

**CHEROKEE COUNTY
PROCUREMENT ORDINANCE**



Cherokee County Board of Commissioners

Harry Johnston, Chairman

Steve West, District 1

Richard Weatherby, District 2

Benny Carter, District 3

Corey Ragsdale, District 4

Geoffrey E. Morton

County Manager

**CHEROKEE COUNTY, GEORGIA
CHAPTER 2, ADMINISTRATION
ARTICLE V
PROCUREMENT**

Table of Contents

<p>Sub-Article 1. General</p> <p>§2-5-1.01 Purpose/Repeal Provisions</p> <p>§2-5-1.02 Application, Definitions</p> <p>§2-5-1.03 Public Access to Procurement Information</p> <p>§2-5-1.04 E-Verification</p> <p>Sub-Article 2. Office of Purchasing Agent</p> <p>§2-5-2.01 Establishment, Appointment</p> <p>§2-5-2.02 Authority and Duties</p> <p>§2-5-2.03 Delegations to Other County Officials</p> <p>Sub-Article 3. Source Selection</p> <p>§2-5-3.01 Cherokee County Based Preference</p> <p>§2-5-3.02 Competitive Sealed Bidding</p> <p>§2-5-3.03 Competitive Sealed Proposals</p> <p>§2-5-3.04 Contracting for Designated Professional Services</p> <p>§2-5-3.05 Purchases exceeding \$25,000</p> <p>§2-5-3.06 Small Purchases</p> <p>§2-5-3.07 Sole Source of Procurement</p> <p>§2-5-3.08 Emergency Procurements</p> <p>§2-5-3.09 Cancellation of Invitations for Bids or Requests for Proposals</p> <p>§2-5-3.10 Cost or Pricing Data</p> <p>§2-5-3.11 Bid and Performance Bonds on Supply or Service Contracts</p> <p>§2-5-3.12 Disadvantaged Business Enterprise (DBE)</p> <p>§2-5-3.13 Procurement of Green Products and Technologies</p> <p>§2-5-3.14 Motor Vehicle Purchases</p> <p>Sub-Article 4. Contracts</p> <p>§2-5-4.01 Types of Contracts</p> <p>§2-5-4.02 Contract Clauses and Administration</p> <p>§2-5-4.03 Contract Administration</p> <p>§2-5-4.04 Right to Inspect Plant</p> <p>§2-5-4.05 Right to Audit Records</p> <p>§2-5-4.06 Reporting of Anti-competitive Practices</p> <p>§2-5-4.07 County Procurement Records</p> <p>§2-5-4.08 Change Orders</p> <p>Sub-Article 5. Specifications</p> <p>§2-5-5.01 Maximum Practicable Competition</p> <p>§2-5-5.02 Brand Name or Equal Specification</p>	<p>§2-5-5.03 Brand Name Specification</p> <p>Sub-Article 6. Procurement of Construction and Architect-Engineering Services</p> <p>§2-5-6.01 Responsibility for Selection of Methods of Construction Contracting Management</p> <p>§2-5-6.02 Bid Security - Construction</p> <p>§2-5-6.03 Contract Performance and Payment Bonds</p> <p>§2-5-6.04 Fiscal Responsibility</p> <p>§2-5-6.05 Architect - Engineering Services</p> <p>Sub-Article 7. Debarment or Suspension</p> <p>§2-5-7.01 Authority</p> <p>§2-5-7.02 Decision - Issuance, Contents</p> <p>§2-5-7.03 Same - Notice</p> <p>§2-5-7.04 Finality of Decision</p> <p>Sub-Article 8. Appeals and Remedies</p> <p>§2-5-8.01 Bid Protests</p> <p>§2-5-8.02 Contract Claims</p> <p>§2-5-8.03 Remedies for Solicitations for Awards in Violation of Law</p> <p>§2-5-8.04 Appeal to Superior Court</p> <p>Sub-Article 9. Ethics in Public Contracting</p> <p>§2-5-9.01 Criminal Penalties</p> <p>§2-5-9.02 Employee Conflict of Interest</p> <p>§2-5-9.03 Business Violations</p> <p>§2-5-9.04 Use of Confidential Information</p> <p>§2-5-9.05 Sanctions</p> <p>§2-5-9.06 Conflict of Interest – Elected Officials</p> <p>Attachment 2-5-10 Appendix A - Federal Grant Procurement Requirements</p> <p style="text-align: center;">SUB-ARTICLE 1 GENERAL</p> <p>§ 2-5-1.01 Purpose/Repeal Provisions.</p> <p>(a) The purpose of this Article is to provide for the fair and equitable treatment of all businesses involved in public purchasing by the County, to maximize the purchasing value of public funds in</p>
---	---

procurement, and to provide safeguards for maintaining a procurement system of quality and integrity.

- (b) Any and all Ordinances or parts of Ordinances in conflict herewith, including but not limited to Section 2-4 of the Code of Ordinances, Cherokee County, Georgia, shall be, and the same are, hereby repealed to the extent of such conflict.

§ 2-5-1.02 Application, Definitions.

- (a) This Article applies to contracts for the procurement of supplies, services and construction entered into by the County after the effective date of the Ordinance from which this section derives, unless the parties agree to its application to contracts entered into prior to the effective date. It shall apply to every expenditure of public funds by the County for public purchasing from businesses, irrespective of the source of the funds. When the procurement involves the expenditure of federal or State assistance or contract funds, the procurement shall be conducted in accordance with any mandatory applicable federal or State laws and regulations. Nothing in this Article shall prevent any public agency from complying with the terms and conditions of any grant, gift, or bequest that is otherwise consistent with law.
- (b) For the purposes of this Article, the following terms shall be defined as follows:

Adequate evidence means information sufficient to support the reasonable belief that a particular act or omission occurred.

Architectural-Engineering services means those professional services within the scope of the practice of architecture, professional engineering or other such professional services, as defined by the laws of the State of Georgia.

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 specification provides for the submission of equivalent or fungible products.

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

Business means any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, limited liability company, or any other private legal

commercial entity.

Change order means a written order signed and issued by the Purchasing Agent, directing the contractor to make changes in the scope of work of the contract and typically involving a price modification.

Confidential information means any information that is available to an employee solely because of the employee's status as an employee of the County and is not a matter of public knowledge or available to the public on request.

Conflict of interest means any situation resulting in a violation of O.C.G.A. § 36-1-14.

Construction (public works) means the building, altering, repairing, improving, or demolishing of any public structure or building or other public improvements of any kind to any real property other than those projects covered by Chapter 4, Article 3, Part 2 of Title 32 of the O.C.G.A. Such term does not include the routine operation, repair or maintenance of existing structures, buildings or real property or any energy saving performance contract or any improvements or installations performed as part of an energy savings contract. See O.C.G.A. § 36-91-2(12).

Contract means all types of County agreements, regardless of what they may be called, for the procurement of supplies, services and/or construction.

Contractor means any person having a contract with the County or an agency thereof.

Cost analysis means the evaluation of cost data for the purpose of arriving at costs actually incurred or estimates of costs to be incurred, prices to be paid, and costs to be reimbursed.

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

Cost reimbursement contract means a contract under which a contractor is reimbursed for costs which are allowable and allocable in accordance with the contract terms and the provisions of this Article, and a fee or profit, if any.

Employee means an individual drawing a salary or wages from the County, whether elected or not, but does not include independent contractors, members of the County Board of Commissioners, or the County Manager.

Fair and Reasonable is generally the term used to indicate that the purchase price of specific goods and/or services associated with a procurement action are consistent with those that a prudent businessperson would pay under current competitive market conditions and given a

reasonable knowledge of the marketplace. The County's Procurement Office shall evaluate proposed pricing for supplies or services by applying one or more price or cost analysis techniques.

Gratuity means a payment, loan, subscription, advance, or deposit of money, service or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is received in return.

Immediate family means an individual's spouse, children, parents, and siblings.

Invitation for bids means all documents, whether attached or incorporated by reference, utilized for soliciting sealed bids.

Lowest proposed price means the lowest bid price of all offerors, or if the lowest proposed price was not from a Cherokee County-based business (as that term is defined in Section 2-5-3.01(1(d)), any Cherokee County-based business with a bid price within five percent (5%) of the lowest bid price from an offeror deemed by the Purchasing Agent to be responsive and responsible, if such Cherokee County-based business agrees to reduce its bid price to match such lowest bid price.

Large procurements are those exceeding \$100,000. Large procurement are subject to competitive formal sealed bid or proposal processes. Purchases of less than \$100,000 may also utilize these formal processes when determined by the Purchasing Agent to be in the best interest of the County.

Motor vehicle means every vehicle which is self-propelled other than an electric personal assistive mobility device, as contemplated by O.C.G.A. § 40-1-1(33).

Person means any individual, corporation, partnership, company, proprietorship, professional corporation, or any other legal entity.

Price analysis means the evaluation of pricing data, without analysis of the separate cost components and profit as in cost analysis, which evaluation may assist in arriving at prices to be paid and costs to be reimbursed.

Pricing data means factual information concerning prices for items substantially similar to those being procured. "Prices" in this definition refers to offered or proposed selling prices, historical selling prices, and current selling prices. The term "pricing data" refers to data relevant to both prime and subcontract prices.

Procurement means the buying, purchasing, renting, leasing or otherwise acquiring of any supplies, services or construction, including description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration.

Procurement summary means a form that has been approved by the County Manager that adequately summarizes the important aspects of Procurement Actions greater than \$25,000 and as defined herein as well as when deemed appropriate by the Purchasing Agent. This form shall address, at a minimum, the value of the action, if the action was an "Emergency Procurement" pursuant to Section 2-5-3.08 below, the scoring of proposals, the evaluated pricing proposal totals from responsive and responsible bidders (including the number of updates quoted by each bidder), the rationale for determining the selected Supplier and a determination of how (or if) the pricing was determined to be fair and reasonable.

Professional services means the professional services rendered by attorneys at law and any type of professional service that may be legally performed only pursuant to a license from a board pursuant to Title 43 of the O.C.G.A., for example, the personal services rendered by certified public accountants, chiropractors, dentists, osteopaths, physicians and surgeons, and podiatrists (chiropractists) as described in O.C.G.A. § 14-10-2(2) or real estate services provided by a licensed real estate broker as described in Chapter 37, Title 36 of the O.C.G.A.

Qualified products list means an approved list of supplies, services or construction items described by model or catalogue numbers that, prior to competitive solicitation, the County has determined will meet the applicable specification requirements.

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

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

Responsive bidder or 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.

Services means the furnishing of labor, time or effort by a contractor, not involving the delivery of a specific end tangible product other than reports that are merely incidental to the required performance, including, without limitation, a professional or consulting service. This term shall not include employment agreements or collective bargaining agreements.

Significant financial interest means anything of monetary value, including, but not limited to, salary or other payments for services (e.g., consulting fees); equity interests (e.g., stocks, stock options or other ownership interest); and intellectual property rights (e.g., patents,

trademarks, copyrights and royalties from such rights). The term does not include:

- Salary, royalties or other remuneration from Cherokee County; or

- Income from seminars, lectures, or teaching engagements sponsored or approved by the County.

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.

Subcontractor means any person with whom a contractor contracts with or intends to contract with for the performance of services on any contract with the County or any agency thereof.

Supplies means all personal property, including but not limited to equipment, materials, printing, insurance, and leases of real property, excluding a permanent interest in land.

Using agency means any department, commission, board or public agency of the County requiring supplies, services and/or construction procured pursuant to this Article.

§ 2-5-1.03 Public access to procurement information.

Procurement information shall be a public record to the extent required by law and shall be available to the public upon written request.

§ 2-5-1.04 E-Verification

E-Verification. All contracts for the "physical performance of services," as defined in O.C.G.A. Sec. 13-10-90(4), shall be procured and administered in compliance with the requirements of O.C.G.A. Sec. 13-10-91.

SUB-ARTICLE 2 OFFICE OF PURCHASING AGENT

§ 2-5-2.01 Establishment, appointment.

(a) *Establishment of the position of Director of Procurement (Purchasing Agent).* There is hereby created the position of Director of Procurement, who shall be the County's principal public purchasing official and agent ("Purchasing Agent").

(b) *Appointment.* The Director of Procurement shall be appointed by the Administrative Services Agency Director of Cherokee County and confirmed by the County Manager.

§ 2-5-2.02 Authority and duties.

(a) *Principal public purchasing official.* Except as otherwise provided herein, the Purchasing Agent shall serve as the principal public purchasing official for the County and shall be responsible for the procurement of supplies, services, and/or construction, as well as the management and disposal of supplies, in accordance with this Article.

(b) *Duties.* In accordance with this Article and subject to the supervision of the Administrative Services Agency Director, the Purchasing Agent shall:

(1) Purchase all supplies, equipment and services needed by any and all departments, boards, commissions and other agencies of the County regardless of the source of funds. Agencies empowered by state statute to purchase independently may have the Purchasing Agent appointed as their agent for these purposes upon relinquishing of such independence by the proper authority.

(2) Keep complete and adequately detailed records of all purchases and disbursements, including purchase orders issued, quotations received, basis for bid awards, and any and all documents required for audit of purchase activity.

(3) Ensure that purchases or contracts for goods and services shall be reviewed the Purchasing Agent.

(4) Have the discretion to reject any or all bids, or waive informalities in the bidding process.

(5) Have the discretion to purchase from or in cooperation with other governmental agencies and purchase cooperatives with or without competitive bids to the extent allowed by law.

(6) Be responsible for developing and administering such other policies, rules and regulations, not inconsistent with this section or state statutes, that he or she deems necessary for the efficient and effective procurement of goods and services. A copy of such policies, rules and regulations shall be filed with the County Clerk.

(7) have the discretion in determining whether an offer, bid, quotation or proposal is from a "responsible bidder or offeror", a "responsible" business or is a "responsible" offer, bid, quotation or proposal, by evaluating factors that may include, but are not limited to: a) the past contracting history, performance and experience with the County or any County Authority, County Office or County Agency of the prospective contractor or person, or any identified subcontractor of the prospective contractor or person; b) whether that prospective contractor or person, or any identified

subcontractor of the prospective contractor or person, is currently on a Federal, State of Georgia or County's list of suspended or debarred suppliers or otherwise ineligible contractors; and/or c) whether the prospective contractor or person, or any identified subcontractor of the prospective contractor or person, has sufficient experience, financial ability or credit, judgment, reliability, integrity, trustworthiness, facilities, equipment, perseverance and skill which will assure good faith performance.

§ 2-5-2.03 Delegations to other County officials.

The Purchasing Agent may delegate authority to purchase certain supplies, services or construction items to other County officials, if such delegation is deemed necessary for the effective procurement of those items.

SUB-ARTICLE 3 SOURCE SELECTION

§ 2-5-3.01 Cherokee County-based Preference.

In addition to the Georgia Purchasing Preferences mandated by O.C.G.A. § 36-84-1, Cherokee County based businesses may be awarded a contract as the lowest responsive and responsible bidder under the circumstances specified herein. This Section 2-5-3.01 shall only be applicable: 1) to purchases funded exclusively by County funds; and 2) regarding purchases funded in whole or in part by funds other than County funds, where the applicable funding regulations authorize the use of the local preference provisions of this Section.

(1) Definitions.

- (a) *Good faith effort* means those demonstrable activities supported by documentation and results that verify the bidder's attempts to reach the established goal.
- (b) *Implementing Department* means the County Department or Agency that has responsibility for oversight of a contract.
- (c) *Joint venture* means cooperation between two or more corporate bodies for a particular project in which they share the responsibilities and profits associated with the project.
- (d) *Cherokee County-based business* means a business with a physical and economic relationship to Cherokee County as evidenced by a building or office physically located in the County and the payment of (1) Cherokee County Occupational Taxes (Business License), and (2) County property taxes on a plant or office and

equipment such as is ordinarily required for the performance of the contract bid.

- (e) *Subcontractor* means a person or company that assumes, by secondary contract, some or all of the obligations of an original contractor.
 - (f) *Construction*. For the purposes of this Sub-Article, the term "Construction" shall exclude public works construction purchases of \$100,000.00 or more and road construction purchases, as discussed in subsection (4) below.
- (2) *Preference for Cherokee County-based businesses on contracts under \$100,000.00* when sealed bids (pursuant to § 2-5-3.02 Competitive sealed bidding of this Ordinance) are received for architectural, engineering, purchases, supplies and construction contracts greater than \$100,000.00, the following shall apply:
 - (a) The person or business submitting the lowest bid that has been deemed responsive and responsible shall be deemed the lowest qualified bidder. If, however, the lowest qualified bidder is not a Cherokee County-based business, any Cherokee County-based business with a bid within five percent (5%) of the lowest dollar bid that has been deemed responsive and responsible in all respects to the requirements set forth in the invitation for bids/proposals shall be deemed the lowest qualified bidder if it agrees to reduce its bid price to match the bid price of the lowest price bidder. The percentage difference may be revised from time to time as the Board of Commissioners deems appropriate.
 - (b) If a Cherokee County-based business that has been deemed responsive and responsible refuses to reduce its price bid to match the lowest price bidder, then the next lowest responsible Cherokee County-based business with a bid within the established percentage of the lowest bid shall be given the opportunity to reduce its bid to match the bid of the lowest bidder. If the Cherokee County-based bidder deemed responsive and responsible agrees to reduce its bid to match the bid of the lowest non-Cherokee County bidder, it will be deemed the lowest bidder and awarded the bid.
 - (c) If no responsive and responsible Cherokee County-based business within the established percentage of the lowest bid agrees to reduce its bid to that of the lowest bidder, then the contract shall be awarded to the person or business with the lowest, most responsive and responsible bid.
 - (d) No contract awarded pursuant to this Section shall be sublet in any manner that permits 50 percent or more of the dollar value of the contract to be performed by

a subcontractor or subcontractors who do not meet the definition of Cherokee County-Based Business.

- (e) Any Cherokee County-based business awarded a contract pursuant to this Section shall agree to make available to the County all records necessary to establish its eligibility and compliance with all County, State and local laws.
- (3) *Affirmative measures for enhancing Cherokee-based businesses.*

The County may allow for joint ventures or other documented business arrangements to enable Cherokee County-based businesses to meet bonding requirements for contracts greater than \$100,000.00.

(4) *Construction.*

Public works construction purchases of \$100,000.00 or more shall be made in compliance with Title 36, Chapter 91 of the Official Code of Georgia Annotated and shall not be subject to this Section. Road construction purchases shall be made in compliance with Title 32, Chapter 4, Article 3, Part 2 of the Official Code of Georgia Annotated and shall not be subject to this Section.

§ 2-5-3.02 Competitive sealed bidding.

- (a) *Conditions for use.* All contracts of the County shall be awarded by competitive sealed bidding, except as otherwise provided in this Article, or as provided by general law.
- (b) *Invitation for bids.* An invitation for bids shall be issued for the procurement of each contract and shall include specifications and all contractual terms and conditions applicable for the procurement.
- (c) *Public notice* For all purchases exceeding \$100,000, except as otherwise provided in this Article, advertisements for formal sealed bids shall be first be posted on the County website for two consecutive weeks prior to the week of bid opening as well as posted on the Georgia Procurement Registry pursuant to O.C.G.A. § 36-80-26. Regular bid openings shall be conducted by the Purchasing Agent or his/her designee at the offices of the purchasing department or other designated location. Immediately after opening all bids, the Purchasing Agent or his/her designee shall record and certify each and every bid. The date, time and place of bid opening shall be included in the specifications or invitations to bid and in the published advertisement therefore.
- (d) *Bid acceptance and bid evaluation.* Bids shall be accepted without alteration or correction, except as authorized in this Article. Bids in the County's

possession may be withdrawn: 1) prior to official opening; or 2) prior to award, upon approval of the County Manager or the Purchasing Agent, where errors are identified, provided that such request is made in writing from an appropriately authorized agent of the bidder. Bids shall be evaluated, except as otherwise provided in this Article, based on the requirements set forth in the invitation for bids, which may include criteria to determine acceptability such as inspection, testing, quality, workmanship, delivery and suitability for a particular purpose. Those criteria that will affect the bid price and be considered in evaluation for award shall be objectively measurable, such as discounts, transportation costs and total or life cycle costs. The invitation for bids shall set forth the evaluation criteria to be used.

- (e) *Award.* The contract shall be awarded to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the invitation for bids; provided, however, that if the bid from the lowest responsible and responsive bidder exceeds the funds budgeted for the contract, the County may negotiate with such apparent low bidder to obtain a contact price within the budgeted amount. Such negotiations may include changes in the scope of work and other bid requirements. In the event that two or more bids are determined to be identical in price or otherwise of clearly equal merit, the County Manager shall determine which of such bids shall be selected.
- (f) *Acceptance of low bid not required.* The award of a contract to a prospective contractor or person based on lowest evaluated bid price alone can be a false economy if there is subsequent default, late deliveries, or other unsatisfactory performance resulting in additional contractual or administrative costs. While it is important that County purchases and contracts be made at the lowest possible bid price, this does not require an award to a prospective contractor or person solely because that prospective contractor or person submits the lowest bid. A prospective contractor or person must affirmatively demonstrate his, her or its responsibility. In evaluating the responsibility of a prospective contractor or person submitting a bid or whether the bid has been submitted by the "lowest responsible and responsive bidder", the Purchasing Agent or his/her designee shall have the discretion to evaluate factors that may include, but are not limited to: a) the past contracting history, performance and experience with the County or any County Authority, County Office or County Agency of the prospective contractor or person, or any identified subcontractor of the prospective contractor or person; b) whether that prospective contractor or person, or any identified subcontractor of the prospective contractor or person, is currently on the State of Georgia's suspended or debarred suppliers list, the Federal government's list of any debarred, suspended or ineligible contractors

and/or any list of suspended, debarred or ineligible contractors maintained by another governmental entity including any other local government; and/or c) whether the prospective contractor or person, or any identified subcontractor of the prospective contractor or person, has sufficient experience, financial ability or credit, judgment, reliability, integrity, trustworthiness, facilities, equipment, perseverance and skill which will assure good faith performance.

§ 2-5-3.03 Competitive sealed proposals.

- (a) *Conditions for use.* When the Purchasing Agent determines that the use of competitive sealed bidding is either not practicable or not advantageous to the County, a contract may be entered into by use of the competitive sealed proposals method.
- (b) *Request for proposals.* Proposals shall be solicited through a request for proposals.
- (c) *Public notice.* Adequate public notice of the request for proposals shall be given in the same manner as provided in section 2-5-3.02(c).
- (d) *Receipt of proposals.* To the extent allowed by law, no proposals shall be handled so as to permit disclosure of the contents of any proposals to competing offerors received in response to a solicitation or during the process of negotiation. The Purchasing Agent may request from bidders such clarifications and/or minor modifications regarding their proposals as may be necessary to ensure compliance with this Article. Subsequent to award, a Proposal Summary, which shall include a register of proposals, shall be prepared containing the name of each offeror, the number of modifications received, if any, and a description sufficient to identify the item offered. The register of proposals shall be open for public inspection, except as otherwise allowed pursuant to O.C.G.A. § 50-18-72(a)(10).
- (e) *Evaluation factors.* The request for proposals shall state the relative importance of price and other evaluation factors. The Purchasing Agent or County Manager shall preapprove any bid that considers the relative importance of price in the source selection process to be less than 50%.
- (f) *Discussion with responsible offerors and revisions to proposals.* Discussions may be conducted with responsible offerors who submit proposals determined to be reasonably susceptible of being selected for award for the purpose of clarification to assure full understanding of, and conformance to, the solicitation requirements. Offerors shall be provided equal opportunity for discussion and revision of proposals, and such revisions may be permitted after submissions and prior to award for the purpose of obtaining

updated offers.

- (g) Once updated offers have been obtained from all offerors reasonably susceptible of being selected for award, they shall be rescored. The updated scores shall result in a determination as to which suppliers are considered responsive and responsible and qualified to perform the work and a ranking shall be prepared in order of qualifications based upon the scoring values.
- (h) The top ranked offeror's price(s) for goods and/or services shall be evaluated by the Purchasing Agent or County Manager as to the fairness and reasonableness of the proposed price and regarding the value provided to the County. If such evaluation reveals that the pricing of the highest ranked offeror is not fair and reasonable, the Purchasing Agent shall initiate negotiations with the top ranked offeror. Should these negotiations fail to result in an acceptable price for the County, the Purchasing Agent shall formally terminate these negotiations. Should the second and third highest ranked offerors be considered qualified and acceptable, then the Purchasing Agent shall make a determination regarding their price reasonableness and negotiate as necessary with one supplier at a time in the ranked order until either an acceptable price is obtained or negotiations are formally terminated. The availability of an approved budget adequate to cover the price of any of the acceptable offeror's prices is not an indication of a fair and reasonable price. For the purposes of this Article, a determination of a "fair and reasonable" price shall occur before the Purchasing Agent may award contracts or place orders, with any exceptions to this requirement to be approved by the County Manager or Board of Commissioners.
- (i) *Award.* The contract shall be awarded with reasonable promptness by appropriate written notice to the responsible and responsive offeror whose proposal is determined in writing to be the most advantageous to the County. This determination shall take into consideration both the evaluation factors set forth in the request for proposals and the determination that the contracted price is fair and reasonable.
- (j) *Acceptance of low proposal not required.* The award of a contract to a prospective contractor, person or entity based on lowest evaluated proposal price alone can be a false economy if there is subsequent default, late deliveries, or other unsatisfactory performance resulting in additional contractual or administrative costs. While it is important that County purchases and contracts be made at the lowest possible purchase price, this does not require an award to a prospective contractor, person or entity solely because that prospective contractor, person or entity submits the lowest proposal. A prospective contractor, person or entity must affirmatively demonstrate his, her or its responsibility. In evaluating the responsibility of a

prospective contractor, person or entity submitting a proposal or whether the proposal has been submitted by the "lowest responsible and responsive bidder", the Purchasing Agent or his/her designee shall have the discretion to evaluate factors that may include, but are not limited to: a) the past contracting history, performance and experience with the County or any County Authority, County Office or County Agency of the prospective contractor or person, or any identified subcontractor of the prospective contractor or person; b) whether that prospective contractor or person, or any identified subcontractor of the prospective contractor or person, is currently on the State of Georgia's suspended or debarred suppliers list, the Federal government's list of any debarred, suspended or ineligible contractors and/or any list of suspended, debarred or ineligible contractors maintained by another governmental entity including any other local government; and/or c) whether the prospective contractor or person, or any identified subcontractor of the prospective contractor or person, has sufficient experience, financial ability or credit, judgment, reliability, integrity, trustworthiness, facilities, equipment, perseverance and skill which will assure good faith performance.

§ 2-5-3.04 Contracting for designated professional services.

- (a) *Applicability.* Regarding the provision of professional services costing less than or equal to \$100,000.00, no less than three (3) businesses shall be solicited to submit quotations, and award shall be made to the responsible business offering the lowest quotation conforming to the standards of this Article. The names of the businesses submitting quotations, and the date and amount of each quotation, shall be recorded and maintained as a public record. Professional services costing \$100,000.00 or more shall conform to the procedure set forth in subsections (b) through (e) below.
- (b) *Public announcement and form of request for proposals.* When seeking proposals for professional services, adequate notice of the need for such services shall be given through a request for proposals posted on the County website, and those professional services vendors registered with the County to receive such notices shall be notified by email upon the posting of any such notice. The request for proposals shall describe the services required, list the types of information and data required of each offeror, and state the relative importance of particular qualifications.
- (c) *Statement of qualifications.* When seeking proposals for professional services, the Purchasing Agent shall develop a uniform format for statements of qualifications to be made a part of the proposal.

Businesses engaged in providing professional services may submit statements of qualifications and expressions of interest in providing such professional services. Businesses may amend these statements at any time by filing a new statement.

- (d) *Discussions.* The head of a using department procuring the professional services or a designee of such officer may conduct discussions with any offeror who has submitted a proposal to determine such offeror's qualifications for further consideration. Discussions shall not disclose any information derived from proposals submitted by other offerors, to the extent allowed by law.
- (e) *Award.* Award shall be made to the offeror determined by the Board of Commissioners or its designee to be best qualified, based on the evaluation factors set forth in the request for proposals, and where the negotiated compensation is determined to be fair and reasonable. If compensation cannot be agreed upon with the best qualified offeror, then negotiations will be formally terminated with the selected offeror. If proposals were submitted by one or more other offerors determined to be qualified, negotiations may be conducted with such other offeror or offerors, in the order of the respective qualification ranking, and the contract may be awarded to the offeror then ranked best qualified if the negotiated amount of compensation is determined to be fair and reasonable.

§ 2-5-3.05 Purchases exceeding \$25,000.00.

- (a) The following policy and procedures with respect to certain purchases exceeding \$25,000.00 shall be construed and interpreted as, and have the effect of, the exercise of the authority of the Board of Commissioners to make these specific purchases.
- (b) The adoption of the budget containing line item expenditures for purchases normally made through the County purchasing department shall be approved by the Board of Commissioners for the purchase of those line items by the purchasing department without further action of the Board of Commissioners, subject to and upon compliance with the following provisions:
 - (1) The items to be purchased must be items included as line items in the approved budget.
 - (2) There must be full compliance with all requirements of this Article with regard to advertisement and bidding prior to any such purchase.
 - (3) The purchase must be within the budgeted amount which has been approved by the Board of Commissioners.

(4) The purchase must be made from the lowest responsive and responsible bidder or the proposer determined to have submitted the proposal in the best interest of the County.

- (c) The procedure outlined in subsection (b) of this section shall not apply to purchases which are not normally made through the County purchasing department, nor shall it affect the County Manager's authority to make purchases under or equal to \$25,000.00.
- (d) The procedure outlined in subsection (b) of this section shall not apply to or supersede the County's policy for the procurement of professional services in Section 2-5-3.04.

§ 2-5-3.06 Small purchases.

- (a) *General.* Any contract not exceeding \$100,000.00 may be made in accordance with the small purchase procedures authorized in this section. Contract requirements shall not be artificially divided so as to constitute a small purchase under this section.
- (b) *Small purchases.* Insofar as it is practical for small purchases, in excess of \$5,000.00 but less than or equal to \$100,000.00, no less than three businesses shall be solicited to submit quotations, and public notice may be accomplished in accordance with § 2-5-3.02(c). Award shall be made to the business offering the lowest acceptable quotation. The names of the businesses submitting quotations, and the date and amount of each quotation, shall be recorded and maintained as a public record.
- (c) *Small purchases of \$5,000.00 or less.* The County Manager, or designee, shall adopt operational procedures for making small purchases of \$5,000.00 or less. Contract requirements shall not be artificially divided so as to constitute a small purchase under this section.

§ 2-5-3.07 Sole source of procurement.

- (a) *Generally.* A contract may be awarded without competition when the Purchasing Agent determines, after conducting a good faith review of available sources, that there is only one source for the required supply, service, or construction item. The Purchasing Agent shall conduct negotiations, as appropriate, as to price, delivery, and terms. The Purchasing Agent shall maintain a list of sole source procurements by each contractor's name, the amount and type of each contract, a listing of the items procured under each contract, and the identification number of each contract file.
- (b) Public works construction contracts shall be governed by the provisions of Title 36, Chapter 91 of the Official

Code of Georgia Annotated, and road construction contracts shall be governed by Title 32, Chapter 4, Article 3, Part 2 of the Official Code of Georgia Annotated.

- (c) *State contracts for procurement.* Where the state takes bids on certain items and it is determined that the purchase of these items is to the best advantage of the County, then it shall be the duty of the Purchasing Agent to use such bids.

§ 2-5-3.08 Emergency procurements.

- (a) Notwithstanding any other provisions of this Article, the Purchasing Agent may make or authorize others to make emergency procurements of supplies and/or services when there exists a threat to the health, welfare or safety of the public or County employees; provided that such emergency procurements shall be made with such competition as is practicable under the circumstances. A written determination of the basis for the emergency and for the selection of the particular contractor shall be documented in the Procurement Summary.
- (b) Public works construction contracts shall be governed by the provisions of Title 36, Chapter 91 and Chapter 10 of Title 13 of the Official Code of Georgia Annotated, and road construction contracts shall be governed by Title 32, Chapter 4, Article 3, Part 2 of the Official Code of Georgia Annotated.

§ 2-5-3.09 Cancellation of invitations for bids or requests for proposals.

An invitation for bids, a request for proposals, or other solicitation 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 interests 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 when in the best interests of the County. Notice of cancellation shall be sent to all businesses solicited. The notice shall identify the solicitation, explain the reason for cancellation and, where appropriate, explain that an opportunity will be given to compete on any re-solicitation or any future procurement of similar items. Reasons for rejection shall be provided upon request by unsuccessful bidders or offerors.

§ 2-5-3.10 Cost or pricing data.

- (a) *Required submissions relating to the award of contracts.* A prospective contractor shall submit cost or pricing data, when requested by the Purchasing Agent, and where the contract is expected to exceed \$100,000.00 and awarded by competitive sealed proposals or by sole source procurement authority.

(b) *Required submissions relating to change orders.* A contractor shall submit cost or pricing data prior to the pricing of any change order, including adjustments to contracts awarded by competitive sealed bidding, whether or not cost or pricing data was required in connection with the initial pricing of the contract, when the change order involves aggregate increases or aggregate decreases in costs plus applicable profits that are expected to exceed \$100,000.00, unless included in county controlled contingency approved by the Board of Commissioners. In such event, the County Manager at his/her discretion, may elect to re-bid the contract.

(c) *Certification required.* A contractor, actual or prospective, required to submit cost or pricing data in accordance with this section, shall conform to the general format and instructions as contained in Federal Acquisition Regulation Subpart 15.4, Table 15-2 and certify that, to the best of its knowledge and belief, the cost or pricing data submitted was accurate, complete and current as of the date(s) executed prior to the award of the contract or the pricing of the change order. Other formats for the submission of cost data may be approved by the Purchasing Agent.

(d) *Price adjustment provision required.* Any contract award or change order under which the submission and certification of cost or pricing data are required shall contain provisions stating that the price to the County, including profit or fee, shall be adjusted to exclude any significant sums by which the County finds that such price was increased because the contractor-furnished cost or pricing data was inaccurate, incomplete or not current as of the date agreed upon between the County and the contractor.

§ 2-5-3.11 Bid and performance bonds on supply or service contracts.

Bid and performance bonds or other security may be requested for supply contracts or service contracts as the Purchasing Agent or head of a using agency deems advisable to protect the County's interests. Any such bonding requirements shall be set forth in the solicitation. Bid or performance bonds shall not be used as a substitute for a determination of a bidder's or offeror's responsibility. Any such bond shall be: 1) on the bond form provided by the County; 2) properly executed by the contractor and surety; and 3) issued by a surety company determined to be: a) in good standing with the office of the Georgia Insurance and Fire Safety Commissioner; and b) listed in U.S. Treasury Department Circular 570 (Federal Register Vol. 62, No. 126) among companies holding certificates of authority as acceptable sureties on Federal bonds.

§ 2-5-3.12 Disadvantaged Business Enterprise (DBE)

The Board of Commissioners has established a Disadvantaged Business Enterprise (DBE) program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26. The County has received Federal financial assistance from the Georgia Department of Transportation, and as a condition of receiving this assistance, the County has signed an assurance that it will comply with 49 CFR Part 26.

It is the policy of Cherokee County to ensure that DBEs, as defined in 49 CFR Part 26, have an equal opportunity to receive and participate in DOT-assisted contracts. It is also the County's policy:

1. To ensure nondiscrimination in the award and administration of DOT – assisted contracts;
2. To create a level playing field on which DBEs can compete fairly for DOT-assisted contracts;
3. To ensure that the DBE Program is narrowly tailored in accordance with applicable law;
4. To ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBEs;
5. To help remove barriers to the participation of DBEs in DOT assisted contracts;
6. To assist the development of firms that can compete successfully in the market place outside the DBE Program.

The Public Works Agency Director, or designee as confirmed by the County Manager, is designated as the DBE Officer of the County.

§2-5-3.13 Procurement of Green Products and Technologies

(a) *Preference for Purchase of Recycled Paper.* The Purchasing Agent shall establish and maintain procedures and specifications for the purchase of paper and paper products which give preference, whenever feasible, to the purchase of recycled paper, and paper products containing recycled paper. Products that do not meet the definition of 50 percent recycled material content, but do contain some percentage of recycled material, shall be preferred over virgin materials.

The Purchasing Agent and department heads, under the oversight of the Purchasing Agent, may purchase recycled paper and paper products, instead of unrecycled paper or paper products, whenever such recycled paper and paper products are available at a comparable cost to unrecycled paper and paper products, and when fitness and quality are similar.

(b) *Preference for ENERGY STAR Qualified Products.* The Purchasing Agent and department heads, under the oversight of the Purchasing Agent, shall select, where life-cycle and cost-effective, ENERGY STAR and other

energy efficient products, when acquiring energy-using products. This information will be required by the bidder in their bid submittal.

- (c) *Preference for High Efficiency Plumbing Fixtures in County Facilities.* All new County buildings should have high efficiency plumbing fixtures that meet the following standards: toilets (1.28 gpf or less), urinals (0.5 gpf or less) and faucets (1.5 gpm or less). This information will be required by the bidder in their bid submittal.
- (d) It is the goal of the County to integrate green and/or sustainable building principles and practices into the design, construction, and operations of all County facilities to the fullest extent possible in which the total project square footage includes 5,000 gross square feet of occupied space or the total project cost exceeds two million dollars.
- (e) The LEED™ rating system and reference guide shall be used as guidance for design and a measuring tool to determine what constitutes sustainable building by national standards.
- (f) *LED Traffic Signals.* It is the policy of the County that all traffic signals be equipped with LED bulbs meeting Institution of Transportation Engineers (ITE) and Department of Energy (DOE) standards.

§2-5-3.14 Motor Vehicle Purchases

- (a) Regarding the procurement of motor vehicles other than as provided in subsections (b) through (f) below, no less than three (3) businesses shall be solicited to submit quotations, and public notice shall be accomplished in accordance with § 2-5-3.02(c). Award shall be made to the business offering the lowest acceptable quotation. The names of the businesses submitting quotations, and the date and amount of each quotation, shall be recorded and maintained as a public record.
- (b) Purchases of State Vehicles, as defined below from manufacturers operating nationwide dealership networks and meeting all of the criteria of subsections (b) through (f) may be accomplished notwithstanding the requirements of subsection (a) above:
 - (1) For purposes of subsections (b) through (f), the term "State Vehicle" shall mean any motor vehicle identified in a competitive bid process by the State of Georgia or any of its departments, agencies, or other governmental entities and regarding which a contract is awarded by such State entity.
 - (2) The State Vehicle is either a standard model sold to the general public or a model specifically modified for law enforcement or fire safety purposes; examples of

the latter category include, but are not limited to: heavy duty suspension, increased horsepower, and a modified dash board.

- (3) The State Vehicle options specified shall be standard manufacturer options as would typically be defined on the manufacture's official web site or as managed and maintained by the manufacturer on a national or regional basis for government specific applications. Examples of standard manufacturer options include, but are not limited to, Power Steering, Electronic Windows, Colors, Engine Size, and Trim Packages, to include law enforcement or fire safety special service packages. Examples of non-standard manufacturer options include, but are not limited to the addition of agency specific decals, emergency lighting equipment and/or electronics and other similar aftermarket conversions.
- (4) The State Vehicle manufacturer's dealer network can provide price quotes for and take orders for the State Vehicle.
- (c) The Agency or Department requesting such a State Vehicle shall specify the make, model and all required manufacturer options. The defined product would include make, model, trim and all required manufacturer options (by way of example: Ford F-150, XLT, Ingot Silver, SuperCab with 8 Foot Box, 3.7L V6 FFVEM, 3.55 Non-Limited Slip Axle Ratio, Equipment Group 300A, P235/75R17 BSW All-Terrain Tires).
- (d) Written competitive bids with the exact State Vehicle specifications shall be obtained as follows:
 - (1) A minimum of three (3) written bids shall be required where the total vehicle purchase will equal or exceed \$100,000.
 - (2) For purchases less than \$100,000, while reasonable attempts should be made to procure three (3) written bids, a minimum of two (2) bids shall be acceptable where bids are requested from at least five (5) dealers.
 - (3) At least one (1) of the minimum number of required bids must be obtained from a dealer holding a contract for the State Vehicle with a State entity.
 - (4) The successful bidder shall agree in writing to the County's standard purchase order terms and conditions.
- (e) A written procurement summary, on a form prepared by the Purchasing Agent, will be used to document each State Vehicle purchase, and for State Vehicle purchases greater than \$25K, the procurement summary shall accompany the department/agency generated Board of Commissioners' agenda request for the proposed State Vehicle purchase.

- (f) Purchase requisitions with the complete State Vehicle description will be generated by the Department or Agency requesting the State Vehicle.

succeeding calendar/fiscal periods. When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent calendar/fiscal period, the contract shall be cancelled.

SUB-ARTICLE 4 CONTRACTS

§ 2-5-4.01 Types of contracts.

- (g) *General authority.* Subject to the limitations of this section and applicable law, any type of contract that is appropriate for procurement and will promote the best interests of the County, as determined by the County in its sole discretion, may be used. A cost reimbursement contract may be used only when a determination is made by the Purchasing Agent in writing that such contract is likely to be less costly to the County than any other type or that it is impracticable to obtain the supply, service, or construction item required except under such a contract. A standard contract for services has been adopted by the Board of Commissioners. Any consultant (service provider) doing business with the County must enter into this standard contract, unless modifications are agreed to by the County Manager and the Purchasing Agent after consultation with the County Attorney.

- (b) *Multi-term contracts.*

- (1) *Specified period.* Unless otherwise provided by law, a contract for supplies or services may be entered into for any period of time deemed to be in the best interests of the County, provided the term of the contract and conditions of renewal or extension, if any, are included in the solicitation and funds are available for the first fiscal period at the time of contracting. Payment and performance obligations for succeeding calendar/fiscal periods shall be subject to the availability and appropriation of funds therefore. All multi-year contracts shall comply with the applicable requirements of O.C.G.A. § 36-60-13.

- (2) *Determination prior to use.* Prior to the utilization of a multi-term contract, the Purchasing Agent shall determine in writing:

- a. That contract requirements cover the period of the contract and are reasonably firm and continuing; and
- b. That such a contract will serve the best interests of the County by encouraging effective competition or otherwise promoting economies in County procurement.

- (3) *Cancellation due to unavailability of funds in*

- (c) *Multiple source contracting.*

- (1) *General.* A multiple source award is an award of a contract for one or more similar supplies or services to more than one bidder or offeror.

- (2) *Limitations on use.* A multiple source award may be made when award to two or more bidders or offerors for similar products is necessary for adequate delivery, service or product compatibility. Any multiple source awards shall be made in accordance with the provisions of other sections as applicable. Multiple source awards shall not be made when a single award will meet the County's needs without sacrifice of economy or service. Multiple source awards shall not be made for the purpose of dividing the business, making available product or supplier selection to allow for user preference unrelated to utility or economy, or avoiding the resolution of tie bids. Any such awards shall be limited to the least number of suppliers necessary to meet the valid requirements.

- (3) *Intent to use.* If a multiple source award is anticipated prior to issuing a solicitation, the County shall reserve the right to make such an award, and the criteria for award shall be stated in the solicitation.

- (4) *Determination required.* The Purchasing Agent shall make written determination setting forth the reasons for a multiple source award, which shall be made a part of the procurement file.

§ 2-5-4.02 Contract clauses and administration.

- (a) *Contract clauses.* All County contracts for supplies, services, and construction shall include provisions necessary to define the responsibilities and rights of the parties to the contract. A standard contract for services has been adopted by the Board of Commissioners. Any consultant (service provider) doing business with the County must enter into this agreement, unless the County Manager and Purchasing Agent determine otherwise in writing in their sole discretion and after consultation with the County Attorney.

- (b) *Standard clauses and their modification.* The Purchasing Agent, after consultation with the County Attorney and County Manager, may recommend modifications to standard contract clauses for use in

County contracts. If the Purchasing Agent recommends modifications to the standard contract for services adopted by the Board of Commissioners, such clauses may be varied, provided that any variations are supported by a written explanation that states the circumstances justifying such variations.

§ 2-5-4.03 Contract administration.

The Purchasing Agent shall maintain a supplier evaluation system designed to insure that contractors are evaluated according to their performance in accordance with the contract terms and conditions. All supplier performance problems that cannot be effectively resolved by those departments receiving the goods or services are to be promptly reported to the Purchasing Agent for appropriate action.

§ 2-5-4.04 Right to inspect plant.

The County may, at reasonable times, inspect the part of the plant, place of business or work site of a contractor or subcontractor at any tier that is pertinent to the performance of any contract awarded or to be awarded by the County.

§ 2-5-4.05 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 contractor who has submitted cost or pricing data pursuant to section 2-5-3.10 to the extent that such books, documents, papers, and records are pertinent to such cost or pricing data. Any business that receives a contract or change order 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.
- (b) *Contract audit.* The County shall be entitled to audit the books, documents and records of a contractor or a subcontractor at any tier under any negotiated contract or subcontract, other than a firm fixed-price contract, to the extent that such books, documents, papers, and records are pertinent to the performance of such contract or sub-contract. Unless a longer retention period is specified by the County, such books, documents and records shall be maintained by the contractor for a period of three (3) years from the date of final payment under the prime contract and by the subcontractor for a period of three (3) years from the date of final payment under the subcontract.

§ 2-5-4.06 Reporting of anti-competitive practices.

When for any reason collusion or other anti-competitive practices are suspected among any bidders or offerors, or individual(s) responsible for rating proposals, a notice of the relevant facts shall be transmitted to the state attorney

general and the district attorney, County solicitor, or other appropriate legal officer.

§ 2-5-4.07 County procurement records.

- (a) *Contract file.* All determinations and other written records pertaining to the solicitation, award or performance of a contract shall be maintained for the County in a contract file by the Purchasing Agent.
- (b) *Retention of procurement records.* All procurement records shall be retained and disposed of by the County in accordance with records retention guidelines and schedules approved by the Board of Commissioners in Section 2-7 of the County Code.

§ 2-5-4.08 Change orders.

Any change order materially altering the terms of a contract or increasing the total amount to be paid under a contract in excess of \$25,000.00 must be approved by resolution of the Board of Commissioners. The County Manager is authorized to execute all other change orders.

**SUB-ARTICLE 5
SPECIFICATIONS**

§ 2-5-5.01 Maximum practicable competition.

All specifications shall be drafted by the requesting department and reviewed by the Purchasing Agent so as to promote overall economy for the purposes intended and to encourage competition in satisfying the County's needs and shall not be unduly restrictive. The policy enunciated in this section applies to all specifications including, but not limited to, those prepared for the County by architects, engineers, designers and draftsmen.

§ 2-5-5.02 Brand name or equal specification.

- (a) *Use.* Brand name or equal specifications may be used when the Purchasing Agent determines 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.

- (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" (i.e. fungible) references and shall further state that substantially equivalent products to those designated will be considered for award.
- (c) *Required characteristics.* Unless the Purchasing Agent determines that the essential characteristics of the brand names 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, functional and/or performance characteristics which are required.
- (d) *Nonrestrictive use of brand name or equal specifications.* Where 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/or characteristics desired and is not intended to limit or restrict competition.

§ 2-5-5.03 Brand name specification.

- (a) *Use.* Since use of a brand name specification is restrictive of product competition, such specifications may be used only when the Purchasing Agent makes a written determination that only the identified brand name item or items will satisfy the County's needs.
- (b) *Competition.* The Purchasing Agent shall seek to identify sources from which the designated brand name item or items 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 2-5-3.07.

**SUB-ARTICLE 6
PROCUREMENT OF CONSTRUCTION AND
ARCHITECTURAL - ENGINEERING SERVICES**

§ 2-5-6.01 Responsibility for selection methods of construction contracting management.

The County Manager shall have discretion to recommend to the Board of Commissioners the appropriate method of construction contracting management for a particular project. In determining which method to recommend, the County Manager shall consider the County's requirements, its resources, and the potential contractor's capabilities. The County Manager shall execute, and include in the contract file a written statement setting forth the facts which led to the recommendation of a particular method of construction contracting management for each project. All public works construction bidding and contracting,

including but not limited to bid security and payment and performance bonds, shall conform to the applicable requirements of Title 36, Chapter 91 of the Official Code of Georgia Annotated. All contracts for the construction, reconstruction, or maintenance of County roads, including but not limited to bid security and payment and performance bonds, shall conform to the applicable requirements of Title 32, Chapter 4, Article 3, Part 2 of the Official Code of Georgia Annotated.

§ 2-5-6.02 Bid security - Construction.

- (a) *Requirement for bid security.* Bid security shall be required for all competitive sealed bidding for construction contracts when the price is estimated by the Purchasing Agent to equal or exceed \$100,000.00. Bid security shall be: 1) on the bond form provided by the County; 2) properly executed by the contractor and surety; and 3) issued by a surety company determined to be: a) in good standing with the office of the Georgia Insurance and Fire Safety Commissioner; and b) listed in U.S. Treasury Circular 570 (Federal Register Vol. 62, No. 126) among companies holding certificates of authority as acceptable sureties on Federal bonds, or the equivalent in cash, or otherwise supplied in a form satisfactory to the County. Nothing in this section shall prevent the requirement of such bonds on construction contracts under \$100,000.00 when the circumstances so warrant as determined by the Purchasing Agent.
- (b) *Amount of bid security.* Bid security shall be in an amount equal to at least five percent of the amount of the bid.
- (c) *Withdrawal of bids.* If a bidder is permitted to withdraw its bid before award, as provided in section 2-4-3.02(d), no action shall be had against the bidder or the bid security.

§ 2-5-6.03 Contract performance and payment bonds.

- (a) *When required; amounts.* When a public works construction contract is awarded equal to or in excess of \$100,000.00, the following bonds or security shall be delivered to the County and shall become binding on the contractor upon the execution of the contract:
 - (1) A performance bond shall be: 1) on the bond form provided by the County; 2) properly executed by the contractor and surety; and 3) issued by a surety company determined to be: a) in good standing with the office of the Georgia Insurance and Fire Safety Commissioner; and b) listed in U.S. Treasury Circular 570 (Federal Register Vol. 62, No. 126) among companies holding certificates of authority as acceptable sureties on Federal bonds

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

- (2) A payment bond shall be: 1) on the bond form provided by the County; 2) properly executed by the contractor and surety; and 3) issued by a surety company determined to be: a) in good standing with the office of the Georgia Insurance and Fire Safety Commissioner; and b) listed in U.S. Treasury Circular 570 (Federal Register Vol. 62, No. 126) among companies holding certificates of authority as acceptable sureties on Federal bonds or otherwise secured in a manner satisfactory to the County, for the protection of all businesses supplying labor and material to the contractor or its subcontractors for the performance of the work provided for in the contract. The bond shall be in an amount equal to 100 percent of the price specified in the contract.

- (b) *Reduction of bond amounts.* After notice to the Board of Commissioners, the Purchasing Agent, except when prohibited by Title 36, Chapter 91 of the Official Code of Georgia Annotated, is authorized to reduce the amount of performance and payment bonds to 50 percent of the contract price for each bond when a determination is made that is in the best interest of the County to do so.
- (c) *Authority to require additional bonds.* Nothing in this section shall be construed to limit the authority of the County to require a performance bond or other security in addition to those bonds or in circumstances other than specified in subsection (a) of this section.

§ 2-5-6.04 Fiscal responsibility.

Every change order in excess of \$25,000.00 under a public works construction contract with the County shall be subject to prior approval by the Board of Commissioners after receiving a report from the County Manager as to the effect of the change order on the total project budget or the total contract budget. The County Manager is authorized to execute all other change orders.

§ 2-5-6.05 Architect-Engineering services.

- (a) *Public announcement.* It is the policy of the County to announce publicly all requirements for Architect-Engineering services where the cost of the service shall exceed \$100,000.00, and to negotiate such contracts on the basis of demonstrated competence and qualifications at fair and reasonable prices. In the procurement of architect-engineering services, the Purchasing Agent shall request firms to submit a statement of qualifications and performance data.
- (b) *Selection process.* A selection committee composed of

three members designated by the County Manager (or another officer with appropriate professional qualifications) and the head of the using agency, or his designee, in need of the architect-engineering services shall conduct discussions with no less than three firms (unless only one firm responds) regarding the proposed contract and the relative utility of alternative methods of approach for furnishing the required services and shall select from among them no less than three of the firms deemed most qualified to provide the required services. The selection shall be made in order of preference, based on criteria established and published by the selection committee.

- (c) *Negotiation.* The Purchasing Agent or County Manager shall negotiate a contract with the firm considered by the selection committee to be the most qualified (responsible and responsive) for architect-engineering services at compensation which the Purchasing Agent determines to be fair and reasonable to the County. In making this decision, the Purchasing Agent or County Manager shall take into account the estimated value, the scope, the complexity and the professional nature of the services to be rendered. In determining whether a firm is responsible, the Purchasing Agent or County Manager may consider factors including but not limited to: a) the past contracting history, performance and experience with the County or any County Authority, County Office or County Agency of the firm or any identified subcontractor of the firm; b) whether the firm, or any identified subcontractor of the firm, is currently on the State of Georgia's suspended or debarred suppliers list, the Federal government's list of any debarred, suspended or ineligible contractors and/or any list of suspended, debarred or ineligible contractors maintained by another governmental entity including any other local government; and/or c) whether the firm, or any identified subcontractor of the firm, has sufficient experience, financial ability or credit, judgment, reliability, integrity, trustworthiness, facilities, equipment, perseverance and skill which will assure good faith performance. Should the Purchasing Agent or County Manager be unable to negotiate a satisfactory contract with the firm considered to be the most qualified at a price the Purchasing Agent determines to be fair and reasonable to the County, negotiations with that firm shall be formally terminated. The Purchasing Agent or County Manager shall then undertake negotiations with the second most qualified firm submitting a price determined to be fair and reasonable to the County. If no satisfactory contract can be reached, the Purchasing Agent or County Manager shall formally terminate negotiations. The Purchasing Agent or County Manager shall then undertake negotiations with the third most qualified firm submitting a price determined to be fair and reasonable to the County. Should the Purchasing Agent or County Manager be

unable to negotiate a satisfactory contract at a fair and reasonable price with any of the selected firms, and if the County wishes to continue with the pending solicitation, the selection committee shall select additional firms in order of their competence and qualifications considered in relation to the fairness and reasonableness of their price, and the Purchasing Agent or County Manager shall continue negotiations in accordance with this section until an agreement is reached. If no satisfactory agreement is reached with any firm, the selection process may be terminated and a new selection process may be initiated.

SUB-ARTICLE 7 DEBARMENT OR SUSPENSION

§ 2-5-7.01 Authority.

After reasonable written notice to the business involved and reasonable opportunity for that business to be heard, the Board of Commissioners, after consultation with the County Attorney, is authorized to suspend a business from consideration for award of future contracts upon a finding, based upon adequate evidence, that the business has engaged in any activity that might lead to debarment. The suspension shall be for a period in the discretion of the Board of Commissioners and not to exceed three (3) years.

The causes for debarment shall be limited to:

- (1) Conviction under state or federal statutes for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract;
- (2) Conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, or receiving stolen property;
- (3) Conviction under state or federal antitrust statutes arising out of the submission of bids or proposals;
- (4) Violation, within the preceding three (3) years, of contract provisions, as set forth below, of a character that is regarded by the Purchasing Agent to be so serious as to justify debarment action:
 - a. failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or
 - b. A record of failure to perform or of 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 debarment;

- (5) A record of failing to pay employees and/or subcontractors in the performance of a contract with the County, a County Authority, a County Office and/or a County Agency;
- (6) A record of dishonesty or inaccuracy in its dealings and contract performance with the County, a County Authority, a County Office and/or a County Agency, including but not limited to a record of duplicate invoicing for invoices already paid, inaccuracies in invoice descriptions, inaccurate documentation supporting invoices, excessive change notices, unreasonable difficulty in reaching an agreement on the value of change notices, and threats to stop work that are without merit;
- (7) Where there is a pending bankruptcy proceeding of a prospective contractor or of any person that owns, controls or manages in whole or in part a prospective contractor
- (8) Where there is a pending lawsuit filed by a prospective contractor or by any person that owns, controls or manages a prospective contractor against the County, a County Authority, a County Office and/or a County Agency;
- (9) Where the County, a County Authority, a County Office and/or a County Agency has a pending lawsuit against a prospective contractor or any person that owns, controls or manages in whole or in part a prospective contractor;
- (10) Where there is a pending lawsuit against a prospective contractor or any person that owns, controls or manages a prospective contractor by any Federal, State or local government with regard to contractual performance, bid irregularities, false representations, false statements or false claims, or violations of International Traffic in Arms Regulations (ITAR);
- (11) Where a prospective contractor or any person that owns, controls or manages a prospective contractor is currently on the State of Georgia's suspended or debarred suppliers list, the Federal government's list of any debarred, suspended or ineligible contractors, or any suspended or debarred contractor or supplier list of another government entity including any local government;
- (12) Any other cause the Board of Commissioners determines to be so serious and compelling as to affect responsibility as a County contractor,

including debarment by another governmental entity for any cause listed in this Article; or

- (13) For violation of the ethical standards set forth in Sub-Article 9 of this Article, Ethics in Public Contracting.

§ 2-5-7.02 Decision - Issuance, contents.

The Purchasing Agent and County Attorney shall, when appropriate under this Sub-Article, issue a written decision to debar or suspend a business. The decision shall state the reasons for the action taken and inform the debarred or suspended business involved of its right of appeal pursuant to section 2-5-7.04.

§ 2-5-7.03 Same-Notice.

A copy of the decision required by section 2-5-7.02 shall be mailed or otherwise furnished immediately to the debarred or suspended business.

§ 2-5-7.04 Finality of decision.

A decision under section 2-5-7.02 shall be final and conclusive, unless the debarred or suspended business within ten (10) calendar days after receipt of the decision files a writ of certiorari with the Cherokee County Superior Court.

**SUB-ARTICLE 8
APPEALS AND REMEDIES**

§ 2-5-8.01 Bid protests.

- (a) *Right to protest.* Any actual or prospective bidder, offeror or contractor who is aggrieved in connection with the solicitation or award of a contract may protest to the Purchasing Agent. Protestors are required to seek resolution of their complaints initially with the Purchasing Agent. A protest with respect to an invitation for bids or request for proposals shall be submitted in writing to the Purchasing Agent prior to the opening of bids or the closing date of proposals, unless the aggrieved business did not know and should not reasonably have known of any of the facts giving rise to such protest prior to bid opening or the closing date for proposals. The protest shall be submitted within five (5) calendar days after such aggrieved business knows or reasonably should have known of any of the facts giving rise thereto.
- (b) *Stay of procurements during protests.* In the event of a timely protest under subsection (a) of this section, the Purchasing Agent shall not proceed further with the solicitation or award of the contract until all administrative and judicial remedies have been exhausted or until the Board of Commissioners makes a determination on the record that the award of a

contract without delay is necessary to protect substantial interests of the County. Notice of any such stay shall be provided to all prospective bidders, offerors or contractors. The stay provisions of this subsection shall not apply where a contract has actually been awarded.

§ 2-5-8.02 Contract claims.

- (a) *Decision of Purchasing Agent.* All claims by a contractor against the County relating to a contract shall be submitted in writing to the Purchasing Agent for a decision. The contractor may request a conference with the Purchasing Agent on the claim. Claims include, without limitation, disputes arising under a contract or change order, and those based upon breach of contract, mistake, misrepresentation, rescission, or other cause related to a contract.
- (b) *Notice to contractor of Purchasing Agent's decision.* The decision of the Purchasing Agent shall be promptly issued in writing, and shall be immediately mailed or otherwise furnished to the contractor. The decision shall state the reasons for the decision reached, and shall inform the contractor of its appeal rights under section (c) of this section.
- (c) *Finality of Purchasing Agent's decision; contractor's right to appeal.* The Purchasing Agent's decision shall be final and conclusive unless, within ten calendar days from the date of receipt of the decision, the contractor delivers a written appeal to the Board of Commissioners.
- (d) *Failure to render timely decision.* If the Purchasing Agent does not issue a written decision regarding any contract controversy within 15 days after written request for a final decision, or within such longer period as may be agreed upon between the parties, then the aggrieved party may proceed to appeal as if an adverse decision had been received.

§ 2-5-8.03 Remedies for solicitations or awards in violation of law.

- (a) *Prior to bid opening or closing date for receipt of proposals.* If the Purchasing Agent, after consultation with the County Attorney, determines that a solicitation is in violation of federal, state or County law, the solicitation shall be cancelled or revised to comply with applicable law.
- (b) *Prior to award.* If, after bid opening or the closing date for receipt of proposals and after consultation with the County Attorney, the Purchasing Agent determines that a solicitation is in violation of federal, state or County law, then the solicitation or proposed award shall be cancelled.

(c) *After award.* If, after an award of a contract and after consultation with the County Attorney, the Purchasing Agent determines that the solicitation or award of a contract was in violation of applicable law, then the contract shall be declared null and void.

§ 2-5-8.04 Appeal to Superior Court.

Any final decision under this Article may be appealed to the Superior Court of Cherokee County by petition for writ of certiorari.

**SUB-ARTICLE 9
ETHICS IN PUBLIC CONTRACTING**

§ 2-5-9.01 Criminal penalties.

To the extent that violations of the ethical standards of conduct set forth in this Sub-Article constitute criminal violations, such violations shall be punishable as provided under applicable law. Such criminal penalties shall be in addition to the civil sanctions set forth in this Sub-Article.

§ 2-5-9.02 Employee conflict of interest.

- (a) It shall be a prohibited conflict of interest for any County employee to violate the Conflicts of Interest, Gifts, Nepotism, or Outside Employment provisions of the Cherokee County Personnel Policies.
- (b) For purposes of this Sub-Article, the term "County employee" shall exclude independent contractors.

§ 2-5-9.03 Business violations.

It shall be a prohibited conflict of interest for any business to aid any County employee in a violation of § 2-5-9-.02

§ 2-5-9.04 Use of confidential information.

It shall be unethical for any employee knowingly to use confidential information for actual or anticipated personal gain.

§ 2-5-9.05 Sanctions.

(a) *Employees.* The County Manager may impose any one or more of the following sanctions on a County employee for violations of the ethical standards in this Sub-Article:

1. Oral or written warnings or reprimands.
2. Suspension with or without pay for specified periods of time
3. Termination of employment

(b) *Non-employees.* The Board of Commissioners may

impose any one or more of the following sanctions on a non-employee for violations of the ethical standards of this Sub-Article.

1. Written warning or reprimand.
2. Termination of contracts
3. Debarment or suspension as provided in Sub-Article 7

§ 2-5-9.06 Conflict of Interest-Elected Officials

Public Service is a public trust, requiring all officials to place loyalty to the law and ethical principles above private gain. To that end, the Board of Commissioners prohibit the County from transacting business for procurement of goods and services from any elected official, or through a firm, corporation, partnership or business entity in which they or any member of their immediate family has a financial interest, direct or indirect.

(End)

ADOPTED, THIS 19th DAY OF SEPT 2023 BY THE CHEROKEE COUNTY BOARD OF COMMISSIONERS.

BOARD OF COMMISSIONERS


Harry Johnston, Chairman

ATTEST:


Christy Black, County Clerk

