

1 AN ORDINANCE PURSUANT TO THE HOME RULE PROVISION OF THE
2 GEORGIA CONSTITUTION REPEALING SECTIONS OF CERTAIN LOCAL
3 ACTS WHICH ESTABLISHED CERTAIN PROVISIONS OF THE FULTON
4 COUNTY PURCHASING CODE AND AMENDING THE FULTON COUNTY
5 PURCHASING CODE PROVIDING FOR THE MANNER OF PROCUREMENT
6 OF GOODS AND SERVICES FOR FULTON COUNTY, GEORGIA; AND FOR
7 OTHER PURPOSES.

8 WHEREAS, in 1998, the Georgia General Assembly enacted Ga. Laws 1998, p.
9 583, as amended from time to time, which established Fulton County's current
10 provisions for purchasing thresholds; and

11 WHEREAS, in 2013, Fulton County undertook a comprehensive revision of the
12 Purchasing Code, but did not seek to remove any of the provisions that were enacted
13 by the Georgia General Assembly; and

14 WHEREAS, the Fulton County Department of Purchasing and Contract
15 Compliance provides services to all County departments, agencies and officials, but like
16 many local and national employers, struggles with a decreased workforce during the
17 ongoing Great Resignation; and

18 WHEREAS, a review of the purchasing thresholds and practices utilized by
19 comparable metropolitan Atlanta jurisdictions reveals that Fulton County has been
20 limited by the above referenced Georgia General Assembly's Local Act while other
21 jurisdictions are not similarly hampered; and

22 WHEREAS, the Fulton County Board of Commissioners has determined that it is
23 in the best interest of Fulton County procurement practices to make changes to the
24 Purchasing Code that will streamline the procurement process, including adjustments to
25 the purchasing thresholds and other stylistic and integration changes; and

26 WHEREAS, the proposed revisions to the Purchasing Code will:

- 27 (1) Align Fulton County informal procurement thresholds with those of
28 neighboring jurisdictions of comparable population and budget size,
- 29 (2) Increase Fulton County's competitiveness within the business community;
- 30 (3) Provide increased flexibility to User Departments to procure goods and
31 services without a formal solicitation while still utilizing open and competitive
32 processes, and

1 (4) Streamline procurement processes to make available staff more efficient; and
2 **WHEREAS**, the Georgia Constitution provides each county with Home Rule
3 authority to repeal or amend Local Acts such as Ga. Laws 1998, p. 583, that are
4 applicable to that particular county.

5 **NOW, THEREFORE, BE IT ORDAINED**, that pursuant to the Home Rule
6 authority granted to Fulton County to amend or repeal local acts applicable to its
7 governing authority by Article 9, Section 2, Paragraph 1(b) of the Georgia Constitution,
8 the Fulton County Board of Commissioners hereby amends Sections 1 and 2 of Ga.
9 Laws 1998, p. 583.

10 **BE IT FURTHER ORDAINED**, that the Fulton County Board of Commissioners
11 adopts, the Fulton County Purchasing Code amendments outlined in "Attachment A,"
12 which is attached hereto.

13 **BE IT FINALLY ORDAINED**, that this Ordinance amendment becomes effective
14 upon adoption, that the amended Fulton County Purchasing Code shall apply to all
15 procurements initiated after adoption of this ordinance and that all ordinances and parts
16 of ordinances in conflict with this Ordinance are hereby repealed.

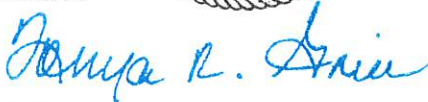
17 **SO PASSED AND ADOPTED**, by the Board of Commissioners of Fulton County,
18 Georgia this 16th day of March, 2022.



19
20 **FULTON COUNTY BOARD OF**
21 **COMMISSIONERS:**

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23 By: 
24 Robert L. Pitts, Chairman
25
26

ATTEST:



Tonya Grier
Clerk to Commission

ITEM # 22-0203 RCS 3/16/22
RECESS MEETING

ITEM # 22-0203 RM 4/13/22
REGULAR MEETING

APPROVED AS TO FORM

M. H. Jo
Y. Soo Jo

1 P:\CALegislation\Pur\Ordinances\3.16.22 Home Rule Change to Purchasing Thresholds.doc

ITEM # 22-0203 RCS 3/16/22
RECESS MEETING

ITEM # 22-0203 RM 4/13/22
REGULAR MEETING

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~~100,000.00, 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.

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- (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(s)—Management of the joint venture, § 102-675

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.

(e) *Contract Extension.* Under this article, the purchasing agent may extend a contract once for 90 days after the date of expiration under the contract for re-procurement purposes only, when the following conditions are met:

(1) The purchasing agent determines in writing that the extension of the contract is in the best interests of the city and would encourage effective competition; and

(2) The chief financial officer verifies the availability of funds.

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

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

Sec. 102-369. Authority of county manager.

No supplies, materials or equipment shall be purchased, except by the authority of the county manager, nor shall any work or labor be engaged to be done except by authority of the county manager.

Except as otherwise provided in this article, the County Manager shall have the authority to sign contracts on behalf of the County, pursuant to Ssections 2-

149 and 2-152 of Part 1, Division 4 of the Fulton County Code , in the following circumstances:

- (a) For services, construction, professional and consultant services, grant agreements and intergovernmental agreements up to \$100,000.00 on behalf of the County, subject to budgetary limitations.

(Res. No. 13-0052, 1-23-13; Ord. No. 19-0220, Exh. A, 4-10-19; Ord. No. 19-0854, Exh. A, 11-20-19)

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;~~

~~(2) All cooperative purchasing;~~

~~(13) Contract compliance reports;~~

~~(4) First source jobs; and~~

(2) Contracts up to \$100,000,00 signed by the County Manager, for purposes of spreading the same on the minutes; and

(53) Other reports that are requested by the board of commissioners.

(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~~100,000.00, 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.*
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- 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.
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- (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.
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(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(s)—Formerly Code, Pt. I, §§ 2-314 and 2-316.

Sec. 102-374. Competitive sealed proposals.

Acquisitions Greater Than \$100,000.00. Any item or service which is expected to cost or generate revenue greater than \$100,000.00, when the competitive sealed bid process is not applicable nor in the best interest of the County, shall be acquired through the competitive sealed proposal process.

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- (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:
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- (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
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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.

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- (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(s)—Formerly Code, Pt. I, § 2-320.

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

Acquisitions Greater Than \$100,000.00. Any service which is expected to cost or generate revenue greater than \$100,000.00, when the competitive sealed bid process is not applicable nor in the best interest of the County, shall be acquired through the competitive sealed proposal process.

- (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.
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(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(s)—Formerly Code, Pt. II, § 102-354.

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

Acquisitions Greater Than \$100,000.00. Any service which is expected to cost or generate revenue greater than \$100,000.00, when the competitive sealed bid process is not applicable nor in the best interest of the County, shall be acquired through the competitive sealed proposal process.

- (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;

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- (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.
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- (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
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- 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.

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- (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. 102-382. 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~~ 5,000.00 but less than ~~\$50,000.00~~ 100,000.00, 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.
- (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(s)—Formerly Code, Pt. I, § 2-315.

Sec. 102-383.1 Small purchases.

- (a) ~~Conditions for use~~General procedures. Purchases of ~~\$2,499.99~~ 5,000.00 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~~
- (12) Where the purchase does not exceed \$2,499.99 5,000.00 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.~~

Sec. 102-383.2 Purchasing card purchases.

- (a) Conditions for use.-Purchases that **do not exceed \$2,499.99** 2,500.00 per transaction, that are compliant with purchasing card policies and use funding allocated to the department under a duly enacted appropriation.
- (b) 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," "travel card," or "county t-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.

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- 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.
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- 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
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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)

Sec. 102-392. Cost or pricing data.

- (a) *Submissions relating to award of contracts.*

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- (1) *Required.* A prospective contractor shall submit cost or pricing data when the contract is expected to exceed ~~\$2,499.99~~ \$5,000.00; 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
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or pricing data was inaccurate, incomplete or not current as of the date it was submitted.

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

Sec. 102-462. 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~~ 100,000.00 without BOC approval.

(Res. No. 13-0052, 1-23-13; Ord. No. 19-0854, Exh. A, 11-20-1)