(Res. No. 13-0052, 1-23-13)

Sec. 102-463. - Employee conflict of interest.

- (a) *Conflict of interest.* It shall be a breach of ethical standards for any employee to participate directly or indirectly in procurement when the employee knows:
  - (1) The employee or any member of the employee's immediate family has a financial interest pertaining to the procurement;
  - (2) A business or organization in which the employee, or any member of the employee's immediate family, has a financial interest pertaining to the procurement; or
  - (3) Any other person, business, or organization with whom the employee or any member of the employee's immediate family is negotiating or has an arrangement concerning prospective employment is involved in the procurement.
- (b) *Discovery of actual or potential conflict of interest, disqualification, and waiver.* Upon discovery of an actual or potential conflict of interest, an employee shall promptly submit a written statement of disqualification and shall withdraw from further participation in the transaction involved. The employee may, at the same time, apply to the ethics commission in accordance with sections 2-66 et seq., for an advisory opinion as to what further participation, if any, the employee may have in the transaction.

(Res. No. 13-0052, 1-23-13)

Sec. 102-464. - Employee disclosure requirements.

- (a) *Disclosure.* Any employee that serves on a vendor selection committee or a designated advisor to the vendor selection committee for a competitive sealed proposal shall complete a confidentiality agreement and disclosure report and disclose whether the employee or any member of the employee's immediate family has a business or financial interest pertaining to the procurement.
- (b) *Violation.* Violation of the confidentiality agreement and disclosure report shall result in removal of the employee from the vendor selection committee or as designated advisor to the vendor selection committee and may result in the cancellation of the solicitation.

(Res. No. 13-0052, 1-23-13)

Sec. 102-465. - Gratuities and kickbacks.

- (a) *Gratuities.* It shall be unethical for any person to offer, give or agree to give any employee or former employee or for any employee or former employee to solicit, demand, accept or agree to accept from another person a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation or any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy or other particular matter pertaining to any program requirement or a contract or subcontract or to any solicitation or proposal therefor.
- (b) *Kickbacks.* It shall be unethical for any payment, gratuity or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or any person associated therewith as an inducement for the award of a subcontract or order.
- (c) *Contract clause.* The prohibition against gratuities and kickbacks prescribed in this section shall be conspicuously set forth in every contract and solicitation therefor.

(Res. No. 13-0052, 1-23-13)

Sec. 102-466. - Contingent fees.

- (a) *Prohibition.* It shall be unethical for a person to be retained or to retain a person to solicit or secure a county contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, except for retention of bona fide employees of bona fide established commercial selling agencies for the purpose of securing business.
- (b) *Contract clause required.* Every county contract or purchase order shall contain the clause prohibiting contingent fees, as follows:

"The vendor or contractor or firm warrants that it has not employed or retained any company or person, other than a bona fide employee working for the vendor or contractor or firm, to solicit or secure this contract or purchase order; and that the vendor or contractor or firm has not paid or agreed to pay any person, company, association, corporation, individual or firm, other than a bona fide employee working for the vendor or contractor or firms, any fee, commission, percentage, gift or any other consideration contingent upon or resulting from the award or making of this agreement. For the breach or violation of the above warranty, and upon a finding after notice and hearing, the county shall have the right to terminate the contract or purchase order without liability, and, at its discretion, to deduct from the contract or purchase order price, or otherwise recover the full amount of such fee, commission, percentage, gift or consideration." The requirement of incorporating the clause prohibiting contingent fees into purchase orders and contracts shall be considered met when such quoted language is set forth in an exhibit attached to the contract and appropriate language incorporating the exhibit into the contract is set forth in the contract."

(Res. No. 13-0052, 1-23-13)

Sec. 102-467. - Contemporaneous employment.

Unless otherwise provided in this article, it shall be unethical under this division for any employee who is participating directly or indirectly in the procurement process to become or to be, while such an employee, the employee of any person contracting with the governmental body by whom the employee is employed.

(Res. No. 13-0052, 1-23-13)

## # 19-0854

Sec. 102-468. - Violations.

- (a) Any intentional violation of this code of ethics in public contracting, the furnishing of false or misleading information to the purchasing agent with respect to the disclosures and duties outlined herein shall subject the violator to:
  - (1) The purchasing agent making a recommendation for imposition of an administrative sanction not to exceed \$1,000.00, which sanction shall be deposited into the general fund of Fulton County; and/or
  - (2) A public reprimand.
- (b) In addition to those sanctions provided for at subsection (a), with regard to a violation of this code of ethics committed by an employee of Fulton County, the purchasing agent may recommend to the board of commissioners or the appropriate appointing authority disciplinary action in accordance with the personnel rules and regulations of Fulton County.
- (c) In addition to those sanctions provided for at subsection (a), with regard to a violation of this code of ethics committed by any person, business, or other entity, the purchasing agent may commence debarment proceedings in accordance with applicable ordinances of Fulton County.

(Res. No. 13-0052, 1-23-13)

Secs. 102-469—102-490. - Reserved.