

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

William C. McMaster, Circuit Court Judge

Common Pleas Case No. 2025-CP-23-00389

Appellate Case No. 2025-001151

Southern Painting and Maintenance Specialists,
LLC.,

Appellant,

v.

Greenville County,

Respondent.

RECORD ON APPEAL
Volume II of II (ROA_0492-0587)

Respectfully submitted this 3rd day of December 2025.

s/John-Paul Baum

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STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

Southern Painting and Maintenance
Specialists, LLC,

Plaintiff,

v.

Greenville County,

Defendant.

IN THE COURT OF COMMON PLEAS

Case No. 2025-CP-23-00389

**MEMORANDUM IN SUPPORT OF
PRELIMINARY INJUNCTION**

I. INTRODUCTION¹

Greenville County has violated South Carolina law by awarding a public construction contract to an unlicensed contractor. This is not merely a procedural misstep—it is a fundamental breach of the public trust and an attack on South Carolina’s licensing and procurement act.

Contractor licensing in South Carolina is not optional. It is a legal prerequisite designed to protect public safety, ensure quality workmanship, and maintain accountability on publicly funded projects. Yet, Greenville County has disregarded this requirement entirely, handing taxpayer-funded work to an entity that has not met the State’s most basic threshold for legal operation.

Southern Painting is a law-abiding, licensed general contractor that pays thousands of dollars each year to remain in good standing with the State. It plays by the rules. It follows the law. And it should not be forced to compete against companies that do not. To allow this unlawful award to stand is to reward noncompliance, punish legitimate businesses, and invite further disregard for the law.

¹ Plaintiff incorporates all facts, arguments, and evidence set forth in memorandum in support of declaratory judgment.

If the law means anything, this Court must intervene. Greenville County must be enjoined from proceeding with this illegal contract. Licensing requirements are not suggestions—they are mandates. When a public entity violates those obligations, it falls to the Court to enforce the law and restore the rule it exists to uphold.

II. GREENVILLE COUNTY PROCURMENT CODE

Greenville County’s Procurement Code governs the award of public construction contracts and mandates compliance with competitive, transparent, and lawful procurement practices. Section 7-192(b) states that the Code is intended to “foster real and effective broad-based competition” and “ensure the fair and equitable treatment of all persons” seeking to do business with the County. (Exhibit A.) These provisions establish binding procurement standards and are not discretionary. All vendors participating in public procurements must meet the legal qualifications required to enter into County contracts.

The Code also mandates the method for selecting construction contracts. Section 7-304 requires that all County contracts valued at \$35,000 or more be awarded through competitive sealed bidding or competitive sealed proposals—unless a specific exemption applies. These procedures are designed to ensure that contracts are awarded only after public notice, documented evaluation, and compliance with all material terms of the solicitation, including legal eligibility. Circumventing these requirements—such as by awarding a contract to an unlicensed contractor—renders the procurement process noncompliant and voidable under the Code.

III. ANIMAL CARE FACILITIES PROJECT

On September 20, 2024, Greenville County issued a seal bid for general contractors to provide and install flooring for Animal Care Facilities- Shelter Flooring Installation, project ID: RFP # 25029 (“Project”). The proposal stated that the current flooring of the Animal Care Facility showed visible wear, including scratches, cracks, and areas where moisture has seeped in, leading to safety

and health concerns for both animals and staff. The RFP requested contractors to provide the following scope of work for the County:

- Inspecting all surfaces where new flooring will be installed.
- Identifying any subfloor preparation required to ensure the long-term durability and performance of the new flooring.
- Preparing the site for installation, including the removal and proper disposal of existing materials, if necessary.
- Moisture testing to be conducted where needed to ensure proper adhesion.
- The contractor is responsible for ensuring the site is adequately prepared to minimize delays during installation.

The Project called for four phases, two of which involved the installation of flooring (RFP, Section 3.7). It also required the awarded contractor to remove old flooring and debris (RFP, Section 3.8). Contractor were required to provide their contractor's license with their bid. The relevant language is found here:

4.4. Statement of Qualifications

Vendor shall include the following with their response:

- A. Overview of company background, the relationship of any co-ventures, and an identification of subcontractors, which the Contractor proposes to use on the contract and their respective percentages of participation
- B. Staffing or organizational chart showing staff that will be used for this project
- C. References including names, addresses, and telephone numbers of current or previous customers. The vendor should include any South Carolina governmental entity reference.
- D. A brief description of previous projects
- E. Explanation of Methodology for flooring solution
- F. Evidence of Certifications/Licenses required to complete the project, to include applicable General Contractor's License and Specialty Licenses
- G. Explanation of Methodology for flooring solution
- H. Proposed product specifications
 - I. Warranty specifications
- J. Timeline for completion, after receipt of Notice to Proceed
- K. Certificate of Insurance

The proposal required bidders to comply with state and federal laws and to be licensed and authorized to do business in South Carolina. (RFP, Section 12.24). Tailor Mader Services, Inc. ("TMS") a bidder, certified in its proposal that it held a valid contractor's license and was authorized to do business in the state. However, TMS does not hold a general contractor's license and was not registered to do business in South Carolina at the time of their bid (Exhibit B & C). Despite this, TMS was awarded the Project by Greenville County. Southern Painting protested the bid under the Greenville County Procurement Code and appealed to the County Administrator, but both the protest and the appeal were denied. As Southern Painting has exhausted its administrative remedies, its claim is now ripe for judicial review.

IV. STANDARD OF REVIEW

“The sole purpose of an injunction is to preserve the status quo to avoid potential irreparable injury to the aggrieved party pending litigation. *Levine v. Spartanburg Reg'l Servs. Dist., Inc.*, 367 S.C. 458, 464, 626 S.E.2d 38, 41 (Ct. App. 2005), *holding modified by Poynter Invs., Inc. v. Century Builders of Piedmont, Inc.*, 387 S.C. 583, 694 S.E.2d 15 (2010). “An order granting or denying an injunction is reviewed for abuse of discretion.” *Richland Cnty. v. S.C. Dep't of Revenue*, 422 S.C. 292, 309, 811 S.E.2d 758, 767 (2018). *See Williams*, 92 S.C. at 347, 75 S.E. at 710 (holding a party seeking a preliminary injunction need to prove only “a fair question to raise as to the existence of [a legal] right”); *Levine*, 367 S.C. at 465, 626 S.E.2d at 42 (holding a plaintiff seeking a preliminary injunction need not prove an absolute legal right; a plaintiff need only present a “fair question to raise as to the existence of such a right”); *see also Compton*, 392 S.C. at 367, 709 S.E.2d at 642 (“In evaluating whether a plaintiff is entitled to a preliminary injunction, the court must examine the merits of the underlying case only to the extent necessary to determine whether the plaintiff has made a sufficient prima facie showing of entitlement to relief.”) *Jennings-Dill, Inc. v. Israel*, 442 S.C. 98, 108–09, 897 S.E.2d 201, 206–07 (Ct. App. 2024), *reh'g denied* (Feb. 14, 2024).

V. ARGUMENT

For a preliminary injunction to be granted, the plaintiff must establish that: (1) he would suffer irreparable harm if the injunction is not granted; (2) he will likely succeed on the merits of the litigation; and (3) there is an inadequate remedy at law. *AJG Holdings, LLC v. Dunn*, 382 S.C. 43, 51, 674 S.E.2d 505, 508 (Ct. App. 2009). An injunction is necessary to prevent Greenville County from awarding the contract to TMS, as TMS is not a licensed contractor. The injunction is necessary to protect the parties' rights and ensure compliance with state law until the Project can be awarded to a properly qualified bidder.

A. Southern Painting will succeed on the merits because Greenville County awarded the Project to an unlicensed contractor in violation of the law.

Under S.C. Code § 40-11-410(c), flooring installation qualifies as general contracting, as it includes nonstructural renovations like floor installation and finishing. Under South Carolina law, flooring installers must be licensed for projects over \$10,000. S.C. Code 40-11-30 prohibits individuals or entities from performing contracting work above this threshold without a valid license. Additionally, S.C. Code 40-11-370 prohibits individuals from presenting themselves as licensed contractors or performing general or mechanical construction without obtaining the required license. It is also a criminal offense for an awarding authority or contractor to allow a contractor to begin work unless the bidder or contractor has first obtained a license. S.C. Code 40-11-200(b). As such, the South Carolina Supreme Court has reinforced this requirement, holding that general contractors cannot legally undertake construction without first obtaining a license. *W & N Const. Co. v. Williams*, 322 S.C. 448, 449, 472 S.E.2d 622, 622 (1996).

S.C. Code 40-11-30 is designed to regulate and ensure quality, safety, and accountability in the construction and renovation industry. Given that flooring installation is included under the nonstructural renovation category, it follows that the installer must be licensed to legally perform such work. Failure to obtain the necessary license not only violates S.C. Code 40-11-30 but also render the contractor's work invalid.

Here, it is undisputed that TMS is unlicensed and failed to provide a required license to the County. (Exhibit D, Pl.'s Reqs. For Admis No. 10). It is irrelevant that Mr. Brewer "made inquiries" with SCLLR. It is undisputed that he never once looked to see if TMS was licensed. It is equally undisputed that Mr. Brewer didn't provide the SCLLR with the proper scope of work, as Mr. Brewer stated to SCLLR that the Project was a mere sealant job. Therefore, TMS is barred from performing construction work.

Moreover, TMS was not registered to do business in the state at the time of their bid. (Exhibit C). Under S.C. Code Ann. § 33-15-101, a foreign corporation cannot transact business in South Carolina without a certificate of authority from the Secretary of State. By operating without this authorization, the unlicensed contractor violates state law, making any contract awarded to it nonresponsive and void.

1. Construction of a statute by a state agency is no longer the law as alleged by Greenville County.

Greenville County relies heavily on *Ruocco* and *In re: Protest of Monroe Construction Co.* to argue that the SCLLR and Procurement Review Panel concluded no license was required². But that position is legally outdated. Deference to agency interpretations of licensing statutes is no longer the law in this Country. Courts now interpret statutes independently, without yielding to agency conclusions—especially where those conclusions undermine statutory licensing requirements. The Supreme Court, Chief Justice Roberts, held that courts need not, and under the Administrative Procedure Act may not, defer to an agency's interpretation of the law simply because a statute is ambiguous. *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 144 S. Ct. 2244, 219 L. Ed. 2d 832 (2024). In short, it's the job of **judges—not bureaucrats—to say what the law means**. Even if a law is unclear, **courts must interpret it independently**, not just accept the agency's reading. The Court reminded us that “[t]he Framers appreciated that the laws judges would necessarily apply in resolving those disputes would not always be clear, but envisioned that the final “interpretation of the laws’ would be ‘the proper and peculiar province of the courts.’” *Id.* at 2247 (quoting *The Federalist* No. 78, at 525 (A. Hamilton)).

“A statute should be given a reasonable and practical construction consistent with the purpose and policy expressed in the statute. *Colonial Pipeline Co. v. S.C. Dep't of Revenue*, 443

² The Procurement Review Panel's decision is not binding on this Court because it applies to state-level contracts, whereas the present matter involves a county project.

S.C. 448, 461, 905 S.E.2d 129, 136 (Ct. App. 2024), *reh'g denied* (Aug. 19, 2024), *cert. denied* (Feb. 12, 2025). In *Colonial Pipeline Co. v. S.C. Dep't of Revenue*, the court held, “we find the ALC did not apply the plain and ordinary meaning of the term industrial plant. Thus, we reverse.” *Id.* The statute is clear: unlicensed contractors cannot perform the work at issue. This is a direct violation of South Carolina law, and the Court need not look beyond the plain language to reach that conclusion.

2. TMS is not an indispensable party.

As an initial matter, Greenville County has not filed a motion pursuant to SCRCP 19 or taken any other action to join TMS as an interested party. Therefore, this argument is waived.

Additionally, TMS is not a necessary party to this action under SCRCP 19. Rule 19(a) requires joinder only when (1) complete relief cannot be accorded among those already parties, or (2) the absent party claims an interest relating to the subject of the action and disposition in their absence may impair or impede their ability to protect that interest or subject existing parties to substantial risk of inconsistent obligations.

Neither circumstance applies here. Southern Painting seeks a determination that Greenville County’s award of the contract to TMS violated mandatory state licensing requirements. The gravamen of this suit is the County’s conduct—not TMS’s. Complete relief—namely, injunctive relief barring the County from proceeding under an unlawful contract—can be granted without TMS. Nor does TMS’s absence prevent it from protecting its interests. The County is fully capable of defending the validity of its procurement decisions, including any asserted basis for deeming TMS qualified. No risk of inconsistent obligations exists, as TMS is not currently subject to any obligation arising out of this lawsuit, only the County is.

B. Southern Painting will suffer irreparable harm without an injunction.

As of yesterday, Southern Painting has just learned that TMS—still unlicensed and unauthorized—has bulldozed its way halfway through the Project. (Brewer Aff. ¶ 10). The damage isn't hypothetical anymore; it's happening in real time, and it will keep happening unless this Court puts an immediate stop to it.

Whether “a wrong is irreparable, in the sense that equity may intervene, and whether there is an adequate remedy at law, are questions that are not decided by narrow and artificial rules.” *Kirk v. Clark*, 191 S.C. 205, 211, 4 S.E.2d 13, 16 (1939). Irreparable harm in the business context can arise by way of example, when the denial of hospital privileges leads to the loss of professional practice, patient referral base, and competency, warranting injunctive relief. *Levine v. Spartanburg Reg'l Servs. Dist., Inc.*, 367 S.C. 458, 465, 626 S.E.2d 38, 42 (Ct. App. 2005), *holding modified by Poynter Invs., Inc. v. Century Builders of Piedmont, Inc.*, 387 S.C. 583, 694 S.E.2d 15 (2010). The court is not required to conduct an independent analysis of the balancing of the equities, as this is subsumed by the irreparable harm and inadequate remedy elements of a preliminary injunction. *Poynter Invs., Inc. v. Century Builders of Piedmont, Inc.*, 387 S.C. 583, 587, 694 S.E.2d 15, 17 (2010)

South Carolina's licensing laws exist to protect public safety by ensuring that only qualified contractors perform construction work. Awarding a contract to an unlicensed contractor poses an immediate and irreparable risk, which is substandard workmanship. As stated above, it is unlawful for a contractor to perform work without a general contractor's license. See S.C. Code 40-11-370. Employing unlicensed contractor's can lead to dangerous conditions, structural failures, and costly repairs that cannot simply be undone. Once an unqualified contractor performs work, the damage—is already done, making monetary remedies insufficient.

Awarding the Project to an unlicensed contractor inflicts unfair and irreparable economic harm on licensed professionals like Southern Painting. The contractor licensing system exists to ensure lawful competition and protect the integrity of the industry. Once work begins (as it already has), Southern Painting loses the ability to obtain the contract because the project progresses under the control of an unlicensed contractor, making it impractical or legally impossible to reverse completed work and reallocate the contract. Allowing the unlicensed contractor to proceed deprives Southern Painting of the opportunity to perform the contract, causing irreparable harm that cannot be remedied by monetary damages alone.

C. Southern Painting has no remedy at law, as it will lose the Project and has no legal recourse to recover the loss.

“The basis for granting equitable relief is the impracticability of obtaining full and adequate compensation at law.” *Nutt Corp. v. Howell Rd., LLC*, 396 S.C. 323, 327, 721 S.E.2d 447, 449 (Ct. App. 2011). “Accordingly, equity is generally only available when a party is without an adequate remedy at law.” *Id.*

Here, Southern Painting has no adequate remedy at law because no legal cause of action exists to redress a Project that is awarded to an unlicensed contractor. Under the Greenville County Procurement Code, Southern Painting was required to protest the bid, but that protest was denied, leaving Southern Painting without any statutory or contractual recourse. Without any available legal claim for damages or other relief, Southern Painting’s only remaining avenue is to seek injunctive and declaratory relief. Because equity intervenes where the law offers no solution, the absence of a legal remedy makes injunctive relief not only appropriate but imperative to prevent irreparable harm.

VI. CONCLUSION

The injunction should be granted because Greenville County awarded the Project to an unlicensed contractor which violates South Carolina law, undermines fair competition, and poses

a risk to public safety. Southern Painting, a properly licensed contractor, faces irreparable harm through lost business opportunities and an uneven playing field that rewards noncompliance. Greenville County has no legitimate interest in circumventing state licensing requirements, and allowing the contract to proceed would set a dangerous precedent that weakens the integrity of public procurement. Because Southern Painting has no adequate remedy at law and the balance of equities and public interest strongly favor enforcement of licensing laws, injunctive relief is not only appropriate but necessary to prevent the ongoing and unlawful harm.

Respectfully submitted April 11, 2025

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DIVISION 1. GENERAL PROVISIONS

PART A. PURPOSE AND APPLICATION

§ 7-191 CITATION.

This article shall be known and may be cited as the "Greenville County Procurement Ordinance."

(Ord. 3704, passed 6-17-2003)

§ 7-192 INTENT; POLICY.

(a) *Legislative Intent.* It is the intent of the County Council that the primary concern of county government be the effective provision of services to the citizens of the County in a competitive, efficient and economical way, and that all purchases of goods and services needed to provide these services be conducted with primary concern for the efficient and economical use of revenues provided by those citizens.

(b) *Purpose and Policies.* The underlying purposes and policies of this article are:

- (1) To provide a clear and comprehensive ordinance governing procurement by this County;
- (2) To promote increased public confidence in the procurement regulations, procedures, and practices used by this County;
- (3) To maximize the purchasing value of public funds;
- (4) To foster real and effective broad based competition for public procurement within the free enterprise system;

(5) To ensure the fair and equitable treatment of all persons who are providing, or seeking to provide, supplies and/or services to this County;

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(6) To provide safeguards for maintaining a procurement system of quality and integrity; and

(7) To permit the continued development of procurement regulations, procedures, and practices that support user needs.

(Ord. 3704, passed 6-17-2003)

§ 7-193 OBLIGATION OF GOOD FAITH.

Every contract, duty, or responsibility within this article imposes an obligation of good faith in its negotiation, performance, or enforcement. "Good Faith" means honesty in fact in the conduct or transaction concerned and the observance of reasonable commercial standards of fair dealing.

(Ord. 3704, passed 6-17-2003)

§ 7-194 APPLICATION.

(1) *General Application.* This article applies to contracts for the procurement of property, supplies, services, and/or construction entered into by the County after the effective date of this article, unless the parties agree to its application to contracts entered into prior to the effective date.

(2) *Application to County Procurement.* This article shall apply to every expenditure of funds by the County for the purpose of procuring property, supplies, services, and/or construction services for the County irrespective of the source of funds. It shall also apply to the disposal of County equipment and/or supplies.

(3) *Application to State or Federal Fund Procurements.* Where a procurement involves funds provided by the State of South Carolina or the United States of America, that procurement shall be in compliance with such State or Federal laws and authorized regulations as are mandatorily applicable. However, in every instance where the provisions of this article are more restrictive than State or Federal laws or authorized regulations, the provisions of this article shall be followed.

(Ord. 3704, passed 6-17-2003)

§ 7-195 REPEALER.

All previously issued ordinances pertaining to public procurement for this County are hereby repealed.

(Ord. 3704, passed 6-17-2003)

§ 7-196 SEVERABILITY.

If any provision of this article or any application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or application of this article which can be given effect without the invalid provision or application.

(Ord. 3704, passed 6-17-2003)

PART B. DETERMINATIONS

§ 7-197 DETERMINATIONS.

Written determinations and findings required by this article and all documents pertinent to contracts shall be retained in official files of the Purchasing Department. This requirement does not include documents, parts of documents, or copies of documents that are normally distributed to using agencies, the Finance Department, or any other agency that normally receives such distributions.

(Ord. 3704, passed 6-17-2003)

PART C. DEFINITIONS OF TERMS USED

§ 7-198 DEFINITIONS.

(1) *Architect Engineer and Land Surveying Services*. Those professional services associated with the practice of architecture, professional engineering, land surveying, landscape architecture and interior design pertaining to construction, as defined by the laws of this state, as well as incidental services that members of these professions and those in their employ may logically or justifiably perform, including studies, investigations, surveys, evaluations, consultations, planning, programming conceptual designs, plans and specifications, cost estimates, inspections, shop drawing reviews, sample recommendations, preparation of operating and maintenance manuals and other related services.

(2) *Blind Trust*. An independently managed trust in which the employee beneficiary has no management rights and in which the employee beneficiary is not given notice of alterations in, or other dispositions of, the property subject to the trust.

(3) *Business*. Any corporation, partnership, sole proprietorship, firm, an enterprise, a franchise, an association, organization, self-employed individual, or any other private legal entity.

(4) *Catalogue Price*. The price included in a catalogue, price list, schedule, or other form that:

(a) Is regularly maintained by a manufacturer or contractor;

(b) Is either published or otherwise available for inspection by customers; and

(c) States prices at which sales are currently or were last made to a significant number of any category of buyers or buyers constituting the general buying public for the supplies or services involved.

(5) *Change Order (unilateral)*. A written order signed and unilaterally issued by the Procurement Director, or by his designee, directing the Contractor to make changes which the contract authorizes the County to order without the consent of the Contractor.

(6) *Change Order (bilateral)*. An agreed-upon written order to a Contractor executed by the County and the Contractor after execution of the base contract, directing a change in the work which may include a change in the contract price, the time for the Contractor's performance, or any combination thereof.

(7) *Confidential Information*. Information, whether transmitted orally or in writing, which is obtained by reason of the public position or office held and is of such nature that it is not, at the time of transmission, a matter of public record or public knowledge.

(8) *Construction*.

(a) The process of building, altering, repairing, improving, or demolishing any public structure or building, or other public improvements of any kind to any public real property. It does not include the routine operation, routine repair, or routine maintenance of existing structures, buildings or real property.

(b) Construction Management Services, Design-Build Services, or Turnkey Management Services. Approaches to construction contract management that allow for the selection of a single firm to perform and/or manage the complete design and construction of a project (Ordinance 3018).

(9) *Contract*. All types of County agreements, regardless of how they may be styled, for the procurement or disposal of supplies, services, or construction.

(10) *Contract Modification*. Any written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of any contract accomplished by mutual action of the parties to the contract.

(11) *Contractor*. Any person having a contract with the County.

(12) *Cooperative Purchasing*. Procurement conducted by, or on behalf of, more than 1 Public Procurement Unit.

(13) *Data*. Recorded information, regardless of form or characteristic.

(14) *Days*. Calendar days.

(15) *Designee*. A duly authorized representative of a person with formal responsibilities under the ordinance.

(16) *Minority and Disadvantaged Business*. A small business which is owned or controlled by a majority of persons, who have been deprived of the opportunity to develop and maintain a competitive position in the economy because of social disadvantages and/or owned and operated by a person considered to fall within the category of a minority group. Such groups include, but are not limited to Black Americans, Hispanic Americans, and Native Americans.

(17) *Electronic*. Anything electrical, digital, magnetic, optical, electromagnetic, biometric, or any other technology that is similar to these technologies. (cf. S.C. Code, § 26-6-20(5)).

(18) *Electronic Record*. A record generated, communicated, received, or stored by electronic means. (cf. S.C. Code, § 26-6-20(7))

(19) *Electronic Signature*. Any identifier or authentication technique attached to or logically associated with an electronic record that is intended by the party using it to have the same force and effect as a manual signature. (cf. S.C. Code, § 26-6-20(8))

(20) *Electronic Commerce*. Refers to the use of computer technology resources where business trade is conducted electronically.

(21) *Economic Interest*. An interest distinct from that of the general public in a purchase, sale, lease, contract, option, or other transaction or arrangement involving property or services in which a public official, public member, or public employee may gain an economic benefit of \$50 or more.

This definition does not prohibit a public official, public member, or public employee from participating in, voting on, or influencing or attempting to influence an official decision if the only economic interest or reasonably foreseeable benefit that may accrue to the public official, public member, or public employee is incidental to the public official's, public member's, or public employee's position or which accrues to the public official, public member, or public employee as a member of a profession, occupation, or large class to no greater extent than the economic interest or potential benefit could reasonably be foreseen to accrue to all other members of the profession, occupation, or large class.

(22) *Excess Supplies*. Any supplies other than expendable supplies having a remaining useful life but which are no longer required by the Using Agency in possession of the supplies.

(23) *Expendable Supplies*. All tangible supplies other than nonexpendable supplies.

(24) *Gender*. It is the intention of this article to be gender neutral. Wherever he, his, or similar language is used it is not intended to specify a particular individual's gender but rather to make reference to the individual.

(25) *Gift*. Anything of value, including entertainment, food, beverage, travel, and lodging given or paid to a public official, public member, or public employee to the extent that consideration of equal or greater value is not received. A gift includes a rebate or discount on the price of anything of value unless it is made in the ordinary course of business without regard to that person's status. A gift does not include campaign contributions accepted pursuant to this chapter.

(26) *Governmental Body*. Greenville County or any department or agency of this County with which a public official, public member, or public employee is associated or employed.

(27) *Immediate Family*.

(a) A child residing in a public official's, public member's, or public employee's household;

(b) A spouse of a public official, public member, or public employee; or

(c) An individual claimed by the public official, public member, or public employee or the public official's, public member's, or public employee's spouse as a dependent for income tax purposes.

(28) *Individual*. One human being.

(29) *Individual with whom he/she is associated*. An individual with whom the person or a member of his immediate family mutually has an interest in any business of which the person or a member of his immediate family is a director, officer, owner, employee, compensated agent, or holder of stock worth \$100,000 or more at fair market value and which constitutes 5% or more of the total outstanding stock of any class.

(30) *Invitation for Bids (IFB)*. A written or published solicitation issued by an authorized procurement officer for bids to contract for the procurement or disposal of stated supplies, services, or construction, which will ordinarily result in the award of the contract to the responsible bidder making the lowest responsive bid.

(31) *May*. Denotes the permissive.

(32) *Nonexpendable Supplies*. All tangible supplies having an original acquisition cost of over \$250 per unit and a probable useful life of more than 1 year.

(33) *Person*. An individual, a proprietorship, firm, partnership, joint venture, joint stock company, syndicate, business trust, an

estate, a company, committee, an association, a corporation, club, labor organization, or any other organization or group of persons acting in concert.

(34) *Personal Property*. All supplies not considered as real property.

(35) *Public Employee*. An individual employed by the State, a county, a municipality, or a political subdivision thereof.

(36) *Public Member*. An individual appointed to noncompensated part time position on a board, commission, or council. A public member does not lose this status by receiving reimbursement of expenses or a per diem payment for services.

(37) *Public Official*. An elected or appointed official of the State, a county, a municipality, or a political subdivision thereof, including candidates for the office.

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

(39) *Procurement Officer*. Any person duly authorized to administer contracts and make written determinations with respect thereto. The term also includes an authorized representative acting within the limits of authority.

(40) *Public Agency*. A public entity subject to or created by the County.

(41) *Public Procurement Unit*. Any county, city, town, or other subdivision of the State or public agencies of any such subdivision, public authority, educational, health, or other institution, any other entity which expends public funds for procurement of property, supplies, services, or construction, any association which limits membership to governmental units.

(42) *Procurement Director*. The person holding the position created in § 7-203 (Establishment, Appointment, and Tenure), as the head of the Central Purchasing Department of the County.

(43) *Real Property*. Any land, all things growing on or attached thereto, and all improvements made thereto including buildings and structures located thereon.

(44) *Regulation*. A statement having general or particular applicability and future effect, designed to implement, interpret, or prescribe law or policy, or describing organization, procedure, or practice requirements, which has been promulgated in accordance with existing procedure.

(45) *Request for Proposals (RFP)*. A written or published solicitation issued by an authorized procurement officer for proposals to provide supplies, services, or construction services which ordinarily result in the award of the contract to the responsible bidder making the proposal determined to be most advantageous to the County. The award of the contract must be made on the basis of evaluation factors which must be stated in the RFP, and must include, but not be controlled alone by the factor of price proposed to be charged.

(46) *Responsible Bidder*. A person who has the capability in all respects to perform fully the contract requirements, and the tenacity, perseverance, experience, integrity, reliability, capacity, facilities, equipment, and credit which will assure good faith performance.

(47) *Responsive Bidder*. A person who has submitted a bid which conforms in all material respects to the requirements set forth in the invitation for bids.

(48) *Service(s)*. The furnishing of labor, time, or effort by a contractor not required to deliver specific end product, other than reports which are merely incidental to required performance. This term does not include employment agreements.

(49) *Shall*. Denotes the imperative.

(50) *Small Business*. A business which is independently owned and which is not dominant in its field of operation or an affiliate or subsidiary of a business dominant in its field of operation.

(51) *Subcontractor*. Any person having a contract to perform work or render service to a prime contractor as a part of the prime contractor's agreement with the County.

(52) *Specification*. 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.

(53) *Supplies*. All personal property, including but not limited to equipment, materials, printing, insurance, excluding real property or

an interest in real property.

(54) *Surplus Supplies.* Any supplies other than expendable supplies no longer having any use to the County. This includes obsolete supplies, scrap materials, and nonexpendable supplies that have completed their useful life cycle.

(55) *Using Agency.* Any department, commission, board, or public agency of this County requiring supplies, services, or construction procured under this article.

(Ord. 3704, passed 6-17-2003; Ord. 5051, passed 1-22-2019)

PART D. PUBLIC ACCESS TO PROCUREMENT INFORMATION

§ 7-199 PUBLIC ACCESS TO PROCUREMENT INFORMATION.

Procurement information shall be a public record to the extent required by S.C. Code, §§ 30-4-10 et seq. (the Freedom of Information Act, being S.C. Code, Title 30, Ch. 4). Commercial or financial information obtained in response to a "Request for Proposals" or any type of bid solicitation, or "Request for Quotations," which is privileged and confidential shall not be disclosed as well as other information which may be exempt from disclosure. Privileged and confidential information is information in specific detail not customarily released to the general public, the release of which might cause harm to the competitive position of the party supplying the information or constitute an unreasonable invasion of privacy. Examples of this type information include, but are not limited to:

- (1) Customer Lists;
- (2) Design recommendations and identification of prospective problem areas under an RFP;
- (3) Design concepts, including methods and procedures;
- (4) Biographical data on key employees of the bidder;
- (5) Evaluative documents predecisional in nature such as inter or intra agency memoranda containing technical evaluations and recommendations.
- (6) Items marked as proprietary by a bidder under an RFP and not subject to public access under any other provisions.

(Ord. 3704, passed 6-17-2003)

DIVISION 2. PROCUREMENT ORGANIZATION

PART A. ORGANIZATION OF PUBLIC PROCUREMENT

§ 7-201 CENTRALIZATION OF PURCHASING.

All rights, powers, duties, and authority relating to the purchase of equipment, supplies, and services and to the management, control, warehousing, sale, and disposal of equipment and surplus supplies are hereby vested in a Central Purchasing Department for Greenville County subject to the legitimate authority of the County Council, the County Administrator and such ordinances, rules, and regulations as exist for the governance of Greenville County.

(Ord. 3704, passed 6-17-2003)

§ 7-202 CENTRALIZATION OF PROCUREMENT AUTHORITY.

Except as otherwise provided in this article, the authority relating to the procurement of supplies, services, and construction is hereby vested in the Procurement Director of this County.

(Ord. 3704, passed 6-17-2003; Ord. 5051, passed 1-22-2019)

PART B. PROCUREMENT DIRECTOR

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§ 7-203 ESTABLISHMENT, APPOINTMENT, AND TENURE.

(1) *Establishment of the Position of Procurement Director.* There is hereby created the position of Procurement Director, who shall be the County's principal public procurement official. The Procurement Director shall report to the Deputy County Administrator.

(2) *Appointment.* In consultation with the County Administrator the Deputy County Administrator shall appoint the Procurement Director. The Procurement Director shall be employed with regard to his professional qualifications in public procurement and level of education. The Procurement Director may employ such staff as may be necessary to perform the functions of the Purchasing Department.

(3) *Tenure.* The Procurement Director shall be a full time public employee of Greenville County, and subject to the Greenville County Personnel Rules.

(Ord. 3704, passed 6-17-2003; Ord. 5051, passed 1-22-2019)

§ 7-204 AUTHORITY AND DUTIES.

(1) *Principal Public Procurement Official.* Except as otherwise provided herein, the Procurement Director shall serve as the principal public procurement official of the County, and shall be responsible for the procurement of supplies, services, and construction in accordance with this article, as well as the disposal of supplies.

(2) *Duties.* In accordance with this article, the Procurement Director shall:

(a) Procure or supervise the procurement of all supplies, services, and construction services needed by the County;

(b) Sell, trade, or otherwise dispose of surplus supplies belonging to the County;

(c) Establish and maintain programs for specifications development, contract administration and inspection and acceptance, cooperation with the using agency, for supplies, services, and/or construction services.

(3) *Operational Procedures.* Consistent with this article, the Procurement Director shall adopt operational procedures relating to the execution of his duties.

(Ord. 3704, passed 6-17-2003; Ord. 5051, passed 1-22-2019)

§ 7-205 DELEGATION OF AUTHORITY.

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

(Ord. 3704, passed 6-17-2003; Ord. 5051, passed 1-22-2019)

PART C. PROCUREMENT REGULATIONS

§ 7-206 AUTHORITY TO PROMULGATE REGULATIONS.

Except as otherwise provided in this article, the Procurement Director shall have the authority and responsibility to promulgate regulations governing the procurement, management, control, and disposal of any and all supplies, services, and/or construction to be procured by the County. A manual of Purchasing Regulations and Procedures shall be developed and maintained by the Procurement Director. All regulations and procedures shall be in keeping with the letter and intent of this article. Such regulations shall be binding in all procurements made by the County.

(Ord. 3704, passed 6-17-2003; Ord. 5051, passed 1-22-2019)

PART D. ADVISORY GROUPS, TRAINING, AND EDUCATION

§ 7-207 RELATIONSHIP WITH USING AGENCIES.

The Procurement Director and his staff shall maintain a close and cooperative relationship with the using agencies. Each using agency shall be afforded reasonable opportunity to participate in and make recommendations with respect to procurement matters affecting the using agency.

(Ord. 3704, passed 6-17-2003; Ord. 5051, passed 1-22-2019)

§ 7-208 ADVISORY GROUPS.

The Procurement Director may appoint advisory groups, such as user committees, to assist with respect to specifications and procurement in specific areas, and with respect to any other matters within the authority of the Procurement Director. These groups could include department heads, vendors, and others as deemed necessary.

(Ord. 3704, passed 6-17-2003; Ord. 5051, passed 1-22-2019)

§ 7-209 TRAINING AND EDUCATION.

The Procurement Director shall establish and maintain a procurement training program for personnel of the Purchasing Department that encompasses the latest techniques and methods of public procurement.

(Ord. 3704, passed 6-17-2003; Ord. 5051, passed 1-22-2019)

DIVISION 3. SOURCE SELECTION AND CONTRACT FORMATION

PART A. EXEMPTIONS

§ 7-301 GOVERNMENTAL BODY EXEMPTIONS.

(1) *Greenville County Library.* The purchase and disposal of published books, periodicals, technical pamphlets, and other such materials by the Greenville County Library System are exempt from the provisions of this article. However, the Greenville County Library Board of Trustees shall submit procedures for the purchase and disposal of such items to County Council for approval and shall abide by the procedures approved by County Council.

(2) *Greenville County Museum of Art.* The purchase and disposal of 1 of a kind items, such as paintings, antiques, sculptures and similar objects by the Greenville County Museum of Art are exempt from the provisions of this article. However, the Greenville County Museum Commission shall submit procedures for purchase and disposal of such items to County Council for approval and shall abide by the procedures approved by County Council.

(Ord. 3704, passed 6-17-2003)

(3) *Contracts approved by County ordinance.* Contracts approved by ordinance of the County Council are exempt from the provisions of this article.

(Ord. 4056, § 1, passed 10-17-2006)

§ 7-302 SUPPLY/SERVICE/REAL PROPERTY TRANSACTION EXEMPTIONS.

The following supplies and services are exempt from this article and need not be purchased through the standard procurement process:

- (1) Works of art and 1 of a kind items, such as paintings, antiques, sculptures and similar objects;
- (2) Published books, maps, periodicals, technical pamphlets, and other such materials;
- (3) Membership fees;

- (4) Postage stamps and fees;
- (5) Utility services;
- (6) The purchase and/or sale of real property by the County.

(Ord. 3704, passed 6-17-2003; Ord. 4056, §§ 5, 6, passed 10-17-2006)

§ 7-303 OTHER EXEMPTIONS.

Procurements obtained under any of the following methods are exempt from Invitation for Bids/Request for Proposals procedures listed in this article:

- (1) Emergency procurement (see § 7-310);
- (2) Sole Source procurement (see § 7-309);
- (3) Equipment Maintenance or service contracts which are made with the manufacturer or authorized service/agent;
- (4) Cooperative purchases (see § 7-901);

Although the items listed in this section are exempt from the normal procurement procedures of this article, every effort should be made to ensure that the procurement made and/or contract negotiated is cost effective and is in the best interest of the County.

(Ord. 3704, passed 6-17-2003)

PART B. METHODS OF SOURCE SELECTION

§ 7-304 METHODS OF SOURCE SELECTION.

Unless otherwise required by law, all County contracts amounting the \$35,000 or more shall be awarded by competitive sealed bidding, pursuant to § 7-305 (Competitive Sealed Bidding), or by competitive sealed proposals, pursuant to § 7-307 (Competitive Sealed Proposals), whichever is determined to be more advantageous to the County, except as provided in:

- (1) Section 7-306 (Negotiations After Unsuccessful Competitive Sealed Bidding);
- (2) Section 7-308 (Small Purchases);
- (3) Section 7-309 (Sole Source Procurements);
- (4) Section 7-310 (Emergency Procurements);
- (5) Section 7-311 (Professional Services);
- (6) Section 7-501 (Construction Procurements);
- (7) Section 7-507 (Architect-Engineering and Land Surveying Services);
- (8) Section 7-508 (Design-Build Services, Turnkey Management Services, or Construction Management Services).

(Ord. 3704, passed 6-17-2003; Ord. 4056, § 2, passed 10-17-2006; Ord. 5051, passed 1-22-2019)

§ 7-305 COMPETITIVE SEALED BIDDING.

(1) *Invitation for Bids.* An Invitation for Bids shall be issued in an efficient and economical manner to at least 3 qualified sources on the bidders' lists appropriate for the particular procurement, and shall include specifications and all contractual terms and conditions applicable to the procurement. If 3 qualified sources are not available, invitations for bids shall be issued to such qualified sources as are available.

- (2) *Bidders' Lists.*

(a) All sources requesting to be put on a bidders' list shall be so enlisted, unless the Procurement Director makes a written determination that the source should not be enlisted in accordance with regulations.

(b) The Procurement Director shall ensure that the bidders' lists contain all identified sources interested in bidding on County procurement. The Procurement Director shall periodically review the bidders' lists and shall require the addition or deletion to such lists of sources contained therein, as deemed necessary.

(3) *Public Notice.* Adequate public notice of the Invitation for Bids shall be given for a reasonable time, not less than 7 calendar days prior to the date set forth therein for the opening of bids. Such notice may include publication in a newspaper of general circulation a reasonable time prior to bid opening. The public notice shall state the place, date, and time of bid opening.

(4) *Receipt and Safeguarding of Bids.* All bids (including modifications) received prior to the time of opening shall be kept secure and unopened in a locked cabinet or safe.

(5) *Bid Opening.* Bids shall be opened publicly in the presence of 1 or more witnesses at the time and place designated in the Invitation for Bids. The amount of each bid, and such other relevant information as the procurement officer deems appropriate, together with the name of each bidder shall be recorded. The record (tabulation) and each bid shall be open to public inspection after award of bid in accordance with § 7-199 (Public Access to Procurement Information).

(6) *Bid Acceptance and Bid Evaluation.* Bids shall be unconditionally accepted without alteration or correction, except as authorized by this article. Bids shall be evaluated 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. The Invitation for Bids shall set forth the evaluation criteria to be used. No criteria may be used in bid evaluation that are not set forth in the Invitation for Bids.

(7) *Discussion with Bidders.* As provided in the invitation for bids, discussions may be conducted with apparent responsive bidders for the purpose of clarification if in the procuring agency's sole judgement such clarification is necessary. Clarification of any bidder's bid must be documented in writing by the procurement officer and shall be included with the bid file. Documentation concerning the clarification shall be subject to disclosure upon request as required by § 7-199.

(8) *Correction or Withdrawal of Bids; Cancellation of Awards.* Correction or withdrawal of inadvertently erroneous bids before or after bid opening, or cancellation of awards or contracts based on such mistakes, may be permitted subject to the following: appropriate mistakes discovered by the bidder before bid opening may be modified or withdrawn by submitting written notice to the Purchasing Department prior to the time set for bid opening. After bid opening, no changes in bid prices or other provisions of bids prejudicial to the interest of the County or fair competition shall be permitted. Except as otherwise provided by regulation, all decisions to permit the correction or withdrawal of bids, or to cancel awards, or contracts, after award but prior to performance shall be supported by a written determination made by the Procurement Director.

(9) *Tie Bids.* If 2 or more bidders are tied in price, while otherwise meeting all of the required terms and conditions of the bid, awards may be determined as follows:

(a) If there is an in county firm (active business or warehousing facility located within Greenville County) tied with an out of county firm, the award will go to the in county firm.

(b) If there is an in state firm (active business or warehousing facility located within South Carolina) tied with an out of state firm, the award will go to the in state firm.

(c) Tie bids involving in County and in State firms may be resolved by accepting the bid that was first received (reference time and date stamp) in the Purchasing Department.

(d) Tie bids involving in County and in State firms may be resolved by the flip of a coin in the office of the Procurement Director witnessed by all interested parties.

(10) *Award.* The contract shall be awarded with reasonable promptness by appropriate written notice to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the Invitation for Bids. The Procurement Director shall approve the award of contracts up to \$70,000 after receiving an acceptable recommendation of award from the appropriate procurement officer or using department. The Deputy County Administrator shall approve the award of contracts over \$70,000 after receiving an acceptable recommendation of award from the appropriate procurement officer or using department.

(11) *Multi-step Sealed Bidding.* When it is considered impractical to prepare initially a purchase description to support an award based on price, an Invitation for Bids may be issued requesting the submission of unpriced offers to be followed by an Invitation for Bids limited to those bidders whose offers have been determined to be technically acceptable under the criteria set forth in the first

solicitation.

(12) *Minor Informalities and Irregularities in Bids.* A minor informality or irregularity is one which is merely a form or is some immaterial variation from the exact requirements of the Invitation for Bids having no effect or merely a trivial or negligible effect on total bid price, quality, quantity, or delivery of the supplies or performance of the contract, and the correction or waiver of which would not affect the relative standing of, or be otherwise prejudicial to, bidders. The Procurement Director shall either give the bidder the opportunity to cure any deficiency resulting from a minor informality or irregularity in a bid or waive any such deficiency when it is to the advantage of the County. Such communication or determination shall be in writing. Examples of minor informalities or irregularities may include, but are not limited to:

- (a) Failure of a bidder to return the number of copies of signed bids required by the solicitation;
- (b) Failure of a bidder to furnish the required information concerning the number of the bidder's employees or failure to make a representation concerning its size;
- (c) Failure of a bidder to acknowledge receipt of an amendment to a solicitation, when required, but only if the amendment has no effect or merely a trivial or negligible effect on price, quality, quantity, delivery, or relative standing of bidders;
- (d) Failure of a bidder to furnish product literature;
- (e) Failure of a bidder to furnish financial statements;
- (f) Failure of a bidder to indicate a bid number on its submission envelope.
- (g) Failure of a bidder to indicate his contractor's license number.

(Ord. 3704, passed 6-17-2003; Ord. 4056, § 3, passed 10-17-2006; Ord. 5051, passed 1-22-2019)

§ 7-306 NEGOTIATIONS AFTER UNSUCCESSFUL COMPETITIVE SEALED BIDDING.

When bids received pursuant to an Invitation for Bids under § 7-305 are unreasonable, or are not independently reached in open competition, or the low bid exceeds available funds as certified by the appropriate fiscal officer, and it is determined in writing by the Procurement Director that time or other circumstances will not permit the delay required to resolicit competitive sealed bids, a contract may be negotiated pursuant to this section, provided that:

- (1) Each responsive/responsible bidder, who submitted a bid under the original solicitation, is notified of the determination and is given reasonable opportunity to negotiate;
- (2) The negotiated price is lower than the lowest rejected bid by any responsive/responsible bidder under the original solicitation;
- (3) The negotiated price is the lowest negotiated price offered by any responsive/responsible bidder.

(Ord. 3704, passed 6-17-2003; Ord. 5051, passed 1-22-2019)

§ 7-307 COMPETITIVE SEALED PROPOSALS.

(1) *Request for Proposals.* Proposals shall be solicited from at least 3 qualified sources, when such sources are available, through a Request for Proposals.

(2) *Public Notice.* Adequate public notice of the Request for Proposals shall be given in the same manner as provided in § 7-305(4) (Competitive Sealed Bidding, Public Notice); provided the minimum shall be fifteen calendar days.

(3) *Receipt of Proposals.* No proposals shall be handled so as to permit disclosure of the contents of any proposal to competing offerors during the process of negotiation. A register of proposals shall be prepared containing the name of the offeror, the number of modifications received, if any, and a description sufficient to identify the item/service offered. The register of proposals shall be open for public inspection only after contract award.

(4) *Proposal Opening.* Proposals shall be publicly opened and only the names of the offerors disclosed at the proposal opening. Contents of competing offerors shall not be disclosed during the process of negotiation. Proposals shall be open for public inspection, in accordance with § 7-199, Public Access to Procurement Information, after contract award. Propriety of confidential information marked as such in each proposal shall not be disclosed without written consent of the offeror. If a proposal is received after the

advertised deadline, it will not be accepted.

(5) *Request for Qualifications.* Prior to soliciting proposals, the procurement officer may issue a Request for Qualifications from prospective offerors. Such request shall contain at a minimum a description of goods or services to be solicited by the Request for Proposals and the general scope of the work and shall state the deadline for submission of information and how prospective offerors may apply for consideration. The request shall require information only on their qualifications, experience, and ability to perform the requirements of the contract.

After receipt of the responses to the Request for Qualifications from prospective offerors, the prospective offerors shall be ranked from most qualified to least qualified on the basis of the information provided. Proposals shall then be solicited from at least the top 2 prospective offerors by means of a Request for Proposals. The failure of a prospective offeror to be selected to receive the Request for Proposals shall not be grounds for protest under § 7-701.

(6) *Public Notice.* Adequate public notice of the Request for Qualifications shall be given in the manner provided in § 7-305.

(7) *Evaluation Factors.* The Request for Proposals shall state the relative importance of the factors to be considered in evaluating proposals. Price may, but need not be, an initial evaluation factor.

(8) *Discussion with Responsive/Responsible Offerors and Revisions to Proposals.* As provided in the Request for 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 accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals and such revisions may be permitted after submissions and prior to award for the purpose of obtaining best and final offers. In conducting discussions, there shall be no disclosure of any information derived from proposals submitted by competing offerors.

(9) *Selection and Ranking.* Proposals shall be evaluated using only the criteria stated in the Request for Proposals and there must be adherence to any weightings that have been previously assigned. Once evaluation is complete, all responsive offerors shall be ranked from most advantageous to least advantageous to the County, considering only the evaluation factors stated in the Request for Proposals. If price is an initial evaluation factor, award shall be made in accordance with § 7-307. If price is not an initial evaluation factor, negotiations shall be conducted with the top ranked responsive offeror for performance of the contract at a price which is fair and reasonable to the County. Should the procurement officer be unable to negotiate a contract at a price which is fair and reasonable to the County, negotiations shall be formally terminated with the top ranked responsive offeror and negotiations commenced with the second most advantageous responsive offeror, and then the third and so on until a satisfactory contract has been negotiated. In conducting negotiations, there must be no disclosure of any information derived from proposals submitted by competing offerors.

(10) *Award.* Award must be made to the responsive offeror whose proposal is determined in writing to be the most advantageous to the County, taking into consideration price and the evaluation factors set forth in the Request for Proposals, unless 1 of the options listed in § 7-307 is utilized. The contract file shall contain the basis on which the award is made. Procedures and requirements for notification of intent to award the contract shall be the same as those stated in § 7-305.

(11) *Other.* If, after following the procedures set forth in § 7-307, a contract is not able to be negotiated, the scope of the Request for Proposals may be changed in an effort to reduce the cost to a fair and reasonable amount, and all responsive offerors must be allowed to submit their best and final offers.

Where price was an initial evaluation factor, the using department, through the procurement officer, may in its sole discretion, and not subject to challenge through a protest filed under § 7-701, proceed in any of the following manners:

(a) Negotiate price with the highest scoring offeror. If a satisfactory price cannot be agreed upon, price negotiations may be conducted with the second, and then the third, and so on, ranked offerors to such level of ranking as determined by the using department and/or procurement officer;

(b) Negotiate with the highest ranking offeror on matters affecting the scope of the contract, so long as the overall nature and intent of the contract is not changed. If a satisfactory contract cannot be negotiated with the highest ranking offeror, negotiations may be conducted with the second, and then the third, and so on, ranked offerors to such level of ranking as determined by the using department and/or procurement officer;

(c) Change the scope of the request for proposals and give all responsive/responsible offerors an opportunity to submit best and final offers.

If any of these options are chosen, and a contract is still unable to be awarded, any of the procedures outlined herein may be repeated until a proposed contract is successfully achieved.

(Ord. 3704, passed 6-17-2003; Ord. 4056, § 4, passed 10-17-06)

§ 7-308 SMALL PURCHASES.

(1) *General.* Any contract not exceeding \$35,000 may be made in accordance with the small purchase procedures authorized in this Section. Procurement requirements shall not be artificially divided so as to constitute a small purchase under this Section.

(2) *Small purchases under \$2,000.* Any purchase not exceeding \$2,000 may be accomplished without securing competitive quotations if the prices are considered to be fair and reasonable. Competitive quotations need only be taken when the procurement officer suspects the price may not be fair and reasonable, e.g., comparison to previous price paid, personal knowledge of the price range of the item involved. The maximum amount for purchases that may be achieved by using the Procurement Card is \$2,000. Every effort should be made to distribute such purchases equitably among qualified suppliers.

(3) *Small purchases over \$2,000 but not exceeding \$7,500.* Insofar as it is practical, solicitations of verbal or written quotes from a minimum of 2 qualified sources of supply shall be made and documentation of the quotes recorded on or attached to the purchase requisition. The award shall be made to the lowest responsive/responsible source.

(4) *Small purchases over \$7,500 but not exceeding \$35,000.* Insofar as it is practical, solicitations of verbal or written quotes from a minimum of 3 qualified sources of supply shall be made and documentation of the quotes recorded on or attached to the purchase requisition. The award shall be made to the lowest responsive/responsible source.

(5) *Purchasing* reserves the authority to review any request made by a Using Department or Agency pursuant to this section.

(6) *Protest Rights.* The provisions of § 7-701 shall not apply to contracts awarded under the procedures set forth in this Section.

(7) By separate directives, the County Administrator can delegate signature authority for budgeted standard agreements not exceeding \$35,000 per contract or year, whichever is lesser.

(Ord. 3704, passed 6-17-2003; Ord. 5051, passed 1-22-2019)

§ 7-309 SOLE SOURCE PROCUREMENT.

Any request by an agency or department head that a procurement be restricted to 1 potential source shall be accompanied by a letter from the using department signed by the department head stating why no other source will be suitable or acceptable to meet the needs. A contract may be awarded for a property, supply, service, or construction item without competition when the Procurement Manager or his designee determines in writing that there is only 1 source for the required property, supply, service, or construction item or that the proposed award to a single source is a permitted, non-competitive procurement as established herein. After verification of a sole source vendor, or the justification of a sole source purchase is warranted, the Procurement Manager, or his designee, has the authority to negotiate the price, terms, and conditions of the procurement.

Examples of a permissible, non-competitive procurement include, but not limited to:

. Where the Procurement Manager and the Department Head has deemed the compatibility of equipment, accessories, services, systems, software or replacement parts is of paramount importance.

. When public utility services are to be procured.

(Ord. 3704, passed 6-17-2003)

§ 7-310 EMERGENCY PROCUREMENTS.

Notwithstanding any other provision of this article, the Procurement Director may make or authorize others to make emergency procurements of property, supplies, services, and/or construction when there exists a threat to public health, welfare, or safety under emergency conditions, provided that such emergency procurements shall be made with such competition as is practicable under the circumstances. A written determination by the using agency of the basis for the emergency and for the selection of the particular contractor shall be provided to the Purchasing Department and included in the contract file.

(Ord. 3704, passed 6-17-2003; Ord. 5051, passed 1-22-2019)

§ 7-311 PROFESSIONAL SERVICES.

(1) *Authority.* For the purpose of procuring the services of accountants, clergy, consultants, court reporters, dentists, lawyers, physicians, "or other professional services" as defined in this section, any using department requiring such services may procure them on its own behalf, in accordance with the selection procedures specified in this Section. Any using department procuring such services may wish to consult with the Procurement Director. No contract for services of legal counsel may be awarded without prior consultation with the County Attorney and County Administrator.

(1) *Definition.* Professional services shall be defined as those services which involve extended analysis, the exercise of discretion and independent judgement in their performance, and an advanced, specialized type of knowledge, expertise, or training customarily acquired either by a prolonged course of study or equivalent experience in the field.

(2) *Selection Procedure.*

(a) *Conditions for Use.* Except as provided under § 7-309 (Sole Source Procurement) or § 7-310 (Emergency Procurement), the professional services designated in Subsection (1) of this Section shall be procured in accordance with this Subsection.

(b) *Statement of Qualifications.* Persons engaged in providing the designated types of professional services may submit statements of qualifications and expressions of interest in providing such professional services. A using department utilizing such professional services may specify a uniform format for statements of qualifications. Persons may amend these statements at any time by filing a new statement.

(c) *Public Announcement and Form of Request for Proposals.* Adequate notice of the need for such services shall be given by the using department requiring the services through a Request for Proposals. 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.

(d) *Discussions.* The head of the using department procuring the required 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.

(e) *Award.* Award shall be made to the offeror determined in writing by the head of the using department procuring the required professional services or a designee of such officer to be best qualified based on the evaluation factors set forth in the Request for Proposals, and negotiation of compensation 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 1 or more other offerors determined to be qualified, negotiations may be conducted with such other offeror or offerors, in the order of their respective qualification ranking, and the contract may be awarded to the offeror then ranked best qualified if the amount of compensation is determined to be fair and reasonable.

(f) *Protest Rights.* The provisions of § 7-701 shall not apply to contracts awarded under the procedures set forth in this Section.

(Ord. 3704, passed 6-17-2003; Ord. 5051, passed 1-22-2019)

PART C. CANCELLATION OF INVITATION FOR BIDS OR REQUEST FOR PROPOSALS

§ 7-312 CANCELLATION OF INVITATION FOR BIDS OR REQUESTS FOR PROPOSALS.

An Invitation for Bids, a Request for Proposals, or other solicitation may be cancelled, or any or all bids or proposals may be rejected in whole or parts when it is in the best interest of the County.

Documentation supporting the reason(s) for rejection shall be made a part of the solicitation file.

(Ord. 3704, passed 6-17-2003)

PART D. QUALIFICATIONS AND DUTIES

§ 7-313 RESPONSIBILITY OF BIDDERS AND OFFERORS.

(1) *Determination of Responsibility.* Responsibility of the bidder or offeror shall be ascertained for each contract entered into by the County based upon full disclosure to the procurement officer concerning capacity to meet the terms of the contracts and based

upon past record of performance for similar contracts.

(2) *Determination of Nonresponsibility.* If a bidder or offeror who otherwise would have been awarded a contract is found nonresponsible, a written determination of nonresponsibility, setting forth the basis of the finding, shall be prepared by the procurement officer. The unreasonable failure of a bidder or offeror to supply information promptly in connection with an inquiry with respect to responsibility may be grounds for a determination of nonresponsibility with respect to such bidder or offeror.

(3) *Right of Nondisclosure.* Except as otherwise provided by law, information furnished by a bidder or offeror pursuant to this Section shall not be disclosed by the County outside of the Purchasing or using departments, without prior written consent by the bidder or offeror, since the solicited information to evaluate responsibility may be of a privileged or a proprietary nature.

(Ord. 3704, passed 6-17-2003)

§ 7-314 PREQUALIFICATION OF SUPPLIERS.

Prospective suppliers may be prequalified for particular types of supplies, services, and/or construction. Solicitation mailing lists of potential contractors shall include but shall not be limited to such prequalified suppliers.

(Ord. 3704, passed 6-17-2003)

§ 7-315 COST OR PRICING DATA.

(1) *Required Submissions Relating to the Award of Contracts.* A prospective contractor shall submit cost or pricing data when the contract is expected to exceed \$50,000 and is to be awarded under § 7-307 (Competitive Sealed Proposals), § 7-309 (Sole Source Procurement), or § 7-507 (Architect Engineer and Land Surveying Services), § 7-305 (Competitive Sealed Bids).

(2) *Exceptions.* The submission of cost or pricing data relating to the award of a contract is not required when:

- (a) The contract price is based on adequate price competition;
- (b) The contract price is based on established catalogue price or market prices;
- (c) The contract price is set by law or regulation; or

(d) It is determined in writing by the Procurement Director that the requirements of § 7-305 may be waived, and the determination states the reasons for such waiver.

(3) *Required Submissions Relating to Change Orders or Contract Modifications.* A contractor shall submit cost or pricing data prior to the pricing of any change order or contract modification, including adjustments to contracts awarded by Competitive Sealed Bidding, whether or not cost or pricing data were required in connection with the initial pricing of the contract.

(4) *Price Adjustment Provision Required.* Any contract award, change order, or contract modification under which the submission and certification of cost or pricing data are required shall contain a provision 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 as submitted was inaccurate, incomplete, or not current as of the date agreed upon between the County and the contractor.

(5) *Certification Required.* A contractor, actual or prospective, required to submit cost or pricing data in accordance with this Section, shall certify that the cost or pricing data submitted was accurate, complete, and current as of a mutually specified date prior to the award of the contract or the pricing of the change order or contract modification.

(Ord. 3704, passed 6-17-2003; Ord. 5051, passed 1-22-2019)

§ 7-316 BID AND PERFORMANCE BONDS ON SUPPLY OR SERVICE CONTRACTS.

All contracts for equipment, supplies, and services may require bid security and performance bonds at the discretion of the Procurement Director in consultation with the using department head. Bid security when required, shall be in an amount equal to at least 5% of the amount of the bid. Performance bonds, when required, will normally be equal to 100% of the contract. A determination regarding bids received for equipment, supplies, and services without requiring bid security will be made by the Procurement Director

in the same manner as provided for in § 7-502. A cashiers/official bank check made payable to the County may be submitted in lieu of a bond, or a letter of credit under circumstances deemed acceptable by the Procurement Director and the County Attorney's office. Bonding requirements will be set forth in the solicitation.

(Ord. 3704, passed 6-17-2003; Ord. 5051, passed 1-22-2019)

PART E. TYPES OF CONTRACTS

§ 7-317 TYPES OF CONTRACTS.

Subject to the limitations of this Section, any type of contract which will promote the best interest of the County may be used; except that the use of a cost plus a percentage of cost contract shall be approved by County Council. A cost reimbursement contract, including a cost plus a percentage of cost contract, shall be used only when a determination has been made in writing by the Procurement Director that such contract is likely to be less costly to the County than any other type or that it is impracticable to obtain the supplies, services, or construction required except under such a contract.

(Ord. 3704, passed 6-17-2003; Ord. 5051, passed 1-22-2019)

§ 7-318 MULTI TERM CONTRACTS.

(1) *Specified Period.* To the extent permitted by law, a contract for supplies or services may be entered into for a period of time not to exceed a total of 5 years, provided the terms of the contract and the 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. To extend beyond the 5-year total will be at the discretion of the County Administrator or as County Council may direct. Payment and performance obligations for succeeding fiscal periods shall be subject to the availability and appropriation of funds therefore and shall not be subject to nonsubstitution provisions.

(2) *Determination Prior to Use.* Prior to the utilization of a multi term contract, it shall be determined in writing by the using department:

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

(3) *Cancellation Due to Unavailability of Funds in Succeeding Fiscal Periods.* All multi term contracts shall contain a clause stating that when funds are not appropriated to support continuation of performance in any subsequent fiscal period, the contract shall be cancelled. Such contracts shall also provide that the County is not subject to a nonsubstitution provision.

(Ord. 3704, passed 6-17-2003)

PART F. INSPECTION OF PLANT AND AUDIT OF RECORDS

§ 7-319 RIGHT TO INSPECT PLANT.

The County may, at reasonable times, inspect the part of the plant or place of business of a contractor or any subcontractor which is related to the performance of any contract awarded or to be awarded by the County.

(Ord. 3704, passed 6-17-2003)

§ 7-320 AUDITING.

(1) *Audit of Cost or Pricing Data.* The County may, at reasonable times and places, audit the books and records of any person who has submitted cost or pricing data pursuant to § 7-315 (Cost on Pricing Data) to the extent that such books and records relate to such cost or pricing data. Any person who receives a contract, change order, or contract modification for which cost or pricing data is required, shall maintain such books and records that relate to such cost or pricing data for 3 years from the date of final payment under

the contract, unless a shorter period is otherwise authorized in writing.

(2) *Contract Audit.* The County shall be entitled to audit the books and records of a contractor or subcontractor under any negotiated contract or subcontract other than firm fixed price contract to the extent that such books and records relate to the performance of such contract or subcontract. Such books and records shall be maintained by the contractor for a period of 3 years from the date of final payment under the subcontract, unless a shorter period is otherwise authorized in writing.

(Ord. 3704, passed 6-17-2003)

PART G. REPORTS AND RECORDS

§ 7-321 PROCUREMENT RECORDS.

(1) *Solicitation File.* All determinations and other written records pertaining to the solicitation and award of a bid shall be maintained in a file by the Procurement Director.

(2) *Retention of Procurement Records.* All procurement records shall be retained and disposed of in accordance with record retention guidelines and schedules approved by the County.

(Ord. 3704, passed 6-17-2003; Ord. 5051, passed 1-22-2019)

DIVISION 4. SPECIFICATIONS

§ 7-401 MAXIMUM PRACTICAL COMPETITION.

All specifications shall be drafted so as to assure cost effective procurement for the purposes intended and encourage competition in satisfying the County's needs, and shall not be unduly restrictive. Any use of characteristics that serve to limit competition shall be avoided. The policy enunciated in this Section applies to all specifications including but not limited to, those prepared for the County by architects, engineers, designers, draftsmen, and land surveyors.

(Ord. 3704, passed 6-17-2003)

§ 7-402 DUTIES OF THE PROCUREMENT DIRECTOR AND THE USING AGENCIES.

The Procurement Director may prepare or review, issue, revise and maintain the specifications for supplies, services, and construction required by the County. The Procurement Director may obtain expert advice and assistance from personnel of the using agencies or other advisory sources in the development of specifications and may delegate to a Using Agency the authority to prepare its own specifications.

Specifications for property, supplies, services, or construction items exempted in Division 3 (Exemptions including §§ 7-301, 7-302, 7-303), may be prepared by the Using Agency in accordance with the provisions of this Article.

(Ord. 3704, passed 6-17-2003; Ord. 5051, passed 1-22-2019)

§ 7-403 BRAND NAME OR EQUAL SPECIFICATION.

(1) *Use.* Brand name or equal specifications may be used when the using agency makes a written determination that 1 of the following exists:

- (a) No other design or performance specification or qualified products list is available;
- (b) Time does not permit the preparation of another form of purchase description not including a brand name specification;
- (c) The nature of the product or the nature of the County's requirements makes use of a brand name or equal specifications suitable for the procurement; or

(d) Use of a brand name or equal specification is in the County's best interests.

(2) *Required Characteristics.* Unless the procurement officer determines that the essential characteristics of the brand name included in the specifications are commonly known in the industry or trade, brand name or equal specifications shall include a description of the particular design, functional, or performance characteristics which are required.

(3) *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 characteristics desired and is not intended to limit or restrict competition.

(Ord. 3704, passed 6-17-2003)

§ 7-404 BRAND NAME SPECIFICATION.

(1) *Use.* Since use of a brand name specification is restrictive of product competition, it may be used only when the using agency makes a written determination that only the identified brand name item or items will satisfy the County's needs.

(2) *Competition.* The procurement officer 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 1 source can supply the requirement, the procurement shall be made under § 7-309 (Sole Source Procurement).

(Ord. 3704, passed 6-17-2003)

DIVISION 5. PROCUREMENT OF CONSTRUCTION, ARCHITECT-ENGINEER AND LAND SURVEYING SERVICES

PART A. MANAGEMENT OF CONSTRUCTION CONTRACTING

§ 7-501 RESPONSIBILITY FOR SELECTION OF METHODS OF CONSTRUCTION CONTRACTING MANAGEMENT.

The Assistant County Administrator for Public Works in consultation with the Procurement Director and with approval of the County Administrator or his designee shall have discretion to select the appropriate method of construction contracting management for a particular project subject to provision of Part E of this division. In determining which method to use, the Assistant County Administrator for Public Works shall consider the County's requirements, its resources, and the potential contractor's capabilities. The Assistant County Administrator for Public Works shall execute, and include in the solicitation file a written statement setting forth the facts which led to the selection of a particular method of construction contracting management for each project.

(Ord. 3704, passed 6-17-2003; Ord. 5051, passed 1-22-2019)

PART B. BID SECURITY AND BONDS

§ 7-502 BID SECURITY.

(1) *Requirement for Bid Security.* Bid security shall be required for all competitive sealed bidding for construction contracts when the price is estimated by the Procurement Director to exceed \$25,000. Bid security shall be a legitimate bid bond provided by a surety company authorized to do business in South Carolina, or the equivalent in cash, or otherwise supplied in the form satisfactory to the County (surety bond, certified check, cashiers' check or official money order). Nothing herein prevents the requirement of such bonds on construction contracts under \$25,000 when the circumstances warrant.

(2) *Amount of Bid Security.* Bid security shall be in an amount equal to at least 5% of the amount of the bid and shall remain in place until completion of construction or posting of performance and payment bonds.

(3) *Rejection of Bid for Noncompliance with Bid Security Requirements.* When the Invitation for Bids requires security, noncompliance requires that the bid be rejected (except that a bidder who fails to provide bid security in the proper amount or a bid bond with the proper rating shall be given 1 working day from bid opening to cure such deficiencies. If the bidder cannot cure these deficiencies within 1 working day of bid opening, his bid shall be rejected).

(4) *Withdrawal of Bids.* After the bids are opened, they shall be irrevocable for the period specified in the Invitation for Bids. If a bidder is permitted to withdraw its bid before bid opening pursuant to § 7-305 (Competitive Sealed Bidding, Correction or Withdrawal of Bids, Cancellation of Awards), no action shall be had against the bidder on the bid security.

(Ord. 3704, passed 6-17-2003; Ord. 5051, passed 1-22-2019)

§ 7-503 CONTRACT PERFORMANCE AND PAYMENT BONDS.

(1) *When Required Amounts.* When a construction contract is awarded in excess of \$25,000 the following bonds or security shall be delivered to the County and shall become binding on the parties upon the execution of the contract:

(a) A performance bond satisfactory to the County, executed by a surety company authorized to do business in this State or otherwise secured in a manner satisfactory to the County, in an amount equal to 100% of the price specified in the contract; and

(b) A payment bond satisfactory to the County, executed by a surety company authorized to do business in this State or otherwise secured in a manner satisfactory to the County, for the protection of all persons 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% of the price specified in the contract.

(2) *Reduction of Bond Amounts.* The Procurement Director is authorized to reduce the amount of performance and payment bonds to 50% of the contract price for each bond, when it has been determined in writing such reduction is necessary or warranted and is in the best interests of the County to do so.

(3) *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 1 of this Section.

(Ord. 3704, passed 6-17-2003; Ord. 5051, passed 1-22-2019)

§ 7-504 BOND FORMS AND COPIES.

(1) *Bond Forms.* The Procurement Director shall promulgate by regulation the form of the bonds required by this Section.

(2) *Certified Copies of Bonds.* Any person may request and obtain from the County a certified copy of a bond upon payment of the cost of materials and labor for reproduction of the bond and postage, if any. A certified copy of a bond shall be prima facie evidence of the contents, execution, and delivery of the original.

(Ord. 3704, passed 6-17-2003; Ord. 5051, passed 1-22-2019)

PART C. CONSTRUCTION CONTRACT CLAUSES AND FISCAL RESPONSIBILITY

§ 7-505 CONTRACT CLAUSES AND THEIR ADMINISTRATION.

(1) *Contract Clauses.* All contracts for supplies, services, and construction shall include provisions necessary to define the responsibilities and rights of the parties to the contract. The Procurement Director may also issue clauses appropriate for supply, service, or construction contracts, addressing at least the following subjects:

(a) The unilateral right of the County to order in writing changes in the work within the scope of the contract;

(b) The unilateral right of the County to order in writing temporary stoppage of the work or delaying performance that does not alter the scope of the contract;

(c) Variations occurring between estimated quantities of work in a contract and actual quantities;

(d) Defective pricing;

(e) Liquidated damages;

(f) Specified excuses for delay or nonperformances;

- (g) Termination of the contract for default;
- (h) Termination of the contract in whole or in part for the convenience of the County;
- (i) Suspension of work on a construction project ordered by the County; and
- (j) Site conditions differing from those indicated in the contract, or ordinarily encountered, except that differing site condition clauses need not be included in a contract:
 - (i) when the contract is negotiated;
 - (ii) when the contract provides the site or design; or
 - (iii) when the parties have otherwise agreed with respect to the risk of differing site conditions.

(2) *Price Adjustments.*

(a) Adjustments in price resulting from the use of contract clauses required in Subsection 1 of this Section shall be computed in 1 or more of the following ways:

- (i) by agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;
- (ii) by unit prices specified in the contract or subsequently agreed upon;
- (iii) by the cost attributable to the events or situations under such clauses with adjustment of profit or fee, all as specified in the contract or subsequently agreed upon;
- (iv) in such other manner as contracting parties may mutually agree; or
- (v) in the absence of agreement by the parties, by unilateral determination by the County of the reasonable costs allocable either directly or indirectly, to the events or situations under such clauses as accounted for in accordance with generally accepted accounting principles, and with adjustment of profit or fee, as appropriate, and subject to the provisions of Division 7 (Legal and Contractual Remedies).

(b) A contractor shall be required to submit cost or pricing data if any adjustment in contract price is subject to the provisions of § 7-315 (Cost or Pricing Data).

(3) *Standard Clauses and Their Modification.* The Procurement Director may establish, after consultation with the County Attorney, standard contract clauses for use in County contracts. If the Procurement Director establishing any standard clauses addressing the subjects set forth in Subsection 1 of this Section, such clauses may be varied provided that any variations are supported by a written determination that states the circumstances justifying such variations, and provided that the nature of any such material variation be stated in the Invitation for Bids or Request for Proposals.

(Ord. 3704, passed 6-17-2003; Ord. 5051, passed 1-22-2019)

§ 7-506 FISCAL RESPONSIBILITY.

Every contract modification, change order, or contract price adjustment under a construction contract with the County in excess of \$25,000 shall be subject to prior approval by the County Administrator after receiving a report from the fiscal officer of the County as to the effect of the contract modification, change order, or contract price adjustment on the total project budget or the total contract budget.

(Ord. 3704, passed 6-17-2003)

PART D. ARCHITECT-ENGINEER AND LAND SURVEYING SERVICES

§ 7-507 PUBLIC ANNOUNCEMENT AND SELECTION PROCESS.

(1) *Public Announcement.* It is the policy of the County to publicly announce all requirements for architect engineer and land surveying services and to negotiate such contracts on the basis of demonstrated competence and qualification at fair and reasonable

prices.

(2) *Selection Process.* A selection committee composed of at least the following members: Procurement Director, head of using agency in need of the architect engineer or land surveying services, and those determined to be qualified to make an informed decision as to the most competent and qualified firm for the proposed project shall conduct discussions with at least 3 firms regarding the proposed contract and shall select from among them the firm(s) 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.

(3) *Negotiation.* The selection committee shall negotiate a contract with the highest qualified firm for architect engineer or land surveying services at compensation which is considered to be fair and reasonable to the County. In making this decision, the committee shall take into account the established value, the scope, the complexity, and the professional nature of the services to be rendered. Should the committee be unable to negotiate a satisfactory contract with the firm considered to be most qualified, negotiations with that firm shall be formally terminated. The committee shall then undertake negotiations with the second most qualified firm. Failing award with the second most qualified firm, the committee shall formally terminate negotiations. The committee shall then undertake negotiations with the third most qualified firm. Should the committee be unable to negotiate a contract with any of the selected firms, the selection committee shall select additional firms in order of their competence and qualifications and continue negotiations in accordance with this Section until an agreement is reached.

(Ord. 3704, passed 6-17-2003; Ord. 5051, passed 1-22-2019)

PART E. CONSTRUCTION MANAGEMENT SERVICES, DESIGNBUILD SERVICES, TURNKEY MANAGEMENT SERVICES

§ 7-508 CONSTRUCTION MANAGEMENT SERVICES, DESIGNBUILD SERVICES, TURNKEY MANAGEMENT SERVICES.

(a) The County Administrator or his designee shall have the discretion to use construction management services, design build services, or turnkey management services as alternatives for construction contracting administration. In exercising such discretion the County Administrator or his designee shall consider the method which in the Administrator or his designee's discretion is the most advantageous to the County and will result in the most timely, economical, and successful completion of the construction project. The determination of the method of source selection utilized shall be stated in writing and included as part of the contract file. As a part of this determination, the County Administrator shall determine if the County should prepare the request for proposals for providing such method of construction contracting administration or if the County should retain outside consulting services to prepare such request for proposals.

(b) If the County Administrator or his designee determines that the use of construction management services, design build services or turnkey management services is the most advantageous means of securing the construction contracting administration set forth in § 7-508(a), and the amount of services to be secured thereby is anticipated to exceed \$5 million, the selection of the method of construction contracting administration used by the County and set forth in § 7-508(a) shall be submitted for review to the Committee of the Whole of County Council. Within 15 days after notice of such review, an interested party shall submit to the Committee of the Whole written comments which set forth the position of the party with respect to the decision as to which construction contracting method to use. At the next meeting of the Committee, which shall not occur until after at least 15 days following notice of such review, those who submitted comments may address the Committee. Following the meeting of the Committee of the Whole, if County Council does not reject the selection of this method, the construction contracting administration shall be secured in the manner set forth in § 7-508.

(c) If the method of construction contracting administration is determined under this Section, the Chairman of County Council shall select an independent monitor from an agency of Government who does not report directly or indirectly to the County Administrator to observe the source selection process to determine if the process was fair, open and competitive at the time of source selection. The monitor shall give a written report to the Chairman which sets forth those findings.

(d) If the competitive sealed proposal method of construction contracting administration is determined to be the most advantageous to the County, the County shall use such method set forth in § 7-307 for the purposes of procuring construction management services, design build services, or turnkey management services or any other similar type of construction management contract. The request for proposals for any of these services shall set forth the criteria which the County will be using to select the successful proposal. (Ordinance 3346).

(Ord. 3704, passed 6-17-2003)

ROA_0527

PART A. SUPPLY MANAGEMENT REGULATIONS

§ 7-601 RECEIVING AND INVENTORY REGULATIONS.

The Procurement Director shall promulgate regulations and procedures to insure proper receipt, identification, and inventory control for all supplies purchased for County use.

(Ord. 3704, passed 6-17-2003; Ord. 5051, passed 1-22-2019)

§ 7-602 SALE, TRANSFER, LEASE, AND DISPOSAL OF SURPLUS SUPPLIES.

Subject to the letter and intent of this article and of the applicable sections of the County Code, the Procurement Director shall promulgate regulations governing the sale, lease, or disposal of surplus supplies by public auction, competitive sealed bidding or other appropriate methods designated by such regulations, and the transfer of excess supplies between agencies and departments.

(Ord. 3704, passed 6-17-2003; Ord. 5051, passed 1-22-2019)

§ 7-603 TRADE IN SALES.

The Procurement Director shall promulgate regulations and procedures to govern the trade in of personal property owned by the County.

(Ord. 3704, passed 6-17-2003; Ord. 5051, passed 1-22-2019)

PART B. PROCEEDS**§ 7-604 ALLOCATION OF PROCEEDS FROM SALE, LEASE OR DISPOSAL OF SURPLUS SUPPLIES.**

Proceeds from the sale, lease or disposal of surplus supplies shall be deposited into the County's general fund.

(Ord. 3704, passed 6-17-2003)

DIVISION 7. LEGAL AND CONTRACTUAL REMEDIES

PART A. PRE-LITIGATION RESOLUTION OF CONTROVERSIES

§ 7-701 AUTHORITY TO RESOLVE PROTESTED SOLICITATIONS AND AWARDS.

(1) *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 Procurement Director, except as otherwise stated in this article. The protest shall be submitted in writing within 7 calendar days after such aggrieved person knows or should have known of the facts giving rise thereto.

(2) *Authority to Resolve Protests.* The Procurement Director shall have authority, prior to the commencement of an action in court concerning the controversy, to settle and resolve a protest by an aggrieved bidder, offeror, or a contractor, actual or prospective, concerning the solicitation or award of a contract.

(3) *Decision.* If the protest is not resolved by mutual agreement, the Procurement Director shall issue a decision in writing within 10 calendar days. The decision shall:

(a) State the reasons for the action taken; and

(b) Inform the protestant of his rights to administrative review as provided in this Article.

ROA_0528

(4) *Notice of Decision.* A copy of the decision under Subsection 3 of this Section shall be mailed or otherwise furnished immediately to the protestant and any other intervening party.

(5) *Finality of Decision.* A decision under Subsection 3 of this Section shall be final and conclusive, unless fraudulent, or:

(a) A person adversely affected by the decision appeals administratively to the County Administrator in accordance with this Article.

(Ord. 3704, passed 6-17-2003; Ord. 5051, passed 1-22-2019)

§ 7-702 AUTHORITY TO DEBAR OR SUSPEND.

When for any reason collusion or other anticompetitive practices are suspected among any bidder or offerors, a notice of the relevant facts shall be transmitted to the County Attorney.

(1) *Authority.* After reasonable notice to the person involved and reasonable opportunity for that person to be heard, the Procurement Director, after consultation with the County Attorney, shall have authority to debar a person or firm for cause from consideration for award of contracts. The Procurement Director, after consultation with County Attorney, shall also have the authority to suspend a person or firm from consideration for award of contracts if there is probable cause to believe that the person or firm has engaged in any activity which might lead to debarment. The period of debarment or suspension shall be as prescribed as appropriate by the Procurement Director.

(2) *Causes for Debarment or Suspension.* The causes for debarment or suspension shall include, but not be limited to, the following:

(a) Conviction 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;

(b) Conviction under State or Federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which currently, seriously or directly affects responsibility as a County contractor;

(c) Conviction under State or Federal antitrust statutes arising out of the submission of bids or proposals;

(d) Violation of contract provisions, as set forth below, of a character which is regarded by the Procurement Director to be as serious as to justify debarment action:

(i) deliberate failure without good cause to perform in accordance with the Specifications or within the time limit provided in the contract; or

(ii) a recent record of failure to perform or of unsatisfactory performance in accordance with the terms of 1 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.

(e) Any other cause the Procurement Director determines to be so serious and compelling as to affect responsibility as a County contractor, including debarment by another governmental entity for cause.

(f) For violation of the ethical standards set forth in S.C. Code, Title 8, Chapter 13.

(3) *Decision.* The Procurement Director shall issue a written decision to debar or suspend. The decision shall:

(a) State the reasons for the action taken; and

(b) Inform the debarred or suspended person involved of his rights to administrative review as provided in this Article.

(4) *Notice of Decision.* A copy of the decision under Subsection 3 of this Section shall be mailed or otherwise furnished immediately to the debarred or suspended person and any other intervening party.

(5) *Finality of Decision.* A decision under Subsection 3 of this Section shall be final and conclusive, unless fraudulent, or the debarred or suspended person appeals administratively to the County Administrator in accordance with this Article. Debarment is not stayed pending appeal.

ROA_0529

(Ord. 3704, passed 6-17-2003; Ord. 5051, passed 1-22-2019)

§ 7-703 AUTHORITY TO RESOLVE CONTRACT AND BREACH OF CONTRACT CONTROVERSIES.

(1) *Applicability.* This Section applies to controversies between the County and a contractor and which arise under, or by virtue of, a contract between them. This includes without limitation controversies based upon breach of contract, mistake, misrepresentation or other cause for contract modification or rescission.

(2) *Authority.* The Procurement Director is authorized, prior to commencement of an action in a court concerning the controversy, to settle and resolve a controversy described in Subsection 1 of this Section.

(3) *Decision.* If such a controversy is not resolved by mutual agreement, the Procurement Director shall promptly issue a decision in writing. The decision shall:

- (a) State the reason for the action taken; and
- (b) Inform the contractor of his rights to administrative review as provided in this Article.

(4) *Notice of Decision.* A copy of the decision under Subsection 3 of this Section shall be mailed or otherwise furnished immediately to the contractor.

(5) *Finality of Decision.* The decision under Subsection 3 of this Section shall be final and conclusive, unless fraudulent, or the contractor appeals administratively to the County Administrator in accordance with this Article. Debarment is not stayed pending appeal.

(6) *Failure to Render Timely Decision.* If the Procurement Director does not issue the written decision required under Subsection 3 of this Section within a reasonable time after written request for a final decision, or within such longer period as may be agreed upon by the parties, then the contractor may proceed as if an adverse decision had been received.

(Ord. 3704, passed 6-17-2003; Ord. 5051, passed 1-22-2019)

PART B. SOLICITATIONS OR AWARDS IN VIOLATION OF LAW

§ 7-704 APPLICABILITY.

The provisions of this Section apply where it is determined by the Procurement Director, or upon administrative review, that a solicitation or award of a contract is in violation of law.

(Ord. 3704, passed 6-17-2003; Ord. 5051, passed 1-22-2019)

§ 7-705 REMEDIES PRIOR TO AWARD.

If prior to award, it is determined that a solicitation or proposed award of a contract is in violation of law, then the solicitation or proposed award shall be:

- (a) Cancelled; or
- (b) Revised to comply with the law and rebid; or
- (c) Revised to comply with the law and awarded in a manner that complies with the provisions of this article.

(Ord. 3704, passed 6-17-2003)

§ 7-706 REMEDIES AFTER AN AWARD.

If after an award of a contract, it is determined that the solicitation or award is in violation of law, then:

- (a) If the person awarded the contract has not acted fraudulently or in bad faith:
 - (i) the contract may be ratified and affirmed, provided it is determined that doing so is in the best interest of the County; or
 - (ii) the contract may be terminated and the person awarded the contract shall be compensated for the actual expenses

reasonably incurred under the contract prior to the termination.

(b) If the person awarded the contract has acted fraudulently or in bad faith:

(i) the contract may be declared null and void; or

(ii) the contract may be ratified and affirmed if such action is in the best interest of the County, without prejudice to the County's right to such damages as may be appropriate.

(Ord. 3704, passed 6-17-2003)

DIVISION 8. ELECTRONIC PROCUREMENT AND COMMERCE

§ 7-801 ELECTRONIC PROCUREMENT.

The Procurement Director may participate in securing goods and services as provided in this article by means of electronic procurement. Examples of this type procurement may include but are not limited to:

- . Reverse auction where bids are permitted until the lowest bid is identified;
- . Acceptance of IFB and RFPs electronically;
- . Establish a chat room for meeting of bidders/proposers;
- . Establish a FAQ site which relates to a specific bid or proposal.

All requirements set forth in Division 3, Part B apply.

(Ord. 3704, passed 6-17-2003; Ord. 5051, passed 1-22-2019)

§ 7-802 ELECTRONIC RECORD.

An electronic record is deemed to be secure if:

(a) It is created by application of a security procedure that is commercially reasonable and agreed to by the parties;

(b) The electronic record can be verified not to have been altered since a specified point in time (cf. S.C. Code, §§ 26-6-10 *et seq.*).

(Ord. 3704, passed 6-17-2003)

§ 7-803 ELECTRONIC SIGNATURE.

An electronic signature is deemed to be secure if:

(a) It is created by application of a security procedure that is commercially reasonable and agreed to by the parties;

(b) The electronic signature can be verified by use of a procedure that is recognized and approved by the parties;

(c) When not previously agreed to by the parties, the electronic signature is:

(1) unique to the party using it; and

(2) capable of identifying such party; and

(3) created in a manner or using a means under the sole control of the party using it; and

(4) linked to the electronic record to which it relates in a manner such that, if the record is changed, the electronic signature is invalidated (cf. S.C. Code, §§ 26-6-10 *et seq.*).

ROA_0531

(Ord. 3704, passed 6-17-2003)

§ 7-804 ELECTRONIC COMMERCE.

The Procurement Director may participate in securing goods and services through means of electronic commerce whereby quotes and solicitations for the purchase of goods or services is done through a business's electronic "store." Division 3 of this article will apply.

(Ord. 3704, passed 6-17-2003; Ord. 5051, passed 1-22-2019)

§ 7-805 SECURITY OF RECORDS.

All records received electronically will be maintained electronically in a secure location and retained in original format.

(Ord. 3704, passed 6-17-2003)

DIVISION 9. INTERGOVERNMENTAL RELATIONS

§ 7-901 COOPERATIVE PURCHASING AUTHORIZED.

The Procurement Director may either participate in, sponsor, conduct, or administer a cooperative purchasing agreement for the procurement of supplies, services, or construction services with 1 or more Public Procurement Units in accordance with an agreement entered into between the participants. Such cooperative purchasing may include, but is not limited to, joint or multi party contracts between Public Procurement Units. Examples of such cooperative purchasing is State of South Carolina contracts, General Services Administration (GSA) contracts, supplies and/or services procured from another governmental agency, and U.S. Communities.

(Ord. 3704, passed 6-17-2003; Ord. 5051, passed 1-22-2019)

§ 7-902 SALE, ACQUISITION OR USE OF SUPPLIES.

The Procurement Director may sell to, acquire from, or use any supplies belonging to another Public Procurement Unit independent of the requirements of Division 3 and Division 6 of this article.

(Ord. 3704, passed 6-17-2003; Ord. 5051, passed 1-22-2019)

§ 7-903 COOPERATIVE USE OF SUPPLIES OR SERVICES.

The Procurement Director may enter into an agreement, independent of the requirements of Division 3 and Division 6 of this article, with any Public Procurement Unit for the cooperative use of supplies or services under the terms agreed upon between the parties.

(Ord. 3704, passed 6-17-2003; Ord. 5051, passed 1-22-2019)

§ 7-904 JOINT USE OF FACILITIES/ EQUIPMENT.

The Procurement Director may enter into agreements for the common use or lease of warehousing facilities, capital equipment, and other facilities with another Public Procurement Unit under the terms agreed upon between the parties.

(Ord. 3704, passed 6-17-2003; Ord. 5051, passed 1-22-2019)

§ 7-1001 STATEMENT OF POLICY.

It is the belief of the County that business firms that are owned and operated under the categories addressed by this Article are often restricted from full participation in our free enterprise system to a degree disproportionate to other businesses. Therefore, the County wishes to ensure that those businesses are afforded the opportunity to fully participate in the overall procurement process of the County by the implementation of this Article.

(Ord. 3704, passed 6-17-2003)

§ 7-1002 SOLICITATION OF SMALL, DISADVANTAGED, AND MINORITY BUSINESSES.

The Procurement Director shall maintain bidders lists of qualified small, disadvantaged, and minority businesses and shall solicit those firms whenever they are potential sources for supplies, services, or construction.

(Ord. 3704, passed 6-17-2003; Ord. 5051, passed 1-22-2019)

DIVISION 11. ETHICS IN PUBLIC CONTRACTING

§ 7-1101 ETHICS, GOVERNMENT ACCOUNTABILITY AND RULES OF CONDUCT.

The provisions of S.C. Code, §§ 8-13-100 et seq., known as the Ethics, Government Accountability and Campaign Reform Act, being S.C. Code, Title 8, Ch. 13, are incorporated herein by reference and are applicable to all county procurement.

(Ord. 3704, passed 6-17-2003)

§ 7-1102 PROHIBITION AGAINST CONTINGENT FEES.

It shall be unethical for a person to be retained, or to retain a person, to solicit or secure a County contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies for the purpose of securing business.

(Ord. 3704, passed 6-17-2003)

§ 7-1103 SANCTIONS.

In addition to all other civil and administrative remedies which are provided by law, the following sanctions may be imposed:

(1) *Employees*. The County Administrator may impose any 1 or more of the following sanctions on a County employee for violations of the ethical standards in this division or in the South Carolina State Ethics Act:

- (a) oral or written warnings or reprimands;
- (b) suspension with or without pay for a specified period of time; or
- (c) termination of employment.

(2) *Nonemployees*. The Procurement Director may impose any 1 or more of the following sanctions on a nonemployee for violations of the ethical standards:

- (a) written warnings or reprimands;
- (b) termination of contract(s); or
- (c) debarment or suspension as provided in § 7-702 (Authority of Debar or Suspend).

(Ord. 3704, passed 6-17-2003; Ord. 5051, passed 1-22-2019)

§ 7-1201 CONFORMANCE.

Conformance as promulgated herein, other portions of the County Code shall be modified to conform with such amendments.

(Ord. 3704, passed 6-17-2003)

§ 7-1202 SEVERABILITY.

Severability is intended throughout and within the provisions of this article. If any section, subsection, sentence, clause, phrase or portion of this article is held to be invalid or unconstitutional by a court of competent jurisdiction, then that decision shall not be affect the validity of the remaining portions of this article.

(Ord. 3704, passed 6-17-2003)

§ 7-1203 REPEAL.

Section 2-304 of the Greenville County Code is hereby repealed. All ordinances or parts of ordinances in conflict with this article or inconsistent with its provisions, are hereby repealed or superseded to the extent necessary to give this article full force and effect.

(Ord. 3704, passed 6-17-2003)

§ 7-1204 EFFECTIVE DATE.

This article shall take effect upon adoption.

(Ord. 3704, passed 6-17-2003)

§§ 7-1205-7-1300 RESERVED.

EXHIBIT B



[Main Menu](#) : **Commercial Contractors** Note: All fields are not required for searching

Company/Last Name:	Tailor Made Services	First name:	
License number:		City:	
		State Abbreviation:	
		Classification:	All
		Find	Results will display below

Your search returned: 0 record(s).

Search Tip:

- When SEARCHING by license number, ENTER NUMBERS ONLY. Do not enter the letters G, M, CLG, or CLM.
- IF YOUR SEARCH RETURNS "0 Record(s)", YOU MAY WANT TO TRY SEARCHING UNDER THE RESIDENTIAL LICENSING BOARD. CLICK ABOVE ON "Main Menu" AND FROM THE DROPDOWN LIST SELECT "Residential Builders" TO PERFORM YOUR SEARCH.
- When searching for a specific licensee, search either the COMPANY NAME or the INDIVIDUALS NAME; you CANNOT search both together. Enter just a few letters to do a multiple search listing if you don't know the exact way a person or company is licensed.
- When SEARCHING for a CLASSIFICATION only, you must enter in a CITY name.
- Do not use any punctuation marks when searching a "Company name"
- IF YOU ARE AN APPLICANT CHECKING THE STATUS OF YOUR APPLICATION AND THE SEARCH RETURNS "0 RECORDS", CHECK HERE FIRST TO SEE IF YOUR APPLICATION IS PENDING BEFORE CONTACTING THE LICENSING BOARD: [PENDING APPLICATION CHECK](#) . IF YOU ARE SHOWN TO BE PENDING, YOUR APPLICATION HAS BEEN RECEIVED AND IS BEING PROCESSED. YOU WILL BE CONTACTED BY MAIL OR FAX IF ITEMS ARE MISSING OR INCOMPLETE.

Status Clarification:

- ACTIVE: Licensee is current and properly licensed to work and pull permits in the state of SC.
- INACTIVE: Contractor cannot bid, pull permits, or do any regulated contracting work above the \$10,000 contract limit. See work/jobs that are unregulated here: [No License Required by SC Contractor's Licensing Board](#) (pdf)
- LAPSED: This license is lapsed/cancelled; the contractor cannot bid, pull permits, or do any regulated contracting work above the \$10,000 contract limit. See work/jobs that are unregulated here: [No License Required by SC Contractor's Licensing Board](#) (pdf)
- SUSPENDED: The license has been suspended by the board until further notice. No work or permits can be pulled during this time.

Notes:

This website is maintained by LLR staff and is updated nightly reflecting changes to our licensing and enforcement database. If you are a licensee who requires a license verification to another state board, please log into your online LLR account and select the verification option. If you are not a licensee, please email the board directly.

Questions / Contact Information

[South Carolina Contractor's Licensing Board](#)

EXHIBIT C



Business Name Search

To Search

Enter the business name of the company you wish to view and click "Search." Find the business in the results below and click to view the official business profile and relevant information.

To File for an Existing Business

Enter the business name of the company for which you wish to file documents and click search. Find the business in the results below and click to view the official business profile. From your business's profile click the "Add Filing" button.

Results displayed will show entities that contain your search criteria.

Search by Business Name

Contains

Tailor Made Services, inc

 Search

This name is currently being used

 Add New Entity

Search Results

Displaying 1 record(s)

Entity Name	Date of Incorporation	Entity Type	Entity Status	Incorporated State
<u>Tailor Made Services LLC</u>	07/14/2020	Limited Liability Company	Good Standing	South Carolina

EXHIBIT D

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS

Southern Painting and Maintenance
Specialists, LLC,

Plaintiff,

vs.

Greenville County,

Defendant.

**GREENVILLE COUNTY'S ANSWERS TO
PLAINTIFF'S REQUEST TO ADMIT**

TO: JOHN-PAUL BAUM, ESQ.

Pursuant to Rules 36 of the South Carolina Rules of Civil Procedure, Defendant Greenville County ("the County"), hereby answers Plaintiff's Request to Admit.

1. Admit that Defendant awarded the Project to Tailor Made Services, Inc. ("TMS").

ANSWER: Admitted.

2. Admit that the Project involves the installation of flooring.

ANSWER: Denied. The phrase "installation of flooring" is not defined, and as a result its possible meaning is too broad to be admitted.

3. Admit that the Project involves the finishing of flooring.

ANSWER: Denied. The phrase "finishing of flooring" is not defined, and as a result its possible meaning is too broad to be admitted.

4. Admit that in the TMS Proposal, TMS states that it is a certified installer.

ANSWER: Denied. The phrase “certified installer” is not defined, and as a result its possible meaning is too broad to be admitted. The County does admit that TMS’ proposal states, among many things, that “[o]ur TMS Team is approved, certified installers for Sherwin-Williams and Dur-A-Flex.”

5. Admit that in the TMS Proposal, TMS states that all systems will follow the designed system guide.

ANSWER: As a standalone statement, this request is denied. To the extent this request addresses whether TMS’ proposal contains a phrase that states all systems will follow the designated “designed system guide” in the overall context of TMS’ overall proposal, this request is admitted.

6. Admit that in the TMS Proposal, TMS provided the system guide as Sherwin Williams Fastop Deco Flake SL45.

ANSWER: Denied. The phrase “system guide” is not defined, and as a result its possible meaning is too broad to be admitted.

7. Admit that in the TMS Proposal, the provided system guide for Sherwin Williams states that Fastop Deco Flake SL45 will be installed.

ANSWER: Denied. The phrase “will be installed” is not defined, and as a result its possible meaning is too broad to be admitted.

8. Admit that TMS was expected to install and finish floors as part of the Project.

ANSWER: Denied. The phrase “install and finish floors” is not defined, and as a result its possible meaning is too broad to be admitted.

9. Admit that TMS did not provide a general contractor’s license to the Defendant.

ANSWER: Admitted.

10. Admit that TMS does not hold a general contractor's license.

ANSWER: Admitted that TMS does not hold a general contractor's license for the State of South Carolina. The County has no knowledge of whether TMS holds licenses in other jurisdictions.

11. Admit that TMS is not registered to do business in the State of South Carolina.

ANSWER: Denied.

12. Admit that TMS was contracted to perform flooring installation despite not holding a valid South Carolina contractor's license.

ANSWER: Denied. The phrase "flooring installation" is not defined, and as a result its possible meaning is too broad to be admitted.

HAYNSWORTH SINKLER BOYD, P.A.

s/Boyd B. Nicholson, Jr.

Boyd B. Nicholson, Jr. (S.C. Bar No. 65387)

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Greenville, SC 29601

Telephone: 864.240.3247

Facsimile: 864.240.3300

Email: nnicholson@hsblawfirm.com

Attorneys for Defendant Greenville County

April 10, 2025
Greenville, South Carolina

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that true and correct copies of the foregoing were served upon the party below via U.S. Mail, proper postage prepared and addressed as follows, and e-mail on this the 10th day of April, 2025.

John-Paul Baum, Esq.
Campbell Teague LLC
110 Edgeworth St.
Greenville, SC 29607
johnpaul@campbellteague.com

HAYNSWORTH SINKLER BOYD, P.A.

s/Boyd B. Nicholson, Jr

Boyd B. Nicholson, Jr.

Date: April 10, 2025

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

Southern Painting and Maintenance
Specialists, LLC,

Plaintiff,

v.

Greenville County,

Defendant.

IN THE COURT OF COMMON PLEAS

Case No. 2025-CP-23-00389

**PLAINTIFF'S MOTION TO ALTER
OR AMEND JUDGMENT**

COME NOW, Plaintiff Southern Painting and Maintenance Specialists, LLC ("Southern Painting"), by and through its counsel, hereby moves the Court pursuant to Rule 59(e), SCRCPP, to alter or amend its Order denying Plaintiff's Motion for Preliminary Injunction and Request for Declaratory Judgment. This motion is made to preserve all issues for appeal and to request that the Court address and rule upon each legal and factual ground raised by Plaintiff in its prior memoranda and oral arguments.

I. ARGUMENT

A. The Court erred in failing to grant a preliminary injunction

For a preliminary injunction to be granted, the plaintiff must establish that: (1) he would suffer irreparable harm if the injunction is not granted; (2) he will likely succeed on the merits of the litigation; and (3) there is an inadequate remedy at law. *AJG Holdings, LLC v. Dunn*, 382 S.C. 43, 51, 674 S.E.2d 505, 508 (Ct. App. 2009). An injunction is necessary to prevent Greenville County from awarding the contract to TMS, as TMS is not a licensed contractor. The injunction is necessary to protect the parties' rights and ensure compliance with state law until the Project can be awarded to a properly qualified bidder.

B. The Court applied the wrong standard for a preliminary injunction

Plaintiff demonstrated all elements required under *AJG Holdings, LLC v. Dunn*, 382 S.C. 43, 51, 674 S.E.2d 505, 508 (Ct. App. 2009), including irreparable harm, likelihood of success on the merits, and the inadequacy of legal remedies. The Court did not address these elements or applicable precedent. Plaintiff requests that this ground be altered or ruled upon.

C. The court erred in failing to enjoin an unlicensed contractor from providing work.

Under S.C. Code § 40-11-410(c), flooring installation qualifies as general contracting, as it includes nonstructural renovations like floor installation and finishing. Under South Carolina law, flooring installers must be licensed for projects over \$10,000. S.C. Code 40-11-30 prohibits individuals or entities from performing contracting work above this threshold without a valid license. Additionally, S.C. Code 40-11-370 prohibits individuals from presenting themselves as licensed contractors or performing general or mechanical construction without obtaining the required license. It is also a criminal offense for an awarding authority or contractor to allow a contractor to begin work unless the bidder or contractor has first obtained a license. S.C. Code 40-11-200(b). As such, the South Carolina Supreme Court has reinforced this requirement, holding that general contractors cannot legally undertake construction without first obtaining a license. *W & N Const. Co. v. Williams*, 322 S.C. 448, 449, 472 S.E.2d 622, 622 (1996). This Court has overturned *W & N Const. Co. v. Williams* by its ruling.

S.C. Code 40-11-30 is designed to regulate and ensure quality, safety, and accountability in the construction and renovation industry. Given that flooring installation is included under the nonstructural renovation category, it follows that the installer must be licensed to legally perform such work. Failure to obtain the necessary license not only violates S.C. Code 40-11-30 but also

render the contractor's work invalid. Here, it is undisputed that TMS is unlicensed and failed to provide a required license to the County. (Exhibit D, Pl.'s Reqs. For Admis No. 10).

It is irrelevant that Mr. Brewer "made inquiries" with SCLLR. It is undisputed that he never searched to see if TMS was licensed. This process takes less than five minutes. It is equally undisputed that Mr. Brewer didn't provide the SCLLR with the proper scope of work, as Mr. Brewer stated to SCLLR that the Project was a mere sealant job, even though Greenville County stated to SCLLR that this was a flooring install.

Moreover, TMS was not registered to do business in the state at the time of their bid. (Exhibit C). Under S.C. Code Ann. § 33-15-101, a foreign corporation cannot transact business in South Carolina without a certificate of authority from the Secretary of State. By operating without this authorization, the unlicensed contractor violates state law, making any contract awarded to it nonresponsive and void. TMS lied on its bid form when it stated that it was licensed to do business in this State. That is enough to render the award non-responsive and for this Court to rule in Plaintiff's favor. *See William C. Logan & Assocs. v. Leatherman*, 290 S.C. 400, 401, 351 S.E.2d 146, 147 (1986). However, this Court has disregarded the Supreme Court's ruling in *William C. Logan & Assocs. v. Leatherman*.

D. The Court erred by deferring to an email sent by Rhonda.

Greenville County relied heavily on *Ruocco* and *In re: Protest of Monroe Construction Co.* to argue that the SCLLR and Procurement Review Panel concluded no license was required¹. But that position is legally outdated. In fact, the Honorable Paula H. Thomas ruled that South Carolina is now "cognizant" of the *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 144 S. Ct. 2244, 219 L. Ed. 2d 832 (2024) holding and "mindful of its rules." *See Colonial Pipeline Co. v. S.C. Dep't of*

¹ The Procurement Review Panel's decision is not binding on this Court because it applies to state-level contracts, whereas the present matter involves a county project.

Revenue, 443 S.C. 448, 458, 905 S.E.2d 129, 134 (Ct. App. 2024), *reh'g denied* (Aug. 19, 2024), *cert. denied* (Feb. 12, 2025)

“We are cognizant of the recent United States Supreme Court decision in *Loper Bright Enterprises v. Raimondo*, 603 U.S., 144 S.Ct. 2244, 219 L.Ed.2d 832 (2024), which overruled precedent requiring a reviewing court “to defer to ‘permissible’ agency [interpretations of the statutes those agencies administered,]” even when a reviewing court might read the statute differently, if “ ‘the statute [was] silent or ambiguous with respect to the specific issue’ at hand... Mindful of these rules governing statutory construction, we first review...”

The Court erred in stating that *Loper Bright Enterprises v. Raimondo*, has “no effect on the present case.”

Deference to agency interpretations of licensing statutes is no longer the law in this Country. Courts now interpret statutes independently, without yielding to agency conclusions—especially where those conclusions undermine statutory licensing requirements. Especially when these “rulings” come from an email by Rhonda. The Supreme Court, Chief Justice Roberts, held that courts need not, and under the Administrative Procedure Act may not, defer to an agency's interpretation of the law simply because a statute is ambiguous. *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 144 S. Ct. 2244, 219 L. Ed. 2d 832 (2024). In short, it's the job of **judges—not bureaucrats—to say what the law means**. Even if a law is unclear, **courts must interpret it independently**, not just accept Rhonda's reading. The Court reminded us that “[t]he Framers appreciated that the laws judges would necessarily apply in resolving those disputes would not always be clear, but envisioned that the final “interpretation of the laws’ would be ‘the proper and peculiar province of the courts.” *Id.* at 2247 (quoting *The Federalist* No. 78, at 525 (A. Hamilton)).

“A statute should be given a reasonable and practical construction consistent with the purpose and policy expressed in the statute. *Colonial Pipeline Co. v. S.C. Dep't of Revenue*, 443

S.C. 448, 461, 905 S.E.2d 129, 136 (Ct. App. 2024), *reh'g denied* (Aug. 19, 2024), *cert. denied* (Feb. 12, 2025). In *Colonial Pipeline Co. v. S.C. Dep't of Revenue*, the court held, “we find the ALC did not apply the plain and ordinary meaning of the term industrial plant. Thus, we reverse.” *Id.* The statute is clear: unlicensed contractors cannot perform the work at issue. This is a direct violation of South Carolina law, and the Court need not look beyond the plain language to reach that conclusion. “The term valid is clear and unambiguous, and leaves no room for statutory construction. Respondent admits it did not have the appropriate license, yet attempts to avoid the door-closing effect of section 40–11–370(C) by claiming it was merely under-licensed. The statute manifestly forecloses Respondent's interpretation, as the term valid does not give rise to the slightest ambiguity.” *C-Sculptures, LLC v. Brown*, 403 S.C. 53, 57, 742 S.E.2d 359, 361 (2013). Therefore, this Court erred.

E. The court erred in failing to rule that Plaintiff would suffer irreparable harm.

TMS—still unlicensed and unauthorized—has bulldozed its way halfway through the Project. (Brewer Aff. ¶ 10). The damage isn’t hypothetical anymore; it’s happening in real time, and it will keep happening unless this Court puts an immediate stop to it.

Whether “a wrong is irreparable, in the sense that equity may intervene, and whether there is an adequate remedy at law, are questions that are not decided by narrow and artificial rules.” *Kirk v. Clark*, 191 S.C. 205, 211, 4 S.E.2d 13, 16 (1939). Irreparable harm in the business context can arise by way of example, when the denial of hospital privileges leads to the loss of professional practice, patient referral base, and competency, warranting injunctive relief. *Levine v. Spartanburg Reg'l Servs. Dist., Inc.*, 367 S.C. 458, 465, 626 S.E.2d 38, 42 (Ct. App. 2005), *holding modified by Poynter Invs., Inc. v. Century Builders of Piedmont, Inc.*, 387 S.C. 583, 694 S.E.2d 15 (2010). The court is not required to conduct an independent analysis of the balancing of the equities, as this is

subsumed by the irreparable harm and inadequate remedy elements of a preliminary injunction. *Poynter Invs., Inc. v. Century Builders of Piedmont, Inc.*, 387 S.C. 583, 587, 694 S.E.2d 15, 17 (2010)

South Carolina’s licensing laws exist to protect public safety by ensuring that only qualified contractors perform construction work. Awarding a contract to an unlicensed contractor poses an immediate and irreparable risk, which is substandard workmanship. As stated above, it is unlawful for a contractor to perform work without a general contractor’s license. *See* S.C. Code 40-11-370. Employing unlicensed contractors can lead to dangerous conditions, structural failures, and costly repairs that cannot simply be undone. Once an unqualified contractor performs work, the damage—is already done, making monetary remedies insufficient.

Awarding the Project to an unlicensed contractor inflicts unfair and irreparable economic harm on licensed professionals like Southern Painting. The contractor licensing system exists to ensure lawful competition and protect the integrity of the industry. Once work begins (as it already has), Southern Painting loses the ability to obtain the contract because the project progresses under the control of an unlicensed contractor, making it impractical or legally impossible to reverse completed work and reallocate the contract. Allowing the unlicensed contractor to proceed deprives Southern Painting of the opportunity to perform the contract, causing irreparable harm that cannot be remedied by monetary damages alone. The Court failed to rule on this issue and Plaintiff requests the Court to rule on this issue.

F. The court erred in failing to rule that Southern Painting has no remedy at law.

“The basis for granting equitable relief is the impracticability of obtaining full and adequate compensation at law.” *Nutt Corp. v. Howell Rd., LLC*, 396 S.C. 323, 327, 721 S.E.2d 447, 449 (Ct.

App. 2011). “Accordingly, equity is generally only available when a party is without an adequate remedy at law.” *Id.*

Here, Southern Painting has no adequate remedy at law because no legal cause of action exists to redress a Project that is awarded to an unlicensed contractor. Under the Greenville County Procurement Code, Southern Painting was required to protest the bid, but that protest was denied, leaving Southern Painting without any statutory or contractual recourse. Without any available legal claim for damages or other relief, Southern Painting’s only remaining avenue is to seek injunctive and declaratory relief. Because equity intervenes where the law offers no solution, the absence of a legal remedy makes injunctive relief not only appropriate but imperative to prevent irreparable harm. The Court failed to rule on this issue and Plaintiff requests the Court to rule on this issue.

G. The Court erred in failing to grant a declaring judgment that the Project was for the installation of floors.

The scope of the Project is not open to interpretation—it plainly required floor installation, as outlined below.

3. Scope of Work

3.1. General Information

The County of Greenville is seeking sealed proposals from General Contractors **to provide and install flooring** at the Animal Care Services facility located at 328 Furman Hall Road, Greenville, SC 29609.

The Animal Care facility consists of two buildings; Building 1 for Animal Adoptions, and Building 2 for Animal Receiving. To ensure minimal disruption, the project will be executed in two phases with building 1 as the first phase and building 2 being the second phase.

TMS (the party who was awarded the Project) defined its scope of work to include the installation of a comprehensive five-layer flooring system. (Exhibit A, TMS Bid). This scope of work leaves

no doubt that the Project was for flooring installation—not merely a basic seal coat application, as inaccurately claimed by Greenville County.

In addition to the scope of work, TMS identifies itself as a certified installer, which indicates that the work requires specialized expertise and training beyond the mere application of a protective coating. *Id.* The scope outlines a five-step process that demonstrates a comprehensive flooring system installation rather than a quick, surface-level treatment. This multi-layered approach ensures that the finished product is a durable, functional, and integrated flooring system, which is fundamentally different from a basic seal coat that merely serves as a temporary surface protectant.

A key distinction is in the preparation process, where TMS commits to grinding or shot blasting the floors as the first step. *Id.* This mechanical process is essential for proper adhesion and integration of the new flooring system, as it removes contaminants, roughens the substrate, and creates the necessary bonding surface for the epoxy flooring. A simple seal coat job would not require such intensive preparation; rather, it would involve minimal surface cleaning before application. The subsequent steps further confirm that this is a full flooring system, as TMS applies a primer coat to enhance adhesion, followed by the epoxy flooring layer that establishes the actual structural flooring surface. The application of a topcoat then seals and protects the installed floor, providing long-term durability and resistance to wear. This layering process is integral to a flooring installation—where multiple coats work together to form a solid, permanent surface—whereas a seal coat job consists of a single, thin protective layer that lacks structural integrity.

Additionally, TMS includes quality control and maintenance procedures as a key part of its process, further reinforcing that this is a true flooring installation. Unlike a seal coat, which does not typically require post-application testing or evaluation, an installed flooring system must

undergo quality control measures to ensure proper adhesion, curing, and performance over time. The inclusion of a maintenance plan underscores that the installed floors are intended for long-term functionality, as opposed to a simple seal coat, which is a temporary treatment with minimal post-application considerations. Taken together, these factors demonstrate that the work TMS is performing is far more extensive than a superficial sealant application. The combination of mechanical preparation, multiple application layers, and post-installation quality control proves that this Project involves the installation of a flooring system, not a mere seal coat job. The Court failed to rule on this issue and Plaintiff requests the Court to rule on this issue.

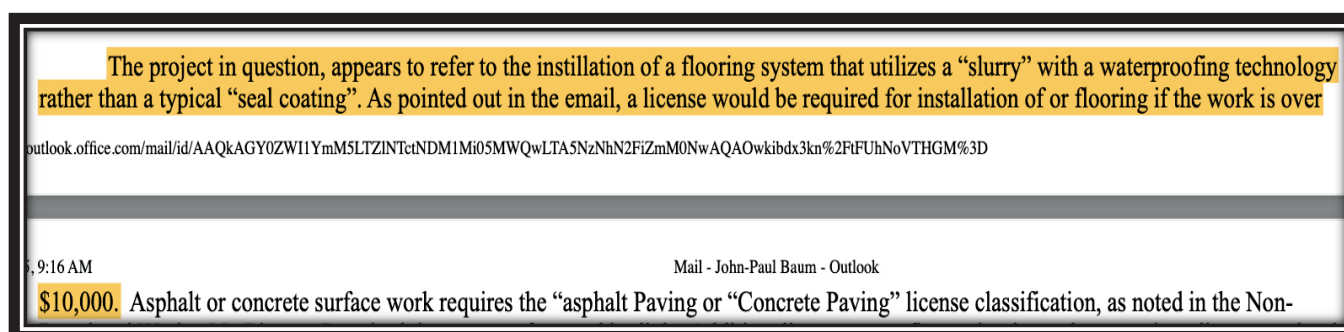
H. The Court erred in failing to declare that a general's contractor's license is required for the Project.

S.C. Code 40-11-30 provides that, “no entity or individual may practice as a contractor by performing or offering to perform contracting work for which the total cost of construction is greater than ten thousand dollars for general contracting or greater than ten thousand dollars for mechanical contracting without a license issued in accordance with this chapter.”² The relevant statute regarding licenses for the Project is provided for in S.C. Code Ann. § 40-11-410(C), which states,

“Nonstructural Renovation” which includes interior and exterior installing, remodeling, renovations, and finishes of acoustical ceiling systems and panels, load-bearing and nonload-bearing drywall partitions, lathing and plastering, **flooring (excluding carpet) and finishing**, interior recreational surfaces, window and door installation, and installation of fixtures, cabinets, and millwork; and which also includes fireproofing, insulation, lining, painting, partitions, sandblasting, interior and exterior wall covering, and waterproofing. This subclassification does not include alterations to load-bearing portions of a structure.

² Total cost of construction is defined under S.C. Code § 40-11-20(26), which means the actual cost incurred by the owner, all contractors, subcontractors, and other parties for labor, material, equipment, profit, and incidental expenses for the entire project. This does not include the cost of design services unless those services are included in a construction contract.

As outlined above, the Project's scope is centered entirely on the installation of flooring. Every task specified by Greenville County directly supports the installation, adhesion, and long-term performance of new flooring materials. Both Greenville County's own scope of work and TMS's bid confirm this. (Exhibit A, B). If the Court declines to treat Greenville County's admissions as dispositive, it should give substantial weight to the opinion of the Office of Advice Counsel of LLR, which stated that the Project involves flooring installation and requires a licensed general contractor to perform the work:



(Exhibit C).

In short, no matter where you look—Greenville County's scope, TMS's bid, or the Advice Counsel's opinion—the conclusion is the same: this is licensed contractor work, plain and simple. The Court failed to rule on this issue and Plaintiff requests the Court to rule on this issue.

I. The court erred in failing to declare that unlicensed contractors cannot install floors.

TMS figured if no one checked, the whole "licensed contractor" thing didn't really matter. S.C. Code Ann. § 40-11-370 provides that "it is unlawful to use the term licensed contractor or to perform or offer to perform general or mechanical construction without first obtaining a license as required by this chapter. S.C. Code Ann. § 40-11-300(B) states, "an entity or individual engaging in general or mechanical construction on a project without the required license or certificate must immediately withdraw from the construction project and may not act as a subcontractor on that

construction project.” Here, it is undisputed that TMS does not hold a general contractor’s license. (Exhibit D, Pl.’s Reqs. For Admis No. 10). Therefore, TMS is barred from performing construction work for the Project.

South Carolina public policy prohibits unlicensed contractors from performing work that requires a license. In *C-Sculptures, LLC v. Brown*, 403 S.C. 53, 742 S.E.2d 359 (2013), a general contractor entered into an agreement to build a home for the property owners, the contract price of which was over \$800,000. After a disagreement between the parties, the contractor filed an action to enforce a mechanic’s lien against the property. *Id.* The Browns then learned that the contractor’s license was limited to construction projects not exceeding \$100,000, and they filed a motion to dismiss pursuant to S.C. Code Ann. § 40-11-370(c) on the grounds that the contractor’s invalid license precluded him from bringing an action at law or in equity to enforce the contract. *Id.* On appeal from an arbitrator’s denial of the motion, the South Carolina Supreme Court held that the arbitrator manifestly disregarded the governing law, noting specifically that “[t]he plain language of § 40-11-370(c) was clear, defined, explicit, and unquestionably applicable,” therefore the motion should have been granted based on the affirmative defense of § 40-11-370. *Id.*; see also *Duckworth v. Cameron*, 270 S.C. 647, 649, 244 S.E.2d 217, 218 (1978) (“Any builder who violates the chapter by entering into a contract for home construction without obtaining the required license simply cannot enforce the contract.”).

The State has a strong interest in ensuring that only properly licensed contractors engage in regulated construction activity. By way of example, in *Arbet v. Riverstone Dev. Grp., Inc.*, No. 2019-000235, 2022 WL 303549, at *1 (S.C. Ct. App. Feb. 2, 2022) (unpublished), the Court of Appeals upheld Judge Gravely’s decision granting summary judgment against an unlicensed contractor, holding that the contractor was barred from recovering payment due to his unlicensed

status. The Court of Appeals stated there, “An entity or individual engaging in general or mechanical construction on a project without the required license...must immediately withdraw from the construction project.... Therefore, we hold the circuit court properly found Riverstone could not bring an action seeking to enforce the contract because it did not possess a valid license for the project.” *Id.* Similarly, Judge Miller granted Summary Judgment and dismissed a contractor’s claim when the contractor did not hold a proper contractor’s license. (Exhibit E). The Court failed to rule on this issue and Plaintiff requests the Court to rule on this issue.

J. The court erred in declaring that TMS was a responsive bidder.

It is undisputed that the Project required all bidders to provide proof of a valid contractor’s license.

4.4. Statement of Qualifications

Vendor shall include the following with their response:

- A. Overview of company background, the relationship of any co-ventures, and an identification of subcontractors, which the Contractor proposes to use on the contract and their respective percentages of participation
- B. Staffing or organizational chart showing staff that will be used for this project
- C. References including names, addresses, and telephone numbers of current or previous customers. The vendor should include any South Carolina governmental entity reference.
- D. A brief description of previous projects
- E. Explanation of Methodology for flooring solution
- F. Evidence of Certifications/Licenses required to complete the project, to include applicable General Contractor's License and Specialty Licenses**
- G. Explanation of Methodology for flooring solution
- H. Proposed product specifications
 - I. Warranty specifications
- J. Timeline for completion, after receipt of Notice to Proceed
- K. Certificate of Insurance

(Exhibit F).

It is equally undisputed that TMS never had one and never produced it. (Exhibit D, Pl.’s Reqs. For Admis No. 10). **This is the beginning and the end of the case.** This issue was addressed in *William C. Logan & Assocs. v. Leatherman*, 290 S.C. 400, 401, 351 S.E.2d 146, 147 (1986), where the South Carolina Supreme Court held that a contractor’s failure to comply with procurement requirements—specifically, listing subcontractors—rendered the bid nonresponsive and void. The Court didn’t excuse the oversight. It enforced the rule.

TMS’s failure to submit proof of a general contractor’s license—an explicit requirement of the bid solicitation—constitutes a fundamental and disqualifying defect. Under *William C. Logan & Assocs. v. Leatherman*, such noncompliance is not a trivial or technical oversight; it renders the bid nonresponsive as a matter of law. The defect was clear at the time the bid was submitted and renders the resulting contract legally invalid. To hold otherwise would effectively reduce mandatory licensing requirements to mere procedural suggestions, undermining both the integrity of the public procurement process and the statutory framework designed to protect it. The Court failed to rule on this issue and Plaintiff requests the Court to rule on this issue.

K. TMS was not authorized to do business in South Carolina at the time of the bid and therefore, cannot perform the Project.

TMS was awarded the Project in December 2023 yet was not registered to do business in South Carolina until February 12, 2024—more than a month after the award and notably, just 21 days after suit was filed by Southern Painting. This timeline is fatal to TMS’s eligibility.

Pursuant to S.C. Code Ann. § 33-15-101, a foreign corporation “may not transact business in this State until it obtains a certificate of authority from the Secretary of State.” The statute is not discretionary. It is a mandatory condition precedent to doing business—including bidding on and performing public contracts—within the state. TMS expressly acknowledged and agreed to this

requirement in the “S.C. Law Clause” it signed as part of its bid submission. (Def. Exhibit A). That clause makes clear that “upon award,” the contractor must “comply with the laws of South Carolina which require such person or entity to be authorized and/or licensed to do business with this State.” *Id.* TMS not only failed to meet this obligation—it did not even attempt to satisfy it until litigation forced the issue. By its own signature, TMS bound itself to South Carolina law and jurisdiction, yet ignored the very legal condition—business registration—that governs its right to contract with the State. This is not a technicality; it is a legal barrier. The failure to register at the time of bid submission means TMS was not legally eligible to enter into or perform the contract. That defect cannot be cured retroactively, especially after litigation has already commenced

To permit otherwise would render § 33-15-101 meaningless and encourage a practice where contractors bid first and worry about compliance only when challenged later. The law does not permit such gamesmanship, particularly when public funds are at stake. Accordingly, the Court should declare the contract void and unenforceable based on TMS’s failure to comply with the statutory requirement to be authorized to do business in South Carolina at the time of the award. The Court failed to rule on this issue and Plaintiff requests the Court to rule on this issue.

L. The Court overlooked public policy and licensing enforcement

Plaintiff argued that the enforcement of licensing laws is necessary to protect public safety and ensure lawful competition. This point, grounded in South Carolina public policy and case law, was not addressed in the Order. Plaintiff requests the Court issue a ruling on this issue.

M. The Court did not rule that Greenville County own’s agent admitted that this was a flooring install.

An email by the Greenville County procurement office admitted that the Project was for the installation of flooring. This ground was raised and requires a specific ruling by the Court. Plaintiff requests the Court issue a ruling on this issue.

N. The Court erred in stating that Ms. Sutherland did not review the specifications of the project.

The Court incorrectly found that Ms. Sutherland did not review the project specifications. Ms. Sutherland explicitly stated that she did review the project, which is directly contradicted by her own email. Plaintiff requests the Court issue a ruling on this issue.

O. The Court erred in stating that Southern Painting did not raise the issue of TMS being licensed in South Carolina.

The Court mistakenly held that Plaintiff waived that TMS was not licensed to do business in South Carolina by failing to raise it in its protest to Greenville County. However, administrative appeals of Greenville County are not governed by the “raised and ruled upon” rule, and the Court cited no authority to support this position because no such requirement exists. Plaintiff requests the Court issue a ruling on this issue.

CONCLUSION

Plaintiff respectfully requests that the Court alter or amend its previous ruling. Alternatively, Plaintiff request this Court to rule on each ground raised by Plaintiff in its briefs, oral arguments, and in this motion to preserve all issues for appeal.

Respectfully submitted May 16, 2025

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STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS

Southern Painting and Maintenance
Specialists, LLC

Civil Action No. 2025-CP-23-00389

Plaintiff,

vs.

Greenville County,

Defendant.

**MEMORANDUM IN OPPOSITION TO
PLAINTIFF'S MOTION TO ALTER OR
AMEND THE JUDGMENT**

In this lawsuit arising from the denial of a procurement protest, Plaintiff Southern Painting and Maintenance Specialists, LLC (“Southern Painting”) seeks to alter or amend the Court’s Order denying Southern Painting’s motions for preliminary injunction and declaratory judgment. Defendant Greenville County (the “County”) submits that Southern Painting’s current motion is nothing more than a re-hash of its prior arguments in support of its motions, and for that reason the Court should deny Southern Painting’s motion based on the reasoning set forth in the Court’s Order and the arguments that the County made in its memorandum in opposition to Southern Painting’s motions for preliminary injunction and declaratory judgment and during the hearing before the Court. To the extent that Southern Painting has raised arguments that the Court did not address or overlooked – which the County contends Southern Painting has not done – those arguments provide no relief to Southern Painting. For these reasons, to be discussed more fully below, the Court should deny Southern Painting’s motion to alter or amend.

ARGUMENT

I. The Court Applied the Proper Legal Standards and Properly Exercised its Discretion in Denying Southern Painting's Motions.

Sections A and B of Southern Painting's motion are emblematic of its entire motion. Section A merely re-states the elements needed for a preliminary injunction and then states, without more, that the Court erred in not granting an injunction because Tailor Made Services, Inc. ("TMS") does not have a South Carolina contractor's license. Section B of Southern Painting's motion is similar, and in this section Southern Painting's argument seems to be that because the Court ruled against Southern Painting, the Court applied the wrong standard for granting a preliminary injunction. Southern Painting makes similar arguments throughout its entire motion to alter or amend. These arguments have no merit.

"The granting of temporary injunctive relief is within the sound discretion of the trial court and will not be overturned absent an abuse of that discretion." *Zabinski v. Bright Acres Assocs.*, 346 S.C. 580, 601, 553 S.E.2d 110, 121 (2001). "An abuse of discretion occurs where the trial court is controlled by an error of law or where the trial court's order is based on factual conclusions without evidentiary support." *Id.* In its Order the Court properly exercised its discretion in finding that Southern Painting did not meet the heavy burdens of proof that the law required Southern Painting to meet in order to obtain the drastic remedy of a preliminary injunction and to find that the County's actions were arbitrary or unreasonable in order to obtain declaratory relief. *See* Order at 3 (citing *Scratch Golf Co. v. Dunes W. Residential Golf Props.*, 361 S.C. 117, 121, 603 S.E.2d 905, 907 (2004) for the proposition that "[a]n injunction is a drastic remedy issued by the court in its discretion to prevent irreparable harm suffered by the plaintiff."). *See also* Order at 4 (citing *Sloan v. Greenville Cnty.*, 356 S.C. 531, 555-56, 590 S.E.2d 338, 351 (Ct. App. 2003) for the proposition

that Southern Painting had to demonstrate that the County's actions were "arbitrary, unreasonable, in obvious abuse of discretion, or an excess of lawfully delegated power.").

Without restating here all of the arguments made in its memorandum in opposition to Southern Painting's motions for preliminary injunction and declaratory judgment and before the Court, all of which the County incorporates herein, the Court's order was proper.

II. The Court Has Ruled upon All Issues that Southern Painting Raised.

The County submits that the Court's Order addressed all issues that Southern Painting raised in its motions for preliminary injunction and declaratory relief. To the extent that Southern Painting's motion raises issues that the Court did not address, however, those arguments provide no relief to Southern Painting.

A. Ruling on Substantial Harm and No Adequate Remedy.

In Sections E and F of its motion, Southern Painting claims that the "Court erred in failing to rule that Plaintiff would suffer irreparable harm" and that the "Court erred in failing to rule that Southern Painting has no remedy at law." In action seeking a preliminary injunction, a plaintiff must show each of the following elements:

- (1) irreparable harm if the injunction is not granted;
- (2) likelihood of success on the merits; and
- (3) an inadequate remedy at law.

Strategic Resources Co. v. BCS Life Ins. Co., 367 S.C. 540, 544, 627 S.E.2d 687, 689 (2006). Because the Court ruled that Southern Painting failed to establish likelihood of success on the merits, *see* Order at 10, the Court did not need to rule upon the two other elements required for obtaining a preliminary injunction. *See Greenville Bistro, LLC v. Greenville County*, 435 S.C. 146,

167, 866 S.E.2d 562, 573 (2021) (stating that because the plaintiff “failed to prove it would likely succeed on the merits”, the court “need not consider whether Greenville Bistro established the elements of irreparable harm or inadequate remedy at law.”).

B. Rulings Concerning the Communications of State Agency Employees.

While taking the Court to task in Section E for “deferring to an email sent by” Ms. Rhonda Jackson of the South Carolina Contractors Licensing Board, who Southern Painting refers to derisively as “Rhonda”, *see* Section D of Motion to Alter or Amend, Southern Painting then complains that the Court “erred in stating that Ms. Sutherland did not review the specifications of the project.” *See id.* at Section N. Regarding Ms. Jackson, Southern Painting misses the point, as the Court did not “defer” to her in ruling on a licensing issue. As the Court’s Order properly states, which Southern Painting does not dispute in its motion to alter or amend, the issue in this case is whether the County acted reasonably in finding that awarding TMS the project and in denying Southern Painting’s protest. *See* Order at 9. *See also* Order at 4 (“The issue in this case, therefore, is whether the County’s written determinations finding TMS to be a responsible and responsive vendor should be upheld.”). In making its decisions relative to TMS and Southern Painting’s protest, the County relied in part on Ms. Jackson’s statements to the County that TMS was not required to have a contractor’s license to perform the scope of work TMS proposed. Given the authority that the General Assembly has given to the South Carolina Contractors Licensing Board to oversee the licensing of contractors in this state, *see* S.C. Code Ann. §§ 40-11-10(A)¹, 40-11-

¹ This provision states:

There is created the South Carolina Contractor's Licensing Board under the administration of the Department of Labor, Licensing and Regulation. The purpose of this board is to protect the health, safety, and welfare of the public through the regulation of businesses and individuals who identify, assess, and provide contracting work to individuals or other legal entities through the administration and

70 -- 40-11-110, 40-11-210 and 40-11-160, and given the broad discretion that the County has in making these decisions, *see* Order at 4 (citing *Sloan v. Greenville Cnty.*, 356 S.C. 531, 555-56, 590 S.E.2d 338, 351 (Ct. App. 2003) and discussing the standard to use in reviewing Greenville County procurement decisions), the Court was well within its discretion to find that the County reasonably relied on Ms. Jackson’s communications.²

Regarding the communication from Ms. Carolyn Sutherland, Advice Counsel for the South Carolina Department of Labor, Licensing and Regulation, Southern Painting complains that the Court “incorrectly found that Ms. Sutherland did not review the project specifications. Ms. Sutherland explicitly stated that she did review the project, which is directly contradicted by her own email.” Motion to Alter or Amend at 15. This is not what the Court found. Instead, the Court stated:

Unlike the County’s e-mail to Ms. Jackson of the SC Licensing Board, where the County provided the specifications provided by TMS for the Project and also a link to a Project description, the record does not show what Southern Painting provided to Ms. Sutherland by way of a description of the Project.

enforcement of this chapter and any regulation promulgated under this chapter and Article 1, Chapter 1.

² Southern Painting cites *Colonial Pipeline Company v. South Carolina Department of Revenue*, 443 S.C. 448, 905 S.E.2d 129 (Ct. App. 2024) and notes that the court of appeals stated in that case stated that it was “cognizant” of *Loper Bright Enters. V. Raimondo*, 603 U.S. 369 (2024). Nowhere does the court in the *Colonial Pipeline Company* opinion, however, overrule or even question *Ruocco v. South Carolina State Bd. of Registration for Professional Engineers and Land Surveyors*, 314 S.C. 111, 115, 441 S.E.2d 829, 831 (Ct. App. 1994) or *Dunton v. South Carolina Bd. of Examiners in Optometry*, 291 S.C. 221, 353 S.E.2d 132 (1987), both cited in the Court’s Order at 8. Moreover, as the United States Supreme Court noted in *Loper*, the *Chevron* standard “demand[ed] that courts mechanically afford **binding deference** to agency interpretations, including those that have been inconsistent over time ... [and] even when a pre-existing judicial precedent holds that an ambiguous statute means something else,” 603 U.S. at 398. This former federal standard is a far cry from the “the most respectful consideration” standard described in *Ruocco*. 314 S.C. at 115, 441 S.E.2d at 831. The *Colonial Pipeline Company* opinion, therefore, does nothing for Southern Painting’s case.

Order at 7. The type of work that TMS performed was critical to the licensing issue that Southern Painting raised in this case. The record demonstrates that the County provided to Ms. Jackson the project specifications that TMS submitted and a link to a project description. The record does not demonstrate what, if anything, Southern Painting provided to Ms. Sutherland, who in any event stated that “she was not qualified to opine whether the Project required a contractor’s license.” Order at 7-8 citing Exhibit C to Southern Painting’s Memorandum in Support of Motion for Declaratory Judgment.

CONCLUSION

For the foregoing reasons, the Court should deny the Southern Painting’s motion to alter of amend.

HAYNSWORTH SINKLER BOYD, P.A.

s/Boyd B. Nicholson, Jr.

Boyd B. Nicholson, Jr. (S.C. Bar No. 65387)

P.O. Box 2048 (29602-2048)

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May 27, 2025
Greenville, South Carolina

Attorneys for Defendant Greenville County

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

William C. McMaster, Circuit Court Judge

Common Please Case No. 2025-CP-23-00389

Appellate Case No.

Southern Painting and Maintenance Specialists,
LLC.,

Appellant,

v.

Greenville County,

Respondent.

NOTICE OF APPEAL

Southern Painting and Maintenance Specialists, LLC, appeals the Orders in this Matter filed on April 21, 2025, May 8, 2025, and June 3, 2025. Copy of the written Orders are attached to this Notice as Exhibit “A” “B” “C”, and “D.”

Respectfully submitted this 5th day of June 2025.

CAMPBELL TEAGUE LLC

s/John-Paul Baum

John-Paul Baum (SC Bar #104928)

110 Edgeworth St.

Greenville, SC 29607

PH: (864) 326-4186

johnpaul@campbellteague.com

Attorney for Plaintiff

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

Southern Painting and Maintenance
Specialists, LLC,

Plaintiff,

v.

Greenville County,

Defendant.

IN THE COURT OF COMMON PLEAS

Case No. 2025-CP-23-00389

NOTICE OF FILING

To: Clerk of Court and Defendant of Record:

Please take notice that Defendants have filed the attached Notice of Appeal to the South Carolina Court of Appeals.

Respectfully submitted this 5th day of June 2025.

CAMPBELL TEAGUE LLC

s/John-Paul Baum

John-Paul Baum (SC Bar #104928)

110 Edgeworth St.

Greenville, SC 29607

PH: (864) 326-4186

johnpaul@campbellteague.com

Attorney for Plaintiff

PROOF OF SERVICE

IT IS HEREBY CERTIFIED that a copy of the foregoing document was served upon via
email:

Boyd B. Nicholson, Jr.
Haynsworth Sinkler Boyd, P.A.
1 North Main, 2nd Floor
Greenville, SC 29601
nnicholson@hsblawfirm.com


Kimberly Lykes

Date: June 5, 2025

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Greenville
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2025CP2300389

Southern Painting And Maintenance Specialists LLC
PLAINTIFF(S)Greenville County
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED** (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled);
☐ Other
- ☐ **ACTION STRICKEN** (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

This matter came before the Court on April 14, 2025. John Paul Baum appeared on behalf of the Plaintiff and Boyd Benjamin Nicholson appeared on behalf of the Defendant. After hearing the arguments of the parties and a review of the filings in the case, the Plaintiff's Motion for Preliminary Injunction is Denied. Defense counsel is to prepare a formal order within 15 days.

It Is So Ordered.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 04/18/2025 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ELECTRONICALLY FILED - 2025 Apr 21 9:14 AM - GREENVILLE - COMMON PLEAS - CASE#2025CP2300389
ELECTRONICALLY FILED - 2025 Jun 05 3:34 PM - GREENVILLE - COMMON PLEAS - CASE#2025CP2300389



Greenville Common Pleas

Case Caption: Southern Painting And Maintenance Specialists LLC vs. Greenville County
Case Number: 2025CP2300389
Type: Order/Electronic Form 4

So Ordered

William C. McMaster, III

Electronically signed on 2025-04-18 11:39:07 page 3 of 3

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Greenville
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2025CP2300389

Southern Painting And Maintenance Specialists LLC
PLAINTIFF(S)Greenville County
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

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Greenville Common Pleas

Case Caption: Southern Painting And Maintenance Specialists LLC vs. Greenville County
Case Number: 2025CP2300389
Type: Order/Electronic Form 4

So Ordered

William C. McMaster, III

Electronically signed on 2025-04-18 11:39:27 page 3 of 3

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS

Southern Painting and Maintenance
Specialists, LLC

Civil Action No. 2025-CP-23-00389

Plaintiff,

**ORDER DENYING PLAINTIFF'S
MOTIONS FOR PRELIMINARY
INJUNCTION AND FOR
DECLARATORY JUDGMENT**

vs.

Greenville County,

Defendant.

Plaintiff Southern Painting and Maintenance Specialists, LLC (“Southern Painting”) filed motions for a preliminary injunction and declaratory judgment against Defendant Greenville County (the “County”), claiming that the County improperly awarded a contract to a vendor, Tailor Made Services, Inc. (“TMS”). The Court heard these motions on April 14, 2025. John-Paul Baum represented Southern Painting, and Boyd B. Nicholson, Jr. represented the County. For the reasons discussed below, the Court denies Southern Painting’s motions.

FACTS

The County issued Request for Proposals # 25029 (the “RFP”), “Animal Care Services – Shelter Flooring Installation” (the “Project”). The RFP described the goal of the Project as follows:

The goal of this project is to enhance the shelter’s functionality while improving the health and safety of both animals and personnel. This will involve replacing existing flooring – currently a mix of sealed concrete, VCT tile, ceramic tile, and epoxy-coated concrete – with a material that is moisture-resistant, scratch-resistant, and capable of withstanding frequent cleaning using accelerated hydrogen peroxide, stiff-bristle brushes, water hoses, and squeegees. The new flooring should also contribute to the facility’s overall aesthetic.

See RFP, Section 1.1, included as Exhibit A to the Affidavit of Robert Brewer (“Brewer

Affidavit”). Three vendors submitted proposals or bids: TMS, Southern Painting, and HRP Innovations (“HRP”). Brewer affidavit at ¶ 3. Because TMS’ proposal contained no indication that TMS held a South Carolina contractor’s license, Robert Brewer, the County’s Director of Procurement, contacted personnel from the South Carolina Contractors Licensing Board (“SC Licensing Board”) to determine whether a contractor’s license was needed. Brewer affidavit at ¶ 5. Based on this communication, Mr. Brewer understood that a South Carolina contractor’s license was not required to perform the work described in the RFP, and therefore, he determined that TMS was a responsible vendor. *Id.* Mr. Brewer also determined that Southern Painting and HRP were responsible vendors. *Id.*

The County’s evaluation committee evaluated the vendors’ proposals and deemed TMS’ proposal to be the most advantageous to the County. Therefore, the County awarded the contract to TMS. Brewer Affidavit at ¶ 6. Southern Painting protested this award on the grounds that (i) TMS did not have a required South Carolina contractor’s license, and (ii) Southern Painting could not confirm bid amounts. Brewer Affidavit at ¶ 6. *See also* Southern Painting’s Protest, attached as Exhibit B to Brewer Affidavit. Mr. Brewer then contacted the SC Licensing Board again about the licensing issue, and again concluded after this latest communication that TMS was not required to hold a South Carolina contractor’s license. Brewer Affidavit at ¶ 8. *See also* written communications with SCLLR personnel, attached as Exhibit C to Brewer Affidavit. Based on these communications, Mr. Brewer denied Southern Painting’s protest. Brewer Affidavit at ¶ 8. Pursuant to the Greenville County Procurement Ordinance (“GCPO”), Southern Painting appealed Mr. Brewer’s decision to the Greenville County Administrator, who upheld Mr. Brewer’s decision. *See* Affidavit of Bob Maffett at ¶ 13. *See also* Exhibit C to Maffett Affidavit (containing protest decisions of County officials). This lawsuit followed.

LEGAL STANDARD

I. Preliminary Injunction

For a preliminary injunction to be granted, the plaintiff must establish that (1) it would suffer irreparable harm if the injunction is not granted; (2) the party seeking injunction will likely succeed in the litigation; and (3) there is an inadequate remedy at law.” *Strategic Resources Co. v. BCS Life Ins. Co.*, 367 S.C. 540, 544, 627 S.E.2d 687, 689 (2006). The party seeking a temporary injunction has the burden of demonstrating facts and circumstances satisfying each of these elements. *Strategic Res. Co.*, 367 S.C. at 544, 627 S.E.2d at 689. If there is a failure by the movant to establish even one of these three elements, a request for a temporary injunction must be denied. *Shapemasters Golf Course Bldrs., Inc. v. Shapemasters, Inc.*, 360 S.C. 473, 477-478, 602 S.E.2d 83, 85-86 (2004) (affirming trial court’s denial of restraining order because moving party did not show irreparable harm). Furthermore, “[i]n deciding whether to grant [a temporary] injunction, the court must balance the benefit of an injunction to the plaintiff against the inconvenience and damage to the defendant, and grant an injunction which seems most consistent with justice and equity under the circumstances of the case.” *Strategic Res. Co.*, 367 S.C. at 544, 627 S.E.2d at 689. The granting of a temporary injunction is a drastic remedy and ought to be applied with caution. *Id.* at 544, 627 S.E.2d at 689 (citing *Forest Land Co. v. Black*, 216 S.C. 255, 57 S.E.2d 420 (1950)). *See also Scratch Golf Co. v. Dunes W. Residential Golf Props.*, 361 S.C. 117, 121, 603 S.E.2d 905, 907 (2004). (“An injunction is a drastic remedy issued by the court in its discretion to prevent irreparable harm suffered by the plaintiff.”).

II. Declaratory Judgment

This case follows the County’s denial of Southern Painting’s protest. In that protest, Southern Painting claimed TMS was not a responsible vendor because TMS did not have a South

Carolina contractor's license. Mr. Brewer, the County's Procurement Director reviewing Southern Painting's protest in the first instance, and Mr. Joseph Kernell, the County Administrator reviewing Southern Painting's appeal of Mr. Brewer's decision, made written determinations upholding the County's prior determination that TMS was a responsive and responsible vendor.¹ The issue in this case, therefore, is whether the County's written determinations finding TMS to be a responsible and responsive vendor should be upheld. In a prior case also examining the validity of a written determination made by County officials under the GCPO, the South Carolina Court of Appeals stated that the plaintiff in that case had to demonstrate that the County's written determination was "arbitrary, unreasonable, in obvious abuse of discretion, or an excess of lawfully delegated power." *See Sloan v. Greenville Cnty.*, 356 S.C. 531, 555-56, 590 S.E.2d 338, 351 (Ct. App. 2003). The South Carolina Procurement Review Panel uses a similar standard in reviewing procurement decisions of this nature, in which protestors must demonstrate that procurement determinations of this nature are "clearly erroneous, arbitrary, capricious, or contrary to law." *See IN RE: Appeal by CBN Secure Technologies, Inc.*, Case No. 2024-4, 2024 WL 5325242 (S.C. Proc. Rev. Panel 2024). *See also In re: Protest of Brantley Construction Co., Inc.*, Case No. 1993-3, 1999 WL 33590765 (S.C. Proc. Rev. Panel 1999) ("[t]he protesting bidder must prove the determination of responsibility is clearly erroneous, arbitrary, capricious, or contrary to law.").

¹ Under the County's competitive sealed proposals procurement process, the County may only award a contract to a bidder that is responsive and responsible. *See* GCPO § 7-307 (8) - (10). The GCPO defines a responsible bidder as a "person who has the capability in all respects to perform fully the contract requirements, and the tenacity, perseverance, experience, integrity, reliability, capacity, facilities, equipment, and credit which will assure good faith performance." GCPO § 7-198(46), and it defines a responsive bidder as a "person who has submitted a bid which conforms in all material respects to the requirements set forth" in the solicitation documents. GCPO § 7-198(47).

DISCUSSION

Southern Painting seeks a preliminary injunction and declaratory judgment against the County on the grounds that the County's award of the Project to TMS was improper for two reasons: first, that TMS does not have a South Carolina contractor's license, and second, that TMS is not authorized to do business in South Carolina. Neither of these arguments, however, invalidates the award of the Project to TMS.

I. Licensing.

The requirements of licensure for general contracting in South Carolina are set forth in S.C. Code Ann. § 40-11-5, *et. seq.* (the "Licensing Act"), and it provides, among other things, that no one "may practice as a contractor by performing or offering to perform contracting work for which the total cost of construction is greater than ten thousand dollars for general contracting ... without a license issued" by the SC Licensing Board. S.C. Code Ann. § 40-11-30. A "general contractor" is one who "performs or supervises or offers to perform or supervise general construction," *id.* § 40-11-20(11), and the Licensing Act defines "general construction" as "the installation, replacement, or repair of a building, structure, highway, sewer, grading, asphalt or concrete paving, or improvement of any kind to real property." *Id.* § 40-11-20(10). The Licensing Act creates different categories of general contracting, *id.* § 40-11-410, and it describes those activities that are exempt from the Licensing Act. *Id.* § 40-11-360. The SC Licensing Board has the power to receive complaints, perform investigations and discipline contractors. *Id.* §§ 40-11-70 -- 40-11-110. It also has the authority to bring a lawsuit in civil court to enjoin a party from violating licensing statutes. *Id.* § 40-11-210. Any person who is aggrieved by a decision of the SC Licensing Board must appeal that decision to the SC Administrative Law Court, not the Circuit Court. *Id.* §

40-11-160.²

The record demonstrates that the County did not act in an arbitrary or capricious manner concerning the contractor licensing issues that this Project presented. As the affidavit of Robert Brewer demonstrates, the County investigated on two separate occasions the issue of whether TMS was required to hold a South Carolina contractor's license. The first investigation took place following the receipt of TMS's proposal. Because TMS did not submit a license with its proposal, the County contacted the SC Licensing Board, the authority having jurisdiction over the licensing of contractors. See Brewer Affidavit at ¶ 5 and Exhibit C to Brewer Affidavit. Based on the SC Licensing Board's response, Mr. Brewer deemed TMS responsive and responsible. Brewer affidavit at ¶ 5.

After Southern Painting protested the award of the Project to TMS, Mr. Brewer made another inquiry concerning the need for a license to perform the work described in the RFP. Mr. Brewer again contacted the SC Licensing Board, stating in an e-mail:

We need a little more clarification as we are handling a protest from a responder to our RFP. The protest is that the awarded vendor does not have the proper license for the work. The project is applying sealant coating (specifications attached if you need them) to a concrete floor. There is no demolition needed to the current flooring or any concrete repair work. The protest states that a GC license with a classification of Nonstructural Renovation (NR) is needed.

I'm also attaching the following link to our project in case you need more information. ...

Please clarify if a GC license with a NR classification is needed.

² The South Carolina General Assembly created the SC Licensing Board pursuant to the Licensing Act: "There is created the South Carolina Contractor's Licensing Board under the administration of the Department of Labor, Licensing and Regulation. The purpose of this board is to protect the health, safety, and welfare of the public through the regulation of businesses and individuals who identify, assess, and provide contracting work to individuals or other legal entities through the administration and enforcement of this chapter and any regulation promulgated under this chapter and Article 1, Chapter 1." South Carolina Code § 40-11-10(A).

See January 6, 2025 e-mail from Robert Brewer to Rhonda Jackson at SC Licensing Board, included as part of Exhibit C to Brewer Affidavit. Ms. Jackson, the Program Coordinator of the SC Licensing Board, replied: “Sealants do not require a license from our board as stated in my 12/04/2024 email below.” See January 14, 2025 e-mail from Rhonda Jackson to Robert Brewer, included as part of Exhibit C to Brewer Affidavit.

Southern Painting also presented to the Court an e-mail from a state government employee regarding this licensing issue.³ This communication came from Carolyn Sutherland, Advice Counsel for the South Carolina Department of Labor, Licensing and Regulation (“SC LLR”). In its filings with the Court, Southern Painting quoted Ms. Sutherland as stating:

The project in question appears to refer to the installation of a flooring system that utilizes a “slurry” with a waterproofing technology rather than a typical “seal coating”. As pointed out in the email, the license would be required for installation of or flooring if the work is over \$10,000.

Exhibit C to Southern Painting’s Memorandum in Support of Motion for Declaratory Judgment. Unlike the County’s e-mail to Ms. Jackson of the SC Licensing Board, where the County provided the specifications provided by TMS for the Project and also a link to a Project description, the record does not show what Southern Painting provided to Ms. Sutherland by way of a description of the Project. Moreover, Southern Painting did not quote the remainder of Ms. Sutherland’s e-mail, wherein Ms. Sutherland stated in part that she was not qualified to opine whether the Project required a contractor’s license. See Exhibit C to Southern Painting’s Memorandum in Support of

³ Each of these e-mails the parties submitted to the Court constitute hearsay. See South Carolina Rules of Evidence, Rule 801. Neither party, however, objected to the introduction of these communications. Moreover, in a hearing involving a request for a preliminary injunction the trial court may rely upon hearsay evidence in determining likelihood of success on the merits. See *Jennings-Dill, Inc. v. Israel*, 442 S.C. 98, 110, 897 S.E.2d 201, 207 (Ct. App. 2024) (“Given the purpose of a preliminary injunction ... it is appropriate for a circuit court to rely on hearsay and speculative statements when deciding whether a party has met their burden of demonstrating a likelihood of success on the merits.”).

Motion for Declaratory Judgment (“That said, waterproofing and sealcoating are pretty similar in nature and I am not qualified to interpret the distinction here.”).

In summary, on two separate occasions the County contacted the SC Licensing Board about the need for a contractor’s license for this Project. Both times, the SC Licensing Board, the authority having jurisdiction over contracting licensing matters in this state, informed the County that a license was not required. The evidence that Southern Painting offered to rebut these two communications was a communication from Advice Counsel of SC LLR who stated that she was not qualified to opine on the issue.

Case law makes clear that Mr. Brewer acted reasonably in following the conclusions and reasoning of the SC Licensing Board, as the “construction of a statute by the agency charged with its administration will be accorded the most respectful consideration and will not be overruled absent compelling reasons.” *Ruocco v. South Carolina State Bd. of Registration for Professional Engineers and Land Surveyors*, 314 S.C. 111, 115, 441 S.E.2d 829, 831 (Ct. App. 1994) (citing *Dunton v. South Carolina Bd. of Examiners in Optometry*, 291 S.C. 221, 353 S.E.2d 132 (1987)). Southern Painting cites the United States Supreme Court case of *Loper Bright Enters. V. Raimondo*, 603 U.S. 369 (2024) and argues that this case has overruled *Ruocco* and the long-standing precedent it cites. *Loper Bright*, however, concerned interpretation of federal administrative law, and thus it has no effect on the present case dealing with the application of a South Carolina licensing statute to a Greenville County procurement.

The case of *In re: Protest of Monroe Construction Co., LLC*, Case No. 2011-3, 2011 WL 7068068 (S.C. Proc. Rev. Panel 2011) is instructive. In that case, the protesting contractor argued that the winning contractor had improperly listed an unlicensed subcontractor in its bid. A representative of the University of South Carolina (the contracting entity) who had prepared the

bid documents testified “that she checked the licenses of [the plumber] prior to award and determined that [the plumber] possessed a valid plumbing license, which is all that was required by the bid form.” The Procurement Review Panel held that “this inquiry satisfied the requirements of the Procurement Code with regard to responsibility” and therefore, the protesting contractor “failed to show that USC’s determination of responsibility [was] ‘clearly erroneous, arbitrary, capricious, or contrary to law.’” *Id.* In the present case, Mr. Brewer did much more than the University of South Carolina representative in *In re: Protest of Monroe*. Here, Mr. Brewer made inquiries – not once but twice – with the SC Licensing Board concerning the licensing issue. Both times he received the same answer: a license was not required.

Based on this record, it is clear that the County acted reasonably. Reasonableness, however, is not the standard. Instead, Southern Painting must show that the County’s award to TMS and the County’s denial of Southern Painting’s protest was “arbitrary, unreasonable, in obvious abuse of discretion, or an excess of lawfully delegated power.” *Sloan v. Greenville Cnty.*, 356 S.C. at 555-56, 590 S.E.2d at 351. Southern Painting has not made this showing. Therefore, Southern Painting is entitled to no relief based on a claim that TMS was not properly licensed.

II. Registration to Do Business in South Carolina.

Southern Painting also claims that its motions should be granted because TMS is not registered to do business in South Carolina. As an initial matter, Southern Painting did not raise this issue in its protest, *see* Exhibit B to Brewer Affidavit, and therefore, this issue is waived. Notwithstanding this fact, however, the County demonstrated that TMS is in fact registered to do business in South Carolina. *See* Brewer Affidavit at ¶ 9 and Exhibit D to Brewer Affidavit. Southern Painting argues, however, that because TMS was not registered when it submitted its bid, TMS was barred from working on the Project. The law does not support this argument.

S.C. Code Ann § 33-15-101(a) provides that an out-of-state corporation “may not transact business in this State until it obtains a certificate of authority from the Secretary of State.” As noted, TMS is registered to do business in South Carolina. Moreover, nothing in the foreign corporation legislation provides that failure to obtain authorization before bidding on a project forever precludes such a corporation from working on that project. To the contrary, the only consequence for failure to become authorized in South Carolina is a small civil fine and the inability to bring lawsuits in South Carolina courts. *See* S.C. Code Ann § 33-15-102. Even if an unauthorized corporation brings an action in a South Carolina court, however, the action may continue if the unauthorized corporation thereafter obtains authorization to do business in South Carolina. *See* S.C. Code Ann § 33-15-102(b)-(c). For these reasons, Southern Painting’s arguments that TMS is not properly authorized to work on the Project must fail, and it is entitled to no relief based on these arguments.

CONCLUSION

Southern Painting has failed to demonstrate a likelihood of success on the merits, and thus Southern Painting is not entitled to a preliminary injunction.⁴ Southern Painting has likewise failed to demonstrate that it is entitled to any declaratory relief. Therefore, the Court denies Southern Painting’s motion for preliminary injunction and Southern Painting’s motion for declaratory judgment.

IT IS SO ORDERED.

The Honorable William C. McMaster III,
Circuit Court Judge for Greenville County

⁴ Because the Court finds no likelihood success on the merits, the Court need not rule concerning the remaining elements needed for a preliminary injunction.



Greenville Common Pleas

Case Caption: Southern Painting And Maintenance Specialists LLC vs. Greenville County
Case Number: 2025CP2300389
Type: Order/Other

So Ordered

William C. McMaster, III

Electronically signed on 2025-05-08 15:13:11 page 11 of 11

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Greenville
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2025CP2300389

Southern Painting And Maintenance Specialists LLC
PLAINTIFF(S)Greenville County
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

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☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

After careful consideration of the able argument and filings of counsel and review of the record, the Court is unable to discover any material fact or principle of law that either has been overlooked or disregarded and further finds no error of law or fact not appropriately considered. Accordingly, the Plaintiff's Motion to Alter or Amend Judgment is Denied.

It Is So Ordered.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 06/03/2025 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



Greenville Common Pleas

Case Caption: Southern Painting And Maintenance Specialists LLC vs. Greenville County
Case Number: 2025CP2300389
Type: Order/Electronic Form 4

So Ordered

William C. McMaster, III

Electronically signed on 2025-06-03 13:47:22 page 3 of 3

V. CERTIFICATION

Consistent with Rule 210, SCACR, the undersigned counsel for Appellant hereby certifies that this Record on Appeal contains all material proposed to be included by the parties and not any other material.

RECEIVED
Dec 03 2025
SC Court of Appeals

Respectfully submitted,

s/John-Paul Baum

John-Paul Baum (SC Bar #104938)

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Attorney for Appellant

Greenville, South Carolina
December 3, 2025