

STATE OF SOUTH CAROLINA)	BEFORE THE PURCHASING OFFICER
COUNTY OF GEORGETOWN)	
)	
In the Matter of Protest of:)	DECISION
)	
Intelligent Lifecycle Solutions LLC of Salley, SC)	CASE NO. 2016-01
)	
County Purchasing Office)	POSTING DATE:
RFP No. 16-025)	
E-Scrap Recycling Service)	Tuesday, May 10, 2016
_____)	

This matter is before the GEORGETOWN COUNTY, SC PURCHASING OFFICER (GCPO) pursuant to a protest filed by Intelligent Lifecycle Solutions (“ILS”) of Salley, SC. With this Request for Proposals (RFP), the GCPO attempts to procure a contract service provider for the removal of E-Waste from the Georgetown County Solid Waste Landfill stream as mandated by the SC Department of Health and Environmental Control (SCDHEC) effective July 01, 2011 and revised on March 04, 2014 for the Georgetown County Public Services Department. ILS protested the GCPO’s *Notice of Intent to Award* to Green Wave Computer Recycling (“GREEN WAVE”) of Indianapolis, IN. This decision is prepared without the benefit of a hearing.

FINDINGS OF FACT

1. On March 04, 2016 the GCPO’s Senior Buyer having sought and received approval, issued a Request for Proposals (RFP) for E-Scrap Recycling Service at the Georgetown County Solid Waste Landfill under County Ordinance 2008-09 and Ordinance 2010-45. The published RFP set forth the requirements and specifications which the County oversight staff deemed would be in the best interest of the County to meet the disposal requirements at a cost that could be off-set by the budget available. Each offeror was required to return the mandatory bid response forms provided which would demonstrate success in similar projects, the understanding of the SCDHEC regulatory requirements, financial stability, costs and credits proposed, and certification of the recycling process.

2. There was no Mandatory Pre-Bid Site Inspection. Each offeror was granted a period to address questions and seek clarification, which ended at 3PM on Wednesday, March 16, 2016.

3. In Addendum #1, issued on March 11, 2016, the Senior Buyer published responses to all inquiries received. This information was e-mailed to all registered providers and also up-loaded to the County website for availability to all. There were no additional questions, and only the single Addendum 1 was issued.
4. On Wednesday, March 23, 2016 at 3:00PM, the GCPO closed the project to any further bid submittals and proceeded with the Public Bid Opening Tabulation per Ordinance 2008-09, §2-48, ¶7.
 7. Bid Opening. The Purchasing Officer or a designee shall decide when the time set for bid opening has arrived, and shall so declare to those present. The Purchasing Officer shall then personally and publicly open all bids received prior to that time and when practicable, read them aloud to those persons present and have the bids recorded. The following information is read aloud: bidders name, unit price or lot price as may be applicable, discount terms offered if discount terms are to be considered in making the award, and brand name and model number, if requested by the bid attendees. Questions on contents of other bidder's bids shall not be answered until after evaluation is complete and award has been made. The tabulation shall be open to public inspection.
5. Responses were publicly opened and read aloud. There were no attendees recorded as present with the exception Nancy Silver, Senior Buyer, who opened and read the responses, and Ann Puckett, Purchasing Assistant, who recorded and witnessed the offers. The Public Bid Opening Tabulation as recorded and subsequently published on-line is attached hereto for reference.
6. On March 31, 2016, the GCPO received a recommendation from the department which reviewed the responses for conformity to requirements and contract cost. This recommendation concluded that based upon their analysis, an award for E-Scrap Recycling Services should be made to GREEN WAVE as being in the best overall and economic interest of the County.
7. In the regular session of Georgetown County Council on April 12, 2016, council members accepted the recommendation of staff and subsequently endorsed an award to GREEN WAVE for an agreement to provide E-Scrap Recycling Services, based upon the rates as submitted and recorded.
8. NOTICE OF INTENT TO AWARD letters were mailed to all offerors on April 13, 2016 as mandated by Ordinance 2008-09, the "Purchasing Ordinance".
9. The GCPO received notice by electronic email on Friday, April 15, 2016, that ILS was filing a formal protest of the award to GREEN WAVE. This protest notification was properly received within the seven (7) day response time specified within Ordinance No. 2008-09, §2-67, ¶1 and a stay of procurement was imposed.

NATURE OF PROTEST

The e-mailed letter of protest is attached and incorporated herein by reference.

INTELLIGENT LIFECYCLE SOLUTIONS' ARGUMENT

ILS opined:

1. While the offer by GREEN WAVE may be in the best interest of the County for CRT (Cathode Ray Tube, a/k/a “picture tube”) disposal as a single item, it does not take into consideration the cost/benefit of what ILS interprets as a “typical mixed load” of various electronics waste items as processed by the Recycling Division of the Solid Waste Landfill.
2. Further, the analysis by the department does not appear to accurately consider the burden of transportation and/or trailer costs as proposed by some providers.
3. If, indeed, it was the County’s intent to consider solely the disposal cost of CRT items only, then the Request for Proposals should have been for a single item cost proposal only. Otherwise, the consideration should follow the cost or benefit of each item weighed against the estimated annual quantity.

COUNTY’S ARGUMENT

The Georgetown County Procurement Code (2008-09) and the subsequent revision contained within Ordinance 2010-45 which redefines “Local Preference”, are both enacted for the purpose of obtaining for citizens and taxpayers “The highest quality supplies, equipment, and/or services for the least possible cost” and “to encourage competition and endeavor to obtain full and open competition on all purchases”.

In the original determination to see which provider could meet the requirements for the disposal of electronic waste imposed by the state and in the method which best benefits Georgetown County, the results were based upon an analysis provided by the staff responsible for the operational oversight of the recycling program.

In response to the protest from ILS where the aggrieved stated the results did not fully consider the ratio of mixed electronics in a typical waste stream, the GCPO set aside the original analysis and attempted to construct an independent verification of the proposed costs against historic data of the quantity and frequency of e-waste goods recycled.

The GCPO received data from the current provider, Electronic Recyclers International, Incorporated (ERI) of Badin, NC for the period covering 03/01/2015 to 03/1/2016 showing the summary weight of e-waste by item type collected, the number and average weight of the loads collected, and a Receiving Report by category, weight and date.

During the re-evaluation by the GCPO, it appeared the original assessment may not have correctly applied the cost/benefit of each e-waste item type against the estimated amount collected as otherwise evidenced by historical data. The original premise that CRT and LCD comprised 90% of all monitors was found to be inaccurate and the historical data revealed in actuality the total composition of all e-waste was comprised of 65% CRT, 5% DLP (Digital Light Processing), 5% LCD (Liquid Crystal Display), 5% Desktop PC, 1% Laptop PC, 8% Radios, 3% Print Devices, and 8% Fax Machines. Additionally, documentation obtained of the average weight and number of pick-ups loads permitted the GCPO to apply the costs of transportation and/or supplies against the figures already in play from the credits or charges of the e-waste item themselves. The consideration of these costs as imposed by each provider in the course of business made a substantial impact to the overall end result.

Using historical collection data against the values provided in the five (5) proposals tabulated, the GCPO calculated an average cost per year for each responding firm, and determined that the County would pay to:

1. Green Wave Computer Recycling LLC of Indianapolis, IN an estimated \$79,543.19 per annum;
2. Intelligent Lifecycle Solutions LLC of Salley, SC an estimated \$56,628.47 per annum;
3. Care Environmental Corporation of Myrtle Beach, SC an estimated \$64,163.58 per annum;
4. Electronic Recyclers International, Incorporated of Badin, NC an estimated \$73,870.01 per annum; and
5. Powerhouse Recycling Incorporated of Salisbury, NC an estimated \$75,641.15.

GCPO confirmed with Intelligent Lifecycle Solutions that no additional charges will apply for transportation or packaging.

Thus the original conclusion that Green Wave Computer Recycling could provide e-waste pick-up and disposal services as mandated by the state at the lowest overall cost to the County was not supported when all factors were re-evaluated against historical data and proposed costs.

The Georgetown County GCPO concludes that Intelligent Lifecycle Solutions LLC of Salley, SC can best provide e-waste services at an estimated \$56,628.47 per annum when the data from the prior operating year is applied against the proposed costs.

FINDINGS OF LAW

The Georgetown County Procurement Ordinance, as amended, forms the basis for the standards and requirements of purchasing and is codified under County Ordinance 2008-09 (11/09/2010) and County Ordinance 2014-02 (02/25/2014) as permitted under South Carolina Code Ann. § 11-35-50.

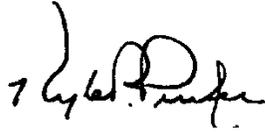
CONCLUSIONS

The GCPO finds that while the original recommendation intended an award to the lowest apparent offeror, identified as Green Wave Computer Recycling, in point of fact there were several considerations that were either not fully applied or were not considered in term of their overall effect to the County's final cost. With the re-evaluation of all factors and their criteria, the County hereby moves to establish Intelligent Lifecycle Solutions LLC of Salley, SC as the provider who represents the best interest of the County.

DETERMINATION

For all the reasons stated above the Georgetown County Purchasing Officer affirms the decision to establish Intelligent Lifecycle Solutions LLC of Salley, SC as the provider who represents the best interest of the County. The protest by Intelligent Lifecycle Solutions LLC of Salley, SC is upheld. It is the intent of the County to finalize the award in the May 24, 2016 regular session of County Council.

It is so ordered.



Kyle P. Prufer
Purchasing Officer,
Georgetown County, SC

Date: May 10, 2016

Attachments:

1. Public Bid Opening Tabulation
2. Protest E-Mail Letter
3. GCPO Re-Evaluation Summary
4. Statement of Right to Appeal



Public Bid Opening Tabulation
Bid #16-025, E-Scrap Recycling Service
Wednesday, March 23, 2016, 3:00PM Eastern

Line 2, Page 21, Proposed Price Structure cost/revenue per Section II, Point 9:

VENDOR : <i>Care Environmental Corp.</i>	
Description	Cost/Revenue to Georgetown Co.
CRT	\$ 0.30
DLP	\$ No Charge
PDP	\$ No Charge
LCD	\$ No Charge
Desktop	\$ No Charge
Laptop	\$ No Charge
Radios	\$ No Charge
Printers	\$ No Charge
Fax Machine	\$ No Charge

Line 3, Page 21 Specific Proposal Requirements attached per Section III: Yes No

Line 2, Page 21, Proposed Price Structure cost/revenue per Section II, Point 9:

VENDOR : <i>Electronic Recyclers International</i>	
Description	Cost/Revenue to Georgetown Co.
CRT	\$ 0.257
DLP	\$ 0.157
PDP	\$ 0.157
LCD	\$ 0.157
Desktop	\$ 0.05
Laptop	\$ 0.05
Radios	\$ 0.107
Printers	\$ 0.107
Fax Machine	\$ 0.107

Line 3, Page 21 Specific Proposal Requirements attached per Section III: Yes No

OPENED BY:

WITNESSED BY: *Ann G. Puckett*



Public Bid Opening Tabulation
Bid #16-025, E-Scrap Recycling Service
Wednesday, March 23, 2016, 3:00PM Eastern

2

Line 2, Page 21, Proposed Price Structure cost/revenue per Section II, Point 9:

VENDOR: Green Wave Computer Recycling

Description	Cost/Revenue to Georgetown Co.
CRT	\$ <0.157
DLP	\$ <0.157
PDP	\$ <0.157
LCD	\$ <0.157
Desktop	\$ 0.10
Laptop	\$ 0.10
Radios	\$ -0-
Printers	\$ -0-
Fax Machine	\$ -0-

Line 3, Page 21 Specific Proposal Requirements attached per Section III: Yes No

Line 2, Page 21, Proposed Price Structure cost/revenue per Section II, Point 9:

VENDOR: Powerhouse Recycling Inc.

Description	Cost/Revenue to Georgetown Co.
CRT	\$ <0.327
DLP	\$ <0.327
PDP	\$ <0.327
LCD	\$ <0.157 good screen + \$ 2.00/unit
Desktop	\$ 0.15
Laptop	\$ 0.65
Radios	\$ <0.057
Printers	\$ <0.057
Fax Machine	\$ <0.057

Additional Pricing on Exceptions page-

Line 3, Page 21 Specific Proposal Requirements attached per Section III: Yes No

OPENED BY: [Signature]

WITNESSED BY: Ann G. Puckett



Public Bid Opening Tabulation
Bid #16-025, E-Scrap Recycling Service
Wednesday, March 23, 2016, 3:00PM Eastern

Line 2, Page 21, Proposed Price Structure cost/revenue per Section II, Point 9:

VENDOR : <i>Intelligent Lifecycle Solutions LLC</i>	
Description	Cost/Revenue to Georgetown Co.
CRT	\$ <i>20.307</i>
DLP	\$ <i>0.01</i>
PDP	\$ <i>20.207</i>
LCD	\$ <i>0.10</i>
Desktop	\$ <i>0.25</i>
Laptop	\$ <i>0.30</i>
Radios	\$ <i>0.01</i>
Printers	\$ <i>0.01</i>
Fax Machine	\$ <i>0.01</i>

Line 3, Page 21 Specific Proposal Requirements attached per Section III: Yes No

Line 2, Page 21, Proposed Price Structure cost/revenue per Section II, Point 9:

VENDOR :	
Description	Cost/Revenue to Georgetown Co.
CRT	\$
DLP	\$
PDP	\$
LCD	\$
Desktop	\$
Laptop	\$
Radios	\$
Printers	\$
Fax Machine	\$

Line 3, Page 21 Specific Proposal Requirements attached per Section III: Yes No

OPENED BY:

WITNESSED BY:

Kyle Prufer

From: Gerald Davies <gerald.davies@lifecyclesolutions.net>
Sent: Friday, April 15, 2016 4:40 PM
To: Nancy Silver
Cc: Kyle Prufer
Subject: RE: Bid 16-025 E scrap Recycling Service

Thanks Nancy

The main point of clarification is how it's being assessed on load info that was not provided and how its averaged out.
Do you have a load that has that much CRT?
If you do I understand a one off load

But ongoing ours and others are lower as we offer more on all items and they offer nothing for them.
A difference of 15c a lb and 17 with some vendors is a lot
They are the only ones offering such a ridiculously low price
Not just us but Powerhouse and ERI are offering more
It seems it's a CRT only load and that is what should have been bid on.
That's what I need clarity on .
Is it a mixed fixed load or is it CRT
My spread sheet shows others as well as us are better in that instance.
I am not seeing the logic in the reasoning provided that's all

Best Regards

Gerry

Gerald Davies FInstSMM
Director

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From: Nancy Silver [mailto:nsilver@gtcounty.org]
Sent: Friday, April 15, 2016 4:31 PM
To: Gerald Davies <gerald.davies@lifecyclesolutions.net>
Cc: Kyle Prufer <kprufer@gtcounty.org>
Subject: RE: Bid 16-025 E scrap Recycling Service

Good Afternoon Mr. Davies,

Unfortunately, I have been told that we do not normally collect audit information such as you are describing below but possibly, for your own reference, you may be able to request that information from the vendor or another appropriate agency under the freedom of information act. For my own peace of mind, can you please confirm whether you are satisfied with the provided information or whether you would like for me to continue the process of a formal protest on this matter?

Thank you,
~Nancy

From: Gerald Davies [mailto:gerald.davies@lifecyclesolutions.net]
Sent: Friday, April 15, 2016 4:05 PM
To: Nancy Silver <nsilver@gtcounty.org>
Cc: Kyle Prufer <kprufer@gtcounty.org>
Subject: RE: Bid 16-025 E scrap Recycling Service

Dear Ms Silver

Accept my apologies but we are passionate on this matter.

If its 25000 per load of CRTs I perfectly understand this..... as our costs are double on that item if you only look at this.

But 25000 a load is a lot of CRTs how long is the contract for.?

But if there is a good mix of other material we win every time this is based on CRT only.... so it's an unfair comparison if that's the case it should have been bid as CRT only as its load has different parameters.

I can't believe that CRT is the basis of the whole load .

Why not send CRT to them and we will pay you as would others for the other material.

As regards the R2.....I unreservedly apologise as I was looking at an old version of their website where they were stating they used downstream R2 companies but did not state they had R2 I have contacted R2 and have double checked and you are correct.

I have found the upgraded site and have looked at R2 sites and they do have R2 so that is my error.

But I still can't believe they can process for 12c a lb after logistics and processing the CRT themselves
As I pay 15c plus logistics to have our glass disposed of.

I would like to see their downstream audit on this as its incredulous in my opinion.

All I would ask is that you audit them on this as we have to undergo site audits on a regular basis from South Carolina state companies and I have two next week.

Thanks for your prompt reply and appreciate your time.
I hope it works for you and if you have any problems please do not hesitate in contacting us.

One more accept my apologies re the R2 statement.

Best Regards

Gerry

Gerald Davies FInstSMM
Director

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From: Nancy Silver [<mailto:nsilver@gtcounty.org>]
Sent: Friday, April 15, 2016 3:23 PM
To: Gerald Davies <gerald.davies@lifecyclesolutions.net>
Cc: Kyle Prufer <kprufer@gtcounty.org>
Subject: RE: Bid 16-025 E scrap Recycling Service

Good Afternoon Mr. Davies,

Attached please find the bid recommendation that we received from the department. Attached you will find a matrix which shows their cost breakdown per company and how the department concluded that Green Wave Computer Recycling was determined to be in the best interest of the County.

Also, I was a bit alarmed by your sentence below stating that Green Wave are not R2 certified. Having not partaken in the recommendation process myself, I wanted to review this. However, based upon the information that we received

from the company, your statement below does not appear to be accurate and Green Wave had supplied their proof of certification in their bid proposal.

Please let me know if you feel that the information attached is sufficient or if you would like to continue the process of a formal protest for this bid.

Thank you,

Nancy Silver
Senior Buyer
Georgetown County Purchasing Dept.
PH: 843-545-3076
FAX: 843-545-3500



From: Gerald Davies [<mailto:gerald.davies@lifecyclesolutions.net>]

Sent: Friday, April 15, 2016 11:50 AM

To: Nancy Silver <nsilver@gtcounty.org>

Subject: Bid 16-025 E scrap Recycling Service

Dear Ms Silver

As per our earlier conversation and obviously only out of the best interests for Georgetown County and in no way wishing to offend anybody in any way.

I would like to appeal against the decision if at all possible as I feel we can offer more to your good selves.

Please find attached a spread sheet showing the collective bids. And reasons why I think we are a better fit for Georgetown County.

I have put rough volume figures based on the most popular items coming from the State contract. You can obviously put your **own figures in Red** as I have no idea what you are likely to have in volumes. If my suggestions are wrong I can only apologise. Please do so if you so wish.

1. We are obviously disappointed as a South Carolina business and employer that we did not attain the contract.
2. **CRTs** as you can see from all bidders.... are a major problem and most companies are costing it as the same as us or more.
3. **CRTs** have to be disposed of in the United States and I cannot find anyone that can process our **glass only for 15c plus 3c** transport after stripping and bringing to the facility. We wish we could. As a lot of labour costs have to be involved in this process.
4. Logistics to Indianapolis is over 11 hours and totally cost prohibitive on scrap that has been vetted by Surplus in SC and the useable items removed.
5. We pick up if required a pallet at a time at any location so no storage costs involved.

6.We as a company are willing at all times to discuss changes in commodity pricing and pay on Market value as per 10% rule on our state contract.

7.CRTs are slowly dwindling out but I understand they are still a problem but we are offering far more on most Items even to the point of offering money for things like printers bearing in mind the network cards must be removed when they arrive at our facility.

8.If CRTs are a major issue we can offset payment against the other material you send us so there will be no large invoices. But I am just speculating that there is a major CRT issue.

9.Some categories on your lists are different from normal and nobody can describe all in a list. But usually only CRT and LCD are chargeable the later if they are broken due to the mercury..... but you have to put a charge if you are disposing of them . Without volumes the Bid is very hard to judge.

Please note that **Green Wave** are not **R2** certified which was a **South Carolina state requirement and usual in the industry** and this will affect the way they have deal with CRT and other waste.

We extend to you an open invitation to visit our facility at any time.

Thank you for your courtesy and consideration at all times.

Best Regards

Gerry

Gerald Davies FInstSMM
Director

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Evaluation for E-Scrap (Bid 16-025) Price Per Pound											
Description	Weighted %	Green Wave		Intelligent Lifecycle		Care Environmental		Electronic Recyclers		Powerhouse Recycling	
		Cost/Revenue	Total Weighted Value	Cost/Revenue	Total Weighted Value	Cost/Revenue	Total Weighted Value	Cost/Revenue	Total Weighted Value	Cost/Revenue	Total Weighted Value
CRT	65.0%	-0.15	-0.0975	-0.30	-0.1950	-0.30	-0.1950	-0.25	-0.1625	-0.32	-0.2080
DLP	5.0%	-0.15	-0.0075	0.01	0.0005	0.00	0.0000	-0.15	-0.0075	-0.32	-0.0160
PDP	0.0%	-0.15	0.0000	-0.20	0.0000	0.00	0.0000	-0.15	0.0000	-0.32	0.0000
LCD	5.0%	-0.15	-0.0075	0.10	0.0050	0.00	0.0000	-0.15	-0.0075	-0.15	-0.0075
Desktop	5.0%	0.10	0.0050	0.25	0.0125	0.00	0.0000	0.05	0.0025	0.15	0.0075
Laptop	1.0%	0.10	0.0010	0.30	0.0030	0.00	0.0000	0.05	0.0005	0.65	0.0065
Radios	8.0%	0.00	0.0000	0.01	0.0008	0.00	0.0000	-0.10	-0.0080	0.05	0.0040
Printers	3.0%	0.00	0.0000	0.01	0.0003	0.00	0.0000	-0.10	-0.0030	0.05	0.0015
Fax Machines	8.0%	0.00	0.0000	0.01	0.0008	0.00	0.0000	-0.10	-0.0080	0.05	0.0040
	100.00%		-0.1065		-0.1721		-0.1950		-0.1935		-0.2080
Additional Costs = Transportation/Trailer Rental Costs (17 loads per year)	329,044	44,500.00	-0.1352	0.00	0.0000	0.00	0.0000	10,200.00	-0.0310	7,200.00	-0.0219
Total Costs Per Pound			-0.2417		-0.1721		-0.1950		-0.2245		-0.2299
Total Costs in Dollars	329,044		\$79,543.19		\$56,628.47		\$64,163.58		\$73,870.01		\$75,641.15

Yrly E-Scrap Data From 3/1/15 to 3/1/16	Electronic Recyclers=Free freight for loads > 21,000 lbs, \$1,000 per load if < 21,000 lbs.
Load 1	17,293 \$1,000.00
Load 2	17,174 \$1,000.00
Load 3	21,242 \$0.00
Load 4	18,939 \$1,000.00
Load 5	14,161 \$1,000.00
Load 6	13,428 \$1,000.00
Load 7	21,050 \$0.00
Load 8	25,661 \$0.00
Load 9	17,133 \$1,000.00
Load 10	15,690 \$1,000.00
Load 11	14,827 \$1,000.00
Load 12	17,303 \$1,000.00
Load 13	22,563 \$0.00
Load 14	22,800 \$0.00
Load 15	21,834 \$0.00
Load 16	24,630 \$0.00
Load 17	23,316 \$0.00
17 Total Loads = 329,044 lbs/yr	329,044 \$9,000.00



STATEMENT OF THE RIGHT TO APPEAL

Ordinance 2008-09, Summary of ADMINISTRATIVE RESOLUTION OF CONTROVERSIES

Sec. 2-67. Administrative Resolution of Controversies

1. **Right to Protest; Exclusive Remedy.** Any prospective bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the solicitation of a contract shall protest to the Purchasing Officer within seven days of the date of issuance of the Invitation for Bids or Request for Proposals or other solicitation documents, whichever is applicable, or any amendment thereto, if the amendment is at issue.

Any actual bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the intended award or award of a contract shall protest to the appropriate Purchasing Officer within seven days of the date notification of award is posted in accordance with this code.

The rights and remedies granted in this article to a disappointed bidder, offeror, contractor, or subcontractor is to the exclusion of all other rights and remedies of such disappointed bidder, offeror, contractor, or subcontractor against the County of Georgetown at common law or otherwise for the loss or potential loss of an award of a contract under the Georgetown County Procurement Policy.

2. **Protest Procedure.** A protest shall be in writing, submitted to the Purchasing Officer and shall set forth the grounds of the protest and the relief requested with enough particularity to give notice of the issues to be decided with the approval of the County Administrator.
3. **Duty and Authority to Attempt to Settle Protests.** Prior to commencement of an administrative review the Purchasing Officer, or designees thereof shall attempt to settle by mutual agreement a protest of an aggrieved bidder, offeror, contractor, or subcontractor, actual or prospective, concerning the solicitation or award of the contract. The Purchasing Officer or designees thereof shall have the authority to approve any settlement reached by mutual agreement with approval of the County Administrator.
4. **Administrative Review and Decision.** If in the opinion of the Purchasing Officer, after reasonable attempt, a protest cannot be settled by mutual agreement, the Purchasing Officer shall promptly conduct an administrative review and shall issue a decision in writing within ten (10) days of completion of the review. The decision shall state the reason for the action taken.
5. **Notice of Decision.** A copy of the decision along with a statement of appeal rights under shall be mailed or otherwise furnished immediately to the protestant and any other party intervening. The Purchasing Officer shall also post a copy of the decision at a date and place communicated to all parties participating in the administrative review, and such posted decision shall indicate the date of posting and shall be accompanied by a statement of the right to appeal.
6. **Finality of Decision.** A decision shall be final and conclusive, unless fraudulent, or unless any person adversely affected by the decision requests a further administrative review by the Procurement Review Panel within ten (10) days of posting of the decision. The request for review shall be directed to the County Administrator, who shall forward the request to the Procurement Review Panel and shall be in writing, setting forth the reasons why the person disagrees with the decision of the Procurement Officer. The person may also request a hearing before the Procurement Review Panel that shall be established at the time of request by the County Administrator.
7. **Stay of Procurement During Protests.** In the event of a timely protest under paragraph 1 above, the County

shall not proceed further with the solicitation or award of the contract until a decision is rendered by the Procurement Officer or, in the event of a timely appeal to the Procurement Review Panel, until a decision is rendered by the panel; provided, however, that solicitation or award of a protested contract will not be stayed if the Procurement Officer, after consultation with the head of the using department, makes a written determination that the solicitation or award of the contract without delay is necessary to protect the best interest of the County.

REMEDIES

Sec. 2-70. Remedies Prior to an Award.

1. If prior to award of a contract, it is determined that the solicitation or award is in violation of law, then the solicitation or proposed award may be:
 - (a) canceled;
 - (b) revised to comply with the law and rebid; or
 - (c) award in a manner that complies with the provisions of this code.

Sec. 2-71. Remedies After an Award.

1. If after an award it is determined that a solicitation or award of a contract is in violation of law, then:
 - (a) If the person awarded the contract has not acted fraudulently or in bad faith:
 - (1) The contract may be ratified and affirmed, provided it is determined that by doing so is in the best interest of Georgetown County.
 - (2) The contract may be terminated and the person awarded the contract may be compensated for actual expenses reasonably incurred under the contract prior to termination.
2. If the person awarded the contract has acted fraudulently or in bad faith:
 - (a) The contract may be declared null and void.
3. The contract may be ratified; if such action is in the best interest of Georgetown County without prejudice to the County's right to such damages as may be appropriate.

Sec. 2-72. Frivolous Protests.

1. Signature on Protest Constitutes Certificate. The signature of an attorney or party on a request for review, protest, motion, or other document constitutes a certificate by the signer that the signer has read such document, that to the best of the signer's knowledge, information, and belief formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law or a good faith argument for the extension modification, or reversal of existing by law, and that it is not interposed for any proper purpose, such as to harass, limit competition, or to cause unnecessary delay or needless increase in the cost of the procurement of the litigation.
2. Sanctions for Violations. If a request for review, protest, pleading, motion, or other document is signed in violation of this subsection on or after appeal to the Procurement Review Panel, the Procurement Review Panel, upon motion or upon its own initiative, may impose upon the

person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the protest, pleading, motion, or other paper, including a reasonable attorney's fee.

REVIEW PANEL

Sec. 2-73. Appeal to the Procurement Review Panel – Jurisdiction.

The Review Panel shall elect a chairperson from the members at large and shall meet as often as necessary to afford a swift resolution of the controversies submitted to it.

Request for review of other written determinations, decisions, policies, and procedures as arise from or concern the procurement of supplies services or construction procured in accordance with the provisions of this policy and the ensuing regulations; provided that any matter which could have been brought before the Procurement Officer in a timely and appropriate manner, but was not shall not be the subject of review. Request for review under this paragraph shall be submitted to the County Administrator in writing, setting forth the grounds, within ten (10) days of the date of such written determinations, decisions, policies, and procedures.

Unless an action has been initiated in the courts for essentially the same cause of action, the Procurement Review Panel shall have authority to review and determine:

1. Any protest of a solicitation or award of a contract addressed to the County Administrator by an actual or prospective bidder or offeror or a contractor.
2. Any appeal by an aggrieved party from a determination by the Purchasing Officer authorized in Section 2-67.
3. Direct appeal of any award made under Section 2-47

Sec. 2-74. Rules of Procedure.

1. Time Limit for Filing an Appeal. For an appeal under Section 2-67 the aggrieved person shall file an appeal with the Purchasing Officer within seven (7) days of receipt of a decision. For an appeal under Section 2-68 the aggrieved person shall file an appeal with County Administrator within fourteen (14) days of the receipt of decision.
2. Decision. Upon receipt of an appeal from an aggrieved party, the Procurement Review Panel shall conduct an administrative review of the appeal and within twenty (20) days shall affirm, alter or deny the decision rendered by the Purchasing Officer.
3. Appeal of Procurement Review Panel's Decision. Any person receiving an adverse decision may appeal to County Council.

[END]